MELBOURNE LAW SCHOOL COVID-19 RESEARCH NETWORK

ANNOTATED BIBLIOGRAPHY OF COVID-19 LEGAL LITERATURE

Updated 1 August 2020

Note: the annotated bibliography below is arranged A) Literature B) Organisations and C) Blogs, journals and websites. A briefer version of this bibliography, containing citations only, is available on the Melbourne Law School website at https://law.unimelb.edu.au/centres/hlen/covid-19/scholarship. The bibliography is regularly updated – this update has added over 200 articles and other resources.

Part A includes scholarship and selected professional literature. It begins with books and then other literature, which is divided into broad topics - general 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 citation. We have only included literature written in English, and relevant literature in other languages is thus inevitably excluded.

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

Part C lists selected blogs or other online fora.

This bibliography was compiled by the Melbourne Law School Academic Research Service, using the following journal article databases: Index to Legal Periodicals (EBSCO), AGIS (INFORMIT), Westlaw UK Journals, Westlaw Canada Journals, Westlaw World Journals, law articles on the Oxford University Press free COVID-19 Resources, HEIN, Sabinet (South African journals) SSRN and Google Scholar. In order to publish scholarship quickly, many scholarly journals have introduced ways to fast-track publication, including a faster peer-review process, and publishing accepted manuscripts, so much of the scholarship listed is in its pre-publication form. Much pre-published scholarship is also available on open access on SSRN, which has a dedicated Coronavirus Hub for early stage non-peer reviewed research to help researchers freely share their latest research. Many journal platforms that are normally only available to subscribers or on a pay per article basis are making COVID-19 literature available on open access – some of this literature is freely available until a specified date. There are also many COVID-19 special issues of journals rapidly emerging.

Links are provided in the bibliography for literature and other resources available on open access.

Please contact Robin Gardner in the Academic Research Service law-academicresearch@unimelb.edu.au if you have any suggestions for additional content. For Melbourne Law School staff, the Academic Research Service can supply full text articles listed below that are not available on open access.
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A) SCHOLARSHIP AND PROFESSIONAL LITERATURE</td>
<td>1</td>
</tr>
<tr>
<td>BOOKS</td>
<td>1</td>
</tr>
<tr>
<td>ARTICLES, RESEARCH PAPERS &amp; BOOK CHAPTERS</td>
<td>3</td>
</tr>
<tr>
<td>GENERAL</td>
<td>3</td>
</tr>
<tr>
<td>ADMINISTRATIVE LAW / REGULATORY &amp; POLICY RESPONSES / GOVERNANCE</td>
<td>8</td>
</tr>
<tr>
<td>BUSINESS LAW (INCLUDING FRANCHISES)</td>
<td>81</td>
</tr>
<tr>
<td>CHARITY / NON-PROFIT LAW</td>
<td>84</td>
</tr>
<tr>
<td>COMPETITION AND CONSUMER LAW</td>
<td>86</td>
</tr>
<tr>
<td>CONSTITUTIONAL LAW</td>
<td>106</td>
</tr>
<tr>
<td>CONSTRUCTION AND PLANNING LAW</td>
<td>126</td>
</tr>
<tr>
<td>CORPORATIONS LAW</td>
<td>129</td>
</tr>
<tr>
<td>COURTS / DISPUTE RESOLUTION</td>
<td>144</td>
</tr>
<tr>
<td>CRIMINAL LAW / CRIMINAL JUSTICE</td>
<td>164</td>
</tr>
<tr>
<td>ELECTION LAW</td>
<td>197</td>
</tr>
<tr>
<td>ENERGY AND NATURAL RESOURCES LAW</td>
<td>200</td>
</tr>
<tr>
<td>ENVIRONMENTAL LAW</td>
<td>200</td>
</tr>
<tr>
<td>FAMILY LAW</td>
<td>207</td>
</tr>
<tr>
<td>FINANCE &amp; BANKING / ECONOMIC LAW</td>
<td>209</td>
</tr>
<tr>
<td>FOOD, AGRICULTURE, ANIMALS</td>
<td>229</td>
</tr>
<tr>
<td>HEALTH / MEDICAL LAW &amp; BIOETHICS</td>
<td>233</td>
</tr>
<tr>
<td>HUMAN RIGHTS / CIVIL LIBERTIES</td>
<td>305</td>
</tr>
<tr>
<td>INDIGENOUS LAW &amp; GOVERNANCE</td>
<td>345</td>
</tr>
<tr>
<td>INSOLVENCY &amp; BANKRUPTCY</td>
<td>348</td>
</tr>
<tr>
<td>INSURANCE LAW</td>
<td>356</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>INTELLECTUAL PROPERTY</td>
<td>359</td>
</tr>
<tr>
<td>INTERNATIONAL LAW</td>
<td>371</td>
</tr>
<tr>
<td>International Economic Law (including Trade &amp; Investment Law)</td>
<td>401</td>
</tr>
<tr>
<td>International Arbitration</td>
<td>415</td>
</tr>
<tr>
<td>LABOUR LAW / EMPLOYMENT</td>
<td>420</td>
</tr>
<tr>
<td>LEGAL EDUCATION</td>
<td>450</td>
</tr>
<tr>
<td>LEGAL GEOGRAPHY</td>
<td>461</td>
</tr>
<tr>
<td>LEGAL PROFESSION / LEGAL PRACTICE</td>
<td>461</td>
</tr>
<tr>
<td>MEDIA LAW / COMMUNICATION</td>
<td>473</td>
</tr>
<tr>
<td>OBLIGATIONS</td>
<td>480</td>
</tr>
<tr>
<td>Contract Law</td>
<td>480</td>
</tr>
<tr>
<td>Torts</td>
<td>491</td>
</tr>
<tr>
<td>PRIVACY &amp; DATA PROTECTION</td>
<td>492</td>
</tr>
<tr>
<td>PROPERTY LAW / HOUSING</td>
<td>516</td>
</tr>
<tr>
<td>REFUGEE &amp; ASYLUM SEEKER / IMMIGRATION LAW</td>
<td>526</td>
</tr>
<tr>
<td>SOCIAL PROTECTION / WELFARE</td>
<td>533</td>
</tr>
<tr>
<td>SPORTS LAW</td>
<td>536</td>
</tr>
<tr>
<td>TAX LAW</td>
<td>537</td>
</tr>
<tr>
<td>TRANSPORT LAW</td>
<td>550</td>
</tr>
<tr>
<td>WILL &amp; SUCCESSION</td>
<td>552</td>
</tr>
<tr>
<td>B) INTERNATIONAL, REGIONAL &amp; DOMESTIC ORGANISATIONS</td>
<td>556</td>
</tr>
<tr>
<td>C) JOURNALS, WEBSITES &amp; BLOGS</td>
<td>562</td>
</tr>
</tbody>
</table>
A) SCHOLARSHIP AND PROFESSIONAL LITERATURE

BOOKS

Ferstman, Carla and Andrew Fagan (eds), *Covid-19, Law and Human Rights: Essex Dialogues* (School of Law and Human Rights Centre, University of Essex, 2020)

This open access book was published on the University of Essex repository on 1 July 2020. Selected individual chapters are listed below in this bibliography. The chapters are arranged thematically into:

- Conceptual Framings
- Global, Regional and Comparative Perspectives
- The Right to Health
- The Effects of the COVID-19 Pandemic on the Regulation of the Economy
- The Impact on Vulnerable Populations
- Access to Justice
- Big Data and Technology
- Accountability


*Jurisdiction*: Canada (and an international law/global chapter)

This open access book was published by the University of Ottawa Press on 14 July 2020. It contains over 40 chapters – most of these are listed below under the appropriate topic headings. The chapters are arranged thematically into:

- Section A: Who Does What? Challenges and Demands of Canadian Federalism
- Section B: Making Sure Someone is Accountable: Public and Private Responsibilities
- Section C: Civil Liberties vs. Ideas of Public Health
- Section D: Equity and Covid-19
- Section E: This Job is Gonna Kill Me: Working and Covid-19
- Section F: Global Health and Governance
**Book Summary:** This book confronts the vulnerabilities that have been revealed by the pandemic and its consequences. It examines vulnerabilities for people who have been harmed or will be harmed by the virus directly and those harmed by measures taken to slow its relentless march; vulnerabilities exposed in our institutions, governance, and legal structures; and vulnerabilities in other countries and at the global level where persistent injustices affect us all. COVID-19 has forced us to not only reflect on how we govern and how we set policy priorities, but also to ensure that pandemic preparedness, precautions, and recovery include all individuals, not just some.


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.

Contents:

- **Ch 1: Overview**
- **Ch 2: Constitution**
- **Ch 3: Substantive Law**

This chapter provides commentary, and legislation and summaries of decided cases on the following topics: Aged Care, Commercial, Criminal, Customs & Trade, Defence, Emergencies, Equity, Family, Financial, Government, Guardianship, Administration & Vulnerable People, Human Rights / Civil Liberties, Industrial Law, Maritime, Migration, Public Security, Planning & Environment, Property, Public Health, Quarantine, Regulatory / Professional Discipline, Tort, and Wills & Estates.

- **Ch 4: Court Practice & Procedure**
- **Ch 5: Further Resources**

**Jurisdiction:** USA

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

**ARTICLES, RESEARCH PAPERS & BOOK CHAPTERS**

**GENERAL**

Chesterman, Simon, ‘*Covid-19 and the Global Legal Disorder*’ (SSRN Scholarly Paper ID 3588397, 29 April 2020)

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

Dodds, Klaus et al, ‘*The COVID-19 Pandemic: Territorial, Political and Governance Dimensions of the Crisis*’ (2020) 8(3) *Territory, Politics, Governance* 289–298

*Extract from Introduction:* ... at a moment of crisis and long-term discombobulation, what can our key terms [territory, politics and governance] tell us about the contemporary and possible future state of the world? And how does the crisis sharpen or challenge our understanding of these concepts in a changing world?

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

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

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

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


Abstract: The course of a pandemic is dictated not just by biology, but also by law. And crucially, unlike biology, law can be readily adapted in response to a pandemic. Unfortunately, the current law does not take account of the compressed timeframe and rapidly changing social needs that distinguish pandemic times from normal times. We thus suggest three urgent, early lessons for law in the pandemic context: First, free information flows save lives, an observation which has ramifications for freedom of speech and press, copyright law, and patent law. Identifying
particular hazards that patent law poses to the free flow of scientific research findings, we suggest a government-funded reward system as an adjunct to the patent system to incentivize pandemic-relevant research and its rapid publication. Second, politically accountable decisionmakers may not act optimally to save lives. We suggest a refashioned, politically insulated U.S. Public Health Service imbued with administrative independence in the vein of the Federal Reserve Board. Third, pre-crisis regulatory structures are not proving nimble enough in the midst of the pandemic. We suggest legislation that directs the FDA to be creative in designing case-by-case approval procedures for vaccines and other treatments to allow them to get to market much faster. To accelerate approvals while retaining scientific rigor, we suggest allowing well-informed, consenting human testing subjects to take on more uncertain risk than the FDA currently tolerates. In sum, we argue for a more general, systematic, and critical perspective on law in the special context of a pandemic.


Abstract: The new and fast evolving COVID-19 global pandemic has already caused, according to the IMF, ‘the worst downturn since the great depression’. This paper considers what the history and scientific analysis of previous large scale economic and disease shocks and current economic modelling can tell us about the likely scale and location of the challenge to global business, which are likely to play out in due course through legal restructuring, bankruptcy and litigation channels. Previous economic shocks briefly considered include: the (2007-8) financial crisis and its aftermath, WW1 (1914-18) and WW2 (1939-45), Wall Street Crash (1929) and Great Depression (1930-36), the collapse of the FSU and its aftermath (1990-97) and the 9-11 attacks (2001). Previous epidemics and pandemics briefly considered include: Ebola, SARS, MERS, HIV/AIDS, Malaria, Asian flu (1957), Spanish flu (1918-19) and the Black Death (14th century). Initial epidemiological, SIR, and global economic modelling results and uncertainties are also considered, and some of the most vulnerable business sectors identified.
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.


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

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

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

ADMINISTRATIVE LAW / REGULATORY & POLICY RESPONSES / GOVERNANCE

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

Ahmad, Tariq, ‘Islamic Religious Authority and Pakistan’s Response to COVID-19’ In Custodia Legis (Blog post, 21 May 2020)

Abstract: This post provides an overview of Pakistan’s governmental responses to COVID-19 involving religious activity, religious gatherings, and processions, particularly leading up to and during the holy month of Ramadan, and the level of cooperation and conflict among religious scholars and Islamic institutions. It focuses on the federal government’s response and the response of the government of the Sindh province.


Jurisdiction: NSW, Australia

Abstract: Never before have Australians seen laws that limit freedom and civil liberties to the extent the new COVID-19 social distancing measures do. The restrictions have successfully
helped "flatten the curve" of new COVID-19 infections in NSW but, in doing so, may set a sinister precedent for the rule of law.


Abstract: The COVID-19 pandemic has already led to dramatic policy responses in most advanced economies, and in particular sustained lockdowns matched with sizable transfers to much of the workforce. This paper provides a preliminary quantitative analysis of how aggregate policy responses should differ in developing countries. To do so we build an incomplete-markets macroeconomic model with epidemiological dynamics that features several of the main economic and demographic distinctions between advanced and developing economies relevant for the pandemic. We focus in particular on differences in population structure, fiscal capacity, healthcare capacity, the prevalence of ‘hand-to-mouth’ households, and the size of the informal sector. The model predicts that blanket lockdowns are generally less effective in developing countries at reducing the welfare costs of the pandemic, saving fewer lives per unit of lost GDP. Age-specific lockdown policies, on the other hand, may be even more potent in developing countries, saving more lives per unit of lost output than in advanced economies.


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.

Anson-Holland, James, ‘Locked down but Not Detained’ [2020] (June) New Zealand Law Journal 166-169, 176

Abstract: It may not be news to anyone that New Zealand has been in the midst of a global pandemic due to a novel coronavirus disease, COVID-19. In response to this pandemic, the New Zealand Government severely restricted travel and required members of the public to self-isolate at home except as permitted for essential personal movement.


Abstract: This article analyses the challenges that the pandemic caused by Covid-19 has presented for the rule of law, democracy, and human rights. The States have faced this pandemic, issuing states of emergency of various kinds, with extraordinary measures that include stay-at-home orders, social distancing, and the quarantine of people. These restrictive measures have affected, among others, the exercise of rights of public assembly and demonstrations and the holding of elections. Furthermore, the normal functioning of the controls of the legislative and judicial powers has been affected. The measures adopted have also highlighted the need to guarantee equal access to public health and to give differential treatment to certain vulnerable groups. All the extraordinary measures to face the pandemic must be within the Constitution and international law.
Bamidele, Olusola, ‘SARS-COV-2 Pandemic: Evaluating Early Disease Response in Wuhan City, China’ (SSRN Scholarly Paper ID 3614147, 28 May 2020)

Abstract: The ongoing coronavirus disease 2019 (COVID-19) is caused by Severe Acute Respiratory Syndrome coronavirus virus 2 (SARS-COV-2). This virus probably originated from the seafood market in Wuhan City, China, in early December 2019. As of 10 May 2020, it has dispersed rapidly to roughly 200 countries, killing over 280,000 out of over 4 million infected people worldwide. This article examines an early disease intervention from the onset of COVID-19 on 8 December 2019 to 23 January 2020 in China. Out of other reasons, this study argues that China apparently delayed intervention to COVID-19, and this might have enhanced its diffusion out of Wuhan city. By deploying data from WHO – China COVID-19 report and relevant articles, the study discovered that the inability of Wuhan authority to stop nearly half of its population emigrating for New Year Celebration apparently played a role in the dispersal of the new virus outside Wuhan City. Other studies had focused on the origin, clinical presentation and probable treatment of the new coronavirus. However, this study illuminates the significance of an early response and intervention in the control of epidemics. A focus on Wuhan, China affords us a rare privilege of gauging how first epidemic control could mitigate a full-blown pandemic.

Bar-Siman-Tov, Ittai, ‘COVID-19 Meets Politics: The Novel Coronavirus as a Novel Challenge for Legislatures’ (Bar Ilan University Faculty of Law Research Paper No 20-08, 2020)

Abstract: Much attention has been given to the challenge posed by the COVID-19 pandemic to people’s health, to public health systems and to the global economy. Insufficient attention has been given to the challenge posed by the 2019 novel coronavirus to legislatures, the vital organ of democracy. This article develops a comprehensive conceptual analysis of the multiple ways in which the pandemic challenges legislatures and their operation, drawing on illustrative examples from various countries around the world. It argues that COVID-19 poses a unique and complex challenge for legislatures; resulting from the characteristics of this pandemic and the ways they interact with the fundamental institutional features of legislatures; the typical demographic traits of legislators; the psychological biases that can prejudice legislatures’ ability to evaluate the risk; and the effects of emergencies on legislatures. The article then delves into an in-depth case study analysis of how the pandemic particularly challenges parliaments in countries in which COVID-19 meets a political crisis. By understanding the complex challenges
posed by COVID-19 on parliaments, we can help ensure that parliaments, and perhaps ultimately democracy itself, would not become casualties of covid-19.

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

26 jurisdictions compared

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

Barbieri, Paolo and Beatrice Bonini, ‘Populism and Political (Mis-)Belief Effect on Individual Adherence to Lockdown during the COVID-19 Pandemic in Italy’ (SSRN Scholarly Paper ID 3640324, 1 July 2020)

Abstract: To mitigate the spread of the novel coronavirus (COVID-19), social distancing and lockdown have been used in the past months. Using region-level geolocation data from Italy, we document that political belief can potentially limit the effectiveness of government distancing orders. Residents in regions leaning towards extreme right-wing party show a lower reduction in mobility. We also find that this is true for regions with high protest votes. On the contrary there was a sharper reduction in mobility in regions were there is a higher political support for the current political legislation. These results are robust to controlling for other factors including time, geography, local COVID-19 cases and deaths, family characteristics, and healthcare hospital beds. Our research shows that bipartisan support as well as national responsibility are essential in order to efficiently implement social distancing. We also suggest that partisan politics and discontent with the political class, as measured by protest voting, might eventually affect human health and the economy.

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

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

Abstract: What factors affected whether or not a U.S. state governor issued a state-wide stay-at-home order in response to the COVID-19 pandemic of early 2020? Once issued, what factors affected the length of this stay-at-home order? Using duration analysis, we test a number of scientific, economic, and political factors for their impact on a state governor’s decision to ultimately issue, and then terminate, blanket stay-at-home orders across the 50 U.S. states. Results indicate that while scientific and economic variables had some impact on the length of the stay-at-home orders, political factors dominated both the initiation of, and ultimate duration of, stay-at-home orders across the United States.


Abstract: Policymaking during a pandemic can be extremely challenging. As COVID-19 is a new disease and its global impacts are unprecedented, decisions need to be made in a highly uncertain, complex and rapidly changing environment. In such a context, in which human lives and the economy are at stake, we argue that using ideas and constructs from modern decision theory, even informally, will make policymaking more a responsible and transparent process.


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.


Abstract: The COVID-19 crisis has shown that European countries remain poorly prepared for dealing and coping with health crises and for responding in a coordinated way to a severe influenza pandemic. Within the European Union, the response to the COVID-19 pandemic has a striking diversity in its approach. By focusing on Belgium, France, Germany, and Italy—countries that represent different models of administrative systems in Europe—the analysis shows that major similarities and convergences have become apparent from a cross-country perspective. Moreover, coping with the crisis has been first and foremost an issue of the national states, whereas the European voice has been weak. Hence, the countries’ immediate responses appear to be corona-nationalistic, which we label “coronationalism.” This essay shows the extent to which the four countries adopted different crisis management strategies and which factors explain this variance, with a special focus on their institutional settings and administrative systems.

Brennan, Jason, Chris Surprenant and Eric Winsberg, ‘How Government Leaders Violated Their Epistemic Duties During the SARS-CoV-2 Crisis’ (SSRN Scholarly Paper ID 3605981, 20 May 2020)

Abstract: In spring 2020, in response to the COVID-19 crisis, world leaders imposed severe restrictions on citizens’ civil, political, and economic liberties. These restrictions went beyond less controversial and less demanding social distancing measures seen in past epidemics. Many states and countries imposed universal lockdowns. In this paper, we argue that these restrictions have not been accompanied by the epistemic practices morally required for their adoption or continuation. While in theory, lockdowns can be justified, governments did not meet and have not yet met their justificatory burdens.
Brown, Jennifer, ‘Coronavirus: The Lockdown Laws’ (Briefing Paper No 8875, House of Commons Library, 8 July 2020)

**Jurisdiction:** UK

*Abstract:* This Commons Library briefing paper describes the law enforcing the UK’s coronavirus lockdown. It discusses police enforcement of the lockdown and legal commentary of the lockdown rules.

Brown, Jennifer, ‘Coronavirus: Parliamentary Consent for the Lockdown in England’ (House of Commons Library, Insight, 4 May 2020)

*Abstract:* This insight explains why MPs are now considering a motion to approve the legislation that underpins the current lockdown in England.


[Link to full text book on open access](https://example.com)

*Abstract:* Faced with major crises, policymakers are at risk of various pathologies. Even in the absence of such pathologies, governments, when faced with a major crisis such as the COVID-19 pandemic, have strong incentives to try to go it alone at the national level: Both policy implementation and political accountability still mostly take place at the national level. Federal political systems, such as Germany, face similar challenges at the sub-national level. At the same time, Louis Brandeis’ classic depiction of U.S. states as ‘laboratories of democracy’ reminds us that federalism offers opportunities for trying different policy responses and learning from the differing results, especially when federalism has ‘experimentalist’ characteristics to encourage feedback and learning. We provide a brief overview of the public and political discourse in Germany, as well as the German federal and state-level policy responses, during the first months of the pandemic and an early, tentative assessment of commonalities, divergence, pathologies, and learning – as well as broader implications for conflict and cooperation in Europe and beyond.
Introduction: States of emergency pose the most significant challenges to the safeguarding of fundamental rights and civil liberties. The strengthening of executive power to the detriment of judicial authority and parliamentary oversight, absent effective domestic mechanisms of supervision of that executive power and the replacement of the judicial role with police operations represent a symptom of how prolonged emergencies lead to the eclipse of legal certainty and may cause the rapid and irreversible degradation of the rule of law.

Abstract: There are several determinants of success in managing a pandemic, but good governance is key. In this short chapter, I elaborate on why good governance matters in a pandemic. I underscore the key attributes of good governance, focusing on strong institutions, robust processes of decision-making, and the right people making those decisions. In this pandemic, Canadian institutions have displayed some of their weaknesses and inadequacies, but on the whole have performed relatively resiliently. Processes of decision-making have been adapted to improve performance, and the people in leadership jobs have largely risen to the challenges they faced. As to institutions, processes, and people, we have been relatively well served.

Abstract: Zhejiang Province achieved one of the best records in containing the COVID-19 pandemic in China, what lessons can the world learn from it? What roles do community-based organizations play in its success story? Based on more than 100 interviews during and after the outbreak in Zhejiang, this article provides a roadmap of how community-based organizations were involved in the three distinct stages of Zhejiang’s responses to COVID-19. We recommend that public sector leaders strategically leverage the strengths of community-based organizations.
in multiple stages of COVID-19 responses; incentivize volunteers to participate in epidemic prevention and control; provide data infrastructure and digital tracking platforms; and build trust and long-term capacity of community-based organizations.


Abstract: Limited, uneven, and possibly “inaccurate” tests make it impossible to know the true scale of COVID-19 infections in the global South. Nevertheless, given the grossly inadequate health systems, further undermined by neoliberal reforms, catastrophic consequences for developing countries are feared. “Flattening the curve” of new infections seeks to ensure national health systems can cope by rapidly augmenting needed capacities and capabilities. The many “known and unknown” unknowns about the pandemic, and its implications, complicate the challenges posed by the complex and very varied socio-economic conditions in most developing countries. Neglecting prompt and adequate precautionary measures due to complacency for a variety of reasons, many governments have belatedly tried to check contagion by strictly imposing extended “stay-in-shelter” “lockdowns.” Success for these types of measures require full public involvement, through social mobilization, public understanding, and credible leadership, enhanced by transparency, information sharing, wide consultation, progressive relief measures, and accountability. However, by acting early to test, trace, isolate, and treat the infected, a few authorities have avoided nationwide lockdowns. Preventive measures, such as safe physical distancing, masking facial orifices, and selective targeted quarantines, enjoy greater public acceptance and voluntary compliance with minimal draconian measures.


Abstract: This paper addresses how the Norwegian government has handled the corona pandemic. Compared to many other countries Norway performs well in handling the crises and
this must be understood in the context of competent politicians, a high trust society with a reliable and professional bureaucracy, a strong state, a good economic situation, a big welfare state and low density of the population. The government managed to control the pandemic rather quickly by adopting a suppression strategy, followed by a control strategy, based on a collaborative and pragmatic decision-making style, successful communication with the public, a lot of resources and a high level of citizens’ trust in government. The alleged success of the Norwegian case is about the relationship between crisis management capacity and legitimacy. Crisis management is most successful when it is able to combine democratic legitimacy with government capacity.


Introduction: ‘In the past weeks, scholars from different disciplines – including myself – have been comparing the publicly available data from different countries about the coronavirus pandemic (covid-19) on a daily basis. For a researcher in comparative law-and-governance, these data are very tempting. Would they allow to draw at least some very raw conclusions about the goodness or badness of some countries’ governance concerning the prevention of covid-19 deaths?.

Civitarese, Jamil, ‘Social Distancing under Epistemic Distress’ (SSRN Scholarly Paper ID 3570298, 7 April 2020)

Jurisdiction: Brazil

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

‘Coronavirus: Changes to Practice and Procedure in the UK and Other Parliaments’ (House of Commons Library Briefing Paper, 19 May 2020)

Abstract: This Briefing Paper illustrates changes that have been made to procedures and practices in response to coronavirus in the House of Commons and a small selection of other parliaments.

Cowie, Graeme, ‘Coronavirus: Is It Possible to Extend the Brexit Transition Period?’(House of Commons Library, Insight, 20 April 2020)

Abstract: The coronavirus has had an impact on negotiations between the UK Government and the EU. This Insight examines the legal and procedural hurdles to any extension of the post-Brexit transition period.

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

Abstract: The article informs on recommendations issued by Croatian Ministry of Justice as of 14 March 2020 to prevent the transmission of the novel coronavirus and control the pandemic. It mentions that measures advise temporary adjustments to legal requirements in civil, insolvency and criminal procedure law to avoid hardship that would otherwise arise as a result of the coronavirus crisis. It also mentions that employees are allowed to work from home, and hearings should be postponed.
Curley, Cali and Peter Stanley Federman, ‘State Executive Orders: Nuance in Restrictions, Revealing Suspensions, and Decisions to Enforce’ (2020) 80(4) Public Administration Review 623–628

Jurisdiction: USA

Abstract: In the absence of a large-scale federal response to the COVID-19 pandemic, state and local elected officials have enacted executive orders that include restrictions on public liberties as well as the suspension of rules and regulations. While these restrictive policy actions have received extensive media attention, the suspensions, including regulatory rollbacks, waivers, and extensions, are lesser known. This Viewpoint essay offers insight from a working database that captures the nuance and variation across restrictions, suspensions, and enforcement mechanisms being utilized at the state level.


Abstract: This paper argues that anyone hoping for a high level of judicial engagement with the forms of power being used to combat the cultural, economic, medical, social, and other impacts from the current pandemic is likely to be disappointed. First, I explain the different forms of power being used in Canada to respond to the pandemic: imperium (general norms with the force of law), dominium (government contracting and distribution of resources), and suasion (information provided to the citizenry). Second, I explain why judges are unlikely to enforce public law principles, such as reasonableness, procedural fairness, and compliance with constitutional norms, on the uses of these different forms of power. As to imperium, any judicial engagement is likely to be at the margins; as to dominium and suasion, there is a long tradition of courts refusing to judicially review contractual decisions and non-binding guidance. Those concerned about the difficulty of holding Canadian governments to account in these trying times would be better advised to look to improving the channels of political accountability than trying to navigate those of legal accountability.
Daly, Tom, ‘Securing Democracy: Australia’s Pandemic Response in Global Context’ (Governing During Crises Policy Brief No 1, Melbourne School of Government, University of Melbourne, 3 June 2020)

*Key Points*: The Policy Brief makes the following central points:

(a) The COVID-19 pandemic has had a dramatic impact on democracies worldwide. An unprecedented number of states are simultaneously under a state of emergency and have derogated from key human rights treaties. Over 50 states have postponed elections.

(b) Government responses in democracies worldwide can be divided into 4 broad categories: effective rationalists; constrained rationalists; autocratic opportunists; and fantasists.

(c) Australia’s response falls into the ‘effective rationalist’ camp. The state has effectively addressed the pandemic through fact-based policy, acted within the constraints of the law, placed clear limitations on emergency actions, and developed innovative responses to address the crisis; principally, the National Cabinet.

(d) That said, there is a need for attention to 6 key issues: reviving parliaments; making the National Cabinet more transparent; ensuring adequate restrictions on surveillance measures; organising forthcoming elections; mitigating the pandemic’s hollowing out of independent media across Australia; and seizing the moment for democratic reform.

Daly, Tom, ‘Prioritising Parliament: Roadmaps to Reviving Australia’s Parliaments’ (Governing During Crises Policy Brief No 3, Melbourne School of Government, University of Melbourne, 1 August 2020)

*Key Points*: The Policy Brief makes the following central points:

(a) The sidelining of parliaments across Australia has been a central ‘blind spot’ in the nation’s largely effective and well-coordinated pandemic response, which, despite the recent rise in COVID-19 cases and deaths, has kept numbers among the lowest in the Western world.

(b) In meeting the challenge of keeping parliaments running, valuable lessons can be learned from overseas, especially from targeted measures taken in the UK, New Zealand, and Canada. The latter show that parliaments do not hinder an effective pandemic response.

(c) There are no material obstacles to re-opening Australia’s parliaments, with a range of options available – especially ‘hybrid’ models mixing online and face-to-face means for conducting parliamentary business. The main sticking point appears to be political
resistance based on a legitimate concern that something valuable would be lost if parliament does not meet in person, and possibly a sense that fuller sittings might slow the crisis response.


Abstract: This paper assesses the quantitative impact of government interventions on deaths related to the COVID-19 outbreak. Using daily data for 32 countries and relying on the stringency of the conducted policies, we find that the greater the strength of government interventions at an early stage, the more effective these are in slowing down or reversing the growth rate of deaths. School closures have a significant impact on reducing the growth rate of deaths which is less effective compared to the case where a number of policy interventions are combined together. These results can be informative for governments in responding to future COVID-19 outbreaks or other pandemics not least because there is a possibility of further waves of COVID-19 infections and deaths as governments progressively relax their interventions.


Abstract: The SARS-CoV-2 virus has been hitting Germany as unexpectedly as other European countries. At the end of January 2020, some employees at Webasto, a supplier of automotive parts in Bavaria, were diagnosed with the novel coronavirus after they had been in direct contact with a Chinese visitor. But, for a few weeks, Germans thought that COVID-19 is an issue for Asian states and not for Germany. Today, Germany continues to be severely affected, but the situation is not nearly as dire as in Britain, Italy or Spain. Germany, with its enormous financial resources and a well-equipped medical sector, appears to be better placed than most other economies to weather the storm. In May 2020, a race to lift restrictions has started and by early June, the country may be back on track.
Dincer, Oguzhan C and Robert Gillanders, ‘Shelter in Place? Depends on the Place: Corruption and Social Distancing in American States’ (SSRN Scholarly Paper ID 3613186, 28 May 2020)

Abstract: This paper investigates the links between corruption and compliance with social distancing during COVID-19 pandemic in America. Both theory and empirical evidence point to a corrosive effect of corruption on trust/social capital which in turn determine people’s behavior towards compliance with public health policies. Using data from 50 states we find that people who live in more corrupt states are less likely to comply with so called shelter in place/stay at home orders.


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 2030. 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.

Dobbs, Kirstie Lynn, ‘Falling Flat? The Impact of State Legitimacy, Capacity, and Political Trust on Flattening the Curve of COVID-19’ (SSRN Scholarly Paper ID 3637832, 30 June 2020)

Abstract: As countries across the world struggle to contain the COVID-19 pandemic, pundits often remark that countries with higher levels of regime legitimacy, state capacity, and political trust are more likely to curtail the spread of the virus. This article offers a first-cut glance analyzing whether these countries are indeed, more successful at containing the virus. By combining data from 10 different sources, I find that countries with higher levels of legitimacy and trust actually experienced greater increases in COVID-19 cases, albeit the strength of this relationship is moderate. State capacity had a stronger positive relationship with increases in COVID-19 cases, but GDP per capita largely drives this relationship. In sum, these results counter expectations regarding the role of certain political indicators on virus containment. Future research should refrain from the ‘blame game’ in terms of politics and should instead look at unique factors characterizing industrialized democracies that make a virus much harder to contain.


Abstract: Partisanship, especially in democratic regimes, may undermine compliance with government policy. We investigate this hypothesis by studying the relationship between electoral support for the minority government coalition and daily growth in covid-19 infections across Belgian municipal districts after the imposition of social-distancing measures. Applying spatial autoregressive modelling, we find that higher support for the parties in the minority government is associated with lower growth in reported infections in the weeks coinciding with
the peak of the coronavirus outbreak. These results persist after controlling for median income, population, population density, change in mobility and week and weekday and region fixed effects. Though we find a small far-right effect, we attribute the growth differential to ideological alignment rather than to intrinsic voter characteristics.

Edgeler, Graeme and Andrew Geddis, ‘The Power(Lessness) of New Zealand’s House of Representatives to Summons the Crown’s Legal Advice’ (SSRN Scholarly Paper ID 3619623, 5 June 2020)

Abstract: The extent of the New Zealand’s House of Representatives’ (‘the House’s’) general power to summons persons and documents recently came into question. A parliamentary committee, established to scrutinise the government’s response to the COVID-19 epidemic, required that various officials provide it with the Crown’s legal advice regarding the very extensive restrictions placed upon New Zealand society. When the Attorney-General objected on the basis that the documents sought were protected by legal professional privilege, the Speaker of the House determined that the House has no power to demand their production. Although this decision was based on precedent, it differs from the position in the United Kingdom’s House of Commons (‘the Commons’) from whence the House derives its privileges. It also is questionable whether it is a desirable outcome in terms of New Zealand’s constitution.


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

- Dobbs, Mary, ‘National Governance of Public Health Responses in a Pandemic?’ 240-248

Renda, Andrea and Rosa Castro, ‘Towards Stronger EU Governance of Health Threats after the COVID-19 Pandemic’ 273-282

Pacces, Alessio M and Maria Weimer, ‘From Diversity to Coordination: A European Approach to COVID-19’ 283-296


Alemanno, Alberto, ‘The European Response to COVID19: From Regulatory Emulation to Regulatory Coordination?’ 307-316


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.

Abstract: The paper examines the prospects of European integration after Brexit. It discusses a number of old and new crises faced by the European Union (EU) – including most recently the COVID-19 pandemic – and highlights how these have profoundly shaken the unity of the member states. In particular, the paper claims that three visions of integration are increasingly competing with each other – a first that sees the EU as a polity, a second that sees the EU as a market, and a third which instead uses the EU as a vehicle to entrench authoritarian governance at home. Given these unresolved tensions, it is unsurprising the EU governance system has been unable to effectively tackle subsequent crises, and as such efforts to rethink the EU constitutional architecture – including through a Conference on the Future of Europe – are to be welcome. However, many challenges still surround this defining moment, and therefore the question whether the EU will integrate further, or rather disintegrate, still remains open.


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

Feikert-Ahalt, Clare, ‘Restrictions on Movement Due to the Coronavirus Pandemic Across England – Part I’ In Custodia Legis: Law Librarians of Congress (Blog Post, 7 May 2020)

Abstract: This is the first part of a summary of the United Kingdom’s lockdown regulations ordered by the UK government to restrict movement and increase social distancing to reduce the effects of the 2020 COVID-19 pandemic.
Feikert-Ahalt, Clare, ‘Restrictions on Movement Due to the Coronavirus Pandemic Across England – Part II’ *In Custodia Legis: Law Librarians of Congress* (Blog Post, 8 May 2020)

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

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


*Abstract:* This article discusses the role of EU State aid law in the COVID-19 crisis. It contends that different Treaty derogations have played unique roles in addressing the core determinants of the economic risk linked to the pandemic - i.e. the ‘exposure’ to lockdown measures and the ‘vulnerability’ of certain sectors to them - and in increasing the resilience of national economies. Moreover, this article discusses the extent to which EU State aid law has also been used to manage and mitigate health risks, by allowing Member States to enhance the preparedness and capacity of their healthcare sector (broadly conceived) to respond to the pandemic. On the whole, this article maintains that State aid control has been used by the European Commission as an important ‘risk management tool’, and highlights the role of the Commission as the crisis-management authority.
Findlay, Mark, ‘Ethics, Rule of Law and Pandemic Responses’ (SSRN Scholarly Paper ID 3661180, 27 July 2020)

Abstract: The argument recounts a growing dissatisfaction with ethics and principled design as either the single or primary self-regulatory regime ensuring responsible data use and trustworthy AI. From this foundation it proposes rule of law compliance as a parallel and supportive normative and operational direction to address the deficiencies likely in any over-reliance on ethics regulation. In expressions of resistance to COVID responses there is scant community confidence in assertions that ethical reflections answer the deeply felt and differentially identified reservations regarding surveillance and data usage in pandemic responses. It is concluded that without the essence of democratic participation, in the form of citizen connection with emergency policymaking, and potential actionability through legal remedies if rights and liberties are compromised (both features of ‘thick rule of law’), then the regulatory legitimacy crisis facing principled regulatory regimes remains.


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


Abstract: This article explores the relationship between crises and democracy through a focus on the unfolding coronavirus pandemic. Its central argument is that to interpret the current pandemic purely in terms of its epidemiology and public health implications risks overlooking its potentially more significant socio-political consequences. This is because the challenges posed by the coronavirus crisis have themselves become overlaid or layered-upon a pre-existing set of concerns regarding the performance, efficiency and capacity of democratic political structures. The aim of this article is to try and understand and warn against what might be termed a rather odd form of cross-contamination whereby the cynicism, negativity and frustration concerning politicians, political processes and political institutions that existed before the coronavirus
outbreak is allowed to direct, define and automatically devalue how democratic structures are subsequently judged in terms of how they responded to the challenge. As such, this article focuses on the link between the Coronavirus crisis and the democratic crisis; or, more precisely, the risk that the Coronavirus crisis may mutate into and fuel a broader crisis of democracy.

Florey, Katherine, ‘COVID-19 and Travel Restrictions’ (SSRN Scholarly Paper ID 3634118, 23 June 2020)

Abstract: The strict controls that many jurisdictions, including most U.S. states, established to contain the COVID-19 pandemic have proven difficult to sustain over time, and most places are moving to lift them. Internationally, many plans to ease lockdowns have retained some form of travel restrictions, including the ‘green zone’ plans adopted by France and Spain, which limited travel between regions with widespread community transmission of COVID-19 and those without it. By contrast, most U.S. states lifting shelter-in-place orders have opted to remove limits on movement as well. This Article argues that this situation is unwise: It tends to create
travel patterns that increase the spread of COVID-19 while hindering contact tracing and information gathering. While broad quarantines have a complicated and far from perfect record in the United States, more targeted and/or voluntary measures are likely within states’ constitutional powers to impose, might be more palatable to the public, and could play a significant role in helping to contain the spread of COVID-19.


Abstract: In the month of May, the Netherlands moved out of the ‘intelligent lockdown’, and into the ‘1.5 meter society’, which aims to mitigate the COVID-19 pandemic by means of safe-distance measures. This paper assesses how Dutch citizens have complied with these social distancing measures. It analyses data from two surveys conducted in May (between 8-14 and between 22-26) among nationally representative samples (N = 984 and N = 1021). We find that a combination of factors explains social distancing compliance. On the one hand we see that people are more likely to comply if they have an intrinsic motivation to do so, when they have the capacity to comply, when they have good impulse control, when they think compliance is normal, and when they see a general duty to obey rules generally. The paper also assesses how compliance has changed over time, assessing changes in May as well as how these are different from compliance with lockdown measures in April. During this period, there has been a gradual decline in compliance that coincides with a decline in intrinsic motivations and capacity for compliance, and there has been an increase in opportunities to violate the measures. The paper assesses what these changes may mean for current and future success of COVID-19 mitigation measures.


Jurisdiction: USA

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


Abstract: While both federal and provincial governments are accountable before the courts for violations of individuals’ rights and freedoms constitutionally protected in the Canadian Charter of Rights and Freedoms, their civil liability in tort for damages is a different matter. This chapter addresses the issue of the suitability of these actions in light of the immunity from suit that the federal and provincial governments (“the Crown”) enjoy. In the first section of this chapter, the state of the law and recent developments in relation to the Crown’s liability in Canada are discussed. The meaning and consequences of the Supreme Court of Canada’s most recent decisions in relation to the Crown’s liability in the context of the COVID-19 pandemic—including for the acts of its departments, servants, agents, corporations, and independent contractors—are discussed in the second section.
Abstract: During the COVID-19 pandemic, physical distancing is being promoted to reduce the disease transmission and pressure on health systems. Yet, what determines physical distancing? Through a panel data analysis, this article identifies some of its determinants. Using a specifically built index that measures the strictness of physical distancing rules in the 27 Brazilian states, this paper isolates the effect of mandatory physical distancing rules from other potential determinants of physical distancing. The article concludes that physical distancing is influenced by at least three variables: the strictness of mandatory physical distancing rules, the number of confirmed cases of COVID-19, and the duration of rules. Evidence also indicates that the effect of physical distancing measures is relatively stronger than that of the number of cases – physical distancing is determined proportionally more by mandatory policies than people’s awareness about the severity of the epidemic. These results have at least two policy implications. First, governments should adopt mandatory measures in order to increase physical distancing – rather than expect people to adopt them on their own. Second, the timing of adopting them is important, since people are unlikely to comply with them for long periods of time.


Abstract: Public policy must confront emergencies that evolve in real time and in uncertain directions, yet little is known about the nature of policy response. Here we take the coronavirus pandemic as a global and extraordinarily consequential case, and study the global policy response by analyzing a novel dataset recording policy documents published by government agencies, think tanks, and intergovernmental organizations (IGOs) across 114 countries (37,725 policy documents from January 2nd through May 26th 2020). Our analyses reveal four primary findings. (1) Global policy attention to COVID-19 follows a remarkably similar trajectory as the total confirmed cases of COVID-19, yet with evolving policy focus from public health to broader social issues. (2) The COVID-19 policy frontier disproportionately draws on the latest, peer-reviewed, and high-impact scientific insights. Moreover, policy documents that cite science appear especially impactful within the policy domain. (3) The global policy frontier is primarily
interconnected through IGOs, such as the World Health Organization, which produce policy documents that are central to the COVID-19 policy network and draw especially strongly on scientific literature. Removing IGOs’ contributions fundamentally alters the global policy landscape, with the policy citation network among government agencies increasingly fragmented into many isolated clusters. (4) Countries exhibit highly heterogeneous policy attention to COVID-19. Most strikingly, a country’s early policy attention to COVID-19 shows a surprising degree of predictability for the country’s subsequent deaths. Overall, these results uncover fundamental patterns of policy interactions and, given the consequential nature of emergent threats and the paucity of quantitative approaches to understand them, open up novel dimensions for assessing and effectively coordinating global and local responses to COVID-19 and beyond.


Jurisdiction: New Zealand

Abstract: It is not hard to grasp why the Covid-19 Public Health Response Act 2020 was greeted with such a wave of sound and fury. The unseemly haste with which the Act was shepherded through the House (all stages under urgency) gave human rights groups, and others, little opportunity to come to grips with the thrust of the legislation.

Note: the Covid-19 Public Health Response Act 2020 (NZ) is available on the official New Zealand Legislation website.


Note: This page includes a comparative summary, and links to the full report and a COVID-19 Contact Tracing Apps world map.

Extract from Introduction: This report surveys the regulation of electronic means to fight the spread of COVID-19 in 23 jurisdictions around the globe: Argentina, Australia, Brazil, China, England, France, Iceland, India, Iran, Israel, Italy, Japan, Mexico, Norway, Portugal, the Russian
Federation, South Africa, South Korea, Spain, Taiwan, Turkey, the United Arab Emirates, and the European Union (EU).

Gill, Peter, ‘Of Intelligence Oversight and the Challenge of Surveillance Corporatism’ (2020) *Intelligence and National Security* 1–20 (advance online article, published 26 June 2020)

*Abstract*: This article examines the experience of oversight during the last fifty years in order to inform current debates in both the older and newer democracies. First, there is a discussion of certain key concepts: intelligence governance including control, authorisation and oversight; second, the difficulties facing oversight, specifically, how these can be alleviated by a structure involving both parliamentary and specialist bodies and, third, the challenges presented by the structures of surveillance corporatism and its reliance on bulk collection. It is concluded that this new intelligence architecture requires a form of decentred regulation of and by state and corporate actors.

Ginsburg, Tom and Mila Versteeg, ‘*Binding the Unbound Executive: Checks and Balances in Times of Pandemic*’ (Virginia Public Law and Legal Theory Research Paper No 2020-52, 2020)

*Abstract*: Emergency governance, we are often told, is executive governance. Only the executive branch has the information, decisiveness, and speed to respond to crises, and so the executive is not capable of being effectively constrained by other branches. This creates a risk of over-reach, erosion of civil liberties, and even democratic backsliding in some cases.

This Article interrogates these propositions using evidence from how various countries have responded to the global COVID-19 pandemic. It presents data from an original and global survey to evaluate the nature of emergency powers during the pandemic. The survey captures, for each country, the legal basis for the pandemic response as well as the extent to which there has been judicial or legislative oversight, and whether the executive’s pandemic response has encountered pushback from subnational units.

This Article finds that, contrary to conventional wisdom, courts, legislatures and subnational governments have played important roles in constraining national executives. Courts have played four different roles: (1) they have insisted on procedural integrity of invocations of emergency; (2) they have engaged in substantive review of rights restrictions, balancing public
health concerns; (3) they have in some cases demanded that government take affirmative steps to combat the virus and its effects; and (4) they have supervised decisions about postponing elections. Legislatures have likewise played an active role in providing oversight and, in some cases, in producing new legislation that is specific to the current crisis. Subnational governments, too, have pushed back against central authorities, producing valuable institutional dialogues on the appropriate response. This Article considers the implications of these findings for theories of emergency governance, arguing that the executive does not occupy as central a role as commonly believed, especially in crises in which information is highly decentralized. It further defends the role of institutional checks and balances during emergencies, arguing that they are likely to produce more legitimate and reasoned responses than the executive acting alone.


Abstract: On 17 March 2020, Tasmania entered a ‘state of emergency’ in response to COVID-19. Parliament stands adjourned, and the executive is regulating the crisis through delegated regulations that significantly limit civil rights and freedoms. Despite assurances Tasmania’s Subordinate Legislation Committee would scrutinise executive power throughout the crisis, its role has been limited, due to an overly prescriptive (we argue incorrect) reading of Tasmania’s scrutiny framework, which has not been properly reformed in several decades. This is a salient lesson about why constitutional laws require regular reviewed and modernisation, to ensure Parliaments remain supreme even (especially) during crises and emergencies.


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?


Abstract: The Centers for Disease Control and Prevention (CDC) modeling suggests that, without mitigation, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the virus that causes novel coronavirus disease 2019 (COVID-19), could infect more than 60% of the US population.1 President Trump has declared a national emergency along with 50 governors declaring state emergencies (Figure), which are unprecedented actions. Social distancing aims to flatten the epidemic curve to moderate demand on the health system. Consequently, whether through voluntary actions or state mandates, individuals are increasingly sheltering at home, schools and universities are closing, businesses are altering operations, and mass gatherings are being canceled. On March 16, the health officers of 6 local governments in the San Francisco Bay Area issued mandatory orders to shelter in place, making it a misdemeanor offense to leave home for any nonessential purpose.


Abstract: The United States is currently trying to manage a fast-moving public health crisis due to the coronavirus outbreak (COVID-19). The economic and financial ramifications of the outbreak are serious. This Working Paper discusses these ramifications and identifies three interrelated but potentially conflicting policy priorities at stake in managing the economic and financial fallout of the COVID-19 crisis: (1) providing social insurance and a social safety net to individuals and families in need; (2) managing systemic economic and financial risk; and (3) encouraging critical spatial behaviors to help contain COVID-19 transmission. The confluence of these three policy considerations and the potential conflicts among them make the outbreak a
significant and unique regulatory challenge for policymakers, and one for which the consequences of getting it wrong are dire. This Working Paper — which will be continually updated to reflect current developments — will analyze the major legislative and other policy initiatives that are being proposed and enacted to manage the economic and financial aspects of the COVID-19 crisis by examining these initiatives through the lens of these three policy priorities. It starts by analyzing the provisions of H.R. 6201 (the ‘Families First Coronavirus Responses Act’) passed by the house on March 14, 2020, subject to subsequent Technical Corrections of March 16, 2020, and then passed by the Senate without amendment and signed by the President on March 18, 2020. Next, it analyzes the provisions of H.R. 748 (the ‘Coronavirus Aid, Relief, and Economic Security Act’ or the ‘CARES’ Act) enacted into law on March 27, 2020. By doing so, this Working Paper provides an analytical framework for evaluating these initiatives.


Abstract: With indiscriminate geographic and socio-economic reach, COVID-19 has visited destruction of life and livelihoods on a largely unprepared world and can arguably be declared the new millennium’s most trying test of state capacity. Governments are facing an urgent mandate to mobilize quickly and comprehensively in response, drawing not only on public resources and coordination capabilities but also on the cooperation and buy-in of civil society. Political and institutional legitimacy are crucial determinants of effective crisis management, and low-trust states lacking such legitimacy suffer a profound disadvantage. Social and economic crises attending the COVID-19 pandemic thus invite scholarly reflection about public attitudes, social leadership, and the role of social and institutional memory in the context of systemic disruption. This article examines Hong Kong as a case where failure to respond effectively could have been expected due to low levels of public trust and political legitimacy, but where, in fact, crisis response was unexpectedly successful. The case exposes underdevelopment in scholarly assumptions about the connections among political legitimacy, societal capacity, and crisis response capabilities. As such, this calls for a more nuanced understanding of how social behaviours and norms are structured and reproduced amidst existential uncertainties and policy ambiguities caused by sudden and convergent crises, and
how these can themselves generate resources that bolster societal capacity in the fight against pandemics.


Jurisdiction: China

Abstract: Chinese citizens are increasingly concluding that the state alone cannot manage national disasters and emergencies. Leveraging two waves of a nation-wide survey of urban residents, conducted in 2018 and 2020, we find statistical support amongst Chinese citizens for civil society organizations to become more involved in a national crisis such as during COVID-19. The theoretical and practical implications for authoritarian regimes are discussed. Primarily, we suggest that while authoritarian regimes can use crises to gain and retain performance legitimacy, their normal methods of controlling information can thwart these gains. Civil society organizations can assist with this dilemma.


Abstract: Governmental reactions to crises like the COVID-19 pandemic can be seen as ethics communication. Governments can contain the disease and thereby mitigate the detrimental public health impact; allow the virus to spread to reach herd immunity; test, track, isolate, and treat; and suppress the disease regionally. An observation of Sweden and Finland showed a difference in feasible ways to communicate the chosen policy to the citizenry. Sweden assumed the herd immunity strategy and backed it up with health utilitarian arguments. This was easy to communicate to the Swedish people, who appreciated the voluntary restrictions approach and trusted their decision makers. Finland chose the contain and mitigate strategy and was towards the end of the observation period apparently hesitating between suppression and the test, track, isolate, and treat approach. Both are difficult to communicate to the general public accurately, truthfully, and acceptably. Apart from health utilitarian argumentation, something like the republican political philosophy or selective truth telling are needed. The application of
republicanism to the issue, however, is problematic, and hiding the truth seems to go against the basic tenets of liberal democracy.


Abstract: Starting from the outbreak of the Corona Virus pandemic (Covid-19) in the early 2020s including in Indonesia, humanity was shaken with a variety of panic. To cope with the Covid-19 pandemic outbreak, the Government of Indonesia established a public health emergency status and adopted a Large Scale Social Restrictions (LSSL) policy. However, this health law enforcement issues a new polemic for the society, for Indonesian Muslims who cannot worship in congregation in mosques or other places of worship. The purpose of this study is to analyze the LSSL Policy that implemented by the government from the perspective of al-Maqashid asy-Syar’iyyah. This research is a legal research with literature study method and normative juridical research. Thus, the legal material related to the LSSL policy imposed by the Government of Indonesia. Based on the results of the study showed that there are some differences and their consequences, but the theory of al-Maqashid asy-Syar’iyyah LSSL policy is one of the best choices in the framework of overcoming the Covid-19 pandemic outbreak in Indonesia.


Jurisdiction: USA

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


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

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


Abstract: Taiwan is situated less than 200 kilometers from the first COVID-19 outbreak state, China, and it has millions of international visitors yearly. Taiwan’s collective efforts to block and eliminate the invisible enemy (COVID-19) from the island have resulted in relatively low infection and death numbers and have been hailed as a successful anomaly amid the global pandemic. This review provides some background on the systems and organizations that helped Taiwan streamline a task force (command center) in a timely manner to launch related initiatives, mobilize the public, and engage private resources to implement strategies and policies that were further enhanced by collaborative behaviors and volunteers. Even subject to threatening conditions such as cruise ship stopover and numerous foreign immigrant workers, there were no outbreaks of community infection in Taiwan similar to those in Singapore, Japan, and other countries. Taiwan’s successful measures offer a good example for future comparative studies.

Abstract: Examines the public health emergency regulations passed by Hong Kong in response to the coronavirus pandemic under the Prevention and Control of Disease Ordinance s.8. Details the scope of the powers, their key features, such as a compulsory quarantine period for new arrivals, and the context in which they were made. Reviews the constitutional principles available to prevent such measures from violating the rule of law, including proportionality.


Abstract: On Saturday, March 28, 2020, President Donald Trump floated the possibility of issuing a ‘quarantine’ order for the states of New York, New Jersey, and Connecticut because of their numerous COVID-19 cases. Later that day, Trump backtracked and declared that a quarantine order would ‘not be necessary.’ While quarantines can differ in type and scope, they generally involve restricting the movement of those exposed or potentially exposed to an infectious disease during its period of communicability. As for Trump’s quarantine order, it is unclear what it would have required: whether it would have affected all three states in their entirety or just partially, mandated that all people in those states stay at home, prohibited all travel into and out of those states, or some combination of these. What is certain, however, is that under current federal law, the president does not have authority to issue a quarantine order that is effectively statewide, including prohibiting all or nearly all travel within a state or into and out of the state. It is also unlikely that Congress could give the president new authority to do so under its Commerce Clause power, which is the basis for the current federal law on quarantine. As COVID-19 continues to radically change daily life in the United States, it is vital to understand the limits on federal authority over mandatory, statewide quarantines—not only to avoid pitched legal battles between the government, quarantined individuals, and the states, but also to deal with current and future pandemics. Involuntary quarantines are often ineffective at
resolving such health crises. Expanding federal power in this area is, as such, unlikely to be an effective health measure, both currently and going forward.


Abstract: The Australian Constitutions and the rule of law require that much by way of regulatory action is taken either directly through statute or indirectly by means of delegated legislation. There are of course many soft laws underneath this fabric such as guidelines, notices, instruments and orders being necessary to implement and execute these laws. The onset of the COVID-19 pandemic has required the legislatures to act with haste. In turn this has necessitated the various offices of the legislative drafters (many of course who are women) to apply their skills under more than the usual daily pressure they face. The persons who perform these tasks go largely unheralded. Quietly and efficiently they create what becomes law in addition to much that may never become law.


Jurisdiction: USA

Abstract: The COVID-19 epidemic has been exacerbated by failures in diagnostic testing for the virus in the United States. In response to these problems, two bills have been introduced in Congress to not only reform emergency use of diagnostic tests, but to fundamentally reform diagnostics regulation in non-emergencies. There has been a long-standing recognition that current U.S. regulation of diagnostics is outdated and problematic, and the history of public health legislation is that emergencies and crises have been the primary motivating factor to break Congressional inertia and to implement new legislation. Thus, the COVID-19 may create a useful ‘window of opportunity’ to pass much-needed legislative reform of diagnostic regulation in both emergency and non-emergency contexts. At the same time, rushing radical legislative changes, especially if they have not been subject to careful stakeholder engagement and Congressional deliberation in advance, is precarious and could result in reckless and disruptive
changes. We review and apply the historical lessons of legislating in response to a crisis and conclude the one but not both of the pending legislative proposals may satisfy the criteria for an appropriate opportunistic change for diagnostics regulation.

Jurisdiction: Canada

Jurisdiction: USA

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

Jurisdiction: Turkey

Abstract: The article offers information on the challenges faced by the coronavirus in the [sic] Turkey, along with the information on the safety measure taken by the Turkey President, Recep Tayyip Erdoğan. It mentions the declaration of the coronavirus outbreak as a global pandemic by the World Health Organization.
Kelly, Richard, ‘Emergency Debate on the Conduct of House Business during the Coronavirus Pandemic’ (Briefing Paper No 08935, House of Commons Library, 5 June 2020)

Jurisdiction: UK

Abstract: On Monday 8 June 2020, the House of Commons will hold an emergency debate on the conduct of House business during the pandemic.

The Procedure Committee published four reports to keep the House informed of the proposals for hybrid proceedings; on the introduction of remote voting; and on the discontinuation of remote participation:

- Procedure under coronavirus restrictions: proposals for remote participation, 21 April 2020, HC 300 2019-21
- Procedure under coronavirus restrictions: remote voting in divisions, 8 May 2020, HC 335 2019-21
- Procedure under coronavirus restrictions: the Government’s proposal to discontinue remote participation, 30 May 2020, HC 392 2019-21
- Procedure under coronavirus restrictions: the Government’s proposal for proxy voting for shielding Members, 3 June 2020, HC 429 2019-21


Abstract: This paper develops a tractable model of a society hit by a viral pandemic. It is sufficiently rich so as to relate the optimal decisions of the policymaker to the underlying characteristics of this society, in terms of preferences, social mores and economic structures. This allows us to make sense of the diversity of policies adopted worldwide with respect to the Covid-19 pandemic.


Abstract: The greatest impact of the novel coronavirus on most of our lives has not been physiological. Rather, the impact has come from state governments’ responses to the virus. In
much of the country, stay-at-home measures have shut down our lives—including our ability to continue with our employment, study, religious practice, socializing, and access to arts and entertainment. Given the situation that states have found themselves in, I believe that their response to the COVID-19 threat has been appropriate—and the limited judicial authority that exists at the time of writing agrees.


Jurisdiction: USA

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

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

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

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.


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.


Abstract: Africa, and sub-Saharan Africa in particular, is one of the last continents to have recorded COVID-19 cases, and is expected to be severely impacted by the virus. The lack of intensive care capacity and under-resourced public healthcare settings in many African
countries, coupled with high levels of poverty and poor access to healthcare services, applies to some extent to South Africa (SA). The SA government’s swift and decisive response to address COVID-19 in March 2020, although praised by many, is increasingly being criticised for its disproportionate, contradictory and harsh consequences, not to mention a range of legal challenges that have followed since the introduction of lockdown measures in terms of the Disaster Management Act. This article examines some of the ethical and legal issues relating to the government’s approach to COVID-19.


Jurisdiction: Philippines

Abstract: The COVID-19 crisis is the most complex and challenging peacetime crisis that the world has ever faced in recent history. Over the course of 5 months, the novel coronavirus has infected more than 6.1 million people in 188 countries and caused the death of almost 400,000 people around the world. The pandemic has forced governments worldwide to declare national lockdowns, shutting down schools and workplaces, disrupting travel, and forcing billions of people around the world to retreat into their homes. When the Philippines emerged from lockdown on June 1, 2020, 18,638 people had tested positive for the novel coronavirus and 960 people had died from the disease. This pandemic is proving to be unlike anything that humanity has experienced before. The rapid spread of the virus coupled with its high reproduction rate and unusually long incubation period has caught governments off-guard as they scramble to adapt to the situation. The pandemic is turning out to be a large-scale social experiment in governance and crisis management, as countries are forced to confront the limitations of their current systems. Two dominant governance models have emerged on how to address the crisis. The first is China’s authoritarian, command-and-control model which uses centralized monitoring, police surveillance, and harsh punishment. The second model is a more democratic model used by South Korea, Taiwan, and Singapore which relies on extensive testing, honest reporting, and cooperation between government and the citizens. In battling this pandemic, the Philippines is currently caught in a tug-of-war between the national government’s authoritarian approach to the crisis, and local governments and private citizens push for involvement and participation to fill the gaps of national governance. This paper will analyze the dynamics
between national government, local governments, and the private sector, and offer recommendations on how local autonomy and citizens’ participation can help support innovation and strengthen governance towards addressing the myriad issues brought about by the pandemic.

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

*Jurisdiction: UK*

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

Lindseth, Peter L, ‘Executives, Legislatures, and the Semantics of EU Public Law: A Pandemic-Inflected Perspective’ in Diane Fromage and Anna Herranz Surrallés (eds), Executive-Legislative (Im)Balance in the European Union (Hart, 2020) [the link is to the pre-published chapter available on SSRN]

*Abstract: This contribution will serve as the epilogue to a forthcoming volume on executive-legislative relations in the European Union (EU). It begins by noting that the EU’s response to the coronavirus pandemic, encouraging though it may be in some respects, has nonetheless reminded us of the constraints placed on a system of supranational governance that lacks a legislative fiscal capacity of its own. Although there is much excitement about the pandemic ‘recovery fund’ built on borrowing against the EU budget (and distributed, at least in part, through grants), the fund will still be ultimately backed by the fiscal capacities of the member states severally rather than by the EU’s own. Autonomous fiscal capacity, however, is arguably the core attribute of a genuinely ‘constitutional’ form of governance, and more specifically of a genuinely constitutional ‘legislature’. The EU’s persistent lack of a fiscal capacity of its own leads this epilogue to pose an admittedly radical question: Semantically speaking, is it right even to speak of the EU possessing ‘legislative’ power at all, at least in the most robust sense of the term, when it otherwise lacks autonomous fiscal capacity? This question might seem bizarre*
given key features of the EU’s institutional system, notably the existence of an elected assembly—the European Parliament (EP)—as well as that body’s participation in something called the ‘ordinary legislative procedure’ (OLP) in order to make rules of general and prospective application to govern European integration. According to the ‘as if’-constitutional framing that dominates most legal analysis of the EU today, the EP and OLP are so-labelled for a simple reason: they are the focal points of “legislative” power in the European system. And yet, might this labelling be misleading? Might both the EP and OLP merely serve to inject an electoral component into a regulatory system that is fundamentally executive-technocratic (ie administrative) in character? Might specifically “legislative” power in the EU—in the sense of the legitimate-compulsory mobilization of fiscal and human resources—still be concentrated entirely at the national level? With these questions in mind, this epilogue examines the many stimulating topics covered by the chapters in this volume: the application of Rodrik’s famous “political trilemma of the world economy” to the EU context; the role of the EP in counter-balancing the powers of the Commission, Council, and European Council; the expansion of national executive power as a consequence of integration—the so-called “deparliamentarisation” phenomenon—which operates to the obvious detriment of national parliaments (NPs); and finally the respective roles of the EP and NPs, as the case may be, in such areas as trade policy, the supranational regulation of national budgets, as well as several former ‘second’ and ‘third pillar’ domains (security, defense, foreign policy, justice and home affairs). Based on this discussion, this epilogue concludes by reflecting on whether the last decade of upheaval in the EU—from the Eurozone crisis to the current pandemic emergency—has brought the EU to a ‘critical juncture’, in which some form of supranationalised fiscal capacity is now in the offing and which, if realised, might then allow the EU to transcend the current but misleading ‘as if’ constitutionalism that continues to characterise discussions of EU public law.


