

MELBOURNE LAW SCHOOL COVID-19 RESEARCH NETWORK
ANNOTATED BIBLIOGRAPHY OF COVID-19 LEGAL LITERATURE

Updated 1 June 2020

Note: the annotated bibliography below is arranged A) Literature B) Organisations and C) Blogs, journals and websites.

The literature in Part A primarily includes scholarship and professional literature and is divided into broad topics, beginning with general literature followed by specific topics. We have only included each article under one topic heading, even if it is appropriate to be listed in two or more topics. A note on the jurisdiction is included if this is not immediately obvious from the title. We have only included literature written in English.

Part B lists selected organisations with dedicated COVID-19 legal publications pages.

Part C lists blogs or other online fora – this is a list to extend the excellent resource of such online commentary, using such authoritative sources such as *EJIL: Talk!* and *Opinio Juris*, that has already been compiled by the George C Marshall European Centre for Security Studies in Germany, and is being regularly updated – see Jonathan G Odom, '[COVID-19 and the Law: A Compilation of Legal Resources](#)'.

Links are provided to literature available on open access.

This bibliography will be regularly updated.

This bibliography was compiled by the Melbourne Law School Academic Research Service, using the following journal article databases: Index to Legal Periodicals (EBSCO), AGIS (INFORMIT), Westlaw UK Journals, Westlaw Canada Journals, HEIN, SSRN and Google Scholar. Few scholarly journals have yet published COVID-19 articles - although many journals have 'relaxed' the usually stringent peer review process in order to get articles published quickly, the process is still quite lengthy, so most scholarship listed is in its pre-publication form on eg: SSRN. Many of the SSRN articles have been uploaded independently by SSRN scholars, rather than as part of, for example, a research paper series.

Please contact Robin Gardner in the Academic Research Service law-academicresearch@unimelb.edu.au if you have any suggestions for additional content.

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A) SCHOLARSHIP AND PROFESSIONAL LITERATURE

GENERAL

Chesterman, Simon, '[Covid-19 and the Global Legal Disorder](#)' (SSRN Scholarly Paper ID 3588397, 29 April 2020)

Abstract: When the world restarts and the masks are put away, will the global legal order look the same? Should it? A crisis is a terrible time to make predictions about the future. But it's a great time to rethink dubious assumptions of the past, and address tensions revealed in the present. Just within the field of international law, Covid-19 has encouraged all three. Pundits predict the death of globalization — or its rebirth. Others assert that they always knew the global public health infrastructure was fundamentally flawed, or that it was the one thing saving us from apocalypse. And, of course, there are those eagerly seeking someone, somewhere, against whom they might bring a lawsuit. So it might be helpful to sort some of the wheat from the chaff and map out what we know, what we don't know, and where we might go from here.

Gostin, Lawrence O, Eric Friedman and Sarah Wetter, '[Responding to COVID-19: How to Navigate a Public Health Emergency Legally and Ethically](#)' (SSRN Scholarly Paper ID 3579094, 26 March 2020)

Jurisdiction: USA

Abstract: Widespread social separation is rapidly becoming the norm, including closure of schools and universities, tele-commuting to work, bans on large gatherings, and millions of people isolated in their homes or make-shift facilities. Bans on international travel are already pervasive. Domestic travel restrictions are exceedingly rare, but now within the realm of possibility. Officials are even discussing cordon sanitaires (guarded areas where people may not enter or leave), popularly described as 'lockdowns' or mass quarantines. When the health system becomes stretched beyond capacity, how can we ethically allocate scarce health goods and services? How can we ensure that marginalized populations can access the care they need? What ethical duties do we owe to vulnerable people separated from their families and communities? And how do we ethically and legally balance public health with civil liberties?

Hodges, Christopher, '[Basing Action and Structures on Values in a Post-Corona World](#)' (Oxford Legal Studies Research Paper No 18/2020, 2020)

Abstract: Every country has experienced profound attack from the Coronavirus. Every state will now face deep economic damage, possibly for a prolonged period. The next stage of economic disruption produces some winners and many losers. It inherently carries risks of widespread unemployment, collapse of companies, services, taxation revenues, and consequential risks of social unrest, criminal exploitation, revolution, cyber exploitation and warfare, and possibly the collapse of states and societies, and invasion by foreign powers. Much depends on how things are handled by a small number of political leaders around the world, the decisions that they take, and the actions that they are able to implement. These challenges arise on top of the other existential risk of climate change and the extinction of species, which may now risk being overlooked. The risks to civilisation could not be more serious.

How should we respond? Many wise suggestions will be made by experts on the economic, employment and administrative aspects. This analysis contributes a different perspective based on what seem to be people's basic views of what they value. Certain values are being re-emphasised as fundamentally important, and we should consider the implications. The prevailing values of a society should be the foundation of the political decisions that are taken in the coming period of economic disruption and increased poverty, and of the evaluation of those decisions. We should also use the values to consider what changes may be necessary in structures, systems, processes actions and behaviours, so as to minimise harm and maximise the achievement of the intended goals.

The argument is that a change is occurring in which pursuit of personal wealth and success at the expense of others is being replaced by recognition of the need to found society and commerce on interconnectedness. Further, this change can only be effective if it is based on the human values of other-regarding and mutual support and solidarity based on a demonstrable commitment to ethical values in conduct. That understanding of the basis of value-based relationships provides the foundation for rethinking the structures and institutions that will be needed.

Huang, Peter H, '[Put More Women in Charge and Other Leadership Lessons from COVID-19](#)' (May 19, 2020). (University of Colorado Law Legal Studies Research Paper No 20-21, 2020)

Abstract: COVID-19 teaches us lessons about leadership, the most important of which is to put more women in charge. This Article provides an interdisciplinary analysis of these lessons, which come at the very high price of many forever disrupted and lost human lives. COVID-19 is a global tragedy. COVID-19 can also be a cruel, relentless and unforgiving teacher of valuable lessons about leadership. During COVID-19, leaders had to quickly mobilize many resources and convince many people to change their established behaviors and familiar routines. Leaders had to rely on effective and persuasive communication to achieve buy-in and voluntary compliance by a diverse public. This is because enforcement of non-compliance is effectively infeasible. This Article introduces the phrase, thoughtful leadership, to describe such leadership and leadership communications. In response to COVID-19, some leaders have been compassionate, courageous, data-based, decisive, and kind. These leaders' communications with the media and the public were calm, caring, clear, empathetic, honest, science-driven, and transparent. This Article analyzes what leaders who were more successful during COVID-19 did and said. During COVID-19, women were many of the most admired and more successful leaders. These female leaders of cities, states and nations were exemplary. There were also some exemplary male leaders. This Article considers explanations and theories about why so many women leaders were among the most successful during COVID-19. This Article profiles in some detail three exemplars of leadership: New Zealand prime minister Jacinda Ardern, Secretary to the Governor of New York Melissa DeRosa, and New York state governor Andrew Cuomo. Finally, thoughtful leadership is applicable to parenting and teaching.

Johnson, Eric E and Theodore C Bailey, '[Urgent Legal Lessons from a Very Fast Problem: COVID-19](#)' (2020) *Stanford Law Review Online* (forthcoming)

Abstract: The course of a pandemic is dictated not just by biology, but also by law. And crucially, unlike biology, law can be readily adapted in response to a pandemic. Unfortunately, the current law does not take account of the compressed timeframe and rapidly changing social needs that distinguish pandemic times from normal times. We thus suggest three urgent, early lessons for law in the pandemic context: First, free information flows save lives, an observation which has ramifications for freedom of speech and press, copyright law, and patent law. Identifying

particular hazards that patent law poses to the free flow of scientific research findings, we suggest a government-funded reward system as an adjunct to the patent system to incentivize pandemic-relevant research and its rapid publication. Second, politically accountable decisionmakers may not act optimally to save lives. We suggest a refashioned, politically insulated U.S. Public Health Service imbued with administrative independence in the vein of the Federal Reserve Board. Third, pre-crisis regulatory structures are not proving nimble enough in the midst of the pandemic. We suggest legislation that directs the FDA to be creative in designing case-by-case approval procedures for vaccines and other treatments to allow them to get to market much faster. To accelerate approvals while retaining scientific rigor, we suggest allowing well-informed, consenting human testing subjects to take on more uncertain risk than the FDA currently tolerates. In sum, we argue for a more general, systematic, and critical perspective on law in the special context of a pandemic.

Nekvapil, Emrys, Maya Narayan and Stephanie Brenker, [COVID-19 and the Law of Australia](#) (2020)

This open access and regularly updated online book is organised by subject area. It provides guidance on the laws made by the legislature, executive and judiciary (and administrative tribunals) of the Commonwealth and each State and Territory in response to the COVID-19 pandemic.

Ogendi, Paul, '[The Law and Ethics of Coronavirus Disease \(Covid-19\) in Kenya](#)' (2020) 4(2) *Journal of Conflict Management and Sustainable Development* 1-42

Abstract: The COVID-19 pandemic is a public health emergency that raises many ethical and legal issues. Of significance is that the pandemic requires emergency public health measures to be put in place by the government significantly disrupting the lives of many. Governments should however remember that emergency public health measures must be legally sound in accordance with their right to health obligations under international law, national constitution and legislation. Suffice to note, the international community has an obligation to assist and cooperate with each other towards fighting the disease. The health providers who are currently at the forefront in fighting the pandemic are being faced with numerous challenges especially in developing countries due to lack of adequate resources. This however should not be an excuse

for violating ethical principles put in place including respecting the confidentiality, privacy, and autonomy of the patients. Lastly, the community has a role to play in making sure that they follow lawful orders and guidelines put in place including social distancing, washing hands and staying at home.

Pistor, Katharina (ed), [Law in the Time of COVID-19](#) (Columbia Law School, 2020)

Abstract: This open access e-book contains insights and information by Columbia Law School academics on the most pressing legal issues the pandemic has raised across a wide range of topics from bankruptcy to privacy.

Sulkowski, Adam J, '[COVID-19: What's Next? Future of Work, Business, and Law: Automation, Transparency, Blockchain, Education, and Inspiration](#)' (SSRN Scholarly Paper ID 3580019, 19 April 2020)

Abstract: We are all wondering: what's next? This paper poses and answers 10 questions. These are predictions for the COVID-19 era and beyond based on my research.

Zetzsche, Dirk A, '[One Million or One Hundred Million Casualties? – The Impact of the COVID-19 Crisis on Low- and Middle-Income Countries](#)' (SSRN Scholarly Paper ID 3597657, 13 May 2020)

Abstract: This paper argues that the overall impact of the COVID-19 crisis on the least developed and developing countries is massive, with a potentially very high number of casualties: we float an entirely arbitrary figure of 100 million. To arrive at this number, we collect and collate the different ways in which COVID-19 may hit developing countries from a public health perspective as well as economically, and show that the crisis may not only threaten many people's lives but may even reverse the positive development trend of the last 20 years, putting the realization of the United Nation's Sustainable Development Goals in some doubt. Furthermore, we propose five policy measures to mitigate the most severe impacts of the crisis on low- and middle-income countries. The paper is structured as follows: Part I provides the context. Part II argues that the number of Corona cases and casualties in the least developed and developing countries is almost certainly underestimated and understated; Part III lays out the indirect severe impacts of the crisis, namely the inevitable return of hunger and famine to many parts of the world; Part

IV suggests that the abandonment of the UN's SDGs is one likely effect of the crisis in the absence of coordinated efforts; and Part V presents five policy principles designed to repel the looming human tragedy. Part VI concludes.

ADMINISTRATIVE LAW / REGULATORY RESPONSES

Note: This general section includes regulatory responses by both legislatures and governments (so is not strictly or exclusively administrative law), and includes rule of law and oversight of administrative action issues. This section also includes literature on restriction of movement – including quarantine and lockdown regulations. Literature on restrictions on *transborder* movement is included below under the Refugee / Immigration heading.

Amat, Francesc et al, '[Pandemics Meet Democracy: Experimental Evidence from the COVID-19 Crisis in Spain](#)' SocArXiv Papers (5 April 2020) 1-31

Abstract: The COVID-19 outbreak poses an unprecedented challenge for contemporary democracies. Despite the global scale of the problem, the response has been mainly national, and global coordination has been so far extremely weak. All over the world governments are making use of exceptional powers to enforce lockdowns, often sacrificing civil liberties and profoundly altering the pre-existing power balance, which nurtures fears of an authoritarian turn. Relief packages to mitigate the economic consequences of the lockdowns are being discussed, and there is little doubt that the forthcoming recession will have important distributive consequences. In this paper we study citizens' responses to these democratic dilemmas. We present results from a set of survey experiments run in Spain from March 20 to March 28, together with longitudinal evidence from a panel survey fielded right before and after the virus outbreak. Our findings reveal a strong preference for a national as opposed to a European/international response. The national bias is much stronger for the COVID-19 crisis than for other global problems, such as climate change or international terrorism. We also find widespread demand for strong leadership, willingness to give up individual freedom, and a sharp increase in support for technocratic governance. As such, we document the initial switch in mass public preferences towards technocratic and authoritarian government caused by the pandemic. We discuss to what extent this crisis may contribute to a shift towards a new, self-enforcing political equilibrium.

Bar-Siman-Tov, Ittai, '[Parliamentary Activity and Legislative Oversight during the Coronavirus Pandemic - A Comparative Overview](#)' (Bar Ilan University Faculty of Law Research Paper No 20-06, 2020)

26 jurisdictions compared

Abstract: The novel Coronavirus disease 2019 (COVID-19) is extremely contagious and currently incurable. Hence, much of the efforts to contain the pandemic have focused on social distancing, prohibiting gatherings and even curfews. The Coronavirus poses a new dual challenge for legislatures. First, the Coronavirus, and the measures taken to contain its spread, make it difficult and even dangerous for parliaments to operate, given that legislatures are by their very nature large multi-member bodies whose operation requires assembling a large group of people together to deliberate and vote. Second, the Coronavirus pandemic creates a sense of emergency that empowers the executive branch and emboldens it to assert greater authority at the expenses of the legislature. Despite these challenges, the continued operation of legislatures throughout the Coronavirus crisis, and particularly the maintenance of legislative oversight of the executive, has never been more vital. Legislatures have a crucial role in checking the executive and ensuring that countries will not lose their constitutional and democratic values in the process of managing the Coronavirus crisis. This report begins by explicating the novel dual challenge the Coronavirus pandemic poses for legislatures. It then focuses on elaborating on the unique challenge currently faced by the Israeli Parliament. It explains how the unique combination between the Coronavirus pandemic and the complex political situation in Israel, has made the issue of parliamentary operation during the Coronavirus pandemic particularly acute and urgent. Against this background, this report examines whether and how parliaments in other democracies are operating during this crucial period of the evolving Coronavirus pandemic. Drawing on a combination of two main types of sources – a network of expert academics and a network of parliamentary research centers – it presents a novel and timely comparative overview about current parliamentary activity during the Coronavirus pandemic. **The report covers 26 democratic parliaments from Europe, North America, Asia, Israel and Australia.** It finds that most parliaments continue to operate during the Coronavirus crisis (including in countries in which the pandemic is quite substantial and in countries where legislators themselves were among those diagnosed with the Coronavirus). It also finds that even though some parliaments continue with business as usual, many parliaments are beginning

to modify their operation, and generally show an ability to adapt to meet the Coronavirus challenge.

Bedford, Becket, 'Covid-19, Brexit and Borders...what Does It Mean for the UK?' [2020] *Lawyer (Online Edition)* 1

Abstract: The article offers information on the challenges faced by the Great Britain's citizens. It discusses the impact of the coronavirus outbreak, along with information on the free to test new arrivals for Covid-19 at the airport in the Great Britain. It mentions the challenges faced by the citizens in the Great Britain in Europe due to the Brexit, along with mentions on the European law.

Bol, Damien and Marco Giani, '[The Effect of COVID-19 Lockdowns on Political Support: Some Good News for Democracy?](#)' (QPE Working Paper 2020-1, Quantitative Political Economy Research Group, Kings College London, 2020)

Abstract: Major crises can act as critical junctures or reinforce the political status quo, depending on how citizens view the performance of central institutions. We use an interrupted time series to study the political effect of the enforcement of a strict confinement policy in response to the COVID-19 pandemic. Specifically, we take advantage of a unique representative web-based survey that was fielded in March and April 2020 in Western Europe to compare the political support of those who took the survey right before and right after the start of the lockdown in their country. We find that lockdowns have increased vote intentions for the party of the Prime Minister/President, trust in government, and satisfaction with democracy. Furthermore, we find that, while rallying individuals around current leaders and institutions, they have had no effect on traditional left-right attitudes.

Civitaresse, Jamil, '[Social Distancing under Epistemic Distress](#)' (SSRN Scholarly Paper ID 3570298, 7 April 2020)

Jurisdiction: Brazil

Abstract: Under the social distancing label, there are policies steaming from governments and policies able to be implemented individually, but mostly they require acquiescence by citizens. In this paper, the social norm about complying with social distancing originates from knowledge diffusions based on social comparison and self-evaluation mechanisms. I use the empirical footprints of the contentious Brazilian health strategy in the COVID-19 outbreak to develop an evolutionary game theory model of governmental communication interacting with experts in an epistemic democracy. This model suggests a complementary effect from governmental actions and civil society preferences that may bias studies about the management of a pandemic crisis. Policy recommendations are towards institutional designs with tighter accountability links between experts and voters.

Coyne, Christopher J and Yuliya Yatsyshina, '[Pandemic Police States](#)' (SSRN Scholarly Paper ID 3598643, 11 May 2020)

Abstract: In response to the COVID-19 pandemic, governments' willingness to employ their police powers have been brought to the forefront. Pandemic police states utilize surveillance, dictates limiting association, and punishment in the name of combating the virus. While police powers can be used for good, they can also be abused. We outline the theoretical foundations of the operation of the potentially troubling aspects of pandemic police state activities. We then catalog some pandemic police state activities associated with the COVID-19 pandemic. We conclude with the implications for peace studies.

'Croatia: Temporary Measures to Mitigate the Consequences of the COVID-19 Pandemic and Zagreb Earthquake in Civil, Insolvency and Criminal Procedure Law' [2020] *Lawyer (Online Edition)* 1

Abstract: The article informs on recommendations issued by Croatian Ministry of Justice as of 14 March 2020 to prevent the transmission of the novel coronavirus and control the pandemic. It mentions that measures advise temporary adjustments to legal requirements in civil, insolvency and criminal procedure law to avoid hardship that would otherwise arise as a result of the

coronavirus crisis. It also mentions that employees are allowed to work from home, and hearings should be postponed.

Daly, Paul, '[Governmental Power and COVID-19: The Limits of Judicial Review](#)' in Colleen M Flood et al (eds), *The Law, Policy and Ethics of COVID-19* (forthcoming, University of Ottawa Press, 2020)

Abstract: The goal of this Chapter is to explain why those hoping for a high level of judicial engagement with the forms of power being used to combat the cultural, economic, medical, social and other fallout from the current pandemic are likely to be disappointed. In Part I, I explain the different forms of power being used in Canada, at the federal and provincial levels, to respond to the pandemic: imperium (general norms with the force of law), dominium (government contracting and distribution of resources) and suasion (information provided to the citizenry). I go on in Part II to explain why judges are unlikely to enforce public law principles, such as reasonableness, procedural fairness and compliance with the Constitution of Canada, including the Charter of Rights and Freedoms, on the uses of these different forms of power. As to imperium, any judicial engagement is likely to be at the margins and as to dominium and suasion there is a long tradition of judges refusing to extend the judicial review jurisdiction to encompass contractual decisions and the provision of non-binding guidance. Those concerned about the difficulty of holding Canadian governments to account in these trying times would be better advised to look to improving the channels of political accountability than trying to navigate those of legal accountability

Djalante, Riyanti et al, '[The ASEAN's Responses to COVID-19: A Policy Sciences Analysis](#)' (SSRN Scholarly Paper ID 3595012, 1 May 2020)

Abstract: The World Health Organisation (WHO) announced the new coronavirus disease (COVID-19) it as a pandemic on March 11th, 2020. The pandemic has brought havoc globally as more than 190 countries and territories are affected as of 30 April 2020. The crisis suggests that no country can deal with the pandemic alone. International cooperation including regional cooperation is essential for any country to survive. We are particularly interested in Association of South East Asian Nation (ASEAN) cooperation and performance under COVID-19 because it has been one of the regions where regional cooperation on health security has been functioning

based on lessons from SARS 2003 and H1N1 2009. The 'One Vision, One Identity, One Community' of ASEAN has merits under COVID-19 response but remains invisible. The method encompasses analysis of published materials issued by and accessible from the ASEAN website, complemented with analysis for media articles including social media, supported by published academic journal articles. All of the authors have expertise on ASEAN policies in the field of health, disasters, and regional policy and planning. Some authors have also worked from various international organisations working on issues related to the ASEAN region. This paper aims to document and analyse how ASEAN member states respond to COVID-19. It asks how to cooperate under the One-ASEAN-One Response framework. This paper also compares the 10 member states' policy responses from January to April 2020. We utilise the framework of policy sciences to analyse the responses. We found that the early regional response was slow and lack of unity (January - February 2020). Extensive early measures taken by each member state are the key to the success to curb the spread of the virus. Although, during March and April 2020, ASEAN has reconvened and utilised its existing health regional mechanism to try to have a coherent response to the impacts. Strengthening future collaboration should be implemented by recognizing that there is a more coherent, multi sectoral, multi stakeholders and whole-of-ASEAN Community approach in ensuring ASEAN's timely and effective response to the pandemic.

European Journal of Risk Regulation [2020] 2: Special Issue - 'Taming COVID-19 by Regulation' (advance articles).

Note: The articles accepted for publication in this Special Issue have made available on open access in advance of publication by the publisher, Cambridge University Press, as part of its Coronavirus Collection. Some are also available on SSRN. Some of the articles in this special issue are listed here – others are listed under other legal topics below in this bibliography.

Abazi, Vigjilena, ['Truth Distancing? Whistleblowing as Remedy to Censorship during COVID-19'](#)
1-9

Abstract: In the COVID-19 pandemic, whistleblowers have become the essential watchdogs disrupting suppression and control of information. Many governments have intentionally not disclosed information or failed to do so in a timely manner, misled the public or even promoted false beliefs. Fierce public interest defenders are pushing back

against this censorship. Dr Fen and Dr Wenliang were the first whistleblowers in China to report that a new pandemic was possibly underway and ever since numerous other whistleblowers around the world have been reporting on the spread of the virus, the lack of medical equipment and other information of public interest. This paper maps the relevant whistleblowing cases in China, US and Europe and shows that many whistleblowers are initially censored, face disciplinary measures or even dismissals. At the same time, whistleblowing during the COVID-19 pandemic has drawn public attention to the shortcomings of institutional reporting systems and a wider appreciation of whistleblowers as uniquely placed to expose risk at early stages. Ultimately, whistleblowing as a means to transparency is not only becoming ever less controversial, but during COVID-19 it has become the 'remedy' to censorship.

Alemanno, Alberto, [‘Taming COVID-19 by Regulation: An Opportunity for Self-Reflection’](#)

Abstract: The COVID-19 outbreak offers a rich case study of government’s emergency response. As such, it is a test bed for risk research and regulatory theories in a world increasingly shaped by transboundary, uncertain manufactured and natural risks. This introductory essay to the special issue of the *European Journal of Risk Regulation* attempts at providing an initial analysis of the surprisingly uncoordinated, at times unscientific, response to an essentially foreseeable event like a novel coronavirus (nCoV) in a geopolitically shattered world. It warns that COVID-19 may go down in history as yet another major disaster occurrence with no learnings attached. Yet, as new transboundary disasters – from bioterrorism to climate change – loom on the horizon, neither the world nor risk regulation, as a discipline and practice of government, can hardly afford to let another crisis go wasted.

Alemanno, Alberto, [‘The European Response to COVID19: From Regulatory Emulation to Regulatory Coordination?’](#)

Abstract: COVID-19 is a matter of common European interest since its very first detection on the continent. Yet this pandemic outbreak has largely been handled as an essentially national matter. This article makes a first attempt at unpacking how such fragmented, uncoordinated national responses to COVID19 came into being under the EU legal order. To do so, it systematizes the European response into separate stages. Phase 1 – the emergency – has been characterized by the adoption of national

emergency risk management measures that, albeit country specific, were inspired by a common objective of pandemic suppression, i.e. to reduce disease transmission and thereby diminishing pressure on health services, under the by now well-known ‘flatten the curve’ imperative. Phase 2 – the lifting – is about the attempt at relaxing some of the national risk responses in a coordinated fashion to avoid creating negative spillovers or distortions – be they sanitary and/or financial – across the Union. The article argues that contrary to conventional wisdom the resulting uncoordinated EU response to Covid-19 shouldn’t be seen as the inevitable consequence of the EU’s limited competence in public health. Against this backdrop, it strives to define the regulatory policy framework that might be governing the next phases of the European risk management response to this pandemic as they will emerge from a widely undefined yet unescapable dialectic between the Union and its member states. Ultimately, it predicts that by testing the outer limits of the EU public health competence COVID-19 is set to go down in history as a major catalyst in the advancement of EU health emergency action.

Delmas-Marty, Mireille, [‘Governing Globalization Through Law’](#) 1-10

Micklitz, Hans-W, [‘The COVID-19 Threat: An Opportunity to Rethink the European Economic Constitution and European Private Law’](#)

Morvillo, Marta, [‘I Just Can’t Get Enough \(of Experts\): The Numbers of COVID-19 and the Need for a European Approach to Testing’](#)

Abstract: This article offers a reflection on the testing strategies deployed in the generation of epidemiological data in the European Union (EU). I will argue that, while in the early days of the pandemic, Member States proceeded to testing in a rather scattered way, the shortage of resources seems to have acted as a driver of coordination, which is now increasingly being discussed at EU level. I will examine the legal and institutional framework supporting such embryonic coordination efforts and offer a preliminary assessment of their implications for a European approach to epidemiological knowledge-making.

Ewing, KD, 'Covid-19: Government by Decree' (2020) 31(1) *King's Law Journal* 1-24

Jurisdiction: UK

Extract from Introduction: The executive style now in vogue involves the introduction of new forms of 'law' making, and has far-reaching consequences for personal liberty and police powers. As I write, Parliament is in recess at the most critical point in the nation's history since the early 1940s, and effective parliamentary scrutiny is almost totally absent.... at the time of writing—15 April 2020—we see only a chronic failure on the part of our sovereign Parliament to discharge its basic constitutional duties. The government has taken unprecedented powers by regulation without parliamentary approval, laying the regulations before Parliament on the day after Parliament rose.... In this article, I wish to make good these concerns in what is inevitably a preliminary look at this issue. The first part deals with financial powers and what I have referred to elsewhere as 'government by Treasury', though this should now be 'government by Treasury Direction'. The second part deals with the restrictions on personal liberty and potentially political freedom.... a public health emergency should not be the occasion for a suspension of constitutional government.

Falletti, Elena, '[Is Form Substance? Some Considerations on the Management of the COVID-19 Emergency in Italy](#)' (SSRN Scholarly Paper ID 3554515, 15 March 2020)

Abstract: In this short contribution we recall and analyze the administrative and legislative actions enacted in Italy to contain the spread of COVID-19, up to the country's lockdown, under the light of the constitutional guarantees.

Faux, Margaret, '[Frenetic Law Making During the COVID-19 Pandemic: The Impact on Doctors, Patients and the Medicare System](#)' *AusPubLaw: Australian Public Law* (Blog Post, 24 April 2020)

Introduction: On 11 March 2020, Prime Minister Scott Morrison announced a comprehensive \$2.4 billion health package to protect Australians from COVID-19, including \$100 million to fund new Medicare services. By 20 April 2020, there were twenty COVID-19 related delegated instruments, which were part of this initiative. All have been earmarked on the Senate Standing Committee for the Scrutiny of Delegated Legislation (SSCSDL) website for consideration at a future meeting, meaning these Determinations are already in force, having bypassed the law

making norm of being scrutinised by the SSCSDL. With federal Parliament adjourned from 23 March 2020 for almost five months, it is unclear when usual Senate scrutiny of these instruments will be undertaken, if at all. In a media release dated 1 April 2020, the Chair of the SSCSDL announced that the Committee had resolved to meet and report regularly over the coming months, though there is no current indication of meeting dates or schedules.

Feikert-Ahalt, Clare, '[Restrictions on Movement Due to the Coronavirus Pandemic Across England – Part II](#)' *In Custodia Legis: Law Librarians of Congress* (Blog Post, 8 May 2020)

Abstract: This is the second part of a summary of the United Kingdom's lockdown regulations ordered by the UK government to restrict movement and increase social distancing to reduce the effects of the 2020 COVID-19 pandemic.

Fernandes, Haniel, '[Would the Lockdown Really Be Necessary for the Control of COVID-19 in Brazil?](#)' (SSRN Scholarly Paper ID 3578627, 17 April 2020)

Abstract: The lockdown quarantine applied in Brazil to contain the advances of the new coronavirus pandemic equivalent to European countries without first observing their demographic, socioeconomic and cultural differences, seems to involve political issues, in addition to controlling problems public health. Therefore, it is necessary to explain a critical idea about the type of prior conduct taken by Brazil to control this pandemic through a descriptive approach that links published policies adopted with the structure of the local health system and the country's socio-economic and demographic characteristics, in addition to response to contagion. Thus, examining some facts intrinsic to the pandemic process that is installed in the world today.

Finizio, Anna, 'The Politics of Pandemics' (2020) 42(3) *Bulletin (Law Society of South Australia)* 24–25

Abstract: In the constantly evolving chaos, it is likely that this article will be out of date within days of it being published due to the frequent changes to laws and restrictions in response to the coronavirus (COVID-19) pandemic.

Foohy, Pamela, Dalié Jiménez and Christopher K Odinet, '[CARES Act Gimmicks: How Not to Give People Money During a Pandemic and What to do Instead](#)' [2020] *University of Illinois Law Review Online* 81

Jurisdiction: USA

Abstract: The coronavirus pandemic upturned Americans' lives. The profound financial effects caused by even a few weeks of the coronavirus' upheaval spurred Congress to pass the CARES Act, which purported to provide economic relief to individuals and businesses. For individuals, the CARES Act includes five provisions that were effectively designed to provide people money. Chief among those provisions are a direct payment in the form of a tax rebate and enhanced employment benefits. Ultimately, this financial support will prove to be shockingly minimal. The direct payments represent a fraction of the average American households' monthly budget. The unemployment benefits, while providing people with more money over several months, require that people be laid off and similarly are unlikely to reach people quickly enough to be effective. These corner pieces of the CARES Act are best understood as gimmicks. Through them, the federal government told people that it would take care of them in ways that were immediately salient to them as the coronavirus crisis began. It also became quickly apparent to at least some lawmakers that Congress would need to pass at least one additional stimulus package. Indeed, Congress may have several more opportunities to craft legislation that actually will help American families survive the pandemic. This legislation must provide people with true funding to stay current with their minimum necessary expenses as these expenses are incurred. In this Essay, we discuss the gimmicks of the CARES Act's individual provisions and what Congress should do for people in future bills to address this pandemic.

Gogarty, Brendan and Gabrielle J Appleby, '[The Role of the Tasmanian Subordinate Legislation Committee During the Covid-19 Emergency](#)' (SSRN Scholarly Paper ID 3587177, 23 April 2020)

Abstract: On 17 March 2020, Tasmania entered a 'state of emergency' in response to COVID-19. Parliament stands adjourned, and the executive is regulating the crisis through delegated regulations that significantly limit civil rights and freedoms. Despite assurances Tasmania's Subordinate Legislation Committee would scrutinise executive power throughout the crisis, its role has been limited, due to an overly prescriptive (we argue incorrect) reading of Tasmania's scrutiny framework, which has not been properly reformed in several decades. This is a salient

lesson about why constitutional laws require regular reviewed and modernisation, to ensure Parliaments remain supreme even (especially) during crises and emergencies.

Gostin, Lawrence O and Lindsay F Wiley, '[Government Public Health Powers in the COVID-19 Pandemic: Stay-at Home Orders, Business Closures, and Travel Restrictions](#)' (SSRN Scholarly Paper ID 3578817, 2 April 2020)

Abstract: The president and all 50 governors have declared health emergencies to combat the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which causes coronavirus disease 2019 (COVID-19). While researchers race for vaccines, officials are implementing physical distancing, including orders to stay at home, restrict travel, and close non-essential businesses. To limit cross-border spread, a few states have issued mandatory quarantines for interstate travelers. Models suggest physical distancing would have to persist for 3 months to mitigate peak impacts on health systems and could continue on an intermittent basis for 12-18 months. What legal powers do governments have? What is the role of the courts? How can we balance public health with personal and economic rights?

Gostin, Lawrence O, James G Hodge and Lindsay F Wiley, '[Presidential Powers and Response to Combat COVID-19](#)' (SSRN Scholarly Paper ID 3561168, 18 March 2020)

Abstract: CDC modeling suggests that, without mitigation, SARS-CoV-2, the virus that causes novel coronavirus disease 2019 (COVID-19), could infect more than 60 percent of the United States population. President Trump has declared a national emergency coupled with 49 governors declaring state emergencies (Figure 1), unprecedented actions. Social distancing aims to flatten the epidemic curve to moderate demand on the health system. Consequently, whether through voluntary action or state mandates, individuals are increasingly sheltering at home, schools and universities are closing, businesses are altering operations, and mass gatherings are being cancelled. Some countries have resorted to more aggressive measures, including a cordon sanitaire (a guarded area where individuals may not enter or leave) or large-scale quarantines. What powers do the President and governors possess in the United States? How should we balance individual rights and public health at a critical point in safeguarding the nation's health?

Grogan, Joelle, '[Right Restriction or Restricting Rights? The UK Acts to Address COVID-19](#)'

Verfassungsblog on Matters Constitutional (Blog Post, 17 April 2020)

Abstract: The UK was initially slow to adopt measures to address the COVID-19 pandemic. However on 23 March 2020 and following escalating infection and mortality rates, the government introduced the most restrictive measures on movement in modern UK history. These lockdown measures which introduced sweeping limitation on movement outside the home were introduced through statutory legislation: regulations which were made by the government and not debated nor legislated by Parliament. This paper considers the issues the UK's legal responses to address the COVID-19 raises in terms of democracy, human rights and the rule of law.

Hafiz, Hiba et al, '[Regulating in Pandemic: Evaluating Economic and Financial Policy Responses to the Coronavirus Crisis](#)' (Boston College Law School Legal Studies Research Paper No 527, 2020)

Abstract: The United States is currently trying to manage a fast-moving public health crisis due to the coronavirus outbreak (COVID-19). The economic and financial ramifications of the outbreak are serious. This Working Paper discusses these ramifications and identifies three interrelated but potentially conflicting policy priorities at stake in managing the economic and financial fallout of the COVID-19 crisis: (1) providing social insurance and a social safety net to individuals and families in need; (2) managing systemic economic and financial risk; and (3) encouraging critical spatial behaviors to help contain COVID-19 transmission. The confluence of these three policy considerations and the potential conflicts among them make the outbreak a significant and unique regulatory challenge for policymakers, and one for which the consequences of getting it wrong are dire. This Working Paper — which will be continually updated to reflect current developments — will analyze the major legislative and other policy initiatives that are being proposed and enacted to manage the economic and financial aspects of the COVID-19 crisis by examining these initiatives through the lens of these three policy priorities. It starts by analyzing the provisions of H.R. 6201 (the 'Families First Coronavirus Responses Act') passed by the house on March 14, 2020, subject to subsequent Technical Corrections of March 16, 2020, and then passed by the Senate without amendment and signed by the President on March 18, 2020. Next, it analyzes the provisions of H.R. 748 (the

'Coronavirus Aid, Relief, and Economic Security Act' or the 'CARES' Act) enacted into law on March 27, 2020. By doing so, this Working Paper provides an analytical framework for evaluating these initiatives.

Hodge, James G, '[Federal vs. State Powers in Rush to Reopen Amid the Coronavirus Pandemic](#)' [2020] *Just Security* (online April 27)

Jurisdiction: USA

Abstract: Despite millions of active infections and tens of thousands of COVID-19 deaths, multiple state governors, led by Georgia Governor Brian Kemp, are actively reopening businesses and withdrawing stay-home orders. President Trump should be elated. The White House has aggressively pushed state efforts to reboot the economy. Yet, the president publicly criticized Kemp for proceeding 'too soon' in a rush to reopen. Underlying the political theatrics, the novel coronavirus is exposing a deep rift in American federalism as federal and state governments vie for primacy in remedying the nation's ills. What powers could the president use to influence state actions whether to impose or lift mitigation measures? What zone of decisions are designated for the states alone?

Hodge, James G and Leila Barraza, '[Legal Pitfalls in Response to 2019 Novel Coronavirus](#)' [2020] *Slate: Future Tense* (online 24 January 2020)

Abstract: Since its emergence from Wuhan, China in late 2019, novel coronavirus, 2019-nCoV, is spreading rapidly, escalating domestic and international concerns, and leading to calls for emergency declarations. By now one might think that we are globally prepared for these type of threats given the successful control of prior coronaviruses like SARS and MERS since 2002. Yet, as Paules, Marston, and Fauci observe in their JAMA Viewpoint on January 23, 2020, '[t]he emergence of yet another outbreak of human disease caused by a [coronavirus] . . . underscores the perpetual challenge of emerging infectious diseases and the importance of sustained preparedness.' This commentary explores some of these contemporary challenges.

Note: [Future Tense](#) is an online magazine – a collaboration by Slate, New America, and Arizona State University. It examines emerging technologies, public policy, and society.

Iskandar, Pranoto, [‘The Pandemic Case for Supra-National Governance: A Redux’](#) (2020) 7 *Indonesian Journal of International and Comparative Law* 297-312

Abstract: It is obvious that the current global fallout as a result of the coronavirus pandemic cannot be separated from the absence of a strong and effective governance at supranational level. To specify, it is the failure of the World Health Organization (WHO) in sending out an early warning to the international community. This failure is strongly suspected due to China’s ever-growing political clout in international bodies, such as the WHO. It is noted that ‘Beijing succeeded from the start in steering the WHO, which both receives funding from China and is dependent on the regime of the Communist Party on many levels.’ Thus seen, any idea that suggests to put forward accountability, such as asking for China to be held accountable, regardless of the soundness of its logics, is far-fetched. It is worth recalling the 2015 Report by the Commission on Global Governance that the world “must promote systemic approaches in dealing with [issues of common concern]. For that reason, it is important to take a step back in order to understand the nature of today’s global order in an effort to propose a meaningful move forward. In fact, the 2015 report of the Commission on Global Governance has called for ‘[t]he creation of adequate governance mechanisms [that] must be flexible enough to respond to new problems and new understanding of old ones. There must be an agreed global framework for actions and policies to be carried out at appropriate levels.’ In this vein, this commentary argues that it is timely to revive the debate in support of a more robust and effective global governance.

Jamshidi, Maryam, [‘The Federal Government Probably Can’t Order Statewide Quarantines’](#) *University of Chicago Law Review Online* (20 April 2020)

Abstract: On Saturday, March 28, 2020, President Donald Trump floated the possibility of issuing a ‘quarantine’ order for the states of New York, New Jersey, and Connecticut because of their numerous COVID-19 cases. Later that day, Trump backtracked and declared that a quarantine order would ‘not be necessary.’ While quarantines can differ in type and scope, they generally involve restricting the movement of those exposed or potentially exposed to an infectious disease during its period of communicability. As for Trump’s quarantine order, it is unclear what it would have required: whether it would have affected all three states in their entirety or just partially, mandated that all people in those states stay at home, prohibited all travel into and

out of those states, or some combination of these. What is certain, however, is that under current federal law, the president does not have authority to issue a quarantine order that is effectively statewide, including prohibiting all or nearly all travel within a state or into and out of the state. It is also unlikely that Congress could give the president new authority to do so under its Commerce Clause power, which is the basis for the current federal law on quarantine. As COVID-19 continues to radically change daily life in the United States, it is vital to understand the limits on federal authority over mandatory, statewide quarantines—not only to avoid pitched legal battles between the government, quarantined individuals, and the states, but also to deal with current and future pandemics. Involuntary quarantines are often ineffective at resolving such health crises. Expanding federal power in this area is, as such, unlikely to be an effective health measure, both currently and going forward.

Kamensky, John, 'A Framework for National Recovery From COVID-19' [2020] *Government Executive* (27 March 2020)

Jurisdiction: USA

Abstract: How can agencies effectively implement programs to address the COVID-19? Following the 2009 Recovery Act, the IBM Center sponsored a number of research reports to explore the government's response to the economic downturn that began in 2007, known as the Great Recession. However, the accountability provisions under the law were entirely new and required new ways of working with both their local governments (who had to report through their states to the federal government) as well as with federal agencies. Below are some of the lessons learned from that experience, and a potential governance framework that addresses the current environment for ensuring the dollars and programs make a difference for the American people.

Kavcar, Gülenay and Levent Lezgin Kılınç, 'Government Announcements on (Covid-19) Coronavirus Epidemic' [2020] *Lawyer (Online Edition)* 1

Jurisdiction: Turkey

Abstract: The article offers information on the challenges faced by the coronavirus in the [sic] Turkey, along with the information on the safety measure taken by the Turkey President, Recep

Tayyip Erdoğan. It mentions the declaration of the coronavirus outbreak as a global pandemic by the World Health Organization.

Knight, Dean R, '[COVID 19 and States of Emergency: Lockdown Bubbles through Layers of Law, Discretion and Nudges – New Zealand](#)' *Verfassungsblog on Matters Constitutional* (Blog Post, 7 April 2020)

Abstract: This contribution explains the legal basis for the COVID-19 lockdown and governmental response in New Zealand. It discusses some of the issues, challenges and future possible future developments too.

Konnoth, Craig, '[Privatized Preemption](#)' (2020) 45(3) *Administrative & Regulatory Law News* (forthcoming); (University of Colorado Law Legal Studies Research Paper No 20-24, 2020)

Jurisdiction: USA

Abstract: In the last few weeks, many in the nation have rediscovered the benefits of federalism, as numerous states got ahead of the federal government in responding to the newest strain of coronavirus. The COVID-19 response is not unique: in recent decades, it is certain states, rather than the federal government, that have been the primary champions of important programs ranging from public education, environmentalism, privacy rights, and consumer protection. In so doing, they have pushed against a range of institutions, ranging from financial institutions to student loan collectors. The federal government, by contrast, has sometimes pushed for deregulation at the federal level, though largely stayed out of the states' way.

There has, however, been a slow shift, as the federal government has tried to counteract state efforts. But rather than do so openly, and by preempting state law with regulation of its own, the federal government has taken a shrewder tack. More specifically, it has conscribed private corporations for the task, and has incited, assisted, and delegated to them the power to contravene and displace state laws. In such situations, the power of displacing state law is left to corporations.

Kooistra, Emmeke Barbara et al, 'Mitigating COVID-19 in a Nationally Representative UK Sample: Personal Abilities and Obligation to Obey the Law Shape Compliance with Mitigation Measures' (SSRN Scholarly Paper No 3598221, 13 May 2020)

[Link to full text article on SSRN](#)

Abstract: The COVID-19 pandemic has greatly influenced daily life all over the world. The present study assesses what factors influenced inhabitants of the United Kingdom to comply with lockdown and social distancing measures. It analyses data from an online survey, conducted on April 6-8, 2020, amongst a nationally representative sample of 555 participants who currently reside in the UK. The results show that compliance depended mostly on people's capacity to comply with the rules, and the normative obligation they feel to obey the law. As such, compliance was not associated with deterrence or obedience out of fear, but rather with people's practical abilities and intrinsic motivation to comply. The paper discusses policy implications for effective mitigation of the virus.

