

## MELBOURNE LAW SCHOOL COVID-19 RESEARCH NETWORK

### BIBLIOGRAPHY OF COVID-19 LEGAL LITERATURE<sup>1</sup>

ISSUE 2: 20 May 2020

*Note:* the annotated bibliography below is arranged A) Literature, B) Commentary from selected organisations, and C) Blogs and websites. The literature in Part A primarily includes scholarship, as well as some professional literature. The literature 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.

Links are provided to literature available on open access. Please contact the Academic Research Service at [law-academicresearch@unimelb.edu.au](mailto:law-academicresearch@unimelb.edu.au) if you would like the full text of any of the articles not available on open access.

#### A) LITERATURE

##### GENERAL

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

---

<sup>1</sup> This bibliography was compiled by Robin Gardner, MLS 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.

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?

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.

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.

Zetsche, 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.

## **COMMERCIAL CONTRACTS**

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.

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.

## **COMPETITION & CONSUMER LAW**

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.

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.

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

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

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.

Louk, David S1, '[Reconstructing the Congressional Guarantee of Republican Government](#)' (2020) 73(3) *Vanderbilt Law Review* 673–756

*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.

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

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.

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

## CORPORATIONS LAW

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.

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.

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.

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 economic 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 in 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**

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

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?

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.

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.

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

*Jurisdiction:* South Africa

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

## **CRIMINAL LAW**

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.

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.

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.

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.

## **ECONOMICS / FINANCE**

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.

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.

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.

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

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.

## **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**

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.

## **GOVERNANCE - NATIONAL & REGIONAL EMERGENCY REGULATORY & POLICY MEASURES**

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.

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.

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.

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.

Ewing, KD, 'Covid-19: Government by Decree' (2020) *King's Law Journal* (Advance Article, 13 May 2020)  
*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.

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?

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.

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.

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.

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.

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.

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.

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.

## HEALTH / MEDICAL LAW AND ETHICS

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.

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.

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.

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.

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.

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).

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 / CIVIL RIGHTS / DISCRIMINATION

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.

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?

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.

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.

'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.

## **IMMIGRATION / REFUGEE LAW**

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.

## **INTELLECTUAL PROPERTY LAW**

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.

## **LABOUR / EMPLOYMENT LAW**

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.

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.

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.

*Italian Labour Law e-Journal* (2020) 13(15) [Special Issue: Covid-19 and Labour Law. A Global Review](#)

*Note:* several new national jurisdictions have been added to this online special issue in the last week, since the first issue of this bibliography:

[COVID-19 and Labour Law: Belarus](#) by Kirill Tomashevski

[COVID-19 and Labour Law: Finland](#) by Annika Rosin

[COVID-19 and Labour Law: Kenya](#) by Abigail Osiki

[COVID-19 and Labour Law: Lebanon](#) by Sari Madi

[COVID-19 and Labour Law: New Zealand](#) by Dawn Duncan

[COVID-19 and Labour Law: Saudi Arabia](#) by Federico Fusco

[COVID-19 and Labour Law: Uruguay](#) by Federico Rosenbaum Carli

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.

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.

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.

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**

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.

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.

## **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.

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.

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.

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.

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.

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.

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.

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’](#).

## **PUBLIC INTERNATIONAL LAW**

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?

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.

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.

## **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.

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.

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.

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.

## TRADE LAW

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.

## **B) INTERNATIONAL AND REGIONAL ORGANISATIONS – STATEMENTS AND GUIDELINES**

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.

[‘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.

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) BLOGS / WEBSITES**

#### **Administrative Law in the Common Law World - [adminlawblog.org](http://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](#)

### **[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 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](#)

[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](#)'
- Rafiqah 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"](#)'