Abstract: President Trump and other prominent Republicans have argued that the measures taken to slow the spread of COVID-19 will create economic consequences too serious to justify the number of lives saved. Are they right? We do the math.
Lord, Phil and Lydia Saad, ‘Outline of Government Programs Related to the COVID-19 Pandemic in Canada’ (SSRN Scholarly Paper ID 3567474, 8 April 2020)


**Abstract:** The radical uncertainty around the current COVID-19 pandemics requires that governments around the world should be able to track in real time not only how the virus spreads but, most importantly, what policies are effective in keeping the spread of the disease under check. To improve the quality of health decision-making, we argue that it is necessary to monitor and compare acceleration/deceleration of confirmed cases over health policy responses, across countries. To do so, we provide a simple mathematical tool to estimate the convexity/concavity of trends in epidemiological surveillance data. Had it been applied at the onset of the crisis, it would have offered more opportunities to measure the impact of the policies undertaken in different Asian countries, and to allow European and North-American governments to draw quicker lessons from these Asian experiences when making policy decisions. Our tool can be especially useful as the epidemic is currently extending to lower-income African and South American countries, some of which have weaker health systems.

Lundgren, Magnus et al, ‘Emergency Powers in Response to COVID-19: Policy Diffusion, Democracy, and Preparedness’ (Stockholm University Research Paper No 78, Faculty of Law, 7 July 2020)

**Abstract:** The paper relies upon legal as well as political science perspectives and methods. The first part of the paper frames pandemics within in the context of international law, focusing especially on the right to health, the WHO 2005 International Health Regulations, and derogations from human rights in normal times as well as during states of emergency. The second part of the paper sets out a theoretical framework, deriving three hypotheses for why certain states declare SOE while others do not: (i) states look to their regional peers for inspiration and legitimation, leading to patterns of regional policy diffusion; (ii) newer and less robust democracies are more likely to resort to SOEs, compared with mature democracies and dictatorships; (iii) states with a higher pandemic preparedness are less likely to resort to a SOE. The third and fourth parts of the paper presents data and results, respectively. The results
suggest that states’ declaration of SOEs is driven by both external and internal factors. A permissive regional environment, characterized by many and simultaneously declared SOEs, may have diminished reputational and political costs, making employment of emergency powers more palatable for a wider range of governments. At the same time, internal characteristics, specifically democratic institutions and pandemic preparedness, shaped governments’ decisions. Weak democracies with poor pandemic preparedness were considerably more likely to opt for a SOE than dictatorships and robust democracies with higher preparedness.

Lunn, Jon and Philip Brien, ‘Coronavirus in Developing Countries: Mapping National Policy Responses’ (House of Commons Library, Insight, 29 June 2020)

Abstract: Some predicted that the coronavirus pandemic had the potential to be a health catastrophe for developing countries. There were concerns that it would result in millions of deaths. But the developing world is not a monolith. And the emerging picture is more complex and nuanced. This Insight maps the main trends in policy to date among developing countries. It highlights some of the ongoing debates in these countries about the pandemic.


Abstract: States of emergency test the limits of constitutionalism and our commitment to the rule of law (Dyzenhaus 2012). They tell us something about the ultimate power in a society and the very nature of state powers. French constitutions have a long history of arising from crises, revolutions and overthrows. The current political regime was born in 1958 at the time of the Algerian war of independence. More recently, the French have lived under a sustained period of emergency regulations following the terrorist attacks in Paris in November 2015. Now that a state of health emergency has been declared and extended it is possible to reflect on how key principles relating to the rule of law, such as legality and judicial control, are being re-shaped. This helps us to reflect on how the state seeks to command compliance from its citizens and how a balance is struck between necessity and legality. Key stages can be identified: a first stage
when (judicial) control is muted and a second stage when judges re-assert their role once the
risks linked to the pandemic have been curbed. This differentiation both confirms the risk of
normalising an executive state of emergency (at the time of the peak) and the possibility of a
judicial state of emergency emerging (once the first wave is over) (Ginsburg and Versteeg 2020).
This brings into question how the next steps in the health emergency can be made subject to
robust scrutiny and accountability mechanisms as necessity evolves.

Marzen, Chad G, ‘Principled Conservatism: The CARES Act and the Lone Voice’ (SSRN Scholarly Paper ID 3643959, 5 July 2020)

Abstract: The Coronavirus Aid, Relief and Economic Security (CARES) Act was the largest
spending bill passed by Congress and enacted into law in American history. This Article
concludes that despite all of the criticism he has endured, Congressman Massie’s lone voice
calling for a vote for over $2 trillion in government spending will be remembered years from
now as a beacon and clarion call for fiscal and principled conservatives. The Article also
examines two prior historical instances which involved a lone voice in the United States House
of Representatives: Congresswoman Jeannette Rankin’s lone vote against a declaration of war
with Japan in 1941 and Congresswoman Barbara Lee’s lone vote against the war in Afghanistan
in 2001. Both the lone votes of Congresswoman Ranking and Congresswoman Lee illustrate that
taking a principled, highly unpopular stance at the risk to one’s political career in the United
States House of Representatives can result in a positive, long-term legacy. This Article predicts
Congressman Massie’s lone voice will be viewed in the same lens in the future.


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


Jurisdiction: Canada

Abstract: Holding the executive and the legislature to account is a perennial challenge in an emergency. Even by emergency standards, however, COVID-19 has presented serious accountability challenges. The current situation raises questions about how we ensure that the executive and Parliament are held accountable in a public health crisis like the one COVID-19 has precipitated. I explore some of these questions in this chapter. In doing so, I attempt a fair assessment of the challenges the executive and Parliament face in such a crisis, and suggest ways that nodes of accountability might be found both within and outside the political branches when they are not operating as usual.


Abstract: This paper examines in general terms the impact of the precautionary principle on COVID-19 legislation and management. In academic discussion the precautionary principle is usually referred to in the context of environmental policy. The principle can also be found, however, in health protection, which suggests its transfer to the pandemic situation. Contrary to the concern that the principle could serve as a blanket justification for extreme and arbitrary interventions in civil liberties, the paper demonstrates that, notwithstanding conflicts with the rule-of-law obligation to evidence-based legislation, the precautionary principle does not supplant the principle of proportionality. Thus, it sets limits to risk-related legislation even
though it allows restrictions in the absence of scientific consensus. Reflecting on the scientific
debate about the precautionary principle can help to maintain (or at least restore) rationality
and prudent risk tradeoffs even in times of emergency legislation.

Administrative Law 66-69

Abstract: The outbreak of the novel coronavirus and the urgent need to contain it has changed
dramatically our society and the ways we live and work in a matter of weeks. The outbreak has
crossed state and international borders and has touched nearly every aspect of our lives. The
government response has required co-operation and co-ordination across the federation and
heads of legislative power. The proliferation of new legislation and legislative instruments, as
well as the interpretation of such documents, presents a challenge in citizens and lawyers alike
in understanding what the rules are and the source of such rules at any given moment. The
instruments which have had the most profound effect on our lives have been the biosecurity
and health emergency declarations made under state and federal laws. At Commonwealth level,
the Governor- General has declared a human biosecurity emergency under section 475 of the
‘Biosecurity Act 2015’ (Cth). In addition to amendments to facilitate the making of directions
and declarations about the COVID-19 emergency, emergency legislation has also been passed
by various jurisdictions to facilitate the emergency response. Given the number of declarations,
directions and amendments being made to facilitate the response to COVID-19, knowing what
the law is at a given point in time and how it will be implemented has become a daily challenge.

Moloney, Kim and Susan Moloney, ‘Australian Quarantine Policy: From Centralization to Coordination
with Mid-Pandemic COVID-19 Shifts’ (2020) 80(4) Public Administration Review 671–682

Abstract: Combining a historical institutionalism approach with institutional isomorphism and
punctuated equilibrium, this article analyzes quarantine policy change across 120 years of
Australian quarantine history. By anchoring its analysis within specific time periods (the years
before the Spanish flu, seven decades of inaction, and multiple post-1997 pandemic updates
and responses), the authors highlight when and why policies did or did not change and how the
constant push-and-pull between state and Commonwealth institutional ownership altered
policy possibilities. The heart of the analysis showcases how Australia’s successful COVID-19 response is a unique output of prior quarantine policies, institutional evolution, and mid-pandemic alterations of key national pandemic response plans.


**Jurisdiction:** UK

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

*Note:* link to the Civil Contingencies Act 2004 on the official UK legislation website.


*Abstract:* In this article we analyse the legal approach and measures implemented by Sweden’s public authorities as a response to the COVID-19 pandemic and their legal background. Further, we discuss general legal and ethical questions related to measures to contain public health threats such as the current COVID-19 pandemic. It is outside of the scope of this paper to compare and critically analyse the effectiveness of Sweden’s public health strategy.

Ohlin, Jens David, ‘Pandemics, Quarantines, Utility, and Dignity’ (SSRN Scholarly Paper ID 3591784, 3 May 2020)

*Abstract:* Medical quarantines were once common in the United States, but in the last 50 years they have been used infrequently by the government. That changed with the spread of the novel Coronavirus, and the resulting Covid-19 illness, in 2020. Cruise ships where the virus had taken hold were quarantined and passengers were prohibited from disembarking. Residents of towns in Spain, and an entire province of China, were prevented from leaving by their respective governments. This Article argues that the permissibility of coercive quarantines is best understood as an example of threshold deontology. Threshold deontology is the view that
individual human dignity must prevail over the common good, but that in moments of extreme
emergency, when a ‘threshold’ has been reached, the reverse is true: the common good can
trump individual rights. Part I provides a brief overview of the use of coercive quarantines to
fight Covid-19 and the surprising lack of objection that these measures triggered. Part II explores
the unmistakably utilitarian logic behind public health generally and quarantines specifically.
Then, Part III introduces the concept of human dignity as a constraint on utilitarian public health
by surveying three representative jurisdictions: The United States, German domestic law, and
the European Convention on Human Rights. Part III concludes that even liberal democracies vary
subtly but significantly in how strongly they protect human dignity and that these differing levels
of commitment to human dignity help explain why some legal cultures have been so quick to
resort to quarantines, while other communities have been reluctant. Finally, Part IV suggests
that jurisdictions that are usually protective of individual rights but decide to fight Covid-19 with
coercive quarantines are best understood as operating under the sway of threshold deontology.
This Article does not defend threshold deontology as a moral theory but does argue that it is
best understood as a covert form of indirect consequentialism. Moreover, this Article concludes
that threshold deontology is the key moral battleground for debating the quarantine power
during the Covid-19 era.


Jurisdiction: UK

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

*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.


*Jurisdiction*: India

*Abstract*: The outbreak of the novel coronavirus demanded the invokement of the epidemic diseases act to combat the crises and provide a legal substance in enforcing rules and regulations. In times of such despair, the Epidemic diseases act, an act legislated in the pre-constitutional era came to the rescue. This paper analyses the provisions of the act and pitfalls faced in light of new challenges and the need to reform the act by inserting new provisions to better capture the modern-day challenges. This paper also deals with the Epidemic Diseases (amendment) ordinance, 2020 which received the assent of the president on April 23rd, 2020
which provided for stricter punishments for attacks against health workers, increased compensation, to make the offences cognizable and non-bailable among other things. This article seeks to establish whether the act and in addition to the new amendment is sufficient to combat current and future crises of similar nature to the novel coronavirus.

‘Parliament’ [2020] (July) Public Law 568-569

_B:UK

**Abstract:** Notes significant Parliamentary developments, including: the passage of the Terrorist Offenders (Restriction of Early Release) Act 2020; the announcement of the March 2020 Budget; key provisions of the Coronavirus Act 2020; the approval of a House of Commons motion to allow Parliamentary procedures to be conducted in a hybrid form due to the coronavirus pandemic; and the holding of the first virtual Prime Minister's Question Time.


_B:USA

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

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

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


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.


Abstract: This paper discusses the corona virus crisis legislation in Belgium, against the background of a political crisis. It raises the questions how a minority government could find legitimacy to take drastic measures that impact upon fundamental rights and how the political crisis impacted the position of Parliament. This is examined from the viewpoint of input, throughput and output legitimacy, and with a comparison to the position of Parliament in Belgium during earlier crises and in the federated entities. The conclusions point to the increased importance of expert advice, an over-use of ministerial police powers, but also to a more important role for Parliament than what we could have expected under the reign of a majority government. While the political crisis did not hinder firm intervention in an initial phase, it is, however, problematic to deal with the effects of the crisis over the longer term.

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.

Pozen, David and Kim Lane Scheppele, ‘Executive Underreach, in Pandemics and Otherwise’ (Columbia Public Law Research Paper No 14-664, 2020)

Abstract: Legal scholars are familiar with the problem of executive overreach. Especially in emergencies, presidents and prime ministers may claim special powers that are then used to curb civil liberties, marginalize political opponents, and subvert the rule of law. Concerns about overreach have surfaced once again in the wake of COVID-19, as governments across the globe have taken extreme measures to tackle the virus. Yet in other countries, including the United States and Brazil, a very different and in some respects opposite problem has arisen, wherein the national executive’s efforts to control the pandemic have been disastrously insubstantial and insufficient. Because so many public law doctrines reflect fears of overreach, President Trump’s and President Bolsonaro’s responses to COVID-19 have left the legal community flat-footed. In this symposium essay, we seek to define and clarify the phenomenon of executive underreach, with special reference to the COVID-19 crisis; to outline ways in which executive underreach may compromise constitutional governance and the international legal order; and to suggest a partial remedy.

Ram, Sumit Kumar and Didier Sornette, ‘Impact of Governmental Interventions on Epidemic Progression and Workplace Activity during the COVID-19 Outbreak’ (SSRN Scholarly Paper ID 3619202, 3 June 2020)

Abstract: In the first quarter of 2020, the COVID-19 pandemic brought the world to a state of paralysis. During this period, humanity has seen by far the largest organized travel restrictions and unprecedented efforts and global coordination to contain the spread of the SARS-CoV-2 virus. Using large-scale human mobility and fine-grained epidemic incidence data, we develop a framework to understand and quantify the effectiveness of the interventions implemented by
various countries to control epidemic growth. Our analysis reveals the importance of timing and implementation of strategic policy in controlling the epidemic. Through our analysis, we also unearth significant spatial diffusion of the epidemic before and during the lock-down measures in several countries, casting doubt on the effectiveness or on the implementation quality of the proposed Governmental policies.


Jurisdiction: Indonesia

Abstract: The government has formed the COVID-19 (Task Force) Acceleration Countermeasures Group to discuss strategies to deal with the Corona Virus outbreak. One of Covid-19's coping strategies, namely: Social restrictions in the form of Lock Down with modifications or rules that are clarified and clear in priority areas as of now, but proposals in the form of Lock Down in priority areas such as DKI are not approved by the government. Although in the end the DKI Jakarta Government issued a policy after approval from the central government through the Minister of Health in the form of Governor's Regulation Number 33 Year 2020 concerning the Implementation of Large-Scale Social Debate in Handling Corona Disease 2019 (COVID-19) in the Special Capital Province of Jakarta and Governor Decree Number 380 Year 2020 concerning the Imposition of the Implementation of Large-Scale Social Restrictions in Handling Corona Disease 2019 (COVID-19) in the Special Capital Province of Jakarta. If the lockdown is really implemented, then this effort will indirectly have an impact on the environment, because the policy will relate to space that includes all objects, power, conditions, and living things, including humans and their behavior, which affect nature itself, continuity of life, and the welfare of humans and other living things. Therefore it is necessary to examine the relationship between the lockdown policy and COVID-19 countermeasures in the perspective of the Environmental Protection and Management Law. The author intends to find a connection point between the lockdown policy by looking at the impact it has on the environment by referring to the Law Act No. 32 Of 2009 Concerning Protection And Management Of Environment.
Abstract: The Director-General of the WHO has suggested that China’s approach to the COVID-19 crisis could be the standard of care for global epidemics. However, as remarkable as the Chinese strategy might be, it cannot be replicated in other countries and certainly not in Europe. In Europe, there is a distribution of power between the European Union and its member states. In contrast, China’s political power is concentrated in the central government. This enables it to take immediate measures that affect the entire country, such as massive quarantines or closing borders. Moreover, the Chinese legal framework includes restrictions on privacy and other human rights that are unknown in Europe. In addition, China has the technological power to easily impose such restrictions. In most European countries, that would be science fiction. These conditions have enabled China to combat epidemics like no other country can. However, the WHO might have been overoptimistic. The Chinese standard of care for treating COVID-19 also raises problematic issues for human rights, and the real consequences of these actions remain to be seen.


Abstract: We provide an interim report on the Indian lockdown provoked by the covid-19 pandemic. The main topics — ranging from the philosophy of lockdown to the provision of relief measures — transcend the Indian case. A recurrent theme is the enormous visibility of covid-19 deaths worldwide, with Governments everywhere propelled to respect this visibility, developing countries perhaps even more so. In advanced economies, the cost of achieving this reduction in visible deaths is ‘merely’ a dramatic reduction in overall economic activity, coupled with far-reaching measures to compensate those who bear such losses. But for India, a developing country with great sectoral and occupational vulnerabilities, this dramatic reduction is more than economic: it means lives lost. These lost lives, through violence, starvation, indebtedness and extreme stress (both psychological and physiological) are invisible. It is this conjunction of visibility and invisibility that drives the Indian response. The lockdown meets all international standards so far; the relief package none.

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.


Abstract: Economic insights are powerful for understanding the challenge of managing a highly infectious disease, such as COVID-19, through behavioral precautions including social distancing. One problem is a form of moral hazard, which arises when some individuals face less personal risk of harm or bear greater personal costs of taking precautions. Without legal intervention, some individuals will see socially risky behaviors as personally less costly than socially beneficial behaviors, a balance which makes those beneficial behaviors unsustainable. For insights, we review health insurance moral hazard, agricultural infectious disease policy, and deterrence theory, but find that classic enforcement strategies of punishing non-compliant people are stymied. One mechanism is for policymakers to indemnify individuals for losses associated with taking those socially desirable behaviors to reduce the spread. We develop a coherent approach for doing so, based on conditional cash payments and pre-commitments by citizens, which may also be reinforced by social norms.

Rocco, Philip, Daniel Béland and Alex Waddan, ‘Stuck in Neutral? Federalism, Policy Instruments, and Counter-Cyclical Responses to COVID-19 in the United States’ (SSRN Scholarly Paper ID 3615329, 27 May 2020)

Abstract: Federalism plays a foundational role in structuring public expectations about how the United States will respond to the COVID-19 pandemic, as both an unprecedented public-health crisis and an economic recession. As in prior crises, state governments are expected to be
primary sites of governing authority, especially when it comes to immediate public-health needs, while it is assumed that the federal government will supply critical counter-cyclical measures to stabilize the economy and make up for major revenue shortfalls in the states. Yet there are reasons to believe that these expectations will not be fulfilled, especially when it comes to the critical juncture of the COVID-19 pandemic. Though the federal government has the capacity to engage in counter-cyclical spending to stabilize the economy, existing policy instruments vary in the extent to which they leverage that capacity. This leverage, we argue, depends on how decentralized policy arrangements affect the implementation of both discretionary emergency policies as well as automatic stabilization programs such as Unemployment Insurance, Medicaid, and the Supplemental Nutrition Assistance Program. Evidence on the US response to COVID-19 to date suggests the need for major revisions in the architecture of intergovernmental fiscal policy.


Extract: The legal regime applicable in England is comprised in The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020....

The unfortunate reality, which will survive long after the COVID-19 virus is vanquished, is that we seem to have accepted, for the first time in history, that a Minister of the Crown can take decisions which destroy livelihoods and businesses, all without Parliamentary authority or the possibility of compensation. Nor is it clear that the measures which have been adopted have statistical support. There are no reliable figures as to the numbers affected (the so-called denominator) or even consistent standards as to numbers of deaths or serious infection (which may be affected by lack of rigorous analysis as to the actual cause of death). Alternative approaches in other countries (specifically Taiwan, Hong Kong, Singapore and South Korea) appear to have been spectacularly more successful than those currently in place in the USA or Europe, at far less cost. Even more moderate restrictions (as in Sweden) appear at the time of writing to be achieving similar results to the present more restrictive approaches so far discussed.
‘SAAPA SA’s Response to Lockdown Regulations on Alcohol’ (2020) 113(5) Servamus Community-based Safety and Security Magazine 56

Jurisdiction: South Africa

Abstract: The Southern African Alcohol Policy Alliance in South Africa (SAAPA SA) welcomed the COVID-19 lockdown regulations announced by Minister of Police, Mr Bheki Cele on 25 March 2020 prohibiting the distribution and sale of liquor for the lockdown period. This prohibition certainly helped to address the concerns that SAAPA SA and its regional partners have been communicating with regard to the risks that the use of liquor poses for controlling COVID-19. This message, which has been echoed in posters circulated by government, has focused on two key issues.


Abstract: Pandemics are not new neither to Indian society nor to global economy. The intensity of the spread of a pandemic and the number of people affected in a country and specific regions depend a lot on the measures of state control at the local and centre-level. State-civil society cooperation led by the Central government and the State governments play an important role in reducing the impact of a pandemic. With the help of evidences collected from previous studies and new reports and available data sets, an attempt has been made to understand the ways in which the state governments are working to control the spread of the pandemic. West Bengal and Andhra Pradesh have been taken up for the analysis because of their high density of population and almost similar infrastructural development and the problems faced during the spread of a pandemic. The state responses in these two states have been analysed and compared with other states which have equally managed to control the pandemic despite lack of infrastructural availability.
Saunders, Cheryl, ‘A New Federalism? The Role and Future of the National Cabinet’ (Governing During Crises Policy Brief No 2, Melbourne School of Government, University of Melbourne, 1 July 2020)

Jurisdiction: Australia

Key Points: The Policy Brief makes the following central points:

(a) The National Cabinet deserves considerable credit for the (so far) very effective response to the pandemic in Australia. The COVID-19 public health crisis could not have been effectively met without drawing on the powers, knowledge and capacities of both the Commonwealth and the States, achieving a balance between collective action and tailored responses.

(b) On 29 May, the Prime Minister announced that the National Cabinet would be transformed into a permanent body, replacing the existing intergovernmental architecture under the Council of Australian Governments (COAG).

(c) The published outline for the structure of the new arrangements, presenting the National Cabinet and the Council on Federal Financial Relations (CFFR) as the two principal components of a National Federation Reform Council, supported by two task forces, seven National Cabinet Reform Committees and a series of intergovernmental expert advisory groups, potentially presents a major shake-up of Australia’s intergovernmental machinery.

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


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.


Abstract: The implications of the severe lockdown regime introduced in Italy in the context of the Covid-19 emergency can be correctly understood only through a broader look at how the text of the provisions adopted by the government is transformed by media reporting and law enforcement practice. From such a perspective, it appears clearly that we are witnessing
nothing more than the most recent segment of a populist approach to the use of legal tools, the history of which starts well before the pandemic.


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.


Abstract: The spread of COVID-19 across China, Asia, Europe and the United States of America was met with public health responses that initially encouraged hand washing and social distancing. They quickly turned to restrictions on the freedom of movement and assembly in the form of forced isolation, mandatory quarantines and lockdowns. Africa’s first confirmed case was not until 14 February in Egypt and March saw a steady spread of the virus throughout the African continent. Concern began to rise about the impact that the virus would have on a continent that is currently facing HIV and TB epidemics and sporadic outbreaks of Ebola and Lassa Fever. There were fears that the already weakened health systems in many African jurisdictions may be unable to cope with another pandemic and quick and decisive action to stop the spread of the virus was considered to be essential.

On 15 March 2020, nine days after the first recorded case in South Africa, President Cyril Ramaphosa announced a State of Disaster. Over the following weeks, a series of regulations were promulgated that limited the freedom of movement and assembly, limited the sale of certain items, specifically prohibited the sale and transportation of alcohol and cigarettes and criminalised the spread of disinformation on COVID-19. Together they represent the greatest limits on the Bill of Rights in post-apartheid South Africa. However, public health strategies such as social distancing and regular hand washing are a privilege many in South Africa cannot afford, especially for those in crowded informal settlements and who use mass public transport systems. In this paper, we consider these regulations and argue that two major issues are a lack
of a community informed response and an over-reliance on the criminal law to this major public health crisis.


Abstract: The COVID-19 pandemic did not eliminate existing social tensions; rather, it at times intensified them. Thus it is unsurprising that the tension between the liberal state and illiberal religious communities likewise intensified, as those communities were late to comply with COVID-19 public health regulations issued by state authorities. This article suggests that alongside the behavioral and psychological explanations for individual non-compliance, illiberal religious communities’ late response to the COVID-19 threats stems out of these communities’ unique characteristics and deeply held norms. Five explanations were provided to support this argument: (1) the structural explanation that focuses on the hierarchical character of decision-making processes in such communities; (2) the communities’ social and spatial characteristics; (3) the constant struggle of illiberal religious communities to control and limit information available to their members; (4) the normative clash between social distancing and communal norms; and (5) the effects of the tension and distrust existing between the state and the communities. Each of these explanations aid in understanding why illiberal religious communities were late to respond to COVID-19 threats, and therefore suffered high rates of morbidity and mortality. This article argued that to some extent, they all result from the interventionist liberal-centric policies embraced by most western states for dealing with illiberal religious communities.

Since COVID-19 is not expected to be the last health related crisis, and as other environmental, economic, or security emergencies may still require social adherence to government regulations, liberal states should rethink their policies toward illiberal religious communities. The ability to harness those communities to comply with life-saving regulations may save lives not only within these communities, but also reduce threats to areas and neighborhoods adjacent to those communities. This article suggests that the isolation and fortification processes that illiberal religious communities engage in—the same processes that prevented these communities from responding quickly and effectively to COVID-19 threats—may be mitigated if states embrace pluralistic-centric policies regarding illiberal religious communities.
As the article suggests, these policies are not only normatively superior to liberal-centric policies, but they may also increase trust between the parties. Working to establish trusting relationships in times of normalcy may provide both the government and the illiberal religious communities with instruments to properly address emergencies.


Jurisdiction: USA

Abstract: The COVID-19 pandemic led all states to issue regulations aiming to limit the spread of the coronavirus and reduce morbidity and mortality. Alongside the impediments that the ‘stay at home’ and social distancing regulations imposed on citizens’ freedom of movement, worship, and leisure, they also interfered, sometimes significantly, with owners’ property rights. Most states ordered closure of non-essential businesses; some prohibited or suspended evictions of residential and commercial rentals, and others restricted beach access, preventing beachfront owners from using their property. The COVID-19 regulations’ harmful economic effects led owners from states all across the country to bring legal challenges to these regulations. Among other claims, owners argued that the regulations violated the Fifth Amendment to the United States Constitution, because the regulations constituted a taking of private property for public use without the payment of just compensation. This article argues that although current takings jurisprudence may pose considerable legal challenges for property owners, establishing owners’ Fifth Amendment claims for compensation for the economic damages resulting from the COVID-19 regulations is not at all unfounded. While regulating property in emergencies is often considered within the state police power, thus relieving the government from paying compensation to owners, there may be circumstances where emergency property regulation would constitute a takings, requiring the government to compensate owners. To further this argument, the article proposes a theory that allows lawmakers and courts to better distinguish between the state’s police power and its eminent domain power. The proposed theory suggests that although the state’s police power is designed to allow the government to regulate property to respond to emergencies efficiently and effectively, such regulation may nevertheless exceed the state police power if it imposes a disproportionate burden on property owners. In such
cases, takings claims may become the most significant means by which property owners can cope with emergency property regulation.


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


Abstract: Emergency management necessarily requires collaboration across multiple layers and units of government. A country’s governance and intergovernmental system shapes its approaches to emergency management. This article focuses on two countries that have different governing systems—China and the United States. China’s administrative contracting system relies on vertical mechanisms such as hierarchical personnel control to hold local government officials accountable, thus creating incentives for delays in addressing crises when
they first emerge. The United States’ polycentric system allows local officials, who are held accountable to local electorates, to sound alarms on emergencies early on. Yet the system may easily suffer from a lack of coordination across levels and units of government. A comparison between the two countries lays the foundations for comparing government responses to COVID-19 and other crises. It also illustrates the need to think about broader governance issues in preparation for large-scale crises in the future.


Jurisdiction: USA

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

Jurisdiction: Ireland

Abstract: Seán Ó Fearghaíl, the Ceann Comhairle, has informed his colleagues, that in light of ‘a very serious constitutional problem,’ the Seanad will be unable to pass legislation after Sunday. He is supported by advice offered from the Attorney General and the Secretary General of the Department of the Taoiseach. The single argument which has been put forward in public in support of the Ceann Comhairle’s position is not entirely frivolous. It is the sort of argument beloved by legal academics giving final examinations based on fictitious fact patterns. Such arguments usually do not play prominent roles in the legal advice offered by officers of state, senior law officers, and highly placed civil servants during national and international emergencies. I respectfully suggest the Attorney General has erred, and the Ceann Comhairle erred in relying on such advice.


Abstract: The current Covid-19 pandemic and lockdown in the UK have parallels with the first ever national management of epidemic infection in England, the Plague Orders of 1578. Combining historical research of the Tudor and Stuart periods with information sources and broadcast news as the epidemic in England unfolds in real time during lockdown, the areas of official guidance, epidemiology, social distancing and quarantine, financing measures, the national health service, fake news and burial of the dead are compared. Then as now, social distancing and quarantine measures were applied for the sake of preserving life, loss of livelihood ameliorated by government loans and dangerous opinions suppressed, the flight to second homes by the rich observed and health inequities uncovered. Taxation of the wealthiest in a parish to pay for measures and promotion of home remedies and over-the-counter preparations are among the differences of the early modern period. Wholly unprecedented in comparison with the past is the quarantining of the whole society and the financial package for workers on furlough to avoid mass unemployment. In the new, less polluted normal after lockdown, people should be given more credit for sophisticated understanding than was
allowed in past centuries when fear and punishment coerced the majority to conform and share in decisions about national and community life.


Abstract: In this paper, I analyze two research questions. Firstly, I assess if countries with a past of autocratic government are more likely to impose harsher lock-down measures during the COVID-19 pandemic. In using multilevel regression models, I show that countries with an authoritarian past tend to impose more restrictions on citizens’ individual freedom compared to countries with a democratic past. I explain this finding with a transference of policy practices over time. Secondly, I explore whether anti-pandemic policies result in democratic backsliding. I compare the development of democracy before and after the “Spanish Flu” of 1918-1920 with interrupted time series models. My findings suggest that this pandemic did not change the trend of democratic decline at the time.


Jurisdiction: India

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

Abstract: The COVID-19 mitigation measures require a fundamental shift in human behavior. The present study assesses what factors influence Americans to comply with the stay at home and social distancing measures. It analyzes data from an online survey, conducted on April 3, 2020, of 570 participants from 35 states that have adopted such measures. The results show that while perceptual deterrence was not associated with compliance, people actually comply less when they fear the authorities. Further, two broad processes promote compliance. First, compliance depended on people’s capacity to obey the rules, opportunity to break the rules, and self-control. As such, compliance results from their own personal abilities and the context in which they live. Second, compliance depended on people’s intrinsic motivations, including
substantive moral support and social norms. This paper discusses the implications of these findings for ensuring compliance to effectively mitigate the virus.

Venkata, Srikar C, ‘Containing Pandemics in India: Going Beyond Lockdowns’ (SSRN Scholarly Paper ID 3609105, 22 May 2020)

Abstract: In India, despite two full months of lockdown, the number of COVID-19 cases have only kept increasing. Globally too, objective analysis of mortality figures tells us that lockdown as a pandemic containment strategy did not generate any concrete reduction of COVID-19 cases. Here, the paper analyses the origins of lockdown, why it may have been utilized for tacking COVID-19 pandemic now globally, and alternative solutions for the Republic of India. However, the paper is a general critique of the lockdown strategy and the paper’s implications can be applied to other nations as well, subject to localized analysis.

Ventura, Deisy de Freitas Lima, Fernando Mussa Abujamra Aith and Danielle Hanna Rached, ‘The Emergency of the New Coronavirus and the “Quarantine Law” in Brazil’ (2020) Revista Direito e Práxis (advance article)

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

Waismel-Manor, Israel et al, ‘COVID-19 and Legislative Activity: A Cross-National Study’ (Bar Ilan University Faculty of Law Research Paper No 20-12, 2 July 2020)

Abstract: Insufficient attention has been given to studying a vital organ jeopardized by COVID-19: legislatures. Legislatures across the globe have been shut down or limited due to COVID-19. In a comprehensive multidisciplinary study, exploring legislatures across 159 countries, we show that there is no causal relation between the severity of COVID-19 and limitations on legislatures’
operation. This suggests that legislatures are at risk of being shut down either due to unfounded fear from COVID-19 or as an excuse for silencing legislatures. We find that legislatures in healthy democracies are relatively immune to this risk, while those in frail democracies and authoritarian regimes are more at risk of becoming casualties of COVID-19. In partially free countries, the use of technology can mitigate this risk.


Abstract: This is the online supplement for the article Waismel-Manor, Israel, Bar-Siman-Tov, Ittai Rozenberg, Olivier, Levanon, Asaf, Benoît, Cyril and Ifergane, Gal, COVID-19 and Legislative Activity: A Cross-National Study (2020). This supplement includes appendices1-4 of the article.


Abstract: The word ‘crisis’ has two different shades of meaning. It can refer to an unstable situation in political or social affairs that persists and intensifies over the relatively long term. Closer to the original Greek meaning of krisis, a crisis also refers to a traumatic episode or condition whose resolution remains unclear and replete with danger. The crisis of democratic leadership is a crisis of the first sort – a slow burn tending towards meltdown. The coronavirus pandemic is a crisis of the second sort – a traumatic event spiralling into an uncertain and perilous future. The paper argues that the crisis of the first sort is currently feeding into and feeding off the crisis of the second sort. COVID-19 has had an extraordinary effect on the political landscape. Its challenge democratic leadership and to the paradigm of representative democracy more generally may be framed according to a number of key features. First, the pandemic may be considered as a premonitory event. Secondly, it poses various acute problems of collective action, both within and beyond the polity. Thirdly, it highlights the dense interconnectedness of the issues that form our political agenda. And fourthly, it suspends many aspects of social and political life, both pausing our capacity to act and interrupting the flow of the world we act upon. Each of these features has double-edged implications for our capacity to
steer our democracies. Each threatens to reinforce democratic impotence, but at the margins each also offers some hope of democratic renewal.


Abstract: This article analyses the role(s) of law in several critical aspects in China’s fight against COVID-19 during the period of its initial outbreak in Wuhan in late 2019 and early 2020. It first provides an analytic framework on the existing laws on the prevention and control of infectious diseases and responses to public health emergencies, focusing on the relevant mechanisms, institutions and procedures under the law. It then analyses several critical aspects of the operation of the legal framework, including information disclosure, the management of the crisis, and the legality of the various post lockdown measures and practices. It reveals that few legal requirements were in fact complied with during the fight against the COVID-19 emergency and, as such, Chinese law in a time of crisis was indeed itself in crisis.


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

*Abstract*: Across the world, the legislative and judicial branches of government have retreated in part during the COVID-19 pandemic, while members of the executive branch have assumed greater responsibilities. Is such a shift in responsibilities justified by this emergency or exceptional situation? This chapter explores this question by reviewing the duty to govern, the duty to govern in compliance with the Rule of Law, the constrained nature of any emergency or exceptional powers, and the duty incumbent on those exercising extraordinary authority to return to the normal situation as much as circumstances allow.


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


*Jurisdiction*: China

*Abstract*: This Viewpoint essay understands China’s COVID-19 responses through the lens of six paradoxes, focusing on normal and non-normal governance, competing values, expertise and politics, centralization and decentralization, public and private, and technology and institutions. Preliminary lessons are drawn regarding pandemic governance: embedding resilience into all aspects of governance; developing a public value framework for pandemic governance and improving individuals’ ethical capacity; institutionalizing policy capacity on pandemic governance and requiring expertise in relevant positions; balancing centralized coordination and decentralized responses with a stable and ready-to-work commanding center; enabling businesses and nonprofits for pandemic governance but regulating them appropriately; and
enacting technologies to revolutionize pandemic governance with proper institutional safeguards.


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

BUSINESS LAW (INCLUDING FRANCHISES)


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


Abstract: In March 2020, in response to the COVID-19 national emergency, states across the United States began issuing shelter-in-place orders curtailing operations of individual businesses
based on ‘essential’ and ‘non-essential’ classification. Virtually all states with legalized medical cannabis, and the majority of adult-use states, allowed cannabis establishments to remain open albeit often with significant restrictions on their operations. Yet, the cannabis industry, and small, minority-owned or social equity designated businesses in particular, are not insulated from the broader economic shockwaves spreading through the country. In April 2020, the Drug Enforcement and Policy Center conducted a survey asking patients/consumers and cannabis industry professionals about the challenges they were experiencing and government responses. Hoping to fill a gap in early discussions of the impact of the COVID-19 crisis, we were especially interested in the impact on cannabis industry participants designated as social equity businesses. The results indicate that the COVID-19 pandemic has both introduced tremendous new challenges for the cannabis industry and exacerbated long-standing difficulties for businesses in this arena. If small, minority-owned and social equity businesses are to survive, they need to be treated by the system like any other regular small business venture. While regulations and safeguards are necessary, these businesses need to be able to operate as a true business, rather than a semi-legal venture with no access to loans, banking, insurance, tax relief, and flexible deliverable modes.


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


Abstract: A pandemic forces franchisors, franchisees and other stakeholders to look with fresh eyes at contracts that usually remain in the bottom drawer. Government light-touch legislation is challenged, and the franchise sector must deal with forcefully drawn contracts and competition from more agile non-franchised businesses. All concerned must come to grips with how contract law addresses a pandemic, if at all, and how courts might interpret established contractual and statutory obligations and legislation enacted to respond to COVID-19. This article reviews franchising through the lenses of force majeure and frustration, and considers how the courts might interpret responses to COVID-19 in the light of the good faith obligation under the Franchising Code of Conduct. It also canvases federal and State regulatory responses in the context of franchising. The article concludes that franchisors will need to depart from a one-size-fits-all response to a more bespoke approach on this occasion.


Jurisdiction: USA

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

*Jurisdiction*: USA

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


*Jurisdiction*: USA

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

**CHARITY / NON-PROFIT LAW**


*Abstract*: This is a revised version of a webinar presentation for a program at the East Delta University, Bangladesh. At first, it underlines the possibility of a debate on the rationality of ‘unscientific lockdown’ that is to harm those people more who are likely to be affected less by the virus, especially in Bangladesh. The discussion then suggests six possible factors to define the post-COVID-19 world and its trajectories, that would create opportunity as well as challenges for Bangladesh. Characterising the non-profit sector with available six legal forms and their varied regulatory mechanisms and the overarching ‘Foreign Donations (Voluntary
Activities) Regulation Ordinance of 1977 (amended in 1982), the work argues, referring to the related theories, that there may not be one uniform form of management or leadership. It is to be contingent upon the size, purpose, age, and (sources) of fund of the organisation. It proceeds further to analyse why all organization are to focus on “efficiency” as a core dimension of management, while the public sector needs to consider “outcome equity”. The government should acknowledge the contribution of the non-profit sector and let it function to offer goods and services for the disaffected “majority” without exploitation or profiteering in the guise of non-profit, but with enough regulation to ensure fairness and state security. As such, in the uncertain post-COVID-19 world, where the private sector is likely to shrink or lose face, the NPOs’ management basics should be self-regulation without any bias or division because the government and society would need them collectively more in ensuring outcome-equity. The work is based on the authors’ previous comprehensive works on the non-profit sector and other secondary sources of information and data, as cited and listed at the end.

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

Abstract: Among the many issues being raised in the course of the recent COVID-19 coronavirus outbreak is the ability of charities to respond to crises and to fulfil their fiduciary and moral duty to apply donations effectively and for the purposes intended. This article notes the problems encountered by charities, in China and elsewhere, and argues that the present crisis should be seen as a call to arms for the tech industry, which has the relevant know-how and resources to radically change the landscape of crisis response and the management of donations through the implementation of blockchain and artificial intelligence tools that are already in common commercial use. Fundamental changes are needed to the structure and method of how such crises are handled. The time for global technologists to develop, on a collaborative basis, borderless solutions to issues of common humanitarian concern is now.
Abstract: Merger review in the United States has overlooked a significant competition harm: increasing risk. Mergers can increase both counterparty risk and systemic risk—the risk of idiosyncratic firm shocks harming trading partners and the national economy. There is now clear evidence that negative shocks to a firm can impose significant harm to that firm’s trading partners, leading to national economic effects. And as the COVID-19 pandemic has shown all too clearly, how we structure our markets can, in a crisis, become a matter of life and death overnight. I argue that mergers that increase counterparty and systemic risk by harming the competitive process can be blocked as violations of the Clayton Act. Systemic and counterparty risk should therefore be treated like innovation in merger review as factors that can increase or decrease merger legality. I show when a merger is likely to change risk, to whom, and in what direction. Important factors include pre- and post-merger market power, counterparty exposure, and network centrality. When a merger increases risk because of a harm to competition, that increased risk is an antitrust harm under the consumer welfare standard and can therefore be used to condemn the merger. Moreover, the agencies’ prosecutorial discretion allows them to consider risk harms in merger review even when such harms are not directly caused by reduced competition. To illustrate, I apply merger risk analysis to a large generic pharmaceuticals deal. I conclude with recommendations on how to incorporate risk analysis into merger review. Bringing risk analysis into merger review reveals otherwise invisible but significant merger harms and demonstrates that merger efficiencies have not just benefits but also serious costs. In an Appendix, I propose language for a new section in the Department of Justice and Federal Trade Commission’s Horizontal Merger Guidelines.

Abstract: For the past several months, Covid-19 has dominated the intellectual property (IP) debate. Most discussions have focused on the implications of patent protection on access to treatments against the virus and a hopefully soon to be found vaccine. In these remarks, I would like to focus on another Covid-19 crisis making headlines across the world and partially related
to IP: millions of workers in the garment industry in developing countries have been fired or furloughed as fashion companies have cancelled orders due to plunging sales since the pandemic's beginning. Famous Western groups such as Inditex (Zara), C&A, Target, and Marks & Spencer are among the companies involved in this humanitarian crisis.


Abstract: The coronavirus pandemic has and will have a huge impact on our economy. Undoubtedly, we face the worst crisis in our recent history. A major consequence is serious financial distress for a myriad of undertakings. A phenomenal number of companies are already close to bankruptcy. It is too early to accurately assess the economic damage caused by the Corona crisis. Nevertheless, competition authorities around the world have reacted swiftly to deal with this unprecedented challenge [1]. The crisis affects drastically both consumers and companies. On the one hand, consumers are prisoners of the containment imposed by their Government. They lost their freedom of choice and have to shop at the stores closest to their homes (pharmacies, food retail stores etc.). Thus, a higher price can be charged due to the inelastic demand from consumers. On the other hand, some companies no longer have consumers while others are seeing the demand for their products and services soar. This situation raises serious competition concerns for competition authorities. The main issue is whether competition law should apply or not in pandemic crisis. Most competition authorities answered yes.


Jurisdiction: USA

Abstract: Several states have laws that prohibit large increases in prices on consumer good, or ‘price gouging,’ during emergency situations like pandemics. We investigate the impact of such laws on online consumer behavior using data from Google Shopping Trends during the onset of the COVID-19 pandemic. We focus on hand sanitizer and toilet paper, two staples predominantly bought in-stores in regular times, which experienced substantial in-store
shortages since the onset of the pandemic. We find robust evidence indicating anti-price gouging laws are associated with significant increases in online searches for hand sanitizer, and some evidence that these laws increase searches for toilet paper as well. These results imply the possibility that anti-price gouging laws lead to shortages for consumer staples during pandemics. Our results inform the ongoing and rigorous debate surrounding anti-price gouging laws and their potential effects during public health emergencies like COVID-19.

Clarke, Philip H, ‘Prepayments, the ACL and the ASIC Act’ (2020) 48(2) Australian Business Law Review 180-188

Abstract: COVID-19 has resulted in the cancellation or postponement of sporting and entertainment events and fixtures, the virtual cessation of domestic and international air travel, and the closure of schools and most entertainment, exercise and sporting venues. What are the rights under the Australian Consumer Law (ACL) of those who have prepaid to attend events, or receive services, such as these? A significant part of the answer can be found in s 36 of the ACL. This article outlines the operation of that provision and applies it to COVID-19 scenarios. It also highlights the value of the provision to online shoppers, who frequently make prepayments for the goods or services they seek, as a precedent for reforms to address the "fees for no service" scandal highlighted by the 2019 Banking Royal Commission.


Jurisdiction: Australia

Abstract: A consumer may be wondering what rights they may have under the consumer guarantees regime in the ‘Australian Consumer Law’ (ACL) where the Australian Government has placed a travel ban on a particular flight or cruise that the consumer made a booking. Unfortunately, for most, the consumer guarantees do not appear to be of great assistance in such circumstances. However, a consumer may have, or is likely to have, other options for remedies outside the consumer guarantee regime. This paper will provide some general analysis on the three consumer guarantee provisions in relation to services, namely sections 60 (guarantee as to due care and skill), 61 (guarantee as to fitness for a particular purpose), and 62
(guarantee as to reasonable time for supply) in circumstances where a travel ban is in force. Of course, this analysis is not intended to be legal advice, and will not apply to every circumstance. When dealing with consumer guarantees, each case must be decided on their own facts.

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

**Jurisdiction**: USA

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


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


Abstract: EU competition law is traditionally understood in two-dimensions: judicial control and enforcement. This paper considers a third dimension: its normative concerns in the context of EU law. In mapping the future of these dimensions, the paper asks if the understanding behind the modernisation of the Commission’s enforcement is still tenable. In relation to judicial control, the effects-based approach of modernisation has either been incorporated by the case law at the cost of its coherence or ignored. Regarding enforcement, modernisation has resulted in the Commission having to step outside its guidance and in multiple proposals to adjust competition rules. As for the normative dimension, modernisation’s emphasis on consumer welfare has not prevented openness to broader concerns and setting this priority aside in reaction to COVID-19. The direction of modernisation will thus continue to raise judicial difficulties and, should it hamper enforcement, possibly lead to legislation that marginalises competition law. A better alternative would be, as was done for COVID-19, to reinforce the normative connection with the rest of EU law.

Abstract: As a result of the global lockdown, countries around the globe are now facing multiple crises at the same time: a health crisis, a financial crisis, and a collapse in commodity prices, which all interact in complex ways. As a reaction governments and policymakers are providing unparalleled support to firms, financial markets, and households. The effectiveness of these policies is considered central to project worse consequences. In order to coordinate the economic response of the Member States and to mitigate the negative repercussions on the EU economy, the European Commission has adopted a Temporary Framework, which enables Member States to use the full flexibility foreseen under EU state aid rules to support the economy in the context of the COVID-19 outbreak. However, in the current crisis the world economy and national economies are also shuttered in their micro-elements, at the demand side. As a result of the measures taken by governments to contain the virus, consumers have seen retail choices limited with hundreds of thousands of shops being required to close their doors, a situation that has exposed consumers to a floodgate of unfair, misleading or abusive business practices. Price gouging for essential consumer products coupled with unfair commercial practices have amplified forcing governments to take various measures, for example introducing price caps. Nevertheless, besides these unfair practices more indirect forms of consumer harm is taking place as a result of some of the current state aid measures that many policy makers may not have immediately realized and acted upon. The current flexibility offered in the State Aid law Temporary Framework has been used by some governments also to tolerate non-compliance with consumer protection rules by undertakings. Such exceptions in fact lead to double burden for consumers. Once as consumers and purchasers of, for example, travel or transport services and second, as taxpayers financing the state aid. Moreover, this may lead to a violation of EU law that lays down the obligation to take consumer protection requirements ‘into account in defining and implementing other Union policies and activities’ (Article 12 TFEU), a principle also laid down in the EU Charter of Fundamental Rights (Article 38). This normative precedent creates a constitutional basis for considering the requirements of consumer protection in the whole body of EU competition law and policy including the Treaty’s state aid provisions. The main question this article aims to answer is how state aid law and consumer protection rules interact in EU law and what lessons these interactions provide for managing the current economic crisis in a coordinated and balanced way that takes equal account of interests.
on the supply and demand side. While the interaction between consumer law and competition
law has been subject to various legal and economic studies in the past, the relationship between
state aid rules and consumer protection has not been studied so far. This article fills this gap, by
making three novel contributions. First, the article sets out the EU law framework that
structures the analysis of how state aid rules and consumer protection interact. It analyses the
goals of these two legal areas and how these goals complement or conflict. Second, by
presenting two case studies (air transport and energy) it explains and illustrates the constituents
of the interaction between these two legal fields and offers an illustration why these
intersections should be analyzed in-depth. Third, the article offers policy recommendations that
can be applied not only in the current crisis but also beyond, on the coordination and
enforcement of these two policies and legal fields.

Davola, Antonio, ‘From the Black Swan, to the Snowball: Risks of COVID-19 Pandemic for Consumer
Credit Scores in the Lack of a Harmonized Regulatory Intervention’ (SSRN Scholarly Paper ID 3604031, 14
May 2020)

Abstract: In light of the harmful and wide-ranging effect of the coronavirus pandemic, many
governments in the European territory and on the global framework rushed to introduce forms
of financial support for those groups that are susceptible to be economically affected by the
current situation in order to limit the economic fallout of the pandemic. Still, and in spite of the
significant level of regulatory intervention, no major normative change addressed the area of
consumer spending and consumer credit. Considering the expected length of the phenomenon,
and its impact on the economy and employment, the management of consumers’ economic
exposure and of unpaid debt is though meant to emerge as a major consequence during and
after the expiration of the pandemic: in particular, significant risks are related to the
consequences that the deterioration of consumers’ exposure caused by the COVID-19 and the
pandemic-related factors is likely to have on their credit scores (and, subsequently, in terms of
outcome of future creditworthiness assessments). Scores have a major impact on consumer
credit landscape, and badly determined/distorted scores invest both consumers and credit
operators: consumers are precluded from accessing credit in a moment of financial distress;
banks and other institutions are not able to properly discriminate between the quality of
potential borrowers, therefore facing risks of overexposure to losses and unprofitable
operativity. In order to prevent a further worsening of the (already distressed) global economic health, it is therefore pivotal to promptly introduce harmonized corrective measures to mitigate the risk of unsought deviation in the credit scoring sector. The research investigates the impact of the events related to the COVID-19 infection on the scoring software’s functioning, considering how the pandemic is likely to impact on both macro and microeconomic factors related to consumer behavior and indebtedness. The analysis is then developed in order to provide a set of recommendations for interventions with the aim to preserve algorithms’ stability, accuracy and predictive power over the pandemic and during its aftermath.


Abstract: Societies and citizens have been hit hard by the public health emergency of the Coronavirus disease (Covid-19). Competition law enforcers have already taken up a new role of providing informal guidance for businesses in Europe and globally. This is most welcome and could represent an opportunity for a long-term informal engagement between authorities and businesses in a more digital and sustainable economy.


Abstract: Considers how the Polish competition authority has revised its priorities because of the coronavirus pandemic. Notes the introduction of maximum prices for goods, merger review, and co-operation between competitors.


Abstract: Notes measures adopted by the Portuguese Competition Authority to ensure continuity of its activities during the coronavirus pandemic, including suspensions of many
judicial and administrative deadlines. Summarises the approach to issues including co-operation to ensure the supply and distribution of scarce products, and the pricing of products deemed essential for consumer's health.


Abstract: Discusses whether competition authorities should rigorously enforce prohibitions on excessive pricing during the coronavirus pandemic. Reviews the international approach to such a prohibition, why its strong enforcement is justified during the pandemic, and the methods which competition authorities should use to assess whether specific prices are unfair or excessive. Examines the arguments for a ‘safe harbour’ protection.


Abstract: One way to deal with apparent Coronavirus-related profiteering, apart from competition law enforcement, is to use regulation to cap the wholesale and retail prices of some products in high demand. However, the use of price controls and price caps has been criticised for running against the spirit of competition policy. This policy brief explains why price regulation is a highly disputed in contemporary regulatory practice and argues that, in the presence of persistent excessive prices, pragmatism justifies price regulation.


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


Abstract: The COVID-19 pandemic created immediate and novel challenges for health professionals. Not as immediate but almost as significant have been the extreme disruptions to supply chains, distribution arrangements and demand conditions that have forced many industries to consider collaborative responses. The Australian Competition and Consumer Commission (ACCC) and competition regulators overseas have been called on to balance short-term measures designed to ensure businesses remain viable and can supply goods and services efficiently and fairly, with long-term efforts to preserve competition. This article outlines the ACCC’s approach of granting urgent interim authorisations and reviews the content and increasingly strict conditions on collaborative activity. It compares this approach to those adopted by competition regulators overseas before briefly addressing an alternative mechanism open to the ACCC in the (as yet untested) class exemption power. The article concludes by observing that the problems faced in the early adjustment period of the pandemic are likely to be very different to those that may emerge during post-pandemic economic contraction and recovery.


Jurisdiction: UK

Abstract: Discusses the significance of the co-operation arrangements between organisations that were excluded from classification as anti-competitive agreements under the Competition
Act 1998 during the coronavirus pandemic. Reviews their public benefits, why such exclusions were not permitted in the past, and their potential future advantages if used to tackle matters such as energy saving, climate change and health improvements.


*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.


*Abstract:* The spread of COVID-19 and subsequent government regulation have substantially impacted service-providing industries. State and federal regulations concerning social gatherings and travel have, in many instances, rendered performance of contracts illegal, economically unworkable or futile. This article considers the remedies available to consumers for service contracts affected by the COVID-19 crisis, with a particular focus on the response of the airlines, and the commonly offered option of credit vouchers. In these unprecedented circumstances, it examines the complex interaction of contract law, including the doctrine of frustration and accompanying statutory incursions on remedy, and consumer rights under the Australian Consumer Law. The article calls for a consistent approach by service providers and the Australian Competition and Consumer Commission that gives consumers a consistent and fair remedy, without the need to resort to the labyrinthine interplay of common law and statute.
Abstract: The unexpected shock provoked by the COVID-19 crisis and the measures taken to limit the spread of the pandemic have affected the functioning of many markets. Throughout the world, competition authorities which, in the last decade, had been enforcing their laws in the context of steady economic growth have had to adjust their enforcement practices not only to the difficulties of running their operations created by lockdowns but more importantly to collapsing markets or markets for essential goods characterized by severe shortages, in a context of deep economic depression with many firms facing severe liquidity constraints or even the threat of bankruptcy. Competition authorities have responded to these extraordinarily brutal circumstances by adjusting their enforcement priorities, exempting certain forms of cooperation, relaxing their standards for efficiency defence, adopting emergency procedures, allowing certain forms of state aids, accepting mergers because the target suddenly was a failing firm etc.... while at the same time insisting that these changes did not mean a weakening or an alteration of the competition law principles that they previously followed. This article describes in detail the responses of a number of competition authorities, analyzes the differences in the responses to the COVID-19 crisis of various governments and competition authorities and discusses whether these responses imply a departure from the traditionally accepted goals and enforcement principles of competition.

Journal of Antitrust Enforcement (2020) 8(2) Special Issue: Competition Law in Times of Crisis – Tackling The COVID-19 Challenge

This open access special issue includes contributions from enforcement agencies in Australia, Germany, Hong Kong, Ireland, Russia, South Africa, UK and USA, as well as 14 scholarly and practitioner articles from around the world.

Contents:

I. COMPETITION ENFORCERS

• Igor Artemiev ‘Statement of Igor Artemiev, Head of the FAS Russia’
• Makan Delrahim ‘Tackling the COVID-19 challenge—a view from the DOJ’
• Isolde Goggin ‘How the Irish Competition and Consumer Protection Commission is responding to the COVID-19 challenge’
• Will Hayter ‘Tackling the COVID-19 challenge—a perspective from the CMA’
• Andreas Mundt ‘The Bundeskartellamt in times of COVID-19: adaption of workflows and implications for our enforcement practice’
• Hardin Ratshisusu and Liberty Mncube ‘Addressing excessive pricing concerns in time of the COVID-19 pandemic—a view from South Africa’
• Rod Sims ‘Competition law in times of crisis—tackling the COVID-19 challenge: Australian Competition and Consumer Commission’
• Martijn Snoep ‘Competition enforcement in times of crisis—a perspective from the ACM’.
• Brent Snyder ‘Striking a balance between principle and pragmatism in COVID-19-related enforcement in Hong Kong’

II. ACADEMICS AND PRACTITIONERS
• David S. Evans ‘Planning for catastrophes’.
• Eleanor M. Fox ‘Developing countries, markets, and the coronavirus: two challenges’.
• Alberto Heimler ‘System wide health care shocks and regulatory interventions in the face of the emergency: are there some lessons to be learned from the COVID-19 crisis?’.
• Alison Jones ‘Cartels in the time of COVID-19’.
• Damien J Neven ‘The EU rescue and restructuring guidelines. Fit for purpose?’.
• John Noble ‘Tackling the Covid-19 challenge—a producer perspective’.
• Julian Nowag ‘Resilience and competition law, in times of emergencies and crises: two research agendas’.
• Peter Ormosi and Andreas Stephan ‘The dangers of allowing greater coordination between competitors during the COVID-19 crisis’.
• Hassan Qaqaya ‘Sustainability of ASEAN integration, competition policy, and the challenges of COVID-19’.
• Fiona M Scott Morton ‘Innovation incentives in a pandemic’.
• Maurice E Stucke and Ariel Ezrachi ‘COVID-19 and competition—aspiring for more than our old normality?’.
• Masako Wakui ‘Free market versus state or something else?: civic sector and competition law’s roles during the COVID-19 pandemic in Japan’.


*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.


*Abstract:* The COVID-19 pandemic could cause Congress to strengthen our merger laws. The authors of this short article strongly urge Congress to do this, but to do this in a manner that ignores 5 myths that underpin current merger policy: Myth 1: Mergers Eliminate Wasteful Redundancies and Produce More Efficient Businesses Myth 2: Current Merger Enforcement Protects Consumers Myth 3: Merger Remedies Preserve Competition Myth 4: The Current Merger Review System Offers Transparency and Guidance to Businesses and the Public Myth 5: Corporations Need Mergers to Grow


*Abstract:* Examines how EU competition law has adapted its approach in response to the coronavirus pandemic, including the exemptions granted to TFEU art.101. Reviews the Commission’s approach to scarce products, the exchange of commercially-sensitive information, co-operation between firms, and the responses to situations involving cartels, state aid, mergers and abuse of a dominant position.

Jurisdiction: South Africa

Abstract: The Competition Act (89 of 1998) and its noble purpose of, among other things, supporting historically disadvantaged persons (HDPs) and small, medium and micro enterprises (SMMEs), has been in force for just over two decades. Certain 2019 amendments to the Act specifically sought to strengthen efforts to promote economic inclusiveness of SMMEs and HDPs. It is in this regard that competition law may provide additional support, a proverbial bark and bite, to existing government efforts aimed at achieving a more equitable society. This has particular relevance in a post-pandemic context.

Morton, Sophie, ‘Competition, Co-Operation and COVID-19’ (2020) 24(1) Inhouse Counsel 6–8

Jurisdiction: Australia

Abstract: The public health response and the economic response to the impact of the COVID-19 pandemic are inextricably linked. In order to support businesses in implementing social distancing measures, with the effects of supply chain disruption and other consequences of the outbreak, the Government has developed numerous policy measures aimed at lessening the economic impact. The Australian Competition and Consumer Commission (ACCC) has also identified several regulatory priorities arising from the outbreak, establishing a COVID-19 Taskforce. As a result of the pandemic, the ACCC has granted permission for organisations in several sectors to behave in a way which would ordinarily be prohibited, so that businesses can work together to co-ordinate and strengthen Australia’s response to COVID-19. ACCC Chair Rod Sims told the ‘Australian Financial Review’ Banking & Wealth Summit Crisis Briefing that


Introduction: On 12 March 2020, the European Commission approved the first state aid measure to combat the Covid-19 pandemic (case SA.56685 notified by Denmark). Two months later the
Commission authorised more than 120 measures, mostly in the form of grants and subsidies for loan guarantees and interest rates. The vast majority of those measures were authorised on the basis of Article 107(3)(b) TFEU which allows state aid to ‘remedy a serious disturbance in the economy of a Member State’. Only 10 measures were authorised on the basis of Article 107(2)(b) TFEU for the purpose of making ‘good damage caused by a natural disaster or exceptional occurrence’.

Covid-19 is both an exceptional occurrence and a serious economic disturbance. This suggests that Member States could choose to notify their aid measures on the basis of either Article 107(2)(b) or Article 107(3)(b). In theory, they should have chosen Article 107(2)(b) because the discretion of the Commission in this instance is narrower than under Article 107(3)(b). The Treaty itself declares aid to make good the damage caused by an exceptional occurrence compatible with the internal market, whereas aid to remedy a serious disturbance may be compatible with the internal market. Therefore, the discretion of the Commission is much wider in assessing whether the latter is or is not compatible.

The article is structured as follows. First, reviews briefly the definition of ‘exceptional occurrence’. Then it examines how the amount of allowable state aid was quantified in the few cases before the outbreak of the Covid-19 pandemic. Next the article reviews the few current cases for which Commission decisions have been published. The penultimate section identifies particularly tricky issues in the measurement of the damage that can be compensated by state aid.


Jurisdiction: India

Abstract: Reviews the approach of the Competition Commission of India (CCI) towards cooperation and concerted actions between competitors in response to the coronavirus pandemic. Considers whether the CCI has tended to penalise or exempt such conduct, compares the approaches adopted by the Australian Competition and Consumer Commission and the UK Competition and Markets Authority, and suggests lessons they could offer India.
Introduction: When the escalation in Covid-19 sparked panic buying and shortages of key products, UK supermarkets asked the government to consider suspending competition law, to allow them to co-ordinate supplies and reduce shortages. On 25 March 2020, the UK’s Competition and Markets Authority (CMA) published a document stating that,

“Throughout the UK, businesses are... providing essential goods and services to consumers, to ensure key workers can carry out their important tasks and in getting the country through this crisis.

The CMA understands that this may involve coordination between competing businesses. It wants to provide reassurance that, provided that any such coordination is undertaken solely to address concerns arising from the current crisis and does not go further or last longer than is necessary, the CMA will not take action against it.” (paras 1.4 and 1.5) (emphasis added)

This article examines the consequences of providing this reassurance and asks whether it is a good idea.


Abstract: Reports on the Bulgarian competition authority's response, in line with EU guidance, to the challenge of the coronavirus pandemic. Notes the investigation of mass fuel markets, and supermarkets' obligations to sell locally produced food.

Abstract: Notes the March 2020 online publication by Ireland’s Competition and Consumer Protection Commission (CCPC) of the joint statement by the European Competition Network (ECN) concerning the relationship between the coronavirus pandemic and competition law. Details the ECB’s views on the flexibility of competition rules, its awareness of the impact and consequences of the coronavirus pandemic, and the importance of co-operation between undertakings.


Abstract: The aim of this article is to provide a short overview and analysis of some competition authorities’ responses to the COVID-19 emergency, by evaluating the state of play and, where relevant, making proposals for how competition law and its enforcement might develop worldwide. The article contributes to the existing international debate about the consequences of the current COVID-19 crisis on competition law. The analysis is limited to restrictive agreements, abuse of dominance and merger control. The undertakings must primarily be aware of that current crisis is not an excuse to breach competition laws and that competition laws continue to apply, with no general crisis exemption, nor during the COVID-19 crisis. The competition authorities are accommodating their practice in addressing restrictive agreements (cooperation between competitors in times of economic crisis), abuse of dominance (measures to protect against exploitative pricing), and merger control (procedural and substantive aspects of control).