Kuiper, Malouke Esra et al, '[The Intelligent Lockdown: Compliance with COVID-19 Mitigation Measures in the Netherlands](#)' (SSRN Scholarly Paper ID 3598215, 6 May 2020)

Abstract: In response to the COVID-19 pandemic, the Dutch government has introduced an 'intelligent lockdown' with stay at home and social distancing measures. The Dutch approach to mitigate the virus focuses less on repression and more on moral appeals and self-discipline. This study assessed how compliance with the measures have worked out in practice and what factors might affect whether Dutch people comply with the measures. We analyzed data from an online survey, conducted between April 7-14, among 568 participants. The overall results showed reported compliance was high. This suggests that the Dutch approach has to some extent worked as hoped in practice. Repression did not play a significant role in compliance, while intrinsic (moral and social) motivations did produce better compliance. Yet appeals on self-discipline did not work for everyone, and people with lower impulse control were more likely to violate the rules. In addition, compliance was lower for people who lacked the practical capacity to follow the measures and for those who have the opportunity to break the measures. Sustained compliance, therefore, relies on support to aid people to maintain social distancing and restrictions to reduce opportunities for unsafe gatherings. These findings suggest several important practical recommendations for combating the COVID-19 pandemic.

Kukavica, Jaka, [‘\(Rule of\) Law in the Time of Covid-19: Warnings from Slovenia’](#) *Verfassungsblog on Matters Constitutional* (Blog Post, 25 March 2020)

Abstract: Painful as they may be, it is beyond question that radical limitations of a wide range of human rights are necessary to limit the spread of Covid-19, keep healthcare systems afloat, and help saving human lives. The aim of this contribution is not to argue against such measures per se. In spite of the gravity of the situation, however, any measures adopted to combat it must be adopted by competent bodies, following the procedure and under the conditions envisaged by law. In other words, rule of law concerns have to be fully respected. It is my concern that Slovenia has been failing this ‘rule of law in times of emergency’ test.

Lawson, David, ‘The Power to Quarantine’ [2020] *Lawyer (Online Edition)* 1

Jurisdiction: UK

Abstract: The article discusses law and practice of quarantine of individuals, of groups and of places, of the unwell and of the healthy including the outbreak of coronavirus, 2019-nCoV, that quarantine can take many forms from regions larger than the UK in lock down to individuals in intensive treatment via groups of people detained for precautionary monitoring; last category includes the recent evacuees to the UK from Wuhan signed a contract to remain at Arrowe Park Hospital in the Wirral for 2 weeks.

Lin, Ching-Fu, Chien-Huei Wu and Chuan-feng Wu, ‘Reimagining the Administrative State in Times of Global Health Crisis: An Anatomy of Taiwan’s Regulatory Actions in Response to the COVID-19 Pandemic’ (2020) 11 *European Journal of Risk Regulation* (forthcoming) 1–21

Abstract: In January of this year, when China decided to lock down Wuhan due to COVID-19, Taiwan took an exceptionally precautionary approach based on three major factors: Taiwan’s decades-long exclusion from the international health community without World Health Organization (WHO) membership/observership and access to other arms of the United Nations (UN); traumatic experiences during the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak, where regulatory failure led to a wave of reforms; and the island’s geographical proximity to and geopolitical suspicion about China. Yet Taiwan’s proactive and precautionary

response to COVID-19 might at the same time pose a threat to this young democracy. The critical issue here is how a constitutional democracy survives a public health emergency with the unprecedented magnitude of COVID-19. The urgency to take effective and efficient measures oftentimes justifies a wide margin of executive discretion. On the other hand, measures adopted in times of emergency tend to linger and become normalized. Emergencies frequently serve to expand the power of executive agencies and sideline legislative or even judicial gatekeepers or lead to irreversible harm to fundamental human rights. This paper therefore aims to offer an anatomy of Taiwan's regulatory actions taken in response to the global COVID-19 pandemic, assess their implications for risk regulation and governance in a global context, and urge a re-imagination of the administrative state in the—hopefully—post-COVID-19 world.

Lord, Phil, '[COVID-19: Is the Cure “Worse Than the Problem Itself”?](#)' *McGill Journal of Law and Health Online* (21 April 2020)

Abstract: President Trump and other prominent Republicans have argued that the measures taken to slow the spread of COVID-19 will create economic consequences too serious to justify the number of lives saved. Are they right? We do the math.

Lord, Phil and Lydia Saad, '[Outline of Government Programs Related to the COVID-19 Pandemic in Canada](#)' (SSRN Scholarly Paper ID 3567474, 8 April 2020)

Luchini, Stephane et al, '[Urgently Needed for Policy Guidance: An Operational Tool for Monitoring the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3563688, 30 March 2020)

Abstract: The radical uncertainty around the current COVID19 pandemics requires that governments around the world should be able to track in real time not only how the virus spreads but, most importantly, what policies are effective in keeping the spread of the disease under check. To improve the quality of health decision-making, we argue that it is necessary to monitor and compare acceleration/deceleration of confirmed cases over health policy responses, across countries. To do so, we provide a simple mathematical tool to estimate the convexity/concavity of trends in epidemiological surveillance data. Had it been applied at the onset of the crisis, it would have offered more opportunities to measure the impact of the

policies undertaken in different Asian countries, and to allow European and North-American governments to draw quicker lessons from these Asian experiences when making policy decisions. Our tool can be especially useful as the epidemic is currently extending to lower-income African and South American countries, some of which have weaker health systems.

Masterman, Clayton, '[Stay-at-Home Orders and COVID-19 Fatalities](#)' (SSRN Scholarly Paper ID 3600905, 14 May 2020)

Jurisdiction: USA

Abstract: The COVID-19 pandemic has prompted most state governments to order residents to stay at home. The goal of such orders is to mitigate infection rates to prevent health care system overload, thereby dramatically reducing the death toll of the pandemic. This article investigates the effectiveness of stay-at-home orders in decreasing COVID-19 infections and fatalities. Using a differences-in-differences approach, I estimate that stay-at-home orders between mid-March and May 9 prevented 1.7 million COVID-19 cases and 55,000 deaths in the United States. Orders that state governments issued were more effective than local government orders, suggesting that consistent policy approaches across geographic areas is key. The effects were concentrated in urban and higher wage counties. Based on the day of the week that infections are prevented, I also find some evidence that the cases stay-at-home orders prevent are largely those that would have occurred at work rather than from recreation.

Moulds, Sarah, '[Keeping Watch on COVID-19 Laws: Are Parliamentary Committees up to the Job?](#)'

AusPubLaw: Australian Public Law (Blog Post, 1 May 2020)

Introduction: In response to the complex and potentially devastating threat posed by COVID-19, Parliaments around Australia have transferred unprecedented powers to executive governments and their agencies, often with the full support of the communities they represent. The usually sturdy doctrine of separation of powers that defines Australia's constitutional democracy wobbled as Minister after Minister was handed sweeping discretionary powers designed to facilitate the fight against the invisible COVID-19 enemy.

What interests me greatly is that from within this throng of emergency law-making and institutional power transfer, one parliamentary oversight mechanism managed to struggle to its

feet. The very same parliamentary mechanism that owes its existence to war-time law-making emerged as the go-to safety blanket in this modern crisis: the parliamentary committee. While Parliaments themselves have packed up shop and suspended or reduced sitting days, parliamentary committees have emerged as the forum of choice when it comes to providing some form of parliamentary oversight of executive action.

As George Williams and Lisa Burton have pointed out, this choice – this instinctual reliance on a mechanism designed to provide parliamentarians with the space to deliberate and examine executive decision making – says something important about the parliamentary model of rights protection that exists in Australia. It also raises important questions as to whether parliamentary committees are up to the job – particularly when the stakes are so high and the political terrain so uncertain.

In this post I will briefly describe some of the specialist parliamentary committees that have been set up to oversee the extraordinary powers transferred to the executive in response to COVID-19, and offer some thoughts on the capacity of these committees to deliver meaningful rights scrutiny in these exceptional circumstances. So what are parliamentary committees anyway, and how do they usually work to protect rights and hold the executive to account?

Nash, Michael, *Emergencies & Extraordinary Measures'* (2020) 170(7879) *New Law Journal* 7

Jurisdiction: UK

Abstract: Considers the duration of emergency measures under the Civil Contingencies Act 2004 in response to the coronavirus outbreak. Highlights concerns that emergency measures, once introduced, may be retained, citing the example of the retention of citizens' identity cards for several years after the end of the Second World War.

Note: link to the [Civil Contingencies Act 2004](#) on the official UK legislation website.

Ohlin, Jens David, '[Pandemics, Quarantines, Utility, and Dignity](#)' (SSRN Scholarly Paper ID 3591784, 3 May 2020)

Abstract: Medical quarantines were once common in the United States, but in the last 50 years they have been used infrequently by the government. That changed with the spread of the

novel Coronavirus, and the resulting Covid-19 illness, in 2020. Cruise ships where the virus had taken hold were quarantined and passengers were prohibited from disembarking. Residents of towns in Spain, and an entire province of China, were prevented from leaving by their respective governments. This Article argues that the permissibility of coercive quarantines is best understood as an example of threshold deontology. Threshold deontology is the view that individual human dignity must prevail over the common good, but that in moments of extreme emergency, when a 'threshold' has been reached, the reverse is true: the common good can trump individual rights. Part I provides a brief overview of the use of coercive quarantines to fight Covid-19 and the surprising lack of objection that these measures triggered. Part II explores the unmistakably utilitarian logic behind public health generally and quarantines specifically. Then, Part III introduces the concept of human dignity as a constraint on utilitarian public health by surveying three representative jurisdictions: The United States, German domestic law, and the European Convention on Human Rights. Part III concludes that even liberal democracies vary subtly but significantly in how strongly they protect human dignity and that these differing levels of commitment to human dignity help explain why some legal cultures have been so quick to resort to quarantines, while other communities have been reluctant. Finally, Part IV suggests that jurisdictions that are usually protective of individual rights but decide to fight Covid-19 with coercive quarantines are best understood as operating under the sway of threshold deontology. This Article does not defend threshold deontology as a moral theory but does argue that it is best understood as a covert form of indirect consequentialism. Moreover, this Article concludes that threshold deontology is the key moral battleground for debating the quarantine power during the Covid-19 era.

Ormerod, David, 'Coronavirus and Emergency Powers' [2020] 6 *Criminal Law Review* 473-477

Abstract: Reflects on emergency powers introduced by UK legislation in response to the coronavirus pandemic. Discusses issues including an initial lack of guidance on the restrictions, civil liberties and police powers involving dispersal of gatherings and reasonable excuses for leaving home, increased domestic violence and whether spitting or coughing at people is an offence. Notes changes to court procedures, such as the increased use of direct live links.

Note: this article considers the following legislation:

- [Coronavirus Act 2020](#)
- [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) (SI 2020/350)

Parpworth, Neil, 'The Coronavirus Act 2020' (2020) 170(7881) *New Law Journal* 7-9

Abstract: Outlines the emergency powers contained in the Coronavirus Act 2020 Sch.21. Considers the powers in relation to "potentially infectious persons", including screening, assessment, and detention, the duration of the transmission control period, the right of appeal, and the responsibilities of adults in relation to children.

Pagallo, Ugo, '[Sovereigns, Viruses, and the Law: The Normative Challenges of Pandemic in Today's Information Societies](#)' (SSRN Scholarly Paper ID 3600038, 13 May 2020)

Abstract: The paper examines the legal and political impact of the Covid-19 crisis, drawing the attention to fundamental questions on authority and political legitimacy, coercion and obligation, power and cooperation. National states and sovereign governments have had and still will have a crucial role in re-establishing the public health sector and addressing the colossal challenges of economic re-construction. Scholars have accordingly discussed the set of legal means displayed during this crisis: emergency decrees, lockdowns, travel bans, and generally speaking, powers of the state of exception. The aim of this paper is to stress the limits of such perspectives on powers of national governments and sovereigns, in order to illustrate what goes beyond such powers. Focus should be on the ontological, epistemic and normative constraints that affect today's rights and duties of national states. Such constraints correspond to a class of problems that is complex, often transnational, and increasingly data-driven. In addition, we should not overlook the lessons learnt from such fields, as environmental law and internet governance, anti-terrorism and transnational business law, up to the regulation of Artificial Intelligence (AI). Such fields show that legal co-regulation and mechanisms of coordination and cooperation complement the traditional powers of national governments even in the times of the mother of all pandemics. The Covid-19 crisis has been often interpreted as if this were the last chapter of an on-going history about the Leviathan and its bio-powers. It is not. The crisis regards the end of the first chapter on the history of today's information societies.

Parmet, Wendy E and Michael S Sinha, '[Covid-19: The Law and Limits of Quarantine](#)' (2020) 382(15) *New England Journal of Medicine* e28

Jurisdiction: USA

Extract from Introduction: As Covid-19 spreads around the globe, governments have imposed quarantines and travel bans on an unprecedented scale. China locked down whole cities, and Italy has imposed draconian restrictions throughout the country. In the United States, thousands of people have been subjected to legally enforceable quarantines or are in “self-quarantine.” The federal government has also banned entry by non–U.S. nationals traveling from China, Iran, and most of Europe and is screening passengers returning from heavily affected countries. Still, the numbers of cases and deaths continue to rise.

Quarantines and travel bans are often the first response against new infectious diseases. However, these old tools are usually of limited utility for highly transmissible diseases, and if imposed with too heavy a hand, or in too haphazard a manner, they can be counterproductive. With a virus such as SARS-CoV-2, they cannot provide a sufficient response.

In public health practice, “quarantine” refers to the separation of persons (or communities) who have been exposed to an infectious disease. “Isolation,” in contrast, applies to the separation of persons who are known to be infected. In U.S. law, however, “quarantine” often refers to both types of interventions, as well as to limits on travel. Isolation and quarantine can be voluntary or imposed by law.

Porcher, Simon, “[“Contagion”: The Determinants of Governments’ Public Health Responses to COVID-19 All Around the World](#)’ (SSRN Scholarly Paper ID 3581764, 21 April 2020)

Abstract: To respond to the COVID-19 outbreak, governments all around the world have implemented public health measures that have resulted in different policies to contain the spread of the virus and to support the economy. These measures include travel restrictions, bans on mass gatherings, school closures and domestic lockdowns, among others. This paper presents a unique dataset of governments’ responses to COVID-19. The dataset codes the policy interventions with their dates at the country level for more than 180 countries. To facilitate cross-country and cross-time comparisons, the paper builds on different measures to create an

index of the rigidity of governments' responses to COVID-19. The index shows that responses to the pandemic vary across countries and across time. The paper also investigates the determinants of governments' public health responses by focusing on the timing of contamination, the health risk of the population and health quality.

Purnhagen, Kai P et al, '[More Competences than You Knew? The Web of Health Competences for Union Action in Response to the COVID-19 Outbreak](#)' (Amsterdam Law School Research Paper No. 2020-13, 2020)

Abstract: To combat COVID-19, unlike its Member States, the Union may act 'only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein'. As legal scholars, we understand why one may think that the Union has no power to act in ways that public health experts, and others, such as economists and behavioural psychologists, suggest would be helpful. The Union's powers in the health domain are traditionally understood to be severely constrained: health law and policy is seen as a matter for Member States. We propose an alternative to this standard legal analysis. The Union has more possible legal powers to create health law and policy in response to the COVID-19 outbreak than traditionally understood, particularly if the different iterations of the protection and promotion of public and human health throughout the Treaty on the Functioning of the EU (TFEU) are read in relation to one another. This alternative interpretation of the Union's competence norms, the 'legal bases' on which the Union institutions act, either to adopt binding legal rules, or persuasive measures, suggests that there are legal options that permit the Union a wider range of actions than it has taken to date, and which support, and go further than, the approaches that the European Commission (Commission) and European Centre for Disease Control have suggested in various policy documents, guidance and communications in March and April 2020. In short, we are arguing that legal impediments to Union action are less restrictive than commonly understood.

Ramdhani, Muhammad Wildan, '[Lockdown Policy as a Corona Disease \[sic\] \(Covid-19\) Management Efforts Asked From the Environmental Aspect of Life Based on Law Act No 32 Of 2009 Concerning Protection and Management of Environment](#)' (2020) 3(1) *Veteran Law Review* 22-36

Jurisdiction: Indonesia

Abstract: The government has formed the COVID-19 (Task Force) Acceleration Countermeasures Group to discuss strategies to deal with the Corona Virus outbreak. One of Covid-19's coping strategies, namely: Social restrictions in the form of Lock Down with modifications or rules that are clarified and clear in priority areas as of now, but proposals in the form of Lock Down in priority areas such as DKI are not approved by the government. Although in the end the DKI Jakarta Government issued a policy after approval from the central government through the Minister of Health in the form of Governor's Regulation Number 33 Year 2020 concerning the Implementation of Large-Scale Social Debate in Handling Corona Disease 2019 (COVID-19) in the Special Capital Province of Jakarta and Governor Decree Number 380 Year 2020 concerning the Imposition of the Implementation of Large-Scale Social Restrictions in Handling Corona Disease 2019 (COVID-19) in the Special Capital Province of Jakarta. If the lockdown is really implemented, then this effort will indirectly have an impact on the environment, because the policy will relate to space that includes all objects, power, conditions, and living things, including humans and their behavior, which affect nature itself, continuity of life, and the welfare of humans and other living things. Therefore it is necessary to examine the relationship between the lockdown policy and COVID-19 countermeasures in the perspective of the Environmental Protection and Management Law. The author intends to find a connection point between the lockdown policy by looking at the impact it has on the environment by referring to the Law Act No. 32 Of 2009 Concerning Protection And Management Of Environment.

Reyes, Eduardo, 'Power Grab' (2020) 117(14) *Law Society's Gazette* 22-23

Jurisdiction: UK

Abstract: Discusses some concerns about the Coronavirus Act 2020, with reference to the interpretation of police powers under the Act by some police forces and the potential for reduction of local authority's obligations to provide care and support to vulnerable adults. Considers whether the Act was really necessary and if the Civil Contingencies Act 2004 would have sufficed.

Note: this legislative comments considers the following legislation:

- Coronavirus Act 2020
- Civil Contingencies Act 2004

Sekhri, Abhinav, '[Learning to Live with Crisis Governance Long after the Coronavirus?](#)' (SSRN Scholarly Paper ID 3603202, 17 May 2020)

Jurisdiction: India

Abstract: This paper demonstrates that the crisis governance model adopted in India, although arguably necessary for the time being, comes at a serious cost. The wholesale concentration of powers in the executive is antithetical to the fibres of democracy. Moreover, the legal basis of this investiture of powers is shorn of sufficient safeguards for oversight. To prevent lasting changes to the 'normal' forms of governance, it is imperative for government to relinquish these powers when no longer necessary. When might that occur in context of COVID-19 is the focus of this paper. I argue that India's past experiences, the peculiar legal basis of the extraordinary powers used during the COVID-19 Pandemic, and the judicial abnegation of responsibility that has been on display thus far, all make it reasonable to assume that these powers are not going to be relinquished any time soon. Learning to live with the Coronavirus, then, might also force learning to live with the decrees of crisis governance.

Shebaita, Maged, '[COVID-19 and the State of Emergency in Egypt](#)' (SSRN Scholarly Paper ID 3597760, 10 May 2020)

Abstract: The nightmare of COVID-19 outbreak spread all over the world by the announcement of WHO on March 14th, 2020 that COVID-19 is a pandemic. The word PANDEMIC is not just an ephemeral word; it led to massive consequences in the legal field especially with regard to the governmental powers, not only in Egypt but also in other democratic countries. The overarching target of this research is to highlight the measures, espoused by the Egyptian government to confront COVID-19 and the constitutional restrictions over its power.

- Part 1: The State of Emergency and its Restrictions in the Egyptian Law
- Part 2: COVID-19 as a State of Emergency and the Governmental Measures

- Part 3: The Legal Restrictions on the Governmental Measures

Simon, David A, '[A Legal Stimulus](#)' [2020] *Northwest University Law Review*, *NULR of Note* (2020)

Abstract: This short essay argues that any further congressional stimulus should allocate additional funds specifically for legal services to individuals who, as a result of COVID-19, face eviction, foreclosure, loan defaults, debt collection, bankruptcy, domestic violence, or denied insurance claims or coverage.

Skerratt-Williams, Sian, 'COVID-19: The Welsh Perspective' (2020) *2017 Estates Gazette* 58

Abstract: Explains how and why certain responses to the coronavirus pandemic by the National Assembly for Wales differ from those adopted by the UK Parliament. Focuses on business and residential tenancies, health protection and business support measures.

Sunstein, Cass R, '[The Meaning of Masks](#)' (2020) *Journal of Behavioral Economics for Policy* (forthcoming)

Abstract: Many incentives are monetary, and when private or public institutions seek to change behavior, it is natural to change monetary incentives. But many other incentives are a product of social meanings, about which people may not much deliberate, but which can operate as subsidies or as taxes. In some times and places, for example the social meaning of smoking has been positive, increasing the incentive to smoke; in other times and places, it has been negative, and thus served to reduce smoking. With respect to safety and health, social meanings change radically over time, and they can be dramatically different in one place from what they are in another. Often people live in accordance with meanings that they deplore, or at least wish were otherwise. But it is exceptionally difficult for individuals to alter meanings on their own. Alteration of meanings can come from law, which may, through a mandate, transform the meaning of action into a bland, 'I comply with law,' or into a less bland, 'I am a good citizen.' Alteration of social meanings can also come from large-scale private action, engineered or promoted by 'meaning entrepreneurs,' who can turn the meaning of action from, 'I am an oddball,' to, 'I do my civic duty,' or, 'I protect others from harm.' Sometimes subgroups rebel

against new or altered meanings, produced by law or meaning entrepreneurs, but often those meanings stick and produce significant change.

Thaler, Jeff, '[2020 Vision: What Can a Governor Do When the 2nd COVID-19 Surge Comes?](#)' (SSRN Scholarly Paper ID 3604706, 25 May 2020)

Abstract: Memorial Day weekend, and the U.S. is about to exceed 100,000 deaths and 1.7 million confirmed cases from COVID-19--while more and more lawsuits are being filed challenging governmental restrictions on gathering or travel..This pandemic is not the first, nor will it be the last, pandemic or epidemic to ravage the world. This is the first essay to assess in detail our current pandemic in the context of previous ones, in terms of important medical, policy and legal trends and precedent. It is important to understand how past pandemic history should inform 2020 litigation and governmental responses, so that the mistakes of the past can be avoided. It also reviews current litigation decisions, primarily at the federal level. Additionally, the essay analyzes what the federal government could legally mandate to contain the spread of COVID-19, but more importantly focuses upon what a State Governor can do now or in anticipation of the likely new surges of COVID-cases and deaths-- in the context of case law focused upon such primary constitutional rights or liberties as the right to travel, the dormant commerce clause, and the right to gather (including, for churches, the Free Exercise Clause). The essay concludes that a State can best protect its residents' health through properly-drafted regulations or executive orders, drawing on legal and medical precedent that will survive court challenges.

Tillman, Seth Barrett, '[COVID-19: Can the Oireachtas Legislate During the Pandemic?](#)' (2020) 38(7) *Irish Law Times* 94

Jurisdiction: Ireland

Abstract: Seán Ó Feargháil, the Ceann Comhairle, has informed his colleagues, that in light of 'a very serious constitutional problem,' the Seanad will be unable to pass legislation after Sunday. He is supported by advice offered from the Attorney General and the Secretary General of the Department of the Taoiseach. The single argument which has been put forward in public in support of the Ceann Comhairle's position is not entirely frivolous. It is the sort of argument

beloved by legal academics giving final examinations based on fictitious fact patterns. Such arguments usually do not play prominent roles in the legal advice offered by officers of state, senior law officers, and highly placed civil servants during national and international emergencies. I respectfully suggest the Attorney General has erred, and the Ceann Comhairle erred in relying on such advice.

Transparency International, '[Procuring for Life](#)' (27 April 2020)

Introduction: This is an introduction to a two-part series about public procurement during the coronavirus or COVID-19 pandemic.

As the rapid spread of the coronavirus or COVID-19 pandemic continues around the world with devastating effects, the growing crisis brings two issues into clear focus: the importance of government action in the emergency response and the essential and often lifesaving role of public procurement.

Clean public procurement not only saves money, but most importantly, it saves lives by making sure the people who are most vulnerable receive the support they need.

Yet, the ongoing global health crisis exposes vulnerabilities in public procurement: loose requirements that contribute to unequal competition and bidding wars and rushed measures that result in low quality or faulty goods, price gouging, undue influence and limited access to information.

van Rooij, Benjamin et al, '[Compliance with COVID-19 Mitigation Measures in the United States](#)' (SSRN Scholarly Paper ID 3582626, 22 April 2020)

Abstract: The COVID-19 mitigation measures require a fundamental shift in human behavior. The present study assesses what factors influence Americans to comply with the stay at home and social distancing measures. It analyzes data from an online survey, conducted on April 3, 2020, of 570 participants from 35 states that have adopted such measures. The results show that while perceptual deterrence was not associated with compliance, people actually comply less when they fear the authorities. Further, two broad processes promote compliance. First, compliance depended on people's capacity to obey the rules, opportunity to break the rules,

and self-control. As such, compliance results from their own personal abilities and the context in which they live. Second, compliance depended on people's intrinsic motivations, including substantive moral support and social norms. This paper discusses the implications of these findings for ensuring compliance to effectively mitigate the virus.

Ventura, Deisy de Freitas Lima, Fernando Mussa Abujamra Aith and Danielle Hanna Rached, '[The Emergency of the New Coronavirus and the "Quarantine Law" in Brazil](#)' (2020) *Revista Direito e Práxis* (advance article)

Abstract: Law no. 13,979, of February 6, 2020, regulates public health measures related to the emergence of the new coronavirus with high potential to restrict fundamental rights, including quarantine and isolation. This critical analysis addresses the international dimension of the emergency, and the casuistic and anti-democratic procedure of the Brazilian law. Based on health law principles and the epidemiological legislation in force, it scrutinizes restrictive measures and safeguards for its implementation.

Ward, Christopher, 'Cruising Through the Coronavirus: A Journey Through International Law' (2020) 66 *LSJ: Law Society of NSW Journal* 71-73

Abstract: Centuries ago, the international movement of plague and sickness led to the development of rules of quarantine. In the 14th Century, the practice of quarantine developed in Croatia, and then Italy. History records that the Master of a vessel arriving in Venice during this period was required to make a declaration through a window to a health magistrate, and if plague was suspected, the vessel and its crew and any passengers were required to lie at anchor for 40 days ('quaranta giorni'). In more recent history, countries including Australia and the United States of America maintained quarantine stations for arriving passengers. Quarantine has been used as a blunt instrument to meet challenges of disease including outbreaks of yellow fever, smallpox, cholera, Spanish flu and the SARS virus.

Wexler, David B, '[High-Rises, Staircases, and Social Distancing: TJ in Informal Policy Statements](#)' (Arizona Legal Studies Discussion Paper 20-15, 2020)

Abstract: A short essay showing how therapeutic jurisprudence and its concepts of therapeutic design of the law (TDL) and therapeutic application of the law (TAL) can be used in short, informal policy statements, including matters such as maintaining social distancing on a staircase of a high-rise apartment building.

Zander, Michael, 'An Extraordinary Act of Parliament' 2020, 170(7882) *New Law Journal* 15-16

Abstract: Outlines the speed of the legislative process of the *Coronavirus Act 2020*. Highlights concerns expressed in the reports of two House of Lords Select Committees, the Delegated Powers and Regulatory Reform Committee and the Constitution Committee regarding the potential effect on civil liberties of certain ministerial powers under the Act, particularly those not specifically limited to the duration of the coronavirus outbreak.

BUSINESS LAW (INCLUDING FRANCHISES)

Baker, Todd H and Kathryn Judge, '[How to Help Small Businesses Survive COVID-19](#)' (Columbia Law and Economics Working Paper No. 620, 2020)

Abstract: Small businesses are among the hardest hit by the COVID-19 crisis. Many are shuttered, and far more face cash flow constraints, raising questions about just how many will survive this recession. The government has responded with a critical forgivable loan program, but for many of these businesses, this program alone will not provide the cash they need to retain workers, pay rent, and help their business come back to life when Americans are no longer sheltering in place. This essay calls on regulators to find new and creative ways to work with existing intermediaries, including banks and online lenders, who have the infrastructure and tools needed to help small businesses get the additional loans they need to survive and thrive. Leveraging existing institutions could enhance the speed, scale, and scope of the government's response, all critical virtues in the efforts to support small business.

Boon, Gert-Jan et al, [‘The COVID-19 Pandemic and Business Law: A Series of Posts from the Oxford Business Law Blog’](#) (Oxford Legal Studies Research Paper No 15/2020, 2020)

Abstract: The COVID-19 Pandemic is the biggest challenge for the world since World War Two, warned UN Secretary General, António Guterres, on 1 April 2020. Millions of lives may be lost. The threat to our livelihoods is extreme as well. Job losses worldwide may exceed 25 million. Legal systems are under extreme stress too. Contracts are disrupted, judicial services suspended, and insolvency procedures tested. Quarantine regulations threaten constitutional liberties. However, laws can also be a powerful tool to contain the effects of the pandemic on our lives and reduce its economic fallout. To achieve this goal, rules designed for normal times might need to be adapted to ‘crisis-mode’, at least temporarily. Business Laws in particular fulfil an important function in this context. Our livelihoods depend on how well businesses are able to navigate through the current crisis. Beginning in early February 2020, the Oxford Business Law Blog has published posts on how Business Laws could contribute to containing the effects of the COVID-19 Pandemic, and on how they need (or need not) to be adapted to achieve the desired effect. This working paper collects the posts published throughout March in chronological order. Thematically, the focus is on finance, financial regulation and insolvency laws. This is not surprising as the most pressing problem businesses face right now is to manage their cash flow. We hope that the contributions in this paper inspire more work by scholars and help policymakers worldwide to adopt the right measures to reduce the damage caused by the Pandemic.

Cresanti, Robert, ‘The Impact of COVID-19’ (2020) 52(4) *Franchising World* 8

Jurisdiction: USA

Abstract: An editorial is presented which discusses the Impact of COVID-19. It discusses about how the new federal coronavirus laws will impact the business from Littler Mendelson’s Michael Lotito and James Paretti; IFA board member Jerry Crawford from Jani-King shares important information about how to safeguard your business, employees and customers; and the rest of this issue is still dedicated to providing important information about franchising to our members that we know you’ll find value from.

Pacheco, Thomas, 'Top Legal Issues for 2020: The Legal Developments You Need to Know' (2020) 52(4)
Franchising World 24–27

Jurisdiction: USA

Abstract: The article discusses legal developments related to Covid-19. Topics include California Consumer Privacy Act went into effect on January 1, 2020, the CCPA establishes consumer rights with regard to data; California's AB 5 law finally came into effect in January 2020; and The Protecting the Right to Organize (PRO) Act.

CHARITY LAW

Johnstone, Syren, '[A Viral Warning for Change. COVID-19 Versus the Red Cross: Better Solutions Via Blockchain and Artificial Intelligence](#)' (University of Hong Kong Faculty of Law Research Paper No 2020/005, 2020)

Abstract: Among the many issues being raised in the course of the recent COVID-19 coronavirus outbreak is the ability of charities to respond to crises and to fulfil their fiduciary and moral duty to apply donations effectively and for the purposes intended. This article notes the problems encountered by charities, in China and elsewhere, and argues that the present crisis should be seen as a call to arms for the tech industry, which has the relevant know-how and resources to radically change the landscape of crisis response and the management of donations through the implementation of blockchain and artificial intelligence tools that are already in common commercial use. Fundamental changes are needed to the structure and method of how such crises are handled. The time for global technologists to develop, on a collaborative basis, borderless solutions to issues of common humanitarian concern is now.

COMPETITION AND CONSUMER LAW

Bloomfield, Doni, [‘Competition and Risk’](#) (SSRN Scholarly Paper ID 3566661, 2 April 2020)

Abstract: Merger review in the United States has overlooked a significant competition harm: increasing risk. Mergers can increase both counterparty risk and systemic risk—the risk of idiosyncratic firm shocks harming trading partners and the national economy. There is now clear evidence that negative shocks to a firm can impose significant harm to that firm’s trading partners, leading to national economic effects. And as the COVID-19 pandemic has shown all too clearly, how we structure our markets can, in a crisis, become a matter of life and death overnight. I argue that mergers that increase counterparty and systemic risk by harming the competitive process can be blocked as violations of the Clayton Act. Systemic and counterparty risk should therefore be treated like innovation in merger review as factors that can increase or decrease merger legality. I show when a merger is likely to change risk, to whom, and in what direction. Important factors include pre- and post-merger market power, counterparty exposure, and network centrality. When a merger increases risk because of a harm to competition, that increased risk is an antitrust harm under the consumer welfare standard and can therefore be used to condemn the merger. Moreover, the agencies’ prosecutorial discretion allows them to consider risk harms in merger review even when such harms are not directly caused by reduced competition. To illustrate, I apply merger risk analysis to a large generic pharmaceuticals deal. I conclude with recommendations on how to incorporate risk analysis into merger review. Bringing risk analysis into merger review reveals otherwise invisible but significant merger harms and demonstrates that merger efficiencies have not just benefits but also serious costs. In an Appendix, I propose language for a new section in the Department of Justice and Federal Trade Commission’s Horizontal Merger Guidelines.

Chaiehloudj, Walid, [‘The New Caledonian Competition Authority Announces Pursue Competition Law Enforcement in the Context of Covid-19 Pandemic’](#) (2020) II *e-Competitions Bulletin* Article No 94154

Abstract: The coronavirus pandemic has and will have a huge impact on our economy. Undoubtedly, we face the worst crisis in our recent history. A major consequence is serious financial distress for a myriad of undertakings. A phenomenal number of companies are already close to bankruptcy. It is too early to accurately assess the economic damage caused by the

Corona crisis. Nevertheless, competition authorities around the world have reacted swiftly to deal with this unprecedented challenge [1]. The crisis affects drastically both consumers and companies. On the one hand, consumers are prisoners of the containment imposed by their Government. They lost their freedom of choice and have to shop at the stores closest to their homes (pharmacies, food retail stores etc.). Thus, a higher price can be charged due to the inelastic demand from consumers. On the other hand, some companies no longer have consumers while others are seeing the demand for their products and services soar. This situation raises serious competition concerns for competition authorities. The main issue is whether competition law should apply or not in pandemic crisis. Most competition authorities answered yes.

Cordray, Richard, Diane E Thompson and Christopher Lewis Peterson, '[Consumer Financial Protection in the COVID-19 Crisis: An Emergency Agenda](#)' (SSRN Scholarly Paper ID 3569357, 6 April 2020)

Jurisdiction: USA

Abstract: The coronavirus pandemic is creating overwhelming needs, in three waves. First is the health crisis; second is the macroeconomic crisis created by the abrupt halt in much business activity; and now third is a consumer crisis, as households are faced with total or partial job loss, sharp income decline, and potential loss of health care. Millions of Americans are falling behind on their bills, including major obligations like mortgages, rent, car payments, and other forms of household debt. At the same time, they face a financial industry itself struggling to respond to the compounding crises and widespread confusion as to what the new rules of the road are as financial institutions, states, localities, and the federal government scramble to respond. The result is fertile ground for consumer scams. The authors call upon the Consumer Financial Protection Bureau to recognize and respond to this new consumer crisis, providing an action plan of more than a dozen practical steps that the CFPB can and must take immediately to prevent widespread consumer harm. The action plan starts with the most basic and essential step of collecting and disseminating timely and accurate information for both consumers and policymakers. The CFPB must address pressing consumer risks in four primary areas: foreclosure prevention, non-mortgage debt forbearance, oversight of debt collectors, and supervision of credit reporting companies. In each of these primary areas, and on all the issues discussed in

this paper, the CFPB must use all of its authorities to ensure that crucial relief is delivered to distressed consumers.

Costa-Cabral, Francisco et al, [‘EU Competition Law and COVID-19’](#) (TILEC Discussion Paper No DP2020-007, 2020)

Abstract: This paper explores how EU competition law enforcement might be affected by the COVID-19 pandemic. Each section of this paper reviews how various components of EU competition law are impacted. The paper evaluates the state of play and, where relevant, it makes policy proposals for how competition law might develop. It suggests that the Commission’s state aid policy is unprecedentedly lax but more tightening up might be welcomed to ensure state funds are not misspent. In the field of antitrust it recommends that competition authorities should be watchful of excessive prices and price discrimination, using interim measures more boldly. Collusion should remain an enforcement priority but a procedural pathway to review agreements that may be in the public interest is proposed, drawing on practices developed in the US in the aftermath of major natural disasters. In merger control, the Commission’s strict interpretation of the failing firm defense is appropriate but, in general, a more skeptical attitude towards mergers may be warranted during this period. Advocacy plays a key role: competition agencies can both point to existing regulations that limit competition and monitor proposed emergency legislation that would harm competition for no good reason.

Costa-Cabral, Francisco, [‘Future-Mapping the Three Dimensions of EU Competition Law: Modernisation Now and After COVID-19’](#) (TILEC Discussion Paper No DP 2020-011, 2020)

Abstract: EU competition law is traditionally understood in two-dimensions: judicial control and enforcement. This paper considers a third dimension: its normative concerns in the context of EU law. In mapping the future of these dimensions, the paper asks if the understanding behind the modernisation of the Commission’s enforcement is still tenable. In relation to judicial control, the effects-based approach of modernisation has either been incorporated by the case law at the cost of its coherence or ignored. Regarding enforcement, modernisation has resulted in the Commission having to step outside its guidance and in multiple proposals to adjust competition rules. As for the normative dimension, modernisation’s emphasis on consumer

welfare has not prevented openness to broader concerns and setting this priority aside in reaction to COVID-19. The direction of modernisation will thus continue to raise judicial difficulties and, should it hamper enforcement, possibly lead to legislation that marginalises competition law. A better alternative would be, as was done for COVID-19, to reinforce the normative connection with the rest of EU law.

Giosa, Penelope-Alexia, 'Exploitative Pricing in the Time of Coronavirus: The Response of EU Competition Law and the Prospect of Price Regulation (2020) *Journal of European Competition Law and Practice* (forthcoming)

Abstract: This article explores Article 102 (a) TFEU, the provision of the EU competition law that the National Competition Authorities and the European Commission can enforce against excessive pricing, in case the excessive prices are not the outcome of a collusive agreement. It discusses the practical and conceptual difficulties that excessive pricing cases involve, especially under the current urgent circumstances that Coronavirus has caused, and it assesses the remedies that the National Competition Authorities and the European Commission can impose in order to deal with price gouging. The article argues that the issuance of "commitment decisions" by the European Commission is preferable to the imposition of fines to firms, as it could reset prices to a non-excessive level, rather than merely alleviating the harmful effects of excessive pricing. In this context, the article also examines if the EU Member States should rely on price regulations in order to cap the wholesale and retail prices of some products in high demand due to the Coronavirus pandemic.

Irvine, Heather, 'Minster of Trade Industry and Competition Responds Swiftly to COVID-19' (2020) 20(3) *Without Prejudice* 6-7
Jurisdiction: South Africa

Abstract: Unprecedented regulations have been passed by Minister Patel in order to exempt certain categories of agreements and practices in the banking, healthcare and retail sector in order to enable competitors in key South African industries to respond to the COVID-19 crisis. Regulations to deter unfair and excessive pricing of critical consumer goods and services have also been put into place.

Jenny, Frederic, '[Competition Law Enforcement and the COVID-19 Crisis: Business As \(Un\)Usual ?](#)' (SSRN Scholarly Paper ID 3606214, 20 May 2020)

Abstract: The unexpected shock provoked by the COVID-19 crisis and the measures taken to limit the spread of the pandemic have affected the functioning of many markets. Throughout the world, competition authorities which, in the last decade, had been enforcing their laws in the context of steady economic growth have had to adjust their enforcement practices not only to the difficulties of running their operations created by lockdowns but more importantly to collapsing markets or markets for essential goods characterized by severe shortages, in a context of deep economic depression with many firms facing severe liquidity constraints or even the threat of bankruptcy. Competition authorities have responded to these extraordinarily brutal circumstances by adjusting their enforcement priorities, exempting certain forms of cooperation, relaxing their standards for efficiency defence, adopting emergency procedures, allowing certain forms of state aids, accepting mergers because the target suddenly was a failing firm etc.... while at the same time insisting that these changes did not mean a weakening or an alteration of the competition law principles that they previously followed. This article describes in detail the responses of a number of competition authorities, analyzes the differences in the responses to the COVID-19 crisis of various governments and competition authorities and discusses whether these responses imply a departure from the traditionally accepted goals and enforcement principles of competition.

Komninos, Assimakis, Jan Jeram and Iakovos Sarmas, '[A Re-Awakening of the Failing Firm Defense in the EU in the Aftermath of COVID-19?](#)' (Competition Policy International, 2020)

Abstract: The COVID-19 crisis raises the question of how EU merger control will be adapted. In particular, whether the standards for accepting the so-called 'failing firm defense' will be relaxed by the European Commission. We discuss the case law and make a few observations on how the FFD is going to play going forward.

Silber, Norman I and Sovern, Jeff, '[Placing Consumers at the Front of the Relief Effort: Redirecting Credit Card Interest Charges](#)' (Hofstra University Legal Studies Research Paper No 2020-04, 2020)

Jurisdiction: USA

Abstract: Catastrophes including the COVID19 pandemic of 2019-2020 impose great financial stress on consumers. This op-ed proposes the distribution of economic relief directly to consumers by authorizing credit card issuers to bill Congress for portions of the interest that otherwise would be charged to cardholders. Significant benefits include expanding access to consumer credit when it otherwise would be expected to diminish, reduced consumer default rates and bank charge-offs, and greater stimulus to overall economic welfare.

Tagara, Myrto et al, '[The EU Commission and EU Member State Competition Authorities Issue a Joint Statement on the Application of Competition Law during the COVID-19 Crisis in the Context of the European Competition Network](#)' [2020] (Preview) *e-Competitions Bulletin*

Abstract: Cooperation in the life sciences industry and EU competition law in the context of COVID-19 The life sciences industry is facing unprecedented demands due to COVID-19. ...

Waksman, Alexander M, 'Editorial (2020) 41(6) *European Competition Law Review* 267-268

Abstract: Summarises the main themes addressed in the journal, and reflects on competition-related responses to the coronavirus pandemic, including actions to facilitate co-operation in the pharmaceutical sector, and the acceptance of electronic merger filing. Discusses whether EU merger convergence is likely to survive Brexit, and notes the reasons for the increasing popularity of sectoral reviews by national competition authorities.

CONSTITUTIONAL LAW

Hogan, Gerard and Hilary Hogan, '[Legal and Constitutional Issues Arising from the 2020 General Election](#)'
(27 April 2020)

Jurisdiction: Ireland

Abstract: In 1989, a series of novel legal issues arising out of the general election of the same year were examined by the first named writer. If the aftermath of the election of 1989 seemed unusual, it pales in comparison to the series of events that took place following the 2020 general election. It seems timely to re-visit some of the issues explored in the 1989, as well as considering some of the new issues thrown up by the 2020 general election. In this article, we analyse the following questions: what is the effect of a death of a general election candidate? Is the outgoing Taoiseach obliged to resign if he is not re-elected as Taoiseach on the date of the first sitting of the Dáil following the general election, and no other candidate for that office is elected on that day? What is the scope of powers afforded to a caretaker Taoiseach and his Ministers? Is the Seanad validly constituted if a new Taoiseach has not nominated eleven members? If not, can the Oireachtas continue to pass legislation over which the Seanad has a more limited role? Many of these questions assumed new relevance in the context of the actions taken by the acting Government during the Covid-19 pandemic.