Abstract: Western competition authorities responded quickly and unanimously to the COVID-19 pandemic with a generous exemption from cartel law for any companies that aim to solve pressing scarcities through collaborations that restrict competition. However there is little reason to expect more supply, fair distribution, or wider use of personal protective equipment
faster or at all from anticompetitive horizontal agreements. Traditional crisis cartels are about reducing excess supply, not excess demand. Embracing the policy may well have been about public image, rather than high expectations of collaboration amongst rivals contributing to solving the needs associated with COVID-19. This remarkable field experiment is not without side effects. By relaxing the first article of antitrust, the agencies undermined their own authority, just when we need them to effectively control the many markets that are rapidly consolidating as a result of the lockdowns and asymmetric state aids. The agencies should have stood by competition instead. On the other hand, this case could become a rich source of learning about the effectiveness of public interest cartels.

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

Jurisdiction: USA

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

Šmejkal, Václav, ‘Impact of the COVID-19 Pandemic on European Antitrust: Mere Adaptations or Real Changes?’ (Charles University in Prague Faculty of Law, Working Paper No 2020/I/1, 2020) 1-16

Abstract: The European Commission and the competition authorities of the EU member states responded to the coronavirus crisis with assurances about sufficient flexibility of their instruments. They enabled temporary cooperation between competitors to ensure the supply of essential medical products and services. At the same time, they warned against any misuse of the crisis for overpricing or other monopolistic practices. However, the crisis has also intensified long-term pressures for a fundamental adaptation of European competition rules. The first challenge is represented by Chinese state-backed enterprises as potential acquirers of weakened European competitors. The second source of pressure is the increasingly dominant
role of global online platforms. Their role as an irreplaceable infrastructure for management, communication, counselling and distance learning was reinforced in the coronavirus crisis. The Commission and other experts are already discussing appropriate responses. This paper maps the discussion on possible EU responses to these challenges and tries to show the strengths and weaknesses of the proposed solutions and on this basis to estimate the future development of EU antitrust in the post-coronavirus period.


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

Wakil, Omar, Dany H Assaf and Linda M Plumpton, ‘COVID-19’s Impact on Competition Enforcement and Foreign Investment Reviews in Canada’ (24 April 2020) 1 Emerging Areas of Practice Series: COVID-19 (Coronavirus), Westlaw Canada

Abstract: The COVID-19 crisis is creating significant challenges for the Competition Bureau and Canadian government as they review competitor collaborations and M&A activity.


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.

Abstract: On 15 March 2020, the President of the Republic of Ghana addressed the nation on anti-coronavirus measures which took effect immediately. He directed the Attorney-General to submit an emergency legislation to Parliament and the Minister for Health to issue an immediate Executive Instrument to regulate the relevant measures. Five days later, Parliament passed the Imposition of Restrictions Act, 2020 (IRA) after a voice count in its favour. A few days, thereafter, the President issued an Executive Instrument (E.I. 64) pursuant to the IRA. The minority members of Parliament, some legal scholars and interested Ghanaians expressed their disapproval of the procedures leading to the enactment of the IRA as well as its nature, form and content. The contentions cover multiple constitutional and legal grounds including the procedural propriety of using a voice vote in Parliament for emergency legislation, the necessity of a new emergency legislation and the time limit for the new emergency legislation. Essentially, these issues point to assessing the overall constitutionality of the law-making procedures and legislative provisions of the IRA. This is the focus of this paper. The paper argues that the IRA stands unconstitutional from the very beginning of its intended existence. The paper concludes that while the IRA is currently operational, its continued existence is challengeable under the 1992 Constitution of Ghana, thus, there is a window of opportunity to right the wrong.


Abstract: For decades, public health professionals, scholars, and on multiple occasions, the Auditor General of Canada have raised warnings about Canada’s dysfunctional system of public health data sharing. Current, timely, and complete epidemiological data are an absolutely necessary, but not sufficient, precursor to developing an effective response to the pandemic. Nonetheless, it remains true that nearly two decades after data sharing proved a catastrophic failure in the 2003 SARS epidemic, epidemiological data still are not shared between the
provinces and the federal government. This is largely due to a baseless and erroneous belief that health falls purely within the jurisdiction of the provinces, despite the Supreme Court of Canada's clear conclusions to the contrary, which has misled Canada to rely on voluntary data sharing agreements with the provinces that are not merely ineffective, but actually inhibit data sharing. As outlined in this chapter, there is no reason for this to be the case, since Canada already possesses statutory powers, under the Statistics Act and the Public Health Agency of Canada Act, to oblige provinces to share critical epidemiological data in a timely manner. It must exercise those powers, both in response to COVID-19 and against the foreseeable certainty of even more serious public health emergencies in the future.

Austin, Lisa M et al, ‘Test, Trace, and Isolate: COVID-19 and the Canadian Constitution’ (SSRN Scholarly Paper ID 3608823, 22 May 2020)

Abstract: Contact tracing is essential to controlling the spread of infectious disease and plays a central role in plans to safely loosen COVID-19 physical distancing measures and begin to reopen the economy. Contact tracing apps, used in conjunction with established human contact tracing methods, could serve as part of Canada’s “test, trace, and isolate” strategy. In this brief, we consider the potential benefits of using contract tracing apps to identify people who have been exposed to COVID-19, as well as the limitations of using this technology. We also consider the privacy implications of different app design choices. Finally, we consider how the privacy impacts of contact tracing apps could be evaluated under the Canadian Charter of Rights and Freedoms, which provides a framework for balancing competing rights and interests. We argue that so long as apps are carefully constructed and the information they reveal is appropriately safeguarded, tracing apps may have a role to play in the response of a free and democratic society to the Covid-19 pandemic.

Berman, Emily, ‘The Roles of the State and Federal Government in a Pandemic’ (SSRN Scholarly Paper ID 3617058, 2 June 2020)

Jurisdiction: USA

Abstract: A recurring question during the coronavirus pandemic response in the Spring of 2020 has been about the division of labor and the allocation of authority between the state and
federal government. This essay briefly outlines the respective roles of the state and federal
governments and lays out the powers and authorities they each bring to bear in a pandemic
situation. It then considers whether the federal response reflected these previously understood
roles. It concludes that while President Trump was relatively quick to assert powers that he did
not possess, he was less willing to invoke powers that he did, in fact, enjoy. The result was a
strong rhetorical role for the federal government, but an anemic one when it came to actually
carrying out federal responsibilities.

Cavalcanti, Maria Francesca and Matthijs Jan Terstegge, ‘The Covid-19 Emergency in the Netherlands: A
Constitutional Law Perspective’ (2020) 43(2) DPCE Online 2037-6677

Abstract: With the Covid-19 (the Coronavirus) outbreak in Europe, starting at the beginning of
February 2020, the Dutch government was forced to take drastic measures to control it. These
measures impacted the social and economic life of the people living the Netherlands as well as
their businesses in a severe way. These measures limited inter alia some of the fundamental
rights as protected by the Dutch Constitution. This article describes the juridical framework in
which the measures to combat Covid-19 are taken. More specifically, it focuses on the way in
which the Dutch state is organised and the division of power between the higher and lower
authorities and the legal instruments these various authorities have. In addition, a brief
overview is given of the various measures taken by the authorities.

Chaplin, Steven, ‘Protecting Parliamentary Democracy in “Plague” Times: Accountability and Democratic

Abstract: The spread of COVID-19 has not only placed strains on public health and the economy.
It has presented challenges to the constitutional structure and the continuing requirement that
parliaments within the Westminster system of government be able to operate. In such systems,
the continued legitimacy of government action and accountability for those actions rests and
must remain with the elected chamber of Parliament. At the same time, COVID-19 precludes
normal gatherings of parliamentarians for proceedings. This article briefly explores the
constitutional necessity for continued parliamentary scrutiny, the various forms such
proceedings have taken to date and the application of parliamentary privilege to such proceedings.


Jurisdiction: USA

Abstract: On March 29, Houston Pastor Juan Bustamante was warned that he could face fines and imprisonment for continuing to hold in-person church services. The next day he filed an Emergency Petition for Writ of Mandamus in the Texas Supreme Court. This Article evaluates his case, which could have broad implications because—like many states—Texas has a Religious Freedom Restoration Act (RFRA) that closely mirrors the federal RFRA. Arguments from both sides are analyzed to determine if such government action limiting religious practice is likely to overcome what the Supreme Court has identified as ‘the most demanding test known to constitutional law.’ City of Boerne v. Flores, 521 U.S. 507, 534 (1997).

Corbin, Caroline Mala, ‘Religious Liberty in a Pandemic’ (SSRN Scholarly Paper ID 3634084, 23 June 2020)  

Jurisdiction: USA

Abstract: The coronavirus pandemic caused an unprecedented shutdown of the United States. The stay-at-home orders issued by most states typically banned large gatherings of any kind, including religious services. Churches sued, arguing that these bans violated their religious liberty rights by treating worship services more strictly than analogous activities that were not banned, such as shopping at a liquor store or superstore. This short Essay examines these claims, concluding that the constitutionality of the bans turns on the science of how the pathogen spreads, and that the best available scientific evidence supports the mass gathering bans.
‘Devolution’ [2020] (July) Public Law 554-557

Jurisdiction: Northern Ireland, Scotland, Wales

Abstract: Reviews devolution-related developments, including: the powers granted to devolved Ministers by the Coronavirus Act 2020; the Northern Ireland Executive's legislative programme and the coronavirus-related legislation passed by the Assembly; key provisions of the Coronavirus (Scotland) Act 2020 and accompanying health protection regulations; and coronavirus-related regulations passed by the Welsh Assembly.


Abstract: Hungary and Poland have started their illiberal remodelling in 2010 and 2015 respectively. Both governments routinely apply the illiberal version of the Rule of Law (illiberal legality), which involves that every situation has the potential to be exploited for political gain. Both states opportunistically apply their constitutions and selectively invoke favourable constitutional provisions. And yet, this paper claims that the Hungarian Fundamental Law and the Polish Constitution are equipped with adequate emergency measures to provide for a proper framework for emergency legislation. In illiberal emergency constitutionalism, Hungary uses and abuses its Fundamental Law, while Poland is disregarding its binding 1997 Constitution and, at the same time, creates its new invisible illiberal constitution. This paper explores how it is done during the current human pandemic crisis by focusing on, first, the emergency regimes the constitutions provide for and their (non-)application. Second, it compares the operation of the parliaments as the Sejm chaotically passes crisis management related omnibus legislation and amendments on the presidential election during the extra-constitutional ‘state of epidemic’. The Hungarian Parliament operates under the ‘danger of crisis’. Yet, it still delivers regular legislative activities, as the emergency ‘legislation’ is done through governmental decree as per the Coronavirus Act 2020, which is unconstitutional. These phenomena necessitate an in-depth inquiry about the nature, form, and content of the Hungarian and Polish emergency legislation and governmental decrees. It is concluded that, under normal circumstances, the Hungarian and Polish constitutional measures set for guiding the authorities in emergencies are adequate. In the current political and constitutional setting and COVID-19 crisis, the form and the content of
some essential Hungarian and Polish emergency measures stay below standards. It is a further warning sign for the European community to take Hungarian and Poland illiberal constitutionalism seriously. Their pushing the envelope will not end by itself.


 Jurisdiction: USA

 Abstract: When emergency health measures have impinged on constitutional rights, judges have often turned to a 1905 Supreme Court case decision, Jacobson v. Massachusetts, which upheld a state law requiring smallpox vaccination. Courts are all over the map on how to apply Jacobson. Some have viewed Jacobson as providing a special constitutional standard during epidemics. As this paper shows, history doesn’t support that view. Other judges have used ‘business as usual’ constitutional analysis that ignore the crisis conditions under which the government must contend with today. During a pandemic, the government confronts a fast-changing situation presenting risks of catastrophic loss of life, under conditions of uncertainty. Similar conditions prevail in national security cases. There, courts apply the normal constitutional tests but give extra deference to the government. Many though not all of the reasons are similar to the coronavirus situation. The lesson would be to utilize the usual tests, but with allowances for the government’s need to take precautionary actions despite high uncertainty.


 Abstract: Effective pandemic management requires a clear and straightforward structure of communication and accountability. Yet the political realities of Canadian federalism preclude this. The fundamental theme of pandemic management in Canada is thus the tension between the need to make clear, coherent, and timely decisions, on the one hand, and the need to involve an exceptionally large array of political actors across different levels of government, on the other. The sudden outbreak of SARS in 2003 exposed several problems in coordinating the public health system. This led to a major restructuring of public health institutions in Canada.
The 2009 H1N1 pandemic tested these reforms and identified new issues underlying the coordination of governmental actors. This chapter presents the legal and institutional context within which COVID-19 has emerged, and identifies both lessons learned from the past and the challenges that remain.


Abstract: As COVID-19 swept through Canada, cities were at the front lines in curbing its spread. From March 2020, municipalities introduced such measures as restricting park access, ticketing those lingering in public places, and enforcing physical distancing requirements. Local governments have also supplemented housing for the vulnerable and given support to local “main street” businesses. Citizens expected their local governments to respond to the pandemic, but few people know how constrained the powers of municipalities are in Canadian law. Municipalities are a curious legal construct in Canadian federalism. Under the Constitution, they are considered to be nothing more than “creatures of the province.” However, courts have decided in many cases that local decisions are often considered governmental and given deference. This chapter focuses on the tensions in this contradictory role when it comes to municipal responses to COVID-19, particularly when those responses take the form of closure of public spaces, increased policing by by-law officers, and fines. I conclude that municipalities serve an important role in pandemic responses, alongside provincial and federal governments. Provincial law should be amended to capture the important role of municipalities in Canadian federalism, especially in the area of municipal finance.


Extract from Introduction: The global Covid-19 pandemic arrived at a time of pre-existing and overlapping constitutional crises in the European Union, and exacerbated them. Two are the particular subjects of this contribution. First, several Member States had been sliding into
authoritarianism long before the pandemic hit. The rise of ‘post-fascism’ in Hungary in particular was already a matter of serious concern, as was the EU’s failure to respond to it. Covid-19 has made this crisis worse, as Hungary has responded with a law suspending its Constitution and allowing the government to rule by decree, while the EU has continued to merely wag its finger. This calls into question the Union’s commitment to its claimed foundational values, amongst which are democracy and the rule of law.

Secondly, tensions between ‘northern’ and ‘southern’ Member States over fiscal discipline and economic solidarity have remained unresolved since the last Eurozone crisis. The EU’s response to the crisis beginning in 2008 revealed the deep conflicts between the debtor and creditor states of Europe, and raised complex legal and political questions as to how the Union could and should assist Member States in financial distress. These questions have now resurfaced in the context of Covid-19, with ill-tempered arguments between the so-called ‘frugal four’ (Austria, Denmark, the Netherlands, and Sweden) and hard-hit states such as Italy and Spain as to how the Union should respond to the pandemic in monetary, financial, and economic terms.

... This contribution therefore seeks to place the Covid-19 crisis in the context of a Union well-used to crisis, and already dealing with at least two when the pandemic hit. Will the Union muddle through as it has historically done, or do the structural tensions at work mean that a more radical rethink is needed?

Hogan, Gerard and Hilary Hogan, ‘Legal and Constitutional Issues Arising from the 2020 General Election’ (27 April 2020)

*Jurisdiction: Ireland*

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


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.

Kettl, Donald F, ‘States Divided: The Implications of American Federalism for COVID-19’ (2020) 80(4)

Public Administration Review 595–602

Abstract: The explosion of the coronavirus onto the global stage has posed unprecedented challenges for governance. In the United States, the question of how best to respond to these challenges has fractured along intergovernmental lines. The federal government left most of the decisions to the states, and the states went in very different directions. Some of those decisions naturally flowed from the disease’s emerging patterns. But to a surprising degree, there were systematic variations in the governors’ decisions, and these variations were embedded in a subtle but growing pattern of differences among the states in a host of policy areas, ranging from decisions about embracing the Affordable Care Act to improving their infrastructure. These patterns raise fundamental questions about the role of the federal government’s leadership in
an issue that was truly national in scope, and whether such varied state reactions were in the public interest. The debate reinforces the emerging reality of an increasingly divided states of America.


Jurisdiction: USA

Abstract: The COVID-19 pandemic is an unprecedented public health crisis that has prompted an unprecedented response. Drastic and previously unthinkable steps have been taken to ‘flatten the curve’ and avoid overwhelming our health systems. In the absence of a coordinated national response to the crisis, the pandemic has underscored both the promise and limits of the Tenth Amendment. As state and local actors have scrambled to adopt policies to protect their residents and minimize the loss of life, the result has been a patchwork of advisories and orders that reveal stark regional disparities and some confounding inconsistencies. The reliance on state and local actors has produced many innovative programs and novel attempts at regional coordination, but it has also led to direct competition between and among jurisdictions as they vie for desperately needed resources. Moreover, it has elevated the friction between the federal government and state and local leaders to alarming levels. This essay examines the role of federalism in the early days of the COVID-19 pandemic in the United States. It explores the dangers that arise when disaster relief is politicized and proposes failsafe mechanisms to prevent key institutions from abdicating their responsibility to the American people. The first section reviews our current preparedness and response policy, which is grounded on a strong vision of cooperative federalism where a response is federally supported, state run, and locally executed. The second section uses the lens of comparative institutional analysis to evaluate the shortcomings of this approach, specifically in the context of pandemic planning. By addressing three core institutional considerations – competency, political responsiveness, and stability – it maps out potential gaps that have the potential to compromise response efforts. The third section discusses failsafe provisions to ensure that disaster relief does not fall victim to partisan wrangling. A brief conclusion notes that the reliance on state and local actors in this pandemic has been a pragmatic, but also imperfect, institutional choice because state and local level initiatives are by their nature partial and porous. They are necessarily hampered by the lack of
uniformity and certainty that could come from a federal pandemic response and, unfortunately, they are ill-suited to stop a novel virus in search of its next host.

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

Abstract: The Republic of Korea (hereinafter referred to ‘South Korea’ or ‘Korea’ interchangeably) had learned a valuable lesson from the Middle East Respiratory Syndromes (hereinafter ‘MERS’) outbreak in 2015. Hence, the Infectious Disease Prevention and Control Act of 2015 (hereinafter ‘IDPC Act of 2015’) and its pertinent ministerial ordinance newly prescribed legal basis to retrace contacts of the infected patients. It is called as ‘contact tracing.’ During the COVID-19 pandemic, the contact tracing system has come into play well. Even though the legitimacy of the contact tracing system is guaranteed under the IDPC Act of 2015 and of 2020, the constitutionality can be challenged because it may violate the freedom of the infected patients and their contacts to move and maintain their occupation, and their freedom of privacy. When there is a conflict between the fundamental rights, an upper-level one will take precedence over a lower-level one. When we take into account the pandemic of deadly COVID-19 virus, right to life, right of occupation and right to know information on the movement paths of the infected patients which non-infected persons have should take precedence over the right to move and the freedom of occupation and of privacy, of the infected persons and their contacts. However, in restricting the fundamental rights of the infected patients and their contacts, the proportionality test will be applied. Hence, there are certain requirements for legislation that restricts the fundamental rights of the nationals only by the public’s risk to those who are in contact with an infected person or to those merely suspected of being infected. All of the following must be balanced: (i) the legitimacy of the purpose, (ii) the adequacy of the method for achieving the goal, (iii) the minimum of damage, and (iv) the balance of legal interests between the public interest to be protected by the legislation and the fundamental right to be infringed. The provisions of the IDPC Act are intended to protect the health of the people. The contact tracing based on those provisions is effective and adequate for achieving the said objective. In addition, the public interest, i.e., national health, to be achieved through the provisions is greater than the limited private interests, i.e., freedom of privacy, of occupation, and of movement which can be enjoyed by the infected patients and their contacts.
However, the state needs to explore whether the third requirement, which is minimization of harm of the infected patients and their contacts, has been met. In other words, the disclosure of personal information of the infected persons or their contact needs to be minimized while Article 37 (2) of the Korean Constitution is taken into account. The issue here is whether the limitations to the right to privacy, to move, and the right of religion, of the infected patients or their contacts must be provided by the IDPC Act. Even though the scope of disclosure of the movement paths of the infected patients and their contacts is advised by the KCDC’s guidelines, its legal bases are on, e.g., Articles 34 bis (1), 76 bis and 6 (2) of the IDPC Act. Also, the pandemic of a novel infectious diseases is not predictable, so that the scope of disclosure of the movement paths of the infected persons and their contacts can be different based on the type of a new infectious disease. In this context, even though the KCDC’s guidelines are not binding upon local governments, it is not fair to say that the scope of disclosure of the movement paths of the infected persons and their contacts is not groundless and unconstitutional. Taking into account the difficulty in delineating the effect of a new infectious disease and the necessity for expeditious countermeasure against it, the disclosure of the movement paths of the infected patients and their contacts is constitutional under the IDPC Act combined with those of Personal Information Protection Act despite the fact that the contents of the KCDC’s guidelines are not explicitly provided under the IDPC Act.


Abstract: The Republican Guarantee Clause of Article IV, Section 4 promises that ‘[t]he United States shall guarantee to every State in this Union a Republican Form of Government.’ Although this clause might seem to confer significant power to oversee the political structures of the states, ambiguity about the Clause’s meaning, coupled with the Supreme Court’s historic disinclination to define its contours, have led some observers to question whether the Clause is a paper tiger. While recent scholarship has focused mostly on what a ‘Republican Form of Government’ might entail, less attention has been given to the threshold questions of who might serve as guarantors of the Clause and precisely what forms of action they might take under it. This Article concludes that while all federal branches may have a role to play as guarantors of republican government, the logic, location, and history of the Republican
Guarantee Clause suggest that the Clause most directly empowers the political branches, and especially Congress, to act as guarantor. Often forgotten, but of critical importance, is that the Clause served as the chief constitutional basis for Reconstruction after the Civil War, and it helped pave the way for ratification of the Fourteenth and Fifteenth Amendments in the southern states. This history suggests that the Clause and those Amendments—on which twentieth-century voting rights legislation was based—should be understood and interpreted in light of one another. This Article explores the role the Clause might play as an alternative source of federal legislative power to guarantee basic political processes alongside—or in place of—these Reconstruction Amendments. These questions have renewed significance today, given recent and frequent constitutional confrontations between Congress and the Supreme Court regarding the scope of Congress’s constitutional power to interpret and enforce the Reconstruction Amendments. Most recently, in Shelby County v. Holder (2013), the Court struck down portions of the Voting Rights Act as extending beyond Congress’s Fifteenth Amendment Enforcement Clause power. Around the same time, many state governments began to impose new restrictions on voter registration and access to the ballot box. These new measures, coupled with the Supreme Court’s holding in Rucho v. Common Cause (2019) that legal challenges to partisan gerrymandering are not justiciable in federal courts, has provoked renewed calls for federal protections to guarantee fairness in state political processes. Other recent developments, including the 2020 coronavirus pandemic, have also led to calls for greater congressional oversight of state electoral procedures. This Article considers whether the Clause might serve as an additional constitutional basis for federal legislation and explores the interpretive arguments Congress might raise to justify the power to reform electoral processes in the states under the Clause. This Article also questions the prevailing view that the Supreme Court has always treated the Clause as functionally nonjusticiable. It argues that even following established precedents, the contemporary Court might well engage with the merits of legislation and litigation commenced under the Clause, given the Court’s recent penchant for enhanced scrutiny of congressional enforcement powers under the Reconstruction Amendments. Such challenges would spark a historical constitutional confrontation between Congress and the Court as to the meaning of the Clause. The Court might take one of several approaches when interpreting Congress’s power to legislate under the Clause, and this Article concludes that the Clause is the rare constitutional provision that would seem to grant both the courts and the political branches independent and complementary bases to guarantee
republican government. Judicial scrutiny of congressional actions taken under the Clause should be heightened when congressional efforts can more readily be achieved by the states or by the courts and diminished when only Congress or president could effectively serve as the guarantor.


Abstract: The COVID-19 pandemic has unleashed a torrent of legal and political commentary, and rightly so: the disease touches every corner of life and implicates all areas of law. In response to the disease, governments, civic institutions, and businesses have struggled to protect public health, respect individual autonomy, and enable Americans to satisfy their elemental instinct to congregate with one another. Public perceptions about the disease, and our responses to it, have substantially fallen along predictable ideological lines. For example, the willingness of individuals to social distance may indicate something about their risk tolerance, but also about their political affiliation. Our ability to launch a unified response to COVID-19 has, in other words, been affected by rifts that generally infect American political life. How we manage these divides over pandemic response matters, because the costs of disunity are high. Those who fear the risk COVID-19 poses to their lives depend on others to participate in mitigation efforts; those who fear the risk our response to COVID-19 poses to their livelihoods depend on others to willingly reengage in economic life. Common ground, while elusive, is essential to America’s response to this pandemic, and the next one that will surely follow. We argue that ingredients for consensus already exist, even if they are obscured by political and policy rancor. Americans share the common goal to safely return to families, jobs, schools, places of assembly, pubs, parks, and the myriad of other settings that make up human lives and we share a fidelity to basic constitutional legal norms that can inform how we safely return. This Essay identifies four constitutional principles to shape pandemic policies and enable them to garner broad public acceptance: substantive and procedural rationality, respect of fundamental liberties, equal treatment, and flexibility to enable government to nimbly and effectively address emergencies that threaten life itself. Fidelity to these norms is essential for all institutions, public and private, because reopening safely can occur only through the cooperation of private individuals, and individuals will cooperate only if they have confidence in the ability of institutions to protect safety, liberty, and equality.

Abstract: Virtually everyone in Canada would describe the COVID-19 pandemic as an emergency. The federal government’s decisions—to close borders and order Canadians into quarantine—suggest that it shares this view. Yet it has neither declared an emergency nor triggered the federal Emergencies Act. The lack of such action has been criticized. At the same time, there has been less focus on the emergency powers available to Parliament under the “peace, order and good government” clause in s. 91 of the Constitution Act 1867. In this chapter, I explore three demands that would require emergency branch legislation: regulating long-term care; providing relief to persons under residential and commercial tenancies; and instituting nation-wide testing. Examining the emergency branch’s benefits and drawbacks, I argue that emergency powers must be approached with continual caution, with due appreciation for the operational and political complexities inherent in a federal state. While a national, “top-down” approach may be effective in some situations, in others it is preferable to encourage regional responses and inter-governmental cooperation.


Jurisdiction: USA

Abstract: When a state deprives us of fundamental liberties, the judiciary is required to assess the government action using the strict scrutiny standard of review. Under this level of scrutiny, the state action must be narrowly tailored and serve a compelling state interest, or it is unconstitutional. An essential aspect of strict scrutiny is that the burden of proof is on the government. Meaning, when State actors infringe on our liberties, they must support the necessity of their actions with evidence. Amidst the COVID-19 pandemic, federal courts have largely failed to apply the strict scrutiny standard of review to state actions. Instead, courts have invented an entirely new standard of review specifically for state actions during a ‘public health
crisis.’ Under this new COVID-19 standard of review, courts may only overturn state actions that lack a real or substantial relation to public health or that amount to a plain, palpable invasion of rights. This standard of review shifts the burden of proof from the state to the individual. Ergo, to earn back bereaved liberties, individuals must demonstrate that a state’s action is not somehow related to a public health crisis or provide evidence that a state’s action meets the court’s subjective definition of a ‘palpable invasion of rights.’ Unsurprisingly, the new COVID-19 standard of review vindicates state deprivations of liberty regardless of merit or necessity.

This Article addresses the new COVID-19 standard of review federal courts are employing to reject constitutional challenges to state actions in response to the coronavirus. This Article describes the fundamental liberties abridged by state lock-downs, and the judicial scrutiny historically applied to these types of infringements on liberty. This Article examines the 1905 Supreme Court case of Jacobson v. Commonwealth of Massachusetts, which courts utilize to support the new COVID-19 standard of review. This Article reviews other legal precedents in the area of ‘quarantine law’ to expose how the COVID-19 standard of review is a radical divergence from traditional jurisprudence. Lastly, this Article compares federal court opinions using the new COVID-19 standard of review with the few court decisions still using strict scrutiny. This comparison demonstrates that once subjected to minimal scrutiny and the burden of proof, state governments utterly fail to support the efficacy and necessity of their COVID-19 ‘emergency’ actions.


Jurisdiction: USA

Note: in this 1905 decision, the United States Supreme Court upheld the authority of states to enforce compulsory vaccination laws.

Abstract: As courts continue to hear constitutional challenges to COVID-related orders, citations to the Supreme Court’s 1905 decision, Jacobson v. Massachusetts, have been proliferating. This essay re-examines Justice Harlan’s nuanced and ambiguous opinion in Jacobson, situating in in its epidemiological and jurisprudential context. The essay also looks at Jacobson’s complex legacy, and how judges, including Chief Justice Roberts in South Bay United Pentecostal Church v. Newsom, have been applying Jacobson as they review COVID-19 social distancing orders.

Abstract: COVID-19 has changed our legal universe. Many states are responding by issuing stay-at-home orders, and as cases rise, may have to prohibit gatherings again. One issue states and courts have to grapple with is what is the relationship between stay-at-home orders and religion. Stay-at-home orders that require closing down churches may be challenged as violating the First Amendment’s guarantee of religious freedom. Under our current jurisprudence, these cases may be handled under a highly deferential standard or under strict scrutiny – depending on the specific order in question, as well as on whether the state has a RFRA. We recommend, in either case, that orders be carefully crafted to impose the minimum prohibitions needed to prevent outbreaks, according to the situation, and that crafters address, generally, the specific things that increase the risk of transmission – for example, prohibit gatherings indoors that are more than in passing, rather than specific activities. We also recommend that crafters avoid drawing value-laden lines (e.g. deciding whether gun stores are more important than churches). Finally, we suggest that courts should rule in ways that support drawing reasonable lines and providing essential information. A separate question is whether stay-at-home orders that exempt churches violate the Establishment Clause’s separation of church and state; we explain why the answer is, probably, no.

Soucek, Brian, ‘Discriminatory Paycheck Protection’ (SSRN Scholarly Paper ID 3628709, 16 June 2020)

Abstract: Lobbyists and strip club owners have both gone to court recently to challenge their exclusion from the $659 billion Paycheck Protection Program, one of Congress’s largest responses yet to the economic devastation unleashed by the COVID-19 pandemic. So far, surprisingly, strip club owners have been successful while political lobbyists have failed. Appeals are still pending in three circuits, with more surely to come.

This Essay argues that when it comes to the Constitution, these split decisions get things exactly right: strip clubs have a stronger free speech claim than lobbyists do, despite the fact that lobbyists engage in expression closer to the core of the First Amendment. Seeing why requires
us to answer what the Supreme Court recently referred to, and dodged (in *Matal v. Tam*), as a ‘notoriously tricky question of constitutional law’: how to draw the line between selective subsidies for expression and targeted attempts to suppress it. The strip club cases ask when the government’s funding priorities become a form of discrimination—an abridgment of speech rather than an ordinary decision about what to support during the current crisis.


*Abstract:* This article discusses the response of the United States Government to the COVID-19 Pandemic from January through June 19, 2020. In particular, the article focuses on the constitutional and legal background of that response. The article was prepared for a symposium in the Italian journal *Il diritti dell’economia* on responses to the COVID-19 pandemic by governments around the world.


*Abstract:* Hawaii’s government has a long experience responding to public health emergencies. But until 2014, when the Hawaii legislature adopted a comprehensive structural overhaul, Hawaii’s emergency response statutes and organization were a patchwork of scattered provisions that did not conform to modern emergency management and response practices. The law’s first major test has been a dramatic one: the COVID-19 worldwide pandemic. Hawaii’s governor exercised his authority to issue a declaration of emergency, and later issued supplemental proclamations purporting to extend the termination date for the emergency. This article analyzes whether the statute’s internal limitation on delegated emergency power—the ‘automatic termination’ provision, under which an emergency proclamation terminates by law the sixtieth days after it was issued—may be enforced by the courts. It argues that that the circumstances in which a court would sustain a challenge are limited, and that the primary remedy will be a political one. It should not be so, however, because Hawaii precedents confirm that the courts should enforce the essential separation of powers boundaries between the other branches. This article examines the prominent narrative threads that have emerged from
Hawaii’s history of adjudicating claims arising out of public health crises, quarantines, and emergencies, as a way of comparing the directions a court might take.


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.


Abstract: This article explores the New Zealand Government’s response to the COVID-19 coronavirus pandemic through a legal and constitutional lens. It adopts an essentially doctrinal analysis in describing the response but intertwines a comparative law thread, to draw selected comparisons with how other governments have responded. It offers some political, demographical and historical insights to provide background information for non-New Zealand readers. The article aims to provide a comprehensive view of New Zealand’s constitutional arrangements and how they have impacted on the Government’s response to COVID-19 as well as a critical analysis of that response by assessing the effectiveness of various measures adopted by the New Zealand Government. The article consists of six sections. Section one provides an introduction to New Zealand’s constitutional framework including some demographic information for non-New Zealand readers. Section two describes the New Zealand Government’s overall response to the COVID-19 pandemic. Section three discusses the declaration of a national state of emergency. Section four examines the Parliamentary oversight mechanism known as the ‘Epidemic Response Committee’. Section five explores the role of the media and the importance of upholding the right to freedom of expression when responding to
Finally, section six draws out some overall recommendations for New Zealand and other countries to consider when moving forward and preparing for the next pandemic.

CONSTRUCTION AND PLANNING LAW


Jurisdiction: UK

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


Jurisdiction: UK

Abstract: Considers the application by the Sizewell C Nuclear Power Station for development consent during the coronavirus pandemic, whether full public consultation on the matter is possible, and why action is needed by the Planning Inspectorate to ensure such consent is preserved during restrictions.


Jurisdiction: Ireland

Abstract: Discusses the impact of COVID-19 on construction contracts. Considers how different types of contract address delay and cost caused by COVID-19 restrictions, a contractor's entitlement to an extension of time and loss and expense, and force majeure clauses. Examines the JCT Suite, the Public Works Contracts suite, FIDIC and NEC4.
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.

Leadbeter, Paul, ‘South Australia: COVID-19 Generated Changes to Planning and Development Controls in South Australia’ (2020) 23(2) Local Government Law Journal 87-91

Abstract: South Australia is presently in the throes of major changes to its regulatory system governing land use, development of land and the development of planning policy against which development assessment decisions are to be made. Eventually the planning and development control system established under the ‘Development Act 1993’ (SA) will be replaced by a new system implemented by the ‘Planning, Development and Infrastructure Act 2016’ (SA) (the new Act). The state is in a transitional phase. The provisions of the new legislation which create the State’s planning authority, the State Planning Commission, have been implemented and the Commission appointed. Local councils have all appointed their Council Assessment Panels as required by the new Act and development decisions under the ‘Development Act 1993’ (SA) assessment procedures are being made by the new bodies. If the implementation of a major new planning system with new legislation and planning policy was not already causing some issues, the advent of the COVID-19 pandemic in South Australia has brought additional complexities including amendments to the regulatory system governing development controls.


Abstract: This article considers to what extent an outbreak of COVID-19 on a construction site will impact on any construction insurance contracts. It will specifically consider to what extent the presence of COVID-19 on site can be considered damage for the purposes of the material damage section of a contract works insurance contract.

**Jurisdiction:** Australia

**Abstract:** The outbreak of coronavirus, or COVID-19, has significantly disrupted every facet of life. Planning law has not been immune. Landowners and developers may find themselves hard-pressed to meet deadlines for the substantial commencement of a development approval within the statutory two years or the implementation of a subdivision approval within the statutory period of three or four years (depending on the numbers of lots in the subdivision) and meet deadlines associated with construction and development. Are there options for parties to retain their approval when circumstances make it difficult to comply with the time limits?


**Abstract:** With apologies to Gabriel Garcia Marquez, the title sums up both the subject-matter of this article, and its goal. In short, my argument is that under NZS 3910:2013 (generally thought to be the most commonly used standard form contract for non-residential construction projects in New Zealand), the Engineer ought to have issued a notice of suspension in response to the COVID-19 lockdown.


**Jurisdiction:** UK

**Abstract:** Considers whether variation clauses in construction contracts could be invoked to address changes such as the scope of work or revised methods of working as a result of the coronavirus pandemic.


**Abstract:** Australia is presently grappling with some unprecedented changes brought by the COVID-19 outbreak: personnel in quarantine, borders closing and worksites at a daily risk of
lockdown. In this article, we summarise how this risk may be allocated under construction contracts and provide some practical tips on the administration of those construction contracts in light of the impact of COVID-19.

CORPORATIONS LAW


Abstract: The COVID-19 epidemic sparked social distancing, economic crisis, mass layoffs, furloughs, inequality, civil unrest, including various private and public responses to these issues. These responses have profound effects on employees rights, their role in the corporations that they serve and overall economic activity in the United States. In the last few decades corporate governance scholarship neglected the role of employees - “human capital,” and mainly focused on the relationship between directors, managers and shareholders. Employees outside the U.S. have a formal role in corporate governance.

There are calls from the public for a revolution in corporate law in the US, mirroring the current social movements, to resist short-termism and achieve long-term value. Corporations are pressured to incorporate in their charters a deep obligation to act for the benefit of society at large, and to include employees formally (EESG), as stakeholders, in the governance of corporations. These calls are not new, and also surfaced following the 2008 financial crisis. The new development is that tech employees joined these efforts and are revolting by organizing, striking and publicly speaking out against their employers.

This article will address the old debate in corporate governance theory, from the current dominant share-holder centric corporate governance to collaborative (stake-holder centric) corporate governance, and the new corporate personhood theory. It also makes a pragmatic suggestion that our corporate governance theory can be extended to include the protection of directors (or officers) if they take employee interests into account in decisionmaking by “expanding” the scope of a director’s (or officer’s) fiduciary duties. The director (or officer) has an obligation to act according to “the best interests of the company.” If the director takes employee interests (as stakeholders) into account for the benefit of the company, because human capital is a valuable intangible asset, which the success of the success of the company
depends on, then, as long as the decision is an informed calculated business decision, the
director is protected by the BJR rule.

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

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

Baur, Dirk G and Allan Trench, ‘COVID-19 Infection of Australian Companies’ (SSRN Scholarly Paper ID
3609110, 1 June 2020)

Abstract: This paper analyzes the impact of the coronavirus pandemic on Australian companies’
share prices. We use daily new infections as a risk factor and proxy for the severity of the
pandemic. Based on the loading to this risk factor and abnormal returns during the crisis we
categorize firms into (i) severely infected, (ii) infected and (iii) mildly or not infected. We find
large differences across firms and sectors highlighting that the virus does not affect all firms and
not in the same way contrasting evidence of financial contagion and excess co-movement from
past crises. The increased cross-sectional dispersion of returns in the pandemic suggests a sophisticated response of investors resulting in significant diversification benefits.

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

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


Abstract: As part of the Federal government’s response to COVID-19, temporary changes have been made to the ‘Corporations Act’ 2001 to facilitate electronic signing of contracts by corporations. The ‘Corporations (Coronavirus Economic Response) Determination (No. 1)’ 2020

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

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

Jurisdiction: Europe

Abstract: This essay argues that, to address the Covid-19 crisis, in addition to creating a special temporary insolvency regime, relaxing provisions for companies in the vicinity of insolvency, and enabling companies to hold virtual meetings, policymakers should tweak company law to facilitate equity and debt injections and address the consequences of the extreme uncertainty faced by European firms. After some general reflections upon the type of rules that are needed in these exceptional times, examples of temporary corporate law interventions for the emergency are provided. Specifically, rules to facilitate injections of equity capital and shareholder loans are suggested, together with relaxations of directors’ liability rules and measures to protect firms against hostile takeovers. All of these measures should apply merely by default and only for so long as the emergency lasts. The essay concludes with some thoughts about how to make normal-times corporate law ready for similar emergencies in the future. The goal is both to reduce the risk that the temporary extreme measures enacted for this crisis are made permanent under the pretense that another crisis may hit again and to have quick adaptation mechanisms already in place to respond to such a crisis.

Folarin, Akorede, ‘Evaluating the Legality of Virtual Meetings under the Companies and Allied Matters Act of Nigeria’ (SSRN Scholarly Paper ID 3637095, 20 May 2020)

Abstract: The movement restrictions and social distancing directives issued in many jurisdictions across the world as a result of the COVID-19 pandemic has disrupted social and commercial interactions and necessitated emergency lifestyle adjustments globally. One of the prominent issues that have consequently arisen from this is the issue of the legality/propriety of companies holding their statutory and annual general meetings (AGMs) virtually in order to balance the imperatives of corporate governance and observance of the relevant company law and regulations on the one hand and compliance with the government’s COVID-19 directives on the other hand. To do this, however, Nigerian companies have been confronted with uncertainties with regard to the position of Nigerian corporate law on virtual company meetings. This article explores the uncertainties surrounding virtual meetings in the above context and also highlights
the true position of Nigerian law on virtual meetings by private and public companies, whilst also proffering suggestions to ameliorate the uncertainty that exists and to bring Nigerian corporate law in tune with modern realities.

Hijink, Steven, ‘Company Law in Uncertainty: The Coronavirus and Beyond’ (2020) 17(3) European Company Law 70-71
Jurisdiction: EU

Extract: The coronavirus now affects – almost – all facets of company law. Listed companies announced postponing their general meetings and several Member States of the European Union issued emergency legislation allowing to postpone general meetings. Listed companies are reconsidering intended dividend payments and financial supervisors, like the European Central Bank (‘ECB’) and the European Insurance and Occupational Pensions Authority (‘EIOPA’), urge financial institutions to postpone dividend payments. Financial institutions suspend payment terms. The European Securities and Markets Authority (‘ESMA’) recommends national competent authorities ‘to apply forbearance powers towards issuers who need to delay publication of financial reports beyond the statutory deadline’. Furthermore, the ECB has announced an extensive additional buying-up program for government bonds. And the European Commission has already stated that when assessing national aid, the coronavirus is considered an ‘extraordinary event’.


Abstract: In March of this year, the World Health Organisation declared COVID-19 a global pandemic. In response to this, the South African government announced and implemented a state of disaster and a resultant lockdown of the country to attempt to curb the spread of the disease. This imposed restrictions on the movement of people and the South African economy and, as referenced in a public briefing by President Ramaphosa, ‘caused...much suffering and required much sacrifice’. South Africa has now moved from a ‘hard lockdown’ to a risk-adjusted approach, based on levels of varying degrees of risk.
Horwitz, Michael et al, ‘Coronavirus Economic Stabilization Act of 2020 (CESA) and Considerations for Private Equity Portfolio Companies’ (4 June 2020) 1 Emerging Areas of Practice Series - COVID-19 (Coronavirus) Westlaw Canada

Jurisdiction: USA

Abstract: On March 27, 2020, the United States Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) to respond to the medical and economic impact of the COVID-19 pandemic. Included in the CARES Act is the Coronavirus Economic Stabilization Act of 2020 (CESA), which authorizes the making of emergency loans and guarantees to, and investments in, U.S. businesses in certain sectors that have experienced losses as a result of COVID-19 and authorizes financial support for the U.S. Federal Reserve’s efforts to provide liquidity to the financial system.


Jurisdiction: South Africa

Abstract: In Alert Level 3 lockdown there remain stringent parameters on how companies, even though now permitted to trade, may conduct their business operations.


Jurisdiction: UK

Abstract: The Material Adverse Change/Effect doctrine (‘MAC’) has become an important, yet chaotic legal concept. With its vague definition and multi-functional objectives on the one hand, and the potential of dramatic consequences arising from the instability of global financial systems, terrorism, Brexit, and, quite possibly, pandemic (COVID-19) outbreaks on the other hand, the significance of MAC has evolved. The article analyses uncertainty surrounding the MAC doctrine under English law by critically evaluating the MAC and investigating its future
under English law both in Debt Finance and M&A following Delaware’s ground-breaking decision in Akorn v Fresenius, followed by Boston Scientific. The article argues for a growing ex-ante, ex-interim, and ex-post practical importance of MAC in the light of destabilising market events. It also argues that Delaware MAC principles are relevant as a reference point for resolving English MAC uncertainties, provided one considers the specifics of MAC’s interpretation in both jurisdictions and its unique attributes in M&A and in Debt Finance. The article further argues that there is no overarching model for the correct application of MAC, be it in Debt Finance or in M&A.


Jurisdiction: Australia

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


Abstract: Investors rely on corporate disclosure to make informed decisions about the value of companies they invest in. The COVID-19 pandemic provides a unique opportunity to examine disclosure practices of companies relative to peers in real time about a somewhat unprecedented shock that impacted practically every publicly listed company in the U.S. We examine how companies respond to such a situation, the choices they make, and how disclosure varies across industries and companies. We ask: • What motivates some companies to be forthcoming about what they are experiencing, while others remain silent?• Do differences in disclosure reflect different degrees of certitude about how the virus would impact businesses,
or differences in management perception of its obligations to shareholders? • What insights will companies learn to prepare for future outlier events?


Jurisdiction: South Africa

Abstract: The COVID-19 pandemic has had an unprecedented impact on the South African economy. Although necessary, the measures that have been employed to deal with the novel coronavirus, which include a nationwide lockdown, have resulted in several companies and businesses feeling the pinch. Despite government’s efforts to ameliorate these challenging conditions through various social relief and economic support packages, South African companies and businesses remain under enormous pressure, with many facing the harsh reality of financial distress. It comes as no surprise, therefore, that companies are increasingly turning to business rescue.


Jurisdiction: USA

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

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

Jurisdiction: USA

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

Jurisdiction: South Africa

Abstract: The standard of directors’ conduct is key to the success, or failure, of companies. The Companies Act of 2008 sets out the duties, standards of conduct and liabilities of directors. These duties include fiduciary duties, a duty to act in the best interests of the company and a duty of reasonable care. Directors may be held liable for any loss, damages or costs sustained by a company as a consequence of any breach by directors in the execution of these duties.

Oranburg, Seth and Benjamin Kahn, ‘Online Onboarding: Corporate Governance Training in the COVID-19 Era’ (Duquesne University School of Law Research Paper No. 2020-09, 2020)

Abstract: Onboarding new directors is critical in the best of circumstances. What should organizations do when training new board members must be completed online? COVID-19 has forced both ordinary and extraordinary business functions to be conducted primarily online, and online onboarding may be necessary or preferred in a number of business contexts. This Article first reviews the best practices in director onboarding and explains the functional goals of those practices. It then explains how to leverage the power of virtual data rooms and virtual conference software to successfully onboard new corporate directors with virtual meetings. These strategies apply to both for-profit and non-profit boards and can be employed to enhance any online meeting or conference where the goals include informing and engaging participants while encouraging them to socialize.


Jurisdiction: New Zealand

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

Trends to watch: • Willingness of overseas wholesale markets to fund NZ lenders • Difficulty of accessing overseas corporate bond markets • Continuing exchange rate hedging and counterparty risks • State liquidity measures focussing on domestic goals, rather than international liquidity and trade flows
Disputes Insights: • Additional benefits (eg, flexibility, adaptability and enforceability) from international arbitration already in place in cross-border contracts • If commencing formal dispute, consider at outset whether final award or judgment will be enforceable against foreign assets

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


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


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

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

Jurisdiction: UK

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


*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.

Wright, Cornell V et al, ‘Governance Considerations for Boards of Directors During the COVID-19 Crisis’ (25 March 2020) 3 Emerging Areas of Practice Series: COVID-19 (Coronavirus), Westlaw Canada

*Jurisdiction*: Canada

*Abstract*: We are now weeks into the unfolding COVID-19 crisis and all indications are that it will persist for many more weeks. Companies have activated their business continuity plans and organized themselves to cope with the restrictions issued by governments and public health authorities. Depending on the organization, this will mean everything from shutting down operations to continuing operations with some or all employees working remotely.

Wu, Xi, ‘*When Crisis Hits: The Role of Regulations*’ (SSRN Scholarly Paper ID 3624592, 15 May 2020)

*Abstract*: This paper shows that regulations act as a stabilizer for firms during crises. During the COVID-19 pandemic, firms with more regulations ex ante, experience a less decline by four to five percent in both stock and corporate bond prices than less regulated firms. Prior to the crisis, more regulated firms held more cash, had lower leverage, and were less likely to pay dividends, making them more resilient to extreme market conditions. Moreover, these more regulated firms have less systematic risk exposures during the crisis. I also find similar effects of regulations during the 2008 Financial Crisis.
Abstract: Legislation responding to COVID-19 allows us to examine how, and to what effect, the corporate governance framework can be amended in times of crisis. Almost all leading industrialized nations have already enacted crisis legislation in the field of company law. Here, given the difficulties or indeed the impossibility of conducting in-person meetings currently, the overall trajectory of company law reforms has been to allow for digitalization. We note five fields in which legislators have been particularly active. First, the extension of filing periods for annual and quarterly reports to reflect the practical difficulties regarding the collection of numbers and the auditing of financial statements. Second, company law requires shareholders to take decisions in meetings – and these meetings were for the most part in-person gatherings. However, since the gathering of individuals in one location is now at odds with the measures being implemented to contain the virus, legislators have generally allowed for virtual only meetings, online-only proxy voting and voting-by-mail, and granted relief to various formalities aimed at protecting shareholders (including fixed meeting and notice periods). Third, provisions requiring physical attendance of board members, including provisions on signing corporate documents, have been temporarily lifted for board matters. Fourth, parliaments have enacted changes to allow for more flexible and speedy capital measures, including the disbursement of dividends and the recapitalization of firms, having accepted that the crisis impairs a company’s equity. Fifth and finally, some countries have implemented temporary changes to insolvency law to delay companies’ petitioning for insolvency as a result of the liquidity shock prompted by the imposition of overnight lockdowns. This working paper seeks to (1) document the respective crisis legislation; (2) assist countries looking for solutions to respond rapidly and efficiently to the crisis; (3) exchange experiences of crisis measures; and (4) spur academic discussion on the extent to which the crisis legislation can function as a blueprint for general corporate governance reform. Countries considered in full or in part include Australia, Austria, Belgium, Canada, China, France, Germany, Hong Kong, India, Italy, Luxembourg, the Netherlands, Norway, Portugal, Singapore, South Korea, Spain, Switzerland, Thailand, the United Kingdom, and the United States. Readers are encouraged to highlight any inaccuracies on the part of the authors in their presentation of the respective laws, and to bring further crisis-related legislation not considered in this working draft to the attention of the authors. Moreover, readers are
invited to indicate where there is room for improvement therein, and/or to signal the need for policy reform.


Abstract: This Article presents a critique of corporate governance theory against the background of a fundamental transformation of the political economy in which the corporation is embedded. This transformation is effectuated, on the one hand, by the denationalization and privatization of corporate governance rule making, which now encompasses a wide range of new transnational fora and actors. On the other hand, this transformation is a substantive one which touches on the core beliefs that have shaped corporate law and corporate governance for more than a century. The coalescence of these two driving forces places the current debate around ‘corporate purpose’ and alternative visions of the corporation in the context of political economy changes which require a serious engagement with the question how it can be prevented that the corporation continues to become even further insulated from democratic political intervention. With these two forces in mind, this Article makes a socio-legal intervention, exploring the actual, regulatory landscape of corporate governance norm production today. We study the connections between law and norm creation on both the nation-state and the global level – rather than treating transnational law as the exception – and seek to engage corporate governance as part of a larger critique of law’s troubled relationship with the business corporation as an entity that exists not only in legal doctrine but in a wealth of actual socio-economic relationships. Complementing this analysis, the Article engages with the question whether the corporation’s purpose can be exhaustively be captured by tying it to the maximization of shareholder value. In light of the global financial crisis and its devastating consequences not so long ago, particularly for retail investors, workers and mortgage debtors, and the present-day collapse of world-wide economic activity due to Covid-19, it would seem unlikely were we to find that the allegation, uttered some two decades ago, whereby the shareholder value maximization paradigm constituted the ‘end of history of corporate law’, was still seen to be true. But, this very belief seems alive and well so that when, in the spring of 2020, business appeals to government for ‘rescue’ in an historically unknown fashion, we must take a closer look at the historical relationship between ‘the state’ and ‘the market.’ What
becomes evident from a historical perspective is the linearity of how mainstream corporate law has over time prepared the ground for a far-reaching autonomization and insulation of corporate governance from ‘society at large.’ The Article analyzes the arguments and policies in support of this alleged autonomy of corporate governance and finds that the roots reach deeper than even the current debates over ‘stakeholderism’ let on. While we are intrigued with the recent advances made in these debates and by important ‘players’ such as the Business Roundtable, it is not at all clear what their lasting impact might be. Our analysis shows that corporate law’s distance from ‘non-shareholder’ interests has long been tied into an economistic concept of the business corporation, from which all memory of the corporation as creature of law is eventually removed. By depicting the corporation through the concept of an 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

Note that international arbitration is listed below in the International Law > International Arbitration section.

‘Administration of Justice’ [2020] (July) Public Law 548-549

Jurisdiction: UK

Abstract: Reviews the Lord Chief Justice’s guidance to civil and family courts on the management of hearings and court proceedings during the coronavirus pandemic, a Protocol on remote hearings, priority court buildings that remain open for essential in-person hearings, a ‘Message to Circuit and District Judges’ in civil and family courts, and an Administrative Justice Council report, ‘Digitisation and Accessing Justice in the Community’.

Note:

- Link to the Administrative Justice Council report, ‘Digitisation and Accessing Justice in the Community’ (29 April 2020)
- Link to Coronavirus (COVID-19): Message from the Lord Chief Justice to judges in the Civil and Family Courts (19 March 2020)
• Link to Civil Justice in England and Wales: Protocol Regarding Remote Hearings (26 March 2020)
• Link to Practice Direction 51Y - Video or Audio Hearings During the Coronavirus Pandemic (25 March 2020)
• This article also notes that on 23 March the Lord Chief Justice suspended all new jury trials in the Crown Courts. Link to announcement.


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


Abstract: After a two-month hiatus due to COVID-19, jury trials will resume in NSW with strict new hygiene measures for anyone attending court.


Abstract: As COVID-19 spreads around the world, some groups have begun looking to the courts to seek legal reparations for the economic and societal damage it is causing. But can you sue a government for a global pandemic?


Abstract: Wherever possible, NSW courts are proceeding with hearings by audio-visual link (‘AVL’). Courts have a discretion as to whether a matter should proceed by AVL. In some circumstances, it may be unfair to a party to proceed in that fashion. Just as it is important to employ persuasive techniques in the physical courtroom, so too is it important in the virtual
courtroom: prepare and plan accordingly. Know your AVL technology and prepare your workspace in a way that conveys professionalism, minimises distractions and establishes a connection with the bench.


Jurisdiction: UK

Abstract: Reports on the increasing number of litigants in person (LiPs) in family and civil proceedings, and the disadvantages for those representing themselves in criminal proceedings. Notes additional problems created by remote hearings during the COVID-19 crisis.


Abstract: The COVID-19 virus has caused substantial disruption to the normal operation of the world’s business. The pre-emptive action taken by the New Zealand Government following the issue of a pandemic notice under the Epidemic Preparedness Act 2006 effectively curtailed all but essential business for a period of 5 weeks.


Jurisdiction: UK

This review was undertaken by the Civil Justice Council between 1-15 May 2020. The aim of the review was:

• To understand the impact of the arrangements necessitated by COVID-19 on court users.
• To make practical recommendations to address any issues over the short to medium term.
• To inform thinking about a longer-term review.

The Report’s findings include:

• Understanding the context for remote hearings under COVID-19
• Remote hearings under COVID-19—The experience of lawyers
Remote hearings during COVID-19—Satisfaction with hearings
Understanding remote hearings under COVID-19—The experience of lay users
Remote hearings under COVID-19—The impact on open justice

The Report also makes recommendations for recovery and managing the backlog of cases.


Candler, Blake, ‘Court Adaptations during COVID-19 in the World’s Two Largest Democracies’ (SSRN Scholarly Paper ID 3609521, 24 May 2020)

Jurisdictions: United State and India

Abstract: Physical distancing measures to mitigate COVID-19 have significantly disrupted the judiciaries of both the United State and India. Courts are strained by an increased case backlog during and immediately after pandemics, as they receive more incoming cases and are less able to process them. Public safety interventions and economic decline cause the caseload to increase. The rate at which courts process cases, known as their disposal rate, decreases as in-person courtroom procedures are interrupted due to physical distancing requirements. Since the start of COVID-19, disposal rates have remained relatively high in the United States while they have plummeted in India. This article explores the main reasons for this difference, particularly the role of virtual courts. It also analyzes the benefits of virtual courts as well as their challenges, including data security and privacy, connectivity and remote access to files, and accountability to the public.

Caparelli, Christopher, ‘COVID-19's Impact on the U.S. Judiciary and Litigation (3 April 2020) 1 Emerging Areas of Practice Series: COVID-19 (Coronavirus), Westlaw Canada

Jurisdiction: Canada

Introduction: Due to the COVID-19 outbreak and escalating restrictions on Americans to stay at home as much as possible, U.S. courts at the state and federal levels are implementing emergency procedures in recognition of social distancing.
Because the U.S. judiciary is decentralized, no single contingency plan applies and each court is responsible for its own practices and procedures. As a result, the adjustments are varied and include restrictions on courthouse access, hearing and trial adjournments, deadline extensions, and allowance of remote appearances. It is important for litigants and their counsel to stay attuned to developments that are changing frequently by checking court websites, dockets and contacting the court as necessary.


**Jurisdiction:** Australia


**Jurisdiction:** Australia

**Abstract:** Two recent cases concerning adjournments illustrate the implications of the COVID-19 pandemic and the influence of the Federal Court’s Special Measures in Response to COVID-19 note on practice and procedure. It seems there has been a rapid re-adjustment of the drivers underlying the ‘just, quick and cheap’ rationale for the resolution of disputes, with parties having to demonstrate a certain level of prejudice or unfairness (as opposed to mere inconvenience), before an adjournment will be granted.
Abstract: The article offers information on the enactment of Indian 2nd COVID-19 Act on limitation periods. It mentions that there is a substantively significant provision in Section 2, the period from the entry into force of this federal law on March 22, 2020 until the end of April 30, 2020 is the time in which a lawsuit or an application may be filed with a court or a Declaration is not included. It also mentions that deadlines for appealing to the court will be suspended in the advent of COVID-19.

Embley, PL, ‘Judicial Perspectives on ODR and Other Virtual Court Processes’ (SSRN Scholarly Paper ID 3638459, 18 May 2020)

Jurisdiction: USA

Abstract: Just a few months ago, most US courts significantly lagged behind banking, education, retail, healthcare, and other industries in the use of technology. Until mid-March 2020, that is, when US courts suddenly, overwhelmingly embraced some uses of technology, almost overnight, because they had to. Virtual hearings and ODR are opening up new possibilities that are not only keeping courts functioning during the pandemic, but also showing promise in helping resolve seemingly intractable access to justice issues. When the dangers of the COVID-19 virus have passed, courts anticipate a surge of filings. ODR and virtual hearings can ‘scale’ to meet surges in demand in ways that traditional processes cannot. Out of necessity in response to an unprecedented pandemic, courts are boldly embracing changes that are bringing more court processes into line with available technologies and public expectations.


Jurisdiction: USA

Abstract: As a result of stay-at-home orders tied to the COVID-19 pandemic, courts in most states are conducting virtual hearings: using technology to facilitate a hearing without the judge and the parties being physically gathered in one location. Evidence is a key aspect of those virtual hearings. Much can be gleaned from the ways other types of organizations do business virtually. However, courts have unique needs that require thoughtful attention as they impact how evidence is submitted, stored, and shared to support a virtual hearing.
Finn, Sean E, ‘Class Conflict in a Time of Plague: COVID-19 and the Class Actions to Which it is Giving Rise’ (11 June 2020) 1 Emerging Areas of Practice Series: COVID-19 (Coronavirus), Westlaw Canada

Jurisdiction: North America, with focus on Québec

Introduction: At different times throughout history, our planet has been caught up in events that impinge upon almost everyone. Transformative technology, catastrophic wars, and stock market crashes are amongst them. So are pandemics. At the time of writing, approximately 6.66 million people worldwide are infected with the novel Coronavirus (“COVID-19”), and of these over 393,000, many of them elderly, have succumbed to this easily communicable infection. The human toll of the current health crisis is enormous. Enormous too are the psychological and economic consequences of the lockdowns that have paralysed economies in Asia, Europe, North America, and other parts of the globe. Businesses and entire industries have been shuttered in an effort to prevent the exponential spread of COVID-19 and the corresponding exhaustion of health care resources. As countries relax restrictions and shops reopen, employees return to their jobs, and some semblance of normalcy descends on a still traumatized world, the wheels of the civil justice system, temporarily idled, will begin to accelerate once more. Perhaps not surprisingly, allegations of negligence, neglect, breach of contract, and collusion, among others, have already been asserted in the context of numerous class actions stemming from COVID-19. While it would be impossible to look at the hundreds of new cases that have been commenced in the United States and Canada, closer attention will instead be paid to those that have been filed in Québec, a jurisdiction that is fertile ground for such proceedings and a microcosm of the continent as a whole.


Abstract: The COVID-19 pandemic has provided numerous challenges to legal practitioners, and especially in the area of virtual commissioning and notarization. This paper looks at some of the legislative developments during the pandemic, as well as some of the technical requirements that might make online commissioning and notarization possible, while utilizing an anti-
oppression framework. Finally, the paper reviews some of the advances in artificial intelligence that might be of interest to the trust and estates bar.


Abstract: How the courts have been responding to the practical issues of lock-down.

Hamlyn, Michelle, ‘A Health Check on Open Justice in the Age of COVID-19: The Case for the Ongoing Relevance of Court Reporters’ (2020) 42(5) Bulletin (Law Society of South Australia) 6-8

Jurisdiction: Australia

Extract: The importance of the media’s role is heightened by the disruption to the courts’ usual processes wrought by COVID-19 public health directives. A review of the cause lists reveals hearings being conducted, variously, in physical courtrooms, in virtual courtrooms hosted on Webex or Teams, or by telephone.

Pleasingly, the courts appear mindful of the requirements of open justice in this changing landscape. In most cases it remains possible for non-parties to obtain dial in details and observe proceedings, albeit at the court’s discretion, and with varying levels of ‘invitation’ versus requiring increased initiative by the nonparty. Some limited matters of substantial public interest are reportedly being livestreamed, and there are undoubtedly opportunities as well as risks associated with that. However, there remains at present a greater risk of persons who intended to observe a hearing being unable to do so due to lack of preparedness or technical difficulties.


Jurisdiction: New Zealand

Abstract: This section considers the effects of the COVID-19 pandemic upon the operation of the courts and the delivery of justice services in New Zealand. It argues that COVID-19 has demonstrated the fragility and fallibility of the physical presence.

Abstract: As a result of the COVID-19 pandemic, courts around the world have relied on a range of technologies to cope with social distancing requirements. Jury trials have often been delayed, although some jurisdictions have moved to remote jury approaches and video conferencing has been used extensively for bail applications. Video conferencing has also been used to a more limited extent in the area of sentencing. However, many were recently appalled by the news that two people had been sentenced to death via Zoom. This article uses Actor Network Theory to explore the role of technology in reshaping the experience of those involved in the sentencing of Punithan Genasan in Singapore.


Abstract: As the coronavirus led to the vast majority of Americans living under stay-at-home orders, government institutions confronted a public health imperative to slow the spread of a communicable disease while still maintaining vital services for their constituents. Judicial branches of governments faced particular challenges given the traditional face-to-face and often time-sensitive nature of their work. Further, while governors can generally exercise centralized control over many parts of the executive branch of government, the judicial function in many states does not operate under a single chief administrator. Ohio represents one such non-unified court system, and this research project sought to review and summarize the formal responses of Ohio courts in the weeks during which the state began shutting down non-essential services in response to the COVID pandemic. This review reveals considerable formal action in service of minimizing physical appearances at court, but also highlights that relatively
few court orders included express provisions aimed at decreasing the number of people entering prisons or authorizing proactive steps to release people from detention.

Jones, Mark, ‘Being a Judge in Juvenile Court During COVID-19’ (2020) 23(4) Judicial Division Record 1–5  

**Jurisdiction:** USA  

**Abstract:** When I was asked to write this brief article about what it’s like being a judge in a juvenile court during the pandemic, my first thought was: “That’s easy: frustrating. No more denial hearings in delinquency cases or adjudicative hearings in CHINS or TPRs; in other words, no more hearings - for a while - of those cases in which we’re all used to face-to-face examination and cross-examination. Can the clients talk confidentially with their counsel during the hearing when they are in two different geographical areas, and one is on a phone and the other a laptop, in the middle of a video hearing?”