Kabumba, Busingye, '[The 1995 Constitution and Covid-19](#)'

Jurisdiction: Kenya

Introduction: The Coronavirus disease (Covid-19) has fundamentally challenged many aspects of international and national life that we had long taken for granted. As at current count, over one million people around the world have tested positive for Covid-19, with over sixty-five thousand deaths thus far. In Uganda, fifty-two people have so far tested positive, and the government has already taken extraordinary measures to try to ensure that this figure remains low. In the midst of this national and global crisis, it might appear insensitive – perhaps even distasteful - to reflect on the legal questions arising in this moment. However, it is possibly precisely at such a time that we should be mindful of, and cling to, the safety and guidance to be found in law – and, in particular, the Constitution. It is in this spirit that this short piece reflects upon the extent

to which the government of Uganda can effectively respond to the challenge posed by Covid-19, while respecting and complying with the safeguards stipulated under the 1995 Constitution

Karavokyris, George, '[The Coronavirus Crisis-Law in Greece: A \(Constitutional\) Matter of Life and Death](#)' *Verfassungsblog: On Matters Constitutional* (Blog Post, 14 April 2020)

Abstract: Each time a crisis emerges, the law is entitled to seize the exceptional moment and contain it, within the limits of democracy and the rule of law. Legal normality, as a vague standard, is usually redefined by the legislator and the courts and rapidly adjusted to reality. The constitutional value of public interest comes into conflict with civil liberties and scholars begin to question the law. The saga of the (Greek) coronavirus crisis-law is, like everywhere, utterly reduced to the proportionality of the exceptional measures of the (Greek) State, but its moral and political implications seem far broader and ambiguous.

Knauer, Nancy J, '[The COVID-19 Pandemic and Federalism](#)' (SSRN Scholarly Paper ID 3599239, Social Science Research Network, 9 May 2020)

Abstract: The COVID-19 pandemic is an unprecedented public health crisis that has prompted an unprecedented response. Drastic and previously unthinkable steps have been taken to 'flatten the curve' and avoid overwhelming our health systems. In the absence of a coordinated national response to the crisis, the pandemic has underscored both the promise and limits of the Tenth Amendment. As state and local actors have scrambled to adopt policies to protect their residents and minimize the loss of life, the result has been a patchwork of advisories and orders that reveal stark regional disparities and some confounding inconsistencies. The reliance on state and local actors has produced many innovative programs and novel attempts at regional coordination, but it has also led to direct competition between and among jurisdictions as they vie for desperately needed resources. Moreover, it has elevated the friction between the federal government and state and local leaders to alarming levels. This essay examines the role of federalism in the early days of the COVID-19 pandemic in the United States. It explores the dangers that arise when disaster relief is politicized and proposes failsafe mechanisms to prevent key institutions from abdicating their responsibility to the American people. The first section reviews our current preparedness and response policy, which is grounded on a strong

vision of cooperative federalism where a response is federally supported, state run, and locally executed. The second section uses the lens of comparative institutional analysis to evaluate the shortcomings of this approach, specifically in the context of pandemic planning. By addressing three core institutional considerations – competency, political responsiveness, and stability – it maps out potential gaps that have the potential to compromise response efforts. The third section discusses failsafe provisions to ensure that disaster relief does not fall victim to partisan wrangling. A brief conclusion notes that the reliance on state and local actors in this pandemic has been a pragmatic, but also imperfect, institutional choice because state and local level initiatives are by their nature partial and porous. They are necessarily hampered by the lack of uniformity and certainty that could come from a federal pandemic response and, unfortunately, they are ill-suited to stop a novel virus in search of its next host.

Lee, Gyooho, '[Legitimacy and Constitutionality of Contact Tracing in Pandemic in the Republic of Korea](#)' (SSRN Scholarly Paper ID 3594974, 7 May 2020)

Abstract: The Republic of Korea (hereinafter referred to 'South Korea' or 'Korea' interchangeably) had learned a valuable lesson from the Middle East Respiratory Syndromes (hereinafter 'MERS') outbreak in 2015. Hence, the Infectious Disease Prevention and Control Act of 2015 (hereinafter 'IDPC Act of 2015') and its pertinent ministerial ordinance newly prescribed legal basis to retrace contacts of the infected patients. It is called as 'contact tracing.' During the COVID-19 pandemic, the contact tracing system has come into play well. Even though the legitimacy of the contact tracing system is guaranteed under the IDPC Act of 2015 and of 2020, the constitutionality can be challenged because it may violate the freedom of the infected patients and their contacts to move and maintain their occupation, and their freedom of privacy. When there is a conflict between the fundamental rights, an upper-level one will take precedence over a lower-level one. When we take into account the pandemic of deadly COVID-19 virus, right to life, right of occupation and right to know information on the movement paths of the infected patients which non-infected persons have should take precedence over the right to move and the freedom of occupation and of privacy, of the infected persons and their contacts. However, in restricting the fundamental rights of the infected patients and their contacts, the proportionality test will be applied. Hence. there are certain requirements for legislation that restricts the fundamental rights of the nationals only by the public's risk to those

who are in contact with an infected person or to those merely suspected of being infected. All of the following must be balanced: (i) the legitimacy of the purpose, (ii) the adequacy of the method for achieving the goal, (iii) the minimum of damage, and (iv) the balance of legal interests between the public interest to be protected by the legislation and the fundamental right to be infringed. The provisions of the IDPC Act are intended to protect the health of the people. The contact tracing based on those provisions is effective and adequate for achieving the said objective. In addition, the public interest, i.e., national health, to be achieved through the provisions is greater than the limited private interests, i.e., freedom of privacy, of occupation, and of movement which can be enjoyed by the infected patients and their contacts. However, the state needs to explore whether the third requirement, which is minimization of harm of the infected patients and their contacts, has been met. In other words, the disclosure of personal information of the infected persons or their contact needs to be minimized while Article 37 (2) of the Korean Constitution is taken into account. The issue here is whether the limitations to the right to privacy, to move, and the right of religion, of the infected patients or their contacts must be provided by the IDPC Act. Even though the scope of disclosure of the movement paths of the infected patients and their contacts is advised by the KCDC's guidelines, its legal bases are on, e.g., Articles 34 bis (1), 76 bis and 6 (2) of the IDPC Act. Also, the pandemic of a novel infectious diseases is not predictable, so that the scope of disclosure of the movement paths of the infected persons and their contacts can be different based on the type of a new infectious disease. In this context, even though the KCDC's guidelines are not binding upon local governments, it is not fair to say that the scope of disclosure of the movement paths of the infected persons and their contacts is not groundless and unconstitutional. Taking into account the difficulty in delineating the effect of a new infectious disease and the necessity for expeditious countermeasure against it, the disclosure of the movement paths of the infected patients and their contacts is constitutional under the IDPC Act combined with those of Personal Information Protection Act despite the fact that the contents of the KCDC's guidelines are not explicitly provided under the IDPC Act.

Abstract: The Republican Guarantee Clause of Article IV, Section 4 promises that '[t]he United States shall guarantee to every State in this Union a Republican Form of Government.' Although this clause might seem to confer significant power to oversee the political structures of the states, ambiguity about the Clause's meaning, coupled with the Supreme Court's historic disinclination to define its contours, have led some observers to question whether the Clause is a paper tiger. While recent scholarship has focused mostly on what a 'Republican Form of Government' might entail, less attention has been given to the threshold questions of who might serve as guarantors of the Clause and precisely what forms of action they might take under it. This Article concludes that while all federal branches may have a role to play as guarantors of republican government, the logic, location, and history of the Republican Guarantee Clause suggest that the Clause most directly empowers the political branches, and especially Congress, to act as guarantor. Often forgotten, but of critical importance, is that the Clause served as the chief constitutional basis for Reconstruction after the Civil War, and it helped pave the way for ratification of the Fourteenth and Fifteenth Amendments in the southern states. This history suggests that the Clause and those Amendments-- on which twentieth-century voting rights legislation was based--should be understood and interpreted in light of one another. This Article explores the role the Clause might play as an alternative source of federal legislative power to guarantee basic political processes alongside--or in place of--these Reconstruction Amendments. These questions have renewed significance today, given recent and frequent constitutional confrontations between Congress and the Supreme Court regarding the scope of Congress's constitutional power to interpret and enforce the Reconstruction Amendments. Most recently, in *Shelby County v. Holder* (2013), the Court struck down portions of the Voting Rights Act as extending beyond Congress's Fifteenth Amendment Enforcement Clause power. Around the same time, many state governments began to impose new restrictions on voter registration and access to the ballot box. These new measures, coupled with the Supreme Court's holding in *Rucho v. Common Cause* (2019) that legal challenges to partisan gerrymandering are not justiciable in federal courts, has provoked renewed calls for federal protections to guarantee fairness in state political processes. Other recent developments, including the 2020 coronavirus pandemic, have also led to calls for greater congressional oversight of state electoral procedures. This Article considers whether the

Clause might serve as an additional constitutional basis for federal legislation and explores the interpretive arguments Congress might raise to justify the power to reform electoral processes in the states under the Clause. This Article also questions the prevailing view that the Supreme Court has always treated the Clause as functionally nonjusticiable. It argues that even following established precedents, the contemporary Court might well engage with the merits of legislation and litigation commenced under the Clause, given the Court's recent penchant for enhanced scrutiny of congressional enforcement powers under the Reconstruction Amendments. Such challenges would spark a historical constitutional confrontation between Congress and the Court as to the meaning of the Clause. The Court might take one of several approaches when interpreting Congress's power to legislate under the Clause, and this Article concludes that the Clause is the rare constitutional provision that would seem to grant both the courts and the political branches independent and complementary bases to guarantee republican government. Judicial scrutiny of congressional actions taken under the Clause should be heightened when congressional efforts can more readily be achieved by the states or by the courts and diminished when only Congress or president could effectively serve as the guarantor.

Orr, Graeme D, '[The Demos in a Pandemic: Staging Elections in a Health Emergency](#)' *AusPubLaw: Australian Public Law* (Blog Post, 6 April 2020)

Abstract: Commentary on constitutional and practical regulatory issues of conducting elections during the 2020 coronavirus contagion.

Paglalonga, Jacob, '[The COVID-19 Cover-Up; How Federal Courts Are Changing Constitutional Law to Uphold Unconstitutional State Actions](#)' (SSRN Scholarly Paper ID 3607298, 21 May 2020)

Jurisdiction: USA

Abstract: When a state deprives us of fundamental liberties, the judiciary is required to assess the government action using the strict scrutiny standard of review. Under this level of scrutiny, the state action must be narrowly tailored and serve a compelling state interest, or it is unconstitutional. An essential aspect of strict scrutiny is that the burden of proof is on the government. Meaning, when State actors infringe on our liberties, they must support the necessity of their actions with evidence. Amidst the COVID-19 pandemic, federal courts have

largely failed to apply the strict scrutiny standard of review to state actions. Instead, courts have invented an entirely new standard of review specifically for state actions during a ‘public health crisis.’ Under this new COVID-19 standard of review, courts may only overturn state actions that lack a real or substantial relation to public health or that amount to a plain, palpable invasion of rights. This standard of review shifts the burden of proof from the state to the individual. Ergo, to earn back bereaved liberties, individuals must demonstrate that a state’s action is not somehow related to a public health crisis or provide evidence that a state’s action meets the court’s subjective definition of a ‘palpable invasion of rights.’ Unsurprisingly, the new COVID-19 standard of review vindicates state deprivations of liberty regardless of merit or necessity. This Article addresses the new COVID-19 standard of review federal courts are employing to reject constitutional challenges to state actions in response to the coronavirus. This Article describes the fundamental liberties abridged by state lock-downs, and the judicial scrutiny historically applied to these types of infringements on liberty. This Article examines the 1905 Supreme Court case of *Jacobson v. Commonwealth of Massachusetts*, which courts utilize to support the new COVID-19 standard of review. This Article reviews other legal precedents in the area of ‘quarantine law’ to expose how the COVID-19 standard of review is a radical divergence from traditional jurisprudence. Lastly, this Article compares federal court opinions using the new COVID-19 standard of review with the few court decisions still using strict scrutiny. This comparison demonstrates that once subjected to minimal scrutiny and the burden of proof, state governments utterly fail to support the efficacy and necessity of their COVID-19 ‘emergency’ actions.

van Niekerk, Bouwer and Parveen Munga, ‘COVID-19 and the Right to Freedom of Movement’ (2020)

20(4) *Without Prejudice* 20-22

Jurisdiction: South Africa

Extract: Section 21 of our Constitution concerns the rights to freedom of movement and residence, in terms of which every person is guaranteed the right to freedom of movement and every citizen is guaranteed the right to enter, remain and reside anywhere in the Republic. The importance of the rights enshrined in s21 cannot be overstated. Its effect is to preclude the former policy of segregation and the severe restrictions imposed on the black populace. It, like many of the rights enshrined in our Constitution, also serves as a stark reminder of the

conditions and status quo that warranted the inclusion of a right seemingly manifest. Remarkably, this section is not comprehensively dealt with in some of our most esteemed academic works dealing with our Constitutional Law. The reason for this is, in all likelihood, axiomatic – this right is so manifest that academic scholars have found neither the need nor the inclination to expand on it. There are also not (as of yet) any groundbreaking Constitutional Court judgments in our jurisprudence opining on this section, as this has never been seriously challenged in our young democracy. But now the national lockdown is infringing upon this very right; our personal movements are curtailed, which halts our ability to trade and disallows something as significant as attending funeral of a loved one. How is it that this right can be so fundamentally and so drastically impeded?

Wickramaratne, Jayampathy, '[Doctrine of Necessity: Stumbling Against the Same Stone in Pakistan - A Mistake Not to Be Emulated in Sri Lanka](#)' (SSRN Scholarly Paper ID 3598986, 12 May 2020)

Abstract: The doctrine of necessity was first expounded as a criminal law principle: 'that which is otherwise not lawful is made lawful by necessity'. Dangers of applying the doctrine in constitutional law were seen in Pakistan where several military coups were validated using it. In Sri Lanka Parliament was dissolved on 02 March 2020. As elections have been postponed due to the COVID-19 pandemic, Parliament will not be able to meet before 02 June, within the maximum period of three months permitted by the Constitution for the country to be governed without Parliament. The country being governed without Parliament means in effect that it would be governed only by the President, without the institution to which he is constitutionally accountable functioning. The dissolved Parliament can be recalled in several ways: (1) withdrawal of the Proclamation of dissolution; (2) declaration of an emergency under the Public Security Ordinance which will trigger the summoning of Parliament; and (3) summoning of Parliament by the President without recourse to the said Ordinance in an emergency. That there is an emergency situation today cannot be denied. However, it has been suggested that the country can go on without Parliament by invoking the doctrine of necessity. This paper argues that where there are alternatives possible under the Constitution, the doctrine cannot be invoked. In any case, learning from the Pakistani experience, Sri Lanka should not use the doctrine in matters of constitutional law.

CONSTRUCTION LAW

'Building Contract Law: Hindrance to the Provision of Services by Covid-19' [2020] *Lawyer (Online Edition)* 1

Jurisdiction: UK

Abstract: The article focuses on the impact of Covid-19 pandemic on construction law. It mentions consequences of this for construction projects depend on the work contracts. It also mentions that for difficulties that arise for a contractor as a result of COVID-19 force majeure he can therefore generally not claim any additional costs, and the contractor is also not entitled to adjust the contract on this basis.

Klein, Rudi, 'Spoiling for a Fight' (2020) 13 *Building* 34-35

Jurisdiction: UK

Abstract: Comments on the difficulties contractors may experience when attempting to rely on force majeure to defend contractual delays as the industry emerges from the COVID-19 lockdown. Suggests that the Government could use the Civil Contingencies Act 2004 to adopt regulations mitigating the effects the pandemic has had on the construction industry.

CONTRACT LAW

Abuwasel, Mahmoud, 'The Coronavirus Pandemic in Contract Law: Companies Disrupted by the Spread of Coronavirus May Seek to Have the Pandemic Recognised as a Hardship Event' (2020) 5(4) *MEED Business Review* 24–25

Adegoke, Taiye, '[COVID-19: Possible Defences to a Non-Performing Party in a Commercial Contract](#)' (SSRN Scholarly Paper ID 3588069, 26 March 2020)

Jurisdiction: Nigeria

Abstract: It is no longer news that the world is confronted with a common enemy today – the novel Coronavirus 2019 popularly known as COVID-19. The virus was first discovered in China and has today spread across over 190 countries around the globe. COVID-19 has disrupted the world economy and businesses across the globe are heavily hit by the operation of the pandemic. There is no gainsaying the fact that this novel coronavirus has surfaced in Nigeria with over 40 cases discovered so far as at the time of this article and still counting. The Nigerian Government, like other countries of the world have taken some measures to contain the spread of this virus in the most populous nation in Africa, which measures obviously is taking a hard toll on businesses, transactions and the economy at large. While the world continuously strives hard to put an end to this misery ravaging the whole world, it is almost certain that the post COVID-19 world would likely herald a bundle of commercial disputes possibly arising from breach of obligations as a result of the sudden outbreak of this disease. Thus, commercial lawyers would be called upon to review various commercial agreements and defaulting litigants would rely on commercial lawyers, to present a solid defence for them, to the breach of their obligations resulting from the COVID-19 disorder.

Berger, Klaus Peter and Daniel Behn, '[Force Majeure and Hardship in the Age of Corona: A Historical and Comparative Study](#)' (2020) *McGill Journal of Dispute Resolution* (forthcoming)

Abstract: Force Majeure and Hardship provide legal tools to deal with the effect of unexpected future events and unforeseen changes in circumstances, particularly in long-term contracts. Given its global and unprecedented dimensions, its lethal potential and its drastic effects on

international contracts the COVID-19 pandemic will generate years, if not decades, of post-pandemic litigation and arbitration focusing on the application of these two concepts. The paper examines the two concepts, from their historic origins over the different paths they took in civil and common law to modern transnational contract law as applied by international arbitral tribunals. Based on this historic and comparative analysis, the paper shows that in such extraordinary times, the doctrines of Force Majeure and Hardship assume the role of regular, rather than exceptional legal remedies, allowing for the risks emanating from the unprecedented crisis to be evenly distributed between the players in the global economy.

Dagan, Hanoch and Ohad Somech, '[When Contract's Basic Assumptions Fail: From Rose 2d to COVID-19](#)' (SSRN Scholarly Paper ID 3605411, 19 May 2020)

Abstract: This Article explores the normative foundations of the rules governing mutual mistake, impossibility, impracticability, and frustration and studies their doctrinal implications. These familiar doctrines, which make contracts voidable or excusable whenever they are grounded on a shared basic assumption that failed, puzzle commentators and courts. We claim that the key to properly understanding their role and interpret their doctrinal elements lies in appreciating the core principles of a genuinely liberal – that is: autonomy-enhancing – contract law. The rules that delineate the scope of these doctrines are guided by liberal contract's commitment to ensure that promisors' future selves are not unacceptably encumbered. The rules that regulate these doctrines, in turn, follow liberal contract's principles of proactive facilitation and relational justice. Together, these rules exemplify both the power of the liberal foundation of modern contract law and the subtlety of its doctrinal workings.

German, Peter, 'Coronavirus (COVID-19) and Force Majeure' [2020] *Lawyer (Online Edition)* 1

Abstract: The article offers information on the impact of the coronavirus pandemic on the commercial activities around the world. It discusses the coronavirus outbreak and force majeure, along with information on the restrictions on travel and gatherings imposed by the government officials all over the globe. It mentions the steps taken by business to limit business travel and participation in meetings and social events.

Majumder, Bodhisattwa and Devashish Giri, 'Coronavirus & Force Majeure: A Critical Study (Liability of a Party Affected by the Coronavirus Outbreak in a Commercial Transaction)' (2020) 51(1) *Journal of Maritime Law & Commerce* 51–63

Abstract: The article discusses the issues on the use of the force majeure clauses in commercial transactions due to the coronavirus pandemic when the virus is not explicitly included in the terms of agreement. Also cited are the clauses' aim to eliminate the liabilities of both parties in a contract, a background of the pandemic that affected up to 24 countries, and the Principles of International Commercial Contracts detailing why the pandemic is a force majeure event.

Mashishi, Thato, 'The Convergence of COVID-19 and Force Majeure' (2020) 20(3) *Without Prejudice* 10
Jurisdiction: South Africa

Abstract: On 11 March 2020, the World Health Organisation ("WHO") characterised COVID-19 as a pandemic pursuant to an assessment by the WHO. As the global community grapples with COVID- 19 and its ramifications, parties to commercial agreements have not been spared from panic in respect of the adverse effects on those agreements.

Mathew, Renjith, '[Force-Majeure under Contract Law in the Context of Covid-19 Pandemic](#)' (SSRN Scholarly Paper ID 3588338, 1 April 2020)

Abstract: Force-majeure and Frustration are contract principles which are very significant in the present context of Covid-19 pandemic. This article is a study on the said contract principles with various judicial pronouncements on the applicability of force-majeure and frustration.

Nongogo, Anele, 'Electronic Signatures in Commercial Contracts' (2020) 20(4) *Without Prejudice* 46-47
Jurisdiction: South Africa

Abstract: The outbreak of the COVID-19 virus has led to most South Africans working from home or other remote areas. A direct result of this is the lack of access to office equipment such as printers and scanners, which means that some commercial contracts will now have to be signed electronically. This article will discuss the use of electronic signatures and advanced electronic signatures in commercial contracts in South Africa, focusing on the Electronic Communications

and Transactions Act (25 of 2002) (ECTA). The ECTA is the primary legislation that regulates electronic signatures and advanced electronic signatures.

Nousia, K, 'The Covid-19 Pandemic: Contract and Insurance Law Implications' (2020) *Journal of International Banking Law and Regulation* (forthcoming)

Jurisdiction: UK, USA and Europe

Abstract: The spread of COVID-19 has had a global impact, with the human toll being significant, and with the economic cost being unquantifiable. With regards to business and contractual relationships, legal liabilities owed to disruption, cancellations, or to the imposed halt of everyday life are perhaps the most notable. This article starts by examining frustration in English, US and continental contract law in relation to cases where the circumstances have changed due to unnatural events such as the ongoing COVID-19 pandemic. It then moves on to discuss the impact of Covid-19 on insurance, in particular business interruption, travel and general liability insurance. The likelihood of success of future claims, the scope of coverage, together with the meaning and interpretation of the term “force majeure” and how this will relate to exclusions from insurance coverage is discussed. Valuations methods are also considered and evaluated with a view to protect the policyholder as his business interruption policy is a contract of adhesion not having left him any room to negotiate. In addition, possible interpretations to be followed by courts in future claims and liability for catastrophic risks and methods of compensation are examined and conclusions on the role of insurance in the COVID19 pandemic are drawn.

Sherman, John, '[The Contractual Balance Between “Can I?” and “Should I?” Mapping the ABA’s Model Supply Chain Contract Clauses to the UN Guiding Principles on Business and Human Rights”](#)' (Corporate Social Responsibility Initiative, Harvard Kennedy School, April 2020, Working Paper No 73, 2020)

Abstract: This paper examines the efforts of the American Bar Association to draft proposed Model Contract Clauses for businesses that prohibit modern slavery and child labor in supply chain contracts. This involves a careful balancing of a buyer’s desire to avoid consuming goods manufactured with human rights abuse and its desire to protect itself legally, in order to ensure that the company is acting in alignment with its responsibility to respect universally recognized

human rights under the UN Guiding Principles on Business and Human Rights. This subject is quite timely in light of the current efforts of many companies, in response to the COVID-19 pandemic, to exercise force majeure clauses in their contracts to dump suppliers without regard to the impacts of vulnerable workers in their supply chains.

Shoor, Sahil, 'COVID-19: What Happens if Your Contract in Canada (Excluding Quebec) Does Not Have a Force Majeure Clause' [2020] *Lawyer (Online Edition)* 1

Abstract: The article offers information on the health challenges faced by the coronavirus outbreak in the Canada. It discusses the declaration of the coronavirus outbreak as a global pandemic by the World Health Organization. It mentions the role of the force Majeure clauses protect the person in times of extreme events, such as Coronavirus outbreak in the Canada.

Stevens, Shawn K, 'COVID-19: Contractual Protection of "Force Majeure" Clauses' (2020) 234(4) *National Provisioner* 8–10

Jurisdiction: USA

Abstract: The article discusses the impact of COVID-19 pandemic on contractual obligations which contains force majeure clauses. Topics discussed include the common-law doctrine of supervening impracticability, the restatement of Contracts and common contractual clause that discharges parties of their performance obligations.

Twigg-Flesner, Christian, '[A Comparative Perspective on Commercial Contracts and the Impact of Covid-19 - Change of Circumstances, Force Majeure, or What?](#)' (SSRN Scholarly Paper ID 3582482, 22 April 2020)

Abstract: This paper sets out the role of force majeure clauses and legal rules on post-formation unforeseen circumstances in the specific context of the COVID-19 pandemic, from a comparative and international commercial law perspective.

CORPORATIONS LAW

Anidjar, Leon Yehuda, '[Directors' Duty of Care in Times of Financial Distress Following the Global Epidemic Crisis](#)' (SSRN Scholarly Paper ID 3577404, 16 April 2020)

Abstract: The global Covid-19 pandemic is causing the large-scale end of life and severe human suffering globally. It is the most massive public health crisis in modern living memory, which created a significant economic crisis. This dramatic change is reflected in a significant recession of global production and the collapse of confidence in the functions of markets. Corporations and boards of directors around the world are required to design specific strategies to tackle the negative consequences of the crisis. This is especially true for small and medium-sized enterprises (SMEs) that suffered tremendous economic loss, and their continued existence as ongoing concern is questionable. Given these uncertain financial times, this Article is devoted to exploring directors' duty of care from a global perspective. In particular, I argue that the current crisis will underline the importance of the advisory role of the board of directors rather than the monitoring function, and further regulatory reforms that strengthen such capacity are expected to emerge. Furthermore, I maintain that the civil law rather than the Anglo-American law on directors' duty of care provides boards with a more expansive scope of discretion to confront the unusual challenges associated with the Covid-19 because these governance regimes are tailored to the unique features of companies and markets. I apply this novel argument in different types of SMEs, mainly in the family business and venture capital-backed firms.

Cheema-Fox, Alexander et al, '[Corporate Resilience and Response During COVID-19](#)' (SSRN Scholarly Paper ID 3578167, 17 April 2020)

Abstract: During a market collapse, it is strategically important for a company to be evaluated as resilient, thereby maintaining trust among investors. We study whether during the 2020 COVID-19 induced market crash, investors differentiate across companies based on a firm's human capital, supply chain and operating crisis response. Using data derived from natural language processing of news around corporate responses to the coronavirus crisis, we find that companies with more positive sentiment exhibit higher institutional investor money flows and less negative returns than their competitors. This is especially true for companies with more salient responses.

'Covid-19 and Damages for Negligent Advice' [2020] *Lawyer (Online Edition)* 1

Abstract: The article informs on damages that companies and investors are entitled to who face losses face due to negligent advice in the advent of Covid-19 pandemic. It mentions that COVID-19 pandemic has caused historic losses across financial markets and business, exacerbated by the oil price war between OPEC and Russia. It also mentions about addressing claims related to disadvantageous transactions in the situation.

Langford, Rosemary Teele, '[Insolvent Trading, Charitable Companies and COVID-19](#)' (2020) 37 (*Company and Securities Law Journal* (forthcoming))

Abstract: In light of the challenges caused by by COVID-19 for all companies, this article analyses the interaction between temporary insolvent trading relief and directors' duties, with particular focus on directors of Australian charitable companies.

Lidstone, Herrick K, '[Corporate Annual Meetings of Shareholders in the COVID-19 World](#)' (SSRN Scholarly Paper ID 3570989, 13 April 2020)

Jurisdiction: USA

Abstract: A number of states are reacting to the COVID-19 pandemic by adopting emergency legislation or executive orders to authorize shareholder meetings that are not held 'at a place' but only by telecommunication – referred to as 'virtual-only' meetings. As corporate practitioners know, Colorado corporations are required to hold annual meetings of shareholders (C.R.S. § 7 107-101(1)), and those meetings involve certain formalities (which can be made more restrictive in the articles of incorporation or bylaws) such as: 1. Preparation of a shareholders' list as of the record date that is available for review by shareholders; 2. Sending notice of the meeting place, date, and time to shareholders; and 3. Counting of votes from properly registered and voting shareholders entitled to vote. These requirements apply to Colorado corporations that are public companies subject to the rules of the Securities Exchange Act of 1934 as well as to private companies with one to one hundred or more shareholders. Of course, Colorado corporations which are subject to the 1934 Act's proxy and reporting rules have a number of requirements to meet in addition to the requirements of Colorado law. Subject to

contrary provisions in the articles of incorporation or bylaws of a Colorado corporation, the Colorado Business Corporation Act contemplates that Colorado corporations may hold hybrid shareholders' meetings, but do not yet provide for virtual only shareholders' meetings. In Colorado, as in other states, other statutes for corporate-like entities (such as nonprofit corporation statutes, statutes for cooperative organizations, and statutes for homeowners associations, should also be reviewed together with the governing documents for those organizations.

Miller, Robert T, '[Material Adverse Effect Clauses and the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3603055, May 18, 2020)

Jurisdiction: USA

Abstract: This paper considers whether the COVID-19 pandemic, the governmental responses thereto, and actions taken by companies in connection with both of these constitute a "Material Adverse Effect" (MAE) under a typical MAE clause in a public company merger agreement. Although in any particular case everything will depend on the exact effects suffered by the company and the precise wording of the MAE clause, this paper concludes that, under a typical MAE clause, given the current tremendous contraction in economic activity, most companies will have suffered a material adverse effect as such term is used in the base definition of most MAE clauses. The question thus becomes whether the risks of a pandemic or of governmental responses thereto have been shifted to the acquirer under exceptions to the base definition. This paper considers some of the difficult causal questions that would arise in answering this question, including the relation of actions taken by the company to remain solvent while suffering the effects of COVID-19 and governmental lockdown orders, and concludes that, in some instances, a company will have suffered an MAE even if the MAE clause contains exceptions for pandemics, changes in law, or both.

'Overcoming COVID-19: Critical Legal Pathways' [2020] *NZ Business + Management* (Sp)12-(Sp)13

Jurisdiction: New Zealand

Abstract: Watch for liquidity or production roadblocks, emerging insolvency risk, and rating downgrades

Trends to watch: • Willingness of overseas wholesale markets to fund NZ lenders • Difficulty of accessing overseas corporate bond markets • Continuing exchange rate hedging and counterparty risks • State liquidity measures focussing on domestic goals, rather than international liquidity and trade flows

Disputes Insights: • Additional benefits (eg, flexibility, adaptability and enforceability) from international arbitration already in place in cross-border contracts • If commencing formal dispute, consider at outset whether final award or judgment will be enforceable against foreign assets

Exporters & importers / Cross Border Trade: Exporters & importers International goods + services contracts.

Quaid, Jennifer, 'Balancing Risk and Reward in the Time of COVID-19: Bridging the Gap Between Public Interest and the "Best Interests of the Corporation"' in Colleen M Flood et al (eds), *The Law, Policy and Ethics of COVID-19* (forthcoming, University of Ottawa Press, 2020)

Abstract: The scale of the global COVID-19 pandemic has made plain that business organizations have a key role to play in supporting public health efforts to contain the virus and follow social distancing. Directors and officers have been called upon to make proactive decisions about risk reduction that may hurt the bottom line (or simply diverge from established practice) but are the right thing to do. However, corporate law is permissive and tends to avoid dictating what should be done, so long as it is in the 'best interests of the corporation'. Uncontrolled outbreaks of the virus in certain sectors of the economy deemed essential raise the difficult question of whether this flexible standard promotes an appropriate balance between economic viability and the legal pursuit of profit on the one hand and fundamental values such as the protection of human life and security on the other. In this paper, I reflect on how the pandemic situation brings this tension into sharper relief and exposes an accountability gap. I suggest that bridging this gap may be possible if we are prepared to recognize more explicitly that sometimes what is best for the corporation to protect the public interest.

Stevelman, Faith and Sarah C Haan, '[Boards in Information Governance](#)' (2020) *University of Pennsylvania Journal of Business Law* (Forthcoming)

Abstract: This Article charts the decline of the two leading twentieth-century paradigms of corporate governance: the agency-cost theory, which produced the limited 'monitoring board,' and the 'separate realms' theory, which deferred consideration of all matters other than profit to government regulation. Repeated stock market crashes and hedge fund activism have exposed the limits of the agency-cost theory. A global pandemic and financial crisis, investor demands for corporate social responsibility and stewardship, and corporations' own participation in the political process have made separate realms thinking nearly irrelevant. We argue that, while much of corporate law theory remains constrained by these twin paradigms, the practice of board governance has largely moved beyond them. The economic shock of the COVID-19 pandemic, in particular, has sent public company boards into high gear, forcing them to look beyond stock prices, to engage the firm's full capacity for information gathering and synthesis, and to actively command the firm's systems of internal and external communication. Even before a global pandemic placed heightened demands on corporate boards, the trend toward information-based governance was well underway, catalyzed by new legal requirements, industry best practices, committee charters, fiduciary duties, and investor demands for more active board governance. It has been observable in audit committees' increased participation in financial reporting, the expanding application of boards' knowledge about the firm to strategic advising and to executive compensation decisions, and boards' greater role in decision-making about risk management, legal compliance, and ESG matters. To capture the board's investment in data gathering, deliberation, and reporting processes as constitutive of the firm's status, and the board's strategic management and authoritative deployment of knowledge and communication, we label this new board governance 'informational governance.' Informational governance includes a robust role for corporate boards in communicative action—the active creation and deployment of the firm's self-knowledge—recognizing an important, value-creating role for boards that has long been discouraged by the 'monitoring board' conceit. Focusing on informational governance helps sharpen our understanding of the board's role in corporate strategy, an overlooked subject in the corporate law literature, but one that has assumed new importance in the postpandemic era. We identify some areas in which the law is likely to evolve as this new, technologically-enhanced, information-rich paradigm continues to cohere.

Swift, Duncan, 'Rescue, Recovery & Renewal' (2020) 13(2) *Corporate Rescue and Insolvency* 64-65

Jurisdiction: UK

Abstract: Reflects on the features of Chancellor Rishi Sunak's first Budget that may affect insolvency and restructuring, including measures to help businesses through the coronavirus pandemic. Suggests that confirmation of changes to the creditor status of HMRC, and proposals to make directors personally liable for corporate tax debts where abuse of the insolvency regime is suspected, will hamper corporate rescue and represent a missed opportunity.

Wilson, Kerri and Natalie Harten, 'Be Careful What You Wish For' (2020) 20(4) *Without Prejudice* 39-41

Jurisdiction: South Africa

Abstract: The scale of the COVID-19 pandemic has led to many businesses facing severe financial difficulties, with boards and shareholders finding themselves in the unfortunate position of having to decide whether to place their companies into liquidation. It goes without saying that this decision is not something to be taken lightly, nor one to be taken in haste.

Zetzsche, Dirk A et al, '[The COVID-19-Crisis and Company Law - Towards Virtual Shareholder Meetings](#)'

(University of Luxembourg Faculty of Law, Economics & Finance WPS 2020-007, 2020)

Abstract: Legislation responding to COVID-19 allows us to examine how, and to what effect, the corporate governance framework can be amended in times of crisis. Almost all leading industrialized nations have already enacted crisis legislation in the field of company law. Here, given the difficulties or indeed the impossibility of conducting in-person meetings currently, the overall trajectory of company law reforms has been to allow for digitalization. We note five fields in which legislators have been particularly active. First, the extension of filing periods for annual and quarterly reports to reflect the practical difficulties regarding the collection of numbers and the auditing of financial statements. Second, company law requires shareholders to take decisions in meetings – and these meetings were for the most part in-person gatherings. However, since the gathering of individuals in one location is now at odds with the measures being implemented to contain the virus, legislators have generally allowed for virtual only meetings, online-only proxy voting and voting-by-mail, and granted relief to various formalities

aimed at protecting shareholders (including fixed meeting and notice periods). Third, provisions requiring physical attendance of board members, including provisions on signing corporate documents, have been temporarily lifted for board matters. Fourth, parliaments have enacted changes to allow for more flexible and speedy capital measures, including the disbursement of dividends and the recapitalization of firms, having accepted that the crisis impairs a company's equity. Fifth and finally, some countries have implemented temporary changes to insolvency law to delay companies' petitioning for insolvency as a result of the liquidity shock prompted by the imposition of overnight lockdowns. This working paper seeks to (1) document the respective crisis legislation; (2) assist countries looking for solutions to respond rapidly and efficiently to the crisis; (3) exchange experiences of crisis measures; and (4) spur academic discussion on the extent to which the crisis legislation can function as a blueprint for general corporate governance reform. Countries considered in full or in part include Australia, Austria, Belgium, Canada, China, France, Germany, Hong Kong, India, Italy, Luxembourg, the Netherlands, Norway, Portugal, Singapore, South Korea, Spain, Switzerland, Thailand, the United Kingdom, and the United States. Readers are encouraged to highlight any inaccuracies on the part of the authors in their presentation of the respective laws, and to bring further crisis-related legislation not considered in this working draft to the attention of the authors. Moreover, readers are invited to indicate where there is room for improvement therein, and/or to signal the need for policy reform.

Zumbansen, Peer C and Dionysia Katelouzou, '[The Transnationalization of Corporate Governance: Law, Institutional Arrangements and Corporate Power](#)' (TLI Think! Paper 17/2020, 2020)

Abstract: This Article presents a critique of corporate governance theory against the background of a fundamental transformation of the political economy in which the corporation is embedded. This transformation is effectuated, on the one hand, by the denationalization and privatization of corporate governance rule making, which now encompasses a wide range of new transnational fora and actors. On the other hand, this transformation is a substantive one which touches on the core beliefs that have shaped corporate law and corporate governance for more than a century. The coalescence of these two driving forces places the current debate around 'corporate purpose' and alternative visions of the corporation in the context of political economy changes which require a serious engagement with the question how it can be

prevented that the corporation continues to become even further insulated from democratic political intervention. With these two forces in mind, this Article makes a socio-legal intervention, exploring the actual, regulatory landscape of corporate governance norm production today. We study the connections between law and norm creation on both the nation-state and the global level – rather than treating transnational law as the exception – and seek to engage corporate governance as part of a larger critique of law’s troubled relationship with the business corporation as an entity that exists not only in legal doctrine but in a wealth of actual socio-economic relationships. Complementing this analysis, the Article engages with the question whether the corporation’s purpose can be exhaustively be captured by tying it to the maximization of shareholder value. In light of the global financial crisis and its devastating consequences not so long ago, particularly for retail investors, workers and mortgage debtors, and the present-day collapse of world-wide economic activity due to Covid-19, it would seem unlikely were we to find that the allegation, uttered some two decades ago, whereby the shareholder value maximization paradigm constituted the ‘end of history of corporate law’, was still seen to be true. But, this very belief seems alive and well so that when, in the spring of 2020, business appeals to government for ‘rescue’ in an historically unknown fashion, we must take a closer look at the historical relationship between ‘the state’ and ‘the market.’ What becomes evident from a historical perspective is the linearity of how mainstream corporate law has over time prepared the ground for a far-reaching autonomization and insulation of corporate governance from ‘society at large.’ The Article analyzes the arguments and policies in support of this alleged autonomy of corporate governance and finds that the roots reach deeper than even the current debates over ‘stakeholderism’ let on. While we are intrigued with the recent advances made in these debates and by important ‘players’ such as the Business Roundtable, it is not at all clear what their lasting impact might be. Our analysis shows that corporate law’s distance from ‘non-shareholder’ interests has long been tied into an economistic concept of the business corporation, from which all memory of the corporation as creature of law is eventually removed. By depicting the corporation through the concept of an itself reductionist ‘nexus of contracts’ that prioritizes investor-management relations at the exclusion of all other contractual and affected stakeholders of the firm, corporate governance can ‘take off’ into Rudolf Ihering’s heaven of ‘pure legal concepts’, all the while betraying its deeply ideological character and actual economic and political power.

COURTS / DISPUTE RESOLUTION

Allman, Kate, 'Covid-19: Events Suspended; Hearings Move Online, but Rule of Law Will Continue "to the Extent Possible"' [2020] (65) *LSJ: Law Society of NSW Journal* 16

Abstract: Courts have suspended face-to-face hearings and asked they be heard via telephone or online in a bid to follow "social distancing" recommendations and stem the spread of coronavirus in NSW.

'Effects of the Covid-19 Crisis on Limitation Periods' [2020] *Lawyer (Online Edition)* 1

Abstract: The article offers information on the enactment of Indian 2nd COVID-19 Act on limitation periods. It mentions that there is a substantively significant provision in Section 2, the period from the entry into force of this federal law on March 22, 2020 until the end of April 30, 2020 is the time in which a lawsuit or an application may be filed with a court or a Declaration is not included. It also mentions that deadlines for appealing to the court will be suspended in the advent of COVID-19.

Hoole, Gregory N and George M Haley, 'How Mediators Leverage Technology to Overcome COVID-19 Concerns and Keep Cases Settling' (2020) 33(3) *Utah Bar Journal* 22–23

Hrdinova, Jana et al, '[Documenting the Challenges \(and Documents\) As Ohio Courts Respond to COVID-19](#)' (Ohio State Public Law Working Paper No 541, 2020)

Abstract: As the coronavirus led to the vast majority of Americans living under stay-at-home orders, government institutions confronted a public health imperative to slow the spread of a communicable disease while still maintaining vital services for their constituents. Judicial branches of governments faced particular challenges given the traditional face-to-face and often time-sensitive nature of their work. Further, while governors can generally exercise centralized control over many parts of the executive branch of government, the judicial function in many states does not operate under a single chief administrator. Ohio represents one such non-

unified court system, and this research project sought to review and summarize the formal responses of Ohio courts in the weeks during which the state began shutting down non-essential services in response to the COVID pandemic. This review reveals considerable formal action in service of minimizing physical appearances at court, but also highlights that relatively few court orders included express provisions aimed at decreasing the number of people entering prisons or authorizing proactive steps to release people from detention.

'Justice System Responds to COVID-19 Crisis' (2020) 42(3) *Bulletin (Law Society of South Australia)* 26

Abstract: The COVID-19 pandemic has created unprecedented challenges for all industries, and the legal industry is no exception.

Mcintyre, Joe, Anna Olijnyk and Kieran Pender '[Courts and COVID-19: Challenges and Opportunities in Australia](#)' *AusPubLaw: Australian Public Law* (Blog Post, 4 May 2020)

Introduction: Reforms of courts and judicial processes generally occur at a glacial pace. Not only is law inherently conservative, courts are complex systems. The implications of change need to be carefully considered to ensure relevant protections are maintained and cherished objectives promoted.

All of this makes the breakneck transition to 'virtual courts' in response to COVID-19 at once terrifying, thrilling, concerning and exciting. Necessity is forcing changes, particularly in the use of remote and online hearings, that were impossible to imagine a few short months ago. The challenge in such a transition is to find the right balance in protecting both the short- and long-term rights and interests of parties and the public. Not only may bad practices adopted in emergency conditions be difficult to wind back later, but vital protections may be unnecessarily denied in the coming months.

This post seeks to identify and discuss the potential challenges raised by this dramatic pivot in court practices. The focus is on general principles of public law (rather than discrete Australian constitutional restrictions), and it adopts a self-consciously comparative approach.

Phillips, Burton and Ahmed Rajan, 'Tribunal Hearings in Unprecedented Times' (2020) 20(4) *Without Prejudice* 51-52

Jurisdiction: South Africa

Abstract: As a consequence of the COVID-19 pandemic and the resulting national lockdown, the use of technology by legal practitioners, courts, tribunals and other adjudicators has become more important than ever before. The lockdown has prevented adjudicators such as the Competition Tribunal, from conducting proceedings in a "business as usual" manner by restricting its ability to conduct physical hearings. The South African competition authorities responded swiftly to the crisis, and have adapted to new means of ensuring the continuity of competition litigation. This has been achieved through the use of virtual working platforms such as Microsoft Teams and Zoom. Could this crisis usher in a new way of conducting proceedings before the Tribunal, particularly in uncontested matters or matters having limited issues in dispute?

Santos Rutschman, Ana and Robert Gatter, '[Smoke Screens: An Initial Analysis of the Coronavirus Lawsuits in The United States against China and The World Health Organization](#)' (Saint Louis University Legal Studies Research Paper No 2020-04, 2020)

Abstract: In this short essay we provide a preliminary analysis of the lawsuits filed by Missouri against China, and New York against the World Health Organization over the COVID-19 pandemic. We also situate the lawsuits against the expanding coronavirus-related misinformation 'epidemic.'