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

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


**Abstract:** On April 21, 2020, the state of Missouri filed a lawsuit in federal court against the People’s Republic of China and various other parties. The lawsuit seeks damages from the defendants for their role in unleashing the COVID-19 pandemic, an action that, as the state has alleged, roiled the world for the last two months, put millions of people out of work, and killed thousands in the process. According to the complaint, Chinese authorities pursued ‘[a]n appalling campaign of deceit, concealment, misfeasance, and inaction’ causing our current ‘unnecessary and preventable’ global pandemic. The threshold issue is whether Missouri can sue under the Foreign Sovereign Immunities Act of 1976 (FSIA). Missouri’s lawsuit does not look promising under current law. Missouri claims that China has engaged in ‘commercial activities’ that allow this suit to go forward, but Missouri’s alleged injuries are not ‘based upon’ those activities, as the FSIA requires. Missouri also alleged that it can sue China in tort for their
response to the virus, but the FSIA does not allow foreign governments to be sued for their ‘discretionary functions,’ even when they abuse that discretion. Missouri alleges that the Chinese Communist Party is the ultimate authority in China, but does not allege that it lacks discretion over choosing its response to COVID-19. Missouri therefore has an uphill climb to avoid dismissal.


Abstract: The coronavirus, which gives rise to the respiratory illness coronavirus disease (COVID-19), emerged in China in December 2019 and then spread to many other countries. Courts around the world moved to online or remote hearings. This significant change gives rise to a multitude of questions, both about how courts performed during the pandemic but also about what lessons the experience may hold for the future. To this end a number of studies have been undertaken or are underway.

Legg, Michael and Anthony Song, ‘Commercial Litigation and COVID-19: The Role and Limits of Technology’ (2020) 48(2) Australian Business Law Review 159-168

Jurisdiction: Australia

Abstract: The COVID-19 pandemic has changed the way society functions. As social distancing measures were enforced across the world, courtrooms and registries, among other public services, were forced to shut their doors to the public to ensure the safety of staff, practitioners and the wider community. However, Australian courts have been able to use technology to deliver the essential service of justice to society remotely, including fully shifting to electronic filing systems and conducting entire hearings online through various audio-visual link platforms. This article examines the experiences of Australian commercial courts using readily available technologies to respond to the crisis. This in turn raises essential questions, such as how can open justice and procedural fairness be maintained when courtrooms close and trials move online? How do we ensure public trust and confidence in the court system and guarantee the essential human element of judicial institutions is not degraded? And how do we address delay and ensure technology is accessible to all? The answers to these questions will be essential to the future of commercial litigation.

Abstract: There has been much discussion about the use of technology in the justice system as a result of measures introduced by the UK government to respond to the Covid-19 pandemic. In this paper I articulate my own thoughts on the use of virtual hearings in light of the pandemic, specifically focusing on their use in contexts concerning potentially vulnerable participants, such as in the Court of Protection. In doing so, I highlight a number of challenges, opportunities and reflections on how we might respond to their use. I argue that in coming to analyse the use of virtual hearings, we should focus on the extent to which open justice is secured, the material differences between the virtual and physical court hearings and the participation of those affected by proceedings.


Abstract: The Australian court system, like other institutions, businesses, and organisations, has had to rapidly adapt to the challenges posed by the COVID-19 pandemic and the related social distancing measures which were imposed in Australia from March 2020.


Abstract: With the closure of the Tax Court of Canada due to the COVID-19 pandemic, the progress of most proceedings slowed, while others were brought to a halt. Although other Canadian courts had similarly restricted operations during this time, some resorted to the use of technology to address outstanding matters, including through video and teleconferencing. The
Tax Court did not take such measures. The Tax Court was not viewed as providing essential services and did not have the technological capability to operate remotely. As a result, it was closed for business in all respects.

On June 25, 2020, Chief Justice Rossiter and Associate Chief Justice Lamarre provided an update on the reopening of the Court and outlined new procedures that the Court intends to implement to address the backlog created by the pandemic.

Outerbridge, David, Sylvie Rodrigue and David WR Wawro, ‘Litigation Risk in COVID-19 Environment: Big Changes’ (11 June 2020) 2 Emerging Areas of Practice Series: COVID-19 (Coronavirus), Westlaw Canada

**Jurisdiction:** Canada

*Introduction:* Litigation risks are materially different today, under COVID-19, than at the start of 2020 when the threat of a world-changing global pandemic was barely an idea. The economic and strategic considerations affecting organizations' litigation decisions are shifting. This article examines that shift and explores the consequences for litigants going forward as they seek to resolve disputes in the pandemic environment—both existing legal disputes and new litigation arising from COVID-19.


**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?

Extract from Introduction: This paper explores some of the challenges faced by victims to ensure that their right to participate in transitional justice accountability mechanisms remains a reality in times of Covid-19. In particular, it considers victims’ participation through the use of information and Communication Technologies (ICTs), particularly virtual hearings. The paper looks at these issues in the context of the work of the Special Jurisdiction for Peace in Colombia, an accountability mechanism established by the Peace Agreement signed between the Colombian government and the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia or FARC) in 2016.


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

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 (Eleven International Publishing, forthcoming)

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.

Shammas, Michael, ‘Thoughts on Optimizing Time & Attention in Virtual Trials’ (SSRN Scholarly Paper ID 3646490, 8 July 2020)

Abstract: I’ve previously examined the logistical difficulties affecting virtual trials and hearings. Two as-yet unexamined aspects involve technology’s impact on:
(1) judicial time management and,
(2) juror and attorney attention.

These questions, however, could not be more important, especially in the case of crucial monologues like a judge’s reading of jury instructions (the focus of this essay). Given the brain’s tendency to wander, what about their usual style should judges alter when conducting trials and hearings over platforms like Zoom? How can judges account for the differences between online and physical interaction?

Abstract: The recent COVID-19 crisis has set the stage for a significant increase in the use of online dispute resolution. Under worldwide country lockdown and/or social distancing orders, behaviors of people have adjusted drastically. Further, the increased use of online mediation to resolve disputes has raised the legal community’s interest across jurisdictions. The purpose of this paper is to examine two different development paths of online mediation post-COVID-19 taken in the People’s Republic of China and the United States, the world’s two largest economies. The first part of the paper provides a background on the development of online mediation in China by examining a few newest judicial and administrative directives mandating state-wide experiment of online dispute resolution mechanisms. Moving on the discussion of the development of online mediation in China, it then focuses on the professional and self-initiated efforts of the dispute resolution community in the United States leading to the further surge in supply and demand of online mediation services. Building on the comparative analysis, the paper unpacks different roles of both public and private stakeholders play towards promoting the wider acceptance of online mediation initiatives in the world, speaking against any pre-fixed preference in dispute resolution for state-led or community-based approaches.

Simon-Kerr, Julia Ann, ‘Unmasking Demeanor’ (SSRN Scholarly Paper ID 3610460, 22 May 2020)

Abstract: Demeanor is seen as a critical tool for assessing credibility in U.S. courtrooms. From the Confrontation Clause to the Immigration and Nationality Act to the Federal Rules of Civil Procedure to the common law of credibility, the U.S. legal system gives priority and deference to assessing demeanor in the courtroom. Evidence law instructs that we must see a witness’s whole face in order to effectively ‘read’ demeanor. Yet, a growing number of jurisdictions will require all participants in the courtroom to wear masks covering the nose, mouth and chin in order to prevent the spread of COVID-19. This essay canvasses the legal impediments to mask-wearing by witnesses. It argues that these legal obstacles are surmountable, and that this mask-wearing moment offers a unique opportunity to reassess the role of demeanor in credibility assessments. Focusing on demeanor forces witnesses to perform credibility, a performance that does not necessarily bring us closer to the truth.
Sinfield, Greg, ‘Let Justice Be Done’ (2020) 185(4749) Taxation 8-11

Jurisdiction: UK

Abstract: Explains how the First-tier Tribunal Tax Chamber moved to remote hearings in response to the coronavirus pandemic, and plans to use them in appropriate cases in future. Considers how the Chamber coped with its workload and why proceedings were stayed and some cases were determined on papers.


Abstract: COVID-19 was declared a pandemic by the World Health Organization on 12 March 2020. The Australian and state governments took various steps to try to slow the transmission of COVID-19, including closing businesses and outdoor areas, restricting group gatherings, encouraging people to work from home and follow ‘social distancing’ - reducing the number of close physical and social contacts a person has.


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

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

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


Abstract: This chapter considers how Australian courts have responded to the coronavirus pandemic as a matter of criminal and civil procedure. Although the diverse nature of the Australian judiciary makes it impossible to provide a detailed analysis of all actions taken nationwide, the chapter nevertheless provides a general overview of the procedural protocols and case law adopted in response to COVID-19 so as to preserve the lessons learned during this period for future reformers based in Australia and beyond.


Abstract: Mediation’s claim to legitimacy is based largely on its promise to integrate responsiveness to personal needs and values into the process of dispute resolution, offering ‘personalised justice’ based on human needs. As face-to-face mediation sessions are not possible during the Covid-19 outbreak, mediation service providers are offering video mediation
services. Before the onset of the pandemic, video mediation was used on a much smaller scale. Whilst this article highlights the benefits of video mediation it also identifies challenges that must be faced when seeking to incorporate video mediation as an integral part of service provision post-pandemic. It emphasises that if mediation is to continue to provide high quality personalised justice it is vital that practitioners, when considering the appropriate medium for each mediation, give thorough consideration to a wide range of factors. Such factors include parties’ need to maintain or reduce distance (geographical and psychological), and the rise of a new form of vulnerability that hinders less IT literate persons’ access to alternative dispute resolution mechanisms. The author includes references to her own personal experience of conducting video mediations in the United Kingdom (UK) and recommends the way forward for optimal integration of videoconferencing into mediation practice.


Jurisdiction: Australia

Abstract: The COVID-19 pandemic has caused courts to almost entirely stop conducting face-to-face hearings. With no clear end to the pandemic in sight, practitioners and their clients have been required to conduct video and telephone hearings. Some litigants have applied to vacate hearings on the basis that the proposed video or telephone substitute is unjust, unfair or unworkable. This article overviews the courts’ approach to resolving such applications and identifies the types of difficulties which may cause a civil hearing to be vacated. In doing so, this article offers some practical guidance for current and future litigants in overcoming the challenges associated with remote hearings.


Jurisdiction: USA

Abstract: Still, interacting over video has its drawbacks and judges and attorneys alike are learning as we go about how to make court proceedings held over video as smooth, simple, and professional as possible. Q: Do judges foresee video arguments becoming a permanent option for court proceedings that will be available after the pandemic has subsided? The orderliness of
the arguments seems to have mitigated, at least to a degree, the inherently choppy nature of remote proceedings and the trouble of the attorneys talking over the justices.

Tomlinson, Joe et al, ‘Judicial Review in the Administrative Court during the COVID-19 Pandemic’ (SSRN Scholarly Paper ID 3580367, 15 April 2020)
Jurisdiction: UK

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

Vasaly, Mary, ‘Law in the Time of Coronavirus’ (2020) 23(4) Judicial Division Record 1–4
Jurisdiction: USA

Abstract: The corona-virus pandemic has required all of us who are part of the judicial system to learn new approaches to legal procedures in record time. Knowing that ‘justice delayed, is justice denied’, we all have felt pressure to adopt new methods of delivering justice in a timely fashion, despite the absence of the ordinary legal processes that have been a hallmark of our justice system. We should remember that our clerks are facing the same constantly changing requirements, and as a result, they must quickly learn new file processing methods, and new remote hearing technologies and procedures, and then, when they are modified, the amended methods and procedures.


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

This section includes literature on domestic/family violence, law enforcement/policing and prisons. Literature on criminal court proceedings are in the Courts / Dispute Resolution section above.


Abstract: The COVID-19 pandemic has amplified decades of vulnerabilities, disparities, and injustices within the U.S. correctional system. The spread of the coronavirus poses a particularly serious threat to those that comprise the system, including personnel, attorneys, prisoners, their families and extends into the communities in which facilities are located. These correctional facilities and communities were especially underprepared for the sudden onset of a highly contagious virus, which has resulted in an exceedingly high number of infections among those who work and are held in the facilities. Rampant overcrowding in the U.S. correctional system, an aging population, and a population exhibiting high rates of underlying health conditions are highly likely to exacerbate the spread of this highly contagious virus. This potentially dire set of interrelated circumstances necessitates rapid decarceration measures that effectively balance public safety and public health. Unfortunately, there has been unclear guidance as well as changing and even contradictory information coming from the federal government concerning rapid measures to mitigate the spread of infection to justice system personnel and federal prisoners. In this paper we summarize the federal response and how it has impacted those responsible for implementation. Furthermore, we discuss how systemic deleterious conditions of the U.S. correctional system serve as both accelerants to as well as effects of the pandemic. We end highlighting critical issues relating to early release due to COVID-19 that will necessitate future research.

Jurisdiction: USA

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

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


Abstract: This paper examines the impact of Covid-19 on community-based violence interventions, especially hospital-based violence interventions and street outreach organizations. Guided by our work in Rochester, New York, we explore how the emergence of covid-19, and the subsequent social restrictions, have hampered the ability of community-based organizations to respond to violence. We also examine ways that community-based
organizations can adapt to the challenges associated with Covid-19 and continue providing services to the community.


Jurisdiction: USA

Abstract: The coronavirus pandemic poses multiple challenges for policing, including the need to continue responding to calls from the public. Several contingency plans warned police to expect a large and potentially overwhelming increase in demand from the public during a pandemic, but (to the author’s knowledge) there is no empirical work on police demand during a major public health emergency. This study used calls-for-service data from 10 large cities in the USA to analyse how calls for service changed during the early months of the 2020 COVID-19 outbreak, compared to forecasts of call volume based on data from previous years. Contrary to previous warnings, overall the number of calls went down during the early weeks of the pandemic. There were substantial reductions in specific call types, such as traffic collisions, and significant increases in others, such as calls to dead bodies. Other types of calls, particularly those relating to crime and order maintenance, continued largely as before. Changes in the frequency of different call types present challenges to law enforcement agencies, particularly since many will themselves be suffering from reduced staffing due to the pandemic. Understanding changes to calls in detail will allow police leaders to put in place evidence-based plans to ensure they can continue to serve the public.


Abstract: The COVID-19 pandemic led to substantial changes in the daily activities of millions of Americans, with many businesses and schools closed, public events cancelled and states introducing stay-at-home orders. This article used police-recorded open crime data to understand how the frequency of common types of crime changed in 16 large cities across the United States in the early months of 2020. Seasonal auto-regressive integrated moving average
(SARIMA) models of crime in previous years were used to forecast the expected frequency of crime in 2020 in the absence of the pandemic. The forecasts from these models were then compared to the actual frequency of crime during the early months of the pandemic. There were no significant changes in the frequency of serious assaults in public or (contrary to the concerns of policy makers) any change to the frequency of serious assaults in residences. In some cities, there were reductions in residential burglary but little change in non-residential burglary. Thefts of motor vehicles decreased in some cities while there were diverging patterns of thefts from motor vehicles. These results are used to make suggestions for future research into the relationships between the coronavirus pandemic and different crimes.


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.
Beard, Jacqueline, ‘Coronavirus: Prisons (England and Wales)’ (Briefing Paper No 8892, House of Commons Library, 18 May 2020)

Abstract: On 27 April 2020 the Justice Secretary said that the numbers of coronavirus cases and deaths in prisons were lower than had been originally predicted and that prisons were coping and dealing well with the threat of covid-19.


Jurisdiction: south Africa

Abstract: SABRIC, the South African Banking Risk Information Centre, warns bank clients that cybercriminals are exploiting the spread of COVID-19 for their own gain using the ‘Coronamania’ panic to spread coronavirus scams. Coronavirus scams exploit people’s concerns for their health and safety and pressure them into being tricked using social engineering. Social engineering is manipulative and exploits human vulnerability because criminals know that the weakest link in the information security chain is the human being.


Jurisdiction: India

Abstract: According to Oxford COVID-19 Government Response Tracker, India has the most stringent lockdown as compared to other nations and has scored 100% in the scale; nevertheless, there had been sporadic incidence of attacks on police personnel and medical workers in different parts of India. This article argues that such resistance comes from two broad factors: (i) a collective scepticism that has built up among certain section of people and (ii) a tool of defiance against the government. In order to quell such resistance, community leaders and the police can play a very crucial role. In order to establish the above hypotheses, a quantitative approach of the events that have occurred in India during the lockdown period of 21 days shall be considered.

Jurisdiction: USA

Abstract: It is hard to overstate the impact of COVID-19. When it comes to the criminal justice system, the current COVID-19 crisis has shone a light on pre-existing flaws. Long before the first confirmed case in Seattle or elsewhere, America’s jails and prisons were particularly susceptible to contagions, exacerbated by problems from overcrowding to over policing to lack of reentry programs. This Essay focuses on one aspect of the challenges the criminal justice system faces in light of COVID-19 and beyond—that of a pretrial detention system that falls more harshly on poor and minority defendants, has swollen local jail populations, and has incentivized pleas contributing in its own right to prison overcrowding. Even in the best of times the pretrial detention system is often punitive, fraught with bias, produces unnecessarily high rates of detention, and carries a myriad of downstream consequences both for the accused and the community at large. In the context of the COVID-19 crisis, this pretrial detention system faces an exacerbated challenge: the health and safety of those in custody and those who staff U.S. jails and prisons. This new reality reveals that even during ‘ordinary times’ the pretrial detention system fundamentally miscalculates public safety interests to the detriment of both detainees and the communities they leave behind. Simply put, current pretrial detention models fail to account for risks to defendants during periods of incarceration and pit defendants’ interests against the very communities that depend on them. The public health crisis of COVID-19 demonstrates in very real terms the interconnected nature of a defendant’s and the community’s safety interests. This connection is not unique to the current public health crisis, however, COVID-19 brings to light the persistent reality that communities are often weakened, not made safer, by the removal of defendants during pretrial periods.

‘Coronavirus: Impact on Penalties: Portugal’ [2020] Lawyer (Online Edition) 1

Abstract: The article informs that breach of legal provisions regulating market organization is punishable in Portugal under public health epidemiological crisis. It mentions that crimes aimed at repressing anti-economic and public health offences, the law provides for and punishes as a crime the acquisition of essential goods, such as medicines, masks, or disinfectant product in the situation of coronavirus.
Coster, Maria, ‘A Disease Exacerbated’ (2020) 163(6) Solicitors Journal 41-43

**Jurisdiction**: UK

**Abstract**: Considers the plight of victims of domestic violence and abuse in the coronavirus pandemic, confined to their homes and more vulnerable than ever to their abusers. Discusses the legal remedies available to protect victims and children, including protection orders, injunctions and financial support.

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.

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

**Abstract**: To analyze human endangerment in the COVID-19 pandemic in the United States as a crime, this paper starts with a review of domestic law in a comparative manner. The experience in France with regard to high government officials being charged with domestic crimes for the contaminated blood scandal during the AIDS epidemic is presented and analyzed noting the key legal rules expressed by the French courts in that context. This paper goes on in a comparative approach in the context of the COVID-19 pandemic to examine such criminal liability in the US system with a discussion of the murky and complex issues of qualified immunity. It further highlights the efforts to have legislation passed to provide robust immunity for civil claims. And it posits that these immunities for civil claims likely reduce any likelihood of criminal process for acts and omissions of both public and private actors, except in the most egregious cases.
a likely impasse through these mechanisms, the article turns to international law and in particular customary international criminal law to see if it can provide a method of analyzing the human endangerment. Drawing from the Statute of the International Criminal Court as a possible crystallization of certain types of crimes against humanity, I identify particular groups against which such crimes might be seen as being in the process of being perpetrated. But, even if the particular crimes against humanity in the Statute of the International Criminal Court are seen as progressive development rather than crystallization, the article suggests that they are useful tools in helping to have an organize principle as to how to address the monstrous US response to the COVID-19 pandemic. The article ends with examples of how this method can help those concerned with human life to examine in a clear eyed manner the hundreds or thousands of intentional acts being done by public and private actors that endanger human life. And it also points a way as to how to think about the myriad acts being done by persons to protect human life. In the end, the monstrous response is seen as placing populations and particularly vulnerable populations before Hobbesian choices between protecting their health and venturing out into society in a time of uncertain information, uncertain resources, and pressure to reopen and pressure to reopen or lose unemployment or other benefits.

Farrow, Kathryn, ‘Policing the Pandemic in the UK Using the Principles of Procedural Justice’ (2020)

Policing: A Journal of Policy and Practice, Article paaa031 (advance online article, published 16 July 2020)

Jurisdiction: UK

Extract: The involvement of the police in ensuring compliance with lockdown measures has raised questions regarding the legitimate boundaries of police power during what is first and foremost a public health emergency. Although it can be argued that enforcing social distancing laws can be seen as part of the police mandate of ensuring social order, it is unusual for officers to enforce measures for what essentially is a public health issue. Concerns have been raised regarding the ability of the police to effectively police social distancing measures, and such issues are only likely to increase as the rules change and adapt with the imminent easing of the lockdown period. The decision for the government to put law enforcement officials in the position of enforcing public health regulations is unprecedented, but is widely in step with the approach taken by many other countries around the world. Although this method of ensuring compliance with public health
measures has been questioned, it is still possible for it to be highly effective during the ‘emergency period’ of the pandemic.


Abstract: This essay considers the circumstances of persons deprived of their liberty in the context of Covid-19. Detention is always intended to be exceptional and the essay explores the extent to which the pandemic impacts upon this exceptional character. First, by increasing the unacceptability of detention, have the rules regarding what may constitute ‘arbitrary detention’ changed? Secondly, for persons serving out prison sentences, to what extent should Covid-19 serve as a justification for early release or commutation of punishment? In this respect, should the goals of retribution and specific and general deterrence be weighed against the rights to health and safety of prisoners and prison staff, and if so, how? Do detaining authorities have absolute discretion to determine which detainees to release or must they ensure that policies of release also, are not arbitrary? To what extent does the arbitrary resort to detention as well as the arbitrary decision to maintain someone in detention during the pandemic, which may heighten certain individuals’ exposure to the disease and thereby produce extreme anxiety, give rise to cruel, inhuman or degrading treatment or punishment, if not torture? The paper considers how governments, specialist agencies and courts are beginning to grapple with these legal, ethical and public health issues. On the one hand, recognition of the heightened health risks for detainees associated with the pandemic is proving to be an important opportunity to reduce reliance on detention – and thereby to make good on the intention for detention to be recognised as an exceptional measure. Yet on the other hand, as will be shown, the selectivity of approaches and lack of transparency and oversight of decision-making has put some detainees at even greater risk of harm.

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


Jurisdiction: USA

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

Grace, Sara, ‘Policing Social Distancing: Gaining and Maintaining Compliance in the Age of Coronavirus’
Policing: A Journal of Policy and Practice, Article paaa029 (advance online article, published 12 July 2020)
Jurisdiction: UK

Abstract: Drawing on motivational posturing theory (MPT) and procedural justice theory (PJT), this article makes recommendations for how best to secure compliance with social distancing regulations. Applying those theories to—mostly observational—data from a study on the use and impact of penalty notices for disorder, the influences on cooperation during police–citizen encounters are explored. Whilst focusing on the English data/regulations, as both MPT and PJT have been tested internationally, the conclusions have relevance beyond these shores. The article proposes a sixth posture—compulsion, a form of resistant compliance—to the five set out by MPT. Focusing attention not just on whether compliance is achieved but how recognizes the risk to future legitimacy posed by only achieving compliance through coercion or the threat thereof. Lessons from the research are applied to policing social distancing, with regards to: securing compliance during interactions, self-regulation and enforcement action, and how to preserve police legitimacy.

Jurisdiction: UK

Abstract: At a time when the home is presented as a place of safety in the face of Covid-19, there are major concerns that forced confinement is exacerbating the risks posed to victims of domestic abuse. Increased isolation, coupled with more limited opportunities to seek support, are presenting unprecedented challenges for victims and for the law in responding to domestic abuse. This paper takes as its focus these legal challenges, focusing particularly on the situation in the UK. It opens by addressing the implications for domestic abuse victims of the restrictions
in movement. It then assesses the capacity of the criminal offence of coercive or controlling behaviour to respond to the rise in domestic abuse. It also explores the recent move to remote hearings within the family justice system, and associated access to justice concerns.

Hawdon, James, Katalin Parti and Thomas E Dearden, ‘Cybercrime in America amid COVID-19: The Initial Results from a Natural Experiment’ (2020) American Journal of Criminal Justice 1-17 (advance article, published 10 June 2020)

Abstract: The COVID-19 pandemic has radically altered life, killing hundreds of thousands of people and leading many countries to issue ‘stay-at-home’ orders to contain the virus’s spread. Based on insights from routine activity theory (Cohen & Felson 1979), it is likely that COVID-19 will influence victimization rates as people alter their routines and spend more time at home and less time in public. Yet, the pandemic may affect victimization differently depending on the type of crime as street crimes appear to be decreasing while domestic crimes may be increasing. We consider a third type of crime: cybercrime. Treating the pandemic as a natural experiment, we investigate how the pandemic has affected rates of cybervictimization. We compare pre-pandemic rates of victimization with post-pandemic rates of victimization using datasets designed to track cybercrime. After considering how the pandemic may alter routines and affect cybervictimization, we find that the pandemic has not radically altered cyberroutines nor changed cybervictimization rates. However, a model using routine activity theory to predict cybervictimization offers clear support for the theory’s efficacy both before and after the pandemic. We conclude by considering plausible explanations for our findings.


Abstract: Correctional Service of Canada and the provincial prison systems have a duty to provide incarcerated individuals with health services that are comparable to those in the community, but they have failed to do so during the COVID-19 pandemic. There are inherent practical difficulties to implementing health care in prisons. In addition, prison demographics include a higher proportion of populations that are vulnerable to disease. These factors together mean that the prison response to COVID-19 must involve depopulation and the implementation
of guidelines provided by public health agencies in all institutions. So far, the measures taken have been insufficient, as is evidenced by the rapid rates of spread of COVID-19 within prisons compared to the community. An overreliance on segregation of incarcerated individuals as a preventive measure raises concerns under s. 7 of the Charter of Rights and Freedoms (the Charter) and international human rights. There are also equality concerns under s. 15 of the Charter, given the high proportion of Indigenous people in prison. Ultimately, some prison systems’


Jurisdiction: USA


Abstract: During pandemics, like COVID-19, law enforcement agencies are responsible for working with government and public health officials to contain spread, serve the local community, and maintain public order. Given the person-to-person spread of COVID19 through respiratory droplets, law enforcement officers are also at a heightened risk of exposure due to their close contact with members of the public. To protect officers, the Centers for Disease Control and Prevention (CDC) and other agencies have made numerous recommendations for law enforcement agencies to protect officers and the public. Departments around the country have responded to the pandemic in various ways, such as reassigning personnel to high-traffic areas, suspending training, roll calls, and community outreach initiatives, only issuing citations for low-level crimes, implementing safety precautions for officers, and limiting access to department facilities. The COVID-19 pandemic also has exposed some key obstacles for law enforcement, related to communication, resource management, the enforcement of public health restrictions, and changes to crime and service patterns. Based on these early/initial responses and obstacles during the COVID-19 outbreak, the current paper highlights directions for future responses to pandemics to ensure the safety and security of police officers and the communities they serve.

Jurisdiction: USA

Abstract: One of the biggest challenges facing modern policing in recent years has been the lack of police legitimacy. The tipping point of this phenomenon is often attributed to the Rodney King incident in Los Angeles in 1991, where Los Angeles Police Department (LAPD) officers were videoed assaulting a lone black male. They were arrested and charged but eventually all were acquitted, thereby etching deep distrust between communities and police. Now the Rodney King example is an extreme and criminal act by police but it was the beginning of communities and media focusing on what the police were doing and how they were doing it. This lack of legitimacy coupled with what is referred to as the militarization of policing have lasting consequences and impacts on police–community relations and how interactions between police and community shape society today. In the wake of pandemic policing due to COVID-19, there are tales of two eventualities for police legitimacy that will be explored in this article: (1) The police response to the pandemic results in further militarization and draws deeper divides between police and communities or (2) the police response is compassionate and builds on procedurally just operations resulting in the rebuilding of police legitimacy post-pandemic.


Introduction: There have been agitations in the past for Kenya’s justice to modernise and meet the demands of the current existing criminal justice dynamics. The two most recent decisions made since emergence of COVID19 pandemic in Kenya are to release prisoners and use of technology to undertake court proceedings. The decision to release prisoners was made in a bid to prevent overcrowding in Kenya’s prisons. Previously, reforms started a decade earlier appear to have stalled, and there are public discussions calling for the reforms to be revived.
Kirchner, Stefan, ‘End-of-Life Decisions Amid the Covid-19 Pandemic as a Practical Problem of Criminal Law Theory’ (SSRN Scholarly Paper ID 3576543, 15 April 2020)

Jurisdiction: Germany

Abstract: The current Covid-19 pandemic threatens to overwhelm health care systems. Because many patients have to be provided with ventilators, there is a risk that not all patients will receive the medical help they require. This has already happened for example in Italy, Spain and France and at the time of writing, during the second week of April 2020, it appears likely that other countries will face the same shortages. In some countries, guidelines have been created to determine under which circumstances a patient will be allocated a ventilator. This allocation of scarce life-saving resources raises significant concerns regarding the protection of the right to life and respect for human dignity. By determining that a person’s life has to end in order to re-allocate resources such as a respirator in an intensive care unit the patient is no longer an actor but becomes the mere object of the decision made by others. This is incompatible with the concept of human dignity, in particular when one takes into account the definition of human dignity employed by the German Federal Constitutional Court in several cases. This notion can be traced back to Immanuel Kant. In practice, however, medical decision-makers will be forced to choose between different patients. These choices can be deadly for one patient and potentially life-saving for the other, violate human dignity and place an inhuman burden on those who have to decide. This text aims to investigate this matter from the perspective of criminal legal theory and to provide guidance as to whether ending life-saving measures amounts to an action or an omission.


Jurisdiction: USA

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

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

Jurisdiction: USA

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


Jurisdiction: Australia

Abstract: With the onset of the COVID-19 pandemic in March, the Commonwealth and NSW Parliaments have introduced temporary laws to enable the management of public health and
safety and prevent the spread of the novel coronavirus. This article provides an overview of these laws with a focus on the exercise of discretion under novel or temporary police powers.


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

Abstract: It is often said that the best time to fix a leaking roof is in winter when there are no storms or heavy rains. This has proved to be true as South African law enforcement agencies' inabilities have been exposed by the COVID-19 outbreak.

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.
Jurisdiction: NSW, Australia

Abstract: The Lawcodes database provides unique codes, called Law Part Codes, for all NSW offences and Commonwealth offences dealt with in NSW. These law part codes are intended to improve the operation of the criminal justice system in NSW through the exchange, between major criminal justice agencies, of standardised electronic information regarding offences.

Jurisdiction: South Africa

Abstract: With more employees working from home during the COVID-19 pandemic, the risk of cybercrime has escalated, and the need to have proper systems and procedures in place has become even more important.


Abstract: Governments have implemented social distancing measures to address the ongoing COVID-19 pandemic. The measures include instructions that individuals maintain social distance when in public, school closures, limitations on gatherings and business operations, and instructions to remain at home. Social distancing may have an impact on the volume and distribution of crime. Crimes such as residential burglary may decrease as a byproduct of increased guardianship over personal space and property. Crimes such as domestic violence may increase because of extended periods of contact between potential offenders and victims. Understanding the impact of social distancing on crime is critical for ensuring the safety of police and government capacity to deal with the evolving crisis. Understanding how social distancing policies impact crime may also provide insights into whether people are complying with public health measures. Examination of the most recently available data from both Los Angeles, CA, and Indianapolis, IN, shows that social distancing has had a statistically significant impact on a
few specific crime types. However, the overall effect is notably less than might be expected given the scale of the disruption to social and economic life.


Abstract: Intimate Partner Violence (IPV) is a global pandemic and many have been victims of it long before Covid-19. International organizations have documented an increase in IPV reports during the current pandemic, raising awareness of the potential causes for such an increase. Reflecting on risk factors associated with IPV, and the underlying need of the perpetrators to exert control over the victims, it becomes increasingly important to understand how the current policies of social distancing, self-isolation, and lockdown can precipitate episodes of IPV. Furthermore, access to specialized services and health care can be compromised, and health care professionals face new challenges and demands imposed by the pandemic while managing IPV cases. This article begins by examining the main risk factors more commonly associated with IPV in the literature. It proceeds by reflecting on how these risk factors may be exacerbated during the Covid-19 pandemic, which can explain the increased number of reports. Finally, it emphasizes the new challenges faced by health care professionals, while assisting IPV victims during the pandemic and provides possible recommendations on actions to implement during and beyond the Covid-19 pandemic to prevent such cases.

Ndedi, Alain, ‘Framework in Ending Gender-Based Violence with the Advent of the COVID 19 from an African Perspective’ (SSRN Scholarly Paper ID 3571319, 8 April 2020)

Abstract: African countries have been among the last to be hit by the global coronavirus pandemic. Yet, as the cases rise and governments rightfully take the necessary measures to slow the spread of the virus, the continent is likely to face widespread economic fallout as business slows to a near halt. The emerging evidence of the impact of the recent global pandemic of COVID-19 on violence against women and girls needs some attention. In this paper, we are making recommendations to be considered by all sectors of society, from governments to international organisations and to civil society organisations in order to prevent and respond to
violence against gender-based violence, during, and after the public health crisis with examples of actions already taken. In view of economic impact of the pandemic and its implications for violence against women and girls in the long-term. This paper draws upon the knowledge and experience of a wide range of experts who support solutions to end violence against women and girls.


Jurisdiction: UK and Scotland


Abstract: COVID-19 is posing challenges larger challenges in terms of human rights including health rights of women and children. Since the mandatory lockdown has been imposed, violence against women is exponentially rising world over. Several countries have enacted special policies, laws and programs to deal with violence against women in homes. However, India which since the 90s has witnessed widening inequalities since the policy of Liberalization, Globalization and Privatization has been introduced, right now is again facing the disastrous impact due to coronavirus. The pandemic is making adverse gender impact in two ways – 1) Middle- or upper-class women facing abuse in homes during the lockdown and 2) Poor women who have no homes or are surviving in slums or those on the roads walking back home or those awaiting in villages for migrant men to come back. The National Commission for Women has reported a rise of 94 percent in complaint cases where women have been abused in their homes during lockdown. Also, another aspect that has not received attention is increasing number of cases where migrant women, along with men, are walking hundreds of miles, some in their advanced stage of pregnancy along with their children, without food. Some are being forced to deliver babies on the roadside while others are receiving devastating news of migrant men being dead while walking on roads. Deprivation and denial of health and other services to women and children during the COVID crisis is aggravating the disaster. Therefore, almost half a billion women are at risk in India due to the pandemic. Yet, the state has not made any
comprehensive COVID response plan to tackle these challenges. Neither any formal statement is
being issued to declare domestic violence as an essential service nor plans have been made to
support pregnant women workers walking hundreds of miles without food and water with their
children. Rather, the state after 40 days of lockdown, while easing down the restrictions,
opened the liquor shops as a first step. In doing so, earning revenue is prioritized over genuine
serious concerns of women. This is despite of the fact that the women’s movement has shown
evidences that consumption of liquor by men is proportional to increase in incidences of abuse.
This essay investigates the gaps in the state’s response in India to the increase in incidents of
violence during the lockdown and argues that a robust comprehensive plan is required to
address different aspects of violence women are facing in the largest democracy. The
government cannot miss the chance to protect women from violence. In order to imagine a
gender just violence free world, the need is to impose the lockdown on the collective
imagination that reiterate gender stereotypical notions and to put the viruses of patriarchy and
poverty in quarantine and isolation forever. By maintaining social distancing with the misogynist
ideas and developing a plan to eliminate inequalities in all forms, gender justice and human
rights could be achieved and the rights guaranteed under the Article 14, 15 and 21 of the
Constitution can be reclaimed.

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

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

‘Parole Board’ [2020] (July) Public Law 569-570

Jurisdiction: UK

Abstract: Highlights the Parole Board’s February 2020 publication of its Operational Protocol to
make transparent to the public, prisoners and victims the procedures it will follow when taking
decisions. Notes the May 2020 release of its Strategy and Business Plan for 2020-2022, its
guidance on the holding of oral and remote hearings during the coronavirus pandemic, and its collation of decisions under the reconsideration mechanism introduced in June 2019.


Abstract: COVID-19 has wreaked havoc on the lives of persons around the world and social scientists are just beginning to understand its consequences on human behavior. One policy that public health officials put in place to help stop the spread of the virus were stay-at-home/shelter-in-place lockdown-style orders. While designed to protect people from the coronavirus, one potential and unintended consequence of such orders could be an increase in domestic violence – including abuse of partners, elders or children. Stay-at-home orders result in perpetrators and victims being confined in close quarters for long periods of time. In this study, we use data from Dallas, Texas to examine the extent to which a local order was associated with an increase in domestic violence. Our results provide some evidence for a short-term spike in the 2 weeks after the lockdown was instituted but a decrease thereafter. We note that it is difficult to determine just how much the lockdown was the cause of this increase as the domestic violence trend was increasing prior to the order.

‘Police Minister Welcomes the Decrease in Serious and Violent Crimes since the Lockdown’ (2020) 113(5) Servamus Community-based Safety and Security Magazine 57

Jurisdiction: South Africa

Abstract: During April 2020, the Minister of Police, Gen Bheki Cele, welcomed the general decrease in serious and violent crimes, attributing this to, among others, the prohibition of the sale and movement of liquor since the COVID-19 nationwide lockdown.

Jurisdiction: USA

Abstract: People confined in jail and prison are especially vulnerable to outbreaks of communicable diseases such as coronavirus disease 2019 (COVID-19). Corrections officials across the country have responded by shifting institutional practices, including suspending visitation and programming, as well as releasing some prisoners early. Missing from leading accounts of COVID-19 in correctional facilities are the perspectives of prisoners. This study examined perceptions of risks and responses among a random sample of 31 high-security male prisoners in Oregon. In-depth interviews were conducted by phone in private attorney rooms between April and May 2020. Mixed method data revealed that respondents felt it was a matter of when, not if, the disease would spread throughout the prison system, due primarily to transmission from correctional officers. Yet prisoners were not highly worried about contracting the disease. This was due, in part, to being physically and socially isolated in restrictive housing, which in this instance they viewed as advantageous. Respondents believed the threat of the virus was being taken seriously by prison officials but lacked confidence in their ability to prevent an outbreak or effectively treat infected prisoners. Strategies are needed to mitigate the spread, fear, and consequences of COVID-19 in correctional facilities, as this disease has the potential to upend the functions and purposes of the American prison.


Jurisdiction: UK

Abstract: When proffering some of his more outr proposals for dealing with Covid-19, US President Donald Trump is wont to ask, "what have you got to lose?". If Sir Richard Henriques' proposal to suspend jury trials in England and Wales as a means of dealing with the crisis is followed, the answer may be "quite a lot". The Lord Chief Justice has said that "any move to judge-only trials would be very undesirable", but the immediate endorsement the idea received from influential supporters, and the significant logistical difficulties of arranging "socially-distanced" trials, suggests the possibility of a "second spike" in support of suspending jury trials.

Abstract: This briefing is divided into three parts. First, we outline the factors which lead to incidents of collective disorder (or riots). Secondly, we consider how the overall response to the coronavirus outbreak and the role of the police within this response will impact the probability of such disorder. Thirdly, we apply these understandings to three specific scenarios of potential disorder.

Sanga, Sarath and Justin McCrary, ‘The Impact of the Coronavirus Lockdown on Domestic Violence’ (SSRN Scholarly Paper ID 3612491, 28 May 2020)

Jurisdiction: USA

Abstract: We use 911 call records and mobile device location data to study the impact of the coronavirus lockdown on domestic violence. The percent of people at home sharply increased at all hours, and nearly doubled during regular working hours, from 45 to 85 percent. Domestic violence increased 12 percent on average and 20 percent during working hours. Using neighborhood-level identifiers, we show that the rate of first-time abuse likely increased even more: 16 percent on average and 23 percent during working hours. Our results contribute to an urgent need to quantify the physical and psychological burdens of prolonged lockdown polices.


Abstract: Law enforcement is the process by which efforts are made for the establishment or functioning of legal norms as a real guide to behavior in traffic or legal relations in the life of society and the state. The community needs law enforcement for a sense of justice, legal certainty, and benefits in society. At this time the Covid-19 Pandemic spread throughout the country. Although there is still a Covid-19 Pandemic, law enforcement continues. Law enforcement is carried out by law enforcement agencies. Law enforcement agencies that continued to carry out law enforcement during the Covid-19 Pandemic period were the National Police, the Attorney General's Office, the Supreme Court (MA) and the KPK through law
enforcement officials. Law enforcement continues to be carried out during the Covid-19 Pandemic. With the aim of maintaining a sense of justice, legal certainty, and benefits in the community during the Covid-19 Pandemic era. The National Police in enforcing the law during the Covid-19 Pandemic era by issuing a Secret Telegram (TR) and the police crack down on crowds of citizens. In law enforcement during the Covid-19 Pandemic period, the Supreme Court tightened the work system in the judiciary. By issuing MA Circular Letter Number 1 of 2020 concerning Guidelines for Implementing Tasks During the Prevention Period of Covid-19 Distribution within the Supreme Court and its Judicial Bodies. During the Covid-19 Pandemic period the Attorney General's Office continued to carry out law enforcement, the prosecutor's examination process in a case continued during the Covid-19 Pandemic period and continued to carry out trials. In law enforcement during the Covid-19 Pandemic period, the Corruption Eradication Commission (KPK) prosecution such as investigators and prosecutors continued.


Abstract: How should we think about crime deterrence in times of pandemics? The economic analysis of crime tells us that potential offenders will compare the costs and the benefits from crime and from innocence and then choose whichever option that is more profitable. We must therefore ask ourselves how this comparison is affected by the outbreak of a pandemic and the policy changes which may accompany it, such as governmental restrictions, social distancing, and economic crises. Using insights from law and economics, this article investigates how the various components in the cost-benefit analysis of crime might change during a pandemic, focusing on COVID-19 as a test case. Building on classical theoretical models, existing empirical evidence, and behavioral aspects, the analysis reveals that there are many potentially countervailing effects on crime deterrence. The article thus highlights the need to carefully consider which aspects are applicable given the circumstances of the pandemic, as whether crime deterrence will increase or decrease should depend on the strength of the effects at play.
There is a dilemma in implementing social distancing as a government policy program to stay at home. For this, the author analyzed the police law perspective, especially the role of the National Police in overcoming the problems during the enactment of government regulations. The study was conducted using primary and secondary data. Primary data obtained through observation and interview, while secondary data obtained through library research. The data was then analyzed qualitatively and presented descriptively. From the results, it was concluded that the impact of the Covid-19 outbreak in the area of West Kalimantan Province was relatively safe and well-controlled which was indicated by no extraordinary crimes there. Polices had carried out their duties in all aspects both in maintaining security and public, law enforcement, protection, guard, and community services.

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

Abstract: This essay was completed in early April 2020 and begun during the first week of the official pandemic panic in Canada. The world-wide plague caused by the COVID-19 virus precipitated the first global police event presenting an occasion for researchers and scholars to apply existing theory and empirical understanding to extra-ordinary circumstances. Consideration of the politics of the police during the plague reveals a tectonic shift in the world system. The transnational and comparative study of police and policing reveals the contours of the emerging system of world power all the more clearly in a moment of crisis. The pandemic panic presents an historical moment during which, figuratively speaking, policing power crystalizes and can be seen clearly. On the global stage, in response to the pandemic panic authoritarian and totalitarian policing practices are demonstrated alongside those in putative democracies. Emerging and observable practices of rule by law are antithetical to democratic policing in the general social interest, and rule of law rhetoric justifying militarized law enforcement action in many places continues to bring police into further disrepute. The coming era will continue to be a time where, in most places "the strong do what they will, and the weak suffer what they must" - as the ancient historian Thucydides observed in the aftermath of the fratricidal Peloponnesian War more than two millennia ago. The pandemic panic shows in the starkest statistical numbers that, where social justice is achieved, the outcome of the politics of the police is not the command of the sovereign.


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.


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.

Jurisdiction: USA

Abstract: Maintaining social distance in the time of COVID-19 is a public health priority. A crowded courtroom is an environment at odds with public health needs. Accordingly, until science determines otherwise, it will be necessary for judges to manage courtroom attendance and exclude the public from trials, wholly or in part. Courtrooms may be closed to the public, despite the Sixth Amendment’s right to a public trial, when the closure is justified by a strong government interest and is narrowly tailored to further that interest. Typically, this heightened scrutiny is applied on a case-by-case basis, and turns on a case’s specific circumstances. This essay proposes that in this period of pandemic, with indisputably strong government interests in public health and with few means available beyond closure to satisfy those interests, courtroom closures may be ordered by trial courts, and approved by appellate courts, almost categorically. It further suggests that there are alternative protections available that may be employed by courts to further the Sixth Amendment’s good government purposes in this time of emergency.

Spencer, JR, ‘Covid Coughing and the Criminal Law’ [2020] 5 Archbold Review 5, 8-9

Jurisdiction: UK

Abstract: Examines the criminal offences that are potentially committed by persons carrying the coronavirus who deliberately cough over other people to scare or harm them. Refers to various offences under the Offences Against the Person Act 1861 and relevant case law.


Jurisdiction: NSW, Australia

Abstract: In ‘Kennedy v R’ [2020] NSWCCA 49 the Court of Criminal Appeal examined the sentencing range for ongoing supply - which is due to become a Table 1 offence soon - and held that at least in the circumstances of this case, no penalty other than a conviction was necessary. Some practitioners likely have health concerns which place them at particular risk if they contract COVID-19. Those practitioners may also feel compromised by the lengthy history of some matters, so that they don’t feel they can withdraw, especially if there is no other
representation available (for example in regional areas). ‘Kahil v R’ [2020] NSWCCA 56 provides at least a little guidance.


Abstract: The COVID-19 pandemic of 2020 has impacted the world in ways not seen in generations. Initial evidence suggests one of the effects is crime rates, which appear to have fallen drastically in many communities around the world. We argue that the principal reason for the change is the government ordered stay-at-home orders, which impacted the routine activities of entire populations. Because these orders impacted countries, states, and communities at different times and in different ways, a naturally occurring, quasi-randomized control experiment has unfolded, allowing the testing of criminological theories as never before. Using new and traditional data sources made available as a result of the pandemic criminologists are equipped to study crime in society as never before. We encourage researchers to study specific types of crime, in a temporal fashion (following the stay-at-home orders), and placed-based. The results will reveal not only why, where, when, and to what extent crime changed, but also how to influence future crime reduction.


Jurisdiction: UK

Extract from Introduction: ... the measures taken by governments to control disease often produce outcomes that can threaten the very basis of functional democracy. In this commentary, we provide a brief analysis of some of the security implications of Covid-19
Abstract: This Article examines the public health response to COVID-19 within federal and state prisons and local jails. Prisons and jails are often a hotbed of airborne infections like COVID-19 as a result of chronic overcrowding, unavoidably close living quarters, and incarcerated people’s underlying health risk factors. Proposals for handling coronavirus vary but tend to include the incorporation of prevention measures within congregate settings as well as the return of individuals to their local communities in order to facilitate physical distancing. This Article identifies ethical tradeoffs and sets priorities for incarcerated people’s return to communities. In Parts I and II, we provide background on why the COVID-19 pandemic is especially dangerous within correctional facilities and lay out the various enacted and proposed public health responses. In Part III, we provide moral, practical, and legal arguments for supporting the early release of incarcerated individuals that stand independently of specific views about criminal detention and theories of legal punishment. In the last part, we set priorities for which individuals to release first. These are individuals who (1) have low risk of recidivism for a violent offense, (2) are being held pretrial, (3) have high risk of mortality from COVID-19, (4) are nearing the end of their sentences, and (5) have custodial responsibilities to third parties.


Abstract: In this essay, we review how the COVID-19 (coronavirus) pandemic that began in the United States in early 2020 has elevated the risks of Asian Americans to hate crimes and Asian American businesses to vandalism. During the COVID-19 pandemic, the incidents of negative bias and microaggressions against Asian Americans have also increased. COVID-19 is directly linked to China, not just in terms of the origins of the disease, but also in the coverage of it. Because Asian Americans have historically been viewed as perpetually foreign no matter how long they have lived in the United States, we posit that it has been relatively easy for people to treat Chinese or Asian Americans as the physical embodiment of foreignness and disease. We examine the historical antecedents that link Asian Americans to infectious diseases. Finally, we
contemplate the possibility that these experiences will lead to a reinvigoration of a panethnic Asian American identity and social movement.

Travaini, Guido, Palmina Caruso and Isabella Merzagora, ‘Crime in Italy at the Time of the Pandemic’ (2020) 91(2) Acta Biomedica 199-203

Abstract:

Background: The beginning of 2020 has been marked by a historic event of worldwide importance: the Coronavirus pandemic. This emergency has resulted in severe global problems affecting areas such as healthcare and the social and economic fields. What about crime?

Purpose of the work: The purpose of this work is to reflect about Italy and its crime rate at the time of Coronavirus.

Methods: Some crimes will be analysed (the "conventional" ones only, ruling out health-related offences) in the light of data resulting from Ministries and Europol reports, as well as from newspapers and news.

Results and conclusions: The outcome will be explained, and some criminological remarks will be added.


Abstract: While the COVID-19 pandemic has dramatically affected the lives of people around the world, select populations (e.g., elderly, immune-compromised, and incarcerated individuals) are among the most likely to contract the virus and among the least likely to overcome the illness and regain full health. This paper focuses on the incarcerated individuals and how the coronavirus has added a new and unprecedented threat to correctional facilities that are already overcrowded and ill-equipped to identify and address the medical needs of the inmate
population. The risk-need-responsivity model (RNR) should be used to make empirically-informed decisions about the targeted release. The identification and release of inmates who pose the least threat to society will help alleviate some of the burdens associated with prison crowding. Specifically, with fewer inmates, correctional facilities can comply with social distancing guidelines, introduce enhanced cleaning measures, and make necessary institutional adjustments. In so doing they will limit the transmission of COVID-19 within correctional institutions, ensure the safety of staff and their charges, and enable prisons and jails to better accommodate the needs of the inmate population.


Abstract: The COVID-19 pandemic has dramatically altered life globally during the first 4 months of 2020. Many countries, including the United States, responded to the pandemic by issuing stay-at-home orders/shelter-in-place orders (SaHOs/SiPOs) to their citizens. By April 2020, more than 90% of the U.S. population was subject to an order. SaHOs/SiPOs raise a number of complex issues for the police, ranging from concerns about infringement of constitutional rights to potential sanctions for violations of an order. This article delves into the issues surrounding SaHOs/SiPOs and highlights their complexity for the police. First, we examine the ‘why the police?’ question, and point to key features of their role which make enforcement of SaHOs/SiPOs the proper business of the police. Second, we examine the relevant legal doctrines that can serve as the basis for police actions against violators of orders, most notably the special needs doctrine. Last, we offer police legitimacy as a lens for viewing the appropriateness of police responses to violators of SaHOs/SiPOs.

ELECTION LAW


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.


Abstract: How much is support for vote by mail (VBM) impacted by the COVID-19 pandemic, partisanship, and recent efforts by partisan elites to politicize discussions about expanding the use of VBM in November 2020? Using surveys of registered voters conducted in April and May 2020 we characterize how changing concerns about COVID 19 and increased partisan messaging affects public support for VBM. We show that the bipartisan support for VBM in April 2020 falls sharply after just six weeks because: Republicans became less worried about catching COVID-19, and unconcerned Republicans also became more opposed to VBM. The pandemic originally increased public support for expanding VBM to help combat the spread of COVID-19 - creating a relative unique opportunity to examine the public’s willingness to reconsider how elections are administered - but decreasing COVID-19 concerns among Republicans and increased opposition among unconcerned Republicans (perhaps due to increased partisan messaging) has combined to increase partisan divisions in otherwise historically high levels of public support for VBM.

Gardner, James A, ‘Democratic Legitimacy under Conditions of Severely Depressed Voter Turnout’ (University at Buffalo School of Law Legal Studies Research Paper No 2-0162020)

Abstract: Due to the present pandemic, it seems increasingly likely that the 2020 general election in November will be held under conditions of unprecedented downward pressure on voter turnout. The possibility of severely depressed turnout for a highly consequential presidential election raises troubling questions of democratic legitimacy. Although voter turnout
in the United States has historically been poor, low turnout is not usually thought to threaten the legitimacy of electoral processes when it results from voluntary abstention and is distributed unsystematically. Conversely, electoral legitimacy is often considered at risk when nonvoting is involuntary, especially when obstacles to voting fall systematically on specific populations. If turnout in November is unusually low but largely voluntary and unsystematic, then the risks to legitimacy should be low. If, however, nonvoting is both widespread and involuntary, and especially if obstacles to voting seem systematically directed at specific groups, conditions will be in place for a significant escalation of the threat. In particular, concerns of electoral legitimacy, which place in doubt only the authority of specific election winners to occupy the offices to which they have purportedly been elected, may ratchet up to much more profound concerns about regime legitimacy. Such concerns cast doubt on the continuing validity of popular consent to the entirety of the existing governmental regime.

Morley, Michael, ‘Postponing Federal Elections Due to Election Emergencies’ (SSRN Scholarly Paper ID 3619213, 4 June 2020)

*Jurisdiction: USA*

*Abstract:* Federal Election Day didn’t just happen. Instead, it reflects the culmination of a series of federal laws enacted over the course of nearly a century that each set a uniform time for a different type of federal election. These laws grant states flexibility to hold federal elections at a later date if there is a ‘failure to elect’ on Election Day. Earlier commentators have argued that these ‘failure to elect’ provisions are narrow, and only authorize runoff elections in states that require candidates to receive a majority (rather than plurality) of the vote to win. Based on a detailed examination of these provisions’ text, legislative history, and history of judicial application, this Essay argues that federal Election Day laws, including their ‘failure to elect’ provisions, empower states to postpone or extend federal elections when an unexpected emergency prevents them from conducting or concluding a federal election on Election Day. A court may also order the postponement or extension of a federal election when necessary to prevent a constitutional or statutory violation. The Supreme Court has emphasized that courts generally should not grant such relief at the last minute, however, although unexpected emergencies may sometimes render it necessary. And a court may not order an election postponement or extension unless other, less extensive changes to the rules governing the
electoral process are insufficient to remedy the constitutional or statutory violation. In the hierarchy of electoral remedies, a postponement or extension is a severe, disfavored remedy—particularly in the unique context of presidential elections—that should be employed only when other alternative would be ineffective.

ENERGY AND NATURAL RESOURCES LAW


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 uninterruptable 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

Bennett, Juliet, ‘Reorienting the Post-Coronavirus Economy for Ecological Sustainability’ (2020) (85) Journal of Australian Political Economy 212-218

Abstract: The increase in zoonotic viruses (transferring from animals to humans) from SARS to Ebola, HIV, Zika (Bell ‘et al.’ 2004) and now COVID-19 is inextricably linked to humanity’s continuing expansion and impact on the planet. Climate chaos resulting from greenhouse gas (GHG) emissions accumulating in the atmosphere is predicted to amplify the future pandemics, socio-economic and ecological crises (Watts et al. 2018). Tackling the roots of the COVID-19 pandemic calls into question the industrialised socio-political-economic systems that assume limitless growth in consumption and production. The urge to ‘return to normal’ remains stuck in growth economics. Meanwhile innovative cities like Amsterdam and countries such as New
Zealand embrace contextual alternatives. This article identifies a few ways that Australia may reorientate their economy for post-coronavirus (and post-bushfires) recovery so to help prevent future pandemics and ecological catastrophes associated with a return to business-as-usual.


Abstract: The COVID-19 pandemic has caused more rapid changes to the law than most of us have seen in our lifetimes. These changes have remade, and in many cases severed, our social and economic connections to each other, in ways unprecedented except during war. As many have argued, climate change is also a dire emergency, requiring an equally sweeping legal response. Climate change is COVID-19 in slow motion, but with less clarity and far greater destructive capacity. Lawyers, like legislators and executive branch leaders, are responding to the coronavirus pandemic with creativity and improvisation. We may find that attorneys seeking to address climate change will be able to learn valuable lessons from the legal response to COVID19. Part I of this Essay, echoing a point that has already been made many times now, explains why, on a practical level, COVID-19 and climate are intertwined. Part II argues that climate attorneys should focus on coronavirus lawsuits, which could be more consequential to climate progress than recent executive or legislative action. Part III of the Essay identifies three specific lawsuits climate attorneys should track. And Part IV concludes with a thought for attorneys as we weather this pandemic – and a warming planet – together.


Abstract: Coronavirus and climate change are not two different crises. They represent two sides of the same significant turmoil relating to the progressive degradation of our environmental and health ecosystems. Against this backdrop, and in light of, not only, the cyclical time of pandemics, but also of the predictable occurrence of a new pandemic associated with the worsening of the climate crisis, what should EU law do to prevent and better manage the occurrence of such risks? To answer this question, the core claim of this paper is that the EU should implement a common, coordinated, and consistent risk management strategy.

Abstract: States attempting to address climate change today face a host of new challenges. A lack of adequate national leadership on the pandemic is forcing states, and especially state governors, to pick up the slack in responding to this overwhelming health crisis. This may better equip them to respond to natural disasters that are projected to be more frequent and severe with climate change, such as wildfires, hurricanes and flooding. But the importance of responding to the pandemic will inevitably edge out other priorities such as climate change at the same time it threatens to drain state and local government coffers. Even aside from the curve-ball thrown by the pandemic, the prospects for robust state and local action on climate change will also depend on legal variables extrinsic to climate policy debates, such as the success to preempt state regulations of GHGs through vehicle emission standards and energy generation. Although President Trump can pull the United States out of the Paris climate agreement and may succeed in rolling back federal climate regulations, he cannot extinguish the power of states, individually or collectively, to address climate change. Nevertheless, states currently face numerous unanticipated challenges in addressing the climate crisis due to the global coronavirus pandemic. This as well as legal hurdles to their power to address various aspects of the climate crisis will shape the effectiveness of future state and local climate actions.


Abstract: The coronavirus pandemic has led many countries to initiate unprecedented economic recovery packages. Policymakers tackling the coronavirus crisis have also been encouraged to prioritize policies which help mitigate a second, looming crisis: climate change. We identify and analyze policies that combat both the coronavirus crisis and the climate crisis. We analyze both the long-run climate impacts from coronavirus-related economic recovery policies, and the impacts of long-run climate policies on economic recovery and public health post-recession. We base our analysis on data on emissions, employment and corona-related layoffs across sectors, and on previous research. We show that, among climate policies, labor-intensive green infrastructure projects, planting trees, and in particular pricing carbon coupled with reduced
labor taxation boost economic recovery. Among coronavirus policies, aiding services sectors (leisure services such as restaurants and culture, or professional services such as technology), education and the healthcare sector appear most promising, being labor intensive yet low-emission—if such sectoral aid is conditioned on being directed towards employment and on low-carbon supply chains. Large-scale green infrastructure projects and green R&D investment, while good for the climate, are unlikely to generate enough employment to effectively alleviate the coronavirus crisis.


Abstract: When 2020 was declared a ‘super year’ for biodiversity conservation, no one suspected that a particular form of this biodiversity would proliferate to such an extent as to bring all of the anticipated activity to a screeching halt. With species and ecosystems in dangerous decline the world over (IPBES 2019), there is growing recognition that previous conservation strategies have been largely inadequate to tackle the challenges they face, and hence that something radically different is needed.


Jurisdiction: Asia

Abstract: This chapter makes the case that ambitious climate action should central to the ‘new normal’ in Asia, and that law has an important role in delivering it. From the perspective of climate change policy and law, the Covid-19 catastrophe offers the slim possibility that we will ‘build back better,’ restoring our societies and economies along climate-friendly lines. This approach – resetting – envisages national stimulus packages and allied actions of central banks and financial regulators which are oriented towards economic growth and net-zero emission pathways in the months and years following Covid-19. Such policy approaches would include monetary financing, asset purchase programs, SME support, and bailouts. Being ‘Paris-aligned’ (aligned with the objectives of the Paris Agreement), these initiatives would be heavily weighted towards net-zero buildings, energy storage, climate-friendly materials, clean industry and land-
use, transport and greenhouse gas (GHG) removal. The alternative narrative – reversion – identifies a recovery trajectory in which policies that are supportive of carbon-intensive pathways push the Paris Agreement targets further out of reach. Components of such recovery packages include unconditional bailouts for the fossil fuel sector, conventional mobility (i.e. aviation, combustion engine-powered vehicles), and so on. Reversion may appear akin to the status quo, but resetting is far from a marginal preoccupation of the environmental movement. Advocates include international organizations, leading central bankers, major corporations, and governments, although the signals can be scrambled. We explore the tension between these two approaches in the immediate response to Covid-19, focusing on the coal sector as an emblematic variable in climate change debates. Coal is particularly significant in terms of its environmental impact, its predominance in Asia, and its unstable economics. These aspects each have relevance to policy responses to climate change, in particular the means by which coal is financed by states through export credit agencies (ECAs), which may be susceptible to legal challenge. Our discussion is limited to a selection of Asian jurisdictions that are representative of the major trends and processes.

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

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

Klenert, David et al, ‘Five Lessons from COVID-19 for Advancing Climate Change Mitigation’ (SSRN Scholarly Paper ID 3622201, 2 June 2020)

Abstract: The nexus of COVID-19 and climate change has so far brought attention to short-term greenhouse gas (GHG) emissions reductions, public health responses and clean recovery stimulus packages. We take a more holistic approach, making five broad comparisons between the crises with five associated lessons for climate change mitigation policy. First, delay is costly. Second, policy design must overcome biases to human judgment. Third, inequality can be exacerbated without timely action. Fourth, global problems require multiple forms of international cooperation. Fifth, transparency of normative positions is needed to navigate value judgments at the science-policy interface. Learning from policy actions during the COVID-19 crisis could enhance efforts to reduce GHG emissions and prepare humanity for future crises.


Abstract: The COVID-19 pandemic is a seismically disruptive event. This commentary explores some of the key ways this seismic shift will interact with environmental law. It explores four types of change triggered by the pandemic: (1) behavioral changes (including of behaviors with environmental impacts); (2) demographic changes that affect levels of background risk against which laws (including environmental laws) operate; (3) changes in values (including regarding the environment); and (4) changing resources (including those that can be spent on environmental or other amenities). Each of these changes has potentially important implications for the assumptions built in to environmental law, for the ability of environmental law to effectively regulate the environment, and for the way that humans will interact with the environment in coming years and decades.
Ryan, Erin, ‘Lessons from the Coronavirus Pandemic for Environmental Governance’ Seeing the Woods: the Rachel Carson Center (Blog Post, 1 June 2020)

Abstract: This very short essay distills lessons from the U.S. response to the COVID-19 pandemic for leaders everywhere about how—and how not—to manage complex interjurisdictional challenges, like the environment, which unfold without regard for political boundaries. In a matter of months, COVID-19 has laid bare the interdependence of the world on every front imaginable: global public health, economic growth and development, social and professional networks, transportation and migration, and of course, ecological and environmental systems. No single nation has the coronavirus. No one state is economically disrupted. There is no single ethnic group, occupation, or corner of the world that has been impacted. All of us, in every corner of the world, in every profession, and in every ecosystem are affected. Since the virus was introduced, it has surfed the channels of our interconnectedness, uniting us all in the grip of its devastation. Similarly, unless we can act in unison to contain it, it will continue to surf those channels, exposing our interconnectedness despite all efforts to pretend otherwise. In this way, the virus and our response to it betrays the fundamental problem with which environmental governance has always contended in our interdependent, multijurisdictional world: We cannot do it alone. The major environmental problems with which we wrestle—air and water pollution, biodiversity preservation, ecosystem integrity, climate stability, and all the others—are bigger than we are, and certainly bigger than any one of these jurisdictions. No matter how skilled or well-intended, a single town, city, state, or even nation cannot effectively cope with the critical environmental challenges of our time, because they extend beyond these arbitrary political boundaries. To accomplish our goals, we have to coordinate our efforts.