Scherer, Maxi, '[Remote Hearings in International Arbitration: An Analytical Framework](#)' (2020) 37(4) *Journal of International Arbitration* (forthcoming)

Abstract: Remote hearings are nothing new, but the COVID-19 crisis has forced international arbitration out of its comfort zone. Parties, counsel and arbitrators must adapt to the new reality of conducting arbitrations in the face of travel restrictions and social distancing measures. One particularly thorny question is whether and to what extent physical hearings that cannot be held due to the above-mentioned restrictions should be postponed, or be held remotely, using modern communication technologies. The present article takes a step back from

the immediate crisis and proposes an analytical framework for remote hearings in international arbitration. In the context of the current pandemic and beyond, it provides parties, counsel and arbitrators with the relevant guidance on assessing whether to hold a hearing remotely, and if so, how to best plan for and organize it. The article also tests the risk of potential challenges to awards based on remote hearings, looking in particular at alleged breaches of the parties' right to be heard and treated equally.

Schmitz, Amy J and Janet Martinez, '[ODR Providers Operating in the U.S.](#)' in Mohamed S Abdel Wahab, Ethan Katsh and Daniel Rainey (eds), *Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution* (forthcoming, 2020)

Abstract: Technology is revolutionizing the Alternative Dispute Resolution (ADR) field, especially in the wake of Covid-19. Despite the long-held assumptions that increasing understanding, building empathy, and crafting resolution are only possible in-person, effective ways have emerged for assisting the resolution of the exploding number of disputes that have burgeoned online. Technology has become the 'fourth party' through the growing field of online dispute resolution (ODR), which includes use of technology and computer-mediated-communication (CMC) in negotiation, mediation, arbitration and other dispute resolution processes. ODR is infiltrating every area of dispute resolution, from courts (small claims, civil, and family) to the block chain. Furthermore, the most prevalent process option is mediation, followed by negotiation and arbitration. This Chart aims to collect providers that self-identified as providing 'ODR' to the National Center for Technology and Dispute Resolution (NCTDR). Curiously, firms had self-identified as 'ODR Providers', but did not all offer ODR. The authors continue to gather and explore firms that identify themselves as 'ODR Providers' and thus the attached is a work-in-progress. Moreover, inclusion in the chart is not an endorsement or agreement with that designation. Again, this merely reports findings regarding those that identified themselves to the NCTDR and will hopefully engage ongoing research in the area.

Simon-Kerr, Julia Ann, '[Unmasking Demeanor](#)' (SSRN Scholarly Paper ID 3610460, 22 May 2020)

Abstract: Demeanor is seen as a critical tool for assessing credibility in U.S. courtrooms. From the Confrontation Clause to the Immigration and Nationality Act to the Federal Rules of Civil

Procedure to the common law of credibility, the U.S. legal system gives priority and deference to assessing demeanor in the courtroom. Evidence law instructs that we must see a witness's whole face in order to effectively 'read' demeanor. Yet, a growing number of jurisdictions will require all participants in the courtroom to wear masks covering the nose, mouth and chin in order to prevent the spread of COVID-19. This essay canvasses the legal impediments to mask-wearing by witnesses. It argues that these legal obstacles are surmountable, and that this mask-wearing moment offers a unique opportunity to reassess the role of demeanor in credibility assessments. Focusing on demeanor forces witnesses to perform credibility, a performance that does not necessarily bring us closer to the truth.

Sourdin, Tania and John Zeleznikow, '[Courts, Mediation and COVID-19](#)' (2020) *Australian Business Law Review* (forthcoming)

Abstract: Fundamental to the practice of law is the need to adapt to the ever-changing circumstances of human society. The COVID19 pandemic is requiring lawyers, courts, judges and others involved in the justice system (such as Alternative Dispute Resolution ('ADR') practitioners) to reassess how they operate in an rapidly changing environment that requires them to use technology to operate remotely and to make use of technological tools that often are not constructed to support the needs of those working in the justice sector. Responses by courts and ADR practitioners vary considerably from jurisdiction to jurisdiction and many responses are ad hoc and informed by a crisis management approach. At the same time, innovation that has often been stalled by inertia across the sector is challenging many to contemplate how rapidly approaches can be introduced to ensure that the justice system can continue to deliver outcomes without increasing delay that can enable economic recovery in the face of a rapid projected increase in disputes. This article explores current response to COVID19 in the context of courts and mediators and also considers these responses in view of past technological developments. The authors note that responses are changing on an almost daily basis in some jurisdictions and therefore note that some responses may alter again as courts and others continue to innovate in this new environment.

Stewart, John M, 'Just How Interconnected We Are' (2020) 94(3) *Florida Bar Journal* 4–9

Abstract: In the article, the author discusses the interconnectedness of people around the world and the susceptibility of the economic and legal systems from uncontrolled interruptions like the COVID-19 pandemic. Topics include the need by the legal system to adopt technologies like telecommuting to ensure life, business, and work continuity and the request by the Florida Supreme Court to reform the rules of procedure and those governing The Florida Bar to prevent work interruption.

Tomlinson, Joe et al, '[Judicial Review in the Administrative Court during the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3580367, 15 April 2020)

Jurisdiction: UK

Abstract: In this paper we report the first set of preliminary empirical findings concerning how the judicial review process in the Administrative Court has operated under COVID-19 measures. Our findings suggest that, while there is support for the process continuing and remote hearings have certain strengths, there are also various technical difficulties arising and remote hearings are not seen as universally appropriate, even in a jurisdiction with a focus on 'law-heavy' disputes.

Whitear-Nel, Nicci, 'Remote Justice: South Africa Lags Behind Just When COVID-19 Requires it' (2020) 20(4) *Without Prejudice* 47-48

Abstract: The COVID-19 pandemic has had a catastrophic effect on so many aspects of our lives – including access to justice.

CRIMINAL LAW & PROCEDURE / CRIMINAL JUSTICE

Akiyama, Matthew J et al, '[Flattening the Curve for Incarcerated Populations: Covid-19 in Jails and Prisons](#)' (2020) 382 *New England Journal of Medicine* (online article) 2075-2077

Jurisdiction: USA

Extract: Because of policies of mass incarceration over the past four decades, the United States has incarcerated more people than any other country on Earth. As of the end of 2016, there were nearly 2.2 million people in U.S. prisons and jails. People entering jails are among the most vulnerable in our society, and during incarceration, that vulnerability is exacerbated by restricted movement, confined spaces, and limited medical care. People caught up in the U.S. justice system have already been affected by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and improved preparation is essential to minimizing the impact of this pandemic on incarcerated persons, correctional staff, and surrounding communities.

...

As with general epidemic preparedness, the Covid-19 pandemic will teach us valuable lessons for preparedness in correctional settings. It will also invariably highlight the injustice and inequality in the United States that are magnified in the criminal justice system. As U.S. criminal justice reform continues to unfold, emerging communicable diseases and our ability to combat them need to be taken into account. To promote public health, we believe that efforts to decarcerate, which are already under way in some jurisdictions, need to be scaled up; and associated reductions of incarcerated populations should be sustained. The interrelation of correctional-system health and public health is a reality not only in the United States but around the world.

Baron, E Jason, Ezra G Goldstein and Cullen T Wallace, '[Suffering in Silence: How COVID-19 School Closures Inhibit the Reporting of Child Maltreatment](#)' (SSRN Scholarly Paper ID 3601399, 14 May 2020)

Jurisdiction: USA

Abstract: To combat the spread of COVID-19, many primary and secondary schools in the United States canceled classes and moved instruction online. This study examines an unexplored consequence of COVID-19 school closures: the broken link between child maltreatment victims

and the number one source of reported maltreatment allegations - school personnel. Using current, county-level data from Florida, we estimate a counterfactual distribution of child maltreatment allegations for March and April 2020, the first two months in which Florida schools closed. While one would expect the financial, mental, and physical stress due to COVID-19 to result in additional child maltreatment cases, we find that the actual number of reported allegations was approximately 15,000 lower (27 percent) than expected for these two months. We leverage a detailed dataset of school district staffing and spending to show that the observed decline in allegations was primarily driven by school closures. Finally, we discuss policy implications of our findings and suggest a number of responses that may mitigate this hidden cost of school closures.

Carroll, Jenny E, '[Pretrial Detention in the Time of COVID-19](#)' (2020) *Northwestern University Law Review* (forthcoming)

Jurisdiction: USA

Abstract: It is hard to overstate the impact of COVID-19. When it comes to the criminal justice system, the current COVID-19 crisis has shone a light on pre-existing flaws. Long before the first confirmed case in Seattle or elsewhere, America's jails and prisons were particularly susceptible to contagions, exacerbated by problems from overcrowding to over policing to lack of reentry programs. This Essay focuses on one aspect of the challenges the criminal justice system faces in light of COVID-19 and beyond—that of a pretrial detention system that falls more harshly on poor and minority defendants, has swollen local jail populations, and has incentivized pleas contributing in its own right to prison overcrowding. Even in the best of times the pretrial detention system is often punitive, fraught with bias, produces unnecessarily high rates of detention, and carries a myriad of downstream consequences both for the accused and the community at large. In the context of the COVID-19 crisis, this pretrial detention system faces an exacerbated challenge: the health and safety of those in custody and those who staff U.S. jails and prisons. This new reality reveals that even during 'ordinary times' the pretrial detention system fundamentally miscalculates public safety interests to the detriment of both detainees and the communities they leave behind. Simply put, current pretrial detention models fail to account for risks to defendants during periods of incarceration and pit defendants' interests against the very communities that depend on them. The public health crisis of COVID-19

demonstrates in very real terms the interconnected nature of a defendant's and the community's safety interests. This connection is not unique to the current public health crisis, however, COVID-19 brings to light the persistent reality that communities are often weakened, not made safer, by the removal of defendants during pretrial periods.

'Coronavirus: Impact on Penalties – Portugal' [2020] *Lawyer (Online Edition)* 1

Abstract: The article informs that breach of legal provisions regulating market organization is punishable in Portugal under public health epidemiological crisis. It mentions that crimes aimed at repressing anti-economic and public health offences, the law provides for and punishes as a crime the acquisition of essential goods, such as medicines, masks, or disinfectant product in the situation of coronavirus.

Davis, Benjamin, '[COVID-19 Human Endangerment as a Domestic Crime or an International Crime Against Humanity](#)' (University of Toledo Legal Studies Research Paper, 2020, forthcoming)

Abstract: To analyze human endangerment in the COVID-19 pandemic in the United States as a crime, this paper starts with a review of domestic law in a comparative manner. The experience in France with regard to high government officials being charged with domestic crimes for the contaminated blood scandal during the AIDS epidemic is presented and analyzed noting the key legal rules expressed by the French courts in that context. This paper goes on in a comparative approach in the context of the COVID-19 pandemic to examine such criminal liability in the US system with a discussion of the murky and complex issues of qualified immunity. It further highlights the efforts to have legislation passed to provide robust immunity for civil claims. And it posits that these immunities for civil claims likely reduce any likelihood of criminal process for acts and omissions of both public and private actors, except in the most egregious cases. Finding a likely impasse through these mechanisms, the article turns to international law and in particular customary international criminal law to see if it can provide a method of analyzing the human endangerment. Drawing from the Statute of the International Criminal Court as a possible crystallization of certain types of crimes against humanity, I identify particular groups against which such crimes might be seen as being in the process of being perpetrated. But, even if the particular crimes against humanity in the Statute of the International Criminal Court are

seen as progressive development rather than crystallization, the article suggests that they are useful tools in helping to have an organize principle as to how to address the monstrous US response to the COVID-19 pandemic. The article ends with examples of how this method can help those concerned with human life to examine in a clear eyed manner the hundreds or thousands of intentional acts being done by public and private actors that endanger human life. And it also points a way as to how to think about the myriad acts being done by persons to protect human life. In the end, the monstrous response is seen as placing populations and particularly vulnerable populations before Hobbesian choices between protecting their health and venturing out into society in a time of uncertain information, uncertain resources, and pressure to reopen and pressure to reopen or lose unemployment or other benefits.

Flanders, Chad and Stephen Galoob, '[Progressive Prosecution in a Pandemic](#)' (2020) *Journal of Criminal Law and Criminology* (forthcoming)

Abstract: This article, written as introduction to a conference volume on 'progressive prosecution,' tries to situate the progressive prosecution movement in the context of the COVID-19 pandemic. The article briefly describes the movement and its main goals before considering three possible results of the pandemic on progressive prosecution: 1) an optimistic result, where the urgency of releasing people from prisons and jails bolsters the ideals of progressive prosecution, 2) a mixed result, where there is only a temporary convergence between the progressive prosecution agenda and a more self-interested public-health impetus for release, and 3) a pessimistic result, where concerns for public health and public safety serve to crowd out any effective movement for criminal justice reform. We conclude by laying out some future challenges to progressive prosecution.

Flanders, Chad et al, "[Terroristic Threats](#)" and [COVID-19: A Guide for the Perplexed](#)' (SSRN Scholarly Paper ID 3575700, 14 April 2020)

Jurisdiction: USA

Abstract: The first few months of the COVID-19 outbreak in the United States saw the rise of a troubling sort of behavior: people would cough or spit on people or otherwise threaten to spread the COVID-19 virus, resulting in panic and sometimes thousands of dollars' worth of

damages to businesses. Those who have been caught doing this — or have filmed themselves doing it — have been charged under so-called ‘terroristic threat’ statutes. But what is a terroristic threat, and is it an appropriate charge in these cases? Surprisingly little has been written about these statutes given their long history and regular use by states. Our article is one of the first to look systematically at these statutes, and we do so in light of the rash of these charges during the recent pandemic. Our argument begins with the premise that these statutes typically contemplate a ‘core case’ of terroristic threatening, e.g., someone calls in a bomb threat which forces the evacuation of a building. But these statutes have been variously revised and repurposed over the years, most notably to mass shootings, and more problematically to those who threaten to give others HIV. The recent COVID-19 charges seem to involve facts that are outside the ‘core case,’ so that even if terroristic threatening is a permissible charge in these cases, it is often not the most appropriate one. We conclude by suggesting that in many of the COVID-19 cases other charges should be made (criminal mischief, disorderly conduct, false reporting, etc.) instead of terroristic threatening, and that a lot of the expressive and deterrence benefits of more serious charges can be accomplished just as well by social disapproval.

Kirchner, Stefan, ‘[End-of-Life Decisions Amid the Covid-19 Pandemic as a Practical Problem of Criminal Law Theory](#)’ (SSRN Scholarly Paper ID 3576543, 15 April 2020)

Jurisdiction: Germany

Abstract: The current Covid-19 pandemic threatens to overwhelm health care systems. Because many patients have to be provided with ventilators, there is a risk that not all patients will receive the medical help they require. This has already happened for example in Italy, Spain and France and at the time of writing, during the second week of April 2020, it appears likely that other countries will face the same shortages. In some countries, guidelines have been created to determine under which circumstances a patient will be allocated a ventilator. This allocation of scarce life-saving resources raises significant concerns regarding the protection of the right to life and respect for human dignity. By determining that a person’s life has to end in order to re-allocate resources such as a respirator in an intensive care unit the patient is no longer an actor but becomes the mere object of the decision made by others. This is incompatible with the concept of human dignity, in particular when one takes into account the definition of human dignity employed by the German Federal Constitutional Court in several cases. This notion can

be traced back to Immanuel Kant. In practice, however, medical decision-makers will be forced to choose between different patients. These choices can be deadly for one patient and potentially life-saving for the other, violate human dignity and place an inhuman burden on those who have to decide. This text aims to investigate this matter from the perspective of criminal legal theory and to provide guidance as to whether ending life-saving measures amounts to an action or an omission.

Kovarsky, Lee, '[Pandemics, Risks and Remedies](#)' (2020) *Virginia Law Review* (forthcoming)

Jurisdiction: USA

Abstract: There are lessons in every catastrophe, and the impact of Coronavirus-19 ('COVID') on America's prisoner population has been especially catastrophic. Jails and prisons are sites of unique peril because each facility bears the systemic risk of a single infection. That COVID tore through these facilities was predictable—the health infrastructure is deplorable, social distancing is impossible, and the community has heightened medical vulnerabilities. These places are pandemic tinder boxes, and COVID was more than enough to kindle the blaze. There is a temptation to view America's inability to protect her prisoners as a simple failure of political and bureaucratic will, but the shortage of such resolve was just one part of a more complex institutional disaster. In this Paper, I argue that COVID exposed a remedial deficit between pandemic risks that were systemic and remedies that were not. In so doing, I explore the surprisingly poor performance of the mechanisms that one might have expected to facilitate sufficient prisoner discharge: federal civil rights litigation, administrative release, and clemency power. The systemic health risk at jails and prisons requires remedies that are fast and scalable, but existing discharge mechanisms are too slow, require too much multilateral consensus, and concentrate discharge powers in the wrong institutions. To address future waves of pandemic infection, American jurisdictions should concentrate discharge powers in decision-makers who are closer to the most acutely affected localities. A concentration-and-localization principle is also a model for a broader back-end decarceration strategy.

Leslie, Emily and Riley Wilson, '[Sheltering in Place and Domestic Violence: Evidence from Calls for Service during COVID-19](#)' (SSRN Scholarly Paper ID 3600646, 14 May 2020)

Jurisdiction: USA

Abstract: The COVID-19 pandemic has led to a worldwide slowdown in activity as more people practice social distancing and shelter at home. The attendant increase in time families spend in isolation, unemployment, and economic stress has the potential to lead to more incidents of domestic violence. In this paper we document the impact of the COVID-19 crisis on police calls for service for domestic violence. The COVID-19 pandemic and accompanying public health response led to a 10.2 percent increase in domestic violence calls. The increase in reported domestic violence incidents begins before official stay-at-home orders were put into place, is not driven by any particular demographic group, but does appear to be driven by households without a prior history of domestic violence.

Levin, Benjamin, '[Criminal Law in Crisis](#)' (2020) *Colorado Law Review Forum* (forthcoming)

Abstract: In this Essay, I offer a brief account of how the COVID-19 pandemic lays bare the realities and structural flaws of the carceral state. I provide two primary examples or illustrations, but they are not meant to serve as an exhaustive list. Rather, by highlighting these issues, problems, or (perhaps) features, I mean to suggest that this moment of crisis should serve not just as an opportunity to marshal resources to address the pandemic, but also as a chance to address the harsh realities of the U.S. criminal system. Further, my claim isn't that criminal law is in some way unusual in this respect (i.e., similar observations certainly could be and have been made about the pandemic's exposure of long-lasting problems associated with the health care/insurance system, the tethering of social benefits to employment, pervasive inequality, and many other features of U.S. political economy). Nevertheless, the current moment provides an opportunity to appreciate the ways in which some of the most problematic aspects of criminal law in times of crisis are basic features of the U.S. carceral state in times of 'normalcy.' To this end, my argument proceeds in two Parts, each addressing one of the aspects or pathologies of U.S. criminal policy that the pandemic has exacerbated. In Part I, I address the absence of 'sentencing realism' or, perhaps more accurately, the failure to consider the reality of jails and prisons when imposing sentences or pretrial detention. In Part II, I address the basic limitations of thinking of 'the criminal system' as a single monolithic 'system,' or, even, as

'systematic' at all. What do commentators and lawmakers miss when they suggest or assume that criminal law and its administration are the same in a rural county in Colorado as in an urban county in New York? In each Part, I explain how the pandemic has made each phenomenon more easily identifiable, but also how each phenomenon defined the criminal system in pre-coronavirus days. Ultimately, I argue that the 'crisis' frame provides an opportunity for reform, but we must not allow the crisis frame to obscure the ways in which the criminal system was in crisis well before the first COVID-19 tests came back positive.

Longman, Craig, 'Criminal law: Could the 'Great Writ' Lie to Release Prisoners at Risk from COVID-19?' (2020) 66 *LSJ: Law Society of NSW Journal* 74-75

Abstract: There is an imminent human disaster threatening Australian prisons, and the disproportionately high number of First Nation prisoners who are incarcerated within. Across the world, governments are recognising the risk to prisoners from the COVID-19 virus. Commentators have noted the 'notorious' status of prisons as incubators for infections, and the World Health Organization foresees the possibility that 'every prisoner' will be contaminated with COVID-19 'very quickly' (Thalia Anthony, 'Coronavirus is a ticking time bomb for the Australian Prison System', 'The Guardian Australia Edition' (online), 26 March 2020); Hannah Summers, "'Everyone will be contaminated": prisons face strict coronavirus controls', 'The Guardian Australia Edition' (online), 24 March 2020).

McGee, Robert W, '[Are the CDC's Corona Virus Statistics Fraudulent? An Accounting and Legal Analysis](#)' (SSRN Scholarly Paper ID 3590800, 1 May 2020)

Jurisdiction: USA

Abstract: This paper presents an overview of the Corona virus situation and examines the literature that seems to suggest that some, or perhaps much of the reporting of Corona virus deaths is actually the result of deliberate misclassification. The accounting and legal literature is also examined to determine whether the misclassifications amount to fraud.

Nigam, Shalu, '[COVID-19: India's Response to Domestic Violence Needs Rethinking](#)' (2020) *South Asia Journal* (forthcoming)

Abstract: COVID-19 is posing challenges larger challenges in terms of human rights including health rights of women and children. Since the mandatory lockdown has been imposed, violence against women is exponentially rising world over. Several countries have enacted special policies, laws and programs to deal with violence against women in homes. However, India which since the 90s has witnessed widening inequalities since the policy of Liberalization, Globalization and Privatization has been introduced, right now is again facing the disastrous impact due to coronavirus. The pandemic is making adverse gender impact in two ways – 1) Middle- or upper-class women facing abuse in homes during the lockdown and 2) Poor women who have no homes or are surviving in slums or those on the roads walking back home or those awaiting in villages for migrant men to come back. The National Commission for Women has reported a rise of 94 percent in complaint cases where women have been abused in their homes during lockdown. Also, another aspect that has not received attention is increasing number of cases where migrant women, along with men, are walking hundreds of miles, some in their advanced stage of pregnancy along with their children, without food. Some are being forced to deliver babies on the roadside while others are receiving devastating news of migrant men being dead while walking on roads. Deprivation and denial of health and other services to women and children during the COVID crisis is aggravating the disaster. Therefore, almost half a billion women are at risk in India due to the pandemic. Yet, the state has not made any comprehensive COVID response plan to tackle these challenges. Neither any formal statement is being issued to declare domestic violence as an essential service nor plans have been made to support pregnant women workers walking hundreds of miles without food and water with their children. Rather, the state after 40 days of lockdown, while easing down the restrictions, opened the liquor shops as a first step. In doing so, earning revenue is prioritized over genuine serious concerns of women. This is despite of the fact that the women's movement has shown evidences that consumption of liquor by men is proportional to increase in incidences of abuse. This essay investigates the gaps in the state's response in India to the increase in incidents of violence during the lockdown and argues that a robust comprehensive plan is required to address different aspects of violence women are facing in the largest democracy. The government cannot miss the chance to protect women from violence. In order to imagine a gender just violence free world, the need is to impose the lockdown on the collective

imagination that reiterate gender stereotypical notions and to put the viruses of patriarchy and poverty in quarantine and isolation forever. By maintaining social distancing with the misogynist ideas and developing a plan to eliminate inequalities in all forms, gender justice and human rights could be achieved and the rights guaranteed under the Article 14, 15 and 21 of the Constitution can be reclaimed.

Nwokeke, Chidera, '[Does the Law Support the Grant of Posthumous Pardon in Nigeria?](#)' (SSRN Scholarly Paper ID 3579276, 18 April 2020)

Abstract: This article examines the position of our law with regards to granting of posthumous pardon. Who can benefit from presidential pardon? The effect of presidential pardon and its impact on COVID-19.

Shayegh, Soheil and Maurizio Malpede, '[Staying Home Saves Lives, Really!](#)' (SSRN Scholarly Paper ID 3567394, 2 April 2020)

Abstract: As coronavirus disease (COVID-19) is spreading around the world, many national and local governments have imposed social restrictive measures to limit the spread of the virus. Such quarantine measures in different cities across the world have brought a new trend in public safety improvement and crime reduction. Using daily crime reports in the US and European major cities, the aim of this project is to evaluate the effects of quarantine and 'shelter-in-place' policies on different crime categories. We adopt a difference in difference strategy to evaluate the change in crime rates. Early results from Oakland and San Francisco in the U.S. suggest a drop by about 40% across the communities and crime categories in both cities. While theft, homicide, and traffic accidents have fallen sharply, domestic violence incidents show no sign of reduction from our early observations. These trends although promising a glimpse of positive outcome for the community during the outbreak, may not have a lasting impact in the long term.

Siegler, Alison and Erica Zunkel, '[Rethinking Federal Bail Advocacy to Change the Culture of Detention](#)' (2020) *The Champion (Journal of the National Association of Criminal Defense Lawyers)* (forthcoming)

Abstract: The federal bail system is in crisis, with three out of every four people locked in a cage despite the presumption of innocence. Disheartening as the numbers are, we defense attorneys have the power to free our clients through zealous advocacy at bail hearings. Bond advocacy is all the more important now. As the COVID-19 pandemic ravages federal jails, pretrial release has become a matter of life or death. All of us who represent clients in federal court have a responsibility to redouble our efforts to defend our clients' fundamental right to liberty. To change the culture of detention, we need to radically rethink our advocacy and ensure that all of the players follow the Bail Reform Act's defense-friendly rules. This article provides statistics to illustrate the contours and costs of the federal pretrial detention crisis and action steps for bringing federal pretrial detention practices back in line with the law. We can change the culture of detention by using the action steps, tethering our arguments to the statute and the data, and filing more bond motions.

Skolnik, Terry, '[Criminal Law During \(and After\) COVID-19](#)' (2020) *Manitoba Law Journal* (forthcoming)
Jurisdiction: Canada

Abstract: In response to the COVID-19 pandemic, governments across the globe are implementing drastic physical distancing measures with wide-ranging implications. Courts are increasingly confronted with novel pandemic-related issues that are significantly altering the criminal justice system. This article explores the current and potential impacts of COVID-19 on three specific areas of the criminal law: the scope of certain crimes, bail, and punishment. It advances three core arguments. First, the pandemic creates a risk that courts will expand the breadth of crimes such as assault and aggravated assault for conduct such as coughing. It provides compelling reasons why courts must limit the scope of these criminal offences and why judges should not extend the legal framework that applies to HIV non-disclosure to COVID-19 transmissions. Second, the pandemic is changing the bail process. Due to COVID-19 outbreaks in detention centres, courts are rethinking whether pre-trial custody is necessary to maintain public confidence in the criminal justice system. More than ever, judges consider the interests of defendants and detainees when interpreting the concept of 'public confidence' – a positive change that limits recourse to pre-trial custody. Third, the pandemic is impacting sentencing as

judges move away from custodial punishments. COVID-19 highlights why incarceration and financial penalties disparately impact defendants, which raises concerns regarding proportionality and retributive justifications for punishment both during and beyond the pandemic. Ultimately, this article shows why judges, policy makers, and justice system actors should seize on this unique opportunity to generate lasting positive changes to the criminal justice system that are taking place during the pandemic.

Turanjanin, Veljko and Darko Radulović, 'Coronavirus (COVID-19) and Possibilities for Criminal Law Reaction in Europe: A Review' (2020) 49 *Iranian Journal of Public Health* 4–11

ELECTION LAW

Akuamoah, Ernest, ['The Year 2020, COVID-19 and Elections in Africa'](#) (SSRN Scholarly Paper ID 3596662, 5 May 2020)

Abstract: Across the continent, millions of people will be going to the polls to exercise their democratic rights this year. In theory, elections will provide avenues for citizens to hold their leaders accountable through either endorsing their legitimacy or replacing them if they have performed abysmally. In this regard, you would expect citizens to be enthusiastic and excited for the opportunity to vote, but this is not always the case. For the most part, election periods in many African countries are characterized by fear and panic because electoral contests are considered a 'do-or-die' affair. Even when incumbents are defeated, it is uncertain whether they will leave office. Moreover, the COVID-19 pandemic presents manifold challenges to democracy in Africa. This paper highlights some of these challenges and identify countries at high risk of contentious elections.

ENERGY AND NATURAL RESOURCES LAW

Smith, Don C, 'COVID-19 and the Energy and Natural Resources Sectors: Little Room for Error' (2020) 38(2) *Journal of Energy & Natural Resources Law* 125–129

Abstract: As this issue of the journal goes to press, the COVID-19 virus continues its relentless march around the world. He notes, however, that uninterrupted power supplies, which are 'key to sustaining necessary utility infrastructure', are 'only as reliable as their access to fuel'. There are a number of key issues/concerns regarding utilities' operations during these uncertain times: Should water and electricity utilities shut off connections for nonpayment? However, during a pandemic, mutual assistance either may not be available or may be severely limited'. That said, the fact is that in these circumstances many utility workers must be in the field repairing the lines that distribute electricity. Electricity demand is being affected by the virus.

ENVIRONMENTAL LAW

Bronin, Sara C, '[What the Pandemic Can Teach Climate Attorneys](#)' (2020) 72 *Stanford Law Review Online* (forthcoming)

Abstract: The COVID-19 pandemic has caused more rapid changes to the law than most of us have seen in our lifetimes. These changes have remade, and in many cases severed, our social and economic connections to each other, in ways unprecedented except during war. As many have argued, climate change is also a dire emergency, requiring an equally sweeping legal response. Climate change is COVID-19 in slow motion, but with less clarity and far greater destructive capacity. Lawyers, like legislators and executive branch leaders, are responding to the coronavirus pandemic with creativity and improvisation. We may find that attorneys seeking to address climate change will be able to learn valuable lessons from the legal response to COVID-19. Part I of this Essay, echoing a point that has already been made many times now, explains why, on a practical level, COVID-19 and climate are intertwined. Part II argues that climate attorneys should focus on coronavirus lawsuits, which could be more consequential to climate progress than recent executive or legislative action. Part III of the Essay identifies three

specific lawsuits climate attorneys should track. And Part IV concludes with a thought for attorneys as we weather this pandemic – and a warming planet – together.

Huang, Jie (Jeanne) and Jiaxiang Hu, '[Can Free Trade Agreements and Their Dispute Resolution Mechanisms Help Protect the Environment and Public Health? The CPTTP, MARPOL73/78 and COVID-19](#)' (Sydney Law School Research Paper No 20/24, 2020)

Abstract: Preventing or managing a global pandemic such as COVID-19 requires states to strictly comply with International Health Regulations 2005 (IHR). However, they lack a strong enforcement mechanism, like many multilateral environmental protection agreements. Over the past fifteen years, several such conventions have been incorporated into free trade agreements (FTAs) to enhance State compliance and therefore promote environmental protection. A typical example is the International Convention for the Prevention of Pollution from Ships and its Protocols (MARPOL 73/78). Vessels, like viruses, are globally mobile. Vessel-sourced pollution also mirrors human-carried viral infection, because the locations of potential harm are unpredictable and widespread. This Chapter examines first whether FTAs (especially mega-regional FTAs) can effectively encourage States to comply with MARPOL 73/78. Through this analysis, it generates implications regarding whether the IHR regime could also rely on new or renegotiated FTAs, or be reformed directly, to enhance state compliance with public health initiatives.

Rowell, Arden, '[COVID-19 and Environmental Law](#)' (SSRN Scholarly Paper ID 3582879, 22 April 2020)

Abstract: The COVID-19 pandemic is a seismically disruptive event. This commentary explores some of the key ways this seismic shift will interact with environmental law. It explores four types of change triggered by the pandemic: (1) behavioral changes (including of behaviors with environmental impacts); (2) demographic changes that affect levels of background risk against which laws (including environmental laws) operate; (3) changes in values (including regarding the environment); and (4) changing resources (including those that can be spent on environmental or other amenities). Each of these changes has potentially important implications for the assumptions built in to environmental law, for the ability of environmental law to

effectively regulate the environment, and for the way that humans will interact with the environment in coming years and decades.

Sulistiawati, Linda Yanti and David K Linnan, '[Covid 19 Versus Climate Change Impacts: Lesson Learned During the Pandemic](#)' (NUS Asia-Pacific Centre for Environment Law Working Paper 20/04, 2020)

Abstract: This article explains legal implication of COVID 19, and the similarity of the Pandemic to Climate Change Impacts. As countries battling with COVID 19, it is apparent that there are several legal implications: Individual rights v. governmental power during the State of Emergency or similar emergency status; the Importance of data v. the rights of privacy; and Judiciary problems such as court trials, private property-economic freedom v. contract. All of us are grasping to understand and find solution for these problems, and yet a bigger challenge is upon us. This article underlines the similarity of the Pandemic and Climate Change Impacts; they are both linked to rapid change, which is hard to understand for most people; they are both related to carbon taxes and stranded assets in terms of oil and natural resources; but the framing of COVID 19 and Climate Change Impacts in the media, is very different. Considering the facts, this pandemic is just a preview for climate change impacts. The significant death rate of COVID 19 (in the worst hit areas) is nothing to the possibility of injuries, illnesses and deaths from extreme weather and climate events, malnutrition, heat stress and malaria as climate change impacts.

FINANCE & BANKING / INVESTMENT LAW / ECONOMIC LAW

Arner, Douglas W et al, '[Digital Finance & The COVID-19 Crisis](#)' (University of Hong Kong Faculty of Law Research Paper No 2020/017, 2020)

Abstract: The COVID-19 coronavirus crisis is putting unprecedented strain on markets, governments, businesses and individuals. The human, economic and financial costs are increasing dramatically, with potentially huge impact on developing countries and emerging market countries in addition to developed countries and regions. Across all of these, the greatest toll is likely to fall on those least able to bear it, with terrible damage to human

development across the world. This paper examines how the digital financial infrastructure that emerged in the wake of the 2008 Global Financial Crisis is being, and can be, leveraged to overcome the immediate challenges presented by the pandemic and manage the impending economic fallout. The origins of the 2008 crisis and current crisis are different: 2008 was a financial crisis spilling over into the real economy. 2020 is a health and geopolitical crisis, spilling over simultaneously into financial markets and the real economy. As such, this crisis requires different approaches. This study operates at two levels:

- At the macro level, it seeks to identify areas of systemic risk and strategies and frameworks to support policy coordination and action; and
- At the micro level it seeks to illustrate how digital finance tools may be able to assist addressing some of the challenges emerging.

Strategies to address financial aspects of the crisis in order to reduce the economic and human impact include: (1) ensuring sufficient liquidity to support market functioning and underpin demand; (2) intensifying information exchange on health and financial / economic matters in an effort to ensure accurate information despite forces that work against this; (3) heavy, temporary financial support for individuals; for small, medium and large enterprises to avoid loss of infrastructure and preserve the capacity for an orchestrated response (by avoiding mass insolvency); and potentially, in some cases, for governments; (4) leveraging digital finance and payments to reduce human-to-human contact, while organizing support for the elderly and other digitally excluded people who would normally use physical channels; (5) establishing a well-funded coordination body as a crisis management tool to ensure information exchange; (6) directing financial resources to medical infrastructure; and (7) directing financial resources to digital infrastructure and connectivity to support all other aspects of society and the economy, including, especially, the online facilitation of education and widespread work-from-home policies. At the same time, the digitization of financial services in the last decade offers alternative and more direct means by which it may be possible to stimulate the real economy, which will be critical in mitigating the economic impacts and maintaining social cohesion. Tools that support financial inclusion, sustainable development and achievement of the UN Sustainable Development Goals can also provide useful tools during a crisis. These short term strategies are expected to generate deeper structural changes long-term. For now, one cannot

predict the new world that will emerge post crisis, but this issue will require focussed attention going forward as the immediate situation eventually comes under control and recovery begins.

Arnold, Theresa, G Mitu Gulati and Ugo Panizza, '[How to Restructure Euro Area Sovereign Debt in the Era of COVID-19](#)' (2020) *Capital Markets Law Journal* (forthcoming)

Abstract: Countries with large debts stocks are vulnerable to the vagaries of the markets. Confidence crises can arise out of nowhere, constricting access to the markets. Hence, the question arises as to whether these countries should put in place mechanisms that will help them better prepare for the possibility of crisis. In effect, the choice is whether to buy insurance. The cost of buying such insurance is that the possibility that markets will see the sovereign's proactive steps to protect against a crisis not as an indication of prudent governance but rather as an indicator that a crisis is imminent. In this article, we use the case of a Euro area country (Italy) with a large debt stock and that has been hit particularly hard by Covid-19 to set forth its options, as of 2020, to anticipate a possible future debt restructuring. It can: do nothing, do a little; or do something substantial.

Cattelan, Valentino, '[Sacred Euro: Sovereign Debt\(s\) and EU Bare Credit in the Corona Crisis](#)' (SSRN Scholarly Paper ID 3592382, 4 May 2020)

Abstract: This is a contribution that I wrote for the discussion opened by Prof. Werner Gephart among the current and former Fellows of the Käte Hamburger Center for Advanced Study in the Humanities 'Law as Culture', on the topic 'The Corona Crisis in light of the Law-as-Culture Paradigm'. The paper advances an interpretation of the current EU political impasse about how to deal with the COVID-19 emergency by shifting Agamben's paradigm of the 'homo sacer' to the 'sacertas' of the Euro. In this frame, it describes the Euro as a currency (nomisma) lacking in an appropriate nomos to give Member States (economic) credit backed by EU (political) credit.

Demirguc-Kunt, Asli, Michael Lokshin and Ivan Torre, '[The Sooner, the Better: The Early Economic Impact of Non-Pharmaceutical Interventions During the Covid-19 Pandemic](#)' (World Bank Policy Research Working Paper No 9257, 26 May 2020)

Abstract: The size of the economic shocks triggered by the COVID-19 pandemic and the effects of the associated non-pharmaceutical interventions have not been fully assessed, because the official economic indicators have not been published. This paper provides estimates of the economic impacts of the non-pharmaceutical interventions implemented by countries in Europe and Central Asia over the initial stages of the COVID-19 pandemic. The analysis relies on high-frequency proxies, such as daily electricity consumption, nitrogen dioxide emission, and mobility records, to trace the economic disruptions caused by the pandemic, and calibrates these measures to estimate magnitude of the economic impact. The results suggest that the non-pharmaceutical interventions led to about a decline of about 10 percent in economic activity across the region. On average, countries that implemented non-pharmaceutical interventions in the early stages of the pandemic appear to have better short-term economic outcomes and lower cumulative mortality, compared with countries that imposed non-pharmaceutical interventions during the later stages of the pandemic. In part, this is because the interventions have been less stringent. Moreover, there is evidence that COVID-19 mortality at the peak of the local outbreak has been lower in countries that acted earlier. In this sense, the results suggest that the sooner non-pharmaceutical interventions are implemented, the better are the economic and health outcomes.

Enriques, Luca and Marco Pagano, '[Emergency Measures for Equity Trading: The Case Against Short-Selling Bans and Stock Exchange Shutdowns](#)' (Law Working Paper No 513/2020, European Corporate Governance Institute, 2020)

Abstract: After the COVID-19 crisis struck, equity prices abruptly plunged across the world. The clear prospect of an almost unprecedented decrease in supply and demand, coupled with extreme uncertainty about the longer-term prospects for the economy worldwide, justified the price adjustments. Yet, in conditions of plummeting prices and high volatility, policymakers around the world felt under pressure 'to do something' to stop the downward trend in market prices. As was the case during the financial crises of 2008-09 and 2011-12, these pressures have quickly led to the adoption of market-wide short-selling bans. In addition, both in Europe and in

the US, there have been calls for an even more drastic measure: a lasting 'stock exchange holiday'. This chapter reviews the evidence on the effects of short-selling bans during the financial crisis and discusses the merits of stock exchange holidays and concludes that neither of these measures bring benefits to financial markets.

Estrada, Ruiz and Mario Arturo, '[Can COVID-19 Generate a Massive Corruption in Developing Countries and Least Developed Countries?](#)' (SSRN Scholarly Paper ID 3597367, 10 May 2020)

Abstract: The impact of COVID-19 on the generation of a massive corruption in developing countries (DC's) and least developed countries (LDC's) is obviously possible anytime and anywhere, but measuring such impact to get a sense of the intensity of its effects on the corruption expansion is subject to a great deal of uncertainty. As such, this paper primarily attempts to close this gap by introducing the massive corruption in times of pandemic crisis evaluation simulator (MCTPCE-Simulator), a new economic instrument that could be used to evaluate how COVID-19 crisis can generate a massive corruption. Based on five key indicators, the (MCTPCE—Simulator) considers and draws its assessment from different indicator available from our simulator. Hence, in this article, a simulation was used to illustrate the applicability of the simulator from where analyses provide a coherent evaluation how the COVID-19 can promote the country's corruption in high and middle levels.

Foohy, Pamela, Dalié Jiménez and Christopher K Odinet, '[The Debt Collection Pandemic](#)' (2020) *California Law Review Online* (forthcoming)

Abstract: As of May 2020, the United States' reaction to the unique and alarming threat of COVID-19 has partially succeeded in slowing the virus's spread. Saving people's lives, however, came at a severe economic cost. Americans' economic anxiety understandably spiked. In addition to worrying about meeting basic expenses, people's anxieties about money necessarily included what might happen if they could not cover already outstanding debts. The nearly 70 million Americans with debts already in collection faced heightened anxiety about their inability to pay. The coronavirus pandemic is set to metastasize into a debt collection pandemic. The federal government can and should do something to put a halt to debt collection until people can get back to work and earn money to pay their debts. Yet it has done nothing to help people

deal with their debts. Instead, states have tried to solve issues with debt collection in a myriad of patchwork and inconsistent ways. These efforts help some people and are worthwhile. But more efficient and comprehensive solutions exist. Because debt collection brought by the COVID-19 crisis will not dissipate anytime soon, even after the crisis ends, the need to implement comprehensive, longer-lasting solutions remains. These solutions largely fall on the shoulders of the federal government, though state attorney generals have the necessary power to help people effectively, provided they act in concert. If the government continues on its present course, a debt collection pandemic will follow the coronavirus pandemic.

Gallego, Jorge A, Mounu Prem and Juan F Vargas, '[Corruption in the Times of Pandemia](#)' (SSRN Scholarly Paper ID 3600572, 13 May 2020)

Jurisdiction: Columbia

Abstract: The public health crisis caused by the COVID-19 pandemic, coupled with the subsequent economic emergency and social turmoil, has pushed governments to substantially and swiftly increase spending. Because of the pressing nature of the crisis, public procurement rules and procedures have been relaxed in many places in order to expedite transactions. However, this may also create opportunities for corruption. Using contract-level information on public spending from Colombia's e-procurement platform, and a difference-in-differences identification strategy, we find that municipalities classified by a machine learning algorithm as traditionally more prone to corruption react to the pandemic-led spending surge by using a larger proportion of discretionary non-competitive contracts and increasing their average value. This is especially so in the case of contracts to procure crisis-related goods and services. Our evidence suggests that large negative shocks that require fast and massive spending may increase corruption, thus at least partially offsetting the mitigating effects of this fiscal instrument.

Grund, Sebastian, '[The Legality of the European Central Bank's Pandemic Emergency Purchase Programme](#)' (Delors Institute Policy Brief, 2020)

Abstract: The announcement of the Pandemic Emergency Purchase Programme (PEPP) by the European Central Bank on March 18, 2020 marks an unprecedented step in the European

history of monetary integration. But it is a commensurate response to the global public health emergency that the COVID-19 outbreak continues to pose as well as the financial and economic shock that it triggered. The legality of the PEPP can be defended in light of both these extraordinary macroeconomic circumstances as well as the European Court of Justice's assessment of previous ECB bond purchase programmes. As this short essay shows, the Court's Gauweiler and the Weiss decisions have defined the boundaries within which the ECB may design its monetary policy measures. And the PEPP does not transgress these boundaries. However, in order to mitigate the risk of any ex-post legal challenges, the legal act on which the PEPP is based should underscore the following principles, which are informed by the pertinent case law:¹ The PEPP's objectives are proportional because they address a malfunctioning of the smooth transmission of monetary policy signals across the currency area triggered by the sudden stop of economic activity, thereby undermining the singleness of monetary policy.² The PEPP's design is proportional because it entails the following safeguards: bond purchases are (i) restricted to EUR750 billion, (ii) limited to periods of malfunctioning monetary policy transmission channels, (iii) not selective, (iv) limited to securities with stringent eligibility criteria, and (v) subject to a limited loss-sharing arrangement.³ The PEPP does not breach the monetary financing prohibition because it (i) has no equivalent effect to bond purchases on the primary markets (due to the safeguards mentioned in 2.) and (ii) does not incentivize Member States pursue unsound budgetary policies.

Hockett, Robert C, [‘The Fed’s Municipal Liquidity Facility: Present & Future Possibilities & Necessities’](#)
(SSRN Scholarly Paper ID 3597732, 10 May 2020)

Jurisdiction: USA

Abstract: The Fed's new Community QE Facility, which is unprecedented in Fed history, will function as a literal lifeline to States and their Subdivisions. But it remains, precisely because of its novelty, unfamiliar and possibly even off-putting or intimidating to many State and City financial officers, not to mention Mayors, Governors, City Councils and State Legislatures. It also continues to fall short of what will be required if our States, our Cities, and our federal polity itself, which the present White House occupancy is doing virtually nothing to assist, are to survive the present pandemic. Continuing unfamiliarity on the part of State and City officials with Community QE raises the danger that those in serious need of funding to address the

present pandemic will not seek or receive it. It also diminishes the likelihood that City and State officials will press the Fed to do a further easing of terms – and this form of pressure will be critical if the Facility is to do all that it's meant to do. This Memorandum is meant to solve those two problems. It first briefly summarizes what the newly eased MLF enables now. It then addresses what the new Facility probably will, and, at least as importantly, must enable in future. The Memorandum then closes with an updated three-phase 'Game Plan' for States and Cities to put into operation the moment the Fed makes clear that the MLF is not a mere 'virtue signal,' but a sincere offer of badly needed funding – by actually beginning to provide funding.

Isaac, William M, 'How Regulators Can Kick COVID-19's Bank Shock into Remission' (2020) 185(53)
American Banker 1

Abstract: Congress has imposed laws, rules and ratios on financial institutions which in times like this limit the ability of lenders and regulators to do their jobs. The 2008 financial crisis was due, in no small part, to the mark-to-market accounting rule known as SFAS 157, which resulted in the senseless destruction of \$500 billion of capital in the banking system.

Jackson, Howell E and Steven L Schwarcz, '[Pandemics and Systemic Financial Risk](#)' (19 April 2020)

Abstract: The coronavirus has produced a public health debacle of the first-order. But the virus is also propagating the kind of exogenous shock that can precipitate – and to a considerable degree is already precipitating – a systemic event for our financial system. This currently unfolding systemic shock comes a little more than a decade after the last financial crisis. In the intervening years, much as been written about the global financial crisis of 2008 and its systemic dimensions. Additional scholarly attention has focused on first devising and then critiquing the macroprudential reforms that ensued, both in the Dodd-Frank Act and the many regulations and policy guidelines that implemented its provisions. In this essay, we consider the coronavirus pandemic and its implications for the financial system through the lens of the frameworks we had developed for the analysis of systemic financial risks in the aftermath of the last financial crisis. We compare and contrast the two crises in terms of systemic financial risks and then explore two dimensions on which financial regulatory authorities might profitably engage with public health officials. As we are writing this essay, the pandemic's ultimate scope and

consequences, financial and otherwise, are unknown and unknowable; our analysis, therefore, is necessarily provisional and tentative. We hope, however, it may be of interest and potential use to the academic community and policymakers.

Loayza, Norman, '[Costs and Trade-Offs in the Fight Against the Covid-19 Pandemic: A Developing Country Perspective](#)' (World Bank Research and Policy Briefs No 148535, 15 May 2020)

Abstract: The world is experiencing the worst pandemic crisis in one hundred years. By mid-April 2020, more than 80 percent of countries around the world had imposed strict containment and mitigation measures to control the spread of the disease. The economic fallout has been immense, with dire consequences for poverty and welfare, particularly in developing countries. This Brief first documents the global economic contraction and its potential impact on developing countries regarding macroeconomic performance, poverty rates, and incomes of the poor and vulnerable. It then argues that the pandemic crisis may hurt low- and middle-income countries disproportionately because most of them lack the resources and capacity to deal with a systemic shock of this nature. Their large informal sectors, limited fiscal space, and poor governance make developing countries particularly vulnerable to the pandemic and the measures to contain it. Next, the Brief reviews recent epidemiological and macroeconomic modelling and evidence on the costs and benefits of different mitigation and suppression strategies. It explores how these cost-benefit considerations vary across countries at different income levels. The Brief argues that, having more limited resources and capabilities but also younger populations, developing countries face different trade-offs in their fight against COVID-19 (coronavirus) than advanced countries do. For developing countries, the trade-off is not just between lives and the economy; rather, the challenge is preserving lives and avoiding crushed livelihoods. Different trade-offs call for context-specific strategies. For countries with older populations and higher incomes, more radical suppression measures may be optimal; while for poorer, younger countries, more moderate measures may be best. Having different trade-offs, however, provides no grounds for complacency for developing countries. The Brief concludes that the goal of saving lives and livelihoods is possible with economic and public health policies tailored to the reality of developing countries. Since 'smart' mitigation strategies (such as shielding the vulnerable and identifying and isolating the infected) pose substantial challenges for implementation, a combination of ingenuity for adaptation, renewed effort by national

authorities, and support of the international community is needed. The lockdowns may be easing, but the fight against the pandemic has not been won yet. People and economies will remain vulnerable until a vaccine or treatment are developed. The challenge in the next few months will be to revive the economy while mitigating new waves of infection.

Menand, Lev, '[Unappropriated Dollars: The Fed's Ad Hoc Lending Facilities and the Rules That Govern Them](#)' (Law Working Paper No 518/2020, European Corporate Governance Institute, May 2020)

Jurisdiction: USA

Abstract: In response to the spread of COVID-19, the Federal Reserve has established fourteen ad hoc facilities to lend to financial firms, foreign central banks, nonfinancial businesses, and state and local governments. This Article reviews these facilities, explains what they are for, and examines the statutory rules that govern them. It distinguishes between seven liquidity facilities designed to backstop deposit substitutes issued by shadow banks and seven credit facilities designed to invest directly in the real economy. Ten of these facilities – three of the liquidity facilities and all seven of the credit facilities – are contemplated by the CARES Act, which appropriates money for the Treasury Secretary to invest in them. But all ten are inconsistent with at least one of the following three provisions of existing law, none of which the CARES Act explicitly amends: (1) section 13(3)(B)(i) of the Federal Reserve Act, which requires the Fed to ensure that 13(3) lending is 'for the purpose of providing liquidity to the financial system'; (2) section 13(3)(A), which requires the Fed to 'obtain evidence' that participants are 'unable to secure adequate credit accommodations' from other banks; and (3) section 10(a) of the Gold Reserve Act, codified at 31 U.S.C. § 5302, which limits the Treasury Secretary to using the Exchange Stabilization Fund to 'deal' in 'securities' consistent with 'a stable system of exchange rates.' Of the four liquidity facilities not contemplated by the CARES Act, two are inconsistent with any reasonable interpretation of section 14(2)(b) of the Federal Reserve Act, which authorizes the Fed to buy and sell government debt only 'in the open market,' and one is inconsistent with a similar requirement in section 14(1) regarding foreign currency. (Although these facilities are permitted by sections 13(13) and 13(3) respectively.) Hence thirteen of the Fed's fourteen facilities as currently constituted are in tension with either the Federal Reserve Act, the Gold Reserve Act, or both. Three conclusions follow. First, most of the Fed's current, critical lending activities are an exception to the baseline statutory framework, permissible only

in conjunction with the CARES Act. Second, Congress's failure to amend that framework is obscuring the fact that it is asking the Fed to take on substantial new responsibilities – ones for which it was not designed and which it may struggle to discharge. Third, Congress should update our money and banking laws to clarify the rules governing Fed lending, reduce the need for monetary backstops, and improve the government's ability to respond quickly and effectively to fiscal emergencies in the future.

Munevar, Daniel and Grygoriy Pustovit, '[Back to the Future: IMF Article VIII Section 2 \(B\) - A Sovereign Debt Standstill Mechanism](#)' (SSRN Scholarly Paper ID 3596926, 9 May 2020)

Abstract: This article provides a proposal to use IMF Article VIII, Section 2 (b) to establish a binding mechanism on private creditors for a sovereign debt standstill. The proposal builds on the original idea by Whitney Deveboise (1984). Using arguments brought forward by confidential IMF staff papers (1988, 1996) and the IMF General Counsel (1988), this paper shows how an authoritative interpretation of Article VIII, Section 2 (b) can provide protection from litigation to countries at risk of debt distress. The envisaged mechanism presents several advantages over recent proposals for a binding standstill mechanism, such as the International Developing Country Debt Authority (IDCDA) by UNCTAD and a Central Credit Facility (CFF) by the Bolton Committee. First, this approach would not require the creation of new intergovernmental mechanisms or facilities. Second, the activation of the standstill mechanism can be set in motion by any IMF member country and does not require a modification of its Articles of Agreement. Third, debtor countries acting in good faith under an IMF program would be protected from aggressive litigation strategies from holdout creditors in numerous jurisdictions, including the US and the UK. Fourth, courts in key jurisdictions would avoid becoming overburdened by a cascade of sovereign debt litigation covering creditors and debtors across the globe. Fifth, private creditors would receive uniform treatment and ensure intercreditor equality. Sixth and last, the mechanism would provide additional safeguards to protect emergency multilateral financing provided to tackle Covid-19.

Ni, Xiaoran, '[Litigating Crashes? Insights from Security Class Actions](#)' (SSRN Scholarly Paper ID 3591634, 1 May 2020)

Jurisdiction: USA

Abstract: Investors tend to litigate large stock price declines, i.e., file 'stock-drop lawsuits'. Enterprising plaintiffs' attorneys seek to take advantage of the stock market declines that have accompanied the COVID-19 outbreak in early 2020 by filing class action lawsuits. However, it is less clear whether the ex-ante threat of security class actions can deter stock price crashes. To address this question, we exploit the 1999 ruling of the Ninth Circuit Court of Appeals that discourages security class actions as a quasi-exogenous shock, and find that reducing the threat of security class actions leads to a significant increase in stock price crash risk. This effect is more pronounced for firms faced with higher litigation risk, with worse earnings quality and weaker monitoring from auditors, and is partially driven by decreased timeliness of bad-news disclosure. Our overall findings highlight the importance of security class actions in constraining bad-news hoarding and maintaining market stability.

Ojo D Delaney, Marianne, '[The Year the World Stood Still: Lessons and The Unquantifiable Consequences of the COVID-19 Outbreak, The Social Pandemic](#)' (2020) 2 *Centre for Innovation and Sustainable Development Economic Review*

Abstract: In its recent March report, two particularly note worthy observations are made in relation to the OECD's projections and predictions about possible outcomes of the recent COVID-19 outbreak (See Le Figaro, 2020): 'The OECD put forward two main possible scenarios: The first, the basic one, which considers that the epidemic will peak in the first quarter following, and that its distribution in the rest of the world will be relatively contained...' The COVID-19 has not only impacted on a social, unprecedented magnitude as never before seen, with the cancellation of major sports tournaments and events, the deferral of the 2020 Olympics, but also highlights the importance of never under estimating a potentially devastating – and particularly unknown unprecedented uncharted phenomenon. Whilst the magnitude and consequences of the outbreak can certainly not be compensated – at least for many, or even quantified, it is hoped that greater cooperation between global economies, will be fostered in the ongoing efforts to find a solution to address the outbreak. This paper is aimed at contributing to the literature on a topic on which previous literature, at least prior to December

12 2019, practically and literally, in respect of COVID-19, did not exist. Many major economies and global economies have extended shut downs from excluding essential workers, to 80-90% of its citizens being ordered to stay at home. Whilst it is certainly crucial to ensure that the outbreak is contained, it appears that certain economies, given uncertainties associated with the nature, scope of recent developments, are willing to take risks at salvaging their economies. At what stage does a government decide that prevailing restrictive social distancing measures should be relaxed? What are possible mental, long term consequences associated with, and attributable to a protracted economic shut down? What options exist for monetary policy and central banks in particular, given less options available amidst historically low interest rate levels? These constitute some of the questions which this paper aims to address.

Shill, Gregory H, '[Congressional Securities Trading](#)' (2020) *Indiana Law Journal* (forthcoming)

Abstract: In March 2020, it was revealed that several U.S. Senators had cashed in their stocks after receiving intelligence on COVID-19, sparking both outrage and renewed interest in congressional insider trading. The pandemic trades exposed gaps not only in current law, but in scholarship and leading reform proposals. Congressional securities trading (CST) generates unique challenges, such as the risk of policy distortion, as well as more prosaic ones, like the management of benign trading by insiders. The current framework—which centers fiduciary regulation of theft—is poorly matched to both types. Surprisingly, rules from a related context have been overlooked. Drawing on SEC regulations that govern public company insiders, this Essay proposes a taxonomy of CST, situates the Senators' conduct within it, and develops a novel, comprehensive prescription to manage it. Like Members of Congress, corporate insiders such as CEOs engage in securities trading despite possessing valuable inside information. The system designed to manage these trades provides a model. Specifically, Rule 10b5-1 plans (which disclose trades ex ante) and the short-swing profits rule of Section 16(b) (which disgorges illicit profits ex post) should be adapted to the congressional context. Both devices emphasize the management of legitimate trades rather than the punishment of criminal ones (which is already accomplished by other rules). Rules like these would address policy distortion and unjust self-enrichment by Members of Congress. To reduce those risks further, lawmakers should also be restricted from owning any securities other than U.S. index funds and Treasuries. None of these rules would require new legislation or regulation; all can be adopted by chamber rule. A

third risk—the unjust enrichment of third parties—is often conflated with the others, but presents distinct tradeoffs and should be taken up separately. SEC rules provide useful precedent here as well.

Taskinsoy, John, '[COVID-19: Is the Great Outbreak a Sign of What the Future Has Stowed for the Human Race?](#)' (SSRN Scholarly Paper ID 3597434, 10 May 2020)

Abstract: COVID-19, the novel coronavirus pandemic, placed the U.S. economy (and capitalism) on a ventilator. A new recently published study has revealed that close to 90% of patients who needed ventilators to breathe did not make it. Of course this is a metaphoric inference, but valuable lessons provided by coronavirus crisis should not be ignored as the previous signs were in the past. The Fed must realize that 'creating money out of thin air' (i.e. credit expansion) is nothing but "'legalized counterfeiting' which will only foster even greater pandemics and financial crises in the near future. Since the Fed was created in 1913, financial and economic crises have become more damaging, longer lasting, and costlier. Every time a high-magnitude crisis strikes (financial, economic, or pandemic), to calm people and restore confidence, governments of advance nations and their high profile central banks (Federal Reserve, European Central Bank, Bank of Japan, and Bank of England) rush to enact unprecedented economic relief/stimulus packages which got larger and larger over the years but sources of systemic crises have remained unresolved since the stock market crash of 1929 and the subsequent Great Depression. In today's economy, \$5 trillion or \$10 trillion virus relief package is mindboggling, but will it be enough to prevent a looming recession? A better question to ask is, will the Fed's infinite money creation out of thin air send American capitalism on a ventilator to the burial ground? In the near future (by 2050), global warming induced climate changes and the resultant catastrophes will make the coronavirus pandemic trivial. Unfortunately, one thing that never changes, in the long-run great financial crises and pandemics kill deprived people in developing and poorest countries.

FOOD, AGRICULTURE, ANIMALS

'China Bans Wildlife Trade' (2020) 367(6481) *Science* 960–960

Abstract: The article offers information on the enforcement of laws governing trade in wild animals, which is believed to be linked to the COVID-19 outbreak as reported by China's Xinhua News Agency.

Juan, San and David Michael, '[Reviewing Rice Tariffication in the Time of COVID-19: Rationale and Road to Rice Self-Sufficiency in the Philippines](#)' (SSRN Scholarly Paper ID 3582210, 19 April 2020)

Abstract: This paper presents a literature-informed and data-driven critique of the Rice Tariffication policy in the Philippines, in the time of the COVID-19 pandemic that has already disrupted rice supplies and hiked rice prices globally. Gaps in the surveyed literature are complemented by discussing the rationale of rice self-sufficiency in an increasingly volatile, uncertain, complex & ambiguous (VUCA) world, and outlining a roadmap to rice self-sufficiency bolstered by practical policy recommendations to bring the law closer to the Philippine State's declared policy, which is '...to ensure food security and to make the country's agricultural sector viable, efficient and globally competitive.'

Nian Yang et al, 'Permanently Ban Wildlife Consumption' (2020) 367(6485) *Science* 1434–1435

Abstract: The article discusses the role of China's wildlife market in the spread of the coronavirus disease and mentions the wildlife protection law which should be revised by the Chinese legislature.

de Sadeleer, Nicolas and Jacques Godfroid, '[The Story Behind Covid-19: Animal Diseases at the Crossroads Of Wildlife, Livestock And Human Health](#)' *European Journal of Risk Regulation* [2020] 2: Special Issue - 'Taming COVID-19 by Regulation' 1-23 (advance article)

Abstract: A number of virological, epidemiological, and ethnographic arguments suggest that COVID-19 has a zoonotic origin. The pangolin, a species threatened with extinction due to poaching for both culinary purposes and traditional Chinese pharmacopeia, is now suspected of

being the “missing link” in the transmission to humans of a virus that probably originated in a species of bat. Our predation of wild fauna and the reduction in habitats have thus ended up creating new interfaces that favour the transmission of pathogens (mainly viruses) to humans. Domesticated animals and wild fauna thus constitute a reservoir for almost 80% of emerging human diseases (SARS-Cov, MERS-CovV, Ebola). These diseases are all zoonotic in origin. As if out of a Chinese fairy tale, the bat and the pangolin have taught us a lesson: within an increasingly interdependent world, environmental crises will become ever more intertwined with health crises. Questions relating to public health will no longer be confined to the secrecy of the physician’s consulting room or the sanitised environment of the hospital. They are now being played out in the arena of international trade, ports and airports, and distribution networks. Simply put, all human activity creates new interfaces that facilitate the transmission of pathogens from an animal reservoir to human. This pluri-disciplinary article highlights that environmental changes, such as the reduction in habitats for wild fauna and the intemperate trade in fauna, are the biggest causes for the emergence of new diseases. Against this background, it reviews the different measures taken to control, eradicate and prevent the emergence of animal diseases in a globalized world.

HEALTH / MEDICAL LAW & ETHICS

This section includes domestic, regional and international law responses and issues. Articles on discrimination against people with disabilities in relation to the rationing of ventilators in hospitals are listed in the Human Rights section below. Articles on privacy of medical data are listed under the Privacy section.

Aubrecht, Paul et al, '[Centralized and Decentralized Responses to COVID-19 in Federal Systems: US and EU Comparisons](#)' (24 April 2020)

Abstract: European Union and the United States have experienced some of the most severe outbreaks of Covid-19. Paper investigates the EU and US divisions of power and suggest that due to the relative advantages and disadvantages of centralized federal responses and decentralized state responses, actions seeking to limit the impact of Covid-19 on society need to reflect a ‘smart mix’ of both centralized and decentralized responses to the pandemic. Centralized procurement and distribution of necessary medical goods can solve problems related to harmful competition between states to procure these goods and allows states to exercise buying power.

Centralized responses to procurement and distribution may solve a problem of moral hazard which leads to the hoarding of necessary medical goods, which represents a cross border externality when other states within the federal system face a shortage of necessary medical goods. This also applies to the procurement of medical goods related to testing for CV. However, paper argues the use of these goods and implementation of testing programs may be best done through a decentralized process because localized authorities have an information advantage over centralized authorities. Decentralized responses may also be necessary to gather information about which form of public health intervention works best, given that there is uncertainty as to which approach is most efficient. States must weigh not only the benefits of implementing public health interventions, but also the costs of these interventions on society.

Bollyky, Thomas J, Lawrence O Gostin and Margaret Hamburg, 'The Equitable Distribution of COVID-19 Therapeutics and Vaccines' (2020) *Journal of the American Medical Association* (forthcoming)

Abstract: Scientists from across the globe are racing to develop effective vaccines and therapeutics for coronavirus disease 2019 (COVID-19). Plans are beginning to emerge for ensuring the equitable worldwide distribution of vaccines and therapeutics resulting from biomedical innovations. Absent broad agreement and buy-in on those plans, governments may prioritize their own populations, resulting in inequitable distribution of medical products both within and among countries. During the 2009 influenza A(H1N1) pandemic, wealthy nations bought virtually all vaccine supplies. Even after the WHO appealed for donations, supplies for low- and middle-income countries (LMICs) were limited. The White House may have already sought exclusive access to a COVID-19 vaccine candidate. European and Asian countries have imposed export controls on personal protective equipment and ventilators, with similar export controls likely to extend to COVID-19 vaccine and therapeutic stocks. The development and widespread distribution of COVID-19 medical treatments are a common global interest. Here we offer a proposal for global cooperation to ensure equitable distribution of vaccines and therapies for COVID-19.

Cattuto, Ciro and Alessandro Spina, '[The Institutionalization of Digital Public Health: Lessons Learned from The COVID-19 App](#)' *European Journal of Risk Regulation* [2020] 2: Special Issue - 'Taming COVID-19 by Regulation' 1-9 (advance article)

Choer Moraes, Henrique, '[Too Big to Heal? Macroprudential Policies in Health Governance](#)' (SSRN Scholarly Paper ID 3591536, 29 April 2020)

Abstract: Amidst the many consequences it will leave in its wake, COVID-19 might reveal that global health governance should focus on systemic risk management, just as their peers in financial regulation did over a decade ago.

Donley, Greer, Beatrice Chen and Sonya Borrero, '[The Legal and Medical Necessity of Abortion Care Amid the COVID-19 Pandemic](#)' (2020) *Journal of Law & the Biosciences* (forthcoming)

Jurisdiction: USA

Abstract: In response to the COVID-19 pandemic, states have ordered the cessation of non-essential healthcare. Unfortunately, many conservative states have sought to capitalize on those orders to halt abortion care. In this short paper, we argue that abortion should not fall under any state's non-essential healthcare order. Major medical organizations recognize that abortion is essential healthcare that must be provided even in a pandemic, and the law recognizes abortion as a time-sensitive constitutional right. Finally, we examine the constitutional arguments as to why enforcing these orders against abortion providers should not stand constitutional scrutiny. We conclude that no public health purpose can be served by this application because abortion uses less scarce resources and involves fewer contacts with healthcare professionals than prenatal care and delivery assistance, which is continuing to be provided in this public health emergency.

Dorfman, Doron, '[Can the COVID-19 Interstate Travel Restrictions Help Lift the FDA's Blood Ban?](#)' (2020) *Journal of Law and the Biosciences* (forthcoming)

Abstract: Optimism among health law scholars is rare in the time of coronavirus. Yet this piece suggests that the crisis might be helpful in overruling one controversial health law policy that

predates the virus: the FDA's blood donation ban for gay and bisexual men. The blood ban was developed in response to the 1980s HIV-AIDS outbreak. Scholars have criticized this policy for years now as being outdated and unconstitutional. A step in the right direction occurred on April 2, 2020, when the FDA issued new recommendations to blood banks changing the one-year deferral for donations from men who have sex with men to a three-month deferral due to the shortage in the blood supply and after a public outcry on the issue. Yet, the policy is still problematic as it expresses disdain about sex between men. In response to the COVID-19 pandemic, states have issued travel restrictions on travelers from severely impacted states. This piece argues that outside of the dwindling blood supply, experience with stigma as a result of the travel restrictions has the potential to change public perceptions about the ban. Both policies, the blood ban and the COVID-19 interstate travel restrictions, are necessary for the short term, are based on activities connected with a disease, and create stigma with respect to the affected populations. Although no one can imagine the travel restrictions continuing after the pandemic is under control, the FDA's ban has existed for decades after the end of the AIDS crisis. Drawing parallels between the policies and their stigmatizing effects could help mobilize the public against the blood ban and eventually have it lifted entirely.

Freckelton, Ian, 'COVID-19, Negligence and Occupational Health and Safety: Ethical and Legal Issues for Hospitals and Health Centres' (2020) 27(3) *Journal of Law and Medicine* 590-600

Abstract: The international incidence of health workers being infected with COVID-19 is deeply troubling. Until a vaccine is developed, they are the community's bulwark against the pandemic. It is vital that they be protected to the maximum extent possible. This entails the need for implementation of effective and compassionate protocols to keep their workplace as safe as possible for them, their colleagues and their patients in a context of much as yet not being known about the virus and awareness that some persons infected by it are for a time at least asymptomatic and that others test negative for it when they are prodromal or even already displaying some symptomatology. This has repercussions both for the liability of hospitals and multi-practitioner centres for negligence and also under occupational health and safety legislation. With the commencement of the roll out of biosecurity and disaster/emergency measures by government and escalating levels of anxiety in the general population, it is important to reflect upon the measures that most effectively can be adopted practically and

ethically to protect the health and safety of those whose task it is to care for us if we become infected by COVID-19.

Gostin, Lawrence O, 'Global Health Security in an Era of Explosive Pandemic Potential' (2019) 14(1) *Asian Journal of WTO & International Health Law and Policy* 267–285

Note: this article was written in 2019, before the coronavirus pandemic.

Abstract: Pandemics pose a significant risk to security, economic stability, and development. Annualized expected losses from pandemics are estimated at \$60 billion per year. Despite the certainty and magnitude of the threat, the global community has significantly underestimated and underinvested in preparing for pandemic threats. We cannot wait or continue with the status quo, in which we pay attention to infectious disease threats only when they are at their peak and then are complacent and remain vulnerable until the next major outbreak. To reinforce and sustain international focus, funding, and action, it is crucial that pandemics rise to the level of 'high politics,' becoming standing agenda items for political actors. I make the case for fundamental reform of the international system to safeguard global health security. I propose an action agenda for rapid detection and response to dangerous infectious diseases. If my action plan were adopted, it would safeguard the global population far better against infectious disease threats. It would reap dividends in security, development, and productivity.

Gostin, Lawrence O, Roojin Habibi and Benjamin Mason Meier, '[Has Global Health Law Risen to Meet the COVID-19 Challenge? Revisiting the International Health Regulations to Prepare for Future Threats](#)' (2020) *Journal of Law, Medicine & Ethics* (forthcoming)

Abstract: Global health law is essential in responding to the infectious disease threats of a globalizing world, where no single country, or border, can wall off disease. Yet, the Coronavirus Disease (COVID-19) pandemic has tested the essential legal foundations of the global health system. Within weeks, the SARS-CoV-2 coronavirus has circumnavigated the globe, bringing the world to a halt and exposing the fragility of the international legal order. Reflecting on how global health law will emerge in the aftermath of the COVID-19 pandemic, it will be crucial to examine the lessons learned in the COVID-19 response and the reforms required to rebuild

global health institutions while maintaining core values of human rights, rule of law, and global solidarity in the face of unprecedented threats.

Griffith, Richard, 'Using Public Health Law to Contain the Spread of COVID-19' (2020) 29(5) *British Journal of Nursing* 326–327

Abstract: Richard Griffith, Senior Lecturer in Health Law at Swansea University, considers what powers are available to ministers, health and local authorities to minimise the spread of the novel coronavirus and the disease it causes.

Habibi, Roojin et al, 'Do Not Violate the International Health Regulations during the COVID-19 Outbreak' (2020) 395(10225) *Lancet* 664–666

Abstract: The International Health Regulations (2005) (IHR) govern how 196 countries and WHO collectively address the global spread of disease and avoid unnecessary interference with international traffic and trade. We - 16 global health law scholars - came to this conclusion after applying the interpretive framework of the Vienna Convention on the Law of Treaties and reaching a jurisprudential consensus on the legal meaning of IHR Article 43 (panel). A State Party implementing additional health measures referred to in paragraph 1 of this Article which significantly interfere with international traffic shall provide to WHO the public health rationale and relevant scientific information for it.

Note: the WHO International Health Regulations 2005 (3rd ed, 2016) are available at <https://www.who.int/ihr/publications/9789241580496/en/>

Heath, J Benton, '[Pandemics and Other Health Emergencies](#)' in *Oxford Handbook of International Law and Global Security* (Oxford University Press, 2020, forthcoming)

Abstract: This chapter presents a critical analysis of the international law and institutions responsible for ensuring global health security. In 2005, the members of the World Health Organization adopted a thoroughly revised set of International Health Regulations, establishing an innovative and binding legal framework for declaring and responding to global health emergencies. At the heart of the Regulations was a particular conception of global health

‘security,’ which emphasized the early identification of health threats, and a coordinated global response that avoided undue interference with trade, travel, or human rights. In practice, the WHO has struggled to live up to these ideals, as it is unable to ensure that governments provide accurate information about disease outbreaks or to prevent unduly harsh responses when disease outbreaks are publicized. At the same time, the WHO has struggled to resolve the tension between expert advice and political discretion that lies at the heart of the Regulations. And it has faced competition from other institutions involved in pandemic response and from alternative normative visions of global health security. This chapter excavates these key tensions and identifies directions for further research and reflection. The aftermath of the COVID-19 pandemic will provide an unprecedented opportunity to rethink the foundations of the international regime for global health security. This rethinking requires a clear understanding of the existing legal and institutional framework, and of the the lessons already learned from previous crises.

Hemel, Daniel Jacob and Anup Malani, [‘Immunity Passports and Moral Hazard’](#) (SSRN Scholarly Paper ID 3596569, 8 May 2020)

Jurisdiction: USA

Abstract: The idea of using ‘immunity passports’ to restart the economy before the arrival of a SARS-CoV-2 vaccine has attracted increasing attention as the Covid-19 crisis has escalated. Under an ‘immunity passport’ regime, individuals who test positive for SARS-CoV-2 antibodies would receive certificates allowing them to return to work and potentially to participate in a broader range of activities without social distancing. One concern raised by the ‘immunity passport’ proposal is that not-yet-infected individuals would have an incentive to expose themselves to the virus intentionally so that they can develop antibodies and obtain passports. This paper evaluates the moral-hazard risk that an immunity passport regime would generate. We develop a rudimentary rational-actor model of self-infection decisions under an immunity passport regime and then parameterize the model using early data on SARS-CoV-2 infection outcomes. Our topline result is that strategic self-infection would be privately rational for younger adults under a wide range of plausible parameters. This result raises two significant concerns. First, in the process of infecting themselves, younger adults may expose others—including older and/or immunocompromised individuals—to SARS-CoV-2, generating significant

negative externalities. Second, even if younger adults can self-infect without exposing others to risk, large numbers of self-infections over a short timeframe after introduction of the immunity passport regime may impose significant congestion externalities on health care infrastructure. We then evaluate several interventions that could mitigate moral hazard under an immunity passport regime, including the extension of unemployment benefits, staggered implementation of passports, and controlled exposure of individuals who seek to self-infect. Our results underscore the importance of careful planning around moral hazard as part of any widescale immunity passport regime.

Jerry II, Robert H, '[COVID-19: Responsibility and Accountability in a World of Rationing](#)' (University of Missouri School of Law Legal Studies Research Paper No 2020-12, 2020)

Abstract: The COVID-19 pandemic is the first modern public health crisis with the potential to overwhelm the public health care system. Health care is a shared society resource, and thus the ethical principles guiding its rationing require health care services, drugs, and equipment to be applied where they are most effective, which gives priority to patients most likely to benefit from treatment. Health care providers—primarily physicians—will make these rationing decisions, and providers deserve considerable latitude for good-faith decisions guided by settled ethical frameworks. Those disadvantaged by these decisions are likely to second-guess those who make them. Providers have a responsibility to make these decisions fairly, both procedurally and substantively, and, like all professionals, they should be held accountable for them. The legal standard of care requires health care professionals to exercise the skill and knowledge normally possessed by providers in good standing in the same field or class of practice in similar communities acting in the same or similar circumstances. But practicing medicine in crisis conditions, like those created by COVID-19, is not the same as or similar to practicing in non-crisis conditions. Thus, the standard of care, properly applied, expects less of health care professionals making decisions under the stress of COVID-19's triage conditions. Because many health care providers do not perceive this to be true, and for pragmatic and normative reasons, policymakers should articulate clearer rules that limit the liability for health care providers' rationing decisions, as well as other acts and omissions, occurring in crisis conditions. Clarified limitations on liability should not create absolute immunities, however. Health care providers should be accountable when practicing in crisis conditions for their acts,

omissions, and decisions—including rationing decisions—that are criminal, reckless, willful or wanton, grossly negligent, or unlawfully discriminatory, or that are intentional violations of settled ethical norms.

Keane, Michael et al, '[Legal Implications of Personal Protective Equipment Use When Treating Patients for COVID-19 \(SARS-CoV-2\)](#)' (SSRN Scholarly Paper ID 3580529, 20 April 2020)

Jurisdiction: Australia

Abstract: Front-line healthcare personnel, particularly anesthetists and others dealing with acute cases of coronavirus, face a high risk of infection and thus mortality. The scientific evidence establishes that to protect them, hospital protocols should require that wearing of the highest levels of personal protective equipment [PPE] be available for doctors and nurses performing intubation of COVID-19 patients. Although several international bodies have issued recommendations for a very high-level PPE to be used when intubation procedures are undertaken, the current PPE guidelines in Australia are more relaxed, and hospital authorities relying on them might not comply with legal obligations to their employee healthcare workers. Failure to provide high level PPE in many hospitals is of concern for large number of healthcare workers; this article examines the scientific literature on the topic and provides a legal perspective on hospital authorities' possible liability in negligence.

Kolber, Adam J, '[Why We \(Probably\) Must Deliberately Infect](#)' (2020) *Journal of Law and the Biosciences* (forthcoming)

Abstract: In the grip of a pandemic of proportions that have not been seen for generations, some have proposed conducting 'human challenge' vaccine trials in which healthy volunteers are deliberately infected with the SARS-CoV-2 virus that causes COVID-19. Such trials might substantially speed up the search for a safe and effective vaccine and save many thousands of lives. I argue that such trials are not only permissible, but given reasonable assumptions, they are morally required, subject to some important caveats.

Lee, Tsung-ling, 'Global Health in a Turbulence Time: A Commentary' (2020) 15(1) *Asian Journal of WTO & International Health Law and Policy* 27–60

Abstract: The emergence of the 2019 novel coronavirus—or COVID-19—outbreak has resuscitated global attention on the state of global health governance. Legal scholars and political scientists have long been fascinated by global governance of health, which had galvanized intellectual discourse that began almost two decades ago. Increasingly, global health operates in a complex, multipolar world, which is informed by pluralistic values. The ever-changing configuration of players, interests and values adds complexity to the global health landscape. It is timely to reexamine the landscape of global health, where new transnational challenges—such as galvanizing a global concerted effort towards international infectious disease control, financing global health activities in a sustainable manner, and achieving Universal Health Coverage—also inform new global health configuration. The article takes a historical view and traces the evolving of the global health landscape and examines the various of norms, processes and institutions that form global governance of health. The article also identifies the strengths and weakness of the International Health Regulations—the international legal architecture for international infectious disease control—as the novel coronavirus outbreak unfolds.

Liddell, Kathleen et al, '[Who Gets the Ventilator? Important Legal Rights](#)' (2020) *Journal of Medical Ethics* (forthcoming)

Abstract: At some point during this pandemic or next, all countries will need to answer hard questions about whether and when scarce ICU resources (such as ventilators, beds and staff) should be either withheld or withdrawn from certain groups of patients solely for the purpose of providing them to others. Attempts to answer these hard questions can be found in ICU triage protocols and ethical guidance documents, many of which embrace the foundational principle of 'save the most lives'. Unfortunately, this worthwhile goal has generated many suggestions that could violate the law. This article identifies 10 ways in which the withholding or withdrawal of a clinically indicated ventilator might violate a patient's rights, along with recommendations on how to avoid doing so. While our analysis is based on UK law, its lessons are relevant for other countries with similar legal systems. If the issues we identify are not addressed, doctors may act unlawfully. Worse, patients may die unlawfully.

Lo, Chang-Fa, 'The Missing Operational Components of the IHR (2005) from the Experience of Handling the Outbreak of COVID-19: Precaution, Independence, Transparency and Universality' (2020) 15(1) *Asian Journal of WTO and International Health Law and Policy* 1–26

Abstract: In December 2019, there was an outbreak of pneumonia caused by Novel Coronavirus (COVID-19) in Wuhan City, China. It was unfortunate that the outbreak has taken so many lives. It was partly because that the handling of the outbreak by the World Health Organization (hereinafter "WHO") was not timely or appropriate. There are so many positive and negative lessons we can learn from the outbreak. At the international level, WHO is supposed to lead the world to fight against the outbreak based on the International Health Regulations (2005) (hereinafter "IHR (2005)"). However, it is apparent that there are many operational problems with the IHR (2005). The role of the IHR (2005) seems not to be critical in guiding States Parties for tackling the outbreak. The operation of the IHR (2005) can definitely be improved to make the system more capable of addressing lifethreatening and life-saving issues. First, the compliance with the requirements of the IHR (2005) should be seriously addressed. Second, the independence of the Emergency Committee and that of the WHO Director-General should also be addressed so as to respect the desirable independence in performing their duties. Third, the transparency issue should also be addressed to help the country where the public health emergency of international concern (hereinafter 'PHEIC') occurs to faithfully respect the disclosure requirement and to become more transparent. Fourth, the timeliness and precautionary principle should be dealt with so as to require a timely decision of a PHEIC and to ensure that the precautionary principle plays a supplementary role to help the declaration of a PHEIC in a timely and efficient manner. Fifth, WHO, its Director-General and States Parties of the IHR (2005) should also be expected to allow non-Parties' meaningful participation in the operation of the IHR (2005).

Mulrenan, Stephen, 'China's Belt and Road Initiative Faces Major Challenges' (2020) 74(3) *IBA Global Insight* 26–33

Abstract: China's transformation from developing economy to powerhouse status ranks among the most dramatic stories of the 21st century, with the Belt and Road Initiative its latest chapter.

But serious concerns over the government's treatment of the Uighurs and human rights, and the devastating outbreak of Covid-19, threaten to derail the country's ambitious project.

O'Neil, Meghan M, '[What Happens When a Pandemic Intersects an Epidemic?](#)' (SSRN Scholarly Paper ID 3587094, 23 April 2020)

Abstract: Persons experiencing addiction may be at very high risk of infectious disease like COVID-19 due to high rates of smoking, recent imprisonment, conditions like HIV/AIDS, and high-risk behaviors (Ezzati et al. 2002; Farhoudian, et. al. 2020). During the COVID-19 pandemic, most courts have shuttered, and treatment center admissions have halted, yet the opioid crisis rages on. America's opioid epidemic may have just become more lethal and socially costly.

de Ruijter, A et al, '[EU Solidarity and Policy in Fighting Infectious Diseases: State of Play, Obstacles, Citizen Preferences and Ways Forward](#)' (Amsterdam Centre for European Studies Research Paper No. 2020/06, 2020)

Abstract: In this paper we confront the role the EU traditionally plays in the domain of health with the urgent need for collective action triggered by the corona virus pandemic. In the face of such a crisis, we argue that the joint procurement, stockpiling and allocation of medical countermeasures is a key component of true European solidarity, besides maintaining the integrity of the Single Market. We present the first results of a survey experiment taken before the current crisis on citizens' attitudes towards centralizing at the EU level of policies to combat infectious diseases, which indicates considerable support. We conclude that a more robust policy framework with substantial centralization of procurement, stockpiling and allocation is warranted.

Savulescu, Julian, James Cameron and Dominic Wilkinson, 'Equality or Utility? Ethics and Law of Rationing Ventilators' (2020) *British Journal of Anaesthesia* (forthcoming)

[Link to full text article on open access](#)

Extract from Introduction: It is predicted that there will be a severe shortage of ventilators in coming weeks for the respiratory support of patients severely affected by coronavirus disease

2019 (COVID-19). The National Institute for Health and Care Excellence (NICE) has recently issued guidelines that set out decision-making procedures for allocation of intensive care and ventilation. These essentially state that factors that affect the probability of survival, such as frailty in older patients, are relevant, but it eschews consideration of factors, such as age, length of life, quality of life, and disability. Following criticism, NICE explicitly clarified that frailty scores should not be used to inform decisions in patients younger than 65 yr, or with a stable learning disability.... The current practice guidelines issued by NICE are neither utilitarian nor egalitarian. They differentiate between people on the basis of probability of survival (as predicted, supposedly, by frailty), but not length or quality of life (Table 1). This will maximise the numbers of lives saved, but not give everyone an equal chance, nor will it maximise the good of the outcome in terms of years of life saved, adjusted for their quality.

Note: the Guidelines referred to in this article are the National Institute for Health and Care Excellence, '[COVID19 Rapid Guideline: Critical Care in Adults](#)' (NICE, 20 March 2020).

Santos Rutschman, Ana, '[The Mosaic of Coronavirus Vaccine Development: Systemic Failures in Vaccine Innovation](#)' (2020) *Journal of International Affairs* (forthcoming)

Abstract: Scientists are racing to develop vaccines against the novel coronavirus. While some vaccine candidates may enter the market in record time, the current vaccine innovation ecosystem exposes governance lacunas at both the international and domestic levels.

Tingle, John, 'Patient Safety and Litigation in the NHS Post-COVID-19' (2020) 29(7) *British Journal of Nursing* 444–445

Abstract: John Tingle, Lecturer in Law, Birmingham Law School, University of Birmingham, discusses patient safety during the present coronavirus pandemic

Tiwari, Ruchi, 'An Empirical Research Study on COVID-19: A Cause for Replace Decrepit Epidemic Law' (2020) 40(71) *Studies in Indian Place Names* 1534–1542

Abstract: Freshly, India has invoked various provisions of the Epidemic Diseases Act of 1897 to control communicable disease which is more or less turned into the most critical one globally.

Coming up of COVID-19 has opened the debate for the new legislation or to clear the pending bill The Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill, 2017 or to come up with special legislation named The Epidemic Bill, 2020. Here, the public health should be the concern in present condition of the society. Objective To respond to Epidemic situation for dissemination of lessons learnt from present crisis across the country that has begun with the strong need of legislation which can repeal the Epidemic Act, 1897.

Wiley, Lindsay F, 'Public Health Law and Science in the Community Mitigation Strategy for Covid-19' (2020) *Journal of Law and the Biosciences* (forthcoming)

[Link to uncorrected manuscript on open access](#)

Abstract: In a crisis like the Covid-19 pandemic, the role of judges is first and foremost to adjudicate urgent requests for temporary restraining orders and preliminary injunctions. This means that judges hearing challenges to bans on gatherings, orders to close gun shops, orders to halt abortion care, and detention of civil immigration detainees in crowded and unsanitary conditions are issuing orders based on the parties' pleadings alone. There is no time—yet—for the discovery, expert testimony, or amicus briefs from professional groups that typically inform assessments of science by judges. This essay examines the role public health science is likely to play in the coming months as judges field challenges to mandatory orders adopted as part of the community mitigation the Covid-19 pandemic. It identifies voluntary guidelines from international and federal health agencies as a resource judges rely on heavily in reviewing emergency communicable disease control orders and argues that transparency of and accountability for guidelines should therefore be held to a higher bar than their voluntary status might otherwise suggest.

Yan, Sophia, 'Wuhan's Whistleblowers' [2020] (Apr/May) *IBA Global Insight* 13-15,17

[Link to full text article on open access](#)

Abstract: Reports on allegations that the Chinese authorities perceived a risk to public order when doctors first raised concerns about the coronavirus outbreak, and tried to silence them. Examines the cases of Dr Ai Fen and Dr Li Wenliang. Discusses whether China missed

opportunities to limit the spread of disease because of preoccupation with administrative secrecy.