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.

FAMILY LAW


Jurisdiction: USA

Extract from Introduction: As COVID-19 spreads, it undoubtedly carries with it a host of legal issues. This article seeks to address one of those issues. Namely, it answers the following question: What options are available to a child’s parent when the child’s other parent who has shared physical custody of the child refuses to take precautions during a pandemic such COVID-19?


Jurisdiction: UK

Abstract: Considers whether a coronavirus-related event is a Barder event justifying the re-opening of a final financial order. Reviews the applicable principles through five "Barder" cases. Looks at a range of possible Barder scenarios arising from the coronavirus pandemic. Outlines procedure for making a Barder application. Offers some thoughts on what to do regarding agreements which have not yet been made into orders.
Foster, David and Philip Loft, ‘Coronavirus: Separated Families and Contact with Children in Care FAQs (UK)’ (Briefing Paper No CBP 8901, House of Commons Library, 1 July 2020)

Abstract: This paper provides brief information in response to some key questions regarding the impact of the Coronavirus outbreak on separated families, maintenance arrangements and access to children.


Jurisdiction: UK

Extract: The effects of the global health crisis and the strategy of national lockdown to ameliorate the pandemic across the globe have had unparalleled consequences for family and social welfare law. Government policies across the world have been introduced at a scale and pace that would have been unthinkable as recently as February of this year. These have been introduced in order to limit the inevitable devastating economic consequences and have resulted in unprecedented levels of government support for businesses and individuals. Other nations such as France are already in an official recession, and while the United Kingdom has not, as yet, made the official list, there is no doubt that we are on our way. According to the Office for National Statistics (2020), Britain’s economy contracted by 2.2% in the first three months of 2020 and GDP fell by 6.9% in March even though the strictest lockdown measures were only in place for nine days of that month.


Jurisdiction: UK

Abstract: Summarises aspects of Scottish and UK child law which have been affected by the COVID-19 pandemic, including child contact arrangements and child welfare hearings.

*Abstract*: Family law disputes have traditionally run the gauntlet of not only legal issues, but also the emotional and human elements that so often accompany such disputes. The COVID-19 pandemic has added an extra complication to the lives of many Australian families dealing with family law disputes. How are families to approach their family law issues during this time? The situation pertaining to the COVID-19 pandemic is constantly changing, and everyone living in Australia needs to ensure they are up-to-date with such changes as they arise. Given the evolving nature of the situation in New South Wales and the potential for significant or abrupt changes, this article is confined to providing an overview of the issues that may arise in family law matters during the COVID-19 pandemic and does not constitute legal advice.


*Jurisdiction*: Australia

*Abstract*: In the recent decision of ‘Walpole’ [2020] FamCAFC 65, the Full Court of the Family Court allowed an appeal against orders requiring two children aged three and two to return to New Zealand. The case was brought under the ‘Family Law (Child Abduction) Regulations 1986’ which give effect in Australia to the ‘Hague Convention on the Civil Aspects of International Child Abduction’. The case is one of the first to provide guidance as to how the Family Court might handle cases in the time of COVID 19.

**FINANCE & BANKING / ECONOMIC LAW**

This section includes literature on stock markets and domestic investment law.

Literature on international economic and investment law, and literature on sovereign debt is listed below in the *International Law > International Economic Law* section.
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 is 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.


Abstract: Technology, money and payment systems have been interlinked from the earliest days of human civilization. But of late technology has reshaped money and payment systems to an extent and speed never before seen. Milestones include the establishment of M-Pesa in Kenya in 2007 (creating mobile money systems), Bitcoin in 2009 (triggering in time the explosive growth in distributed ledger technology and blockchain), the announcement of Libra in 2019 (triggering a fundamental rethinking of the potential impact of technology on global monetary affairs), and the announcement of China’s central bank digital currency – the Digital Currency / Electronic Payment (DCEP) referred herein to as Digital Yuan (marking the first launch by a major economy of a sovereign digital currency). The COVID-19 pandemic and crisis of 2020 has spurred electronic payments in ways never before seen. In this paper, we ask the question: In the context of the crisis and beyond, what role can technology play in improving the effectiveness of money and payment systems around the world? This paper analyses the impact of distributed ledger technologies and blockchain on monetary and payment systems. It particularly considers the policy issues and choices associated with cryptocurrencies, stablecoins and sovereign (central bank) digital currencies. We examine how the catalysts reshaping monetary and payment systems around the world – Bitcoin, Libra, China’s DCEP, COVID-19 – challenge regulators and give rise to different levels of disruption. While the thousands of Bitcoin progenies were able to be ignored, safely, by regulators, Facebook’s proposed Libra, a global stablecoin, brought an immediate and potent response from regulators globally. This proposal
by the private sector to move into the traditional preserve of sovereigns – the minting of currency – was always likely to provoke a roll-out of sovereign digital currencies by central banks. China has moved first, among major economies, with its Digital Yuan – the initiative that may well trigger a chain reaction of central bank digital currency issuance across the globe. In contrast, in the COVID-19 crisis, we argue most central banks should focus not on rolling out novel new forms of blockchain-based money but rather on transforming their payment systems: this is where the real benefits will lie both in the crisis and beyond. Looking forward, neither the extreme private nor public model is likely to prevail. Rather, we expect the reshaping of domestic money and payment systems to involve public central banks cooperating with (new and old) private entities which together will provide the potential to build better monetary and payment systems at the domestic and international level. Under this model, for the first time in history, technology will enable the merger of the monetary and payment systems.


Abstract: We see spikes in unemployment rates and turbulence in the securities markets during the COVID-19 pandemic. Governments are responding with aggressive monetary expansions and large-scale economic relief plans. We discuss the implications on banks and the economy of prudential regulatory intervention to soften the treatment of non-performing loans and ease bank capital buffers. We apply these easing measures on a sample of Globally Systemically Important Banks (G-SIBs) and show that these banks can play a constructive role in sustaining economic growth during the COVID-19 pandemic. However, softening the treatment of non-performing loans along with easing capital buffers should not undermine banks’ solvency in the recovery period. Banks should maintain usable buffer in the medium-term horizon to absorb future losses, as the effect of COVID-19 on the economy might take time to fully materialise.

Abstract: Discusses how the EU relaxed certain aspects of the free movement of goods, services and persons, competition rules and public procurement, while maintaining others, in response to public health emergency in the coronavirus pandemic.

Buckley, Ross P, Emilios Avgouleas and Douglas W Arner, ‘Three Decades of International Financial Crises: What Have We Learned and What Still Needs to Be Done?’ (University of Hong Kong Faculty of Law Research Paper No 2020/037, 2020)

Abstract: Fragility that periodically erupts into a full-blown financial crisis appears to be an integral feature of market-based financial systems in spite of the emergence of sophisticated risk management tools and regulatory systems. If anything, the increased frequency of modern crises underscores how difficult it is to diversify away systemic risk and that perceptions of perfectly stable financial systems are normally flawed, even if the source of the next crisis remains well concealed to the expert eye. Although it is impossible to forecast a financial crisis with a high degree of accuracy and certainty, earlier crises always leave lessons useful in preparation for future crises, from whatever source. It is thus clear that the best way to deal with preventing and addressing major financial crises is to build the defenses of the financial system, including effective institutions, while at the same time trying to identify potential sources of crisis. We should take every opportunity to learn and work to build stronger and more effective financial systems. This paper compares and contrasts the three major crises of the past 3 decades, both to distill the lessons to be learned from them and to identify what more can be done to strengthen our financial systems. As the world addresses the financial impact of the COVID-19 pandemic, the centrality of these lessons is clear.


Key points: The author discusses the most noteworthy measures taken or yet to be taken by the European Union (EU) to combat the coronavirus crisis.
The measures fall into four categories: (i) flexible application of EU rules that could hinder Member States in their strenuous efforts to save their national economies; (ii) a financial support package put in place by the EU itself; (iii) monetary action by the ECB; and (iv) action by European financial regulators, including the ECB (albeit in its capacity of banking regulator rather than monetary authority).

This is followed by some comments on the impact of the coronavirus crisis on (i) the intended completion of the European Banking Union, (ii) the plans for a European Capital Markets Union, (iii) Brexit and (iv) the EU climate plans.

The author concludes that it is clear that the crisis has once again laid bare the divisions between north and south in Europe. These divisions are particularly apparent in relation to the issue of financing the European recovery fund and the power struggle that has now flared up between the German Constitutional Court on the one hand and the CJEU and the ECB on the other. Hard times lie ahead for the EU.


Abstract: Discusses the Singapore regulatory requirement that banks should have business continuity plans ready for all kinds of disruption, including pandemics. Examines banks' obligations in the coronavirus pandemic, especially for workplace health and safety, and procedures for employment cost-cutting.


Abstract: In light of the impacts of Novel Coronavirus disease, renamed COVID-19, nation states and businesses are reacting by implementing robust mitigation measures. We are already seeing impacts of COVID-19 (and the mitigation measures) on domestic and international trade and commerce, capital flows, tourism and migration. But how does this relate specifically to borrowers and lenders and how will COVID-19 impact on their financing arrangements?
Abstract: The size of the economic shocks triggered by the COVID-19 pandemic and the effects of the associated non-pharmaceutical interventions have not been fully assessed, because the official economic indicators have not been published. This paper provides estimates of the economic impacts of the non-pharmaceutical interventions implemented by countries in Europe and Central Asia over the initial stages of the COVID-19 pandemic. The analysis relies on high-frequency proxies, such as daily electricity consumption, nitrogen dioxide emission, and mobility records, to trace the economic disruptions caused by the pandemic, and calibrates these measures to estimate magnitude of the economic impact. The results suggest that the non-pharmaceutical interventions led to about a decline of about 10 percent in economic activity across the region. On average, countries that implemented non-pharmaceutical interventions in the early stages of the pandemic appear to have better short-term economic outcomes and lower cumulative mortality, compared with countries that imposed non-pharmaceutical interventions during the later stages of the pandemic. In part, this is because the interventions have been less stringent. Moreover, there is evidence that COVID-19 mortality at the peak of the local outbreak has been lower in countries that acted earlier. In this sense, the results suggest that the sooner non-pharmaceutical interventions are implemented, the better are the economic and health outcomes.

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.


Jurisdiction: USA

Extract from Abstract: 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 American families’ finances are unlikely to recover as soon as the crisis ends, debt collection brought by the COVID-19 crisis also will not dissipate anytime soon. Even after the crisis ends, the need to implement
comprehensive, longer-lasting solutions will remain. As we detail below, these solutions largely fall on the shoulders of the federal government, though state attorney generals have the necessary power to help people effectively. If the government continues on its present course, a debt collection pandemic will follow the coronavirus pandemic.

Foohey, Pamela, Dalié Jiménez and Christopher K Odinet, ‘The Folly of Credit as Pandemic Relief’ (2020) 68 UCLA Law Review Discourse (forthcoming)

Abstract: Within weeks of the coronavirus pandemic appearing in the United States, the American economy came to a grinding halt. The unprecedented modern health crisis and the collapsing economy forced Congress to make a critical choice about how to help American families survive financially. Congress had two basic options. It could enact policies that provided direct and meaningful financial support to people, without the necessity of later repayment. Or it could pursue policies that temporarily relieved people from their financial obligations, but required that they eventually pay amounts subject to payment moratoria later.

In passing the CARES Act, Congress primarily chose the second option. This option reflects a belief that offering people credit can bring them meaningful relief because it assumes that people will have the ability to pay back the loan as it becomes due. The assumption that people will be able to repay credit masquerading as “relief” in the wake of the pandemic is a serious error that will have enduring negative consequences.

In short, Congress got the balance between providing true money versus what amount to credit products to Americans fundamentally backwards. But given that, unfortunately, the effects of the pandemic likely will continue for months, if not years, it is not too late for Congress to adopt a family financial well-being approach to relief that provides meaningful, widespread, and expanded direct payments to households in distress.

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.


Abstract: The announcement of the Pandemic Emergency Purchase Programme (PEPP) by the European Central Bank on March 18, 2020 marks an unprecedented step in the European history of monetary integration. But it is a commensurate response to the global public health emergency that the COVID-19 outbreak continues to pose as well as the financial and economic shock that it triggered. The legality of the PEPP can be defended in light of both these extraordinary macroeconomic circumstances as well as the European Court of Justice’s assessment of previous ECB bond purchase programmes. As this short essay shows, the Court’s Gauweiler and the Weiss decisions have defined the boundaries within which the ECB may design its monetary policy measures. And the PEPP does not transgress these boundaries. However, in order to mitigate the risk of any ex-post legal challenges, the legal act on which the PEPP is based should underscore the following principles, which are informed by the pertinent case law: 1. The PEPP’s objectives are proportional because they address a malfunctioning of the smooth transmission of monetary policy signals across the currency area triggered by the sudden stop of economic activity, thereby undermining the singleness of monetary policy. 2. The PEPP’s design is proportional because it entails the following safeguards: bond purchases are (i) restricted to EUR750 billion, (ii) limited to periods of malfunctioning monetary policy transmission channels, (iii) not selective, (iv) limited to securities with stringent eligibility
criteria, and (v) subject to a limited loss-sharing arrangement. 3. The PEPP does not breach the monetary financing prohibition because it (i) has no equivalent effect to bond purchases on the primary markets (due to the safeguards mentioned in 2.) and (ii) does not incentivize Member States pursue unsound budgetary policies.


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.


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

Jackson, Howell E and Steven L Schwarcz, ‘Pandemics and Systemic Financial Risk’ (19 April 2020)

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


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


Jurisdiction: USA

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


Extract from Introduction: The COVID-19 threat offers legal scholars a unique opportunity to seriously think about the legal order that should govern the society we want to live in and an economy that serves the expectations of people in the post-COVID-19 world.7 The COVID-19
threat has opened a window of opportunity for transgressing boundaries, for thinking the unthinkable: a fundamental revision of the European Economic Constitution and therewith European private law.


*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.


*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 unchartered 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.


Abstract: Details measures by the Netherlands' Government to address the impact of the coronavirus pandemic on the economy, including provisions allowing companies to defer the payment of taxes, temporary reductions on the interest on overdue tax, and a guarantee enterprise facility which guarantees 50% of bank loans to corporate borrowers.


Abstract: Social impacting investing has become the latest trend to permeate the financial markets. With massive anticipated funding gaps for sustainable development goals, and a millennial driven thirst for doing good while doing well, this trend is likely to continue in the coming decades. This burgeoning industry is poised to experience yet an additional boost, since it provides an alternative mechanism for private actors to ‘profit from our pain’ particularly in
the wake of the COVID-19 pandemic and the Black Lives Matters movement. As to be expected, the law has not sufficiently adapted to this new wave of innovation as regulatory concerns have arisen such as the extent to which impact should be measured and disclosed. Even with this emerging focus, limited attention has been paid to whether the public/private divide under the federal securities laws has contributed to these harms. This Article seeks to fill this scholarly gap by exploring the extent to which the public/private divide under the federal securities laws induces reductions to the net social benefits generated by social impact investments. While social impact investing has the highest potential for impact along the continuum of socially conscious strategies, they largely operate as exempt entities due to the need for regulatory flexibilities such as the power to invest in illiquid assets. As a result, retail investors, which encompass all members of the general public, are restricted from accessing these privately held vehicles due to investor protection concerns. This serves to exclude affected community members as investors, who are the targeted beneficiaries of these schemes, while limiting transparency which would enable the general public as well as policy makers to make assessments about the extent to which these schemes are maximizing net social welfare. This is particularly problematic given the potential for such investments to generate unaccounted for negative externalities which can occur for example when seemingly clean energy technologies inadvertently destroy surrounding environments or habitats. Solely relying on privately ordered solutions can leave costly loopholes given that they are completely voluntary and lack standardization. Innovative regulatory solutions that reconceptualize antiquated notions of publicness may best address these harms. This Article therefore concludes with a novel proposal which seeks to combine existing indicators of ‘publicness’ and ‘privateness’ while perhaps creating new measures. This could be effectuated through the creation of an entirely new series of exemptions entitled the ‘Social Impact Exemptions’ that would appear under the Securities Act of 1933 and the Investment Company Act of 1940. They would effectively recalibrate existing rules related to access and disclosure, while possibly creating new frameworks for accountability and management structure.
Shill, Gregory H, ‘Congressional Securities Trading’ (University of Iowa Legal Studies Research Paper No 2020-11, 2020)

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

Siciliano, Gianfranco and Marco Ventoruzzo, ‘Banning Cassandra from the Market? An Empirical Analysis of Short-Selling Bans during the Covid 19 Crisis’ (Bocconi Legal Studies Research Paper No 3657375, 14 July 2020)

Abstract: During the recent COVID-19 pandemic crisis, stock markets around the world have witnessed an abrupt decline in security prices and an unprecedented increase in security volatility. In response to a week of financial turmoil on the main European stock markets, some
market regulators in Europe, including France, Austria, Italy, Spain, Greece, and Belgium, passed temporary short-selling bans in an attempt to stop downward speculative pressures on the equity market and stabilize and maintain investors’ confidence. This paper examines the effects of these short-selling bans on market quality during the recent pandemic caused by the spread of COVID-19. Our results suggest that during the crisis, banned stocks had higher information asymmetry, lower liquidity, and lower abnormal returns compared with non-banned stocks. These findings confirm prior theoretical arguments and empirical evidence in other settings that short-selling bans are not effective in stabilizing financial markets during periods of heightened uncertainty. In contrast, they appear to undermine the policy goals market regulators intended to promote.


Jurisdiction: USA

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.


Abstract: The purpose of this paper is to investigate the performance of the stock market during the outbreak of the novel Coronavirus (COVID-19) in Vietnam- a frontier country that successfully tackles the outbreak of this pandemic. Employing data from 11 different industries and more than 700 firms from two main stock exchanges from January 23, 2020 (the first case reported in Vietnam), results suggest that COVID-19 exerts heterogeneous impacts on different industries. Moreover, when focusing on firm-level, results depicts that firms with a better financial background (leverage, liquidity, profitability, and cash holdings) have better stock performance.


Abstract: With numerous sectors experiencing financial distress, and companies and individuals facing the increased likelihood of insolvency as a result of the economic disruption caused by COVID-19, forensic practitioners will play a key role in supporting South Africa’s economic recovery.


Abstract: Discusses the role of asset-backed securitisations (ABS) in the European Central Bank's (ECB) programme to help refinance EU banks and support their liquidity in the coronavirus pandemic.

Jurisdiction: UK and USA

Abstract: Assesses the impact of the COVID-19 pandemic on global and national economies, focusing on the US and the UK. Looks at legal implications, including force majeure clauses in commercial contracts, the doctrine of frustration, material adverse change clauses, and companies' reporting obligations.

FOOD, AGRICULTURE, ANIMALS

Note: This section includes literature on food security.


Extract: COVID-19 may not have emerged in industrial agriculture; but the market imperatives of industrial agriculture were imposed on small-scale farms, who responded by producing commodities with which industrial agriculture could not compete: non-traditional farmed animals for niche markets. The central issue at the source of the COVID-19 pandemic is not some people’s taste for seemingly strange or exotic food, which in any event is culturally constructed, but rather the market imperatives of the world food system.

Clearly, the COVID-19 pandemic demonstrates that there is a critical need in contemporary agriculture to manage the interactions between animal and human. However, these interactions are central to the production process of the world food system, which is itself a principal cause of the crisis. Industrial agriculture and the survival strategies of marginalised small-scale petty commodity-producing farmers lay the groundwork from which new, virulent pathogens can emerge. Clearly, the terms and conditions by which the world food system operates serves to deepen threats to global health. In other words, there is a co-morbidity between COVID-19 and the world food system.

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

Hurn, Samantha et al, ‘A Preliminary Assessment of the Impacts of C-19 on Animal Welfare and Human-Animal Interactions in the UK and Beyond’ (SSRN Scholarly Paper ID 3608580, 27 May 2020)

Abstract: One leading theory as to the origins of the current 2019 novel coronavirus (SARS-CoV-2/COVID-19, henceforth C-19) suggests emergence from a seafood and exotic animal ‘wet market’ in Wuhan, China and through the trade, slaughter and consumption of bats or even pangolin. Attributing the origin of this latest pandemic only to the illicit and unsanitary conditions of wet markets would miss the bigger picture. This pandemic, and other zoonotic outbreaks, invite us to carefully question the ways we think about, interact with and consume other animals more generally. This paper has drawn from recent publicly available news and online data sources to conduct a qualitative, cross disciplinary thematic analysis of the diverse impacts of C-19 to date on animal welfare and human-animal interactions in the UK but with global relevance. The diverse examples reviewed highlight areas where welfare might be compromised and allow for recommendations for mitigating such circumstances in the future.


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

Abstract: The article discusses food inspections during the Covid-19 crisis. Topics include during the Covid-19 crisis, the Danish Veterinary and Food Administration (DVFA) has continued its inspection tasks of food business operators, though at a very low scale; the DVFA inspections have been carried out either at the food business operators’ premises, as usual, or virtually, via video calls; and DVFA will start by giving guidance on the new requirements instead of sanctioning potential non-compliance.


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


Abstract: The world economy is sliding yet into another recession (having arguably barely recovered from the previous economic downturn) due to the worldwide pressures and tensions created by the COVID-19 pandemic. With most countries in the world under lockdown (or in similar situations), almost all food is now consumed in the household. Arguably, agricultural producers and the retail industry appear to be the best placed to weather the storm in order to respond to such a change in demand. However, this is overly simplistic. Recent news of empty shelves in supermarkets whilst dairy farmers have been forced to pour milk down the drain have gone viral.

Special Issue - ‘Taming COVID-19 by Regulation’ 210-227

Abstract: A number of virological, epidemiological, and ethnographic arguments suggest that COVID-19 has a zoonotic origin. The pangolin, a species threatened with extinction due to poaching for both culinary purposes and traditional Chinese pharmacopeia, is now suspected of being the “missing link” in the transmission to humans of a virus that probably originated in a species of bat. Our predation of wild fauna and the reduction in habitats have thus ended up creating new interfaces that favour the transmission of pathogens (mainly viruses) to humans. Domesticated animals and wild fauna thus constitute a reservoir for almost 80% of emerging human diseases (SARS-Cov, MERS-CovV, Ebola). These diseases are all zoonotic in origin. As if out of a Chinese fairy tale, the bat and the pangolin have taught us a lesson: within an increasingly interdependent world, environmental crises will become ever more intertwined with health crises. Questions relating to public health will no longer be confined to the secrecy of the physician’s consulting room or the sanitised environment of the hospital. They are now being played out in the arena of international trade, ports and airports, and distribution networks. Simply put, all human activity creates new interfaces that facilitate the transmission of pathogens from an animal reservoir to human. This pluri-disciplinary article highlights that environmental changes, such as the reduction in habitats for wild fauna and the intemperate trade in fauna, are the biggest causes for the emergence of new diseases. Against this background, it reviews the different measures taken to control, eradicate and prevent the emergence of animal diseases in a globalized world.


Abstract: COVID-19 and the lockdown have placed the global economy under tremendous strain but are also increasing the threat of longer term food insecurity. Notwithstanding problems of cross-national data comparability, it is clear that food insecurity is already widespread in many high-income countries. In the aftermath of the global financial crisis in 2008, an estimated 13.5
million European households were tipped into food insecurity, while the current recession is already much deeper and is expected to last longer.

HEALTH / MEDICAL LAW & BIOETHICS

- This section includes literature on the ethics of discrimination in relation to treatment, and the rationing and allocation of equipment such as ventilators in hospitals.

- Literature on international health law regulations and institutions, including the World Health Organisation and the International Health Regulations (IHR) are listed below in the International Law section.

- Articles on privacy of medical data are listed below in the Privacy section.


Abstract: The COVID-19 is causing not only deaths and fear but also economic and social harm across the globe. Lockdowns, travel restrictions, quarantines, social distancing, and other strict public-health measures are playing their part in delaying the spread of infection, but a safe and potent vaccine, effective therapeutics, point-of-care diagnostics, and other health products are desperately needed because it may not be practically possible for governments to extend these measures for an indefinite period of time. On March 23, Costa Rica submitted a proposal to the Director-General of the World Health Organization for the creation of a global pooling mechanism in order to facilitate access to and use of intellectual property, trade-secret know how, regulatory data, cell lines, product blueprints, and other proprietary data for technologies that are useful for the detection, prevention, control and treatment of the COVID-19 pandemic. This study critically evaluates Costa Rica’s proposal and endeavours to briefly answer the following questions: Why Costa Rica’s proposal deserves serious consideration? To what extent this proposal addresses some of the key concerns related to the COVID-19? To what extent this proposal is practically feasible?

Jurisdiction: USA

Introduction: Even as the COVID-19 pandemic places intense stress on both American health care providers and legal institutions, one area of law is uniquely poised to chart the way out of this crisis: vaccine law. The single most effective thing that can be done to bring an end to the sicknesses and deaths that mark the occurrence of a pandemic is the development and deployment of an effective vaccine. Although it will be many months before a COVID-19 vaccine is ready for distribution to the public, when available, such a vaccine will have an immediate impact on the practice of medicine and the legal liabilities of both individual and institutional health care providers. Attorneys advising such individuals and entities should take time now to prepare for the legal issues that will ultimately arise once a vaccine is available.

Agarwal, Harshita, ‘The Urgency for Improvisation of Existing Public Healthcare Law in the Battle against Pandemic’ (SSRN Scholarly Paper ID 3636139, 26 June 2020)

Jurisdiction: India

Abstract: The continuous pandemic of COVID-19, because of the novel coronavirus or SARS-CoV-2 has uncovered conspicuous holes in India’s union laws. Missing a reasonably organized enactment to swear by, the Union government in March exhorted states to summon the Epidemic Diseases Act of 1897 to handle the pandemic in their dominion. The 123-year-old pilgrim law, be that as it may, doesn’t characterize what a disease is, endemic, or a pandemic. Public Health (Prevention, Control, and Management of Epidemics, Bio-Terrorism, and Disasters) Bill had been drafted in 2017, proposed to supplant the old Epidemic Diseases Act of 1897. The Bill presently can’t seem to be postponed in Parliament. This short requires the production of a sound lawful design to bargain more adequately with the outbreak of infectious disease, particularly pandemics of the range of COVID-19.
Ahmed, Aziza, ‘How the COVID-19 Response Is Altering the Legal and Regulatory Landscape on Abortion’
Journal of Law and the Biosciences Article Isa012 (advance article, published 29 April 2020)

Abstract: The response to COVID-19 has been mired in political debates. In a moment of scarcity, especially with regard to medical equipment and capacity, the question of who deserves the few available resources becomes front and center. It is in this context that abortion access has been injected into the political and medical response to COVID-19. There are three main sites of the ongoing abortion debate in the COVID-19 context. First, in the application of the Hyde Amendment to the CARES Act, second, in the attempt by state legislators to classify abortion as an elective procedure that cannot be performed during a time of PPE and personnel shortages, and, finally, a move by state attorney generals (AGs) to seek greater access abortion via telehealth through changing the FDA rules on a necessary abortifacient. This essay describes the current status of the terrain and the potential long-term implications on abortion access and care.


Abstract: In this chapter, we make visible the different forms of privatization of nursing homes to help understand how it has made residents and workers so highly susceptible to the deadliest aspects of the COVID-19 pandemic. Privatization includes the move to private (often for-profit) delivery of services, managerial practices, and responsibilization of individuals and their families. All these forms are evident in nursing homes, exacerbated by austerity measures. The conditions of work in nursing homes intensified with increasing privatization, decreased staffing, and increased resident acuity before the pandemic, but deteriorated dramatically when it began to hit home after home. The extent to which this deterioration can be directly linked to privatization is difficult to determine, but there are clear indications that privatization set the stage. Bold responses are needed to correct this course, not just during the current emergency, but going forward, to ensure that the many deaths in this sector have come with important lessons learned.

Abstract: European Union and the United States have experienced some of the most severe outbreaks of Covid-19. Paper investigates the EU and US divisions of power and suggest that due to the relative advantages and disadvantages of centralized federal responses and decentralized state responses, actions seeking to limit the impact of Covid-19 on society need to reflect a ‘smart mix’ of both centralized and decentralized responses to the pandemic. Centralized procurement and distribution of necessary medical goods can solve problems related to harmful competition between states to procure these goods and allows states to exercise buying power. Centralized responses to procurement and distribution may solve a problem of moral hazard which leads to the hoarding of necessary medical goods, which represents a cross border externality when other states within the federal system face a shortage of necessary medical goods. This also applies to the procurement of medical goods related to testing for CV. However, paper argues the use of these goods and implementation of testing programs may be best done through a decentralized process because localized authorities have an information advantage over centralized authorities. Decentralized responses may also be necessary to gather information about which form of public health intervention works best, given that there is uncertainty as to which approach is most efficient. States must weigh not only the benefits of implementing public health interventions, but also the costs of these interventions on society.


Abstract: During public health crises including the COVID-19 pandemic, resource scarcity and contagion risks may require health systems to shift—to some degree—from a usual clinical ethic, focused on the well-being of individual patients, to a public health ethic, focused on population health. Many triage policies exist that fall under the legal protections afforded by “crisis standards of care,” but they have key differences. We critically appraise one of the most fundamental differences among policies, namely the use of criteria to categorically exclude certain patients from eligibility for otherwise standard medical services. We examine these categorical exclusion criteria from ethical, legal, disability, and implementation perspectives. Focusing our analysis on the most common type of exclusion criteria, which are disease-specific,
we conclude that optimal policies for critical care resource allocation and the use of cardiopulmonary resuscitation (CPR) should not use categorical exclusions. We argue that the avoidance of categorical exclusions is often practically feasible, consistent with public health norms, and mitigates discrimination against persons with disabilities.


Jurisdiction: USA

Abstract: The coronavirus pandemic has forced us to reckon with the possibility of having to ration life-saving medical treatments. In response, many health systems have employed protocols that explicitly de-prioritize people for these treatments based on pre-existing disabilities. This Essay argues that such protocols violate the Americans with Disabilities Act, the Rehabilitation Act, and the Affordable Care Act. Such explicit discrimination on its face violates these statutes. Nor can medical providers simply define disabled patients as being “unqualified” because of disabilities that do not affect the ability to ameliorate the condition for which treatment is sought. A proper interpretation of the law may permit medical providers to use disability as a basis for a rationing decision where an individual’s underlying disability will kill the individual in the immediate term regardless of the treatment. However, as this Essay demonstrates, those circumstances will be narrow. Further, the law requires that such imminent-death determinations will be made based on the best available objective evidence, free from both bias against people with disabilities and devaluation of their lives.

Balogun, Bukky, ‘Coronavirus: Ventilator Availability in the UK’ (Briefing Paper No CBP 8904, House of Commons Library, 3 June 2020)

Abstract: This briefing paper provides an account of ventilator availability and procurement in the UK, a summary of government action, and a discussion of other issues associated with ventilator use.

Abstract: In the face of a pandemic, and in response to a contagion such as SARS-COV-2, can the law allow a state to enforce, or compel, its citizens to undergo mandatory vaccination? Using arguments drawn from ethics, human rights and principles of international law, this piece will attempt to address some of the complexities inherent in such questions. It will argue, further, that present circumstances demand that such questions are asked now, before human rights and civil liberties are (inadvertently) compromised. The answer is not a simple one: the ethical dilemma surrounding the curtailment of consent demands a delicate balance be struck between this, and the wider common good. While human rights prove a natural qualification to the broadening of the latter, even these have their own limitations. And it is on this heavily nuanced fence that the legality of state-enforced vaccination appears to sit. While a state’s own legal and factual nuances will prove determinative, any human rights qualifications must nevertheless remain within the appropriate boundaries—e.g. the Siracusa Principles. Further, in the face of an ongoing (and ever-evolving) pandemic, it is pertinent decisions on matters such as compulsory vaccination are taken now, before they must be made in haste.

Billauer, Barbara Pfeffer, ‘Ageism and CoVid 19: First They Lock the Oldsters Up, Then They Refuse The Ventilators. What’s Next?’ (SSRN Scholarly Paper ID 3647209, 9 July 2020)

Abstract: Most commentators claim that age is a determinant of deaths from Co-Vid 19. This paper suggests flaws in this analysis. While co-morbidities associated with age may be contributory, there is no data showing that oldsters are more vulnerable to death from CoVid 19 than they are for dying generally. In fact, it appears that the aged population is less likely to die from CoVid than from Influenza and that the healthy oldster may be able to survive CoVid better than the healthy youngster. I further claim that CoVid policies targeting the elderly have unnecessarily contributed to their deaths. Thus rationing policies depriving the elderly of respirators and imposing restrictive lockdowns themselves contributed to the very assumptions on which these policy decisions were based.
Blaney, Jane E, ‘Hidden in Plain Sight: How COVID-19 Revealed the Need to Incorporate Wearable Devices into Patient Care’ (2020) 13(3) Journal of Health & Life Sciences Law 41–69

Jurisdiction: USA

Abstract: A COVID-19 has spread across our country and the globe, patients are seeking medical care from behind the safety of a screen, through telehealth. The volume of telehealth visits has skyrocketed since March 2020, exposing a substantial hole in this manner of care: the ability to monitor patients remotely. Recent innovations in wearable devices provide promising benefit to fill this hole and should be assimilated into patient care. Utilizing wearable devices in remote patient care can be a catalyst towards the ultimate triple aim of health care: to increase patient access, reduce overall costs, and increase the quality care. Despite these benefits, changing the standard of care in medicine can be an arduous task. Additionally, wearable devices still face regulatory challenges in gaining classification as a medical device, practitioners face barriers to reimbursement, and there is much uncertainty regarding the ability to protect patient privacy when using wearable devices. Despite these barriers, COVID-19 has disrupted modern day medicine in ways that the population could not have imagined even six-months ago. Addressing these issues will be key in enabling effective care through remote treatment methods and telemedicine.


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.


Abstract: Psychiatric inpatients are particularly vulnerable to the transmission and effects of COVID-19. As such, healthcare providers should implement measures to prevent its spread within mental health units, including adequate testing, cohorting, and in some cases, the isolation of patients. Respiratory isolation imposes a significant limitation on an individual’s right to liberty, and should be accompanied by appropriate legal safeguards. This paper explores the implications of respiratory isolation in English law, considering the applicability of the common law doctrine of necessity, the Mental Capacity Act 2005, the Mental Health Act 1983, and public health legislation. We then interrogate the practicality of currently available approaches by applying them to a series of hypothetical cases. There are currently no ‘neat’ or practicable solutions to the problem of lawfully isolating patients on mental health units, and we discuss the myriad issues with both mental health and public health law approaches to the problem. We conclude by making some suggestions to policymakers.


Jurisdiction: USA

Abstract: After a disaster such as the COVID-19 pandemic, there will be an irresistible desire to blame others. Despite documented failures in the federal government’s response to the pandemic, injured individuals will not be able to hold it accountable due to the broad application of governmental immunity. Congress and state governments have provided targeted immunity to various device manufacturers and emergency volunteers. However, the one group with huge targets on their backs are individual physicians, who are often making impossible choices that are reasonable at the time, but might not appear reasonable to a jury after the fact, and with the bias of hindsight. Recognizing that the potential for liability might cause undue psychological stress on health care providers, this essay argues for statutory immunity that
protects them from rationing and other health care decisions that are made in good faith, and that are in compliance with documented state, institutional, or professional pandemic-response guidelines.

Jurisdiction: South Africa

Abstract: I had the worst day of my whole Nursing career today. We were literally discussing who gets to live and who dies – there are not enough ventilators in our hospital for all who need one. My heart is broken. How did we get here?

Burström, Bo and Wenjing Tao, ‘Social Determinants of Health and Inequalities in COVID-19’ (2020) European Journal of Public Health, Article ckaa095 (advance online article, published 8 July 2020)

Abstract: The COVID-19 pandemic is affecting populations worldwide. Although everyone is susceptible to the virus, there are numerous accounts of the pandemic having a greater impact on lower socioeconomic groups and minorities. Also, in Stockholm, Sweden, the infection rate is 3–4 times higher in some socioeconomically disadvantaged residential areas compared to the regional average. Scientific studies of inequalities in Coronavirus disease 2019 (COVID-19) are lacking at present, but it is reasonable to assume that disparities in social determinants of health have contributed to these early observations and result in differential exposure to the virus, differential vulnerability to the infection and differential consequences of the disease.


Abstract: During the 2020 COVID-19 pandemic, open science has become central to experimental, public health, and clinical responses across the globe. Open science (OS) is described as an open commons, in which a right to science renders all possible scientific data for everyone to access and use. In this common space, capitalist platforms now provide many essential services and are taking the lead in public health activities. These neoliberal businesses,
however, have a problematic role in the capture of public goods. This paper argues that the open commons is a community of rights, consisting of people and institutions whose interests mutually support the public good. If OS is a cornerstone of public health, then reaffirming the public good is its overriding purpose, and unethical platforms ought to be excluded from the commons and its benefits.


Extract: Amid the outbreak of the SARS-CoV-2 pandemic, there has been a call to use innovative digital tools for the purpose of protecting public health. There are a number of proposals to embed digital solutions into the regulatory strategies adopted by public authorities to control the spread of the coronavirus more effectively. They range from algorithms to detect population movements by using telecommunications data to the use of artificial intelligence and high-performance computing power to detect patterns in the spread of the virus. However, the use of a mobile phone application for contact tracing is certainly the most popular.


Jurisdiction: Canada

Abstract: COVID-19 has highlighted and reinforced the vulnerability of multiple populations, including people who live with mental illness. Challenges are posed by the requirements for physical distancing and self-isolation. Mental illness does not automatically render a person incapable of adopting such measures or their decisions not to do so suspect. People with mental illnesses may decide not to follow public health directives just as other people without mental illness may choose to do, and public health enforcement measures would apply. In some cases, symptoms of mental illness do affect a person’s adherence to public health directives by undermining the abilities to understand, to exercise appropriate judgment, and to evaluate risk. Should a person whose ability to follow directives is compromised by mental illness face the...
sanctions and enforcement procedures under public health laws, or should a mental health intervention such as involuntary hospitalization be pursued to protect both the person concerned and others, as well as the community in general? In this chapter, we consider the interplay of these two legislative regimes, recognizing that the balance may change with the evolution of the pandemic, shifting information, risk trade-offs, and social attitudes.


Abstract: The COVID-19 pandemic has necessitated a rapid escalation in the use of telepsychiatry. Herein we revisit some of the ethical issues regarding its use, including patient benefice, distributive justice, privacy, and autonomy. Based on these considerations we would hold that telepsychiatry is a vital aspect of providing psychiatric care, and ethically should be offered as a format for treatment, likely beyond the pandemic period. Investigative and advocacy efforts will need to continue to determine its exact role within psychiatric care, and expand its availability for those most in need.


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.


Abstract: These days we see the first assessments on the EU’s role as crisis manager. Commentators differ in their view whether the EU has failed, been late or has finally come to a substantial response.

Abstract: This is a short postscript to the Public Health Ethics special issue on the legal determinants of health. We reflect briefly on emerging responses to COVID-19, and raise important questions of ethics and law that must be addressed; including through the lens of legal determinants, and with critical attention to what it means to protect health with justice.


Jurisdiction: UK

Abstract: The COVID-19 pandemic has caused an unprecedented challenge for the provision of critical care. Anticipating an unsustainable burden on the health service, the UK Government introduced numerous legislative measures culminating in the Coronavirus Act, which interfere with existing legislation and rights. However, the existing standards and legal frameworks relevant to critical care clinicians are not extinguished, but anticipated to adapt to a new context. This new context influences the standard of care that can be reasonably provided and yields many human rights considerations, for example, in the use of restraints, or the restrictions placed on patients and visitors under the Infection Prevention and Control guidance. The changing landscape has also highlighted previously unrecognised legal dilemmas. The perceived difficulties in the provision of personal protective equipment for employees pose a legal risk for Trusts and a regulatory risk for clinicians. The spectre of rationing critical care poses a number of legal issues. Notably, the flux between clinical decisions based on best interests towards decisions explicitly based on resource considerations should be underpinned by an authoritative public policy decision to preserve legitimacy and lawfulness. Such a policy should be medically coherent, legally robust and ethically justified. The current crisis poses numerous challenges for clinicians aspiring to remain faithful to medicolegal and human rights principles developed over many decades, especially when such principles could easily be dismissed. However, it is exactly at such times that these principles are needed the most and clinicians play a disproportionate role in safeguarding them for the most vulnerable.

Abstract: The COVID-19 pandemic represents a major challenge to both technologically advanced and resource-poor countries. There are currently no effective treatments for severe disease other than supportive care and advanced life support measures, including the use of mechanical ventilators. With the urgency and necessity bred from desperation, there have been many calls to utilize unproven therapies, such as hydroxychloroquine, for which little evidence of efficacy exists. We have previously argued that such off-label use, while legal, is problematic (and even dangerous) and have suggested several regulatory remedies that could protect patients and advance their interests while preserving the reasonable authority of physicians to do what they and their patients think is the best course of action. In this essay we ask whether the special conditions existing in a public healthcare crisis, such as the current pandemic, would justify a relaxing of our argument and permit ongoing unregulated off-label use. We outline at least four areas of concern, all of which can be exacerbated by the widespread distress and despair amongst doctors, patients and other stakeholders. We contend that, if anything, these conditions warrant even more caution and scrutiny of this practice.


Jurisdiction: USA

Abstract: Personal stories that demonstrate public health problems can be a persuasive tool to obtain public support for a legislative, regulatory, or other legally oriented solution. Personal stories associate an identified life—a specific, inherently sympathetic person who needs help now—with a problem that can be solved by public action. This association enables us to draw parallels between ourselves and the identified life—the story’s protagonist. These parallels also motivate us to act on behalf of the identified life. The more emotionally charged the story, the more likely we are to credit the narrative as an accurate and representative portrayal of the problem. But public health focuses on the health of whole populations. Public health policies protect and promote the health of statistical lives, which are both numerous and invisible, and thus lack the immediate appeal of identified lives. For these reasons, personal narratives, while
a powerful motivating force, can limit appreciation of the complexity of the public health issue and proposed policy to which they draw attention and sympathy. The Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2017 and its forty-one state law counterparts offer a stark example of how tragic personal stories—rather than sound data and normative justification—created laws that are at best misleading and inefficient, and at worst, dangerous to public health. This essay examines the history of investigational drugs and expanded access through some of the stories that influenced FDA policy and practice. It then turns its focus to the right to try movement and explores some of the many personal stories that were used to propel the development of right to try laws by focusing exclusively on autonomy and access. Our focus then shifts to those whose personal stories—equally compelling—are not being told in the right to try discussions. These untold stories include narratives that highlight the need for careful science and the duties of researchers; stories that illustrate systematic disadvantage and structural injustice and can help demonstrate the need for a health care system that is meaningfully available to all from the outset; stories about unidentified statistical lives; stories from those who have come to regret the exercise of their right to try; and stories by and about those who have struggled between the do-everything mindset and the desire for a good death. We discuss the concept of identified lives and why the public supports ‘rescuing’ individuals it deems attractive and deserving, and we address the problems associated with elevating these identified lives over other untold stories and statistical unidentified lives in the context of right to try laws. This essay concludes that personal narrative has a place in public health policy generally, and in the question of access to investigational drugs specifically. Personal stories, used judiciously, can be a powerful tool for advocating for needed change. However, in the context of access to investigational drugs, crafting policy with a sole focus on the primacy of personal choice and autonomy fails to incorporate the public policy mandate to base available choices on at least a minimal amount of safety data and a high degree of information transparency. Where research directed to improving human health is at issue, contributing to generalizable knowledge—the principal purpose of research—should not be minimized because patients with life-threatening illnesses believe that they have nothing to lose by trying. While personal narratives can and should be considered, they should be combined with acknowledgment of the complexities of the investigational drug and clinical trial processes, and with awareness of the perennial and inevitable tension between providing access and collecting data supporting safety and efficacy. Even in the most tragic of circumstances,
health care policy in this area deserves to be made collectively, based on careful science, good research, and a fair allocation of resources.


Abstract: The number and size of existing research studies with massive databases and biosample repositories that could be leveraged for public health response against SARS-CoV-2 (or other infectious disease pathogens) are unparalleled in history. What risks are posed by coopting research infrastructure—not just data and samples, but also participant recruitment and contact networks, communications and coordination functions—for public health activities? The case of the Seattle Flu Study highlights the general challenges associated with utilizing research infrastructure for public health response, including the legal and ethical considerations for research data use, the return of the results of public health activities relying upon research resources to unwitting research participants, and the possible impacts of public health reporting mandates on future research participation. While research, including public health research, is essential during a pandemic, careful consideration should be given to distinguishing and balancing the ethical mandates of public health activities against the existing ethical responsibilities of biomedical researchers.

Donley, Greer, Beatrice Chen and Sonya Borrero, ‘The Legal and Medical Necessity of Abortion Care Amid the COVID-19 Pandemic’ (2020) Journal of Law & the Biosciences (advance online article, published 29 April 2020)

Jurisdiction: USA

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


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

Abstract: Due to the present COVID-19 pandemic, forensic mental telehealth assessment (FMTA) is an increasingly utilized means of conducting court-sanctioned psychiatric and psychological evaluations. FMTA is not a novel development, and studies have been published during the past two decades that opine on the positive and negative implications of conducting testing and interview procedures online, in forensic and traditionally clinical matters alike. The present article examines prospects for eventual legal challenges to FMTA, describes considerations for conducting FMTA in both institutional and residential settings, and concludes that FMTA is now—due to predicted accommodations on the part of courts, attorneys, institutions, and professional guilds—a permanent part of the forensic evaluation landscape, even once the present COVID-19 pandemic has subsided.


Introduction: As the world grapples with COVID-19, experts are calling for better identification and isolation of new cases. In this paper, we argue that these tasks can be scaled up with the use of technology. Digital contact tracing can accelerate identifying newly diagnosed patients, instantly informing past contacts about their risk of infection, and supporting social distancing efforts. Geolocation data can be used to enforce quarantine measures. Social media data can be used to predict outbreak clusters and trace the spread of misinformation online. These technology tools have played a role in turning the tide of the epidemic and easing lockdown measures in China, South Korea, and Singapore. There is a growing interest in the US in digital contact-tracing tools that may help rein in contagion and relax lockdown measures. This paper provides an overview of the ways in which technology can support non-pharmaceutical interventions during the COVID-19 epidemic and outlines the ethical challenges associated with these approaches.

Abstract: Ethics consultants and critical care clinicians reflect on Seattle’s early experience as the United States’ first epicenter of COVID-19. We discuss ethically salient issues confronted at UW Medicine’s hospitals and provide lessons for other health care institutions that may soon face what we have faced.


Jurisdiction: North America

Summary: We expand on the article “Ethical Challenges Arising in the COVID-19 Pandemic: An Overview from the Association of Bioethics Program Directors (ABPD) Task Force” to consider the ways in which rural and remote communities pose unique ethical questions in the current COVID-19 pandemic.


Abstract: This article examines the changes made to mental health and capacity laws in Northern Ireland through temporary emergency legislation, known as the Coronavirus Act 2020. The purpose of the legislation was to respond to the emergency situation created by the COVID-19 pandemic, in particular the increase pressure placed on health services in the United Kingdom. An overview is provided of the government’s rationale for the changes to Northern Ireland mental health and capacity laws, as well as exploring how they are likely to be operationalised in practice. Consideration is also given as to how such changes may impact upon existing human rights protections for persons assessed as lacking mental capacity. It is argued that it is important that regular parliamentary oversight is maintained in relation to the potential impact and consequences of such changes during the period they are in force. This should be done in order to assess whether they remain a necessary, proportionate and least
restrictive response to the challenges faced in managing mental health and capacity issues in Northern Ireland during this public health emergency.


Jurisdiction: USA

Extract: By late March 2020, New York was in crisis mode. Our Emergency Department - like its counterparts across the City - was bulging at its seams. We were overwhelmed by the COVID-19 surge. Patients were arriving in respiratory failure at the cusp of needing to be resuscitated and the sheer volume of critically-ill patients appearing at the same time was as if there had been a major plane crash at LaGuardia Airport. The only difference was that this was a sustained disaster with a steady flow of dying patients arriving at the hospital.

And this was a stress test for medical ethics, for distributive justice and the allocation of scarce resources. Simply put, there were more patients to be resuscitated than available personnel, much less equipment.


Abstract: This article explicates a fundamental reason the United States was unprepared for the COVID-19 pandemic, which is that we have systematically institutionalized and created a culture of selfishness in our system for financing and delivering health care. After a brief introduction, the article proceeds in six steps. In Part One, I describe the origins of the novel coronavirus in China, the actions taken there, the fact that while the ban on domestic travel from Wuhan limited the degree of spread within China to cities like Beijing and Shanghai, it failed to prevent the virus’s spread across the world and its march across the United States in the midst of denial, obfuscation, refusals to act and delay. In Part Two, I explicate the various ways in which the United States was unprepared for the pandemic, focusing particularly on the lack of public health infrastructure, including the ability to mobilize supply lines, but also the breakdowns in hospitals and nursing homes and, importantly, the manner in which our continuing lack of a
national health care system is part of our lack of preparedness. In Part Three, I describe how some other nations have had much greater success in staunching the outbreak, focusing particularly on Germany, as a liberal democracy in which civil liberty is respected. In Part Four, I take note of some of the complicated social, political and cultural features that steer a pandemic, which is as much a biological as a social and cultural phenomenon: leadership; disparate interests, regional rivalries and political structures; globalization; the role of the 24/7 news cycle; and finally, the importance of communal embrace of public health to minimize the need for coercive measures. In Part Five, I turn to the institutionalization and embodiment in culture of selfishness in our system for financing and delivering health care, giving rise to a fragmented system of payment and delivery, along with massive concentration of economic power and separate, siloed networks, all reflected in and created by legal doctrine that itself is fragmented. Finally, in Part Six, I offer a brief reflection on the possibility of change, given the crisis. This reflection is rather gloomy, as is, frankly, what is written in the entire article.


Abstract: Fear, anxiety and even paranoia can proliferate during a pandemic. Such conditions, even when subclinical, tend to be a product of personal and predispositional factors, as well as shared cultural influences, including religious, literary, film, and gaming, all of which can lead to emotional and less than rational responses. They can render people vulnerable to engage in implausible conspiracy theories about the causes of illness and governmental responses to it. They can also lead people to give credence to simplistic and unscientific misrepresentations about medications and devices which are claimed to prevent, treat or cure disease. In turn such vulnerability creates predatory opportunities for the unscrupulous. This article notes the eruption of quackery during the 1889–1892 Russian Flu and the 1918–1920 Spanish Flu and the emergence during 2020 of spurious claims during the COVID-19 pandemic. It identifies consumer protection strategies and interventions formulated during the 2020 pandemic. Using examples from the United States, Japan, Australia and the United Kingdom, it argues that during a pandemic there is a need for three responses by government to the risks posed by conspiracy theories and false representations: calm, scientifically-based messaging from public health authorities; cease and desist warnings directed toward those making extravagant or
inappropriate claims; and the taking of assertive and well publicised legal action against individuals and entities that make false representations during a pandemic in order to protect consumers rendered vulnerable by their emotional responses to the phenomenology of the pandemic.


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


Abstract: We propose that a Right to Health Capacity Fund (R2HCF) be created as a central institution of a reimagined global health architecture developed in the aftermath of the COVID-19 pandemic. Such a fund would help ensure the strong health systems required to prevent disease outbreaks from becoming devastating global pandemics, while ensuring genuinely universal health coverage that would encompass even the most marginalized populations. The R2HCF’s mission would be to promote inclusive participation, equality, and accountability for
advancing the right to health. The fund would focus its resources on civil society organizations, supporting their advocacy and strengthening mechanisms for accountability and participation. We propose an initial annual target of US$500 million for the fund, adjusted based on needs assessments. Such a financing level would be both achievable and transformative, given the limited right to health funding presently and the demonstrated potential of right to health initiatives to strengthen health systems and meet the health needs of marginalized populations—and enable these populations to be treated with dignity. We call for a civil society-led multi-stakeholder process to further conceptualize, and then launch, an R2HCF, helping create a world where, whether during a health emergency or in ordinary times, no one is left behind.


Abstract: Scientists have observed that molecular markers for COVID-19 can be detected in wastewater of infected communities both during an outbreak and, in some cases, before the first case is confirmed. The CDC and other government entities are considering whether to add community surveillance through wastewater monitoring to assist in tracking disease prevalence and guiding public health responses to the COVID-19 pandemic. This scientific breakthrough may lead to many useful potential applications for tracking disease, intensifying testing, initiating social distancing or quarantines, and even lifting restrictions once a cessation of infection is detected and confirmed. Yet, new technologies developed in response to a public health crisis may raise difficult legal and ethical questions about how such technologies may impact both the public health and civil liberties of the population. This Article describes recent scientific evidence regarding COVID-19 detection in wastewater, identifying public health benefits that may result from this breakthrough, as well as the limitations of existing data. The Article then assesses the legal and ethical implications of implementing policy based on positive sewage signals. It concludes that the first step to implementing legal and ethical wastewater monitoring is to develop scientific understanding. Even if reliability and efficacy are established, limits on sample and data collection, use, and sharing, must also be considered to prevent
undermining privacy and autonomy in order to implement these public health strategies consistent with legal and ethical considerations.


Jurisdiction: UK

Extract from Introduction: The paper first unpacks why the allocation of healthcare resources is fundamentally a question of justice in Britain and explains why healthcare law and policy require a philosophical approach in times of crucial change and crisis. Secondly, the paper provides a critical analysis of the current situation for the allocation of healthcare resources and the provision of services to patients directly or indirectly affected by the virus. It concludes that the liberal egalitarian conception of distributive justice at the heart of the NHS that aims to guarantee free and equal access to healthcare is now in jeopardy and is being replaced by a utilitarian approach based on a priority ranking of patients for the provision of services at this critical time.

Giubilini, Alberto, Julian Savulescu and Dominic Wilkinson, ‘COVID-19 Vaccine: Vaccinate the Young to Protect the Old?’ (2020) Journal of Law and the Biosciences Article Isaa050 (advance online article, published 26 June 2020)

Abstract: When we have a vaccine against COVID-19, who should be vaccinated first? The question is relevant because, initially, vaccine availability will likely be limited. After healthcare and some other essential workers, it might seem the most obvious candidates are the elderly and other groups that are more vulnerable to the virus. However, we argue that this is not necessarily the case. Protecting the most vulnerable might require prioritizing vaccinating children in order to maximize the benefits of indirect immunity for the elderly and the other vulnerable groups. Whether this will be the best strategy from a public health perspective will depend on characteristics of the vaccine and of the virus, which are currently unknown. Here, we assess this possibility from an ethical point of view, by drawing comparisons and analogies with the case of the flu vaccination and with other examples of health policies and practices. We conclude that there are strong ethical reasons to vaccinate the young to protect the old,
provided that the risks imposed on children are reasonable, even if that implies using children as a means to protect the elderly and the vulnerable.


Note: this article is a response to the article by Solnica, Barski and Jotkowitz listed below.

Abstract: Solnica et al argue that “Jewish law and modern secular approaches based on professional responsibilities obligate physicians to care for all patients even those with communicable diseases”. The authors base their viewpoint on the opinion of Rabbi Eliezer Waldenberg and apply it to suggest that physicians are obligated to endanger themselves during epidemics, such as COVID-19. It is argued that Solnica et al’s analysis of Rabbi Waldenberg’s text and their conclusion that healthcare workers are obligated to endanger themselves while treating patients who suffer from contagious illness during epidemics according to Jewish law suffer from various shortcomings. Indeed, Jewish law looks favourably on healthcare workers who take a reasonable risk in treating their patients in the context of epidemics. However, it is considered a voluntary supererogatory act—not obligatory. Solnica et al may express a legitimate ethical viewpoint. However, it does not seem to represent the mainstream approach of what Jewish law would demand as obligatory from its practitioners.


Jurisdiction: USA

Abstract: The response to the global COVID-19 pandemic has important ramifications for mental health systems and the patients they serve. This article describes significant changes in mental health policy prompted by the COVID-19 crisis across five major areas: legislation, regulation, financing, accountability, and workforce development. Special considerations for mental health policy are discussed, including social determinants of health, innovative technologies, and research and evaluation. These extraordinary advances provide an unprecedented opportunity
to evaluate the effects of mental health policies that may be adopted in the post-COVID-19 era in the United States.


Jurisdiction: USA

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


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

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


Abstract: The confluence of coronavirus disease 2019 (COVID-19) and seasonal influenza this fall and winter will result in considerable morbidity and mortality, stressing the health system. With more than 100 000 COVID-19–related deaths already, the US could see a second wave of disease later this year. In 2018-2019 (a ‘moderate’ year for influenza), the US experienced 35.5 million influenza cases, with 490 600 hospitalizations and 34 200 deaths related to influenza. An effective COVID-19 vaccine is unlikely until 2021. Even though seasonal influenza vaccines have variable year-to-year effectiveness, they can significantly reduce morbidity and mortality, especially with high coverage. The health system, and wider society, must prepare for the likelihood of co-epidemics of COVID-19 and influenza. What are the most effective strategies for increasing influenza vaccine coverage across the population and particularly in schools, businesses, and hospitals? Should states or businesses require vaccinations? Influenza vaccination, moreover, could offer valuable lessons for ensuring vaccine acceptance and uptake when COVID-19 vaccines become available.


Abstract: There is much discussion of adopting COVID-19 immunity certificates to allow those proven to have antibodies to the SARS-CoV-2 virus that causes COVID-19 to resume normal life and help restart the economy. This article points out issues that must be considered before adopting any such program. These issues fall into six categories: the uncertain science of COVID-19 immunity; the questionable quality of COVID-19 antibody tests; practical problems with issuing such certificates; deciding how the certificates might be used; and ethical and social issues they would raise, especially fairness and self-infection; and potential legal barriers. It does
not ultimately take a position on whether some narrow COVID-19 immunity plans should be adopted, concluding that the answer depends on too many currently unknown conditions.

This article begins what will need to be a much longer and deeper discussion—if the future develops along certain paths. It proceeds in six parts. The first five of those parts argue that immunity certificates come with major problems. I start by reviewing some of the scientific questions of immunity to COVID-19 and, second, look at antibody tests. The third and fourth parts discuss some of the practical problems they raise, first in issuing COVID-19 immunity certificates and then in how such certificates might be used. (Although not scientifically or ethically exciting, and hence thus far rarely discussed, these may turn out to be the biggest barriers to the implementation of such immunity certificates anytime soon.) Only then, in the fifth and sixth parts, I begin to consider the ethical and social issues stemming from immunity certificates and possible legal barriers to their adoption and use. The last part shifts gears. Although I believe such certificates should not be implemented now, I end with seven suggestions for decision-makers considering them in a less uncertain future.


Abstract: The very first shock of COVID-19 might be over, but the crisis continues. We have already learned much about what the European Union can and cannot do to help its Member States and peoples manage the crisis—and what it might be able to do better.


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

*Abstract*: The COVID-19 pandemic may result in ‘moral injury’ and mental illness to health care workers (HCWs). Resources may at some point run out and situations may arise where difficult ethical decisions need to be made. Properly preparing staff for the job and the associated challenges reduces the risk of moral injury and mental health problems. Under conditions of information overload and uncertainty-related anxiety such as with the COVID-19 pandemic, doctors may stop acting with clinical equipoise and make cognitive errors. These circumstances require doctors to be the voice of reason and lead by example. Doctors must reason critically, be aware of the biases that may influence thinking processes and critically appraise evidence in deciding how to treat patients. Health care systems must address the stress of HCW’s by continuously monitoring reactions and and creating mechanisms to offer psychosocial support.


*Abstract*: A heightened risk of domestic violence has been associated with infection-reducing measures undertaken by governments during the COVID-19 pandemic. Psychiatric services can play a key role in addressing this issue by (a) addressing certain risk factors for perpetration of domestic violence through, for example, assertive identification and management of substance misuse; (b) providing support, advocacy and treatment services for victims of domestic violence; and (c) multi-agency working to strengthen medical and social responses to domestic violence. At a time like this, it is important that multi-disciplinary mental health services are strengthened, rather than depleted, in order to address the pressing issues at hand.

**Harris, John**. ‘Why Kill the Cabin Boy?’ (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 16 April 2020)

*Jurisdiction*: UK

*Abstract*: The task of combatting and defeating Covid-19 calls for drastic measures as well as cool heads. It also requires that we keep our nerve and our moral integrity. In the fight for
survival, as individuals and as societies, we must not lose our grip on the values and the compassion that make individual and collective survival worth fighting for, or indeed worth having.

Recently in the United Kingdom, our doctors’ trade union The British Medical Association (BMA) and The National Institute for Health and Care Excellence (NICE), the latter established ostensibly to provide: “national guidance and advice to improve health and social care,” seem to be in danger of forgetting their values as well as ours, and their mission, their very raisons d’être.


Abstract: The role of bioethicists amidst crises like the COVID-19 pandemic is not well defined. As professionals in the field, they should respond, but how? The observation of the early days of pandemic confinement in Finland showed that moral philosophers with limited experience in bioethics tended to apply their favorite theories to public decisions, with varying results. Medical ethicists were more likely to lend support to the public authorities by soothing or descriptive accounts of the solutions assumed. These are approaches that Tuija Takala has called the firefighting and window dressing models of bioethics. Human rights lawyers drew attention to the flaws of the government’s regulative thinking. Critical bioethicists offered analyses of the arguments presented and the moral and political theories that could be used as the basis of good and acceptable decisions.
Heled, Yaniv, Ana Santos Rutschman and Liza Vertinsky, ‘The Problem with Relying on Profit-Driven Models to Produce Pandemic Drugs’ (Saint Louis University Legal Studies Research Paper No 2020-17, 2020)

Abstract: The longstanding problems of relying on a market response to a pandemic are becoming readily apparent in the United States, which has quickly become the epicenter of the COVID-19 outbreak. The problems are particularly pronounced in pharmaceutical markets, where we are pinning our hopes for both cures and vaccines. In previous work we have shown how characteristics of healthcare markets in the United States create a divergence between the private incentives of for-profit companies and public health needs, leading to sub-optimal health outcomes in what is a uniquely market-driven healthcare system. In this Essay, written as the COVID-19 pandemic unfolds, we illustrate how this divergence of private incentives from public health needs widens in contexts of pandemic preparedness and pandemic response. The Essay begins by explaining why the design of pharmaceutical markets in the United States yields suboptimal and sometimes even negative health outcomes. The Essay then follows the trajectory of the drug remdesivir as a case study that illustrates the consequences of relying on profit-driven pharmaceutical research and development (R&D) models for pandemic preparedness and response. We conclude that, contrary to what many commentators suggest, government policy responses to pandemic threats that rely primarily on increasing private market incentives within our existing pharmaceutical markets are unlikely to yield pandemic treatments that meet public healthcare needs. Policy interventions should instead be designed in ways that narrow the divergence of private interests from public health needs, especially in pandemic contexts. Achieving this will likely require greater public-sector involvement in pharmaceutical R&D.

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

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

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 widespread immunity passport regime.


Abstract: The COVID-19 pandemic has generated an imbalance between the clinical needs of the population and the effective availability of advanced life support (ALS) resources. Triage protocols have thus become necessary. Triage decisions in situations of scarce resources were not extraordinary in the pre-COVID-19 era; these protocols abounded in the context of organ transplantation. However, this prior experience was not considered during the COVID-19 outbreak in Spain. Lacking national guidance or public coordination, each hospital has been forced to put forth independent and autonomous triage protocols, most of which were, nonetheless, based on common ethical principles and clinical criteria. However, controversial, non-clinical criteria have also been defended by Spanish scientific societies and public institutions, including setting an age cut-off value for unilaterally withholding ALS, using ‘social utility’ criteria, prioritising healthcare professionals or using ‘first come, first served’ policies. This paper describes the most common triage criteria used in the Spanish context during the COVID-19 epidemic. We will highlight our missed opportunities by comparing these criteria to those used in organ transplantation protocols. The problems posed by subjective, non-clinical criteria will also be discussed. We hope that this critical review might be of use to countries at earlier stages of the epidemic while we learn from our mistakes.

Jurisdiction: USA

Abstract: During the COVID-19 pandemic, several states adopted orders temporarily suspending elective surgeries and procedures. A subset of those states moved to limit abortions under those orders, provoking emergency litigation to keep abortion clinics open and functioning. No similar lawsuits have been necessary to protect access to other time-sensitive medical procedures. So why was abortion singled out for disparate treatment?

This Essay provides an overview of the litigation that ensued in the wake of some states’ attempts to limit abortion access under the authority of executive orders banning non-essential or elective procedures. It argues that abortion was singled out in two ways that reflect deeper ambivalence about the place of abortion within medicine more generally. First, the COVID-19 crisis allowed anti-abortion officials to rely on the narrow meaning of “elective” in the abortion context to argue that abortions are medically unnecessary and can be halted indefinitely during a pandemic. Second, and relatedly, they used the exceptional treatment of abortion and the longstanding ambivalence about the place of abortion within health care to argue that abortion providers’ demands to be treated like every other health care provider under these executive orders was in fact a claim for special treatment. This Essay ends by suggesting that, for long-term protection of abortion rights, abortion must be reframed as a medically necessary and appropriate treatment, and it must be rhetorically re-incorporated into healthcare more generally.


Abstract: Governmental efforts to re-open businesses, religious entities, schools, and other enterprises following months of social distancing in response to COVID-19 raise significant legal and policy issues on both sides of the ‘tug-of-war’ between protecting the public’s health and rebooting the economy.

Abstract: The COVID-19 public health emergency has amplified both the potential value and the challenges with health care providers deploying telehealth solutions. As people across the country find ways to stay at home, telehealth preserves an opportunity to obtain necessary healthcare services. Further, telehealth can help individuals avoid COVID-19 infection, free up hospital beds and other resources for those patients most in need and prevent infected individuals from spreading that infection. Federal and state regulators have recognized this potential of telehealth and have quickly changed a variety of laws and regulations to enable health care providers to deploy solutions quickly. These changes can provide lasting benefits for the use of telehealth well after the current crisis. However, to best realize telehealth’s benefits further legal and regulatory action are necessary. Specifically, lawmakers and regulators should focus on six areas: reimbursement, privacy/cybersecurity, liability, licensure, technology access, and AI.


Jurisdiction: UK

Abstract: The paper considers the recently published British Medical Association Guidance on ethical issues arising in relation to rationing of treatment during the COVID-19 Pandemic. It considers whether it is lawful to create policies for the rationing and withdrawal of treatment, and goes on to consider how such policies might apply in practice. Legal analysis is undertaken of certain aspects of the Guidance which appear to misunderstand the law in respect of withdrawing treatment.


Abstract: While the world rushed to develop treatments for COVID-19, some turned hopefully to drug repurposing (drug repositioning). However, little study has addressed issues of drug
repurposing in emergency situations from a broader perspective, taking into account the social
and ethical ramifications. When drug repurposing is employed in emergency situations, the
fairness of resource distribution becomes an issue that requires careful ethical
consideration. This paper examines the drug repurposing in emergency situations focusing on
the fairness using Japanese cases. Ethical issues under these circumstances addressed by the
authors include: maintaining the evidence level, integrity of clinical research ethics, and
voluntary consent by original indication patients. In order to address these issues, they argue
that rapid accumulation of ethically and scientifically valid evidence is required, as is obtaining
information on resource quantity.

Jeffrey, David Ian, ‘Relational Ethical Approaches to the COVID-19 Pandemic’ (2020) 46(8) Journal of
Medical Ethics 495–498

Abstract: Key ethical challenges for healthcare workers arising from the COVID-19 pandemic are
identified: isolation and social distancing, duty of care and fair access to treatment. The paper
argues for a relational approach to ethics which includes solidarity, relational autonomy, duty,
equity, trust and reciprocity as core values. The needs of the poor and socially disadvantaged
are highlighted. Relational autonomy and solidarity are explored in relation to isolation and
social distancing. Reciprocity is discussed with reference to healthcare workers’ duty of care and
its limits. Priority setting and access to treatment raise ethical issues of utility and equity.
Difficult ethical dilemmas around triage, do not resuscitate decisions, and withholding and
withdrawing treatment are discussed in the light of recently published guidelines. The paper
concludes with the hope for a wider discussion of relational ethics and a glimpse of a future
after the pandemic has subsided.

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

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


Extract from Introduction: On 28 February 2020 the WHO issued a report on China’s efforts to control the Coronavirus outbreak, dictating a comprehensive government-led response to the threat. On 29 February, the French Prime Minister Edouard Philippe chose to divert priorities from a Ministerial Council dedicated to COVID-19 by utilising article 49-3 of the Constitution to bypass Parliament and authorise a brutal retirement ‘reform’ package, against which vast sections of the country had struck and demonstrated.

Article 49-3 is a nasty part of the Vth Republic’s Constitution, introduced to transcend the ‘instability’ of governments under the IVth Republic. However, it was conceived for rare
situations in which a government could not muster a majority in the National Assembly to act on problems of national significance in emergency circumstances....

As at 2 June, France had over 28,900 deaths attributed to COVID-19, in the ‘top’ league (apart from the populous US) with its neighbours UK, Italy, Spain and Belgium. Of this total, an estimated 37% occurred in ‘medical-social’ institutions, overwhelmingly aged care facilities. The debilitated hospital system has had to cope with the rest.


Abstract: The arrival of COVID-19 has seen a sea change in how we view masks. As the author of an encyclopedia entry and law review article on anti-mask laws I know this well. Over the past three months, reporters have been asking me about masks, the reluctance of Americans to wear them and the Red vs. Blue culture wars. This paper outlines my experiences and thoughts. After briefly describing the volte face in attitudes towards masks, I take up the argument that, in the coronavirus context, the mask is not a symbol but merely a tool to fight the virus. Then I look at masks and the culture wars, focusing particularly on the argument masking is less common in red states for political reasons. Finally, I look at how to create a culture of masking. Here I look at how public health officials have at times undercut their position by relying too heavily on law enforcement solutions to masking and treating questions, such as whether to protest, as a medical issue rather than a political one. I conclude with plea to treat mask wears as persons, rather than targets of law enforcement, or subjects of medical study.


Introduction: Coronavirus disease 2019 (COVID-19) has revealed how strikingly unprepared the world is for a pandemic and how easily viruses spread in our interconnected world. A governance crisis is unfolding alongside the pandemic as health officials around the world compete for access to scarce medical supplies. As governments of African countries, and those in low-income and middle-income countries around the world, seek to avoid potentially catastrophic epidemics and learn from what has worked in other countries, testing and other
medical resources are of concern. With accelerating spread, funding is urgently needed. Yet even where there is enough money, many African health authorities are unable to obtain the supplies needed as geopolitically powerful countries mobilise economic, political, and strategic power to procure stocks for their populations. We have seen this before. In the AIDS pandemic lifesaving diagnostics and drugs came to many African countries long after they were available in Europe and North America. In 2020, this situation can be avoided. Although health system weakness remains acute in many places, investments by national governments, the African Union, and international initiatives to tackle AIDS, tuberculosis, malaria, polio, and post-Ebola global health security have built important public health capacities. Global leaders have an ethical obligation to avoid needless loss of life due to the foreseeable prospect of slow and inadequate access to supplies in Africa


Jurisdiction: Australia

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

Abstract: Many countries have enacted, or are in the process of enacting, emergency mental health legislation in response to the global pandemic of Covid-19 (coronavirus). In Ireland, the Emergency Measures in the Public Interest (Covid-19) Act, 2020 amends the Mental Health Act 2001 to permit the Mental Health Commission to request an independent psychiatric report about an involuntary patient from any consultant psychiatrist who is not treating the patient (and not just those on its designated panel). This independent examination may occur ‘in person’, ‘by other appropriate means’, or even, ‘due to the exigencies of the public health emergency’, not occur at all, once this is explained in the resultant report. The 2020 Act acknowledges that ‘the exigencies of the public health emergency’ might hamper the independent psychiatrist's work and requires a written report from the patient's treating psychiatrist ‘no earlier than the day before’ the tribunal, in lieu of the psychiatrist physically attending a tribunal hearing, although, if possible, they will attend (i.e. phone in to) a tribunal held by conference call. The 2020 Act permits the Mental Health Commission to, if necessary, appoint tribunals ‘consisting of one member who shall be a practising barrister or solicitor’. Such a tribunal shall, if possible, consult with a consultant psychiatrist if the reports from the independent psychiatrist and treating psychiatrist conflict or if it is otherwise ‘necessary in the interest of the patient’. A tribunal can extend an involuntary order by a second period of 14 days ‘of its own motion if the tribunal, having due regard to the interest of the patient, is satisfied that it is necessary’. Tribunals for current involuntary patients will be prioritised over retrospective tribunals for discharged patients; a tribunal can direct a witness to provide ‘a written statement’ rather than attending; and the patient can make written representation to the tribunal instead of physically attending a tribunal hearing, although they may attend (i.e. phone in to) a tribunal held by conference call. Psycho-surgery for involuntary patients is banned. While it is clear that revisions are urgent and necessary in light of Covid-19, the proportionality of these changes will depend on how, and the extent to which, they are used in practice. With good communication, efficient team-working and close adherence to professional codes of practice and ethics, it is hoped that these amendments will result in a review system that is as reasonable, robust and reassuring as the current, highly unusual circumstances permit.

**Abstract:** Effective responses to the COVID-19 pandemic require novel solutions for research and responsible data sharing. Biobanking presents itself as a key priority in furthering our understanding of COVID-19. In this article, we propose a tripartite approach to consent to create resources for research relating to COVID-19. The approach aims to link three levels of participation: COVID-19 patient, respiratory/infectious disease patients, and longitudinal study participants. We explore the potential approaches that can be taken to consent processes with these three participant groups. We furthermore describe an access model for both single-site and multi-site data and sample storage. Through dealing with these topics at a high level, the model may be adapted to local legal and ethical requirements while still pursuing its ultimate goal: the creation of a research infrastructure that supports transparent, strong, and open science.


**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.


**Abstract:** We evaluate whether a lock-down to control COVID-19 infections is justified by estimating the economic costs for the ‘scythe’, the absence of any government-imposed suppression measures and the ‘hammer’, an early lock-down intended to drastically reduce community transmission. Using a fit-for-purpose compartment model for Australia estimated
from actual data, and a value of a statistical life year (VSLY) to measure welfare losses of COVID-19 patients, we find: (1) economic costs of the scythe are several times greater than the hammer; (2) VSLY welfare losses of fatalities equivalent to GDP losses from a lock-down indicate that for the hammer not to be the preferred strategy requires that Australians prefer more than 30,000 deaths to an 8-weeks lock-down; and (3) in a high-income countries, like Australia, the preferred response to COVID-19 from both a public health and and economy perspective is to ‘go hard, go early’.

Leader, Sheldon ‘The Reach of Rights in the Crisis’ in Ferstman, Carla and Andrew Fagan (eds), Covid-19, Law and Human Rights: Essex Dialogues (School of Law and Human Rights Centre, University of Essex, 2020) 5 – 9 (published 30 June 2020)

*Introduction*: This chapter explores some central challenges to bringing domestic and international human rights principles to bear on the provision of health care in this pandemic. It looks at the ways in which policy aims to balance a variety of competing rights and demands. Some involve competition for access to scarce resources in hospitals, where the competition might be between possessors of the same right to enjoy the highest attainable standard of health: a gain for one might require a loss for another. Other situations involve a competition between a human right that might conflict with institutional demands that do not themselves rank as implementing human rights, but are nevertheless demands that are sometimes considered legitimate and which can exercise considerable downward pressure on the ability to give full effect to the human rights in question. This happens in the present pandemic, for example, when orders, backed by the threat of dismissal, are given by some enterprises to their workforces to return to work despite evidence that this return can jeopardise their health. While the enterprise cannot usually claim to be making a human rights-based demand in an order to return to work, there is here a recognisable competition between the right to health and the demand to stimulate the economy.
Abstract: The emergence of the 2019 novel coronavirus—or COVID-19—outbreak has resuscitated global attention on the state of global health governance. Legal scholars and political scientists have long been fascinated by global governance of health, which had galvanized intellectual discourse that began almost two decades ago. Increasingly, global health operates in a complex, multipolar world, which is informed by pluralistic values. The ever-changing configuration of players, interests and values adds complexity to the global health landscape. It is timely to reexamine the landscape of global health, where new transnational challenges—such as galvanizing a global concerted effort towards international infectious disease control, financing global health activities in a sustainable manner, and achieving Universal Health Coverage—also inform new global health configuration. The article takes a historical view and traces the evolving of the global health landscape and examines the various of norms, processes and institutions that form global governance of health. The article also identifies the strengths and weakness of the International Health Regulations—the international legal architecture for international infectious disease control—as the novel coronavirus outbreak unfolds.


Abstract: The COVID-19 pandemic currently wracking the world represents a crucial test for our ethical toolkit. Governments, institutions and individuals are suddenly called upon to make life and death decisions for which they typically ill-prepared. Vocabulary which has suddenly become so familiar—“flatten the curve”; “social distancing”; “R0”—was unknown to most of us a bare few weeks ago. Even for experts, every option continues to have huge uncertainties associated with it. When experts are divided and unsure, how are the rest of us responsibly to decide how to act and who to trust?

In this paper, we focus on the responsibilities, in particular, of people like ourselves and (we assume) many readers of this journal: people with a genuine claim to expertise in some area, but none in epidemiology. They may be experts in ethics or in law or in some other branch of the sciences or of medicine. These kinds of expertise are (we believe) every bit as valuable as
expertise in epidemiology, but they usually leave us ill-equipped to assess claims in that discipline. What is our role and what our responsibilities in the face of our epistemic limitations? How do our responsibilities differ from those of other non-epidemiologists (politicians and businesspeople, for example) who decisions shape responses to the pandemic?


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


Abstract: The urgent drive for vaccine development in the midst of the current COVID-19 pandemic has prompted public and private organisations to invest heavily in research and development of a COVID-19 vaccine. Organisations globally have affirmed the commitment of fair global access, but the means by which a successful vaccine can be mass produced and equitably distributed remains notably unanswered. Barriers for low-income countries include the inability to afford vaccines as well as inadequate resources to vaccinate, barriers that are exacerbated during a pandemic. Fair distribution of a pandemic vaccine is unlikely without a solid ethical framework for allocation. This piece analyses four allocation paradigms: ability to
develop or purchase; reciprocity; ability to implement; and distributive justice, and synthesises their ethical considerations to develop an allocation model to fit the COVID-19 pandemic.


Abstract: Clinical research is critical to combatting COVID-19, but regulatory requirements for human subjects protection may sometimes pose a challenge in pandemic circumstances. Although regulators have offered some helpful guidance for research during the pandemic, we identify further compliance challenges regarding IRB review and approval, informed consent, emergency research, and research involving incarcerated people. Our proposals for regulatory flexibility in these areas seek to satisfy the goals of protecting participants and promoting the development of high-quality evidence to improve patient care. These recommendations may have relevance beyond the COVID-19 pandemic to enhance the efficiency of research oversight and participant protection more broadly.

Clinical research to understand, treat, and prevent COVID-19 is both crucial and highly regulated. Most intervention studies are subject to Food and Drug Administration (FDA) requirements and federally funded research with human subjects must follow requirements imposed by the Common Rule. Strict regulatory compliance may be challenging amidst a public health emergency, but participant protection and high-quality science remain essential. In recognition of these considerations, FDA and the Office for Human Research Protections (OHRP) within the Department of Health and Human Services (HHS) have issued guidance on conducting research during the COVID-19 pandemic.

Although this guidance offers a helpful start, gaps remain and additional regulatory flexibility is warranted in some instances. COVID-19 research has been running at a remarkable pace, challenging the capacity of both investigators and institutional review boards (IRBs). To ensure that this research proceeds efficiently and ethically, we offer suggestions to proactively address regulatory compliance challenges regarding IRB review and approval, informed consent, and inclusion of vulnerable populations.
Abstract: The COVID-19 pandemic is producing widespread loss of life, unemployment, and social isolation that is triggering a mental health crisis. Experts warn there could be record levels of depression, suicide, and substance use disorders. The U.S. healthcare system is not prepared. It lacks the resources to provide prolonged psychotherapy at scale, and existing drug treatments are ineffective for up to sixty percent of people. Fortunately, there is an untapped resource in the form of the experimental drugs psilocybin and MDMA. Clinical trials suggest that they are safe and effective for treating a variety of mental health conditions. Moreover, they act quickly, and their beneficial effects are often sustained. The U.S. Drug Enforcement Administration (DEA) classifies psilocybin and MDMA as schedule 1 controlled substances with a high potential for abuse and no currently accepted medical uses. However, a growing body of research undermines the DEA’s position. This Essay surveys the scientific evidence for the therapeutic use of psilocybin and MDMA. It argues that due to the urgent need for effective mental health treatments, the DEA should re-schedule these drugs and the Food and Drug Administration (FDA) should issue emergency authorizations for their use. To further enhance safety, the FDA should issue Risk Evaluation and Mitigation Strategies (REMS) requiring the drugs to be administered in controlled settings under professional supervision. The Department of Justice, which oversees the DEA, should pledge not to prosecute individuals who use psychedelics in jurisdictions, such as Denver, Oakland, and Santa Cruz, where they have been decriminalized.


Abstract: COVID-19 provides numerous opportunities for policymakers to consider matters of social equity in relation to the field of public health. Specifically, by reflecting on health disparities in relation to the disproportionate impact of COVID-19 on minority and historically underserved populations, we can leverage a needed discourse on health outcomes for many communities. Grounded in the social determinants of health conceptual framework, this article
explores the application of the disproportionate impact of COVID-19 on vulnerable populations and communities of color for a discussion on strategies for minimizing health disparities.


**Jurisdiction:** USA

**Abstract:** Over the past century, Congress has made the Food & Drug Administration (FDA) responsible for regulating the safety and efficacy of drugs and devices being deployed in the fight against the COVID-19 pandemic. The FDA’s regulatory infrastructure was built for public health threats and to combat manufacturers’ misinformation about treatments. This article spotlights the ways in which FDA has been adapting to a new challenge during the COVID-19 pandemic: combating misinformation emanating from within the executive branch.


**Jurisdiction:** North America

**Abstract:** The COVID-19 pandemic has raised a host of ethical challenges, but key among these has been the possibility that health care systems might need to ration scarce critical care resources. Rationing policies for pandemics differ by institution, health system, and applicable law. Most seem to agree that a patient’s ability to benefit from treatment and to survive are first-order considerations. However, there is debate about what clinical measures should be used to make that determination and about other factors that might be ethically appropriate to consider. In this paper, we discuss resource allocation and several related ethical challenges to the healthcare system and society, including how to define benefit, how to handle informed consent, the special needs of pediatric patients, how to engage communities in these difficult decisions, and how to mitigate concerns of discrimination and the effects of structural inequities.

Abstract: Given the increasing number of ethical and legal issues arising from the impact of the COVID-19 epidemic on informed consent by patients, it is necessary for health professionals to explain to patients how the measures taken to combat the spread of the virus impact on their right to give informed consent. Patients need to be reassured that wherever possible, health professionals are ethically bound to obtain informed consent from patients before they subject them to diagnostic testing and treatment, but at the same time, have to comply with the demands of the law. While the South African Constitution, statutory law and the common law all recognise a person’s right to consent before being subjected to treatment or surgical operations, it is necessary to take remedial steps, because of the dangers of spreading the potentially fatal COVID-19 virus, to prevent this. Such steps may involve compelling patients to be screened, tested and treated – sometimes without their consent. Guidance is given to healthcare professionals on how they should counsel their patients, and what they should tell patients about the impact of the COVID-19 regulations on healthcare professionals’ ethical and legal duties regarding the obtaining of informed consent, as well as on whether, if asked, employers can compel their employees to undergo testing without consent, and what to tell patients about this.


Abstract: The purpose of this article is not to encourage health practitioners to refuse to assist COVID-19 patients if they are not provided with personal protective equipment (PPE) at the workplace. It is to encourage them to advocate for PPE by pointing out that in South Africa (SA), health establishments that fail to provide them with PPE will be held ethically and legally responsible for the deaths of any patients – not health practitioners – if as a last resort such health professionals have to withdraw their services to protect other patients, themselves, their families and their colleagues. The article refers to the World Medical Association, World Health Organization and Health Professions Council of SA guidelines regarding the use of PPE during the COVID-19 epidemic, especially in the case of shortages. All the guidelines state that the safety of
healthcare workers is a priority if they are to care for their patients properly. Mitigation measures are suggested, but do not extend to failing to provide PPE to those healthcare workers who deal directly with patients. The law protects all workers, who have a constitutional and statutory right to a working environment that is not harmful and does not threaten their health and safety. The article concludes that as a last resort, if the international and national ethical guidelines and legal rules are not being followed regarding PPE and advocacy attempts to persuade health establishments to provide PPE fail, and healthcare workers are exposed to the COVID-19 virus, they may ethically and legally withhold their services. These points should be made when health practitioners are advocating for PPE.


Abstract: At some health establishments, doctors and nurses employed there are refusing to treat COVID-19 patients – even when they have been provided with the necessary personal protective equipment. Such conduct would appear to be in breach of the World Medical Association International Code of Medical Ethics, the International Council of Nurses Code of Ethics for Nurses, the Rules of Conduct of the Health Professions Council of South Africa (SA), the SA Nursing Council and some of the provisions of the SA Constitution and of the relevant labour legislation. Guidance is provided to employers on how to deal with the situation based on ethical and legal considerations.


Note: This entire issue has been made available on open access by HEIN Online as one PDF document. It includes a detailed introduction and then separate coverage of the background and current situations in 17 countries: Australia, Azerbaijan, Belgium, Brazil, China, France, Hungary, Hong Kong, Israel, Japan, Netherlands, Peru, Russia, Turkey, Ukraine, UK and USA.
Michalowski, Sabine, ‘The Use of Age as a Triage Criterion’ in Ferstman, Carla and Andrew Fagan (eds), Covid-19, Law and Human Rights: Essex Dialogues (School of Law and Human Rights Centre, University of Essex, 2020) 93-100 (published 30 June 2020)


Jurisdiction: UK

See section entitled ‘Medicolegal implications’ – paragraphs 23-31

Extract (para [23]): COVID-19 and the Coronavirus Act 2020 raise a wide range of related legal issues and questions, which are the focus of in-depth study through articles in this journal issue. The salient medicolegal implications are highlighted briefly below


Abstract: Vaccines are a powerful measure to protect the health of individuals and to combat outbreaks such as the COVID-19 pandemic. An ethical dilemma arises when one effective vaccine has been successfully developed against an epidemic disease and researchers seek to test the efficacy of another vaccine for the same pathogen in clinical trials involving human subjects. On the one hand, there are compelling reasons why it would be unethical to trial a novel vaccine when an effective product exists already. First, it is a firm principle of medical ethics that an effective treatment or vaccine should not be withheld from patients if their life may depend on it. Second, since epidemic outbreaks often emerge in settings with less-resourced health systems, there is a pronounced risk that any trial withholding an effective vaccine would disproportionately affect the vulnerable populations that historically have been exploited for biomedical research. Third, clinical trials for novel vaccines may be at odds with efforts to control active outbreaks. On the other hand, it may be justified to conduct a trial for a candidate vaccine if it is expected to have certain advantages compared with the existing product. This essay discusses key factors for comparing vaccines against epidemic pathogens, including immunological, logistical and economic considerations. Alongside a case study of the development of vaccines for Ebola, the essay seeks to establish a general framework that should
be expanded and populated by immunologists, epidemiologists, economists and bioethicists, and ultimately could be applied to the case of COVID-19 vaccines.


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

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

Abstract: China’s transformation from developing economy to powerhouse status ranks among the most dramatic stories of the 21st century, with the Belt and Road Initiative its latest chapter. But serious concerns over the government’s treatment of the Uighurs and human rights, and the devastating outbreak of Covid-19, threaten to derail the country’s ambitious project.


Abstract: More than a third of the world population is currently under some form of partial or total lockdown to limit morbidity and mortality due to covid-19. Whereas these measures are working, they are exerting an unprecedented negative socio-economic impact on the general wellbeing, and thus may not be sustained for long. Alternative control measures that limit the spread of the virus and yet facilitate socioeconomic progression and wellbeing are urgent. In this article, we make suggestions based on the disease transmission characteristics, the World
Health Organization recommendation, and current practices across the globe. The suggestions focus on the prevention of transmission and acquisition by; (1) ensuring all put on some form of protective barriers to prevent further spread and acquisition while in public or risky spaces, (2) proactively preventing contamination of surfaces at individual and group/community level, (3) disinfecting frequently all surfaces prone to contamination in public and private spaces (4) ensuring that all gathering, work, schools and other public places have COVID-19 prevention protocols in place and are followed, (5) developing an efficient surveillance system that ensures early detection and isolation of COVID-19 cases, (6) strengthening health facilities at all levels of the healthcare system to ably screen, test, isolate, and manage COVID-19 before complications set in, (7) Stepping up health education and awareness at population level on prevention measures for COVID-19 using all possible platforms, (8) Designing special prevention measures for congested neighborhoods and slum dwellings, care homes, and other institutionalized dwellings to prevent a surge in infection and catastrophes, and finally (9) strengthening national, regional and global collaboration to prevent cross-border transmission. A combination of several of the measures above should help ease lockdown and moreover sustain the gains in the absence of the vaccine – thus, ease the consequences of strict social distancing, travel bans and lockdown across settings.


Abstract: There is growing awareness that the only end to the COVID-19 pandemic, without causing an unacceptably large number of deaths, will be with one or more vaccines mass-produced and readily available to meet the world’s needs. A flurry of research and development activities are underway; however, the way the vaccine research and development system is currently constructed is not optimized to develop, manufacture, and equitably distribute vaccines on a global scale. In this chapter, we propose that resolving the tension between these realities requires a different approach to health innovation, one that operationalizes the concept of global public goods throughout the phases of vaccine development, manufacturing, and distribution. We argue that such an approach is not only the morally correct thing to do, given the scale of needs and the risk that the public has accepted by financing the development of various experimental vaccines, but it is also the only possible way of ensuring sufficient global
manufacturing capacity and equitable distribution of any vaccines that prove effective against COVID-19. We detail what adopting a global public goods approach to vaccine production would require in Canada, in an effort to encourage other jurisdictions to follow the same approach.


Abstract: Taking into account the socio-economic, cultural, and political dynamics of Africa, and drawing from a universe of publicly available information, this chapter explores Africa’s experiences with selected aspects of COVID-19 public health and associated response measures. It aims, in part, to identify facets of the contextual dynamics of the continent that warrant creative and fit-for-context public health responses outside of a one-size-fits-all milieu. Also, the chapter identifies and reflects on some real and potential lessons and opportunities from the COVID-19 experience on the African continent that could reposition the continent and enhance its resilience in the face of the first global pandemic in a globalized and technology-driven world order.


Extract: JGHS recognizes that the underlying causes of the spread and impact of the pandemic, the response and the impact of the response is too wide-ranging to expect the bio-medical scientific community alone to design and evaluate comprehensive and effective system level responses to this and any future pandemic. In addition, JGHS believes that an effective response requires a profound understanding from all regions of the globe. This philosophy, set out in the inaugural issue of JGHS has inspired the launch of the JGHS Commission on COVID-19 Response.
O’Neil, Meghan M, ‘**What Happens When a Pandemic Intersects an Epidemic?**’ (SSRN Scholarly Paper ID 3587094, 23 April 2020)

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


*Abstract*: In the context of responses to the Covid-19 pandemic, the paper examines the African regional regime for public health crises and disasters. Using the combined analytic lenses of Capability Approach, Institutional Theory, Constructivism, New Regionalism Approach and Actor Network Theory, it focuses on the opportunities offered by, and limitations of, the African Union legal order.

Ouliaris, Calina, Linda Sheahan and Duncan George, ‘**Preventing Prejudice by Preserving the Spirit of Mental Health Legislation During the COVID-19 National Emergency**’ (2020) *Australasian Psychiatry* 1-4

*Jurisdiction*: Australia

*Abstract*: The COVID-19 national emergency activates legislative powers that allow a proportional infringement upon individual liberties. We canvas the complex legal landscape governing mental health consumers in this climate, highlight ethical considerations in application of the law and offer a simple algorithm to navigate this space.

Jurisdiction: UK

Abstract: The COVID-19 pandemic is putting the NHS under unprecedented pressure, requiring clinicians to make uncomfortable decisions they would not ordinarily face. These decisions revolve primarily around intensive care and whether a patient should undergo invasive ventilation. Certain vulnerable populations have featured in the media as falling victim to an increasingly utilitarian response to the pandemic—primarily those of advanced years or with serious existing health conditions. Another vulnerable population potentially at risk is those who lack the capacity to make their own care decisions. Owing to the pandemic, there are increased practical and normative challenges to following the requirements of the Mental Capacity Act 2005. Both capacity assessments and best interests decisions may prove more difficult in the current situation. This may create a more paternalistic situation in decisions about the care of the cognitively impaired which is at risk of taking on a utilitarian focus. We look to these issues and consider whether there is a risk of patients who lack capacity to make their own care decisions being short-changed.


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


Abstract: In this Viewpoint, Gostin and colleagues review the emerging novel coronavirus (2019-nCoV) outbreak, discuss the public health benefits and risks of the Chinese government’s large city quarantines, and call for WHO leadership to coordinate a global coordinated response that could contain this and prevent similar future outbreaks.


Abstract: New York City hospitals expanded resources to an unprecedented extent in response to the COVID pandemic. Thousands of beds, ICU beds, staff members, and ventilators were rapidly incorporated into hospital systems. Nonetheless, this historic public health disaster still created scarcities and the need for formal crisis standards of care. These were not available to NY clinicians because of the state’s failure to implement, with or without revision, long-standing guidance documents intended for just such a pandemic. The authors argue that public health plans for disasters should be well-funded and based on available research and expertise. Communities should insist that political representatives demonstrate responsible leadership by implementing and updating as needed, crisis standards of care. Finally, surge requirements should address the needs of both those expected to survive and those who will not, by expanding palliative care and other resources for the dying.
Ranjith, PV and Aparna J Varma, ‘Safety of Healthcare Workers in India’ (SSRN Scholarly Paper ID 3629428, 20 May 2020)

Abstract: Health is one of our fundamental human rights and the role of workers in the healthcare system is inseparable. Health workers being the front line staff have more complicated situations to deal with especially in the wake of a pandemic like COVID-19. WHO cautions that they are exposed to hazards that put them at risk of infection. Nevertheless, we are witnessing the relentless efforts put forth by health workers to reinstall the health care system in their respective countries. Amidst all this tension, another concern that derails the COVID-19 battle is the attacks happening against COVID-19 warriors around different parts of the country. This paper is a subjective personal introspection of the authors on the safety of health workers in India. The main objective of the study is to find out the different problems of safety faced by healthcare workers in India and measures to control them.


Jurisdiction: USA

Abstract: Eleven states have tried to suspend abortion care in response to COVID-19. State officials claim that they will preserve medical supplies, hospital space, and health care capacity by classifying abortion as an elective, non-essential surgery that must be delayed. Advocacy groups representing abortion providers sued in several states to enjoin these bans. What has emerged is a fight that ignores medical evidence and threatens to exacerbate the current public health emergency. The Executive Order issued in Texas offers an apt example. Though abortion may be available in Texas for the time being, opinions from the U.S. Court of Appeals for the Fifth Circuit provide a troubling roadmap for suspending constitutional rights as a health emergency measure.

Reis-Dennis, Samuel, ‘Understanding Autonomy: An Urgent Intervention’ Journal of Law and the Biosciences Article Isaa037 (advance article, published 4 June 2020)

Abstract: In this paper, I argue that the principle of respect for autonomy can serve as the basis for laws that significantly limit conduct, including orders mandating isolation and quarantine.
This thesis is fundamentally at odds with an overwhelming consensus in contemporary bioethics that the principle of respect for autonomy, while important in everyday clinical encounters, must be “curtailed,” “constrained,” or “overridden” by other principles in times of crisis. I contend that bioethicists have embraced an indefensibly “thin” notion of autonomy that uproots the concept from its foundations in Kantian ethics. According to this thin conception, respect for autonomy, if unconditioned by competing principles (beneficence, justice, non-maleficence) would give competent adults the right to do anything they desired to do so long as they satisfied certain baseline psychological conditions. I argue that the dominant “principlist” model of bioethical reasoning depends on this thin view of autonomy and show how it deprives us of powerful analytical tools that would help us to think seriously about the foundations of human rights, justice, and law. Then, I offer a brief sketch of a “thick,” historically-grounded notion of autonomy and show what we could gain by taking it seriously.


Abstract: As cases of COVID-19 spread globally and across the United States, reaching over 140,000 United States cases by March 30, 2020 (a number that is almost certainly an underestimate, given the lack of testing across states), scientists and companies throughout the world are searching for a response, a treatment or vaccine. Multiple companies are currently working on developing vaccines for the disease. A vaccine will, by the most optimistic estimates, not be available for at least 12-18 months; but while there is no certainty, there are good chances one or more of variable efficacy will, eventually, be available. When it is, one potential question states will have to address is whether the vaccine should be mandated for school children and anyone else. This article examines this question; the answer, naturally, is —it depends, but this article offers guidance about the ethical and legal considerations for making the decision. The article will address this in three parts: the ethical considerations that affect whether a COVID-19 vaccine mandate is appropriate; potential legal constraints; and practical and political considerations.

Abstract: Global fatalities related to COVID-19 are expected to be high in 2020–2021. Developing and delivering a vaccine may be the most likely way to end the pandemic. If it were possible to shorten this development time by weeks or months, this may have a significant effect on reducing deaths. Phase II and phase III trials could take less long to conduct if they used human challenge methods—that is, deliberately infecting participants with COVID-19 following inoculation. This article analyses arguments for and against such methods and provides suggested broad guidelines for regulators, researchers and ethics committees when considering these matters. It concludes that it may be possible to maintain current ethical standards yet still permit human challenge trials in a context where delay is critical. The implications are that regulators and researchers need to work together now to design robust but short trials and streamline ethics approval processes so that they are in place when applications for trials are made.


Abstract: The devastating pandemic that has stricken the worldwide population induced an unprecedented influx of patients in ICUs, raising ethical concerns not only surrounding triage and withdrawal of life support decisions, but also regarding family visits and quality of end-of-life support. These ingredients are liable to shake up our ethical principles, sharpen our ethical dilemmas, and lead to situations of major caregiver sufferings. Proposals have been made to rationalize triage policies in conjunction with ethical justifications. However, whatever the angle of approach, imbalance between utilitarian and individual ethics leads to unsolvable discomforts that caregivers will need to overcome. With this in mind, we aimed to point out some critical ethical choices with which ICU caregivers have been confronted during the Covid-19 pandemic and to underline their limits. The formalized strategies integrating the relevant tools of ethical reflection were disseminated without deviating from usual practices, leaving to intensivists the ultimate choice of decision.

Abstract: In this paper we consider the impact that the COVID-19 pandemic is having on access to abortion care in Great Britain (England, Wales, and Scotland) and the United States. The pandemic has exacerbated problems in access to abortion services because social distancing or lockdown measures, increasing caring responsibilities, and the need to self-isolate are making clinics much more difficult to access; and this is when clinics are able to stay open which many are not. In response we argue there is a need to facilitate telemedical early medical abortion in order to ensure access to essential healthcare for people in need of terminations. There are substantial legal barriers to the establishment of telemedical abortion services in parts of Great Britain and parts of the United States. We argue that during a pandemic any restriction on telemedicine for basic healthcare is an unjustifiable human rights violation and, in the United States, is unconstitutional.


Introduction: In 2004, the year after the SARS epidemic in Asia and Canada, I wrote an article in which I considered whether the United States would be able to replicate the large-scale quarantine and isolation strategies effectively implemented by the countries hardest-hit by SARS. I called it "Are Traditional Public Health Strategies Consistent with Contemporary American Values?". Although I cautioned against overreliance on social distancing measures, I questioned whether there would be adequate levels of compliance with quarantine in a society grounded on libertarianism, as distinguished from the more collective or communitarian societies of Canada, China, Hong Kong, Singapore, Taiwan, and Vietnam. More generally, I wondered whether the United States had the social solidarity to respond to a major public health threat. Now, 16 years later, we face a challenge much greater than SARS, and it seems appropriate to reexamine American values during the coronavirus pandemic and beyond.

Jurisdiction: UK

Abstract: In the course of a few short weeks, many of the established legal frameworks relating to decision-making in England & Wales in respect of those with impaired decision-making capacity have been ripped up, or apparently rendered all but unusable. Although the Mental Capacity Act 2005 itself has not been amended, the impact of other legislation (especially the Coronavirus Act 2020) means that duties towards those with impaired decision-making capacity have been radically changed. This article reflects the experience of a practising barrister in England & Wales grappling with the impact of COVID-19 upon the Mental Capacity Act 2005 across a range of fields in the weeks after the world appeared to change in mid-March 2020.

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

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

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


Abstract: This short essay explores the reemergence of vaccine nationalism during the COVID-19 pandemic. The essay traces the pre-COVID origins of vaccine nationalism and explains how it can have detrimental effects on equitable access to newly developed vaccines.

Savulescu, Julian et al, ‘An Ethical Algorithm for Rationing Life-Sustaining Treatment during the COVID-19 Pandemic’ (2020) BJA: British Journal of Anaesthesia (advance online article, published 2 June 2020)

Introduction: The burning ethical question raised by the coronavirus disease 2019 (COVID-19) pandemic is how to deal fairly and ethically with a large number of patients simultaneously becoming critically unwell. Across the world, in both developed and developing countries, health systems are grappling with the possibility or the reality that the demand for intensive medical care will outstrip availability. There is a need for ethical guidelines on how to allocate treatment, but such guidelines are potentially highly controversial. In this commentary, we set out a simple algorithm, including what we take to be the essential ethical principles that ought to guide resource allocation in any country or setting and optional elements that will vary between countries depending on the weight placed on different ethical values.


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).


Abstract: Healthcare professionals’ capacity to protect themselves, while caring for infected patients during an infectious disease pandemic, depends on their ability to practise universal precautions. In turn, universal precautions rely on the availability of personal protective equipment (PPE). During the SARS-CoV2 outbreak many healthcare workers across the globe have been reluctant to provide patient care because crucial PPE components are in short supply. The lack of such equipment during the pandemic was not a result of careful resource allocation decisions in the global north, where the short supply could be explained through their high cost. Instead, they were the result of democratically elected governments prioritising low tax regimes over an adequate resourcing of their healthcare delivery systems. Such decisions were made despite global health experts warning about the high probability of pandemics like SARS-CoV2 occurring during our lifetimes. Avoidable allocation decisions by democratically elected political leaders resulted in a lack of sufficient PPE for healthcare professionals. After discussing and discounting various ethical arguments in support of a professional obligation to treat, even without or with suboptimal PPE, I conclude that these policy decisions were sufficiently grave that they provide a sound ethical rationale to justify healthcare workers’ refusal to provide care to infected patients.


Abstract: The current COVID-19 pandemic has raised many questions and dilemmas for modern day ethicists and healthcare providers. Are physicians, nurses and other healthcare workers morally obligated to put themselves in harm’s way and treat patients during a pandemic, occurring a great risk to themselves, their families and potentially to other patients? The issue was relevant during the 1918 influenza epidemic and more recently severe acute respiratory syndrome epidemic in 2003. Since the risk to the healthcare workers was great, there was tension between the ethical duty and responsibility to treat and the risk to one’s own life. This tension was further noted during the 2014 Ebola outbreak in West Africa that left hundreds of healthcare workers dead. The AMA Code of Ethics states that physicians are to ‘provide urgent medical care during disasters...even in the face of greater than usual risk to physicians’ own safety, health or life.’ Classic Jewish sources have dealt with this question as well. There is an obligation ‘to not stand by idly when your friend’s life is in danger’; however, the question arises as to whether there are limits to this obligation? Is one required to risk one’s own life to save another’s? There is a consensus that one is not required but the question open to debate is whether it is praiseworthy to do so. However, regarding healthcare workers, there is agreement for ethical, professional and societal reasons that they are required to put themselves in harm’s way to care for their patients.
Abstract: COVID-19-related controversies concerning the allocation of scarce resources, travel restrictions, and physical distancing norms each raise a foundational question: How should authority, and thus responsibility, over healthcare and public health law and policy be allocated? Each controversy raises principles that support claims by traditional wielders of authority in ‘federal’ countries, like federal and state governments, and less traditional entities, like cities and sub-state nations. No existing principle divides ‘healthcare and public law and policy’ into units that can be allocated in intuitively compelling ways. This leads to puzzles concerning (a) the principles for justifiably allocating ‘powers’ in these domains and (b) whether and how they change during ‘emergencies.’ This work motivates the puzzles, explains why resolving them should be part of long-term responses to COVID-19, and outlines some initial COVID-19-related findings that shed light on justifiable authority allocation, emergencies, emergency powers, and the relationships between them.

Abstract: The novel COVID-19 pandemic has placed medical triage decision-making in the spotlight. As life-saving ventilators become scarce, clinicians are being forced to allocate scarce resources in even the wealthiest countries. The pervasiveness of air travel and high rate of transmission has caused this pandemic to spread swiftly throughout the world. Ethical triage decisions are commonly based on the utilitarian approach of maximising total benefits and life expectancy. We present triage guidelines from Italy, USA and the UK as well as the Jewish ethical prospective on medical triage. The Jewish tradition also recognises the utilitarian approach but there is disagreement between the rabbis whether human discretion has any role in the allocation of scarce resources and triage decision-making.

Jurisdiction: USA

Abstract: As we write, U.S. cities and states with extensive community transmission of Covid-19 are in harm's way—not only because of the disease itself but also because of prior and current failures to act. During the 2009 influenza pandemic, public health agencies and hospitals developed but never adequately implemented preparedness plans. Focused on efficiency in a competitive market, health systems had few incentives to maintain stockpiles of essential medical equipment. Just-in-time economic models resulted in storage of only those supplies needed then. At the same time, global purchasing in search of lower prices reduced the number of U.S. suppliers, with hospitals dependent on foreign companies. There is still a possibility that the pandemic will be manageably bad rather than unmanageably catastrophic in this country. Immediate, powerful, and sustained federal action could make the difference.


Jurisdiction: USA

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


Abstract: A state’s real commitment to its international human rights obligations is never more challenged than when it faces emergency situations. Addressing actual and potential resourcing pressures arising from the COVID-19 pandemic has resulted in, amongst other things, modifications to Scottish mental health and capacity law and the issuing of new guidance
relating to associated practice. Whether these emergency or ordinary measures are invoked during the crisis there are potential implications for the rights of persons with mental illness, learning disability and dementia notably those relating to individual autonomy and dignity. This article will consider areas of particular concern but how strict adherence to the legal, ethical and human rights framework in Scotland will help to reduce the risk of adverse consequences.


Jurisdiction: South Africa

Abstract: In most instances, health research involves patients who are capable of giving informed consent, a statutory and ethical requirement. A smaller subset of patients lacking this capacity owing to their condition present an ethical problem, particularly because both the Bill of Rights of the Constitution of South Africa, and the National Health Act, require adult participant consent, without exception. Local research ethics guidelines, as a way of facilitating such research, suggest the use of a strategy combining proxy and delayed consent. Under conditions of a pandemic, research involving possibly large numbers of critically ill, incapacitated adults is likely. However, with lockdown restrictions, proxy decision-makers will not be available much of the time. Currently, local guidelines do not address the problem of what ought to be done in situations where incapacitated research participants die before being able to provide delayed consent for use of their research data. Under such circumstances, retention and use of such data is ethically justifiable based on the resultant public health benefits. The National Health Research Ethics Council needs to urgently reassess its consent guidelines in this respect.


Jurisdiction: USA

Abstract: COVID-19 has exposed deep-rooted flaws in our health system regarding healthcare financing and delivery. This essay uses COVID-19 as a frame to reflect on the growth in our uninsured population, the flaws inherent in healthcare federalism, how ‘Trumpcare’ has made
things worse, the magnified importance of Medicaid, and the problems inherent in relying primarily on private actors.


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


Abstract: Freshly, India has invoked various provisions of the Epidemic Diseases Act of 1897 to control communicable disease which is more or less turned into the most critical one globally. Coming up of COVID-19 has opened the debate for the new legislation or to clear the pending bill The Public Health (Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters) Bill, 2017 or to come up with special legislation named The Epidemic Bill, 2020. Here, the public health should be the concern in present condition of the society. Objective To respond to Epidemic situation for dissemination of lessons learnt from present crisis across the country that has begun with the strong need of legislation which can repeal the Epidemic Act, 1897.


Abstract: The Article establishes that in a pandemic situation, there is a duty to prevent the transmission of disease & an established duty of care to all other patients. The upsurge in demand for health services in a pandemic situation should not excuse or justify the breach of this duty of care which can result in any harm or injury being done to a patient. In a pandemic situation, the rejection of patients by hospitals, the failure to pay special attention to patients even in isolation centres etc can be adjudged as negligent actions for which medical practitioners & medical institutions can be liable.

**Abstract:** In this chapter, I argue that the particular use and applications of two scientific ideas profoundly affected national pandemic responses, including the allocation of resources, with significant harmful implications for social and health equity. First, the familiar “contain and control” approach to infectious diseases was applied maximally by countries (through national lockdowns) and was without precedent. Second, the epidemic forecasting models and modelling that were so influential early on were mono-dimensional; they modelled scenarios of how human bodies will likely spread infections, and of the biological impacts (infected, recovered, or dead) over time. These models erased acute and endemic vulnerabilities, and were not capable of identifying the impacts of policies to reduce virus transmissions on other health and well-being issues, or on other important social domains (for example, the economy).


**Jurisdiction:** South Africa

**Abstract:** Demand for new products to combat COVID-19 infections presents an opportunity for businesses under strain, but they should be aware of advertising, medical and intellectual property restrictions.


**Abstract:** The coronavirus pandemic, referred to here as Covid-19, has brought into sharp focus the increasing divergence of devolved legislation and its implementation in the United Kingdom. One such instance is the emergency health and social care legislation and guidance introduced by the United Kingdom Central Government and the devolved Governments of Wales, Scotland and Northern Ireland in response to this pandemic. We provide a summary, comparison and
discussion of these proposed and actual changes with a particular focus on the impact on adult social care and safeguarding of the rights of citizens. To begin, a summary and comparison of the relevant changes, or potential changes, to mental health, mental capacity and adult social care law across the four jurisdictions is provided. Next, we critique the suggested and actual changes and in so doing consider the immediate and longer term implications for adult social care, including mental health and mental capacity, at the time of publication several core themes emerged: concerns around process and scrutiny; concerns about possible changes to the workforce and last, the possible threat on the ability to safeguard human rights. It has been shown that, ordinarily, legislative provisions across the jurisdictions of the UK are different, save for Wales (which shares most of its mental health law provisions with England). Such divergence is also mirrored in the way in which the suggested emergency changes could be implemented. Aside from this, there is also a wider concern about a lack of parity of esteem between social care and health care, a concern which is common to all. What is interesting is that the introduction of CVA 2020 forced a comparison to be made between the four UK nations which also shines a spotlight on how citizens can anticipate receipt of services.

Von Batten, Karl, ‘The Effects of Multiple Delayed National Regulatory Actions on the Number of COVID-19 Infections in the European Union and the United Kingdom’ (SSRN Scholarly Paper ID 3625365, 10 June 2020)

Abstract: There is a noticeable difference in the amount of time it took European Union (EU) member states and the United Kingdom (UK) to enact nationwide stay-at-home orders and mandatory face mask provisions in response to the COVID-19 pandemic. Some EU member states enacted nationwide stay-at-home orders and mandatory face mask provisions shortly after the first confirmed case of COVID-19 infection within their respective jurisdiction. In contrast, other EU member states and the UK took much longer to initiate similar regulatory measures. This study’s findings indicate that there is a statistically significant difference in the number of COVID-19 infections between these two groups of countries, with a higher number of COVID-19 infections in the group of countries that took longer to enact nationwide stay-at-home orders and mandatory face mask provisions. This study’s findings also show a moderate positive correlation between the number of confirmed COVID-19 infections and the lag time between the first confirmed COVID-19 infections and the issuance of nationwide stay-at-home
orders and mandatory face mask provisions, respectively. The results also show a very strong positive correlation between the number of confirmed COVID-19 infections and the number of COVID-19 infection tests. A Stepwise multiple regression analysis was performed, in place of Poisson regression, due to a failure to fit. The regression results indicate that confirmed COVID-19 infections increased by 0.0454 infections each test performed, decreased by -60,017 because of mandatory face mask provisions, and increased by 1,141 each day of lag time between the first confirmed COVID-19 infections and the issuance of mandatory nationwide face mask provisions.


Abstract: Proposals for allocating scarce lifesaving resources in the face of the covid-19 pandemic have aligned in some ways and conflicted in others. This paper attempts a kind of priority setting in addressing these conflicts. In the first part, we identify points on which we do not believe that reasonable people should differ—even if they do. These are (a) the inadequacy of traditional clinical ethics to address priority-setting in a pandemic; (b) the relevance of saving lives; (c) the flaws of first-come, first-served allocation; (d) the relevance of post-episode survival; (e) the difference between age and other life-expectancy expectancy; and (f) the need to avoid quality-of-life judgments. In the second part, we lay out some positions on which reasonable people can and do differ. These include (a) conflicts between maximizing benefits and priority to the worst off; (b) role-based priority; and (c) whether patients’ existing lifesaving resources should be subject to redistribution.


Abstract: According to their advocates, immunity licences in the post-confinement phase of the COVID-19 pandemic should be granted to those who have been exposed to the virus and as a result have (presumably) developed immunity. This would allow them to go back to work,
engage in leisure activities, and travel. Those who are in favour of such licences argue that the ability of some to return to work would be of benefit to all. Opponents of the proposal point to their lack of scientific basis, to the perverse incentives that their introduction might generate, and to the risk that they might exacerbate existing inequalities. But should we consider them as wrong per se, that is, independent of the negative consequences that they might produce in present circumstances, consequences that might be neutralized by scientific advances and by an appropriate regulatory apparatus? They would still be morally deficient because they violate the principle of “least infringement” relative to the value of equality. Reorganizing the spaces in which we work and play, and create is one way in which the task of emerging from confinement safely could be accomplished in a more egalitarian manner.


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.

Abstract: The purpose of this paper is to explore the effect of the COVID-19 pandemic on the human rights of persons with mental and cognitive impairments subject to coercive powers in Australia. It sets out the relevant human rights in the Convention on the Rights of Persons with Disabilities which have been engaged by the COVID-19 pandemic and the government’s response to it. It examines the effect of emergency legislation on the relaxation of human rights safeguards in mental health laws, with a focus on mental health tribunals (although it is limited by a lack of published decisions and gaps in publicly available information). However, some of the issues created for persons with disabilities during the COVID-19 pandemic are evident in some decisions published by the New South Wales Guardianship Tribunal. The paper critically analyses two guardianship decisions UZX [2020] NSWCATGD 3 (3 April, 2020) and GZK [2020] NSWCATGD 5 (23 April, 2020) and some emergency South Australian legislation COVID-19 Emergency Response Act, 2020 (SA) Schedule 1 to demonstrate the ways in which the human rights of persons with mental and cognitive impairments can be more at risk than those of the general population, even when the general population is itself in ‘lockdown.’


Abstract: Background Humanitarian crises and emergencies, events often marked by high mortality, have until recently excluded palliative care—a specialty focusing on supporting people with serious or terminal illness or those nearing death. In the COVID-19 pandemic, palliative care has received unprecedented levels of societal attention. Unfortunately, this has not been enough to prevent patients dying alone, relatives not being able to say goodbye and palliative care being used instead of intensive care due to resource limitations. Yet global guidance was available. In 2018, the WHO released a guide on ‘Integrating palliative care and symptom relief into the response to humanitarian emergencies and crises’—the first guidance on the topic by an international body. Aims This paper argues that while a landmark document, the WHO guide took a narrowly clinical bioethics perspective and missed crucial moral
dilemmas. We argue for adding a population-level bioethics lens, which draws forth complex moral dilemmas arising from the fact that groups having differential innate and acquired resources in the context of social and historical determinants of health. We discuss dilemmas concerning: limitations of material and human resources; patient prioritisation; euthanasia; and legacy inequalities, discrimination and power imbalances. Implications In parts of the world where opportunity for preparation still exists, and as countries emerge from COVID-19, planners must consider care for the dying. Immediate steps to support better resolutions to ethical dilemmas of the provision of palliative care in humanitarian and emergency contexts will require honest debate; concerted research effort; and international, national and local ethical guidance.

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

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

HUMAN RIGHTS / CIVIL LIBERTIES
This section includes literature on rights (including international human rights), equality and discrimination generally.

Allman, Kate, ‘Hot Topic: A Line in the Sand: Why the Fight over Bondi was About More than Beaches’ (2020) (67) LSJ: Law Society of NSW Journal 24-25

Jurisdiction: Australia

Abstract: The COVID-19 "lockdown" period saw NSW place unprecedented restrictions on civil liberties. Amid widespread confusion over what citizens could and could not do in the temporary "new normal", tensions boiled over as communities clawed to maintain control over one much-loved Australian ritual: the right to go to the beach.

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


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


Abstract: What better way to start a discourse on civil liberty than by alluding to George Orwell’s 1984? In 1984, Orwell narrates the story of an omnipresent government called The Party and ruled by Big Brother. Big Brother controls every part of the people’s lives with little or no grace for civil liberties. To consolidate unchecked powers, Big Brother invents a language called Newspeak and a regulation called Thought-crimes – both in a bid to completely eliminate any form of opposition – or even a thought of it – to the party’s policies. And whosoever disobeys gets sent to the widely feared Room 101 for punishment. In a similar vein, our history with pandemics shows how governments can be quick to assume the post of a big brother, all in the name of national security. This was the case when the George Bush administration used the possible threat of a smallpox virus attack to justify its controversial massive smallpox vaccination
program. It was the case during the Severe Acute Respiratory Syndrome (SARS) pandemic when China tried to enforce a counterproductive quarantine program.


Abstract: Shortly before the UK was struck by the Covid-19 pandemic, research was published which showed that since 2010 ‘inequalities in life expectancy have widened and life expectancy fell in the most deprived communities’. Such inequalities in health are mainly caused by wider social inequalities. Evidence of the demographics of those who died as a result of the virus, served to highlight how these inequalities disproportionately led to the elderly and BME communities contracting Covid-19 and succumbing to it. This article will discuss how the health and wellbeing of socially disadvantaged people were negatively impacted. It argues that these inequalities are a breach of Article 2 of the Human Rights Act 1988 - the right to life, in that this right cannot be equally accessed by all. Finally, the article explores the current and future practice implications for social workers, who work daily with some of the most vulnerable people in society.


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.


Abstract: The global spread of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) or Coronavirus Disease 19 (COVID-19) has led to the imposition of severely restrictive measures by governments in the Western hemisphere. We feel a contrast between these measures and our freedom. This contrast, we argue, is a false perception. It only appears to us because we look at the issue through our contemporary moral philosophy of utilitarianism and an understanding of freedom as absence of constraints. Both these views can be substituted with more sophisticated alternatives, namely an ethics of virtue and a notion of freedom of the will. These offer a fuller picture of morality and enable us to cooperate with the current restrictions by consciously choosing to adhere to them instead of perceiving them as draconian and immoral. We ask whether we should collaborate with the restrictions and argue that considerations of virtue will lead to an affirmative answer. More broadly, virtue ethics permits to deal with the practical concerns about how an individual should behave during this pandemic, given the current lockdown measures or lack thereof.

In section 1, we present how utilitarianism and a notion of freedom as negative liberty support the opposition to restrictive measures. In section 2, we outline an alternative based on an ethics of virtue and a more elaborated notion of free will. In the concluding section 3 we argue that considerations of virtue should guide the individual and public response to the emergency.
Benfer, Emily A et al, ‘Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Inequity During and After COVID-19’ (SSRN Scholarly Paper ID 3636975, 1 June 2020)

Jurisdiction: USA

Abstract: Past infectious disease epidemics in the United States and governmental responses to them made it highly predictable that people living in poverty, people of color, and people with disabilities would bear the brunt of the coronavirus pandemic due to discrimination that limits equal access to resources, such as health care, housing, and employment. The COVID-19 pandemic magnified and accelerated the impact of longstanding discrimination and health inequity among historically marginalized groups and low-income populations. Black and Latinx populations have a higher COVID-19 contraction and mortality rate, higher rates of unemployment, less access to health care, and are at higher risk of eviction during the pandemic, among other significant inequities. Without robust and swift government interventions, the impacts of the pandemic will be wide and deep. This article analyzes mechanisms of discrimination and barriers to health in the pandemic setting using the health justice framework to address discrimination and poverty. The health justice framework offers four overarching principles to prevent and eliminate health disparities during and after the COVID-19 pandemic. First, legal and policy responses must address the impacts of discrimination and poverty on the social determinants of health, which in turn threaten to exacerbate the health, financial, and social impacts of a public health emergency on low-income communities, communities of color, and other marginalized communities. Second, interventions mandating healthy behaviors—such as staying at home from work when sick, mask wearing, and minimizing close contacts outside the home—must be accompanied by legal protections, accommodations, and social supports to enable those behaviors while minimizing economic, social, and cultural harms. Third, because emergencies typically exacerbate long-standing and interconnected crises in low-income communities and communities of color, legal and policy responses must address root problems in addition to immediate needs. Fourth, historically marginalized communities must be engaged as leaders in the development of any interventions and the attainment of health justice. To demonstrate the application of the health justice framework and principles, this article focuses upon three pillars that support resilience and equip marginalized communities to withstand the immediate and long-term impacts of the pandemic: health care, housing, and employment. This article explains how health care
discrimination is a social determinant of health, how lack of access to health care operated as a barrier to health justice during the COVID-19 pandemic, and applies the health justice framework to address health inequity. Then this article explains how housing and eviction are social determinants of health, how housing discrimination is a barrier to health justice during the COVID-19 pandemic, and suggests way to achieve health justice in housing. Finally, this article discusses how poverty and employment inequity are social determinants of health, how structural discrimination is an accelerator of employment inequity during the COVID-19 pandemic, and suggests how health justice principles can help achieve equity in employment. Ultimately, the framework can be adopted across numerous social determinants of health and structures to ensure the elimination of discrimination, poverty, and poor health among marginalized people during and after the pandemic.

Bertocchi, Graziella and Arcangelo Dimico, ‘Covid-19, Race, and Redlining’ (IZA Discussion Paper No 13467, 14 July 2020)

Jurisdiction: USA

Abstract: Discussion on the disproportionate impact of COVID-19 on African Americans has been at center stage since the outbreak of the epidemic in the United States. To present day, however, lack of race-disaggregated individual data has prevented a rigorous assessment of the extent of this phenomenon and the reasons why blacks may be particularly vulnerable to the disease. Using individual and georeferenced death data collected daily by the Cook County Medical Examiner, we provide first evidence that race does affect COVID-19 outcomes. The data confirm that in Cook County blacks are overrepresented in terms of COVID-19 related deaths since – as of June 16, 2020 – they constitute 35 percent of the dead, so that they are dying at a rate 1.3 times higher than their population share. Furthermore, by combining the spatial distribution of mortality with the 1930s redlining maps for the Chicago area, we obtain a block group level panel dataset of weekly deaths over the period January 1, 2020-June 16, 2020, over which we establish that, after the outbreak of the epidemic, historically lower-graded neighborhoods display a sharper increase in mortality, driven by blacks, while no pre-treatment differences are detected. Thus, we uncover a persistence influence of the racial segregation induced by the discriminatory lending practices of the 1930s, by way of a diminished resilience of the black population to the shock represented by the COVID-19 outbreak. A heterogeneity
analysis reveals that the main channels of transmission are socioeconomic status and household composition, whose influence is magnified in combination with a higher black share.


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


Abstract: As the Covid-19 pandemic has unfolded, epidemiologists have been working to build and refine models of how the disease is spread through populations: at the same time, policy-
makers around the world have been taking measures to try to stem the transmission of disease, which are based on models of how they think the world works. These models may be implicit, or made explicit including through the use of statistics and data science: frequently, though, they are based on stereotypes and assumptions about how individuals and systems operate. This paper argues that it is crucial to understand to whom models are useful, and who they ignore. This paper looks at the gendered assumptions – and resulting gaps - in policy responses, which betray an understanding of the world that neglects the experiences of women and of trans and non-binary people. It examines how gendered assumptions, gender binaries and stereotypes weaken responses to the pandemic, and how they reinforce imperfect models of the world that have detrimental impacts on the people who are not included.


Abstract: This chapter introduces human rights and civic responsibilities as mutually reinforcing ideas in times of public health emergency. Based on rights and responsibilities, and taking the human rights principle of non-retrogression as a starting point, it is necessary to define positive obligations to protect and fulfil economic and social rights when responding to a serious public health crisis. Among other things, I argue that societies should be able to use privately owned resources and facilities, as it is sometimes not only legitimate but necessary to interfere with private property.


Abstract: The racist discourse and attacks on Asian Canadians in the COVID-19 outbreak has illustrated the differentiated risks, vulnerability, and marginalization of racialized persons. A race-based analysis is essential in public health policy. First, public health responses may reinforce long-standing racist narratives of how a virus is transmitted. Second, the “viralizing” of
persons may lead to unfair blame on a racialized community for an outbreak, taking focus away from structural problems in particular environments, as for example in the case of Filipino migrant workers in meat-packing plants who have no control over their working conditions. Finally, there is now data showing that, accounting for other factors, some racialized groups of people, including Black and South Asian people, may be succumbing to COVID-19 more than others. Focusing on the partial border closure as a case study, this chapter looks at how historical and contemporary selective but simultaneous inclusion and exclusion at the border has constructed social ideas of foreigners. The border measures reflect an ongoing tension to admit cheap labour for essential services while pacifying public fear of the Asian person as a vector of the virus. Critical race analysis should be employed when evaluating public health responses to ensure that differential experiences of racialized communities are considered during a pandemic.

Chia, T and Ol Oyeniran, ‘Human Health versus Human Rights: An Emerging Ethical Dilemma Arising from Coronavirus Disease Pandemic’ (2020) 14 (July-September) Ethics, Medicine and Public Health, Article 100511

**Introduction:** The world is contending to contain the outbreak of coronavirus which has now resulted to 36,571 mortalities out of the 754,948 confirmed cases in 202 countries, areas or territories as at March 31, 2020 [1]. Pandemics are usually characterized by a sense of panic and uncertainties. Even though global preparedness and emergency procedures have been enacted, the uncertainties surrounding this pandemic raise considerable questions to their adherence. Widespread restrictions of varying degrees have been placed on individuals, groups, communities, cities or even whole regions. These restrictions ab initio are in contradiction to civil and human rights. These measures, which are now widely implemented in many regions and countries of the globe, have thrown up fresh ethical questions. Between human health and human rights, which takes primacy?
Chilton, Adam S et al, ‘Support for Restricting Liberty for Safety: Evidence During the COVID-19 Pandemic from the United States, Japan, and Israel’ (SSRN Scholarly Paper ID 3591270, 2 May 2020)

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

Chohan, Usman W, ‘After the Coronavirus Vaccine’s Discovery: Concerns Regarding a COVID-19 Vaccination’s Distribution’ (CASS Working Papers on Economics and National Affairs No EC021UC, 2020)

Abstract: The fervent global quest for the development of a vaccine against the novel coronavirus (COVID-19) begs the frightening questions: who will go first in receiving it? and will everyone get to receive it at all? This working paper seeks to highlight the risk that mercantilist market-logic approaches to hoard or overprice a future vaccine poses for human lives, and how it might reproduce global inequalities in a fatal manner. It draws upon the literature on socioeconomic disparities in vaccination to argue that the infrastructure for international dissemination of the vaccine must be built in advance and in a manner that forsakes the hostile mercantilism that has accompanied a shifting and combative international order.
Chowdhury, Barnali, ‘Gender Injustice and the Pandemic’ (SSRN Scholarly Paper ID 3623145, 9 June 2020)

Jurisdiction: India

Abstract: In this twenty first century, women continue to be reckoned as the most oppressed class; and at times are even denied the basic human rights. When women have fewer resources, less power and less influence compared to the male counterparts, they are made to experience inequality and there is discrimination based on class, ethnicity, age, as well as religious and other fundamentalism. Gender inequality, also happens to be the key driver of poverty and a fundamental denial of women’s right. Even in this 21st century, it goes without saying that, a near universal phenomenon is gender-based violence, which threatens the well-being, rights and dignity of women. An instance of such gender based violence is Domestic Violence- which forms the subject matter of this paper. Viewed from the perspective of human rights violation, with the application of human rights law, the State’s obligation to respect individual rights of each and every person gets reinforced, so much so that, the wrong doer can be held accountable for abuse of those rights of private individuals. Therefore, even if the State does not actually commit the abuse, it has the obligation to guarantee legal protection to the women victims. In attempting to discuss about one form of household abuse, which is seen to be aggravating more during this COVID-19 Pandemic, and the Lockdown that is operating in India, since March 24th, 2020, in this paper, discussion will centre round the principle of Equality which the framers of the Indian Constitution has also recognized as a Fundamental Right as well as a Directive Principle of State Policy, and which right has been secured to all citizens by the Preamble to the Indian Constitution. Despite every safeguard being provided by law, the Indian woman has been made to swim through troubled waters, which in itself is a matter of grave concern.