HUMAN RIGHTS / CIVIL LIBERTIES / EQUALITY & DISCRIMINATION

Amos, Merris, '[Human Rights Law and the COVID-19 Pandemic in the United Kingdom Part 1](#)' (SSRN Scholarly Paper ID 3576496, 15 April 2020)

Abstract: The purpose of this note is to provide some further detail to the human rights law issues raised by the COVID-19 pandemic in the United Kingdom. This is a rapidly moving situation and new human rights issues and challenges arise every day. In this note, the following issues are considered: derogation from the ECHR (and HRA); the overarching Article 2 right to life duty; medical treatment for COVID-19 patients; lockdown and deprivation of liberty.

Amos, Merris, '[Human Rights Law and the COVID-19 Pandemic in the United Kingdom Part 2](#)' (SSRN Scholarly Paper ID 3577779, 16 April 2020)

Abstract: The purpose of this note is to provide some further detail to the human rights law issues raised by the COVID-19 pandemic in the United Kingdom. The focus is on setting out the applicable legal rules and, where possible, suggesting how these might apply to current issues. Part 1 of this note concerned: derogation; the overarching duty to protect life; medical treatment of COVID-19 patients; and lockdown and the right to liberty. This note, Part 2 concerns: domestic violence; discrimination; self-imposed restrictions; closure of businesses; access to information; and surveillance and privacy issues arising from lifting lockdown.

Bagenstos, Samuel R, '[May Hospitals Withhold Ventilators from COVID-19 Patients with Pre-Existing Disabilities? Notes on the Law and Ethics of Disability-Based Medical Rationing](#)' (2020) 130 *Yale Law Journal Forum* (forthcoming)

Abstract: Thanks to the coronavirus pandemic, the threat of medical rationing is now clear and present. Hospitals faced with a crush of patients must now seriously confront questions of how to allocate scarce resources—notably life-saving ventilators—at a time of severe shortage. In

their protocols for addressing this situation, hospitals and state agencies often employ explicitly disability-based distinctions. For example, Alabama’s crisis standards of care provide that ‘people with severe or profound intellectual disability “are unlikely candidates for ventilator support.” This essay, written as this crisis unfolds, argues that disability-based distinctions like these violate the law. The Americans with Disabilities Act, the Rehabilitation Act, and the Affordable Care Act all prohibit health care providers from discriminating against qualified individuals with disabilities because of their disabilities. The explicit discrimination embodied in numerous state policies on its face violates these prohibitions. Nor can medical providers simply define disabled patients as being ‘unqualified’ because of disabilities that do not affect the ability to ameliorate the condition for which treatment is sought. Longstanding and authoritative interpretations of the law bar the use of such circular techniques to insulate disability discrimination from legal challenge. Although a proper interpretation of the law may permit medical providers to use disability as a basis for a rationing decision where an individual’s underlying disability will kill the individual in the immediate term regardless of the treatment, those circumstances will be narrow. And a proper interpretation of the law requires assurances that such imminent-death determinations will be made based on the best available objective evidence, free from bias against people with disabilities or devaluation of their lives. Medical providers retain substantial discretion to make resource allocation decisions in a time of triage. They may make decisions based on non-disability factors. And where those factors do not dictate a decision, they may employ a lottery process. Such a process is more fair and democratically legitimate than placing the burden on disabled individuals—individuals who already experience disadvantage as a result of societal discrimination, and who disproportionately lack access to the political processes that frame policies concerning medical rationing.

Bartos, Vojtech et al, [‘Covid-19 Crisis Fuels Hostility Against Foreigners’](#) (Working Paper No. 2020-03, Max Planck Institute for Tax Law and Public Finance, 2020)

Abstract: Intergroup conflicts represent one of the most pressing problems facing human society. Sudden spikes in aggressive behavior, including pogroms, often take place during periods of economic hardship or health pandemics, but little is known about the underlying mechanism behind such change in behavior. Many scholars attribute it to scapegoating, a

psychological need to redirect anger and to blame an out-group for hardship and problems beyond one's own control. However, causal evidence of whether hardship triggers out-group hostility has been lacking. Here we test this idea in the context of the Covid-19 pandemic, focusing on the common concern that it may foster nationalistic sentiments and racism. Using a controlled money-burning task, we elicited hostile behavior among a nationally representative sample (n = 2,186) in a Central European country, at a time when the entire population was under lockdown and border closure. We find that exogenously elevating salience of thoughts related to Covid-19 pandemic magnifies hostility and discrimination against foreigners, especially from Asia. This behavioral response is large in magnitude and holds across various demographic sub-groups. For policy, the results underscore the importance of not inflaming racist sentiments and suggest that efforts to recover international trade and cooperation will need to address both social and economic damage.

Carrera, Sergio and Ngo Chun Luk, '[Love Thy Neighbour? Coronavirus Politics and Their Impact on EU Freedoms and Rule of Law in the Schengen Area](#)' (CEPS Paper in Liberty and Security in Europe No 2020-04, April 2020)

Abstract: Restrictions on international and intra-EU traffic of persons have been at the heart of the political responses to the coronavirus pandemic. Border controls and suspensions of entry and exist have been presented as key policy priorities to prevent the spread of the virus in the EU. These measures pose however fundamental questions as to the *raison d'être* of the Union, and the foundations of the Single Market, the Schengen system and European citizenship. They are also profoundly intrusive regarding the fundamental rights of individuals and in many cases derogate domestic and EU rule of law checks and balances over executive decisions. This Paper examines the legality of cross-border mobility restrictions introduced in the name of COVID-19. It provides an in-depth typology and comprehensive assessment of measures including the reintroduction of internal border controls, restrictions of specific international traffic modes and intra-EU and international 'travel bans'. Many of these have been adopted in combination with declarations of a 'state of emergency'.

Chilton, Adam S et al, '[Support for Restricting Liberty for Safety: Evidence During the COVID-19 Pandemic from the United States, Japan, and Israel](#)' (SSRN Scholarly Paper ID 3591270, 2 May 2020)

Abstract: Democratic governments around the world have taken dramatic steps to halt the spread of COVID-19. These steps have prevented new infections and deaths, but they have also entailed unprecedented restrictions on civil liberties. Navigating this tradeoff between security and liberty is particularly difficult for democracies because they need to maintain public support for their policies and are constrained by their constitutions. We administered surveys to nationally representative samples in three economically advanced democracies—the United States, Japan, and Israel—to assess the extent to which the public supports liberty restrictions designed to combat COVID-19. We found consistent and widespread support for policies restricting civil liberties across all three countries. We also experimentally manipulated information about (1) the constitutionality of these policies and (2) the infections they would prevent, finding evidence that respondents' support for restrictions on civil liberties may depend more on their effectiveness than their legality.

Evans, Kylie and Nicholas Petrie, '[COVID-19 and the Australian Human Rights Acts](#)' *AusPubLaw: Australian Public Law* (Blog Post, 6 May 2020)

Introduction: The COVID-19 pandemic has caused a devastating loss of life and economic stagnation across the globe. Governments have quickly introduced laws and policies to reduce the spread of the virus, ease the burden on health systems, and assist flailing economies. Australia is no exception in this regard. The scale and scope of the government response at the Commonwealth, state and territory levels is nothing short of massive.

This post considers the possible implications for the COVID-19 response arising from the *Human Rights Act 2004* (ACT) ('ACTHRA'), the *Charter of Human Rights and Responsibilities 2006* (Vic) ('Victorian Charter') and the *Human Rights Act 2019* (Qld) ('QHRA') (collectively, the 'Australian HRAs'). We also consider the somewhat unique model of rights protection provided at the Commonwealth level under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) ('2011 Act').

Frees, Edward W and Fei Huang, '[The Discriminating \(Pricing\) Actuary](#)' (SSRN Scholarly Paper ID 3592475, 4 May 2020)

Abstract: The insurance industry is built on risk classification, grouping insureds into homogeneous classes. Through actions such as underwriting, pricing and so forth, it differentiates, or discriminates, among insureds. Actuaries have responsibility for pricing insurance risk transfers and are intimately involved in other aspects of company actions and so have a keen interest in whether or not discrimination is appropriate from both company and societal viewpoints. This paper reviews social and economic principles that can be used to assess the appropriateness of insurance discrimination. Discrimination issues vary by the line of insurance business and by the country and legal jurisdiction. This paper examines social and economic principles from the vantage of a specific line of business and jurisdiction; these vantage points provide insights into principles. To sharpen understanding of the social and economic principles, this paper also describes discrimination considerations for prohibitions based on diagnosis of COVID-19, the pandemic that swept the globe in 2020. Insurance discrimination issues have been an important topic for the insurance industry for decades and is evolving in part due to insurers' extensive use of *Big Data*, that is, the increasing capacity and computational abilities of computers, availability of new and innovative sources of data, and advanced algorithms that can detect patterns in insurance activities that were previously unknown. On the one hand, the fundamental issues of insurance discrimination have not changed with Big Data; one can think of credit-based insurance scoring and price optimization as simply forerunners of this movement. On the other hand, issues regarding privacy and use of algorithmic proxies take on increased importance as insurers' extensive use of data and computational abilities evolve.

Gilchrist, Heidi, "[“Act Normal or Leave”: When Law and Culture Collide](#)" (2020) *Columbia Journal of European Law* (forthcoming)

Abstract: 'Act normal or leave' wrote the Prime Minister of the Netherlands before the 2017 elections in an open letter published on-line and in full-page newspaper advertisements. This article examines the idea of legislating 'normal' and what this means in a diverse world. I specifically explore laws that criminalize dress in Europe - burqa bans that can even carry jail time for women who cover their face in public. I look at these laws as forced assimilation and as

simply a ‘Muslim ban.’ Not only is forced assimilation ineffective, it is a national security threat. In upholding and justifying these laws, I question whether the European Court of Human Rights has created a dangerous new right of the majority not to be offended. Although I argue against these criminal laws, I also consider the issue of what duty to integrate newcomers do have to a host country where they are living and ways in which pop culture can help this integration take place. I then analogize local laws in the United States that criminalize ‘saggy pants.’ In Louisiana, a young man died after being chased by police for wearing saggy pants. Although obvious differences, these laws share the flaw of using the force of law against a minority group by criminalizing dress. The COVID-19 pandemic and recent laws in Europe requiring face masks, but still criminalizing burqas, highlight the injustice.

Gostin, Lawrence O and Eric Friedman, ‘[Health Inequalities](#)’ (Hastings Center Report, 1 May 2020)

Abstract: The vast health inequalities in the United States and beyond that COVID-19 makes glaringly evident are frequently masked by aggregate statistics, which for years had been showing health improvements. Yet these improvements were inequitably distributed, with benefits disproportionately going to wealthier – and in the United States, white – populations. Globally, vast health inequities also exist among and within countries. The inequalities, which have also helped fuel the rise of populism, extend far beyond health care, including to wealth and income. Disaggregated, granular data is critical to understanding these inequalities. Addressing health inequities must extend far beyond universal access to quality health service to under-funded population-based public health interventions. Meanwhile, as any epidemiologist will tell you, the single biggest predictor of health outcomes is a person’s zip code, indicative of social determinants outside the health sector, including employment, education, housing, and transportation. Without explicit attention to these determinants, and the systematic, structural factors like racism that underlie their inequitable distribution, we can make little progress towards health equity, and will fail to meet the UN Sustainable Development Agenda pledge of leaving no one behind. Equity solutions require dedicated, systematic, systemic, well-resourced plans – health equity programs of action. These would include explicit targets, costed actions, rigorous measurement, and accountability through a comprehensive national effort. The United States could choose to lead, which would be a powerful political commitment to health equity and justice. And an intangible yet powerful benefit would be to restore a sense of dignity for all

of society and, in turn, act collectively to elect truthful, compassionate leaders who bring us together as a nation.

Greene, Alan, '[Derogating from the European Convention on Human Rights in Response to the Coronavirus Pandemic: If Not Now, When?](#)' (2020) *European Human Rights Law Review* (forthcoming)

Abstract: This article argues in favour of the use of derogations in accordance with Article 15 of the European Convention on Human Rights in response to the COVID-19 pandemic. States of emergency are designed to quarantine exceptional powers to exceptional situations. In contrast, far from protecting human rights, failure to use Article 15 ECHR risks normalising exceptional powers and permanently recalibrating human rights protections downwards. Part 1 outlines why the work of Carl Schmitt has distorted perceptions of states of emergency, emphasising their antagonistic relation to the extant legal order while ignoring their potential to protect legal norms in a time of normalcy by quarantining exceptional powers to exceptional situations. Part 2 then discusses illustrative examples of rights that may be affected by lockdown measures, arguing that ambiguity as to the scope of the right to liberty in Article 5 ECHR should be resolved in favour of as narrow an interpretation of Article 5 as possible, conceptualising lockdown measures as deprivations of liberty falling outside the scope of Article 5.1(e)—deprivation of liberty to prevent the spread of infectious diseases. Part 3 then addresses some of the critiques of derogations, arguing that the real risk of emergency powers is their propensity to become permanent. This risk is amplified by the failure to declare a de jure state of emergency. Ultimately, this article asks: if not now, when?

Harris, Jasmine, '[The Frailty of Disability Rights](#)' (2020) 169 *University of Pennsylvania Law Review Online* (forthcoming)

Abstract: Whoever said pandemics were equalizers doesn't know a thing about disability legal history. It does not take much of a pretext to rollback disability rights. This is because disability rights laws, despite enumerated principles of equal opportunity and civil rights, have always been viewed as 'nice to do' and not 'must do.' Simply put, society continues to misunderstand disability—what it means, who the category includes or excludes, its relationship to impairment, its valence and construction as an identity. Moral and religious-tinged frames have trumped the

perception of disability as a protected class akin to race, gender, or national origin. This view explains Congress's intent that the Americans with Disabilities Act (ADA) play, not only a remedial role for disability discrimination ex post, but a proactive, ex ante role in upending problematic social norms that treat disability and incapacity as synonymous. Similarly, the perception of disability as a different kind of civil right helps explain the Supreme Court's interpretive missteps in the infancy and adolescence of the ADA and Congress's direct reproach and redirection of the Court in the ADA Amendments Act eighteen years later. Inattention to underlying social judgments about disability and the associated discrimination has caught up with us. Progressive legislation in this pandemic without requisite interventions designed to address how people interpret the disability laws offers precarious protections for people with disabilities. The stakes could not be higher in some areas, namely, life or death denials of health care access based on certain disabilities or biased quality of life measures. Disability scholars in recent weeks have largely focused on addressing why COVID-19-related rationing on the categorical basis of disability offends federal (and state) disability antidiscrimination laws as a means to ensure people with disabilities have access to life-saving medical treatment in and out of hospitals. They persuasively apply disability laws and principles of legal and medical ethics to show why disability is an improper consideration in rationing care and resources. The underlying problem with rationing is much larger and is slowly unfolding with respect to access and rights in other areas including education, housing, and employment. That is, it is not just about devaluation of the lives of individuals with disabilities; it is a symptom of something much deeper. The pervasive and negative impacts of this devaluation will endure long after the immediate healthcare issues are tackled. This Essay surfaces a broader, unresolved issue in disability law laid bare by the current pandemic—that disability rights have never had the public understanding and buy in necessary to exercise and interpret disability laws to generate largescale structural reform. As a result, when people with disabilities are seen (and treated) as unequal, deficient, and incapable, legal enforcement of antidiscrimination laws is, at best, seen as optional and aspirational, creating space for the current manifestations of disability discrimination during the coronavirus crisis. These problems are compounded when medical supplies, personnel, and time are limited. Part I describes real time rollbacks of disability rights in the healthcare access context that are currently unfolding, and the legal responses designed to push back on health care rationing. I then shift to a less studied area, access to education, an evolving landscape as students across the country face the realities of distance learning. Part II

argues that the current forms of discrimination lay bare the fundamental information deficits about disability that negatively skew legal interpretation and undermine the protections of disability laws. Part III identifies key questions and areas of concern as we contend with the virus and its aftermath.

Hellman, Deborah and Kate Nicholson, '[Rationing and Disability in a State of Crisis](#)' (Virginia Public Law and Legal Theory Research Paper No 2020-33, 2020)

Abstract: The rise in COVID-19 cases is soon to overwhelm health care systems, leading to difficult moral and legal choices about how to ration scarce resources, and, most especially, ventilators. Many states have protocols that address this question. These protocols adopt a fully utilitarian approach, aiming simply to save as many lives as possible. To do so, they prioritize patients who are most likely to benefit from care and set standard benchmarks for how quickly a patient must show improvement to continue ventilation. These protocols and related policies of private health care systems are likely to disadvantage people with disabilities, as a disproportionate number of disabled people have health conditions that will make them less likely to survive or will require them to have more time to show improvement. This (draft) Article examines whether the utilitarian approach, which considers only aggregate harms and benefits, is consistent with The Americans With Disabilities Act, and other discrimination statutes, which pay significant attention to the distribution of harms and benefits. The Article focuses especially on facially-neutral policies that will have the effect of discriminating impermissibly against the disabled. As such, it considers four rationing principles that track those used by states and ultimately argues that none balances equity with utility, as discrimination law demands.

Joseph, Sarah, '[COVID 19 and Human Rights: Past, Present and Future](#)' (2020) *Journal of International Humanitarian Legal Studies* (forthcoming)

Abstract: No article can cover the panoply of human rights issues raised by the COVID 19 pandemic. Hence, this article takes a selective approach. Stages of the cycle of the crisis, from its past, its present, to its presumed future, are discussed in relation to salient rights issues affecting the general population. Freedom of expression and access to information arose in the

‘past’, the virus’s beginning, when China suppressed information about its nature and its virulence. Currently, States are imposing lockdowns to stop the spread of the virus, and in some cases have overwhelmed hospital systems: ‘the present’ raises issues regarding the rights to health, life, livelihood, and freedom of movement, assembly and association. Finally, the ‘future’ end of the crisis, in the form of the development of a vaccine, will raise new rights issues, regarding the rights upon whom vaccine candidates are tested, and in terms of access to the vaccine once it is available.

Kaminer, Debbie, [‘Discrimination Against Employees Without COVID-19 Antibodies’](#) *New York Law Journal* (4 May 2020)

Abstract: Policies favoring those with immunity to a contagious disease are a novel concept. It is therefore important to think about the legal and policy issues associated with banning employees without immunity to COVID-19 from the workplace and the appropriate balance between an individual’s right to work and the public health of the nation.

Layser, Michelle D et al, [‘Mitigating Housing Instability During a Pandemic’](#) (SSRN Scholarly Paper ID 3613789, 29 May 2020)

Jurisdiction: USA

Abstract: Housing instability threatens to impair the United States’ policy response to the COVID-19 pandemic by undermining public health strategies such as social distancing. Yet, mitigation of housing instability has not been the focus of early emergency legislation, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which has focused on providing cash support to individuals and businesses. Although many of these laws have the potential to reduce housing instability, this Working Paper argues that they face barriers to effective implementation and take-up akin to those that hindered similar interventions during the Great Recession. These barriers—which include administrative hurdles, reliance on voluntary participation, resource constraints, and political pushback—may prevent these interventions from realizing their full potential. As a result, despite the unprecedented amount of aid that the CARES Act directs to individuals, the implementation of these aid programs may fail to effectively mitigate housing instability. For this reason, additional rental assistance and

mortgage payment assistance may be necessary to prevent loss of housing that ultimately exacerbates the public health crisis. We also recommend a new civil right to counsel in eviction cases and targeted place-based interventions to promote affordable housing development where it is needed most.

Meier, Benjamin Mason, Dabney P Evans and Alexandra Phelan, '[Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease](#)' in Mark Eccleston-Turner & Iain Brassington (eds), *Infectious Diseases in the New Millennium: Legal and Ethical Challenges* (Springer, 2020, forthcoming)

Abstract: Human rights offer universal frameworks to advance justice in public health, codifying international standards to frame government obligations. Health-related human rights have evolved dramatically over the past thirty years to offer a normative framework for justice in preventing, detecting, and responding to infectious disease outbreaks. Where human rights were long neglected in international health debates, the advent of the HIV/AIDS pandemic response would operationalise human rights for public health, as advocates looked explicitly to human rights in framing public health efforts. In this period of heightened fear and emerging advocacy, policymakers first sought to implement human rights law in public health law—viewing discrimination as counterproductive to public health goals, abandoning coercive tools of public health, and applying human rights to focus on the individual risk behaviours leading to HIV transmission. By finding a link between public health and human rights, the health and human rights movement could move away from its early focus on the conflicts between public health goals and individual human rights, employing human rights to advance public health. However, infectious disease control efforts continue to challenge the notion that individual rights can best support population health. In the new millennium—from the 2005 revision of the International Health Regulations to the 2014 birth of the Global Health Security Agenda—policymakers have sought to balance infectious disease imperatives for the public's health with individual dignity protections in human rights. Yet, national public health efforts continue to employ mechanisms that infringe individual rights—from the recent Ebola epidemics in Sub-Saharan Africa to the ongoing COVID-19 pandemic that threatens the world—with public health laws violating individual bodily integrity through vaccination mandates, violating individual

medical privacy through surveillance and reporting, and violating individual liberty through quarantine and isolation.

Miller, Romaine and Rachel Tsang, [‘The Judiciary, Police Detention, and COVID-19. A Brief Review of Abridged Rights and Freedom in National Crises’](#) (SSRN Scholarly Paper ID 3593997, 6 May 2020)

Abstract: In this paper, the writers wish to prose their thoughts on questions surrounding Police Detention and the Judiciary’s responsibility to uphold the rights and freedom of citizen in police custody during this on-going global COVID-19 pandemic. Whilst also examining how national emergencies extend state power and diminish fundamental rights.

Njiri, Kenneth, [‘The Tenants’ Right to Housing in Kenya: Is There Need to Address This Issue during the Covid-19 Pandemic’](#) (SSRN Scholarly Paper ID 3582391, 22 April 2020)

Abstract: The Covid-19 pandemic has changed the lives of people in the world. Most of the governments have imposed restrictive measures on movement and association to ensure that the disease does not spread further into their countries. The government of Kenya has imposed a curfew to restrict movement of the disease. Further, there are regions in Kenya where movement into and out of those regions has been curtailed. The livelihoods of Kenyans from all walks of life have been distracted. Jobs have been lost. The economy of the country is dwindling. Kenyans have been advised to stay at home. The prevailing circumstances have forced some of the Kenyans to stay at home. The directive to stay at home to fight the pandemic presents a unique situation in the country. It requires people to stay indoors to reduce the transmission of the illness. The ball falls into the court of each and every citizen to seek shelter. However, due to the loss of jobs, most of the Kenyans wonder whether they will have shelter. The tenants, who have no source of income at the moment, wonder where they will get the money to pay their landlords to ensure they are not kicked out of their houses. Further, due to the declining economy, most of the tenants do not have sufficient cash to pay their rent. Failure to pay rent will render them homeless. Is there need to address this issue? Should we allow the landlords to deal with the tenants who do not pay rent? In my paper, I seek to address this delicate issue. To begin with, I will balance the rights between the landlord and the tenant. Later, I will recommend on what is to be done to ensure that this issue is resolved amicably.

Njiri, Kenneth, '[Mental Health and Covid-19: The Right to Mental Health during the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3598916, 12 May 2020)

Jurisdiction: Kenya

Abstract: The covid-19 pandemic has disrupted the lives of people in the world. Kenya has not been left alone. As a result, jobs have been lost. Families are apart. There is panic and worry in the world. As a result, the mental health of persons is at risk. In my paper, I argue that there is need for the government of Kenya to safeguard the mental health of its citizens. Further, a multi-sectoral approach should be adopted in ensuring the mental wellness of the people.

Nwokeke, Chidera, '[A Perusal on COVID-19 and Rights of Patients](#)' (SSRN Scholarly Paper ID 3579257, 18 April 2020)

Jurisdiction: Nigeria

Abstract: A perusal on Covid-19 and the rights of patients in Nigeria. This article examines the position of our laws with regards to patients' rights and its enforceability in our Courts and the remedies available to a patient.

Nyawa, Joshua Malidzo, '[Human Rights and Covid-19 \(Corona Virus\) in Kenya: Is the Law Silent?](#)' (SSRN Scholarly Paper ID 3587768, 28 April 2020)

Abstract: During times of pandemics, the law is not silent. Unlike the suggestion by Schmitt et al that there are times where there exists a state of exception, this paper argues that the constitution of Kenya does not permit such a scenario. Even in emergencies, the law applies. This paper looks at the measures and regulations adopted by the executive in a bid to address the Corona problem and tests them against the constitution of Kenya.

'PAs Should Not Use Pandemic to Justify Treating the Right to Know as Disposable' (2020) 16(4) *Freedom of Information* 1, 17

Abstract: Highlights warnings from freedom of information experts and campaigners that public authorities risk losing public trust if they treat the right to know as a "disposable extra" during the coronavirus pandemic.

Persad, Govind, '[Why Disability Law Permits Evidence-Based Triage in a Pandemic](#)' (2020) 130 *Yale Law Journal Forum* (forthcoming)

Abstract: This paper explains why the two core goals of policies proposed or adopted in response to the COVID-19 pandemic that allocate scarce medical resources by using medical evidence—saving more lives and saving more years of life—are compatible with disability law. Disability law, properly understood, permits considering medical evidence about patients' probability of surviving treatment and the quantity of scarce treatments they will likely use. It also permits prioritizing health workers, and considering patients' post-treatment life expectancy. All of these factors, when assessed based on medical evidence and not inaccurate stereotypes, are legal to consider even if they disadvantage some patients with specific disabilities. It then discusses why triage policies that use medical evidence to save more lives and years of life, which I call 'evidence-based triage,' are ethically preferable for people with and without disabilities. In doing so, I explain why recent critiques err by treating people with disabilities as a monolith, overlooking the political disadvantages of less-visible victims, and treating the social origins of scarcity as a justification for sacrificing vulnerable lives. Evidence-based triage should be recognized as similar to other responses to COVID-19, like physical distancing and postponing some medical procedures, that may burden people with specific disabilities but are nevertheless justified because they save more patients with and without disabilities.

Solomon, Mildred, Matthew Wynia and Lawrence O Gostin, 'Covid-19 Crisis Triage: Optimizing Health Outcomes and Disability Rights' (2020) *New England Journal of Medicine* (online May 19) 1–3

Jurisdiction: USA

Abstract: On March 28, 2020, the Office of Civil Rights at the Department of Health and Human Services (HHS) opened investigations into recently released critical care crisis triage protocols. Disability rights advocates are urging Congress to prohibit crisis triage based on 'anticipated or demonstrated resource-intensity needs, the relative survival probabilities of patients deemed likely to benefit from medical treatment, and assessments of pre- or post-treatment quality of life.'

Spadaro, Alessandra, '[COVID-19: Testing the Limits of Human Rights](#)' *European Journal of Risk Regulation* [2020] 2: Special Issue - 'Taming COVID-19 by Regulation'

[United Nations High Commissioner for Human Rights](#) (OHCHR)

Note: This site contains many news items and publications on COVID-19 human rights related issues. See for example:

- '[Seven Actions](#)": A guide to Protect African Women's Rights during COVID-19'

Yearby, Ruqaiijah and Seema Mohapatra, 'Law, Structural Racism, and the COVID-19 Pandemic' (2020) *Journal of Law and the Biosciences* (forthcoming)

Jurisdiction: USA

Abstract: Racial and ethnic minorities have always been the most impacted by pandemics because of: disparities in exposure to the virus; disparities in susceptibility to contracting the virus; and disparities in treatment. This article explains how structural racism, the ways in which laws are used to advantage the majority and disadvantage racial and ethnic minorities, has caused these disparities. Specifically, this article focuses on how employment, housing, health care, and COVID-19 relief laws have been manipulated to disadvantage racial and ethnic minorities, making minorities more susceptible to COVID-19 infection and death. This article uses Blumenshine's 2008 framework to outline how structural racism causes racial and ethnic

minorities' disparities in exposure to viruses, in susceptibility to contracting viruses, in treatment of viruses, and in infection and death rates. This article discusses how historical and current practices of structural racism in existing employment, housing, and health care laws and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) cause disparities in COVID-19 infections and deaths. This article suggests legal solutions to address structural racism as well as public health solutions to help mitigate the racialized effects of the disease.

INDIGENOUS LAW & GOVERNANCE

Fletcher, Matthew LM, '[Indian Lives Matter: Pandemics and Inherent Tribal Powers](#)' (SSRN Scholarly Paper ID 3575751, 14 April 2020)

Abstract: America's reaction to the COVID-19 pandemic of 2020 is a microcosm of how Americans see the nation. It is a story of rugged individualism versus community needs. Many Americans insist on freedom to do as they please, rigorously pushing back on government. But in an environment where small numbers of individuals can easily transmit a deadly infection to others, creating the exponential increase in infections, rugged individualism is a terrible threat. Pandemics, luckily for humans, do not seem to occur all that frequently, but when they do occur, they can dramatically alter human history. Indian people know all too well the impact of pandemics on human populations, having barely survived smallpox outbreaks and other diseases transmitted during the generations of early contact between themselves and Europeans. Indian people also suffered disproportionately from the last pandemic to hit the United States about a century ago. Some things have changed for the better for Indian people, namely tribal self-governance, but many things are not much better, including the public health situation of many Indian people. Modern tribal governments navigate a tricky legal and political environment. While tribal governments have power to govern their own citizens, nonmembers are everywhere in Indian country, and the courts are skeptical of tribal authority over nonmembers. For example, after the Navajo Nation announced a 57-hour curfew for the weekend of April 10-13, 2020 (Easter weekend for many), the sheriff's offices of Cibola and McKinley counties sent letters to the tribe insisting that the tribe refrain from citing nonmembers during the curfew, further insisting that nonmembers are governed more 'fully' by the Governor of the State of New Mexico. Further, the fact that it is the county sheriff's offices –

and not counsel for the nonmembers – sending the letters is a deeply consequential signal to the tribal government. Of course, allowing nonmembers freedom to flout the tribe’s curfew defeats the purpose of the curfew. During a pandemic, the limitations on powers of tribal government could lead to tragedy. This short essay is designed to lay down the argument favoring tribal regulatory powers over nonmembers in Indian country during a pandemic. It should be an easy argument, but federal Indian law makes it more complicated than it should be.

INSOLVENCY & BANKRUPTCY

Bradley, Christopher G, [‘The New Small Business Bankruptcy Game: Strategies for Creditors Under the Small Business Reorganization Act’](#) (2020) 28 *American Bankruptcy Institute Law Review* (forthcoming)

Abstract: In late 2019, Congress enacted the Small Business Reorganizations Act. The Act’s timing is fortuitous: Weeks after it went into force in February, 2020, the Covid-19 pandemic damaged countless small businesses—enterprises that the Act may provide an opportunity to save. The Act provides businesses with powerful options to reorganize under a new ‘subchapter V’ of Chapter 11 of the Bankruptcy Code. Subchapter V eases the requirements for confirmation of plans that creditors don’t approve by simply requiring debtors to project their ‘disposable income’ and pay it to creditors for three to five years; provides incentives for the parties to reach agreement on reorganization plans; lowers the debtor’s disclosure obligations; eliminates the regular appointment of an official committee of creditors; requires the appointment of a trustee to aid in plan negotiations; and permits modification of loans secured by a mortgage on a debtor’s primary residence. Creditors will have to develop a new playbook for subchapter V cases. Most scholarship has emphasized debtors’ new options, but this Article presents an analysis from the perspective of creditors. Of course, creditors are not created equal; strategies will only be useful to creditors with claims substantial enough to justify the investment of time and money. Well-positioned creditors will extract whatever strategic gains they can at the expense of the debtor and of less privileged creditors. The game is multilateral, not simply creditor vs. debtor. The Article suggests strategies for variously positioned creditors to protect their interests. The Article suggests seven major strategies: 1) Creditors should seek influence or control a debtor’s entry into subchapter V by making agreements with debtors concerning the

election, using financial maneuvers to work around subchapter V's debt limits, or challenging the debtor's eligibility for entry.2) Creditors should monitor and make use of trustees as circumstances warrant, whether by cultivating and working closely with them, by seeking to minimize their role and save expenses, or, at the extreme, by opposing them and seeking their removal. 3) To combat debtors' tendency to delay, creditors should apply pressure on the debtor by emphasizing the statutory emphasis on speed, scrutinizing the debtor's required disclosures, and enlisting the trustee and court where possible.4) Creditors should avoid holding general unsecured claims, and, if eligible, should take the election offered by §1111(b) of the Code. 5) Subchapter V places a premium on plans being approved by creditors, so those whose votes are needed for confirmation should extract concessions in exchange for their vote. For those privileged creditors, this should be a major point of leverage.6) Creditors should look to obtain information at every opportunity, including at the required meeting of creditors and status conference early in the case, in the disclosures and filings made by the debtor, and through formal discovery. 7) Creditors extending credit secured by a residence should designing lending practices to ensure that they cannot be 'modified' by debtors in bankruptcy. Many of the strategies above will be of keen interest to secured and other privileged classes of creditors. The Article predicts that with these and other strategies in hand, such creditors will not lose much ground under subchapter V. But the law lowers protections for general unsecured creditors, particularly those who remain passive. A number of the strategic tools presented in this Article can aid disfavored general unsecured creditors as well—but frequently, they will have too little at stake to make it worth putting their energy into the new small business bankruptcy game.

Gurrea-Martínez, Aurelio, '[Insolvency Law in Times of COVID-19](#)' (Working Paper 2/2020, Ibero-American Institute for Law and Finance, 2020)

Abstract: The international spread of the coronavirus is not only generating dramatic consequences from a social perspective but it is also heavily affecting the global economy. For this reason, governments, financial regulators and international organizations are responding to the coronavirus with a package of legal, economic and financial measures. Among the legal measures included in these packages, many countries, including Australia, Germany, Spain, India, Singapore, Colombia, Portugal, Czech Republic, Russia, New Zealand, the United Kingdom,

and the United States, have proposed or implemented temporary changes to their insolvency frameworks. This paper starts by discussing whether using the insolvency system should be the optimal solution to deal with companies affected by the coronavirus. For that purpose, it will analyze the role and limits of insolvency law. It then discusses the most relevant insolvency reforms taking place around the world as a response to the global pandemic, as well as other insolvency and insolvency-related reforms that could be implemented to minimize the harmful economic effects of COVID-19. The paper will conclude by arguing that, even though these responses can provide companies and corporate directors with a valuable breathing space, these reforms need to be accompanied by a more comprehensive package of legal, financial, tax and economic measures to support businesses, employees and the well-functioning of the judicial system.

Morrison, Edward R and Andrea C Saavedra, '[Bankruptcy's Role in the COVID-19 Crisis](#)' (SSRN Scholarly Paper ID 3567127, 7 April 2020)

Jurisdiction: USA

Abstract: Policymakers have minimized the role of bankruptcy law in mitigating the financial fallout from COVID-19. Scholars too are unsure about the merits of bankruptcy, especially Chapter 11, in resolving business distress. We argue that Chapter 11 complements current stimulus policies for large corporations, such as the airlines, and that Treasury should consider making it a precondition for receiving government-backed financing. Chapter 11 offers a flexible, speedy, and crisis-tested tool for preserving businesses, financing them with government funds (if necessary), and ensuring that the costs of distress are borne primarily by investors, not taxpayers. Chapter 11 saves businesses and employment, not shareholders. For consumers and small businesses, however, bankruptcy should serve as a backstop to other policies, such as the CARES Act. Consumer bankruptcy law's primary goal is to discharge debts, but that's not what most consumers need right now. What they need is bridge financing, and perhaps forbearance, until the crisis ends, they get back to work, and they regain their ability to pay their debts again. These key policy levers—bridge financing and forbearance—are available in theory to small businesses in Chapter 11, especially if the government supplies the bridge financing when credit markets are dysfunctional. The practical reality is that bankruptcy is expensive for small

businesses, which may deter them from using it in the first place. Equally important, our courts will be flooded if Chapter 11 is the primary rescue policy for small businesses.

Stegner, Clemens and Wolfgang Höller, 'Coronavirus: Effects on the Insolvency Filing?' [2020] *Lawyer (Online Edition)* 1

Abstract: The article discusses how the COVID-19 presents companies with major challenges including restricted operation, cancellations and the lack of customers that can also lead to liquidity problems in otherwise healthy companies and discusses requirements for opening insolvency proceedings. It informs that in the case of corporations, insolvency law overindebtedness – are met, there is an obligation of the Austrian Insolvency Code to file an application for bankruptcy without culpable hesitation.

INTELLECTUAL PROPERTY

Huang, Vicki T, '[COVID-19 as a Trade Mark in Australia: Issues and Implications](#)' (SSRN Scholarly Paper ID 3577389, 16 April 2020)

Abstract: In the past, well-publicized adverse events have triggered surges in 'tragedy' trade mark applications for signs such as '9/11' or 'MH370'. Unsurprisingly (as at 31 March 2020) there were 57 trade mark applications for the word 'COVID-19' across trade mark registers across the globe. In Australia, these types of marks face a variety of legal hurdles that may prevent registration. These include the question of whether the mark is 'distinctive' and the bar against 'scandalous' marks. This article discusses how 'COVID-19' (and other tragedy related trade marks) challenges the boundaries of these rules; the likelihood of COVID-19 being registered; and whether Australian law should change to expressly proscribe against 'tragedy' trade marking.

Lo Bianco, Federico, '[Comparative Patent Compulsory Licensing Under COVID-19](#)' (SSRN Scholarly Paper ID 3580407, 19 April 2020)

Abstract: It is fascinating to see how the law has always followed human needs and development. Historically, when a new issue came out the governments started legislating in order to ensure social stability and keep the trust of citizens on the politics, but sometimes the regulatory process may be undertaken in advance. Indeed, even if the compulsory licensing procedure has always been one of the flexibilities of the TRIPS agreement, ever since 1995, it has sporadically been used by some states while other nations have never applied this flexibility at all. Recently, due to the COVID-19 pandemic, the importance and the popularity of compulsory licenses have been growing all over the world.

Paradise, Jordan, '[COVID-IP: Staring down the Bayh-Dole Act with 2020 Vision](#)' (SSRN Scholarly Paper ID 3599621, 12 May 2020)

Abstract: As the human and economic toll of the COVID-19 coronavirus steadily escalates, there is extreme uncertainty about the timeframe for preventing, detecting, and treating it. There is also concern about the eventual costs associated with approved products and the barriers to access created by the patent system. Industry, government, and academic collaborations are leading the charge in the discovery race, partnerships which have triggered calls for the activation of the federal governments so-called 'march-in rights' established in the Bayh-Dole Act. The Bayh-Dole Act dramatically altered the patent protections available to federally funded academic institutions and scientists and initiated a 40-year debate over appropriate incentives for innovation and the scope of the government's authority. The COVID-19 coronavirus pandemic provides an opportunity to reflect on the purpose and impact of the historic legislation as well as contemplate the implications for our public health future. Existing and future patent rights for therapeutic compounds, methods of delivery, and medical diagnostics will significantly impact access to and cost of life-saving innovations. In the midst of rapid and wide-ranging research investigations, this article examines advocacy efforts urging the government to utilize governmental march-in rights to quell concerns about patent monopolization and product pricing. It also analyzes the *Facilitating Innovation to Fight Coronavirus Act* as it relates to impending COVID-19 coronavirus products.

Santos Rutschman, Ana, [‘Property and Intellectual Property in Vaccine Markets’](#) (2020) *Texas A&M University Journal of Property Law* (forthcoming)

Abstract: As biopharmaceutical forms of technology, vaccines constitute one of the most important tools for the promotion and maintenance of public health. Tolstoy famously wrote that ‘[h]appy families are all alike; every unhappy family is unhappy in its own way.’ Vaccine markets offer perhaps one of the most extreme embodiments of Tolstoy’s principle in the field of biopharmaceutical innovation. Vaccines are often described as one of the most unprofitable types of biopharmaceutical goods, under-incentivized from a research and development (R&D) perspective, and routinely failing to attract sufficient investment from traditional funders in biopharma. In this sense, and despite the scientifically well-established value of vaccines from a public health perspective, vaccine markets are often portrayed as a collection of unhappy families. Yet, at least throughout the developed world, there are plenty of examples of steadily profitable vaccine markets, as is the case of recently developed vaccines targeting the human papilloma virus (HPV). The Essay begins by mapping this dualism in vaccine R&D and commercialization, describing both ‘happy’ and ‘unhappy’ markets. It then connects the development of new vaccines with the default legal regime to promote innovation in the biopharmaceutical arena: the patent system. In exploring possible solutions for transactional problems arising in connection with the development of vaccine technology in the context of infectious disease outbreaks, the Essay asks whether the rights covering vaccine technologies are best understood as property rights or as something else. This inquiry is of course but a fragment of a much larger interrogation of the nature and mechanics of intellectual property systems: are intellectual property rights—and rights arising out of the grant of patents in particular—more like property or akin to something else? Arguing that under the current non-committal position of the Supreme Court there is room for understandings of patent rights that are not property-centric, the Essay concludes by exploring how less property-like protection—in the form of a liability regime for critical components of vaccine technology—can remove some of the most salient transactional obstacles to the development and commercialization of new vaccines targeting infectious disease pathogens like Ebola, Zika and COVID-19.

INTERNATIONAL LAW

Becker, Michael A, 'Do We Need an International Commission of Inquiry for COVID-19?' (2020) *European Journal of International Law* (forthcoming)

Abstract: This paper considers whether the COVID-19 pandemic requires the establishment of an international commission of inquiry. It considers the reasons to pursue inquiry rather than litigation and what an inquiry's mandate might contain, including how much the inquiry should focus on international law or state responsibility. It then considers who could create such a body, what its composition might look like, different working methods, and how to maximise co-operation. Overall, a forward-looking inquiry aimed at improving global preparedness may be more prudent and realistic than a mechanism focused on legal wrongdoing.

Bergkamp, Lucas, 'State Liability for Failure to Control the COVID-19 Epidemic: International and Dutch Law' (2020) *European Journal of Risk Regulation* (forthcoming)

Abstract: The COVID-19 epidemic has caused governments in Europe to impose a variety of measures to fight the spread of the disease. Some governments have adopted relatively relaxed measures or adopted strict measures late, while some have been more proactive and implemented restrictions early on. This article discusses the potential liability of governments in relation to negligence and omissions with respect to COVID-19 measures. The focus is on China and The Netherlands. State liability can arise if governments have been negligent in addressing the threat of the COVID-19 epidemic, specifically where they have created risks due to not implementing restrictions or not doing so in a timely manner, or otherwise have failed to protect public health and human lives. These issues are analysed with reference to international law and the laws of The Netherlands, which has a well-developed – albeit idiosyncratic – system of state liability. Of course, it is also possible that governments are liable for damages caused by measures to fight COVID-19. For example, regulations requiring the closure of cafes and restaurants will cause economic harm to the operators thereof. This kind of potential liability is not discussed in this article. It should be noted, however, that governments are likely to offer compensation for the damages caused by these measures.

Estrañero, Jumel and Maria Kristina Siuagan, '[Fulcrum of International Negotiation: Strategic Stakes and Consequence of China, SARS-CoV-2, and South China Sea Dispute in Global Security Order](#)' (SSRN Scholarly Paper ID 3590094, 1 May 2020)

Abstract: The current Sars-CoV-2 (COVID-19) has been challenging the global security order in unintended negotiation whether to maintain or revamp the status quo of global security order. From the onset on COVID-19 since the last quarter of 2019, it has already presented negotiators with new rules and new players even from the unexpected actors. The pandemic has not only wrecking havoc the economic tendencies of each state but it has definitely showing many parameters of negotiation which have remained fairly constant through the transition (crisis, collation building, mediation, issue linkages, and related factors and indicators). The determination of national interest has been greatly complicated for governments, democratic and non-democratic alike. For the democracies of the world, diplomatic agenda setting is highly subject to strong domestic pulls; for the non-democracies, deliberations are clearly influenced by international and public opinion. In the contemporary process, it is also clear that culture and identity play greater roles in shaping negotiation positions and moves, as manifested in the application of new techniques such as culture-based mediation and track-two facilitation.