Abstract: This Viewpoint compares manual and digital strategies for coronavirus disease 2019 (COVID-19) contact tracing, describes how countries in Asia and Europe have used smartphone
tracking, and discusses privacy and discrimination concerns and strategies for balancing public health and civil liberties in the US.


Abstract: This report looks at COVID-19 pandemic responses, focusing on the contact tracing apps from a business and human rights perspective. It sets out the human rights criteria when either interfering with the private life of individuals under the ordinary limitations of the right, and also when states choose to derogate having declared a state of emergency. The key tests remain the same: legality, necessity, and proportionality.

Estrada, Ruiz and Mario Arturo, ‘Can COVID-19 Shows Income Inequality?’ (SSRN Scholarly Paper ID 3638160, 29 June 2020)

Abstract: This paper attempts to investigate the existence of a correlation between COVID-19 and income inequality. This research paper’s primary objective is to prove that the fast expansion of COVID-19 cases can be related to the income inequality levels in any country. However, this paper is not looking at economic growth. We focus on how people benefit from this economic growth through the income (re)distribution among different social groups in the same country. According to the World Health Organization (WHO), the top countries with more COVID-19 infected cases, such as the U.S., Brazil, Russia, India, United Kingdom, Peru, Chile, Spain, Italy, and Iran. According to our preliminary results from the ten countries in mention, we can observe the sad reality of income inequality worldwide. Therefore, the COVID-19 can be an alternative parameter to evaluate the income inequality. Finally, this the paper tries to present policies and recommendations to solve income inequality from a holistic approach.

Extract from Introduction: After several months of the spread of Covid-19 throughout the developed world, we now know that the fate of Boris Johnson revealed little about peoples’ vulnerability to the virus. In stark contrast to the claim that the virus did not discriminate, it became quickly apparent that the likelihood of becoming infected is far higher amongst some socio-economic, racial and ethnic groups than others. Identity is an aetiological factor in the spread of the virus. This is not because of the differing physiological or DNA composition of those who have disproportionately been infected by the virus. Biology is not destiny. Rather, those most likely to become infected and thus to die from the virus are also many of the poorest and most socially marginalised within our societies. In addition to its biomedical properties, Covid-19 must also be understood as a profoundly social and political pathogen, that sheds an unrelenting light on the social and political pathologies of affluent, notionally democratic societies such as the United Kingdom.


Abstract: Although unprecedented in scope and beyond all our life experiences, sweeping social distancing measures are not without historical precedent. Historically, racism, stigma, and discrimination resulted in grossly inequitable application of disease containment measures. But history also provides examples in which broad measures enjoyed remarkable public support. When it comes to COVID-19, blame and division continue to shape containment responses. But the COVID-19 pandemic also resonates with moments in which there was broad social support for containment precisely because lockdowns or stay at home orders are, on the surface, remarkably equitable. Yet even in a context in which a majority of Americans support social distancing, small but coordinated conservative groups are challenging social distancing as a matter of individual rights. In sharp contrast, vulnerable populations, who bear the heaviest burden of disease, have claimed a right to social distancing as a matter of protection.
Abstract: The COVID-19 pandemic highlights the challenges governments face in balancing civil liberties against the exigencies of public health, amid the chaos of a public health emergency. A key question concerns the evidentiary standards for justifying interferences with civil liberties. Superficially, civil liberties law and public health appear to invoke opposite evidentiary standards: under the principle of proportionality, civil libertarians demand strong evidence of the necessity of interference with civil liberties, while public health officials, invoking the precautionary principle, urge that intrusive measures be taken—limits on social gatherings, for example—even without conclusive evidence of their necessity. In this chapter, we argue that the two principles are not so oppositional in practice. In testing for proportionality, courts recognize the need to defer to governments on complex policy matters, especially where the interests of vulnerable populations are at stake. For their part, public health experts have incorporated ideas of proportionality in their evolving understanding of the precautionary principle. We emphasize the importance of agility in the COVID-19 response, pointing to strategies that might simultaneously satisfy the proportionality and precautionary principles.

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.


Abstract: As states begin to loosen their COVID-19 restrictions, public debate is underway about what public health measures are appropriate. Many states have some form of mask-wearing orders to prevent the spread of COVID-19 infection. Public health guidance from the Centers for Disease Control and Prevention and the World Health Organization has conflicted. From a public health point of view, it is not clear what the right answer is. In the absence of directives, individuals are also making their own choices about mask use. At a time when public health measures, like shelter-in-place orders and social distancing, are being used to stop the spread of coronavirus, wearing masks can be seen as a form of solidarity and desire to not infect others. Similarly, not wearing a mask can also be a political statement of sorts. Additionally, black men wearing masks have reported being asked to leave stores and fearing for their own safety. This essay provides an overview of the legal and policy landscape and focuses on the potential for policing against African Americans when mask mandates are in place. Despite the public health benefits of mask usage, due to mask mandates likely being enforced discriminatorily, we advise caution against mask mandates. Rather, we suggest ways to support mask use, such as normalizing their use via advertising and media buy-in.

Jurisdiction: USA

Abstract: As the architect of racial disparity, racism shapes the vulnerability of communities. Socially vulnerable communities are less resilient in their ability to respond to and recover from natural and man-made disasters when compared to resourced communities. This essay argues that racism exposes existing practices and structures in public administration that, along with the effects of COVID-19, have led to disproportionate infection and death rates of Black people. Using the Centers for Disease Control’s Social Vulnerability Index (SVI) authors analyze the ways Black bodies occupy the most vulnerable communities, making them bear the brunt of COVID-19’s impact. Findings suggest that existing disparities exacerbate COVID-19 outcomes for Black people. Targeted universalism is offered as an administrative framework to meet the needs of all people impacted by COVID-19.


Jurisdiction: UK


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.


Abstract: With increasing numbers of cases of coronavirus disease 2019 (COVID-19) globally and in the United States, Health and Human Services (HHS) Secretary Alex Azar declared a national public health emergency on January 31.¹ The emergency declaration of the HHS authorizes additional resources, enhanced federal powers, interjurisdictional coordination, and waivers of specific regulations. State and local public health emergency declarations are also likely. During crises, government has a special responsibility to thoughtfully balance public health protections and civil liberties.

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.


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?


Abstract: The vast majority of research focuses on the individual factors leading to coronavirus mortality. Numerous studies have shown that the age of the population is the dominant factor explaining mortality. Other more recent work has added gender, comorbidity, ethnicity and obesity. Based on the most populous and dense region of France — Ile-d-de-France, grouping 8 heterogeneous departments in terms of wealth — our study seeks to identify whether economic and financial or structural factors related to housing can explain a faster circulation of the virus during social distancing like lockdown, and therefore lead to excess mortality. We show that agglomerations with higher precariousness indicators (unemployment benefit income, poverty rate, social minima in income, little or no graduate in the workforce) and less suitable housing (potentially unworthy housing, household size, overcrowded housing) are more at risk, including if their population is younger. Our study therefore provides political leaders with a number of indications allowing them to take effective measures in the event of a second wave of COVID-19 or forthcoming coronavirus pandemics.


Abstract: Whoever said pandemics were equalizers doesn’t know a thing about disability legal history. It does not take much of a pretext to rollback disability rights. This is because disability rights laws, despite enumerated principles of equal opportunity and civil rights, have always been viewed as ‘nice to do’ and not ‘must do.’ Simply put, society continues to misunderstand disability—what it means, who the category includes or excludes, its relationship to impairment, its valence and construction as an identity. Moral and religious-tinged frames have trumped the perception of disability as a protected class akin to race, gender, or national origin. This view
explains Congress’s intent that the Americans with Disabilities Act (ADA) play, not only a remedial role for disability discrimination ex post, but a proactive, ex ante role in upending problematic social norms that treat disability and incapacity as synonymous. Similarly, the perception of disability as a different kind of civil right helps explain the Supreme Court’s interpretive missteps in the infancy and adolescence of the ADA and Congress’s direct reproach and redirection of the Court in the ADA Amendments Act eighteen years later. Inattention to underlying social judgments about disability and the associated discrimination has caught up with us. Progressive legislation in this pandemic without requisite interventions designed to address how people interpret the disability laws offers precarious protections for people with disabilities. The stakes could not be higher in some areas, namely, life or death denials of health care access based on certain disabilities or biased quality of life measures. Disability scholars in recent weeks have largely focused on addressing why COVID-19-related rationing on the categorical basis of disability offends federal (and state) disability antidiscrimination laws as a means to ensure people with disabilities have access to life-saving medical treatment in and out of hospitals. They persuasively apply disability laws and principles of legal and medical ethics to show why disability is an improper consideration in rationing care and resources. The underlying problem with rationing is much larger and is slowly unfolding with respect to access and rights in other areas including education, housing, and employment. That is, it is not just about devaluation of the lives of individuals with disabilities; it is a symptom of something much deeper. The pervasive and negative impacts of this devaluation will endure long after the immediate healthcare issues are tackled. This Essay surfaces a broader, unresolved issue in disability law laid bare by the current pandemic—that disability rights have never had the public understanding and buy in necessary to exercise and interpret disability laws to generate largescale structural reform. As a result, when people with disabilities are seen (and treated) as unequal, deficient, and incapable, legal enforcement of antidiscrimination laws is, at best, seen as optional and aspirational, creating space for the current manifestations of disability discrimination during the coronavirus crisis. These problems are compounded when medical supplies, personnel, and time are limited. Part I describes real time rollbacks of disability rights in the healthcare access context that are currently unfolding, and the legal responses designed to push back on health care rationing. I then shift to a less studied area, access to education, an evolving landscape as students across the country face the realities of distance learning. Part II argues that the current forms of discrimination lay bare the fundamental information deficits
about disability that negatively skew legal interpretation and undermine the protections of disability laws. Part III identifies key questions and areas of concern as we contend with the virus and its aftermath.


Abstract: Extraordinary responses to the COVID-19 pandemic are generating substantial debates over the scope and reach of public health powers and religious freedoms. Emergency declarations at every level of government to limit societal impacts of COVID-19 may shift constitutional norms, but do not completely negate rights to free exercise or assemble. Yet, no one has an unmitigated right to harm others in pursuit of their faith. Somewhere between individual religious rights and communal public health objectives lies a legally viable balance. Finding it during the pandemic is controversial. Among the most contentious issues are governments’ temporary orders suspending large religious gatherings to maintain social distances. While many religious leaders have complied, others have vociferously objected. Reaching accord begins with an assessment of legal principles of separation of church and state, especially concerning claims of religious rights to assemble despite unprecedented public health risks.

‘Human Rights’ [2020] (July) Public Law 561-563

Jurisdiction: UK


Jurisdiction: Canada

Abstract: COVID-19 has underscored the crucial role of the single-payer health care system in ensuring access to care based on need, consistent with the Canadian Charter of Rights and Freedoms (the Charter) and international human rights guarantees. But significant fault lines were exposed when health authorities across the country concentrated their pandemic readiness efforts on maximizing hospitals’ capacity to deal with the anticipated surge of COVID-19 patients, without considering the potentially disastrous consequences for an already struggling long-term care system. COVID-19 laid bare the reality that barriers to care continue to exist as a function of who patients are and where they are being treated. Focussing on COVID-19 hospital transfer decisions and their impact on the life, liberty, and security of the person and the equality rights of long-term care residents, this chapter argues that governments and health care decision makers in Canada must recognize that access to a comprehensive range of care is a fundamental right, and that human rights–based accountability is urgently needed in the battle against COVID-19, and beyond.


Abstract: No article can cover the panoply of human rights issued raised by the COVID 19 pandemic. Hence, this article takes a selective approach. Stages of the cycle of the crisis, from its past, its present, to its presumed future, are discussed in relation to salient rights issues affecting the general population. Freedom of expression and access to information arose in the ‘past’, the virus’s beginning, when China suppressed information about its nature and its virulence. Currently, States are imposing lockdowns to stop the spread of the virus, and in some cases have overwhelmed hospital systems: ‘the present’ raises issues regarding the rights to health, life, livelihood, and freedom of movement, assembly and association. Finally, the ‘future’ end of the crisis, in the form of the development of a vaccine, will raise new rights issues, regarding the rights upon whom vaccine candidates are tested, and in terms of access to the vaccine once it is available.

Abstract: This essay suggests that the pandemic brings unprecedented economic and social challenges while simultaneously opening the door for the renegotiation of minimum guarantees that human rights discourses conceptualise. The particular conditions of the pandemic have the potential to crystallise slow and structured forms of violence, and widen our imagination of the possibilities for human rights discourses. This is especially the case because neoliberal rationality doesn’t have the hegemony over social movements and human rights imagination, as it may have done in the 90s.


Abstract: In April 2020, the UN Office of the Commissioner of Human Rights & the Committee under ICESCR [International Covenant on Economic, Social, Cultural Rights] issued general and special statements addressing the challenges being faced by individuals & States in light of the prevailing global health crisis.

The statements highlight the key human rights principles and standards applicable in light of COVID 19. At the same time, developments around the world open up for scrutiny questions on the current status of human rights and responsibilities. Several themes have become critical including the powers of states to declare emergency, the limitations on human rights derogations, and the scope and applicability of rights including right to scientific information.


Abstract: To help tackle the spread of COVID-19 a range of surveillance technologies – smartphone apps, facial recognition and thermal cameras, biometric wearables, smart helmets, drones, and predictive analytics – have been rapidly developed and deployed. Used for contact
tracing, quarantine enforcement, travel permission, social distancing/movement monitoring, and symptom tracking, their rushed rollout has been justified by the argument that they are vital to suppressing the virus, and civil liberties have to be sacrificed for public health. I challenge these contentions, questioning the technical and practical efficacy of surveillance technologies, and examining their implications for civil liberties, governmentality, surveillance capitalism, and public health.


Jurisdiction: Canada

Abstract: To prevent the spread of COVID-19 Canada has, like most other states, temporarily limited access to its territory. It has, as requested by international law, allowed the return of its own citizens. However, in contrast to other countries, Canada has opted for a more restrictive approach by requesting air carriers to deny boarding to any passengers abroad, citizen or not, with symptoms suggestive of COVID-19. In this article, we assess the legality of Canada’s approach regarding the return of citizens, both under international human rights law and Canadian constitutional law.


Abstract: In normal times, the exercise of fundamental rights can conflict with each other, or with collective interests. States are entitled to balance such interests and limit some of those rights if necessary. In exceptional circumstances, more severe restrictions and derogations can be admitted. In the following sections, we discuss the applicability of the derogatory regime to human rights in the context of Covid-19, before analyzing the conditions of application of valid derogatory measures. In particular, we insist on the need to protect vulnerable people, by taking some specific measures and/or by refraining to adopt too invasive measures.
Abstract: The objective of this article is to explore how the COVID-19 pandemic has been managed in Brazil, especially through the analysis of the actions and inactions of the Brazilian president Jair Bolsonaro related to the complete denial of the global threat that the new coronavirus represents, seeking to demonstrate its major impacts on human rights and public health in the country. Our main conclusions were that: (i) since the election of Bolsonaro in 2018, Brazilian politics have been entrenched with a neoliberal spirit marked by illiberal notions that have compromised Brazil’s democracy and rights regime; (ii) since 2016, the Brazilian Unified Health System (SUS) has been subjected to a privatizing logic guided by market rules and exploitation of health as a source of profits, which represents a serious threat to the right to health in the country as a result of the first; (iii) by not making sufficient efforts to safeguard the lives of Brazilians or to strengthen public health institutions in the middle of the new coronavirus pandemic, the Brazilian State is violating the rights to life and health by omission; (iv) ultimately, it was demonstrated that Bolsonaro has worked unceasingly to bulldoze anti-COVID-19 efforts in Brazil and how it can be better explained through the concept of necropolitics.


Abstract: This Essay addresses two of the many lessons America must learn from the COVID-19 pandemic in order to survive. Both lessons are about structural inequality. The first is that structural inequality threatens the health of our entire population. The COVID-19 pandemic laid bare the fallacy of imagining that inequality is only a problem for the marginalized among us. Although it is all too true that the pandemic has disproportionately ravaged poor neighborhoods as compared to wealthy ones, killed more blacks than it did whites, and afflicted the elderly more severely than the young, by attacking the most vulnerable, it crippled us all. The virus shut down at least one-quarter of the U.S. economy. No community was isolated from the dangers the disease that daily threatened the “essential” workers who delivered groceries, stocked shelves, harvested fruit, drove buses, and provided healthcare for everyone in the nation. The
threat of death and economic destruction touched all, though it was borne most heavily by a few. Indeed, this pandemic has taught that we will ignore the disproportionate devastation suffered by the least privileged among us to our collective peril. The second vital lesson is that structural racism is the greatest threat America now faces to our democracy. Structural racism may be defined as the brand of structural inequality fomented by unchecked racial discrimination in housing, education, the environment, and criminal justice, and other major societal institutions. I argue that the key to overcoming this dual public health threat lies in health providers, patients, and lawmakers uniting to dismantle structural racism. First, we must rectify systemic racial discrimination in housing, education, the environment, and radically reform the American criminal justice system. Systematic discrimination in each of these domains not only disproportionately disrupts access to the basic building blocks known as the social determinants of health, but it also fixes disadvantage in black and brown communities, while concomitantly fixing advantage in white communities. This fundamentally defeats the core American value of equal opportunity and justice for all. Moreover, structural racism forges racial isolation and segregation fomenting the fear, stigmatization, stereotyping, and resentment that makes democratic reform impossible, and unchecked violent reactions likely. The result is an irrepressible eruption of hatred and violence; we must give credence to the cry of activists who are filling streets around the world: America must now “Know Justice, to know peace!” This essay calls upon lawmakers to reverse structural racism, beginning with equalizing access to high quality health care, that screens for and treats all inequities in the social determinants of health as medicine. I identify strengthening Section 1557 – the Health Care Civil Rights provision of the Affordable Care Act as a starting point. However that will not be enough. Beyond universalizing health care, we must universalize the example set for us by healthcare workers during the COVID-19 crisis. They have stood on the frontlines against a pandemic, to fight for the lives of all, especially the most vulnerable among us, putting their own lives at risk for the greater good. They have shown us what it means to regard all humanity as equally valuable before the Creator. I argue that it is time for lawmakers and the all of us to do the same.
Meier, Benjamin Mason, Dabney P Evans and Alexandra Phelan, ‘Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease’ in Mark Eccleston-Turner & Iain Brassington (eds), Infectious Diseases in the New Millennium: Legal and Ethical Challenges (Springer, 2020, forthcoming)

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

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


Abstract: In response to the COVID-19 pandemic, as with other countries across the world, the Central and State Governments of India initiated several measures to slow down the spread of the virus and to ‘flatten the curve’. One such measure was a ‘total lockdown’ for several weeks across the country. A complex and unexpected outcome of the lockdown which has medical, ethical, economic, and social dimensions is related to alcohol consumption. The lockdown and consequent acute non-availability of alcohol resulted in people with alcohol dependence going into withdrawals, black marketing of alcohol, and in extreme cases suicide resulting from the alleged frustration of not having access to alcohol. The health dilemmas around this situation are biological (e.g. pushing people into risky situations-potentially fatal alcohol withdrawal, consumption of illicit or other non-consumable alcohol) and psychosocial (e.g. isolation increasing the risk of relapses, loss of control over the decision to abstain which can be detrimental to recovery, restriction of access to services for alcohol problems). The legal and rights-related dilemmas are centred around whether States have the right to impinge on individual autonomy on the grounds of public health, the capacity of the health systems to provide appropriate services to cope with those who will struggle with the unavailability of alcohol, the constitutionality of the Central government’s impinging on jurisdiction of states under the guise of a health emergency caused by the pandemic, and the ability of the State to make unbiased decisions about this issue when it is highly dependent on the revenue from the sale of alcohol and associated industries. The way forward could be a pragmatic and utilitarian approach involving continued access to alcohol, while observing all physical distancing norms
necessary during the pandemic, for those who want to continue drinking; and implementing innovative measures such as tele-counselling for those who wish not to return back to drinking.


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.


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.


Abstract: The outbreak of the coronavirus disease (covid-19) in December 2019 precipitated public health control measures in many states across the world. The impact of covid-19 was as unprecedented as were the measures introduced by states to control it. The outbreak provides an opportunity to analyse responses of states to pandemics. At the core of this article is the question whether civil liberties matter during pandemics. A rights-based approach is founded on human rights protected in international human rights treaties. In cases of massive disease outbreaks, states adopt and enforce typically radical measures to contain the spread of the infection. After the outbreak of covid-19, a range of restrictions was imposed by the affected
states. However, in the haste to contain a rapidly spreading pandemic, human rights are potentially vulnerable to violations. This article assesses the responses to the pandemic by states within the context of human rights. As the article seeks to illustrate, in times of pandemics, the law on management of pandemics does not favour human rights observance. Even states with deep-rooted democratic cultures resort to illiberal responses. The rhetoric of inalienability of rights becomes hollow as even traditional democratic states mimic authoritarian regimes.


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


Abstract: Compares the historical responses to the Black Death and the AIDS crisis with contemporary reactions to the coronavirus pandemic, highlighting the differing reactions of Christian and Muslim communities to the Black Death, including the European persecution of Jews. Assesses whether humanity is now moving beyond blame and tolerance towards a fuller recognition of human dignity and individual rights.


Abstract: We investigate gender differences across socioeconomic and wellbeing dimensions after three months of lockdown in the UK, using an online sample of approximately 1,500 respondents in Prolific, representative of the UK population with regards to age, sex and
ethnicity. We find that women’s mental health is worse than men’s along the four metrics we collected data on, that women are more concerned about getting and spreading the virus, and that women perceive the virus as more prevalent and lethal than men do. Women are also more likely to expect a new lockdown or virus outbreak by the end of 2020, and are more pessimistic about the current and future state of the UK economy, as measured by their forecasted present and future unemployment rates. Consistent with their more pessimistic views about the economy, women choose to donate more to food banks. Women are more likely to have lost their job because of the pandemic, and working women are more likely to hold more coronavirus-risky jobs than men. We also find that between February and June 2020 women have decreased their work hours, but increased housework and childcare much more than men. These gender inequalities are not driven by differences in age, ethnicity, education, family structure, income in 2019, current employment status, place of residence or living in rural/urban areas.

Oswald, Marion and Jamie Grace, ‘The COVID-19 Contact Tracing App in England and “Experimental Proportionality”’ (SSRN Scholarly Paper ID 3632870, 18 June 2020)

Abstract: In this analysis, we review the history of the contact tracing app developed by England’s National Health Service and the differences of opinion over so-called ‘centralised’ and ‘decentralised’ technical approaches. The focus on data protection concerns has drawn attention away from more expansive human rights considerations, and we argue that human rights law should guide our assessment of the legal implications of a decision to deploy a contact tracing app. Acknowledging the uncertain situation presented by the coronavirus pandemic, we revisit our ‘experimental proportionality’ model first described in 2018. We demonstrate that, combined with a robust and rolling oversight function, this model of proportionality review could assist in upholding a fair balance between the rights of the individual and the interests of the community in situations of uncertainty and crisis.

‘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.


Abstract: As states reopen, an increasing number of state and local officials are requiring people to wear face masks while out of the home. Grocery stores, retail outlets, restaurants and other businesses are also announcing their own mask policies, which may differ from public policies. Public health measures to stop the spread of the coronavirus such as wearing masks have the potential to greatly benefit millions of Americans with disabilities, who are particularly vulnerable to the impact of COVID-19. But certain disabilities may make it difficult or inadvisable to wear a mask. Mask-wearing has become a political flashpoint, putting people with disabilities at risk. There are reports emerging that people with disabilities have been challenged, excluded from retail establishments, and even threatened with arrest for not wearing masks. Some anti-mask activists encourage their followers to falsely represent themselves as disabled to confound mask requirements, which has the potential to amplify skepticism and mistrust of people with non-obvious disabilities. Reports of violent conflict over mask-wearing add to these tensions. The first lawsuit challenging a mask requirement under federal disability rights law was filed in late May, and more are likely to follow. Federal laws like the Americans with Disabilities Act (ADA) prohibit discrimination on the basis of disability and require appropriate modification of public and private mask-wearing policies to accommodate the needs of individuals with disabilities. These laws, like other civil rights statutes, remain in force during the pandemic and should operate as a check against any discrimination that might result from a mask requirement. However, misunderstanding of and noncompliance with these laws limits their effectiveness. This article provides the first expert analysis of the federal disability law framework that applies to mask policies issued by state and local officials, as well as by stores, restaurants and other businesses that serve the public, and the often confusing interaction between public and private policies. It argues that contrary to some popular assumptions, mask policies can be employed in a manner consistent with the ADA and the Rehabilitation Act.
Finally, it offers specific recommendations for the design and implementation of mask policies in manner that accommodates both the rights of people with disabilities and developing scientific knowledge of efforts to slow the spread of COVID-19.


Abstract: Governments across the world have enforced emergency measures in response to the SARS-CoV-2 coronavirus (henceforth ‘the coronavirus’) pandemic. Indeed, the UK government has enacted emergency legislation in its response by passing the Coronavirus Act 2020. Amongst other things, this act extends existing statutory powers to impose deprivations of liberty for public health purposes. The extension of such powers naturally raises concerns about whether their use will be compatible with human rights law. In particular, it is unclear whether their use will fall within the public heath exception to the Article 5 right to liberty and security of the person in the European Convention of Human Rights, enshrined in the UK law by virtue of the Human Rights Act 1998. In this paper, I use the Coronavirus Act introduced in the UK as a case study of how emergency legislation enacted in a pandemic may conflict with human rights law enshrined elsewhere in domestic law. Having outlined key features of existing statutory powers in the UK, and how they are extended under the Coronavirus Act, I briefly consider how the European Court of Human Rights has interpreted the public health exception to Article 5 rights. This analysis suggests two grounds on which deprivations of liberty performed in accordance with the emergency legislation introduced in the UK might be vulnerable to claims of Article 5 rights violations. First, the absence of specified time limits on certain deprivations of liberty means that they may fail the requirement of legal certainty championed by the European Court in its interpretation of the public health exception. Second, the Coronavirus Act’s extension of powers to individual’s lacking public health expertise may undermine the extent to which the act will ensure that deprivations of liberty are both necessary and proportionate.

Abstract: The human right to the enjoyment of the highest attainable standard of physical and mental health provides binding normative guidance for health-care systems, broader social responses, and global solidarity.


Abstract: Technology companies have been playing a key role during Covid-19 from assisting state responses to improving quality of life during lockdown. These companies are providing means of communication, work, education, social and cultural life that would otherwise be impossible. As tech companies are now playing an essential facilitating role in enabling human rights in this way, a key question emerges: Should tech companies facilitating essential services bear special responsibilities? This paper argues that tech company obligations are heightened to the extent that the means through which they meet their due diligence obligations are amplified. This will be demonstrated by first illustrating the unique role that tech companies are playing during Covid-19, and second, examining whether special obligations should apply to those companies that are facilitating essential services. Third, this paper will recommend practical steps in the form of three types of human rights impact assessments (HRIAs) that companies should carry out as a starting point to understanding how they can meet their responsibility to respect human rights.


Abstract: In the wake of the COVID-19 pandemic, states have been quick to adopt emergency measures aimed at curbing the spread of the virus. However, poorly constructed restrictions threaten to undermine hard won human rights protections and may in fact erode important
elements of international human rights law as a result of overreaching implementation or lack of rigorous analysis in how the restrictions are put, and kept, in place. This article analyzes the International Convent on Civil and Political Rights (ICCPR) standards which apply to emergency regulation in times of public health crisis and the tangled morass of legal tests which have been used to balance human rights and emergency restrictions. We argue that in the current pandemic, human rights are best protected when states act under the Article 4 derogation mechanism to put emergency measures in place because it provides opportunities for oversight ensuring the end of emergency restrictions after the crisis subsides and provides certainty as to how states are justifying their emergency measures under the treaty regime. Given that so few states have provided notice of derogation under the ICCPR, this Article also considers what a rigorous analysis would look like when restricting freedom of movement, privacy, and freedom of assembly using the limitation language found in each article, suggesting best practices for better balancing COVID-19-related emergency measures with human rights.


Abstract: Religious challenges to state-issued stay-at-home orders have become a staple of the litigation generated by the COVID-19 pandemic. These challenges allege that states discriminate against religion by granting lockdown exceptions to certain professions and businesses, but not to churches for communal religious services. It has become common, for example, for churches to demand that their ability to gather for worship not be considered less essential than the operation of liquor stores in those states that have designated the latter as ‘essential’ businesses. Judges hearing these challenges have had to grapple with an old question imbued with new pandemic-related nuance: what constitutes discrimination against religion under the Free Exercise Clause? The answer—as evidenced by the wide divergence in courts’ responses—is anything but straightforward. In this essay, I explore an ambiguity surrounding religious discrimination in current free exercise jurisprudence, the role this ambiguity plays in the current religious challenges to stay-at-home orders, and how the Supreme Court stands to finally lay this ambiguity to rest in Fulton v. City of Philadelphia, a case it will hear next term.
Abstract: Persons with disabilities are significantly and disproportionately impacted by COVID-19. In this paper, we address the accessibility of emergency preparedness and the failure of governments to consistently include people with disabilities in their response strategies, even when statutes mandate inclusions and accessibility. In particular, persons with disabilities have not consistently been included in COVID-19 communication strategies, and may encounter barriers to accessing vital information and advice about the pandemic. We also highlight the implications of the economic marginalization of people with disabilities during a pandemic. The economic disruption caused by COVID-19 particularly undermines the income security of persons with disabilities. People with disabilities largely live in poverty and yet their concerns have largely been ignored by pandemic stimulus funding. Finally, we explore how institutionalization in this brave new world has grave consequences for people with disabilities. The institutions, where many people with disabilities live, are quickly becoming epicentres of SARS-Cov-2 transmission. COVID-19 calls into question the utility of their confinement in general terms and magnifies the concerns that pre-existed the pandemic.

Extract from Introduction: ... this article starts by explaining why the taking of measures to contain the pandemic is warranted under human rights law. The article shows that, at the same time, some measures can have a detrimental effect on the enjoyment of a number of human rights. With a focus on the International Covenant on Civil and Political Rights (ICCPR) and on the European Convention on Human Rights (ECHR), the article then proceeds to analyse the conditions under which States may legitimately interfere with certain human rights through either limitations or derogations and highlights some areas of concern in this respect. It concludes that while the curtailment of certain freedoms might be temporarily necessary to deal with the COVID-19 outbreak, such curtailment should be carefully limited and constantly monitored so as to avoid abuses.
Thomas, George and Erica Pulford, ‘Civil Liberties in the Age of COVID-19’ (2020) 72(3) Rutgers Law Review (forthcoming)

Jurisdiction: USA

Abstract: Can a state close its borders to, or impose mandatory quarantine on, travelers from states or cities that have a high community spread of COVID-19? On March 26, Rhode Island Governor Gina Raimondo imposed various restrictions on travelers from New York. Governor Andrew Cuomo threatened to sue. On June 24, Governor Cuomo, along with New Jersey and Connecticut governors, imposed mandatory quarantine on travelers from eight states that had developed into ‘hot spots’ for the virus. What kind of restrictions would be most effective in dampening the spread of the virus? Does the Constitution permit these restrictions on out of state citizens?


Abstract: The COVID-19 pandemic has raised significant concerns for population mental health and the effective provision of mental health services in the light of increased demands and barriers to service delivery. Particular attention is being directed toward the possible neuropsychiatric sequelae of both COVID-19 and of the stringent societal mitigation steps deployed by national governments, concerns that are informed by historical increases in the incidence of psychotic disorders following influenza pandemics. However, so far there has been scant attention paid to other important areas of psychiatry during COVID-19, including medico-legal aspects and human rights. In this paper, we discuss the legal implications for psychiatry of the COVID-19 pandemic and report a novel situation in which psychiatric patients may experience diminution of their statutory protections. We believe that this represents a paradigm shift in psychiatric care and that the consideration of the fundamental rights of psychiatric patients as "less important" than infection control measures compel mental health professionals to "advocate for ... patients and their caregivers" in this time of crisis.

Abstract: Within the historical materialist tradition, communication is principally understood to occur in concrete social contexts which are continually shifting in real socio-historical environments. Such a view of language and communication enables for an examination of media narratives in fast changing political landscapes surrounding the Covid-19 pandemic, in particular the manner in which normalisation of the discourses of surveillance takes place in the time of the health crisis. In examining surveillance practices and silencing of dissent in capitalism, we point to the dangers of a newly emergent narrative of the ‘new normal’ which threatens a violation of human rights and civil liberties.


Abstract: The Coronavirus pandemic is not only a health, economic and social challenge but a major challenge for national constitutions, international law and the EU legal order as well. More precisely, the pandemic is evolving into a comprehensive challenge to the acquis of modernity, i.e. liberal democracy, human rights and the guarantees of the rule of law, the nation state and its sovereignty, the organization of international society and the role of the United Nations and international organizations, regional cooperation, European integration and solidarity, and the degree of economic development and the ‘western way of life’. Our analysis will be focused on fundamental rights, while also making some necessary references to the function of liberal democracy institutions.


Abstract: President Joko Widodo announced a public health emergency at the end of March 2020. This policy demonstrates denial, too late and limited in responding to the spread of Covid-19. On the other hand, the state security approach during the pandemic has pressured civil liberties, especially criticisms against government policies. This phenomenon is not a new development in Indonesia whereby attacks on freedom of expression and academic freedom are
common. This article analyses how the COVID-19 health emergency situation is handled by the government from the perspective of human rights law standards and the rule of law. This article argues the Indonesian COVID-19 emergency law violates many guarantees of legal protection under the rule of law standard. It is apparent how the issue of human rights has not yet become an effective strategy or approach in this non-natural disaster emergency situation.


Abstract: Emerging statistics demonstrate that COVID-19 disproportionately affects African Americans. The effects of COVID-19 for this population are inextricably linked to areas of systemic oppression and disenfranchisement, which are further exacerbated by COVID-19: (1) healthcare inequality; (2) segregation, overall health, and food insecurity; (3) underrepresentation in government and the medical profession; and (4) inequalities in participatory democracy and public engagement. Following a discussion of these issues, this article shares early and preliminary lessons and strategies on how public administration scholars and practitioners can lead in crafting equitable responses to this global pandemic to uplift the African American community.


Abstract: To date, the vast majority of Covid-19 deaths have been those over the age of 65. The vulnerability of older people to the impacts of Covid-19 were recognised early and have featured prominently in policy discussions and decision-making of governments around the world. While the risks posed by Covid-19 to the health and wellbeing of older people are significant, the impact of policies introduced in response to the public health crisis raise several critical human rights issues. This article addresses two broad areas of concern regarding the rights of older people which have emerged in the United Kingdom as a consequence of Covid-19. Firstly, this article discusses the risks posed by the suspension of several Local Authority
duties under the Care Act, and proposes amendments aimed at ensuring the rights of people in need of care and support are maintained during this period. Secondly, the social wellbeing of older people is discussed with reference to Article 8 of the European Convention on Human Rights, which establishes the right to respect for private and family life. For older adults living in the community, it is argued that Article 8 imposes a positive obligation on Local Authorities to identify and support those older adults experiencing significant isolation or loneliness as a consequence of measures introduced in response Covid-19. In care home environments, Article 8 is considered with reference to the suspension of care home visitation rights, which is argued to be a disproportional and overly restrictive measure which imperils the rights and social wellbeing of older people.


Jurisdiction: USA

Abstract: Racial and ethnic minorities have always been the most impacted by pandemics because of: disparities in exposure to the virus; disparities in susceptibility to contracting the virus; and disparities in treatment. This article explains how structural racism, the ways in which laws are used to advantage the majority and disadvantage racial and ethnic minorities, has caused these disparities. Specifically, this article focuses on how employment, housing, health care, and COVID-19 relief laws have been manipulated to disadvantage racial and ethnic minorities, making minorities more susceptible to COVID-19 infection and death. This article uses Blumenshine’s 2008 framework to outline how structural racism causes racial and ethnic minorities’ disparities in exposure to viruses, in susceptibility to contracting viruses, in treatment of viruses, and in infection and death rates. This article discusses how historical and current practices of structural racism in existing employment, housing, and health care laws and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) cause disparities in COVID-19 infections and deaths. This article suggests legal solutions to address structural racism as well as public health solutions to help mitigate the racialized effects of the disease.

**Jurisdiction:** Canada

*Abstract:* This chapter considers the federal government’s fettering of jurisdiction through inaction in the areas of clean water and housing. We consider a small sample of First Nations’ responses, taken on the basis of their assertions of jurisdiction and responses to the particular needs and circumstances of their communities. We conclude that First Nations are best positioned to make policy and law in response to COVID-19, and that the federal government can and must work with First Nations communities on resourcing their plans for wellness and emergency preparedness in relation to the pandemic, in accordance with a sui generis application of the constitutional principle of subsidiarity in conjunction with other constitutional obligations such as the fiduciary duty of the Crown and its duty to act honourably. This chapter is contextualized by the theme of self-determination in Indigenous health, s. 35 of the Constitution Act, and the United Nations Declaration on the Rights of Indigenous Peoples.


**Jurisdiction:** USA

*Abstract:* COVID-19 is the most recent example of the vulnerability of American Indian reservations to pandemic disease. The Navajo Nation’s COVID-19 infection rate is higher than that of any US state—even New York. The economic and health situation on reservations exacerbates the challenge of responding to the current pandemic. A central policy challenge is to alleviate the continued burden imposed on American Indian tribes by a uniquely complex federal legal structure. The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides only temporary measures to increase tribal funding. Reducing long-run vulnerability to pandemic disease requires an affirmation of tribal sovereignty along with institution building that enables the tribes to respond to crises. Recognizing tribal authority on tribal lands will
enable tribes to effectively respond to reservation health problems; moreover, recognizing tribal sovereignty will enable tribes to rebuild their long-hobbled economies.


*Abstract:* From the implications of panic buying in remote areas to the policing of social distancing restrictions and lack of robust health resources, legal experts warn the impact of COVID-19 may be especially harsh on Indigenous communities.


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


Jurisdiction: Canada

Abstract: Historic and contemporary forms of colonialism predispose First Nations peoples to higher risk for COVID-19. This chapter argues that the health disparities faced by First Nations communities are directly attributable to the underfunding and discrimination in public services, especially on reserves. The first part of the chapter canvasses the inequities in government services and programs that impede the capacity of First Nations communities to effectively prevent and manage public health crises, such as the COVID-19 pandemic, in accordance with their own priorities, circumstances, and needs. The second part proposes Caring Society v Canada, a precedent-setting decision of the Canadian Human Rights Tribunal (CHRT), as establishing the legal standard for Canada when designing and funding its response to the COVID-19 pandemic for First Nations communities. We argue that if the Government of Canada does not immediately and comprehensively address the systemic inequities in its services and programs to First Nations peoples, as required under the Canadian Human Rights Act, measures aimed at managing the COVID-19 pandemic and potential future health crises will inevitably fail to produce equitable outcomes in these communities.
Tweedy, Ann E, ‘The Validity of Tribal Checkpoints in South Dakota to Curb the Spread of COVID-19’ (SSRN Scholarly Paper ID 3622836, 9 June 2020)

Abstract: This essay examines the question of whether, during a public health emergency, tribes located in a state that has adopted minimal protections to curb the pandemic may enact stronger protections for their own citizens and territories. May they do so, even when enforcement of these protections causes inconvenience to those simply passing through the reservations and when the regulations affect non-member residents of the reservations? Based on Supreme Court case law, the answer is yes—tribes are within their rights in adopting and enforcing regulations designed to protect their citizens and other reservation residents from a public health emergency.

INSOLVENCY & BANKRUPTCY


Abstract: Since the financial impact of the COVID-19 pandemic began to increase there have been many discussions around potential options for businesses to protect themselves and restructure.


Abstract: Executive power, court intervention and the opportunity for meaningful law reform to the voluntary administration regime.

Abstract: In late 2019, Congress enacted the Small Business Reorganizations Act. The Act’s timing is fortuitous: Weeks after it went into force in February, 2020, the Covid-19 pandemic damaged countless small businesses—enterprises that the Act may provide an opportunity to save. The Act provides businesses with powerful options to reorganize under a new ‘subchapter V’ of Chapter 11 of the Bankruptcy Code. Subchapter V eases the requirements for confirmation of plans that creditors don’t approve by simply requiring debtors to project their ‘disposable income’ and pay it to creditors for three to five years; provides incentives for the parties to reach agreement on reorganization plans; lowers the debtor’s disclosure obligations; eliminates the regular appointment of an official committee of creditors; requires the appointment of a trustee to aid in plan negotiations; and permits modification of loans secured by a mortgage on a debtor’s primary residence.Creditors will have to develop a new playbook for subchapter V cases. Most scholarship has emphasized debtors’ new options, but this Article presents an analysis from the perspective of creditors. Of course, creditors are not created equal; strategies will only be useful to creditors with claims substantial enough to justify the investment of time and money. Well-positioned creditors will extract whatever strategic gains they can at the expense of the debtor and of less privileged creditors. The game is multilateral, not simply creditor vs. debtor. The Article suggests strategies for variously positioned creditors to protect their interests. The Article suggests seven major strategies: 1) Creditors should seek influence or control a debtor’s entry into subchapter V by making agreements with debtors concerning the election, using financial maneuvers to work around subchapter V’s debt limits, or challenging the debtor’s eligibility for entry. 2) Creditors should monitor and make use of trustees as circumstances warrant, whether by cultivating and working closely with them, by seeking to minimize their role and save expenses, or, at the extreme, by opposing them and seeking their removal. 3) To combat debtors’ tendency to delay, creditors should apply pressure on the debtor by emphasizing the statutory emphasis on speed, scrutinizing the debtor’s required disclosures, and enlisting the trustee and court where possible. 4) Creditors should avoid holding general unsecured claims, and, if eligible, should take the election offered by §1111(b) of the Code. 5) Subchapter V places a premium on plans being approved by creditors, so those whose votes are needed for confirmation should extract concessions in exchange for their vote. For those privileged creditors, this should be a major point of leverage. 6) Creditors should look to obtain information at every opportunity, including at the required meeting of creditors and status conference early in the case, in the disclosures and filings made by the debtor, and
through formal discovery. 7) Creditors extending credit secured by a residence should designing lending practices to ensure that they cannot be ‘modified’ by debtors in bankruptcy. Many of the strategies above will be of keen interest to secured and other privileged classes of creditors. The Article predicts that with these and other strategies in hand, such creditors will not lose much ground under subchapter V. But the law lowers protections for general unsecured creditors, particularly those who remain passive. A number of the strategic tools presented in this Article can aid disfavored general unsecured creditors as well—but frequently, they will have too little at stake to make it worth putting their energy into the new small business bankruptcy game.


Jurisdiction: UK

Abstract: Discusses the temporary suspension of directors' personal liability for wrongful trading under the Insolvency Act 1986 s.214 in response to the coronavirus pandemic. Reviews key features of s.214 and the requirements for liability, including the absence of an intention to defraud. Considers whether its suspension was necessary to protect directors, whether it may have a detrimental effect and whether the suspension may need to be extended.


Jurisdiction: Australia

Abstract: Prior to COVID-19, we saw safe harbour protection under section 588GA of the ‘Corporations Act 2001’ (Cth) as a mechanism for directors to proactively work with their company while it was under

*Abstract*: To assist Registered Liquidators (RLs) navigate their obligations during the COVID-19 pandemic, here’s an overview of our current and future insolvency regulatory areas of focus.


*Abstract*: The international spread of the coronavirus is not only generating dramatic consequences from a social perspective but it is also heavily affecting the global economy. For this reason, governments, financial regulators and international organizations are responding to the coronavirus with a package of legal, economic and financial measures. Among the legal measures included in these packages, many countries, including Australia, Germany, Spain, India, Singapore, Colombia, Portugal, Czech Republic, Russia, New Zealand, the United Kingdom, and the United States, have proposed or implemented temporary changes to their insolvency frameworks. This paper starts by discussing whether using the insolvency system should be the optimal solution to deal with companies affected by the coronavirus. For that purpose, it will analyze the role and limits of insolvency law. It then discusses the most relevant insolvency reforms taking place around the world as a response to the global pandemic, as well as other insolvency and insolvency-related reforms that could be implemented to minimize the harmful economic effects of COVID-19. The paper will conclude by arguing that, even though these responses can provide companies and corporate directors with a valuable breathing space, these reforms need to be accompanied by a more comprehensive package of legal, financial, tax and economic measures to support businesses, employees and the well-functioning of the judicial system.


*Abstract*: A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: ‘Coronavirus (COVID-19) Tracker of insolvency reforms globally’. Details shown by the Tracker for Australia as at 19 May 2020 are included.

Abstract: The New Zealand government has introduced legislation to temporarily change certain insolvency and directors’ duties laws due to the impacts of COVID-19. These changes are included in the ‘COVID-19 Response (Further Management Measures) Legislation Bill 2020’ (the Bill) that passed its third reading in the House of Representatives on 13 May 2020. The focus of this article is two changes to the ‘Companies Act 1993’ (the Act), although the Bill amends or modifies the application of 45 different Acts. The two changes are: the introduction of a temporary safe harbour for directors from breaches of the duties against reckless trading and incurring unperformable obligations; and the introduction of a temporary COVID-19 Business Debt Hibernation (BDH) scheme. These measures were outlined in a Cabinet Paper released on 4 April 2020 (the Cabinet Paper), that stated that the proposed changes were necessary to address the impacts of COVID-19 on otherwise profitable and viable businesses that are facing a real risk of being liquidated in the near future because of the serious disruption they are incurring. The two amendments are discussed in more detail below.


Jurisdiction: USA

Abstract: This article will look at the changes made to the restructuring of small businesses under the ‘Small Business Reorganization Act’. To do so, it will first provide a brief overview of Chapter 11, followed by a discussion of the changes made to Chapter 11 under the 2019 Act. The article will conclude with a discussion of the impact of the Act to date as small businesses in the United States struggle to survive.

Abstract: My last contribution to the ARITA Journal came just weeks after the devastating bushfires tore through large parts of the country. Thousands of Australians were affected, and the economic impacts of the disaster will likely linger for many years.

It seems unfathomable that Australia, and indeed the world, is already facing another crisis. The economic impacts of the COVID-19 crisis are far-reaching. Nearly all industries have been impacted, some more than others.

Those providing personal insolvency services are being required to adapt quickly to a fast-changing environment. The difficult economic conditions are putting a financial strain on many Australians – but steps are being taken by both the private and public sectors to support those that are facing unmanageable debt.


Abstract: The impact of COVID-19 has forced many companies to file for bankruptcy and amongst this the government has made amendments to the Insolvency and Bankruptcy Code 2016 to prevent companies from insolvency proceedings. Such amendments are treated a boon for the companies as it has given them chance of survival in these difficult times.
Morrison, Edward R and Andrea C Saavedra, ‘Bankruptcy’s Role in the COVID-19 Crisis’ (SSRN Scholarly Paper ID 3567127, 7 April 2020)

Jurisdiction: USA

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


Abstract: Notes impending revisions to the UK insolvency regime, in response to the coronavirus pandemic, to permit UK companies undergoing restructuring or corporate rescue to continue trading. Details the main reforms, including a moratorium to protect companies considering restructuring, the protection of suppliers, and the temporary suspension of the wrongful trading regime under the Insolvency Act 1986 s.214.

Abstract: Highlights the Government's intention to introduce changes to the insolvency framework in response to the coronavirus pandemic. Details the additional restructuring tools proposed, including protection of companies' supplies to allow trading to continue, and the introduction of a new restructuring plan.

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

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


Abstract: Highlights the 31 March 2020 publication by the President of Brazil's National Council of Justice of Recommendation No.63/2020, detailing six guidelines to mitigate the impact of restrictions introduced in response to the coronavirus pandemic, and relating to courts dealing with bankruptcies and business recovery actions. Summarises the main recommendations, including that general face-to-face meetings with creditors be suspended.

Abstract: The economic impact of the Covid-19 outbreak has triggered calls for emergency fiscal and legislative measures to address liquidity and legal problems in several areas of law. Some of these measures address specifically companies in financial distress and insolvency statutes. Among the proposed changes to the insolvency framework, the UK Government announced a suspension of wrongful trading provision as outlined in section 214 of the Insolvency Act 1986 (‘the Act’). This announcement was later implemented (with significant amendments) in section 10 of the Corporate Insolvency and Governance Bill (‘the Bill’). This measure applies retrospectively from 1 March 2020 for a 3-month period or one month after the coming into force of the Bill, whichever is later. To assess the need for such a measure, this paper investigates the requirements to establish a successful claim for wrongful trading and the interpretation of those requirements, stemming from the case law. It also discusses the announced suspension as implemented by the Government in the Bill. This analysis strongly suggests that the suspension of (liability for) wrongful trading does nothing to achieve the purpose for which it was introduced, i.e. to facilitate business rescue and/or to help viable companies to survive the crisis created by the Covid-19 pandemic. To the contrary, the suspension of personal liability actions against the directors is likely to curb the rule of law in the UK. Laws are deferred and the exercise of civil liability remedies restricted without any apparent justification and with no proof that this measure is relevant to address the crisis created by the Covid-19 pandemic.

INSURANCE LAW

Dolgay, Cody F, ‘COVID-19 Insurance and Healthcare Considerations’ (8 July 2020) 2 Emerging Areas of Practice Series - COVID-19 (Coronavirus) Westlaw Canada

Jurisdiction: Canada

Extract: The Canadian health and long term care industries have been hit particularly hard by COVID-19. It would appear that this has not gone unnoticed by insurance underwriters. We are now aware that at least two large national insurers have begun to implement dramatic changes to the policies that they underwrite for health care organizations and long term care facilities. Specifically, it appears that a “Contagious Disease Exclusion Endorsement” is being added to some policies upon renewal. This broad Endorsement purports to completely remove
from coverage “any claim, action, occurrence, accident, loss, damage, injury, cost, expense, fee, charge, fine, penalty, or other amount” alleged to be caused directly or indirectly by a number of contagious diseases listed in the Endorsement.


Abstract: The World Health Organisation (WHO) website records that globally, as at 20 April 2020, there have been 2,245,872 confirmed cases of COVID-19, including 152,707 deaths, reported to WHO. The first case of COVID-19 was traced back to Hubei Province in China in mid-November 2019. Five months later, a total of 6,606 cases of COVID-19 have been reported in Australia, including 70 deaths. The life insurance industry is now in the unexpected situation of having to radically respond to enormous changes, at extremely short notice. Who would ever have thought that a virus could change the world almost overnight? This article looks at how COVID-19 has impacted upon and will change the life insurance industry.


Abstract: The COVID-19 virus has had a profound impact on many businesses in Australia. They have had to change the way in which they work or, in many cases, have even closed down. With that, there has been a significant decrease or complete loss in revenue or an increase in cost of working. Understandably, many businesses have been interested to understand if their business interruption insurance policy may come to their aid. Regrettably, in many cases, it will not.


Abstract: The financial consequences of the government-ordered shutdowns of businesses across America to mitigate the COVID-19 health crisis are enormous. Estimates indicate that small businesses have lost $255 to $431 billion per month and more than 44 million workers have been laid off. When businesses have requested reimbursement of their business
interruption losses from their insurers under business interruption policies, their insurers have denied the claims. The insurance industry also has announced that business interruption policies do not cover pandemic losses, so they intend to fight COVID-19 claims ‘tooth and nail.’ More than 450 lawsuits throughout the country already have been brought against insurers, including dozens of class actions. Legislators in several states have proposed legislation that would require insurers to pay business interruption claims regardless of whether the claims are covered by the wording of the policies. In the absence of a government bailout, the losers of this epic insurance battle—either insurers or their insureds’ businesses—will likely face bankruptcy. Thus, the financial consequences of this battle, and its implications for America’s economy, cannot be overstated. This is the first scholarly Essay to discuss the arguments for and against business interruption policies covering COVID-19 business interruption losses. In doing so, it sets forth the strongest arguments on each side of the fight regarding the meaning of the applicable policy language in the context of the existing caselaw and the purpose of business interruption insurance. It also addresses the insurance industry’s claim that pandemic losses are not covered by business interruption policies because such losses are simply uninsurable. Finally, it discusses the competing public policies that support each side.


Abstract: As the coronavirus disease (COVID-19) outbreak evolves and travel restrictions remain in place for at least part of Australia’s winter, it has become abundantly clear that any plans Australians may have to enjoy a summer in Italy, Spain or England are quickly fading. In these uncertain and fluid times, travel insurers face increasing scrutiny from customers and regulators, with new policy sales grinding to a halt. It is an important time for insurers to assess their position and how they can best service their clients moving forward. In this article, we investigate how the travel industry is approaching cover for epidemics and pandemics, some potential coverage issues, and how travel insurers can use this time to regain consumer trust, following the Financial Services Royal Commission.

**Abstract:** The outbreak of the coronavirus (COVID-19) pandemic has raised many questions around insurance coverage with regard to COVID-19 related losses, exposures and liabilities.

**INTELLECTUAL PROPERTY**


**Jurisdiction:** Nigeria

**Abstract:** The COVID-19 epidemic has ravaged nations leaving a high death toll in its wake. This article examines the intellectual property issues that may surround an invention of a vaccine for COVID-19. Chief amongst these issues being compulsory licensing. The compulsory licensing of a COVID-19 vaccine patent was examined with respect to the right to health. International treaties on compulsory licensing and the right to health was discussed as a justification for making vaccines such as that which may be discovered for the COVID-19 available to developing countries like Nigeria. It was discovered that the Nigerian Constitution does not make justiciable the right to health. It was recommended amongst others that the Nigerian State should leave up to its international commitments as contained in treaties signed by making policies that ensure access to health care.


**Jurisdiction:** Canada

**Abstract:** This chapter addresses intersections among international trade law, intellectual property rights, and domestic innovation policies to prevent, detect, and treat pandemics. Structural issues with Canada’s innovation system affected preparedness for this pandemic and, unless remedied, will impede responses to future crises. In this chapter, we suggest aligning
domestic and international policy measures to nuance Canada’s approach to intellectual property and accelerate Canada’s global contributions through open science.


Abstract: While public health emergencies such as the recent COVID-19 coronavirus pandemic strain resources, burden the economy and cause significant human suffering, they also provide opportunities to revisit established legal doctrines and consider them in a fresh light. This phenomenon is as true in patent law as it is in many other areas of law. Commentators have been quick to observe the many intersections between patent law and the coronavirus pandemic, often in connection with longstanding complaints and criticisms of the system. This essay does not attempt to address every patent law issue raised by the coronavirus pandemic, of which there are many. Rather, it focuses on two discrete areas of patent law through the lens of the current crisis and considers how we might adjust existing doctrine knowing what we know today.


Abstract: The United States’ disastrous response to the onset of the Covid-19 pandemic has arisen in large part by an utter failure to provide adequate diagnostic tests for the presence of SARS-CoV-2. The Centers for Disease Control were the sole testing source authorized by the Food and Drug Administration, and when the CDC failed to provide reliable tests in sufficient volume, it took weeks for other providers to be approved and to ramp up testing. Revised policies should decrease the likelihood of sole-sourcing tests in pandemic contexts, which results
in a fragile system. The pandemic sole-sourcing failure, however, not only accelerated the pandemic, but also provides lessons for innovation policy about diagnostic testing more generally. Sole-sourcing hurts clinical practice by limiting confirmatory testing and systemic robustness, whether in a pandemic or in regular practice. We thus argue against relying too heavily on exclusivity-creating patents as innovation incentive for diagnostic tests—including the proposed Coons-Tillis patent reform bill which would increase patentability for many such tests. Instead, we propose the use of reformed reimbursement to create better incentives for diagnostic test innovation. In both pandemics and elsewhere, single-sourcing creates too great a point of failure, but targeted innovation policy can help.


Abstract: While the coronavirus 19 (COVID-19) pandemic forced a large part of the world’s population into quarantine, research into treatment and testing intensified. At the same time, patents have rarely been so much in the forefront: how can we ensure that access to care will not be hindered by patents? Should we opt for an ex-officio license, relax the conditions of this license, or even expropriate the patentees? A bill tabled on April 7, 2020 in the French ‘Assemblée Nationale’ launches discussion in France.


Abstract: Discusses the need for international consensus on copyright law’s approach to user rights for research regarding the text and data mining (TDM) required in artificial intelligence applications. Reviews the right to research, the variations in the approaches to copyright exceptions for TDM in respect of matters such as cross-border data sharing, and how the coronavirus pandemic has highlighted the need for WIPO-backed co-operation on the matter.

Abstract: The COVID-19 pandemic has laid bare inherent tensions between the protection of intellectual property (IP) and the health of individuals touched by life-threatening medical conditions. Examples from around the world have made front page news: hospitals desperate for ventilator parts while 3D-printing instructions for such parts remain unshared for fear of liability; potentially lifesaving medicines whose manufacture and distribution on sufficient scale is limited by the threat of patent infringement; proprietary clinical data essential for making life-or-death decisions withheld from doctors and patients; the list continues. The threat of liability for IP infringement also dampens the ability to innovate under conditions of emergency, further contrasting the protection of IP with the protection of human lives. A number of policy responses for the current pandemic have been advanced, including the application of government rights under the Defense Production Act to IP contexts, compulsory licensing, legislation that would allow for emergency overrides to IP protections, and efforts to encourage companies to make their IP freely available voluntarily through the Open COVID Pledge. But fears of disrupting IP protections have curtailed the use of these measures, leaving the tensions between protection and life-saving access largely unaddressed. In this Article we argue that the time is ripe for doctors, hospitals, independent compounders, medical products manufacturers, engineers and, ultimately, litigants and the courts to consider self-defense and necessity as an old-new tool for resolving IP disputes. Doing so would not only be ethically sound but would also help to resolve many of the public health critiques that have been plaguing IP law by attenuating ingrained misalignments between IP frameworks and the furtherance of public health goals. The Article demonstrates the need for the self-defense and necessity doctrines in IP law; explains how such claims may allow defendants to avoid liability in circumstances in which infringement is necessary to prevent adverse public health outcomes; and shows why the adoption of these doctrines is needed to increase preparedness ahead of future—indeed expected—outbreaks of infectious diseases.
Huang, Vicki T, ‘COVID-19 as a Trade Mark in Australia: Issues and Implications’ (SSRN Scholarly Paper ID 3577389, 16 April 2020)

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

Hudson, Emily and Paul Wragg, ‘Proposals for Copyright Law and Education During the COVID-19 Pandemic’ (SSRN Scholarly Paper ID 3617720, 3 June 2020)

Abstract: This article asks whether the catastrophic impact of the COVID-19 pandemic justifies new limitations or interventions in copyright law so that UK educational institutions can continue to serve the needs of their students. It describes the existing copyright landscape and suggests ways in which institutions can rely on exceptions in the CDPA, including fair dealing and the exemption for lending by educational establishments. It then considers the viability of other solutions. It argues that issues caused by the pandemic would not enliven a public interest defence to copyright infringement (to the extent this still exists in UK law) but may be relevant to remedies. It also argues that compulsory licensing, while permissible under international copyright law, would not be a desirable intervention, but that legislative expansion to the existing exceptions, in order to encourage voluntary collective licensing, has a number of attractions. It concludes by observing that the pandemic highlights issues with the prevailing model for academic publishing, and asks whether COVID may encourage universities to embrace in-house and open access publishing more swiftly and for an even greater body of material.

Abstract: Recent events, including the COVID-19 pandemic, have led to calls for governments to use privately owned intellectual property for the public interest. Contact tracing technology, testing kits, potential treatments and research analysis are just a few examples of privately generated inventions and works that may be of incredible public benefit in a pandemic. This article considers how and when governments (and others authorised by them) may obtain rights in an emergency, particularly those connected with patents, designs and copyright.

Kumar, Sapna, ‘Patents, Pharma, and the Pandemic’ (SSRN Scholarly Paper ID 3636456, 26 June 2020)

Abstract: Highly-developed countries have generally supported strong patent rights and opposed utilizing compulsory licensing to obtain patented products without patent holders’ permission. But the COVID-19 pandemic has caused governments to reassess their position. Aided with taxpayer money, pharmaceutical companies are developing new vaccines and treatments. Unfortunately, there is no guarantee that they will be able to produce a sufficient quantity of any newly developed drugs, and the cost may be prohibitively expensive to most. Several countries have consequently reconsidered their past opposition to compulsory licensing and have passed new legislation bolstering their ability to provide patented drugs to their citizens for the duration of the pandemic. The United States, however, remains staunchly opposed—driven by the belief that any crack in strong patent rights will harm innovation. This Article examines the growing compulsory licensing divide among highly-developed countries. It provides an overview of existing U.S. law and looks at how the U.S. government’s attitude towards the compulsory licensing of drugs has shifted over time. It then discusses how countries such as Germany and Canada have recently adapted their patent laws and taken a collaborative approach to safeguarding public health, while the Trump administration has pursued a path of ‘vaccine nationalism.’ Finally, the Article proposes federal and state solutions to ensure access to COVID-19-related pharmaceuticals.

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


Abstract: The ongoing rapid spread of COVID-19 is challenging the capacity of governments and of the World Health Organization (WHO) to timely put in place a global coordinated response to the pandemic. Developing countries and Least Developed Countries (LDCs) in particular in Africa are especially vulnerable to the unfolding effects of the public health crisis. A priority area for global collaboration is to advance research and development (R&D) for vaccines and medicines that are made available, affordable and accessible worldwide. There is currently no vaccine and no proven safe and effective direct therapy for COVID-19. There is also the need to accelerate testing capacity and tools in developing countries and LDCs with increased access to low-cost diagnostics. The approach to the management of intellectual property rights by research institutions, pharmaceutical and biotech companies and R&D funders will decisively affect availability and access, as well as the transfer of technology and know-how. Governments must ensure that they have legislative and procedural frameworks in place to enable them to overcome any patent, data exclusivity and trade secret barriers to procure and produce COVID-19 diagnostics, vaccines, medicines and other therapeutics.

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.


Abstract: Against the backdrop of COVID-19, this Opinion essay proposes three ways to improve the European patent system without the need for legislative reform. Each has particular implications for drug patenting, and reflects an interpretive conception of law and legal legitimacy as requiring the application of legislation in accordance with moral values, including those expressed in constitutional instruments. If adopted, the proposals would: restrict the patentability of second medical indications and anchor assessments of inventive step more firmly to patent policy; expand assessments of the moral and public policy implications of patenting inventions and extend the disclosure duties of applicants; and adapt the FRAND licensing system to cover essential medical technologies.
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.