Klein, Natalie, '[International Law Perspectives on Cruise Ships and COVID-19](#)' (2020) *Journal of International Humanitarian Legal Studies* (forthcoming)

Abstract: Cruise ships have contributed to the spread of COVID-19 around the world and State responses to the pandemic have needed to account for the presence of these ships in their ports and the medical treatment of both passengers and crew on board. This contribution outlines the key bodies of international law that must be brought to bear in deciding on State action in response to cruise ships and their COVID-19 cases: the law of the sea, international health law, shipping conventions and especially treaties protecting the rights of seafarers, international human rights law and laws relating to consular assistance. While these laws tend to reinforce each other, it is argued that the need for humanitarian considerations to feature strongly in State decision-making is challenged by systemic weaknesses.

Joshpe, Brett, '[Considering Domestic and International Frameworks for Analyzing China's Potential Legal Liability in the Aftermath of COVID-19](#)' (SSRN Scholarly Paper ID 3598614, 11 May 2020)

Abstract: The COVID-19 pandemic has imposed a human and economic cost on the world that was virtually unimaginable only a few months ago. Credible investigative sources agree with virtual unanimity that COVID-19 emerged from Wuhan in China, either as a result of human wildlife consumption at wet markets or from a laboratory that studies diseases in bats. China has long been aware of the risks that both scenarios presented. Even more disturbingly, however, China may have hid valuable information about COVID-19 that could have significantly improved the international community's ability to respond to, and fight, the pandemic. China's apparent obfuscation, along with the alleged failures of other groups such as the World Health Organization, has arguably resulted in trillions of dollars in liabilities, millions of sicknesses, and hundreds of thousands of lost lives—with those numbers mounting daily. The emergence of COVID-19 within China and the Chinese government's failure to promptly and transparently provide needed information to the international community raises the question whether the Chinese government and/or its officials could be held civilly or criminally liable under international law or U.S. domestic law. While China arguably violated numerous international conventions and obligations, and while there would certainly be liability according to U.S. common law principles if this scenario involved a private party, the reality is that neither is likely adequate to impose liability on China under the current state of the law, meaning the international community would need to create a new framework for imposing international legal liability—something the U.S. should be very weary of—or the U.S. would need to revoke China's sovereign immunity, something that lawmakers are currently considering. Either way, the COVID-19 outbreak demands serious consideration of how the legal system could—and whether it should—be updated to account for the current crisis and any future pandemics. This article discusses the Chinese government's potential violations of existing international law and international norms, as well as potential theories of civil and criminal liability arising from the damages caused by the COVID-19 pandemic. Part I provides an introduction. Part II provides a background of key facts as currently understood and lays out the role that the Chinese government apparently played in enabling COVID-19 and failing to contain its global spread. Part III discusses the manner in which China may have run afoul of various treaties and civil tort principles, as well as the difficulties with imposing civil liability for these violations. Part IV articulates theories about how traditional criminal liability might apply to China and why

international criminal law is generally too limited in scope to impose liability. Finally, Part V suggests a potential framework for ensuring accountability for the COVID-19 outbreak and any future pandemics. This article concludes that although litigation—and civil and criminal liability both at the domestic and international level—can be effective tools in the diplomatic arsenal of nations, practical realities and the current legal framework limit China’s potential liability arising from the COVID-19 crisis. Nevertheless, this paper could serve as a starting point for discussing whether a new framework is necessary.

Mazzuoli, Valerio de Oliveira, '[International Responsibility of States for Transnational Epidemics and Pandemics: The Case of COVID-19 from the People’s Republic of China](#)' (SSRN Scholarly Paper ID 3584944, 24 April 2020)

Abstract: This research addresses the possibility of state responsibility for transnational epidemics or pandemics, especially focusing on COVID-19 as a case study – a pandemic originated in the People’s Republic of China. To that end, this article analyzes this issue grounded on international health regulations together with the Constitution of the World Health Organization to be able to assess whether these rules are binding on the Member States. Furthermore, this article analyzes case laws from the International Court of Justice, and the feasibility of filing legal procedures against China before this U.N. Court for not informing the international society in due course about an impending COVID-19 pandemic.

Mazzuoli, Valerio de Oliveira, '[Is It Possible to Hold China Responsible in the Case of COVID-19?](#)' (SSRN Scholarly Paper ID 3597799, 1 May 2020)

Abstract: In this article I will summarize the arguments I developed in a more complete study, already published online (at SSRN: <https://ssrn.com/abstract=3584944>). Its purpose is to determine whether, in the light of public international law, there is state accountability for the thousands problems that occurred worldwide as a result of COVID-19. Thus, would the law of nations provide any mechanism to hold the Chinese government accountable if proven that it has not taken the necessary precautions to prevent the spread of the new Coronavirus? Are there international norms and case-laws addressing these issues?

Milanovic, Marko and Michael N Schmitt, '[Cyber Attacks and Cyber \(Mis\)Information Operations during a Pandemic](#)' (2020) *Journal of National Security Law & Policy* (forthcoming)

Abstract: The COVID-19 pandemic has been accompanied by reprehensible cyber operations directed against medical facilities and capabilities, as well as by a flood of misinformation. Our goal in this article is to map out the various obligations of states under general international law and under human rights law with regard to malicious cyber and misinformation operations conducted by state and non-state actors during the pandemic. First, we consider cyber operations against health care facilities and capabilities, including public health activities operated by the government, and how such operations, when attributable to a state, can violate the sovereignty of other states, the prohibitions of intervention and the use of force, and the human rights of the affected individuals. Second, we perform a similar analysis with regard to state misinformation operations during the pandemic, especially those that directly or indirectly affect human life and health, whether such misinformation is targeting the state's own population or those of third states. Finally, we turn to the positive obligations that states have to protect their populations from hostile cyber and misinformation operations, to the limits that human rights law imposes on efforts to combat misinformation, and to protective obligations towards third states and their populations. We argue that international law can play a robust role in addressing the COVID-19 pandemic. For the most part, the parameters of the relevant legal rules are reasonably clear. But significant areas of uncertainty remain. For instance, at least one state, wrongly in our view, rejects the existence of the general international law rule most likely to be breached by COVID-19-related cyber operations, sovereignty. Another major issue is the extraterritorial application of the human rights obligations to respect and protect the rights to life and health in the cyber context, which we examine in detail. It is difficult to find anything positive about this horrific global pandemic. However, perhaps it can help draw attention to the criticality of moving forward the international cyber law discourse among states much more quickly than has been the case to date. Many states have been cautious about proffering their interpretation of the applicable law, and to some extent rightfully so, but caution has consequences and can leave us normatively ill-prepared for the next crisis. Some states have condemned the COVID-19-related cyber operations, although seldom on the basis of international law as distinct from political norms of responsible state behavior. Hopefully, they will add legal granularity to future statements. But all states, human rights courts, human rights

monitoring bodies, the academy, the private sector and NGOs must take up the challenge presented by this tragic pandemic to move the law governing cyberspace in the right direction.

von Bogdandy, Armin and Pedro Villarreal, '[Critical Features of International Authority in Pandemic Response: The WHO in the COVID-19 Crisis, Human Rights and the Changing World Order](#)' (Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No 2020-18, 2020)

Abstract: During the COVID-19 pandemic, unprecedented national authority seems the motto of the day, and international authority largely irrelevant. By contrast, the article will show that international authority does play a core role in the global response, and that some governments, by failing to see this, may even be facilitating shifts in the multilateral world order. To this end, the article will first present some essentials to grasp the WHO's authority, an embattled instance of global governance. It then analyzes three key contributions to the current pandemic response with the respective controversies: its detailed regulatory framework, its framing of the 2020 health crisis, including its much criticized postponement for a week, and its recommendations on what to do concretely, in particular not to restrict travel which is accused of hindering national governments. The article then moves to two broader questions. The first is how the WHO's positioning in the clash between more democratic and more authoritarian forces, as it emerges in its recommendations on how to square human rights with quarantines. The second issue relates to its positioning in the current competition between China and the West, in particular the US.

von Bogdandy, Armin and Pedro Villarreal, '[International Law on Pandemic Response: A First Stocktaking in Light of the Coronavirus Crisis](#)' (Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2020-07, 2020)

Abstract: The coronavirus (SARS-CoV-2) pandemic is currently raging throughout the world. The ensuing crisis has acquired a multidimensional nature, affecting all levels of society. Measures adopted by domestic authorities have included a broad spectrum of restrictions: from general alerts to mandatory quarantines and isolations of individuals, to blanket travel bans and cordoning-off of cities and, in some cases, countries. Many governments have declared states of emergency, thereby assuming exceptional powers. This dire crisis leads to our core questions:

What are the relevant obligations, powers and procedures under public international law? Have they been complied with? What role, if any, has international law, via its institutions, played so far? The World Health Organization, a specialized agency of the United Nations, is the international institution with a core mandate in issues of global health. Moreover, the International Health Regulations (IHR) is the main legally binding instrument laying down rules for the cross-border spread of disease. Against this backdrop, in order to address the core questions, this paper provides an overview of the IHR in light of current issues and disputes. The paper then evaluates those issues and disputes under other regimes of international law, such as human rights, trade law, peace and security law, and the law of development finance. Lastly, the paper offers conclusions by way of answers to the research questions.

Weidemaier, Mark C and G Mitu Gulati, '[Necessity and the COVID-19 Pandemic](#)' (2020) *Capital Markets Law Journal* (forthcoming)

Abstract: As the global economic downturn from the coronavirus worsens, many sovereign debtors will have to choose between paying creditors and fighting the virus. As of this writing in May 2020, official sector creditors have taken steps to grant relief to the poorest nations, but there is little sign that private creditors will coordinate to voluntarily grant relief. And that raises the likelihood that creditors who do not receive their payments will litigate. Customary international law, through the rarely applied doctrine of 'necessity,' may provide sovereign debtors with some respite. This doctrine allows sovereigns to temporarily delay performance of international obligations when necessary to mitigate a grave and imminent danger to the populace.

International Economic Law

Adebayo, Temilade, '[Post-COVID-19 Investment: Ten Things to Learn about International Investment Law](#)' (SSRN Scholarly Paper ID 3609804, 25 May 2020)

Abstract: International Investment Law exists to guide the business relationship between States globally. Even though there is no one single document that says International Investment Law, Bilateral treaties between States exist to guide this relationship and place it within the bounds of Law. The expression of treaties and conventions relating to international investment have

revealed the objectives of the Law to be to protect foreign investors, grant protection to attract foreign investment, and foster economic development. It therefore becomes imperative to explain in simple terms to private investors what international investment law entails.

Gathii, James T et al, 'International Economic Law in the Global South and COVID-19'

[Link to full text introductory paper on open access](#)

Note: the papers in this symposium will be published in a forthcoming issue of [AfronomicsLaw](#).

Abstract: The COVID-19 pandemic has disrupted all facets of human relations on a magnitude not witnessed in the post-World War II era. Due to the interdependence of countries in the international system, it is not surprising that the unfolding public health crisis has had significant ramifications for the functioning of the global economy as well. In responding to this global health crisis, and the associated fallouts, the academic community has a crucial role to play in finding solutions to the hydra-headed problems we all face.

Driven by this sense of urgency and responsibility, AfronomicsLaw put out a call for contributions in April 2020 for a symposium issue focusing on COVID-19 and International Economic Law in the Global South. This Symposium will last for a full four weeks.

This paper provides a broad summary of the 37 insightful essays accepted for the symposium issue. The essays have been grouped into four major themes: (1) International Trade and International Investment Law and Policy, (2) Intellectual Property, Technology and Agriculture, (3) Sovereign Debt, Finance and Competition Law, and (4) Governance, Rights and Institutions.

Komolafe, Oyin, '[Global Epidemic: Coronavirus, the Law and the Economy](#)' (SSRN Scholarly Paper ID 3603153, 15 April 2020)

Abstract: Following the outbreak of the COVID-19 pandemic in Wuhan, China, the virus spread like wildfire and as a result, the world has been recording daily fatalities in thousands. In a bid to curb the spread of the virus, containment measures have been adopted by several countries, and this has grounded the global economy to a halt. Stock market prices have plunged, global industries have been badly hit, and global integration has not been spared either. This has led to the clamour for the implementation of effective measures to mitigate the current and possible future effects of the coronavirus pandemic on the global economy. As such, this essay shall

attempt a critical examination of the effects of coronavirus on the global economy and establish a linkage between these effects and the position of the law as a tool of mitigation.

International Trade Law

Battistella, Perle, 'Trade Bodies Want SFTR Delay Due to Coronavirus' [2020] *Global Investor* (6 April 2020)

Abstract: Trade bodies the International Securities Lending Association (ISLA) and the International Capital Market Association (ICMA) have urged the European Securities and Markets Authority (ESMA) to delay the Securities Financing Transactions Regulation's (SFTR) go-live date. In an open letter addressed to Steve Maijoor, chair of ESMA on March 16, the firms have asked for a delay of the SFTR go-live date of April 11.

Carreño, Ignacio, '[The Implications of The Covid-19 Pandemic on Trade](#)' *European Journal of Risk Regulation* [2020] 2: Special Issue - 'Taming COVID-19 by Regulation' 1-12 (advance article)

Trujillo, Elizabeth, '[An Introduction to Trade and National Security: New Concepts of National Security in a Time of Economic Uncertainty](#)' (2020) 30 *Duke Journal of Comparative & International Law* 211

Abstract: Within the context of enhanced rhetoric about the need for national security measures to protect domestic economic interests, the Duke Journal of Comparative & International Law hosted a Symposium on National Security and Trade Law in which speakers raised questions as to not only what is meant by national security today, but also the significance of invoking national security exceptions in trade. This Introduction provides an overview of issues discussed as well as some reflections on the use of the national security exception in trade during a time when nations are moving away from international cooperation towards unilateralism and facing global crises such as the COVID-19 pandemic. With the World Trade Organization's recent panel decision, *Russia—Measures Concerning Traffic in Transit*, the international community received some guidance as to the limited use of this exception under GATT Article XXI and the need for good faith by nations invoking it, but larger questions remained as to its applicability in the context of economic insecurity and in the context of broader global challenges such as cybersecurity and climate change. Furthermore, with the

current dysfunction of the Appellate Body of the WTO, there is no central adjudicatory body to address these issues in a systematic fashion, leaving it up to the nations or ad hoc adjudicatory processes to decide, rendering the multilateral trade framework an even more fragmented system. New ways of imagining the role of trade in the context of global and economic crises are needed, as well as more resilient institutional frameworks that can adapt to future forms of insecurity and allow for varied, constructive forms of dialogue among nations.

World Trade Organization, [COVID-19 and World Trade](#)

This site includes news, statements, proposals and the following *WTO reports on COVID-19 and World Trade*:

- [Trade in Medical Goods in the Context of Tackling COVID-19](#)
- [Transparency — why it matters at times of crisis](#)
- [Export prohibitions and restrictions](#)
- [The treatment of medical products in regional trade agreements](#)
- [E-commerce, trade and the COVID-19 pandemic](#)

LABOUR LAW / EMPLOYMENT

Acharya, Suman and Jyoti Koirala, '[Labour Relations In Nepal Amid the Wake of COVID-19 Outbreak](#)' (SSRN Scholarly Paper ID 3609161, 24 May 2020)

Abstract: It has been now no wonder that labours are the propeller of the physical development of the earth in the form of blue collar and white collar labour. It includes all formal, semi-formal and informal sectors. Accordingly, labour law manages and regulates the status of labour in relation with employer, employee and the society. It establishes industrial relation i.e. rights and obligations of workers and employers, working hours, wages, leaves, labour security etc. ILO sets the standard and benchmark through series of conventions, protocols and recommendations on labour matter applicable for the member country across the globe. Along with the impact of COVID -19, many labours across the globe can be dislocated and forced for

layoff. In fact, layoff is not the ultimate answer if we want to revitalize the world economy. The outbreak of pandemic has forced to stop labour movement. It has quite a lot contracted world's economic activities. Even partial and nonpayment of remuneration to labour may further shrink effective demand in market which can be adverse to the whole economic transactions.

Bonacini, Luca, Giovanni Gallo and Sergio Scicchitano, '[All That Glitters Is Not Gold: Effects of Working from Home on Income Inequality at the Time of COVID-19](#)' (SSRN Scholarly Paper ID 3597996, 8 May 2020)

Jurisdiction: Italy

Abstract: The recent global COVID-19 pandemic forced most of governments in developed countries to introduce severe measures limiting people mobility freedom in order to contain the infection spread. Consequently, working from home (WFH) procedures became of great importance for a large part of employees, since they represent the only option to both continue working and keep staying home. Based on influence function regression methods, our paper explores the role of WFH attitude across labour income distribution in Italy. Results show that increasing WFH attitudes of occupations would lead to a rise of wage inequality among Italian employees. The opportunity of WFH tends to benefit male, older and high-paid employees, as well as those living in provinces more affected by the novel coronavirus.

Caldararo, Niccolo Leo, '[The End of Leisure and Retirement, COVID-19: Innovations, Jobs, Pensions, and Keynes: Guaranteed Income or Future Poverty and Redundancy?](#)' (SSRN Scholarly Paper ID 3574285, 12 April 2020)

Abstract: The history of the support by society of the aged is discussed in cross cultural and historical context. Various cultural traditions are compared with the forms developed in complex societies from ancient Egypt and Greece and Rome, to China, the Aztec, Inca and Maya, to those of religious organizations, or those developed under different modern ideological systems like capitalism and communism as well as social democratic nations. It is found that the way a society values the aged and views their contribution to society determines largely their willingness to provide for their support. An increasing number of companies have gone bankrupt in recent years following the 2007 credit crisis and stock market collapse. More have

raided their pension funds to stay afloat or have closed them and transferred liability to the federal Pension Benefit Guaranty Corporation. Major changes to federal law concerning pensions and the responsibility of corporations to fund them has made under the Pension Protection Act of 2006. World wide workers' retirement payments are under assault as are investments by pension funds due to laws governing priority of payment in different countries concerning stock holders vs bondholders and liability for pension funds. The need for retirement of some kind in the post-Covid-19 world will require new forms as well as recovery of pre-Covid-19 savings and investments. Changes in the law are proposed to increase the stability of pensions and reliability to workers of pension payments.

Capelin, Tim et al, 'Practical Guidance for Companies during the COVID-19 Pandemic' (2020) 42(3) *Bulletin (Law Society of South Australia)* 28

Abstract: The COVID-19 pandemic has created unprecedented challenges for businesses, who are dealing with how remain operational while ensuring the safety of their workers, while also complying with industrial law obligations and Government directives in the wake of this public health crisis. This article provides some guidance on the most commonly asked questions with regards to employment law issues.

Coetzer, Neil, 'Are Employers Obligated to Save Jobs?' (2020) 20(4) *Without Prejudice* 8-10
Jurisdiction: South Africa

Abstract: At the time of writing, the extended period of lockdown has just commenced. The COVID-19 pandemic has already had a drastic impact on the operations of businesses and, in most cases, will lead to varying degrees of financial pain for both employers and employees. We are also told that, notwithstanding the extended lockdown of 35 days, the peak of the pandemic will only be reached by September 2020. Combating the virus will clearly require a change to the 'business as usual' approach, reimagining, for the foreseeable future, the way we work and go about our daily lives.

Das Acevedo, Deepa, '[Searching for Silver Linings During COVID-19](#)' (SSRN Scholarly Paper ID 3568750, 4 April 2020)

Jurisdiction: USA

Abstract: This short essay responds to currently circulating suppositions about how COVID-19 will impact—specifically, will improve—working conditions in America once the pandemic has concluded. I argue that these predictions are cautiously optimistic, rationally deduced from ongoing events, and thoroughly unlikely to be realized. As world-transforming as COVID-19 has already proven to be, I show that both governmental and corporate responses to date do not support optimistic assessments as to the pandemic's effects on labor and employment law in the United States. I also respond to various analogies that have been drawn to previous world-transforming events as a way of supporting the idea that the pandemic will change working conditions in America for the better, and I show why either those analogies rely on bad history or are simply faulty in the way they compare previous events to COVID-19. The lesson—because even in these difficult times, papers by academics must have lessons—is as grim as the news about the virus itself: America's problematic labor system is far more resilient than the workers who suffer because of it.

de Flamingh, Jack and Heidi Fairhall, 'Employment Law and WHS: Containing Coronavirus: Workplace Considerations' (2020) (65) *LSJ: Law Society of NSW Journal* 71

Abstract: The very size and nature of a workplace makes it an area of high risk for the spread of COVID-19, with the additional feature that it is subject to a high degree of control by the employer. It is hardly surprising, therefore, that employers around the world have been called upon to play a leading role in containing COVID-19 (World Health Organisation 'Getting your workplace ready for COVID-19').

de Flamingh, Jack and James Connolly, James, 'COVID-19: Employment Law Responds' (2020) 66 *LSJ: Law Society of NSW Journal* 88-90

Abstract: In this article, we explore the Federal Government's response to COVID-19 in the form of the JobKeeper program. Described by Prime Minister Scott Morrison as 'the biggest economic

lifeline in Australia's history', it is a program of fiscal stimulus that, at its core, utilises the employment relationship to assist distressed businesses and its employees.

Hartigan, Chris et al, 'Practical Guidance for Companies during the COVID-19 Pandemic' (2020) 42(3) *Bulletin (Law Society of South Australia)* 28

Abstract: The COVID-19 pandemic has created unprecedented challenges for businesses, who are dealing with how remain operational while ensuring the safety of their workers, while also complying with industrial law obligations and Government directives in the wake of this public health crisis. This article provides some guidance on the most commonly asked questions with regards to employment law issues.

International Labour Organization, [COVID-19 and the World of Work](#)

Note: This site includes news, analysis, publications such as ILO Monitor, policy and technical briefs and country policy responses. See for example:

ILO Monitor: [COVID-19 and the World of Work: Updated Estimates and Analysis](#) (3rd ed, 29 April 2020)

Irvine, Grave and Nadira Deonarain, 'COVID-19 Pandemic and the Employer's Health and Safety Obligations' (2020) 20(3) *Without Prejudice* 11-12

Jurisdiction: South Africa

Abstract: According to the World Health Organisation (WHO), the coronavirus is a "family of viruses that cause illness ranging from the common cold to more severe diseases". The novel strain of the coronavirus (COVID-19) is a unique strain to the coronavirus family. While it is still unclear how COVID-19 originated, or how it was transmitted, what scientists know for sure is that the virus is resistant to antibiotics.

Issue abstract: This special issue intends to provide a systematic and informative overview on the measures set out by lawmakers and/or social partners in a number of countries of the world to address the impact on the Covid-19 emergency on working conditions and business operations. The aim is to understand which labour law norms and institutions and which workplace arrangements are being deployed in the different legal systems to tackle the global health crisis. Another aim is to find whether and to what extent the established body of laws is proving able to cope with the problems raised by the current extraordinary situation or whether, on the contrary, new special regulations are being introduced. The national reports may be subject to updating in case of major changes.

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Lambropoulos, Dr Victoria, 'Coronavirus, Jobkeeper and Stand Down under the Fair Work Act 2009 (CTH): A Review of the Law' (2020) (Special COVID-19 Edition) *Australian Business Law Review* (forthcoming)

Abstract: The Coronavirus (COVID-19) employment law amendments are a peculiar invention arising out of the unprecedented economic times which we are facing as a nation. This article looks at the legislative responses to the Coronavirus pandemic in the area of employment law. It sets out the pre-existing law in relation to stand down and redundancy. It then examines it in the light of the recent amendments to the Fair Work Act 2009 (Cth) contained in the new Part 6-4C. A number of the new powers given to employers have been curbed by the requirement that they be exercised reasonably. It is unclear how reasonableness will be interpreted in these

unique times. The article concludes that the amendments were necessary to address the inflexibility of the stand down framework. We now have something that looks like stand down, but is not stand down, as we have known it.

Lord, Phil, '[The Social Perils and Promise of Remote Work](#)' (2020) 4:S *Journal of Behavioral Economics for Policy* (forthcoming)

Abstract: The COVID-19 pandemic has transformed daily life, notably by forcing billions of people to work from home. As restrictions related to the pandemic are eased, companies are reconsidering their real estate footprint and contemplating a long-term move to remote work. This paper takes an in-depth look at this move. It argues that remote work is, like other consequences and aspects of the pandemic, deeply rooted in broader social issues. The move to remote work has the potential to alleviate historic inequities which arise from the demands of the modern workplace – demands which have led women to occupy lower-paying positions. It also argues that the move to remote work can contribute to the increasing precarity of work, by shifting the cost of workspace from employers to employees. It suggests governmental solutions, rooted in law and behavioural economics, which could maximise its potential and protect workers from its perils.

Lord, Phil, '[Incentivising Employment during the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3573176, 16 April 2020)

Jurisdictions: Canada and USA

Abstract: This paper considers government responses to unemployment caused by the COVID-19 pandemic. It analyses the two main legislative responses adopted by North American governments: a broadening of access to (un)employment insurance (EI) and the adoption of payroll subsidies for companies. It comparatively and critically assesses these two solutions, to eventually propose an alternative plan. Under this plan, access to EI would be broadened to cover those not traditionally covered by it, such as self-employed workers, contract workers, and those caring for a family member sick from COVID-19 or for a child who is at home due to school and day-care closures. Unemployed workers who have traditionally paid into the EI system would be rewarded through a tax credit. To avoid incentivising temporary layoffs, a

payroll subsidy would be adopted. The subsidy would make it as attractive to keep workers on payroll as to lay them off so they can benefit from EI. It would also provide a more faithful picture of unemployment rates during the crisis. The plan would also address broader concerns regarding the unsustainability of public spending during the crisis by limiting access to both temporary layoffs and the payroll subsidy. Large and profitable companies, as well as companies with high revenue or cash reserves, would not be able to temporarily lay their employees off during the crisis or benefit from the subsidy. For companies that face liquidity issues yet are not eligible for the subsidy, short-term, interest-bearing emergency loans would be available.

Lord, Phil and Lydia Saad, '[Tackling the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3554436, 8 April 2020)

Abstract: The recent coronavirus outbreak provides a fit backdrop for us to assess our preparedness for and reaction to this and future outbreaks. This article considers the role of non-state actors in global health crises. While much attention has been afforded to the role of the state in preventing and managing these crises, the recent coronavirus outbreak reminds us that the effectiveness of the state's response to (the economic consequences of) global health crises is largely dependent on the good faith and implicit obligations of the private sector. In a capitalistic society and in the absence of specific legal obligations, companies have no obligation to keep their workers on payroll during an economic slowdown or use government stimulus funds to actually benefit those governments hope to target. We argue that relying on private actors to take measures which they have no obligation to take and are disincentivised to take is neither responsible nor sustainable. It causes private actors to shoulder a disproportionately low portion of the burden of a crisis, leaving governments to, in the unique circumstances of a prolonged global health crisis, spend public funds at an unsustainable rate. We further argue that the current framework, aimed at helping unemployed workers, provides perverse incentives and encourages companies to lay off their workers. Absent changes to this framework, our response to global health crises is bound to be inadequate.

Lotito, Michael J, James Paretti and Littler Mendelson, 'New Federal Coronavirus (Covid-19) Laws: A Summary of the New Laws Impacting Your Franchise during the Coronavirus Pandemic' (2020) 52(4) *Franchising World* 16–19

Jurisdiction: USA

Abstract: The article discusses New Federal Coronavirus Laws. Topics include The FFCRA creates two limited-duration programs for providing workers impacted by the coronavirus with paid sick leave and paid 'family' leave under the federal Family and Medical Leave Act (FMLA); and the CARES Act provides additional economic support for individuals and businesses to maintain operations, retain workers and increase unemployment benefits under state-administered unemployment compensation systems.

Mulligan, Tanya and Neil Coetzer, 'Incapacitated by the Lockdown: Exploring the Possibility of Temporary Legal Incapacity' (2020) 20(4) *Without Prejudice* 10-11

Jurisdiction: South Africa

Abstract: The National Lockdown imposed by government in terms of the Disaster Management Act has prompted considerable debate about its effects on the treatment and payment of employees during this period. The Regulations and Directives issued in terms of the Act have been silent on the issue, while statements by the Department of Employment & Labour, in particular, have served only to confuse things further.

Olivier, Johan, Andries Kruger and Shane Johnson, 'Avoiding Potential Retrenchments Flowing From COVID-19' (2020) 20(4) *Without Prejudice* 6-8

Jurisdiction: South Africa

Abstract: The nationwide lockdown imposed across South Africa, due to the COVID-19 pandemic, has led many employers to consider the financial sustainability of their business. Employers who are not able to operate during this time are particularly affected.

'Poland: Coronavirus: Impacts on Employment in Poland' [2020] *Lawyer (Online Edition)* 1

Abstract: The article offers information on Crisis Act enacted by Poland for addressing the impact of coronavirus on employment. It mentions that an order to work from home can be given in any form, also verbally, however, employers should confirm such order to work from home in writing or in an official email or, in the absence of other possibilities, even by a text message.

Sheehan, Brian, "'Legislating in Times of Crisis": the UK's Job Retention Scheme' [2020] 13 *Industrial Relations News* 22-23

Abstract: Highlights comments made by two UK employment law specialists on the "unprecedented" economic supports announced by the UK Chancellor of the Exchequer Rishi Sunak in response to the coronavirus outbreak. Argues that the UK's Job Retention Scheme exposes the inadequacy of the existing UK labour law framework concerning urgent measures that such a nationwide emergency requires.

Srinivasan, Vinithra and Varun Srinivasan, '[Employment Issues During COVID-19 Crisis: An Analysis of the MHA's Order](#)' (SSRN Scholarly Paper ID 3595983, 5 May 2020)

Jurisdiction: India

Abstract: The COVID-19 crisis, declared as a pandemic by the Director General of WHO on 11.03.2020, in addition to having a significant and highly disastrous impact on the lives of people world over, has had and will continue to have an apparent and heavy influence on all industries, globally. Even in the most automated industries, people are at the fulcrum and so when contemplating cost-cutting, to stay afloat on such troubled waters, companies find it an inevitable step to cut down on their manpower, either in the form of job cuts or more prevalently, salary / wage reductions. However, at the same time, there is also a necessity to ensure protection for these personnel during these tough times while also equally safeguarding and balancing the interests of both the company and the employees. In this context, the Indian Government has taken the initiative through the recent Ministry of Home Affairs ('MHA') Order dated 29.03.2020, among other notifications/guidelines issued by other departments, stating that employers are required to pay full wages to all workers, the non-compliance of which

would attract penal consequences. The said order has been recently challenged before the Supreme Court, in which matter the Trade Unions have also sought to be impleaded, and which Order has also been challenged by another petition as well; however, the Supreme Court for the interim has not provided any stay and has sought for the Government's response on the said Order. In the meanwhile, the Central Government has extended the lockdown till the 17th of May, 2020, continuing the effect of the Order dated 29.03.2020. Further, penal consequences are also being enforced against employers for non-compliance of the said Order. Therefore, considering the fact that the Supreme Court has not granted stay over the said Order, this article seeks to analyse the Order's impact in the context of the prevailing labour laws in India, while also considering whether the Order can be said to be all encompassing in its application, without delving into the grounds such as arbitrariness, unreasonableness, amongst others, which have been raised in the Petitions.

Ud Din, Nizam et al, '[COVID-19 Crisis Shifts the Career Paradigm of Women and Maligns the Labour Market: A Gender Lens](#)' (SSRN Scholarly Paper ID 3589448, 5 April 2020)

Abstract: This study attempt to examine the effect of the COVID-19 on women participation in the labor market. We have used the ILO and World bank data to determine how the recession affect women employment in a different region? And how current pandemic (COVID-19) affect women employment? The result shows that lower-middle-income, middle income and upper-middle-income group effect from any upcoming recession. Moreover, the labour market in the lower-income countries is already severe, and the current pandemic could further widen the gender gap. Among all women are associated with informal employment in any sector, tourism, food, and small enterprise would be suffered the most.

LEGAL EDUCATION

Cunningham, Lawrence A, '[Adapting to Remote Law Practice through the Pandemic: Essays from the GWNY 2020 Business Lawyering Class](#)' (GWU Legal Studies Research Paper No 2020-22, 2020)

Jurisdiction: USA

Abstract: The coronavirus pandemic requires law schools to train students in the new art of remote legal services, to anticipate how this will change the practice of law and what it means to be 'practice ready.' The accompanying essays, by students caught in the middle of the epidemic during an immersive training program, offer reflections and visions. Written by students at the end of their spring 2020 semester in George Washington University's New York City (GWNY) business law program, the students explore how they must adapt their competencies accordingly.

Dutton, Yvonne and Seema Mohapatra, '[COVID-19 and Law Teaching: Guidance on Developing an Asynchronous Online Course for Law Students](#)' (2021) *St. Louis University Law Journal* (forthcoming)

Abstract: Most law schools suspended their live classroom teaching in March 2020 due to the COVID-19 pandemic and quickly transitioned to online programming. Although professors can be commended for rapidly adapting to an emergency situation, some commentators have nevertheless suggested that the emergency online product delivered to students was substandard. Based on our own experiences in designing and delivering online courses, we caution against embracing a broad-reaching, negative conclusion about the efficacy of online education. Indeed, much of this emergency online programming would be more properly defined as 'emergency remote teaching,' as opposed to 'online education.' Delivering online education to students involves more than giving the same classroom lecture on Zoom. Online education requires professors to design their courses to be delivered at a distance, with the goal being to create a course driven by pedagogy using technological tools to inform and enhance the learning experience. COVID-19 is going to be with us for the foreseeable future, and because some schools might be unable to bring all of their students back into the classroom in the fall, we urge faculty to prepare to deliver their courses online. Law schools and faculty should not wait for another emergency and should prepare to deliver at least some of their courses online

in the fall. To aid with this transition, this Article offers some guidance on how to develop and implement an effective asynchronous distance-learning course for law students.

Ebner, Noam, [“Next Week, You Will Teach Your Courses Online”: A Reassuring Introduction to Pandemic Pedagogy](#) (SSRN Scholarly Paper ID 3552124, 10 March 2020)

Abstract: Many institutions of higher education in the US and around the world have responded to the 2020 coronavirus pandemic by closing down campus operations and moving all teaching activity online. This essay aims to provide a helpful, demystifying and comforting first read for faculty who have just received online transition orders from their institution.

Ebner, Noam and Sharon Press, [‘Pandemic Pedagogy II: Conducting Simulations and Role Plays in Online, Video-Based, Synchronous Courses’](#) (SSRN Scholarly Paper ID 3557303, 19 March 2020)

Abstract: The goal of this paper is to continue to support teachers as they transition their classroom-based courses to an online, synchronous, video-based format in response to recent campus closures resulting from the coronavirus pandemic of 2020, which has rendered classroom gatherings unsafe. Written with teachers in the fields of negotiation, mediation, conflict management and dispute resolution in mind, this paper addresses these fields’ central teaching tool: conducting simulations and role plays. However, the paper will also be helpful for teachers in fields such as business, nursing, law, social work, education and others, who also utilize simulations as a teaching tool. While our focus is on negotiation and mediation simulations, our suggestions should remain valid across many simulated processes, such as patient interviewing, client counseling, coaching, student advising, etc. We will note minor tweaks required for simulating other conflict resolution processes; teachers in other fields can consider how they might tweak our guidance to support simulations in other areas.

Ghori, Umair, [‘Readapting Assessments in Response to COVID-19: Bond Law Perspective’](#) *Bond University Centre for Professional Legal Education* (Blog Post, 14 April 2020) [2020]

Abstract: There was a time when we as academics used to love debating about online exams, its nuances, pros and cons...and then like all academics we went back to our favourite pastime:

answering emails! And, of course, marking research essays and conducting our own research. The thought that we will ever depart from our comfortably set routine of traditional end-of-semester exams was limited to seminars and staff meetings... and then a one-in-a-hundred-year event jolted us into action. What was once an interesting option suddenly became the only viable way forward.

McGee, Robert W, '[Does Closing a University Because of the Corona Virus Constitute Negligence or a Breach of Fiduciary Duty?](#)' (SSRN Scholarly Paper ID 3590805, 1 May 2020)

Jurisdiction: USA

Abstract: This paper reviews the current Corona virus situation, then examines the legal definitions of negligence and fiduciary duty in an attempt to determine whether closing a university because of health concerns over the Corona virus might result in legal liability for the university's board members and relevant university administrators.

McPeak, Agnieszka, '[Asynchronous Online Law School Teaching: A Few Observations](#)' (SSRN Scholarly Paper ID 3553094, 12 March 2020)

Abstract: This short paper discusses my experiences designing asynchronous online law school courses. It is meant to serve as a quick resource for professors moving classes online to deal with Covid-19 live class cancellations.

Oranburg, Seth, '[Distance Education in the Time of Coronavirus: Quick and Easy Strategies for Professors](#)' (Duquesne University School of Law Research Paper No 2020-02, 2020)

Abstract: A worldwide pandemic is forcing schools to close their doors. Yet the need to teach students remains. How can faculty – especially those who are not trained in technology-mediated teaching – maintain educational continuity? This Essay provides some suggestions and relatively quick and easy strategies for distance education in this time of coronavirus. While it is written from the perspective of teaching law school, it can be applied to teaching other humanities such as philosophy, literature, religion, political theory, and other subjects that do not easily lend themselves to charts, graphs, figures, and diagrams. This Essay includes an

introductory technology section for those techno-phobic faculty who are now being required to teach online, and it concludes with five straightforward steps to start teaching online quickly.

Oranburg, Seth and David Tamasy, '[Corporations Hybrid: A COVID Case Study on Innovation in Business Law Pedagogy](#)' (Duquesne University School of Law Research Paper No 2020-03, 2020)

Abstract: This essay, written by a law professor and a student teaching assistant, shares suggestions intended to increase student engagement and improve learning outcomes by creating and using digital teaching assets effectively. The essay briefly summarizes the literature on traditional and online law school pedagogy and then explains the Hybrid Corporation class we taught during the Spring 2020 COVID-19 emergency. We report on what worked well in our real-world classroom environment and what worked when we had to shift totally to an online delivery format. We found that good videos are critical, and we explain why and how we created what the students found to be effective instructional videos. We also explain how to juxtapose videos and other passive learning content with active digital teaching assets such as quizzes, essay tests, reflective journals, and discussion boards, all intended to enhance student learning and engage students in our virtual classroom. Following the essay we have appended a case brief template to serve as a resource for law teachers who want to use the case law method online and for students who want a more structured approach to reading cases.

Ryznar, Margaret, '[What Works in Online Teaching](#)' (2021) *St Louis University Law Journal* (forthcoming)

Abstract: This Article offers lessons from an empirical study of an Online Trusts & Estates course. More than 280 law students were surveyed over three semesters on what works well for them and what does not in this online course. Their top three answers in each category serve as guidance for faculty creating online courses.

Extract (page 3): It is important to note that this Online Trusts & Estates course is fully asynchronous and was built over time. In an asynchronous course, teaching and learning is done through an online learning management system (in this case, Canvas), with lessons organized by modules containing prerecorded lectures by the professor, readings, supplemental videos, and student assessment activities that often receive faculty feedback. This differs from synchronous courses done live but online through video conferencing, such as Zoom, which most faculty

adopted during the COVID-19 pandemic because they were confronted with an emergency and lacked the time to build a course in advance. Nonetheless, many of the lessons for asynchronous courses presented in this Article hold true for synchronous courses as well.

Zentner, Aeron, '[Assessing the Impact of the CARES Act on Online Students: A Case Study of Two-Year Public College](#)' (SSRN Scholarly Paper ID 3591519, 2 May 2020)

Jurisdiction: USA

Abstract: The COVID-19 pandemic has made a major impact on higher education and affected students' livelihoods and attainment of education. To help students during these challenging times the Federal CARES Act was established to provide financial relief and support students in their time of need, However, not all students are eligible to participate and these limitations have impacted funding to specific institutions. The following research study examined the implications of the CARES Act for higher education by assessing the current factors associated with the national funding model. Additionally, three additional models were created to estimate the FTE impact and approximated the financial implications of the Act in relation to the unserved or excluded populations. A survey was conducted to understand current student essential needs and the implications of COVID-19 on their livelihoods. The survey was reverse engineered to understand enrollment patterns to determine the proportionality of needs based on the enrollment patterns.

Note: this article is not about law schools, but tertiary education more generally.

LEGAL PROFESSION / LEGAL PRACTICE

Angelos, Claudia et al, '[Diploma Privilege and the Constitution](#)' (2020) 73 *SMU Law Review Forum* 168

Jurisdiction: USA

Abstract: The COVID-19 pandemic and resulting shutdowns are affecting every aspect of society. The legal profession and the justice system have been profoundly disrupted at precisely the time when there is an unprecedented need for legal services to deal with a host of legal issues generated by the pandemic, including disaster relief, health law, insurance, labor law, criminal justice, domestic violence, and civil rights. The need for lawyers to address these issues is great

but the prospect of licensing new lawyers is challenging due to the serious health consequences of administering the bar examination during the pandemic. State Supreme Courts are actively considering alternative paths to licensure. One such alternative is the diploma privilege, a path to licensure currently used only in Wisconsin. Wisconsin's privilege, limited to graduates of its two in-state schools, has triggered constitutional challenges never fully resolved by the lower courts. As states consider emergency diploma privileges to address the pandemic, they will face these unresolved constitutional issues. This Article explores those constitutional challenges and concludes that a diploma privilege limited to graduates of in-state schools raises serious Dormant Commerce Clause questions that will require the state to tie the privilege to the particular competencies in-state students develop and avenues they have to demonstrate those competencies to the state's practicing bar over three years. Meeting that standard will be particularly difficult if a state adopts an in-state privilege on an emergency basis. States should consider other options, including privileges that do not prefer in-state schools. The analysis is important both for states considering emergency measures and for those that might restructure their licensing after the pandemic.

Angelos, Claudia et al, '[The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action](#)' (Ohio State Public Law Working Paper No 537, 2020)

Jurisdiction: USA

Abstract: The novel coronavirus COVID-19 has profoundly disrupted life in the United States. Among other challenges, jurisdictions are unlikely to be able to administer the July 2020 bar exam in the usual manner. It is essential, however, to continue licensing new lawyers. Those lawyers are necessary to meet current needs in the legal system. Equally important, the demand for legal services will skyrocket during and after this pandemic. We cannot close doors to the profession at a time when client demand will reach an all-time high.

In this brief policy paper, we outline six licensing options for jurisdictions to consider for the Class of 2020. Circumstances will vary from jurisdiction to jurisdiction, but we hope that these options will help courts and regulators make this complex decision. These are unprecedented times: We must work together to ensure we do not leave the talented members of Class of 2020 on the sidelines when we need every qualified professional on the field to keep our justice system moving.

Ariens, Michael S, [‘The NCBE’s Wrong-Headed Response to the COVID-19 Pandemic’](#) (SSRN Scholarly Paper ID 3587751, 28 April 2020)

Jurisdiction: USA

Abstract: The NCBE [National Conference of Bar Examiners] issued a White Paper in early April 2020 attacking proposals to admit 2020 graduates of law schools through a diploma privilege with some additional requirement of supervised practice hours. Its justifications are both self-serving and inconsistent. In an unprecedented time, the NCBE chose to protect its monopoly position in providing bar examination products rather than the 2020 bar applicants upended by the COVID-19 pandemic. Its claim to protect the public from the licensing of ‘incompetent’ bar applicants rings hollow. Because the legal profession is wedded to the status quo in licensing of new lawyers, the NCBE will likely survive the threat to its existence delivered by the pandemic. But its claims should not go unanswered.

Note: the White Paper referred to in this article is [NCBE, Bar Admissions During the COVID-19 Pandemic: Evaluating Options for the Class of 2020](#) (9 April 2020)

Olson, Ashley, [‘Advising Clients in Times of Crisis: How Servant Leadership Can Deepen Client Relationships and Add Value During the Pandemic and Beyond’](#) (SSRN Scholarly Paper ID 3609971, 10 May 2020)

Abstract: This paper analyzes servant leadership demonstrated by the Twin Cities hospitality industry during the COVID-19 pandemic, and what lessons this industry can teach attorneys who are advising clients during this public health crisis. In response to government-mandated shut-downs, many local businesses are pivoting their business models to serve community needs. Despite being one of the hardest-hit industries by the pandemic, they are demonstrating servant leadership by prioritizing service to others and being good stewards of resources. Lawyers can learn from the leadership modeled by this business community by engaging their clients on issues that go beyond the law. Lawyers continue to limit their advising to just the legal issues their clients face, and this approach to the lawyer-client relationship deprives the client of the full value the lawyer can provide. By adopting the servant leadership model, attorneys can focus their efforts on helping the client grow and succeed during the pandemic and beyond. Lawyers

should pay attention to the servant leadership being demonstrated by the hospitality industry because it shows that clients are concerned about more than just the bottom line and complying with the law. Attorneys should be engaging with clients to learn about their values and objectives to help the client make the most informed decision that best protects their interests. This article explores the ways in which local businesses are demonstrating servant leadership and how attorneys can use servant leadership to strengthen client relationships and provide added value to clients.

Simmons, Richard, 'Coronavirus: Full Details of the Law Firms Affected so Far' [2020] *Lawyer (Online Edition)* 1

Jurisdiction: UK

Abstract: The article provides an overview of the impact of coronavirus on law firms. Topics discussed include Simmons & Simmons delays partner distributions; the Inns of Court announce an emergency hardship fund to assist barristers who need urgent help amid the coronavirus crisis; and Mayer Brown launches an emergency service in order to support staff with problems working from home.

Tabchouri, Elias, 'What COVID-19 Could Mean for the Legal Industry' (2020) 42(3) *Bulletin (Law Society of South Australia)* 29

Abstract: As a lawyer accustomed to spending every working day in court I sit contemplating what the future holds for the legal industry. What is not in dispute is that the legal industry is an essential service and therefore must continue. The way it will proceed is the real question that many of us are still coming to terms with.

MARITIME LAW

Power, Vincent, '[COVID-19 / Coronavirus and European Union Shipping Law: An Interim Analysis](#)' (2020)
26 *Journal of International Maritime Law* 14–31

Abstract: This article seeks to assess how the European Union has responded so far to the COVID-19/ Coronavirus Crisis in terms of various aspects of EU shipping law. It begins with a short overview of the general EU response to the crisis so as to set the context and then considers the various issues thematically including issues of health, repatriation, state aid, passenger rights, restrictions on travel and movement, the shipment of waste and port charges.

PRIVACY & DATA PROTECTION

Becker, Regina et al, '[COVID-19 Research: Navigating the European General Data Protection Regulation](#)' (SSRN Scholarly Paper ID 3593579, 5 May 2020)

Abstract: Researchers must collaborate globally in order to rapidly respond to the COVID-19 pandemic. In Europe, the General Data Protection Regulation (GDPR) regulates the processing of personal data, including health data of value to researchers. Even during a pandemic, research still requires 1) a legal basis for the processing, 2) an additional justification for the processing of sensitive data and 3) a basis for any transfer outside Europe. The GDPR does provide legal grounds and derogations that can support research addressing a pandemic, if these measures are proportionate to the aim pursued and accompanied by suitable safeguards. During a pandemic, a public interest basis may be more promising for research than a consent basis, given the high standards set out in the GDPR. However, the GDPR leaves many aspects of the public interest basis to determination by individual Member States, who have not fully or uniformly made use of all options. The consequence is an inconsistent legal patchwork displaying insufficient clarity and impeding joint approaches. The COVID-19 experience provides lessons for national legislatures. Responsiveness to pandemics requires clear and harmonized laws, which consider the related practical challenges and support collaborative global research in the public interest.

Bennett Moses, Lyria et al, '[COVIDSafe App - Submission to the Parliamentary Joint Committee on Human Rights](#)' (SSRN Scholarly Paper ID 3595109, 7 May 2020)

Abstract: This submission to the Parliamentary Joint Committee on Human Rights sets out how the Australian government's scheme around the COVIDSafe app can better align with the human right to privacy. We recognise the app pursues a legitimate objective and that the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Public Health Contact Information) Determination 2020 (Cth) and exposure draft of Privacy Amendment (Public Health Contact Information) Bill 2020 provide important protections. Nevertheless, we make a series of recommendations that would improve the transparency of the scheme and better protect the privacy of those downloading and using the app.

Finnegan, Matthew, 'Zoom Hit by Investor Lawsuit as Security, Privacy Concerns Mount' [2020] *Computerworld (Online)* 4

Abstract: The article discusses video conferencing app Zoom. Topics include the challenges facing Zoom continue to mount, as the company now faces an investor lawsuit and more organizations ban the use of the video meeting app due to privacy and security concerns; company also upped efforts to improve its security and privacy practices by hiring Facebook's former CSO as a consultant; and Zoom seen a surge in use as self isolation in response to the pandemic ramps up the demand for video software.

Ghose, Anindya and D Daniel Sokol, '[Unlocking Platform Technology to Combat Health Pandemics](#)' (*Yale Journal on Regulation* (Online 18 March 2020))

Abstract: Effective use of data from digital platforms and related technological ecosystems could be key to mitigating the spread of the COVID-19 pandemic. Data from smartphones, GPS, and wearable fitness trackers can combine with sophisticated algorithms to trace networks of contact with COVID-19 patients. This practice has already been used to successfully slow the spread of the pandemic in Korea and Taiwan warrants immediate, broader consideration. Regarding consumer concerns about data privacy, given the unusual and dire circumstances, government authorities need a set of consent exceptions that allows non-health data to be

harnessed for the public health. A swift, thoughtful collaboration between the technology sector and the government could result in regulatory policy changes that have proven potential to save lives.

Goodyear, Michael, '[The Dark Side of Videoconferencing: The Privacy Tribulations of Zoom and the Fragmented State of U.S. Data Privacy Law](#)' (2020) 10(3) *Houston Law Review* 76-89

Abstract: COVID-19 has forced the world to increasingly rely on online services to continue daily life. Chief among these, for school, business, and fun, are videoconferencing services. Zoom has led the way, being used by millions, yet it has come to light that Zoom's data privacy practices are far from ideal. The tracking of users and the sale of personal data has enormous consequences for users' data privacy. Yet U.S. law provides poor protections for such risky behavior. U.S. data privacy law is fragmented on both the federal and state level, with federal law focusing on industry-specific protections and states each going their own ways. While this splintered framework does provide some protection for Americans against poor data privacy practices by Zoom and others, it is an unequal framework that provides different protections to different groups of Americans. Instead, Zoom's privacy tribulations should be a call for Congress to follow the precedent of Europe and enact comprehensive data privacy legislation to equally protect Americans at the federal level from the improper use and sale of consumers' data privacy.

Greenleaf, Graham and Katharine Kemp, '[Australia's 'COVIDSafe App': An Experiment in Surveillance, Trust and Law](#)' (University of New South Wales Law Research Series 999, 2020)

Abstract: The joint Australian governments' coronavirus contact tracing app, marketed as 'COVIDSafe', was released on 26 April 2020 for public download by the federal government, together with an emergency Determination under the Biosecurity Act to govern its operation, a Privacy Impact Assessment (PIA) with the Health Department's response to that PIA, and (not least) the App itself and its privacy policy.

It is a package intended to create sufficient public confidence to result in downloads of the app by a sufficient percentage of the Australian mobile-phone-owning population, for it to have a significant effect on the tracing of persons infected with the COVID19 virus. In the first few days

since its launch nearly 3 million Australian's have downloaded the app.

When Parliament resumes, probably on May 12, it is expected that the government will introduce legislation to replace the non-disallowable Determination. This article analyses the steps that Australian governments need to take if public trust is to be justified, and aims to make a constructive contribution to the development of better legislation and greater transparency.

We conclude that the conditions necessary to justify sufficient public trust in government for the Australian public to opt in voluntarily to the installation and use of the COVIDSafe app, and to not opt out, are lacking. Many of the main deficiencies we identify in this article are remediable: five deficiencies in transparency; and nine categories of improvements to the current Determination by the proposed COVIDSafe Act. However, the question of whether an individual Australian would be well advised to install and run the app remains a decision which depends on individual circumstances.

Note: The Act referred to in this article, the [Privacy Amendment \(Public Health Contact Information\) Act 2020](#) (Cth) ('the COVIDSafe Act') was assented to on 15 May 2020.

Greenleaf, Graham and Katharine Kemp, '[Australia's COVIDSafe Experiment, Phase III: Legislation for Trust in Contact Tracing](#)' (University of New South Wales Law Research Series, 2020)

Abstract: The joint Australian governments' coronavirus contact tracing app, marketed as 'COVIDSafe', was released on 26 April 2020 for public download by the federal government, together with an emergency Determination under the Biosecurity Act to govern its operation. In a brief federal Parliamentary sitting from 12-14 May, the Parliament enacted the Privacy Amendment (Public Health Contact Information) Act 2020 (Cth) ('the COVIDSafe Act') on 14 May 2020.

The COVIDSafe app is more toward the centralised than decentralised end of the spectrum in the design of such apps, but its use is voluntary, and the government claims that will continue to be the case.

The Act aims to create sufficient public confidence in the privacy protections surrounding the COVIDSafe app to result in downloads and use by a sufficient percentage of the Australian mobile-phone-owning population, for it to have a significant effect on the tracing of persons

infected with the COVID19 virus. In the first two and a half weeks since its launch over 5.5 million Australian's have downloaded the app, about 25% of those possible, and 20% of the population. Public trust must become more widespread, before success in uptake is likely to follow.

Now that the Bill has been enacted, the purpose of this article is to provide a reasonably comprehensive explanation of the provisions of the COVIDSafe Act and important aspects of their Australian context. Significant deficiencies in both the extent of transparency around the introduction of the COVIDSafe app, and the privacy-protective provisions of the Act, are identified and improvements suggested. These extensive suggestions are made because debate over the app and the Act is not over, and opportunities to obtain improvements may arise, particularly through the operation of the two Parliamentary committees examining Australia's COVID-19 response, and the human rights implications of the Act.

Many other countries are developing contact tracing apps. Australia's experiment is further advanced than most that are attempting to build a system based on voluntary uptake, protected by legislation. The results of its experiment will be of interest to many.

Hardy, Jodi, 'COVID-19 Tracing and Personal Privacy' (2020) 20(4) *Without Prejudice* 52-53

Jurisdiction: South Africa

Abstract: The National Department of Health has instituted a COVID-19 tracing database to help trace people who might have come into contact with a Person of Interest – one who has (or might have) contracted COVID-19. The move will affect all providers of electronic communication services.

Huang, Jie (Jeanne), '[COVID-19 and Applicable Law to Transnational Personal Data: Trends and Dynamics](#)' (Sydney Law School Research Paper No 20/23, 2020)

Abstract: The recent COVID-19 outbreak has pushed the tension of protecting personal data in a transnational context to an apex. Using a real case where the personal data of an international traveller was illegally released by Chinese media, the paper identifies that three trends have emerged at the each stage of conflict-of-laws analysis for *lex causae*: (1) the EU, the US, and China characterize the right to personal data differently, (2) the spread-out unilateral applicable

law approach comes from the fact that all three jurisdictions either consider the law for personal data protection as a mandatory law or adopt connecting factors leading to the law of the forum, and (3) the EU and China strongly advocate de-Americanisation of substantive data protection laws. The trends and their dynamics provide valuable implications for developing the choice of laws for transnational personal data. First, this finding informs parties that jurisdiction is a predominant issue in data breach cases because courts and regulators would apply the forum law. Second, currently there is no international treaty or model law on choice-of-law issues for transnational personal data. International harmonization efforts will be a long and difficult journey considering how the trends demonstrate not only the states' irreconcilable interests, but also how states may consider these interests as their fundamental values that they do not want to trade off. Therefore, for states and international organisations, a feasible priority is to achieve regional coordination or interoperation among states with similar values on personal data protection.

Lucivero, Federica et al, '[Covid-19 and Contact Tracing Apps: Technological Fix or Social Experiment?](#)' (SSRN Scholarly Paper ID 3590788, 10 April 2020)

Abstract: Mobile applications are increasingly regarded as important tools for an integrated strategy of post-lockdown policy response around the globe. This paper explores how the use of smartphone applications for digital contact tracing is currently being framed by media, experts and policy-makers and discusses a number of questions raised by the debate on digital surveillance at the time of Covid-19: How can personal data be adequately collected and protected? Who should access data? What is a legitimate role for Big Tech companies in the development and implementation of these systems? How is the cultural and moral context taken into account in the design of these apps? Should use of these apps be compulsory? What does transparency and ethical oversight mean in this context? As we show that responses to these questions are complex and uncertain, we argue that rather than technological fixes to the current emergency these apps should be introduced in society as societal experimental trials whose effectiveness and consequences need to be closely and independently monitored the same level of precaution and safeguards that social experimentation require.

Marks, Mason, '[Emergent Medical Data: Health Information Inferred by Artificial Intelligence](#)' (2021)
U.C. Irvine Law Review (forthcoming)

Abstract: Artificial intelligence can infer health data from people's behavior even when their behavior has no apparent connection to their health. AI can monitor one's location to track the spread of infectious disease, scrutinize retail purchases to identify pregnant customers, and analyze social media to predict who might attempt suicide. These feats are possible because in modern societies, people continuously interact with internet-enabled software and devices. Smartphones, wearables, and online platforms monitor people's actions and produce digital traces, the electronic remnants of their behavior. In their raw form, digital traces might not be very interesting or useful; one's location, retail purchases, and internet browsing habits are relatively mundane data points. However, AI can enhance their value by transforming them into something more useful—emergent medical data. EMD is health information inferred by artificial intelligence from otherwise trivial digital traces. This Article describes how EMD-based profiling is increasingly promoted as a solution to public health crises such as the COVID-19 pandemic, gun violence, and the opioid crisis. However, there is little evidence to show that EMD-based profiling works. Even worse, it can cause significant harm, and current privacy and data protection laws contain loopholes that allow public and private entities to mine EMD without people's knowledge or consent. After describing the risks and benefits of EMD mining and profiling. The Article proposes six different ways of conceptualizing these practices. It concludes with preliminary recommendations for effective regulation. Potential options include banning or restricting the collection of digital traces, regulating EMD mining algorithms, and restricting how EMD can be used once it is produced.

Mühlhoff, Rainer, '[We Need to Think Data Protection Beyond Privacy: Turbo-Digitalization after COVID-19 and the Biopolitical Shift of Digital Capitalism](#)' (SSRN Scholarly Paper ID 3596506, 30 March 2020)

Abstract: Turbo-Digitization after Covid-19 will advance algorithmic social selection and the biopolitical shift of digital capitalism. In order to mitigate these risks, we must address the social implications of anonymous mass data.

Naudé, Wim, '[Artificial Intelligence Against Covid-19: An Early Review](#)' (SSRN Scholarly Paper ID 3568314, 6 April 2020)

Abstract: Artificial Intelligence (AI) is a potentially powerful tool in the fight against the COVID-19 pandemic. Since the outbreak of the pandemic, there has been a scramble to use AI. This article provides an early, and necessarily selective review, discussing the contribution of AI to the fight against COVID-19, as well as the current constraints on these contributions. Six areas where AI can contribute to the fight against COVID-19 are discussed, namely i) early warnings and alerts, ii) tracking and prediction, iii) data dashboards, iv) diagnosis and prognosis, v) treatments and cures, and vi) social control. It is concluded that AI has not yet been impactful against COVID-19. Its use is hampered by a lack of data, and by too much data. Overcoming these constraints will require a careful balance between data privacy and public health, and rigorous human-AI interaction. It is unlikely that these will be addressed in time to be of much help during the present pandemic. In the meantime, extensive gathering of diagnostic data on who is infectious will be essential to save lives, train AI, and limit economic damages.

Ponce, Aida, '[COVID-19 Contact-Tracing Apps: How to Prevent Privacy from Becoming the Next Victim](#)' (ETUI Research Paper - Policy Brief 5/2020, 2020)

Abstract: Contact-tracing apps to combat the COVID-19 pandemic have increasingly been mentioned as useful tools to accompany and contribute to a return to normality despite the many ethical and legal questions they raise. The pressure exerted by business circles and lobbies to restart and 'save the economy' has been intense. What started as a public health crisis morphed into an economic crisis and we are now faced with a 'trick-or-treat' choice: accept to 'pay the price' and use invasive tracing apps, and by so doing facilitate a gradual reopening of business, or fight for privacy and delay the return to normality.

Sheehan, Brian, 'GDPR Rules "Do Not Hinder" Measures Taken in Covid-19 Fight' (2020) 14 *Industrial Relations News* 23-24

[Full text article available on open access](#)

Abstract: Discusses the European Data Protection Board (EDPB)'s guidelines on the processing of personal data in the context of emergency measures taken by governments and public and private organisations throughout Europe to contain and mitigate COVID-19.

Note: the Statement referred to in this article is the European Data Protection Board, '[Statement on the Processing of Personal Data in the Context of the COVID-19 Outbreak, Adopted on 19 March 2020](#)'.

van Kolschooten, Hannah and A de Ruijter, '[Covid-19 and Privacy in the European Union: A Legal Perspective on Contact Tracing](#)' (Amsterdam Law School Research Paper No. 2020-18, 2020)

Abstract: When disease becomes a threat to security, the balance between the need to fight the disease and obligation to protect the rights of individuals often changes. The current COVID-19 crisis shows that the need for surveillance and contact tracing poses challenges to the right of privacy. We focus on the European Union (EU), which has some of the strongest fundamental rights and data protection regimes, yet requires its member states at the same time to exchange personal data gathered through contact tracing. While public authorities may limit the right to privacy in case of threats to public health, the EU provides little guidance when such limitations are proportionate. To define standards, we analyse existing EU case law regarding national security measures. We conclude that on the proportionality of contact tracing in the EU it is difficult to reconcile public health measures and individual rights, but guidance can be taken from understandings of proportionality in the context of security, particularly in the current COVID-19 emergency.

Watts, David, '[COVIDSafe, Australia's Digital Contact Tracing App: The Legal Issues](#)' (SSRN Scholarly Paper ID 3591622, 2 May 2020)

Abstract: The Australian government has developed a digital contact tracing app, COVIDsafe, accompanied by a temporary legal framework that is designed to support its deployment until a legislative framework is developed. This preliminary analysis argues that the temporary legal

framework does a creditable job in addressing privacy concerns. Despite this, there are a variety of legal risks that remain. These centre on the ability of the courts to issue orders to obtain and inspect the data produced by or through the app; police warrant powers; metadata retention and its availability to local law enforcement agencies; the vulnerability of data to US law enforcement agencies through the US CLOUD Act; inaccurate assurances about proximity restrictions and more general concerns that users' consent to the use of their app data for contact tracing may not be valid. These are issues that must be addressed by government when it develops its permanent legislative framework for COVIDSafe. A failure to do so will erode the community's trust in COVIDSafe and thus undermine its efficacy as a means by which COVID-19 risks can be managed until a vaccine or an effective treatment become available.

REFUGEE & ASYLUM SEEKER / IMMIGRATION LAW

Doebbler, Curtis, Geoffrey A Hoffman and Javier Maldonado, ['The Habeas Petition, And Other Options for Immigrants, in the Federal Courts'](#) in *Federal Immigration in Litigation* (2020, forthcoming) Ch 7

Jurisdiction: USA

Abstract: The petition for a writ of habeas corpus is an important tool in the arsenal of immigration attorneys who seek to fully represent their clients. Going to federal court in an attempt to obtain habeas relief may be the only remaining remedy after all other administrative options have been exhausted. Traditionally, habeas has been used to challenge prolonged detention post-final order of removal, prolonged detention pre-final order, and to challenge unlawful detention, but increasingly it is used to challenge such related issues as unlawful deportations in violation of the statute or regulatory provisions, and/or violations by CBP, USCIS or other agency actions during the expedited removal process under 8 U.S.C. § 1225(b). In response to the Covid-19 pandemic, the federal courts have changed operations to limit the spread of the disease. Also, there have been other significant changes to the operations of USCIS and EOIR, in recent days. The article addresses some of the issues to be considered by the habeas petitioner when going forward in federal court proceedings given the Covid-19 pandemic.

European Union: European Agency for Fundamental Rights, [Fundamental Rights of Refugees, Asylum Applicants and Migrants at the European Borders](#) (27 March 2020)

Council of Europe (CoE) and European Union (EU) Member States have an undeniable sovereign right to control the entry of non-nationals into their territory. While exercising border control, states have a duty to protect the fundamental rights of all people under their jurisdiction, regardless of their nationality and/or legal status. Under EU law, this includes providing access to asylum procedures. In recent weeks, states in Europe have taken measures to protect their borders to address public order, public health, or national security challenges. This note summarises some key safeguards of European law as they apply at the EU's external borders, bearing in mind that relevant CoE instruments apply to all borders.

European Union: European Commission, [Communication from the Commission COVID-19: Guidance on the Implementation of Relevant EU Provisions in the Area of Asylum and Return Procedures and on Resettlement](#) (C(2020) 2516 Final, 16 April 2020)

Abstract: The Guidance illustrates how to ensure continuity of procedures as much as possible while fully ensuring the protection of people's health and fundamental rights in line with the EU Charter of Fundamental Rights. At the same time, it recalls the fundamental principles that must continue to apply, so that access to the asylum procedure continues to the greatest extent possible during the COVID-19 pandemic. In particular, all applications for international protection must be registered and processed, even if with certain delays. Emergency and essential treatment of illness, including for COVID-19, must be ensured.

Global Protection Cluster (GPC), [COVID-19 Pandemic: Trafficking in Persons \(TIP\) Considerations in Internal Displacement Contexts](#) (March 2020)

Abstract: This guidance on TIP considerations during the COVID-19 pandemic is intended as a quick reference tool to support colleagues in the field working directly with internally displaced persons (IDPs) and/or engaged in protection advocacy. It has been developed in response to requests for further guidance on how the evolving COVID-19 pandemic may disproportionately impact internally displaced trafficked persons and people at risk of trafficking. It should be read

in conjunction with the Global Protection Cluster COVID-19 guidance and anti-trafficking response guidance.

Makhlouf, Medha D and Jasmine Sandhu, '[Immigrants and Interdependence: How the COVID-19 Pandemic Exposes the Folly of the New Public Charge Rule](#)' (SSRN Scholarly Paper ID 3597791, 2 May 2020)

Abstract: On February 24, 2020, just as the Trump administration began taking significant action to prepare for an outbreak of COVID-19 in the United States, it also began implementing its new public charge rule. Public charge is an immigration law that restricts the admission of certain noncitizens based on the likelihood that they will become dependent on the government for support. The major effect of the new rule is to chill noncitizens from enrolling in public benefits, including Medicaid, out of fear of negative immigration consequences. These chilling effects have persisted during the pandemic. When noncitizens are afraid to (1) seek treatment or testing for COVID-19 or (2) access public benefits in order to comply with stay-at-home guidance, it impedes efforts to slow the spread of COVID-19, contributing to the strain on the health care system. This Essay describes how the pandemic has exposed the folly of the public charge rule: Discouraging noncitizens from accessing public benefits to support their health and well-being is and always has been unwise from a public health perspective. The pandemic merely magnifies the negative consequences of this policy. This Essay contributes to scholarly conversations about how immigration law and policy have framed the United States' response to the COVID-19 pandemic. Specifically, it provides an in-depth analysis of the negative public health consequences of the new public charge rule during the pandemic.

Sadler-Venis, Jennifer, 'COVID-19: Emergency Travel Bans Raise Immigration Concerns' [2020] (Apr/May) *IBA Global Insight* 9

[Link to full text article on open access](#)

Abstract: Discusses human rights issues with the trend to ban or restrict immigration during the coronavirus pandemic, focusing on US President Donald Trump's travel restrictions. Considers the proportionality of such measures, in view of World Health Organisation advice.

Tepepa, Martha, '[Public Charge in the Time of Coronavirus](#)' (SSRN Scholarly Paper ID 3571721, 8 April 2020)

Abstract: The United States government recently passed legislation and stabilization packages to respond to the COVID-19 (i.e., coronavirus disease 2019) outbreak by providing paid sick leave, tax credits, and free virus testing; expanding food assistance and unemployment benefits; and increasing Medicaid funding. However, the response to the global pandemic might be hindered by the lassitude of the state and the administration's conception of social policy that leaves the most vulnerable unprotected. The administration's 'zero tolerance' immigration campaign poses public health challenges, especially in the prevention of communicable diseases. In addition to the systemic obstacles noncitizens face in their access to healthcare, recent changes to immigration law that penalize recipients of some social services on grounds that they are a public charge will further restrict their access to treatment and hinder the fight against the pandemic.

United Nations High Commissioner for Refugees (UNHCR)

The [UNHCR COVID-19](#) website contains global, regional and national information, including the following publications:

- '[Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the Context of the COVID-19 Response](#)' (UNHCR, 2020)

Abstract: This paper sets out key legal considerations, based on international refugee and human rights law, on access to territory for persons seeking international protection in the context of measures taken by States to restrict the entry of non-nationals for the protection of public health in response to the COVID-19 pandemic. It reconfirms that while States may put in place measures which may include a health screening or testing of persons seeking international protection upon entry and/or putting them in quarantine, such measures may not result in denying them an effective opportunity to seek asylum or result in refoulement.

- [Age, Gender and Diversity Considerations – COVID-19](#) (UNHCR, 21 March 2020)

This guidance on Age, Gender and Diversity (AGD) Considerations in relation to the COVID-19 pandemic is intended as a quick reference tool to support colleagues in the

field who are working directly with populations of concern and/or engaged in protection advocacy. It has been developed in response to requests for further guidance on how the evolving COVID-19 pandemic may disproportionately impact specific AGD groups.

- [Gender-based Violence Prevention, Risk Mitigation and Response During COVID-19](#), (UNHCR, 26 March 2020)

This briefing note aims at giving an overview of risks of gender-based violence (GBV) in the context of COVID-19 pandemic. It also includes recommendations to mitigate risks and ensure access to lifesaving GBV services. The last section contains a list of useful resources. Women and girls of concern to UNHCR are likely to experience distinct challenges and risks associated with the COVID-19 pandemic, and as such the outbreak might exacerbate already existing risks of GBV. Confinement is expected to increase risks of intimate partner violence for displaced women and girls, while worsened socio-economic situation will expose refugee women and girls in particular to increased risks of sexual exploitation by community members as well as humanitarian workers. In parallel, access to regular GBV services is likely to become challenging for survivors.

- [The Covid-19 Crisis: Key Protection Messages](#) (UNHCR, 31 March 2020)

In the face of the COVID-19 pandemic, we are all vulnerable. Governments around the world are rightly adopting increasingly stringent measures to protect public health. Yet as they do so, fundamental principles of refugee and human rights laws are also challenged. Asylum seekers, refugees and the internally displaced are especially vulnerable to health risks and other protection concerns. In this context, UNHCR would like to share the following key protection messages, based on international refugee and human rights law, for advocacy by other organisations. These will be updated as needed, and feedback and suggestions are welcome.

- [Risk Communication and Community Engagement \(RCCE\) – COVID-19](#), (UNHCR, 21 March 2020)

This guidance on risk communication and community engagement (RCCE) is intended as a quick reference tool to support colleagues in the field who are working directly with populations of concern. It has been developed in collaboration with regional bureaux specifically in response to the continuously developing COVID-19 situation. Building on

global guidance from UNHCR, WHO and other key actors, this document suggests key considerations and additional tips to help respond to some of the communications challenges we are facing at local levels.

UN Network on Migration, '[COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?](#)' (Policy Brief, April 2020)

Note: this publication includes a useful and regularly updated list of COVID-19-specific guidance and policy documents, as well as tools and practical resources on alternatives to immigration detention.

SPORTS LAW

Lindholm, Johan, 'Editorial: When Sports Is the Most Important Utterly Non-Important Thing in the World' (2020) 20(1) *The International Sports Law Journal* 1–2

Abstract: It will take considerable time before it is possible to fully gauge the impact of Covid-19 on sports, but it is possible to see some possible and significant consequences and related legal issues that will follow in the wake of the virus. As often, most of these are related to the commercial aspects of sports and there are both short- and more long-term issues.

TAX LAW

Borden, Bradley T, 'Universal Deadline Extensions Draw Attention to Section 1031 Periods' (2020) 167 *Tax Notes Federal* 601

Jurisdiction: USA

Abstract: The IRS published Notice 2020-23 extending section 1031 periods, but that guidance lacks clarity related to several key issues. The IRS has indicated that it will issue additional guidance in the form of FAQs, which should add clarity. Until then, exchangers, qualified intermediaries, and tax advisors must make decisions based upon the existing guidance. We hope the IRS will soon address issues that are central to those decisions. In the meantime, this

article does the following: Provides three criteria that apply to the analysis and application of Notice 2020-23 and inform future guidance the IRS may publish for exchanges affected by COVID-19: (i) extend generous relief to exchangers, (ii) be simple to apply and explain, and (iii) vivify real estate markets. Explains the technical aspects of IRS extension guidance, assisting parties making decisions prior to the IRS additional guidance or will make decisions regarding issues that the IRS guidance may not cover. Demonstrates that the 120-day extension in Rev. Proc. 2018-58 should apply to exchanges covered by Notice 2020-23. Warns that qualified intermediaries should err on the side of caution by interpreting Notice 2020-23 as applying the 120-day extension to avoid distributing proceeds prior to the expiration of the (g)(6) restrictions. Suggests that IRS guidance should apply the Notice 2020-23 extensions to all exchanges entered into on or before any date from January 20, 2020, until July 15, 2020. The detailed analysis in the article will serve as a reference for parties dealing with pending or planned exchanges and for parties who must carefully analyze the application of extension guidance in the future.

Brown, Harriet, 'Justice Delayed' (2020) 185(4742) *Taxation* 8-9

Jurisdiction: UK

Abstract: Discusses whether the stay of proceedings in the First-tier Tribunal Tax Chamber, in response to the coronavirus outbreak, has affected taxpayers' rights so adversely that the administration of justice is at risk, and proceedings should start again as soon as possible.

Camp, Bryan T, '[Taxation of Electronic Gaming](#)' (2020) 77(2) *Washington & Lee Law Review* 661–750

Abstract: At a doctrinal level, the subject of this Article is timely. During this time of the coronavirus pandemic, casinos have been closed and large populations have been subject to stay-home orders from local and state authorities. One can reasonably expect a large increase in electronic gaming and thus an increased need for proper consideration of its taxation. This Article argues for a cash-out rule of taxation.

At a deeper level, the subject of this Article is timeless. Tax law is wickedly complex for a reason. This Article explores that complexity using the example of electronic gaming. It grapples with the source of that complexity: an inherent and unresolvable tension between economic theories of income and the practical needs of administering a system of taxation to a large population in

a democracy. That tension led some scholars to argue for a standards-based approach to taxation. This Article considers and rejects that argument. Legal rules are necessary to mediate between theory and practice. Hence, this Article demonstrates the continued relevance and importance of doctrinal analysis in legal scholarship.

Crawford, Bridget J, '[Taxation as a Site of Memory: Exemptions, Universities, and the Legacy of Slavery](#)' [2020] *SMU Law Review Forum* (forthcoming)

Abstract: Many universities around the United States are attempting to grapple with their direct and indirect involvement with the institution of slavery. Lolita Buckner Inniss's book *The Princeton Fugitive Slave: the Trials of James Collins Johnson* (2019) enters directly into the conversation taking place on university campuses and nation-wide about what responsibilities institutions have to acknowledge their past and to create racially inclusive campuses in the twenty-first century. Because most universities are tax-exempt, it is important to understand that their activities are indirectly subsidized by local, state and federal governments. The lens of tax law facilitates better understanding of universities' unique historic role in American economic activity as well as contemporary arguments about their obligations to workers and community constituents during the COVID-19 crisis.

'Cyprus: Tax Measures to Support Local Businesses during Covid-19 Crisis' [2020] *Lawyer (Online Edition)*

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Abstract: The article reports that Cyprus Government have announced a number of tax measures in an attempt to support local businesses and economy to overcome the crisis related to the effect of COVID-19 pandemic. It also mentions that the tax measures are yet to be finalized and submitted for the Parliament's approval.

Feuer, Albert, '[How the CARES Act Takes Care of an Individual's Savings and Retirement Benefits](#)' (2020)
48 *Tax Management Compensation Planning Journal* 110

Jurisdiction: USA

Abstract: The CARES Act forgives federal student loan payments with due dates between March 27, 2020 and September 30, 2020 and suspends the minimum required distribution rules for distributions otherwise due during the 2020 calendar year. The CARES Act also provides cash flow relief for qualified individuals with savings and retirement benefits by enhancing provisions for direct loans and indirect loans (repayable distributions) of such benefits. Guidance is needed to address at least six major issues. Who are qualified individuals, and how may they be determined? What notices are required pertaining to the enhanced loan provisions, and to the enhanced distribution provisions? What is the DOL position with respect to fiduciary responsibility requirements pertaining to the enhanced direct and to the indirect loan provisions? Must plans defer loan payment due dates by qualified individuals for due dates between March 27 and December 31, 2020 in the same manner as IRS Notice 2020-23 requires plans to do so for all participants and beneficiaries for due dates between April 1 and July 14, 2020? How do plans determine the new amortization schedule for those deferring such payments? Must plan administrators give qualified individuals the right to avoid withholding on the enhanced distributions that the Act calls coronavirus-related distributions in the same manner that plan administrators must do so for all participants and beneficiaries on the distributions that would be 2020 required minimum distributions, absent the CARES Act? May qualified individuals repay all or only some coronavirus-related distributions within three years to an eligible retirement plan? The longer this guidance is delayed, particularly with respect to the definition and the determination of a qualified individual, the longer will the relief to individuals needing such relief be delayed and the longer will those individuals be unaware of the available relief.

Kess, Sidney, 'First Look at the CARES Act's Provisions for Tax Relief' (2020) 90(4) *CPA Journal* 8–9

Jurisdiction: USA

Abstract: The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748), signed into law on March 27, 2020, is a \$2.2 trillion package enacted to help individuals and businesses get through the health and economic crisis triggered by the coronavirus pandemic. Rebate Checks

for Individuals Rebate checks are advance payments of a new refundable tax credit [Internal Revenue Code (IRC) section 6428]. These rebate checks for individuals with adjusted gross income (AGI) below set amounts are being paid via the IRS.

Ryznar, Margaret, '[Emergency Funds in the Wake of the Coronavirus](#)' (2020) 96(1) *Tax Notes State* 65–66

Abstract: The CARES Act targeting the economic effects of the COVID-19 pandemic allows taxpayers to withdraw up to \$100,000 from their retirement savings, such as section 401(k) plans, without the typical 10% penalty for early withdrawal. However, retirement accounts do not make for ideal emergency funds. This Article therefore advocates that future legislation should incentivize separate savings funds.

Ryznar, Margaret, '[Extending the Charitable Deduction Beyond the Covid-19 Pandemic](#)' (2020) 167(3) *Tax Notes Federal* 463–464

Abstract: While the importance of the charitable deduction decreased in the 2017 tax reform, it has returned during the COVID-19 pandemic with the CARES Act. This Article lays out the reasons that the limited above-the-line charitable deduction authorized by Congress during the coronavirus pandemic should remain a permanent feature of U.S. tax law.

Zelinsky, Edward A, '[Coronavirus, Telecommuting, and the “Employer Convenience” Rule](#)' (2020) 95 *Tax Notes State* 1101

Jurisdiction: USA

Abstract: New York's 'convenience of the employer' doctrine overtaxes nonresident telecommuters on the days they work at their out-of-state homes. This doctrine was poor tax policy in normal times. It is particularly bad tax policy during the Covid-19 crisis, penalizing individuals who work at home.

WILLS

Horton, David and Reid K Weisbord, '[COVID-19 and Formal Wills](#)' (2020) 73 *Stanford Law Review Online* (forthcoming)

Jurisdiction: USA

Abstract: Most Americans do not have a will. The reasons are easy to understand. Thinking about death is unpleasant, and hiring a lawyer is expensive. However, as COVID-19 sweeps through the country, some Americans urgently need an estate plan. Unfortunately, U.S. law makes it difficult to create a will during crises like these. Indeed, twenty-five states and the District of Columbia recognize only one type of will: a 'formal' will executed in compliance with the Wills Act. Under this ancient statute, wills must be written, signed by the testator, and also witnessed by two people who were present at the same time. As journalists and lawyers are recognizing, the Wills Act's insistence that the parties physically occupy the same space creates unprecedented roadblocks during a time of widespread quarantine and shelter-in-place orders. Yet the pandemic has also arrived during a period in which wills law is in flux. In the last two decades, a handful of jurisdictions have begun excusing harmless errors during the will-execution process. And, in an even sharper departure from the Wills Act's stuffy norms, four states have recently authorized electronic wills. This Essay argues that COVID-19 vividly highlights the shortcomings of formal wills. Indeed, the outbreak has exposed the main problem with the Wills Act: it makes will-making inaccessible. As a result, we urge lawmakers in states that cling to the statute to liberalize the requirements for creating a will. Our argument proceeds in three Parts. Part I details the social value of will-making. Part II describes the Wills Act and explains why it creates formidable obstacles for testators who are caught in the jaws of a pandemic. Part III explores four ways in which policymakers can solve this problem: by permitting holographic wills, adopting the harmless error doctrine, enacting electronic will legislation, or temporarily suspending certain elements of the Wills Act during public health emergencies.

B) INTERNATIONAL & REGIONAL ORGANISATIONS – STATEMENTS & GUIDELINES

Note: we have not included many blogs or other online fora in this bibliography. An excellent resource of such literature has already been compiled by the George C Marshall European Centre for Security Studies in Germany, and is being regularly updated – see Jonathan G Odom, '[COVID-19 and the Law: A Compilation of Legal Resources](#)'. This is a list arranged by topic, and includes mostly international law commentary, and some US domestic commentary, using such authoritative sources such as [EJIL: Talk!](#) and [OpinioJuris](#). We have included below resources not included in the list by Professor Odom.

['COVID-19: Governments Must Promote and Protect Access to and Free Flow of Information During Pandemic'](#) - Joint Statement issued by the United Nations, the Inter-American Commission for Human Rights, and the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (19 March 2020)

This joint statement urges governments to provide truthful, reliable and accessible information, refrain from blocking internet access, protect the work of journalists, address disinformation, and limit the use surveillance technology to track the spread of the coronavirus in order to rigorously protect patient privacy, individual rights to privacy, journalistic sources and other freedoms, and to ensure non-discrimination

European Commission, [COVID-19 Guidelines for Border Management Measures to Protect Health And Ensure The Availability Of Goods And Essential Services](#) (16 March 2020)

These guidelines to Member States on health-related border management measures in the context of the COVID-19 emergency aim is to protect citizens' health, ensure the right treatment of people who do have to travel, and make sure essential goods and services remain available.

United Nations High Commissioner for Human Rights (OHCHR), [Covid-19 and the Rights of Persons With Disabilities: Guidance](#) (29 April 2020)

Introduction: While the COVID-19 pandemic threatens all members of society, persons with disabilities are disproportionately impacted due to attitudinal, environmental and institutional barriers that are reproduced in the COVID-19 response.

Many persons with disabilities have pre-existing health conditions that make them more susceptible to contracting the virus, experiencing more severe symptoms upon infection, leading to elevated levels of death. During the COVID-19 crisis, persons with disabilities who are dependent on support for their daily living may find themselves isolated and unable to survive during lockdown measures, while those living in institutions are particularly vulnerable, as evidenced by the overwhelming numbers of deaths in residential care homes and psychiatric facilities. Barriers for persons with disabilities in accessing health services and information are intensified. Persons with disabilities also continue to face discrimination and other barriers in accessing livelihood and income support, participating in online forms of education, and seeking protection from violence. Particular groups of persons with disabilities, such as prisoners and those who are homeless or without adequate housing, face even greater risks.

Awareness of these risks leads to better responses that can allay the disproportionate impact experienced by persons with disabilities. This guidance aims to:

- bring awareness of the pandemic's impact on persons with disabilities and their rights;
- draw attention to some promising practices already being undertaken around the world;
- identify key actions for States and other stakeholders; and
- provide resources for further learning about ensuring rights based COVID-19 responses inclusive of persons with disabilities.

C) JOURNALS / WEBSITES / BLOGS PUBLISHING REGULAR COVID-19 LITERATURE

Administrative Law in the Common Law World - adminlawblog.org

This blog contains many COVID-19 blog posts, such as:

- Goutham Shivshankar, '[Debating the Applicability of India's Disaster Management Law to COVID-19](#)' (Blog Post, 19 May 2020)
- Andrew Geddis, '[The New Zealand Lockdown and the Law](#)' (Blog Post, 11 May 2020)
- Lee Marsons, '[Covid-19 and the UK Administrative State](#)' (Blog Post, 31 March 2020)

- Jonathan Liberman, '[COVID-19 and Administrative Powers in Australia](#)' (Blog Post, 30 March 2020)

Asian Law Centre, Melbourne Law School - [Asian Legal Conversations - COVID-19](#)

This site provides a platform to 'discuss and compare experiences on issues either raised or exacerbated by COVID-19, which are shared by the jurisdictions of the Asia Pacific region. It also discusses country-specific issues. Contributions range in format from written blog posts, short written pieces or video recordings in the broad areas of:

- [Celebrating Asian Australians](#)
- [Civil Society](#)
- [Courts, Lawyers and the Administration of Justice](#)
- [Daily Life](#)
- [Finance and Business](#)
- [Government / Governance](#)
- [Health Care](#)
- [Labour](#)

[AUSPUBLAW: Australian Public Law](#) – from the Gilbert + Tobin Centre of Public Law at UNSW Law and the Australian Association of Constitutional Law.

- This blog has a dedicated [COVID-19 and Public Law](#) site.

[DEM-DEC \(Democratic Decay\)](#)

This website has been temporarily renamed COVID-DEM. It has an 'Infohub to help democracy analysts worldwide track, compile, and share information on how State responses to the novel coronavirus (COVID-19) are impacting on democratic governance'. This infohub includes a [Research](#) section, which contains a list of academic research, including working papers and published papers, on COVID-19's impact on democracy.

Freedom House – [Democracy During Pandemic](#)

This site includes news and perspectives from around the world, expert comment, media, and a new newsletter – [Keeping Democracy Healthy in a Pandemic](#) (this is free, but requires registration).

[International Bar Association](#) includes the following publications:

- [IBAHRI Covid-19 Human Rights Monitor](#)
- [IBA Global Insight](#) – this includes many articles on coronavirus.

International Commission of Jurists, [Human Rights in the time of COVID-19: Front and Centre – ICJ news, Articles, Op-Eds, Legal Blogs, Videos](#)

Includes the following articles, opinion pieces and briefing papers:

[COVID-19 pandemic exposes India’s housing crisis – ICJ Briefing Paper](#)

[Judiciaries during COVID-19: South American experience](#)

Just Security . This is an online journal, based in the Reiss Center on Law and Security at New York University School of Law. The journal website contains a section dedicated to [Coronavirus Coverage](#), including a regularly updated [topical index](#) of COVID-19 articles in *Just Security*, and a useful and regularly updated [Timeline of the Coronavirus Pandemic and U.S. Response](#).

Melbourne Asia Review - from the University of Melbourne Asia Institute

This open access online journal includes a COVID-19 Analysis section, which includes articles such as:

- Tanya Spisbah, [‘India is Shaping a ‘New Multilateralism’ in a post-COVID World’](#)
- Rafiq Qurrata A'yun and Abdil Mughis Mudhoffir, [‘Indonesia is Exploiting the COVID-19 Crisis for Illiberal Purposes’](#)
- Delia Lin, [‘Lost in Translation: COVID-19 and China’s “Wet Markets”’](#)

[Verfassungsblog on Matters Constitutional](#) – published by the Berlin Social Science Centre’s [Centre for Global Constitutionalism](#). This blog has a dedicated [COVID 19 and States of Emergency](#) Debates site, which states ‘As states of emergency are declared throughout the world in response to the spread of COVID-19, concerns arise as to the use – and potential abuse – of power in a time of crisis. In this Symposium, comparative country reports show the use of emergency powers from the perspective of democracy, human rights, and the rule of law’.