Jurisdiction: USA

Abstract: The COVID-19 pandemic has highlighted the need for explicit rights to repair needed medical products during emergencies. Current law may deter such actions because of the risk of private intellectual property infringement liability, and contracts may also prohibit making legitimate repairs. Congress should consider adopting limited exceptions to infringement to assure the ability to make repairs.


Jurisdiction: USA

Abstract: The COVID-19 pandemic has highlighted the need for explicit rights to repair and to supply needed medical products during emergencies. Current law may deter such actions because of the risk of private intellectual property infringement and tort liability, and contracts may also prohibit making legitimate repairs. Legislation is needed to authorize in advance the right to repair and production rights for defined emergencies.


Abstract: At a time where counterfeit and substandard medications and critical medical supplies, such as hand sanitizers and face masks, are flooding the world market due to the COVID-19 pandemic, the 2020 report from the Organisation for Economic Co-operation and Development and the European Union Intellectual Property Office on ‘Trade in Counterfeit Pharmaceutical Products’ finding that trade in falsified medicine reached USD 4.4 billion in 2016, threatening public health and safety, while enriching criminals and organized crime, is very timely.

Note: see OECD/EUIPO, Illicit Trade: Trade in Counterfeit Pharmaceutical Products (OECD Publishing, 2020)

Abstract: The COVID-19 pandemic and the urgent global need for effective treatments and/or a vaccine have implications for Australia’s new Crown use and compulsory licensing patent provisions as well as similar provisions from around the globe. With these provisions, a government and in some cases a third party can access and exploit a patented invention without authorisation of the patentee.


Abstract: Will the regulation of a vaccine for COVID-19 be left in the hands of health standards administrators and research conventions or will an alliance of political and economic imperatives, chorused by a loud philanthropic/humanitarian cadre push both the roll-out and access challenges? This brief review identifies current developments in the vaccine race and reflects on the way that political, commercial, hegemonic and humanitarian realities will influence law’s regulatory relevance particularly through intellectual property regimes. The conclusion, because of this speculative moment, is watch this space. The paper accepts the argument that substantive IP rights on their own are not to blame for adverse access outcomes, if they arise. But the need for compulsory licences and TRIPS exceptions reveals that a state cannot rely on the good intentions of successful manufacturers to promote social good when profits are potentially significant and market competition is constrained. The political and economic externalities pressuring more socially responsible commercial decision-making in the vaccine case are unique but even so law’s normative framework for justice and fairness is a counterbalance to private property exclusion when world health is at stake.

*Extract:* A new policy of global scale is needed and it should prioritize licensing and open support, technology transfer, and new partnerships for technical access. As to the market, there is need for a commitment not to increase drug prices during the pandemic.

The challenge is not whether intellectual property exists, but how it will be exercised. In this area there is a great opportunity to practice intellectual property management, focusing on public interest, particularly during a pandemic. Thus, in the case of COVID-19, thinking about open licensing aims to eliminate a barrier to the production capacity of the input needed to face the pandemic.

Yanisky-Ravid, Shlomit and Regina Jin, ‘Summoning a New Artificial Intelligence Patent Model: In the Age of Pandemic’ (SSRN Scholarly Paper ID 3619069, 4 June 2020)

*Abstract:* To combat the fast-moving spread of the pandemic we need an equally speedy and powerful tool. On the forefront against COVID-19, for example, AI technology has become a digital armament in the development of new drugs, vaccines, diagnostic methods, and forecasting programs. Patenting these new, nonobvious, and efficient technological solutions is a critical step in fostering the research and development, the huge investments as well as the commercial processes. This article considers the challenges of the current patent law as they apply to AI inventions in general and especially in the age of a global pandemic. The article proposes a novel solution to the hurdles of patenting AI technology by establishing a new patent track model for AI inventions (including the inventions that are made by AI systems and creative AI systems themselves). Unlike other publications promoting either complete abandonment of AI related patents, or advocating to maintain current patent laws, or recommending minor adjustment to patent laws, this article suggests a novel model of separate patent venue solely targeting AI inventions. The argument of this article is based on four pillars: the difficulty of having a patent-eligible subject matter, the hurdle of the ‘blackbox’ conundrum, the confusion of who is ‘a person of ordinary skills in the art’ (‘POSITA’), and the criticality of establishing a new AI patent track model, a crucial step, especially during a global epidemic. The first pillar of the argument is the difficulty of having a patent-eligible subject matter in AI inventions. We
therefore propose the new AI patent track model that would extend the scope of patent protection to cover creative AI systems, including both the algorithms and trained models, and AI-made inventions in order to, inter alia, incentivize investments of the ‘Multi-Players’. The second pillar of the argument of the argument is the hurdle posed by the 'blackbox' conundrum of AI systems that undermines the explainability and transparency of the inventions. In analogy to already existing rules applied to microorganism patents that are hard to describe, we advise a depository rule for AI working models to sufficiently describe the otherwise inexplicable inventions. The third pillar arises from the confusion of who is a person of ordinary skills in regard to the non obviousness assessment of AI inventions. We submit an alternative standard of ‘a skilled person using an ordinary AI tool in the art’ under the new track model to enable the evaluation of the patentability of complex AI inventions. The fourth pillar of the argument is the criticality of establishing a new AI patent track model on the grounds that the current patent law regime has posed substantial hurdles and uncertainties for patenting AI inventions with regard to almost all patentability requirements. We analyzed each of the requirements to demonstrate that most, if not all, aspects of patent law are not suitable in the AI era; only a revolutionary new patent model specific for AI inventions could solve all the concerns while maintaining the patent incentive for innovations. Our model also suggests an expedited examination with the aid of AI tools and a shortened patent lifetime in light of the fast AI development and technology elimination speed. The article concludes with the hope to harness AI technology for the wellbeing of humanity, in general and especially during tough times in the current COVID-19 era and in general.

INTERNATIONAL LAW

*Note:* this section includes literature on international health law, including the World Health Organisation and the WHO International Health Regulations (IHR). The International Health Regulations 2005 (3rd ed, 2016) are available at [https://www.who.int/ihr/publications/9789241580496/en/](https://www.who.int/ihr/publications/9789241580496/en/)


*Abstract:* This piece of work centers on blaming China for the damages caused in the world and how China violated some articles in the international health regulations (IHR).
Alvarez, José E, ‘The WHO in the Age of the Coronavirus’ (NYU School of Law, Public Law Research Paper No. 20-30, 2020)

Abstract: The responses of states and the WHO to the COVID-19 pandemic reveal the considerable weaknesses of international organizations. Although the Trump Administration has misdiagnosed the ills of the WHO, that organization has indeed failed to meet the public health threat posed by the coronavirus. The WHO’s responses to the current crisis demonstrate that it shares five disorders common to other UN system expert-driven organizations. It is hampered by its dependence on states, a singular reliance on ‘managerial’ approaches to enforcement, inflexible declarations of emergency, the absence of regularized systems for inter-regime collaboration, and common bureaucratic pathologies.


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


Abstract: In this essay, I argue that the World Health Organization (WHO) has not been equipped with the necessary authority to adequately fulfill its mission. The WHO was built on the mistaken assumption that attaining adequate global health is a matter of high-level coordination. However, the challenge of global health governance is, crucially, also one of complex political cooperation. I distinguish between different types of cooperation problems
faced by the WHO and explain why achieving global health calls for intrusive powers by a
governing authority—powers that the WHO does not enjoy.


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

Link to full text book on open access

Abstract: The UN World Health Organisation (WHO) is the most important international actor when it comes to coordination in the fight against contagious diseases. This article presents the International Health Regulations (2005) which constitute the WHO’s legal basis for coordinating the work to counter epidemics, it identifies serious weaknesses in the International Health Regulations (2005), and it points to solutions for remedying these weaknesses. The article argues that the COVID-19 pandemic provides a warning bell that is too loud to be ignored, and that this warning bell reminds us that it is high time to prepare ourselves against those transmittable diseases that will hit us in the future. In this respect we must ensure that the WHO is much better equipped to lead this fight than what is the case today.


Introduction: The rapid spread of, and devastation caused by, Covid-19 worldwide reflects not only its viral properties, but the dichotomy between a globalised world profoundly connected by trade and travel and the absence of global solidarity and coordination in the response to the pandemic. Challenging a rising disengagement from multilateral governance, the UN Secretary General, the World Health Organisation (WHO), and the UN Committee on Economic, Social and Cultural Rights (CESCR) have all called for global solidarity and international assistance and cooperation to be at the heart of the Covid-19 response. In this paper, we explore what this means for global health, giving particular attention to two core components of global health law that provide legally binding obligations regarding Covid-19: the commitments to global governance under the International Health Regulations (IHR) and obligations of international assistance and cooperation towards the realisation of economic, social and cultural rights, including the right to health, under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Situating the global pandemic response in the context of the contemporaneous decline of multilateralism, our article takes a critical look at the international institutions and frameworks and their role during pandemic responses, and the imperative of a more cosmopolitan approach to global governance, embracing solidarity and international cooperation in a way that serves low-income countries and rights holders everywhere.

*Abstract*: The pandemic of ‘severe acute respiratory syndrome coronavirus 2’ (SARS-CoV-2) has raised unprecedented challenges for most international legal and policy regimes and we cannot yet foresee its long-term consequences. The legal and institutional regime to prevent and control the international spread of disease, based on the World Health Organization and the International Health Regulations (IHR 2005) has also been severely tested. Critics have challenged WHO’s apparent politicization and the ineffectiveness of the IHR 2005 as a tool to coordinate the international response to covid-19. The IHR 2005 have codified the operational model of the who Secretariat at the time of their revision, but the assumptions about who’s epistemic authority and the willingness of states parties to conform to who’s lead have proven overoptimistic. Still, addressing some of the major weaknesses of the IHR 2005 could give them renewed momentum and nudge states towards a more coordinated and effective response to epidemics.


*Abstract*: Three months since the World Health Organization (WHO) declared the outbreak of COVID-19 as a pandemic, the health crisis has wreaked havoc on people’s lives and livelihoods across the globe. Can state responsibility be apportioned for the pandemic, under the current international legal system? What would the elements of such responsibility be? This brief explores the concept of “state responsibility” under public international law and examines whether China—ground-zero of the pandemic—can be made legally responsible. The brief studies practical cases to assess how principles of international law have previously been applied with respect to state responsibility.

Extract from Introduction: The international community already benefits from a suitable - if patchy - international legal and policy framework laying down States’ duties to act diligently in preventing, halting and remedying harmful cyber operations against systems and infrastructures which are essential during health crises. States must implement those obligations, inter alia, by adopting measures aiming at: establishing an adequate national legal framework; monitoring cyber threats; enhancing the security and resilience of relevant systems and infrastructure; engaging in constructive international cooperation and dialogue. By behaving diligently in cyberspace, States will more likely be able to contain the spread of Covid-19, prevent further harm and pursue an effective recovery from the outbreak.


Abstract: While disease outbreaks remain to a certain extent unforeseeable, international law provides a comprehensive legal framework requiring States to prevent their harmful consequences, effectively respond to ensuing health emergencies, and cooperate in achieving those aims. This contribution shows that, within this framework, many rules take the form of ‘due diligence’ obligations. Obligations of due diligence, albeit inherently flexible to accommodate different capabilities and circumstances, are binding on States. They impose a duty to act according to a standard of ‘good governance’: a State must employ its best efforts to realise certain common goals. At least five key sets of rules establishing due diligence duties are relevant to the COVID-19 outbreak: a) the ‘no-harm’ principle; b) international disaster law; c) the International Health Regulations; d) international human rights law; and e) international humanitarian law. We preliminarily identify some of the actions required from States to prevent new outbreaks and respond to the pandemic, whilst assessing compliance with applicable rules. We conclude that hard lessons learned during the current pandemic should spur more decisive action to prevent and address future public health emergencies.
Durrheim, David, Lawrence O Gostin, and Keymanthri Moodley, ‘When Does a Major Outbreak Become a Public Health Emergency of International Concern’ The Lancet Infectious Diseases (Comment Online First, 19 May, 2020)

*Extract from Introduction*: Could the pandemic of the century have been averted? The process by which WHO decides whether to declare a Public Health Emergency of International Concern (PHEIC) under the International Health Regulations has drawn criticism.


*Abstract*: On March 11, 2020, the World Health Organization (WHO) declared coronavirus (COVID-19) ‘a global pandemic’. It infected nearly 5,568,271 people all over the world and killed more than 350,754 persons from 187 countries to date. The numbers are increasing, and the situation is becoming extremely dangerous. Accordingly, it is only logical to consider the International Health Rules (IHR) to which the largest number of States are subject. These rules should guarantee ways to protect peoples from this pandemic, considering its tremendous spread across borders. Thus, this paper will tackle the enforcement of the IHR and its present and future role in this regard.

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-democratrics, 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.


Abstract: The disproportionate impact of COVID-19 on communities of color in the United States and immense vulnerabilities in lower-income countries has revealed a global health reality that is often overshadowed by decades of progress in overall global health, with new lows in child and maternal deaths every year, more people with HIV receiving access to lifesaving anti-retroviral therapy, and rising life expectancies. That reality is one of vast national and global inequalities, with the lived experiences of members of marginalized populations far removed from laudatory health headlines. Here, we propose an ambitious agenda to bridge the gap between progress in global health and the realities of vast swaths of the world’s people. These proposals could comprise part of a new post-COVID-19 global health architecture to prepare the world for the next pandemic and protect even the poorest people in the poorest countries. We offer three ideas that, collectively, would span from international law to domestic law and policy to grassroots empowerment: a Framework Convention on Global Health, health equity programs of action, and a Right to Health Capacity Fund. A Framework Convention on Global Health would be a global treaty based in the right to health and aimed at national and global health equity, creating a missing regime of accountability for the right to health. It would take the right to health to the next level, bringing specificity to presently vague human rights standards and providing concrete tools to achieve them. Health equity programs of action would be systemic, systematic, and inclusive approaches to address health inequities that each marginalized population experiences, across the determinants of health. And a Right to Health Capacity Fund would empower right to health advocacy and advance equity, accountability, and participation by providing grants to civil society organizations advocating for the right to health and by supporting accountability and participation mechanisms. If brought to fruition, these proposals, which would interact with and reinforce with one another, would have a
transformational impact on global health, greatly reducing health inequities – leaving no one behind in health in both ordinary and extraordinary times.


Abstract: From the time China reported a novel coronavirus to the World Health Organization (WHO) on December 31, 2019, it took barely 4 months to become a pandemic, killing hundreds of thousands, and growing daily. It is now clear that the novel severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) had been circulating in Wuhan, China, for weeks before China reported it to the WHO, and that authorities hid information. China maintained SARS-CoV-2 was not readily transmissible between humans. The WHO published China’s data, but without independently verifying their accuracy. President Trump subsequently blamed the WHO for its slow and ‘China-centric’ response. On April 14, 2020, he announced a suspension of US voluntary contributions to the agency. Although the WHO was unable to verify the Chinese data, it was proactive, including widely sharing the genomic sequencing of the virus with international scientists. On January 30, 2020, the WHO declared coronavirus disease 2019 (COVID-19) a global health emergency, urging rigorous containment including testing, contract tracing, and quarantine. Broad criticism of the organization is unfounded, and is particularly damaging because the pandemic is poised to deeply affect sub-Saharan Africa. That said, legitimate concerns about the WHO include its reluctance to insist China allow a robust WHO team on the ground and its praising of China’s transparency. The crisis now unfolding could also become a historic opportunity to strengthen the WHO. Reforms must start with recognizing the global public good achieved by the WHO.


Extract: We are facing a once-in-a-century health emergency, with WHO under attack as never before. But out of a crisis can come an historic opportunity to strengthen WHO to become the health agency the world desperately needs. What might WHO reform look like if we truly want to empower the Organization, as we should? That reform should address the structural
problems that put WHO in the crossfires of geopolitical disputes and force it to appeal to countries' political interests instead of the best scientific evidence. First, it is important to consider how, and why, COVID-19 has become so politicized and divisive.


Introduction: On May 29, 2020, President Donald Trump announced the USA would sever its relationship with WHO and redirect funds to US global health priorities. On July 6, 2020, the US administration officially notified UN Secretary-General António Guterres of its intention to withdraw from WHO membership. This notification coincides with record daily increases in COVID-19 cases worldwide and rising infections in more than three-quarters of the US states. In response, 750 leaders from academia, science, and law have urged the US Congress to block the president’s action.

The US Congress, the courts, and the public all have the power to block this reckless decision. The USA entered WHO membership through a 1948 joint resolution passed by both houses of Congress and this resolution has been supported by successive administrations. Former President Harry Truman explicitly referenced that resolution as his legal basis for joining WHO. The current US administration's unilateral action notifying the UN that the USA is withdrawing violates US law because it does not have express approval of Congress to leave WHO. A Supreme Court precedent has made clear that “When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.”

Note: the Letter to Congress referred to in this article is ‘Letter to Congress on WHO Withdrawal from Public Health, Law and International Relations Leaders’ (30 June, 2020), in which 750 scholars and experts in global public health, U.S. constitutional law, and international law and relations wrote to Congress in opposition to U.S. withdrawal from WHO.

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.


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


Abstract: The COVID-19 pandemic has presented a global health crisis unlike any seen in the seventy-five years since the United Nations and the World Health Organization were formed—"one that is killing people, spreading human suffering, and upending people's lives. But this is much more than a health crisis. It is a human crisis. The coronavirus disease (COVID-19) is
attacking societies at their core. It is therefore a crucial point around which to focus the
capability of national and global institutions to address this essential threat to human health and
life. Although the human right to the highest attainable standard of health was formally
established with the adoption of the Constitution of the World Health Organization (WHO) in
1946 (entering into force in 1948), the field of global health law, oriented to deal with threats
like COVID-19, is much younger. For many decades, WHO's implementation of its mandate was
limited to technical advice on measures that states (especially developing states) should adopt
to address individual and public health, as well as a successful campaign commencing in 1967
to address first smallpox and then additional vaccine-preventable diseases in children, which
has now expanded even further. In the early 2000s, the World Health Assembly (WHA), the
governing body of WHO, revised the International Health Regulations. These revisions gave
WHO broader authority to fight disease outbreaks and other public health events of
international concern. The WHA also adopted the Framework Convention on Tobacco Control
the first use of WHO's Article 19 authority to conclude public health treaties. COVID-19 has
challenged the sufficiency of even these significant global efforts.

Halabi, Sam and Kumanan Wilson, ‘The Plausibility and Resolvability of Legal Claims Against China and
WHO under the International Health Regulations (2005)’ in Flood, Colleen et al, Vulnerable: The Law,
Policy and Ethics of COVID-19 (University of Ottawa Press, 2020) 533

Abstract: Since the declaration of a public health emergency of international concern by the
World Health Organization on January 30, 2020, accusations have been levelled against both the
World Health Organization (WHO) and the People’s Republic of China (PRC) for failures to
adequately and effectively notify the world about the COVID-19 threat. These accusations have
been followed by calls for international sanctions, withdrawal of contributions to WHO’s work,
and multilateral calls for investigations into the pandemic’s origins. Against a backdrop of
increasingly bellicose rhetoric from governments, this chapter sets forth the most
straightforward legal framework for resolving disputes about PRC and WHO actions: the
International Health Regulations (2005). All disputing parties are members of the agreement,
which provides specific mechanisms for dispute resolution. The chapter carefully assembles the
known timeline from the outbreak of the novel coronavirus in Wuhan, PRC, to the PRC’s
notification to WHO, to actions taken thereafter. It identifies the possible grounds for legal complaints, and analyzes the legal alternatives for resolution.


Abstract: Do countries have obligations under public international law to prevent and contain a disease and to help other countries during pandemics? COVID-19 became an international pandemic that affected every country and threatened global economic collapse. International Human Rights law recognizes a right to health and contains obligations but there lacks a sufficient enforcement mechanism. Pandemics are analogous to war, therefore the Responsibility to Protect (R2P) can help. Used to protect from atrocities of humankind, R2P is not just a responsibility to protect from the worst that humankind has to offer but from the worst that can be offered to humankind.


Abstract: This chapter presents a critical analysis of the international law and institutions responsible for ensuring global health security. In 2005, the members of the World Health Organization adopted a thoroughly revised set of International Health Regulations, establishing an innovative and binding legal framework for declaring and responding to global health emergencies. At the heart of the Regulations was a particular conception of global health ‘security,’ which emphasized the early identification of health threats, and a coordinated global response that avoided undue interference with trade, travel, or human rights. In practice, the WHO has struggled to live up to these ideals, as it is unable to ensure that governments provide accurate information about disease outbreaks or to prevent unduly harsh responses when disease outbreaks are publicized. At the same time, the WHO has struggled to resolve the tension between expert advice and political discretion that lies at the heart of the Regulations. And it has faced competition from other institutions involved in pandemic response and from alternative normative visions of global health security. This chapter excavates these key tensions and identifies directions for further research and reflection. The aftermath of the COVID-19
pandemic will provide an unprecedented opportunity to rethink the foundations of the international regime for global health security. This rethinking requires a clear understanding of the existing legal and institutional framework, and of the the lessons already learned from previous crises.


Abstract: This article studies the impact of COVID-19 on armed conflict. The pandemic has significant health, economic and political effects. These can change the grievances and opportunity structures relevant for armed conflicts to either increase or decrease conflict risks. I analyse empirical evidence from Afghanistan, Colombia, India, Iraq, Libya, Pakistan, the Philippines, Thailand and Yemen from the first four months of 2020. Results suggest that COVID-19 provides little opportunities for health diplomacy and cooperation, but it also has not yet driven grievances to a level where they became relevant for armed conflicts. Three countries have encountered temporary declines in armed conflicts, mostly due to strategic decisions by armed groups to account for impeded logistics and increase their popular support. Armed conflict levels have increased in five countries, with parties exploiting either state weakness or a lack of (international) attention related to COVID-19. This is a worrisome trend given the tremendous impacts of armed conflict on human security and the capabilities of countries to deal with health emergencies.


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 of 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.


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.


Abstract: This article addresses the ecology and functioning of the World Health Organization in a time of crisis, zooming in on the pressures on both the organization and its leadership generated by the circumstance that the organization cannot avoid allocating costs and benefits when taking decisions. The article argues that the covid-19 crisis illustrates how international organizations generally and the who in particular are subjected to conflicting demands, and how this impacts on the role of decision-makers. The latter, it transpires, need to display considerable practical wisdom.

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.


Abstract: This article explores the responsibility of military or civilian superiors in international criminal law for their failure to act in relation to a potentially lethal virus epidemic or pandemic. In this direction, two different angles of the issue are discussed. The first focuses on the responsibility of individuals in positions of power for their failure to prevent the spread of the virus or provide adequate health support to an epidemic or pandemic affected population, when this population is used as a target group for the commission of crimes against humanity, war crimes or even genocide. The second refers to the responsibility of these superiors for their failure to prevent their subordinates to use such an epidemic or pandemic as a mean to commit crimes against humanity or war crimes. It is argued that, in order for superior responsibility to be attributed in these circumstances, a careful consideration on the theory of omission and the nature of superior responsibility is required.
Abstract: The most important natural resource on the planet earth is air because people, animals and plants (vegetation) need to breathe in clean air that is not polluted in order to be alive. Breathing is a vital natural process which is called respiration. In the process of respiration, also known as ‘cellular respiration’, a living subject or thing takes in oxygen from the air and expels carbon dioxide (CO2) as a waste product. Therefore, if the respiration of ambient air is intoxicated by the gaseous or chemical substances produced by air pollution (PM 10, 2.5, or 0.5), the lives of people, animals and plants, will be in serious danger. The environment, structures and the ecosystem will also suffer destruction and depletion of the ozone layer (effects of the ozone hole). This Article strives to scientifically investigate, analyse and demonstrate that the actual public international law rules put in place have not substantively provisioned the remedies and constitutional or treaty mechanisms which should tackle air pollution effectively. Legal Scholar will draw on the public international law instruments of this research question in order to make a preliminary proposed reform that should remedy the devastating effects of air pollution in the World. The Article envisages to substantiate on how air pollution has contributed in increasing the number of deaths on the coronavirus-19 patients around the globe. The study moves on to advice COVID-19 victims on the tortious liability actions they could engage against their national Governments, if they can substantiate that, air pollution aggravated their COVID-19 situations, which injuriously caused them any substantiated loss or harm. Researcher will move on with his conclusion by inciting Nation-States and the United Nations Organizations, to study the reform he has proposed in this introductory Article and make use of such. The continuation of the greater part of the project will comparatively analyse and investigate on how the national and public international law rules of air pollution countries like France, Britain, the USA, China and India regulate air pollution? The complete project of which this Article is the first part, will be concluded through the presentation of a proposed public international law instrument that should effectively regulate air pollution. Such an instrument will be in the form of a model drafted international treaty of a jus cogens character. It will aim at drastically curbing air pollution and imposing compliance on all Members and non-
Members of the United Nations Organization (UNO), who have ratified or not the proposed reform, if adopted by the United Nation Organization (UNO).


Abstract: The global outbreak of COVID-19 has triggered governments around the world to take a series of health measures in response to the public health challenges that have arisen, as well as their corresponding social, economic, and political ramifications. The World Health Organization (hereinafter ‘WHO’) and its International Health Regulations (2005) (hereinafter ‘IHR (2005)’) play a pivotal role in providing a global governance framework to guide and coordinate governments through a series of substantive and procedural requirements. During the COVID-19 pandemic, however, some State Parties and the WHO Director-General have allegedly not acted in compliance with the IHR (2005), which may lead to disputes between State Parties or even between the WHO and State Parties. Yet the IHR (2005) seems to lack an adequate dispute settlement mechanism that facilitates peaceful resolution. This article therefore examines the multilayered dispute settlement mechanism under Article 56 of the IHR (2005), and explores the critical flaws of its institutional design. It further calls for the establishment of a Compliance and Accountability Committee via a minor revision of the IHR (2005) to actively monitor, evaluate, and issue Specific Comments on the practices of the State Parties and the WHO in terms of their conformity with the treaty. By adding this quasi-adjudicative branch to existing mechanisms, the Compliance and Accountability Committee offers an expeditious, proactive, and less costly channel to publicly name those whose measures are not in conformity with the IHR (2005) with detailed legal reasoning, creating a stronger compliance pull and a normative reference for dispute settlement. While the proposed institutional redesign is not and cannot be an alternative to existing dispute settlement mechanisms, it may supplement and reinvigorate ways in which to resolve disputes in an innovative manner.

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


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?

Meier, Benjamin Mason, Roojin Habibi and Y Tony Yang, ‘Travel Restrictions Violate International Law’ (2020) 367(6485) Science 1436

Abstract: From China’s lockdown of the city of Wuhan to U.S. restrictions on travelers from Europe to border closures across a widening range of countries, governments are increasingly seeking to limit freedom of movement in response to the coronavirus disease 2019 (COVID-19). These travel restrictions have slowed, but not halted, the spread of the pandemic. However, the necessity and benefits of this public health response are outweighed by its violation of international law. Under the International Health Regulations (2005) (IHR), binding on all World Health Organization (WHO) member states, health measures ‘shall not be more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives.’ Given the effectiveness of community-based public health measures such as social distancing and contact tracing, the necessity of travel bans must be weighed against less restrictive alternatives, increased global divisions, and violated IHR obligations.
Abstract: The COVID-19 pandemic has been accompanied by reprehensible cyber operations directed against medical facilities and capabilities, as well as by a flood of misinformation. Our goal in this article is to map out the various obligations of states under general international law and under human rights law with regard to malicious cyber and misinformation operations conducted by state and non-state actors during the pandemic. First, we consider cyber operations against health care facilities and capabilities, including public health activities operated by the government, and how such operations, when attributable to a state, can violate the sovereignty of other states, the prohibitions of intervention and the use of force, and the human rights of the affected individuals. Second, we perform a similar analysis with regard to state misinformation operations during the pandemic, especially those that directly or indirectly affect human life and health, whether such misinformation is targeting the state’s own population or those of third states. Finally, we turn to the positive obligations that states have to protect their populations from hostile cyber and misinformation operations, to the limits that human rights law imposes on efforts to combat misinformation, and to protective obligations towards third states and their populations. We argue that international law can play a robust role in addressing the COVID-19 pandemic. For the most part, the parameters of the relevant legal rules are reasonably clear. But significant areas of uncertainty remain. For instance, at least one state, wrongly in our view, rejects the existence of the general international law rule most likely to be breached by COVID-19-related cyber operations, sovereignty. Another major issue is the extraterritorial application of the human rights obligations to respect and protect the rights to life and health in the cyber context, which we examine in detail. It is difficult to find anything positive about this horrific global pandemic. However, perhaps it can help draw attention to the criticality of moving forward the international cyber law discourse among states much more quickly than has been the case to date. Many states have been cautious about proffering their interpretation of the applicable law, and to some extent rightfully so, but caution has consequences and can leave us normatively ill-prepared for the next crisis. Some states have condemned the COVID-19-related cyber operations, although seldom on the basis of international law as distinct from political norms of responsible state behavior. Hopefully, they will add legal granularity to future statements. But all states, human rights courts, human rights
monitoring bodies, the academy, the private sector and NGOs must take up the challenge presented by this tragic pandemic to move the law governing cyberspace in the right direction.


Abstract:

Introduction: Nine events have been assessed for potential declaration of a Public Health Emergency of International Concern (PHEIC). A PHEIC is defined as an extraordinary event that constitutes a public health risk to other states through international spread and requires a coordinated international response. The WHO DirectorGeneral convenes Emergency Committees (ECs) to provide their advice on whether an event constitutes a PHEIC. The EC rationales have been criticised for being nontransparent and contradictory to the International Health Regulations (IHR). This first comprehensive analysis of EC rationale provides recommendations to increase clarity of EC decisions which will strengthen the IHR and WHO’s legitimacy in future outbreaks.

Methods: 66 EC statements were reviewed from nine public health outbreaks of influenza A, Middle East respiratory syndrome coronavirus, polio, Ebola virus disease, Zika, yellow fever and coronavirus disease-2019. Statements were analysed to determine which of the three IHR criteria were noted as contributing towards the EC’s justification on whether to declare a PHEIC and what language was used to explain the decision.

Results: Interpretation of the criteria were often vague and applied inconsistently. ECs often failed to describe and justify which criteria had been satisfied.

Discussion: Guidelines must be developed for the standardised interpretation of IHR core criteria. The ECs must clearly identify and justify which criteria have contributed to their rationale for or against PHEIC declaration.

Conclusion: Striving for more consistency and transparency in EC justifications would benefit future deliberations and provide more understanding and support for the process.

Abstract: The COVID-19 and the lockdown of the UN Headquarters in New York brought the principal political organs of the United Nations to introduce unanimously new, extraordinary and exceptional procedures for voting, negotiating and deliberating, albeit resistances and perplexities emerged. The General Assembly silence procedure proved to be successful and secret ballot elections took place. However, e-voting encountered difficulties and the silence procedure has serious political and legal flaws since States’ participation in negotiations is hampered. The Security Council seems to be the most heavily affected by the situation and is unable to take any substantive position on what is happening. The progress registered recently on Security Council working methods could be another victim of the pandemic.

Okediya, Peter, ‘China Coronavirus Bioweapon Conspiracy Theory: The Application of International Humanitarian Law by States’ (SSRN Scholarly Paper ID 3614166, 18 May 2020)

Abstract: Rumors are circulating about China’s deliberate plan to make the Coronavirus a bioweapon. These rumors cannot be discountenanced because the science and technologies designed for benign purposes can also be misused. The response of IHL to an unproven rumor is mainly conducting investigations to ascertain the validity of the rumors. However, if it later turned out China deliberately contemplated the Coronavirus to be a biological weapon as an attack against any country, the response of IHL lies in various statutory instruments and retaliatory actions from other States. More options available to individuals and States are explained in this publication.


Abstract: This contribution considers how adjudicators could determine the end of the SARS-Cov-2 pandemic. Considerable work examines the beginning and existence of pandemics and emergencies. By contrast, when either of these two phenomena end remains underexplored – creating legal uncertainty. This article reviews how pandemics as biological and social events,
end, considers how international bodies have approached the end of emergencies, and assesses what this might mean for adjudicators deciding on the end of the SARS-Cov-2 pandemic and related public health emergency.


Abstract: Over 168 million people across 50 countries are estimated to need humanitarian assistance in 2020 [1]. Response to epidemics in complex humanitarian crises—such as the recent cholera epidemic in Yemen and the Ebola epidemic in the Democratic Republic of Congo—is a global health challenge of increasing scale [2]. The thousands of Yemeni and Congolese who have died in these years-long epidemics demonstrate the difficulty of combatting even well-known pathogens in humanitarian settings. The novel severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2) may represent a still greater threat to those in complex humanitarian crises, which lack the infrastructure, support, and health systems to mount a comprehensive response. Poor governance, public distrust, and political violence may further undermine interventions in these settings.

Rourke, Michelle et al, ‘Policy Opportunities to Enhance Sharing for Pandemic Research’ (2020) 368 (6492) Science 716-718

Extract from Introduction: COVID-19 reveals gaps in international law that can inhibit timely sharing of information, samples, and sequences.... We examine the sharing of public health information, biological samples, and GSD in the still early days of the COVID-19 pandemic, identify barriers to sharing under the current international legal system, and propose legal and policy reforms needed to enhance international scientific cooperation.

Abstract: Reflecting on the covid-19 infodemic, this paper identifies different dimensions of information disorder associated with the pandemic, examines how online platform governance has been evolving in response, and reflects on what the crisis reveals about the relationship between online platforms, international law, and the prospect of regulation. The paper argues that online platforms are intermediary fiduciaries of the international public good, and for this reason regulation should be informed by relevant standards that apply to fiduciary relationships.

Schmitt, M, ‘COVID-19 and International Cyber Law’ Directions: Cyber Digital Europe (1 July 2020)

Abstract: States and non-state actors are turning to cyberspace to exploit the COVID-19 pandemic. Many of their operations violate such international law rules as the requirement to respect the sovereignty of other states, the prohibitions on intervention and the use of force, and international human rights law obligations and prohibitions.


Link to full text book on open access


Abstract: Even before COVID19 struck, we were going through a remarkable moment of political, economic, and social instability. We see disruption of many international institutions, both formal and informal, and a sea change in national politics. The United States tries to renegotiate the terms of its engagement with the rest of the world; the European Union’s structural flaws become manifest, with Brexit only the first crack; the domestic politics of many great states turn towards populism and the obliteration of historically significant political
parties; authoritarianism seems on the rise, and liberal democracy waning, in those parts of the world that had seemed transformed in or around the annus mirabilis of 1989; and the dark side of technological innovation manifests itself in the privatization of organized violence, unsustainable inequality, and the erasure of privacy. Then COVID-19 came, with its dire if still not fully realized consequences. The liberal democratic nation-state, supposedly the culmination of a Hegelian process that ended history, is listing, taking on water, and perhaps doomed.

What does this have to do with sovereignty? The present moment invites yet another reconsideration of the liberal democratic nation-state as the nexus of sovereignty. Can we talk about sovereignty without committing to a political or historical theory about particular kinds of social organization? If the liberal democratic nation-state is on the way out, what becomes of sovereignty?

This article argues that we cannot begin to make sense of the present series of crises in contemporary domestic and international politics without accepting the flexibility and elasticity of sovereignty. Localities, substates, nation-states, and the international order all may exercise some form of sovereignty. Sovereignty is a relationship, not a fundamental concept on which to build a general theory of political economy.

My argument is fairly straightforward. First, I lay out the conceptual argument for divorcing the concept of sovereignty from the modern idea of a nation-state. Second, I posit, without spending a lot of time trying to prove, that the most significant force driving economic, political, and social change over the past fifty years is the rise of the knowledge economy. The immediate crisis associated with COVID-19 seems to have amplified this process, although we won’t know for sure for some time. Third, I sketch out the effects of that rise on different sites of sovereignty, local, substate, national, and international. These effects, I argue, create both synergies and antagonisms that play out differently at each level. Finally, I speculate about different scenarios that might result from the inherent tensions within and among these sites of sovereignty.

Introduction: Amid frenzied national responses to COVID-19, the world could soon reach a critical juncture to revisit and strengthen the International Health Regulations (IHR), the multilateral instrument that governs how 196 states and WHO collectively address the global spread of disease. In many countries, IHR obligations that are vital to an effective pandemic response remain unfulfilled, and the instrument has been largely side-lined in the COVID-19 pandemic, the largest global health crisis in a century. It is time to reimagine the IHR as an instrument that will compel global solidarity and national action against the threat of emerging and re-emerging pathogens. We call on state parties to reform the IHR to improve supervision, international assistance, dispute resolution, and overall textual clarity.


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.

Abstract: The coronavirus (SARS-CoV-2) pandemic is currently raging throughout the world. The ensuing crisis has acquired a multidimensional nature, affecting all levels of society. Measures adopted by domestic authorities have included a broad spectrum of restrictions: from general alerts to mandatory quarantines and isolations of individuals, to blanket travel bans and cordonning-off of cities and, in some cases, countries. Many governments have declared states of emergency, thereby assuming exceptional powers. This dire crisis leads to our core questions: What are the relevant obligations, powers and procedures under public international law? Have they been complied with? What role, if any, has international law, via its institutions, played so far? The World Health Organization, a specialized agency of the United Nations, is the international institution with a core mandate in issues of global health. Moreover, the International Health Regulations (IHR) is the main legally binding instrument laying down rules for the cross-border spread of disease. Against this backdrop, in order to address the core questions, this paper provides an overview of the IHR in light of current issues and disputes. The paper then evaluates those issues and disputes under other regimes of international law, such as human rights, trade law, peace and security law, and the law of development finance. Lastly, the paper offers conclusions by way of answers to the research questions.


Abstract: Concerns that have been raised about states violating the International Health Regulations (2005) by imposing travel restrictions are valid, and some states have not complied with their obligations under those Regulations. Given the unprecedented situation and uncertainty about the best course of action, we should not assume that all travel restrictions violate international law, even though they were not recommended by the WHO. Some travel restrictions are more likely to be justified than others, depending on a number of factors, including how they are designed and local capacity to implement less restrictive measures. The WHO still has an important role to play in providing guidance to states as they modify or lift travel restrictions. In order for the international framework to be more effective, the WHO
should have more flexibility to make early travel recommendations and develop protocols to facilitate the reopening of borders.


Introduction: The Covid-19 pandemic has raised questions of international responsibility of States; in particular, whether States can be internationally responsible for the failure to prevent and the spread of the outbreak internally and externally across international borders; and other matters pertaining to international health law. Also, as highlighted in earlier contributions in this publication, the Covid-19 pandemic raises tensions and questions in domestic and international law. These draw to light questions of State responsibility for acts or omissions by States for various conduct that may come into question. This is particularly so when States are unable to perform obligations owed under international law to other States, international organizations or individuals, as a result of their domestic policies and actions to deal with the Covid-19 pandemic.

This contribution provides an overview of the rules of international law concerning the responsibility of States for their international wrongful acts, and how these rules are relevant in the Covid-19 pandemic. The international law of State responsibility, as formulated by the International Law Commission in the 2001 Articles on the responsibility depicts the general conditions under international law for a State to be responsible for wrongful acts and the legal consequences that flow by operation of law. These general conditions are understood as the secondary rules of State responsibility, which result from the breach of primary rules, i.e. rules of customary international law or treaty law that provide international obligations on States.
International Economic Law (including Trade & Investment Law)
This section includes literature on sovereign debt.


Abstract: International Investment Law exists to guide the business relationship between States globally. Even though there is no one single document that says International Investment Law, Bilateral treaties between States exist to guide this relationship and place it within the bounds of Law. The expression of treaties and conventions relating to international investment have revealed the objectives of the Law to be to protect foreign investors, grant protection to attract foreign investment, and foster economic development. It therefore becomes imperative to explain in simple terms to private investors what international investment law entails.


Abstract: Countries with large debts stocks are vulnerable to the vagaries of the markets. Confidence crises can arise out of nowhere, constricting access to the markets. Hence, the question arises as to whether these countries should put in place mechanisms that will help them better prepare for the possibility of crisis. In effect, the choice is whether to buy insurance. The cost of buying such insurance is that the possibility that markets will see the sovereign’s proactive steps to protect against a crisis not as an indication of prudent governance but rather as an indicator that a crisis is imminent. In this article, we use the case of a Euro area country (Italy) with a large debt stock and that has been hit particularly hard by Covid-19 to set forth its options, as of 2020, to anticipate a possible future debt restructuring. It can: do nothing, do a little; or do something substantial.
Augustin, Patrick et al, ‘In Sickness and in Debt: The COVID-19 Impact on Sovereign Credit Risk’ (SSRN Scholarly Paper ID 3613432, 17 July 2020)

Abstract: The COVID-19 pandemic provides a unique setting in which to evaluate the importance of a country’s fiscal capacity in explaining the relation between economic growth shocks and sovereign default risk. For a sample of 30 developed countries, we find a positive and significant sensitivity of sovereign default risk to the intensity of the virus’ spread for fiscally constrained governments. Supporting the fiscal channel, we confirm the results for Eurozone countries and U.S. states, for which monetary policy can be held constant. Our analysis suggests that financial markets penalize sovereigns with low fiscal space, thereby impairing their resilience to external shocks.


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


Introduction: On 17 March 2020, the President of the European Council, Charles Michel, and the President of the European Commission (hereinafter, Commission), Ursula von der Leyen, announced further European Union (EU) actions in response to the COVID-19 outbreak. Since the pandemic reached Europe, the EU has adopted a number of trade-related measures, including the issuance of guidelines for national border management, as well as export authorisation requirements. On 14 March 2020, the Commission adopted “Commission Implementing Regulation (EU) 2020/402 of 14 March 2020 making the exportation of certain products subject to the production of an export authorisation”, temporarily restricting exports of “personal protective equipment” to destinations outside of the EU. On 14 April 2020, the
Commission announced that it would narrow down export authorisation requirements to protective masks only and extend the geographical and humanitarian exemptions. Governments around the world have been implementing trade-related measures in response to the COVID-19 pandemic, some trade restrictive, but a number of countries have also called for the elimination of export controls and restrictions on essential goods. As the greater implications of the COVID-19 pandemic on trade are still difficult to assess, the emergency measures taken by affected countries already require legal scrutiny. At the same time, it must be noted that, as noted above for the EU measures, measures around the world are subject to change dynamically in view of the evolution of the pandemic.

Cattelan, Valentino, ‘Sacred Euro: Sovereign Debt(s) and EU Bare Credit in the Corona Crisis’ (SSRN Scholarly Paper ID 3592382, 4 May 2020)

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


Abstract: This Article explores the role of investment law and investment arbitration in (and after) the COVID-19 crisis in the context of transnational health policy. This Article discusses a technical possibility (COVID-19 measures can give rise to investor-state disputes) and explains why most of these claims will probably not be successful (most COVID-19 measures are covered by international defenses). Through a comprehensive survey of measures adopted across 50 jurisdictions, the Article shows that most of these measures are in line with the World Health Organization regulations. Furthermore, these domestic measures could be subject to a number of international law exceptions, allowing States to justify the potential violations. Nevertheless,
the Article identifies a minority of measures that may have the potential to lead to successful claims. Paradoxically, the most problematic measures (such as taxation measures and sovereign debt increase) only indirectly address the pandemic.


Link to full text book on open access


Abstract: The COVID-19 pandemic has revealed the frailties of economic relations across different aspects of the globalized network. From the national, through the sub-regional, to the regional to the international levels, questions have arisen regarding the seemingly interconnected, yet fractured socio-economic relationships in our modern societies. In this essay we shall focus on the trade and investment dimension of South-South relations that have been affected by the pandemic. In doing so, we shall reveal the (often overlooked or taken for granted) linkages with race in South-South relations. We identify the way(s) in which the Covid-19 pandemic has made obvious the latent tensions, hostilities and structural inequalities that exist in South-South cooperation. We argue that three possible narratives may emerge in a post-COVID-19 era for South-South trade and investment cooperation and explore what each narrative might mean for the future of South-South relations.


Abstract: ‘This report--the eleventh and final in a series that began a year and half ago--briefly considers what in the author’s view are the most significant of the external factors that could have a significant impact on whether the USMCA, now that it has entered into force, will achieve the levels of success in stimulating North American investment, jobs and trade that the three
Parties hope for. These important factors include the U.S. Section 232 (“national security”) tariffs on steel and aluminum; the ongoing and expanding United States-China trade war; the emasculation by the United States of the World Trade Organization’s dispute settlement system; the somewhat unpredictable nature of the U.S. and Mexican presidents; and the impact of the coronavirus pandemic. All of these add to the challenges facing the three governments and private stakeholders.’


Abstract: The ongoing global pandemic has forced States to implement a variety of emergency measures, some of which could potentially lead to investment claims and, under such circumstances, States may rely on customary law defenses. Particularly relevant for purposes of a global pandemic scenario are the defenses based on force majeure, distress and necessity. This article will analyze the specific requirements for each of the defenses, it will briefly explain their constitutive elements, review the known cases that have considered them, and thus discern whether they would be appropriate for the possible challenges faced by States.

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

Note: this paper introduces a symposium. The symposium papers will be published in a forthcoming issue of AfronomicsLaw.

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

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

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


Extract from Introduction: International trade is also one of the potential victims of the current pandemic. As it is too early to assess the real impact of the various processes that are taking place now, the objective of this text is limited. Instead of identifying and analysing the probabilities of different scenarios, the intention is to highlight one possible course of action that seems to be emerging in the field. To this end, the two following sections discuss the short- and long-term consequences of the current pandemic for international trade. The final section offers some brief conclusions.


Extract: An age-old question in the world of securities disclosure is whether there is value in mandating that issuers disclose key pieces of information about themselves to the investing public or whether these issuers will voluntarily disclose the optimal amount of information as a function of reputational pressures...

Yet, there is no clear answer to the core question of whether issuers will voluntarily disclose useful information that only they know to investors at key times (eg when investors are being asked to buy securities) or whether a mandatory system with penalties and monitoring is necessary to induce this disclosure.

The current COVID-19 pandemic may present an opportunity to examine this question in the sovereign issuer context. As a result of a strange confluence of factors, there seems to little negative effect of this global pandemic on the international sovereign debt market. If anything, this market is booming more than ever with countries across the range ratings
quality being able to borrow billions of dollars at rates comparable to pre-COVID times. Important for purposes of the question we have raised, each and every one of these countries has been impacted by the pandemic differently. And, more important, each of these countries is taking different steps to tackle the crisis and has information as to what is going on at the local level that global investors likely know little about.


Abstract: Measures adopted to curtail the spread of COVID-19 have led to a sharp contraction of the global economy and an even larger decline in global trade, with significant implications on the livelihoods of people in Africa. Despite the relatively low number of cases, the region’s economy would be hard hit due to its high reliance on trade, heavy dependence on commodities, a fragile food system, and limited fiscal capacity to respond. This reinforces the region’s inherent vulnerabilities, posing risks of wiping out the gains made in poverty reduction. Countries that have been registering robust growth face rapid growth declines. The response calls for a regional and global coordination to scale up safety nets, facilitate flow of essential goods and ease the region’s debt burden to free some fiscal space. There is a need for active policies to support enterprises so that disruptions are not permanent. This requires coordinated effort between government, workers organizations, global lead firms as well as domestic firms. This may also provide opportunities to introduce reforms that would otherwise be considered sweeping. As they chart their operations, beyond the pandemic, countries should reconsider their industrial policies and firms need to rethink their strategies to address emerging uncertainties.

Komolafe, Oyin, ‘Global Epidemic: Coronavirus, the Law and the Economy’ (SSRN Scholarly Paper ID 3603153, 15 April 2020)

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


Abstract: The Basel IV accords that were introduced in late December 2017 was the first set of Basel accords that was not introduced against the backdrop of a global financial crisis. While Basel IV addresses most of the shortfalls of Basel III, it has failed to address the issue of risk-weights that are attached to sovereign debt, which is a significant shortcoming under the Basel Accords. This paper analyses the Basel accords, particularly in light of the economic impact of the novel coronavirus (‘COVID-19’) pandemic, which has proven to be surprise test on the resilience of the revamped Basel Accords.


Abstract: Trade policy has been an important part of the global response to Covid-19. In order to boost production and increase the supply of critical goods, countries have lowered tariff barriers, put export restrictions in place, and smoothed the path to issue compulsory licenses for patented medicines and medical devices. All of these measures touch on trade policy, and fall under the ambit of the World Trade Organisation (WTO). This raises the question: do the flexibilities built into WTO law give countries the policy space they need to take emergency measures during this health crisis? This short paper explains the WTO rules and their application to national trade measures in response to Covid-19 using the example of export restrictions. It finds that from a legal perspective, WTO rules are flexible enough to permit countries to deviate from their normal obligations during this time of crisis. However, from a justice perspective, these flexibilities will be far more useful for wealthy developed states than for those with less purchasing power and production capacity. Indeed, the flexibility built into WTO law may prove
ineffectual—and even detrimental—for poorer states, as it permits the wealthy the policy space to take measures in their own interest while leaving the less powerful without access to critical goods. The paper concludes that here, as elsewhere, the negative economic effects of Covid-19 will fall disproportionately on the poor and the vulnerable.


Abstract: The COVID-19 pandemic has caused severe disruptions not only to public health, but also to the global economy. In response, many States have enacted preventive control measures to curtail the spread of the virus, as well as rehabilitative measures aimed at protecting the economy. Due to the breadth, scope and (at present) uncertain duration of these measures, it is likely that these may result to investment claims from foreign investors whose investments have been severely affected. This Note will discuss one of the available defences to investment claims resulting from regulatory measures undertaken pursuant to public health, that of the doctrine of police powers. This doctrine recognises that reasonable governmental regulation does not result to compensable expropriation. This Note will further consider the challenges faced in the application of the police powers doctrine to the present pandemic situation.


Abstract: The unprecedented COVID-19 pandemic has drastically changed the world we live in, and exerted negative impacts on business activities, including international trade and investments. In order to flatten the rocketing curve of confirmed COVID-19 cases, countries have implemented preventive measures such as restricting international travel, suspending almost all kinds of businesses, and even nationalizing certain products (e.g., masks) from private enterprises. While the purpose of these government actions is legitimate and reasonable—namely to protect public health—these profound and unprecedented measures will adversely affect both domestic and foreign companies’ managements and businesses. Under the protection of the international investment agreement (hereinafter ‘IIA’), the affected foreign
investor is entitled to initiate the investment claim, asserting that the regulatory environment of the host state has been changed, or arguing that the host state is in breach of the commitments which have been made and constituted the foundation for the investments. And the host state might therefore be claimed to have failed to provide the fair and equitable treatment (hereinafter ‘FET’) required by the IIA. The tension between the host state’s COVID-19 measures and the foreign investors’ legitimate expectations hence arises. This article focuses on the legitimacy of host states’ COVID-19 measures and examines whether those measures, though creating regulatory changes in host states, impede foreign investors’ legitimate expectations and constitute a violation of FET under the IIA. Insomuch that the COVID-19 crisis seems to be unpredictable, this article argues that the protection of foreign investors’ legitimate expectations should not be unlimited, and the preventive measures implemented by host states should be respected, providing that the normative changes are in bona fide nature and proportionate. In addition, this article also proposes certain public health defenses which are available for host states to justify their COVID-19 measures and which should be considered by the arbitral tribunals. In short, it is hoped that the findings and analysis of this article can offer a different angle to understand the scope of the foreign investors’ legitimate expectations and more broadly, host states’ FET obligation in a time of pandemic.


Abstract: COVID-19 hit as the world was undergoing the most significant upheaval in the international trade regime since at least the creation of the World Trade Organization (WTO) in 1995. The pandemic has given urgency to a preexisting demand in the United States, Europe, and elsewhere for the localization of supply chains. When the crisis hit, many developed countries realized that their supply chains for critical medical supplies and pharmaceuticals were concentrated in China. When the pandemic temporarily halted production in China, developed countries faced significant shortages of medical supplies. As a result, approximately eighty nations restricted the export of such products.

This Article argues that modern trade agreements overly constrain the ability of states to regulate supply chains for critical products such as medical supplies. I make two primary points. First, critics of reshoring have argued that further trade liberalization is the best guarantee
against supply chain risks. To the contrary, I argue that modern free trade agreements (FTAs), the primary vehicle through which trade liberalization has proceeded since 1995, do little to encourage the diversification of supply chains and in some cases actually exacerbate supply chain risks, especially through loose rules of origin. Second, I argue that WTO rules constrain preventative regulation of supply chain risks designed to prevent a crisis, while providing exceptions for aggressive action only in the face of a crisis. WTO members are thus put to a choice. They can limit their attempts to preventatively regulate supply chain risks, waiting until a crisis occurs, or they can flout WTO rules. The former option risks more supply chain crises, while the latter option risks further undermining support for and adherence to the multilateral trading system. In this sense, trade law finds itself at a juncture similar to that faced by rules on the use of force two decades ago. Both sets of rules contain limited exceptions for preemptive action in the face of imminent threats. Just as nations like the United States felt that the imminence requirement did not give them enough flexibility to respond to modern threats in the use of force context, so too will nations chafe at the narrow exceptions for crisis-based supply chain regulation in the trade context.

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.


Abstract: The COVID-19 global health pandemic has led some 75 countries to restrict their exports of hundreds of products, ranging from antibiotics and face masks to medical ventilators. The cost of these measures, which lead to global shortages, will be counted in human lives. Yet the multilateral trade regime lacks effective legal disciplines on export restrictions. In response, scholars have pinned their hopes on the prospect of potential retaliation working as a deterrent. Are such hopes warranted? Early evidence suggests not: the threat of retaliation cannot effectively deter most export controls, because the most flagrant country users are also shielded by the very characteristics that render them prone to imposing export restraints in the first place. The empirical evidence indicates the prospect of retaliation has played no role in the decision to restrict exports by the world’s biggest exporters of essential medical goods. Yet autarky is unlikely to be a workable solution to assure domestic supply. I suggest that attempts at limiting market consolidation of essential goods may be one way of reducing the incentive to implement export controls in the first place.


Abstract: Both the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD) are forecasting dramatic falls in both global trade and investment, which parallel predicted falls in economic growth resulting from shutdowns and disruptions to global production chains that began in March 2020.

Abstract: Like several countries, the global pandemic, COVID-19, has hit India quite badly. In order to stop the spread of the disease, India has imposed a stringent national lockdown. It may adopt several other regulatory measures in future. This paper examines that if foreign investors bring Investor-State Dispute Settlement (hereinafter ‘ISDS’) claims against India under different bilateral investment treaties challenging Indian COVID-19 related regulatory measures as indirect expropriation, will India be able to defend its regulatory measures by invoking the police powers doctrine. The police powers doctrine is recognised by several ISDS tribunals. However, ISDS tribunals differ on the actual scope of this doctrine when assessed in relation to the effect a regulatory measure may have on foreign investment. This paper argues that while India can rely on the police powers doctrine, its actual working in a case will depend on arbitral discretion. To have a better chance at defending its COVID-19 related regulatory measures as part of State police powers doctrine, India should ensure that exercise of its regulatory measure is not excessive or disproportionate.


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.


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.


Abstract: Coronavirus Disease 2019 (COVID-19) is a newly discovered disease that has now become a global emergency, not just threatening the life and health of many, but also having significant adverse impact on the World Trade Organization (hereinafter ‘WTO’) legal order due to the response measures enacted by WTO members. However, many governments do not seem to consider the WTO dispute settlement system to be a viable forum for resolving disputes due to the new challenges posed by this epidemic. Based on the design of the dispute settlement system as seen today, this Article identifies a series of factors, including two benefits that the system can provide and four adverse issues that may undermine the system’s
effectiveness. This Article hopes that these factors will provide guidance to WTO members on whether to present a dispute to the WTO.


Abstract: As the global economy has become more integrated and increasingly complex, the need for a system that administers government default has become more and more apparent. The body of ‘sovereign debt law’ that has emerged to fill this need in the context of the Eurozone is an amalgamation of treaty obligations, domestic law constitutional principles, and tensions between state government and supranational government actors. Using a hypothetical Italian restructuring, this paper seeks to explore how these different bodies of law operate together to create a system that protects government function as opposed to guaranteeing creditor recovery. Further, this paper explores how an exogenous shock as the COVID-19 pandemic effects the analyses undertaken at various points in the sovereign debt legal framework. This analysis reveals a silver lining: although Italy has suffered horrible losses as the result of the COVID-19 pandemic, the effects of the pandemic will help mitigate the legal challenges faced by Italy in the course of a local-law restructuring effort and thus smooth the path to a successful post-COVID recovery.

International Arbitration


Abstract: Technological developments, especially digitization, artificial intelligence (AI), and blockchain technology, are currently disrupting the traditional format and conduct of arbitrations. Stakeholders in the arbitration market are exploring how new technologies and tools can be deployed to increase the efficiency and quality of the arbitration process. The COVID-19 pandemic is accelerating this trend. In this essay, we analyze the ‘Anatomy of an Arbitration’. We argue that, functionally, fully AI-powered arbitrations will be both technically feasible and should be permitted by the law at some point in the future. There is nothing in the
concept of an arbitration that requires human control, governance, or even input. We further argue that the existing legal framework for international commercial arbitrations, the ‘New York Convention’ (NYC) in particular, is capable of adapting to and accommodating fully AI-powered arbitrations. We anticipate significant regulatory competition between jurisdictions to promote technology-assisted or even fully AI-powered arbitrations, and we argue that this competition would be beneficial. In this competition, we expect that common law jurisdictions will enjoy an advantage: machine learning applications for legal decision-making can be developed more easily for jurisdictions in which case law plays a pivotal role.


Abstract: Many states are taking a variety of measures to cope with the unprecedented global threat arising from COVID-19. To the extent that these measures affect the interest of foreign investors, they could implicate various provisions of international investment agreements. In particular, the pandemic situation in 2020 raises the possibility of invoking national security exceptions clauses contained in recent investment agreements. Although it is still too early to judge, recent jurisprudence indicates that a bona fide measure to counter COVID-19 may constitute an instance to invoke security exceptions in investment agreements. At the same time, current security exceptions clauses are not detailed enough to deal with new types of national emergency such as pandemics. Nor have there been sufficient discussions so far to clarify and fine-tune the clauses. Keen attention having been paid to national security exceptions even before the pandemic is now signaling that the provision is likely to be invoked more actively and robustly in the investment context. Existing and future investment agreements need to revisit this provision to ensure it does not become a source of conflict or a carte blanche for treaty violations.

Abstract: Since January 2020, many national governments have implemented stringent measures to counteract the spread of COVID-19. An unintended side effect of these measures is the disruption to international arbitration proceedings, causing not only administrative and logistical complications, but also, in some cases, having substantive effects on the outcome of the case. In the midst of the restrictions imposed due to the global pandemic, tribunals and parties have been looking for ways to mitigate the disruption so that proceedings may continue, and disputes could be resolved in an efficient manner. In many cases, these alternative procedures and methods may well be an acceptable second choice. However, if the solutions are not tailored to the challenges presented by each arbitration, they may in fact present more issues than the problems they are attempting to solve. At minimum, it may create more inefficiencies and leave a mess for parties and tribunals to clean up after the dust settles. In more extreme cases, there may be a danger that parties may be deprived of a sufficient opportunity to be heard such that minimum due process requirements are not met. This article discusses the potential issues with respect to costs, efficiency, and due process arising from virtual or online hearings, documents-only proceedings and bifurcated proceedings.


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.

Shope, Mark, ‘The International Arbitral Institution Response to COVID-19 and Opportunities for Online Dispute Resolution’ (2020) 13(1) Contemporary Asia Arbitration Journal 67-84

Abstract: Although arbitral institutions have long provided for virtual interactions, the online dispute resolution dialogue has intensified due to the global COVID-19 situation. This reflection discusses arbitral institutional reactions to the global COVID-19 situation and specific arbitral institutional rules relating to virtual interactions, protocols, and other ODR standards.

Teramura, Nobumichi, Shahla F Ali and Anselmo Reyes, ‘Expanding Asia-Pacific Frontiers for International Dispute Resolution: Conclusions and Recommendations’ (University of Hong Kong Faculty of Law Research Paper No 2020/038, 1 July 2020)

Abstract: Asia’s emergence as a global economic powerhouse has corresponded with a prolonged upward trend in international commercial arbitration (ICA) cases involving Asian parties, as well as a belated expansion of investor-state dispute settlement (ISDS) arbitrations involving Asian states or investors. Further accelerating the eastward shift in international dispute resolution, various initiatives to improve support for ICA and ISDS have been taken and alternatives (such as international commercial courts and international commercial mediation) have been promoted. This book aimed to examine significant ‘new frontiers’ for Asia-Pacific cross-border business dispute resolution, focusing on major economies in East and South Asia and countries (such as Australia) that are closely linked economically and geographically. The principal questions posed were: (1) whether existing and new venues for ICA could improve their attractiveness through law reform, case law development, and other measures, despite worries about cost and delay; (2) whether emerging concerns about ISDS-backed investment treaty commitments would prompt Asian states to become rule-makers in international investment law, rather than be mere rule-takers; and (3) whether innovations in existing or new fields might assist the Asia-Pacific region to develop international dispute settlement further. The foregoing chapters have discussed these broad themes, focusing on developments in Australia, Japan, Hong Kong, China, India and Malaysia, while paying attention to broader
regional initiatives (such as China’s Belt and Road Initiative (BRI)) and recent international instruments (such as the Singapore Convention on Mediation (entering in force from 12 September 2020)). This concluding chapter highlights key findings in the individual chapters and identifies some challenges for the post COVID-19 era.


Abstract: COVID-19 had an immediate and significant impact on the practice of international arbitration. Nevertheless, arbitral institutions, arbitral tribunals, counsel and other participants learned quickly how to deal with this new challenge. The crucial question is whether there will be long-term impacts by these COVID-19 experiences on international arbitration even once this pandemic is over. The spontaneous and probably correct answer would be ‘Yes’. Most probably, more elements of a typical arbitration that were based on physical presence will from now on occur contactless, i.e. in virtual reality. However, it is not only helpful but also necessary to identify which elements of international arbitration could easily take place in virtual reality and for which elements physical presence is and remains desirable or maybe even indispensable. In the end, COVID-19 will most probably speed up processes aimed at more efficiency that had already commenced prior to the outbreak of COVID-19, but will not change the core elements of international arbitration, i.e. the search for impartial and independent and—hopefully in most cases fair and just—decision-making in cross-border disputes through a voluntary and flexible process.


Abstract: COVID-19 brought the world to a standstill, however arbitration is ‘business as usual’. This is also the expectation of the UK Courts and Tribunals Service (HMCTS) through the High Court’s decision in MillChris Developments Ltd v. Waters [2020] 4 WLUK 45. This article highlights the ‘business as usual’ approach adopted by the international arbitration community, in particular, institutional arbitrations carrying out remote hearings and meetings. A review of the Seoul Protocol on Video Conferencing in International Arbitration, the ICCA-NYC Bar-CPR

LABOUR LAW / EMPLOYMENT


Abstract: It has been now no wonder that labours are the propeller of the physical development of the earth in the form of blue collar and white collar labour. It includes all formal, semi-formal and informal sectors. Accordingly, labour law manages and regulates the status of labour in relation with employer, employee and the society. It establishes industrial relation i.e. rights and obligations of workers and employers, working hours, wages, leaves, labour security etc. ILO sets the standard and benchmark through series of conventions, protocols and recommendations on labour matter applicable for the member country across the globe. Along with the impact of COVID-19, many labours across the globe can be dislocated and forced for layoff. In fact, layoff is not the ultimate answer if we want to revitalize the world economy. The outbreak of pandemic has forced to stop labour movement. It has quite a lot contracted world’s economic activities. Even partial and nonpayment of remuneration to labour may further shrink effective demand in market which can be adverse to the whole economic transactions.

Barbieri, Teresa, Gaetano Basso and Sergio Scicchitano, ‘Italian Workers at Risk During the COVID-19 Epidemic’ (Bank of Italy Occasional Paper No 569, 26 June 2020)

Abstract: We analyse the content of Italian occupations operating in about 600 sectors with a focus on the dimensions that expose workers to risks during the COVID-19 epidemics. We leverage detailed information from ICP, the Italian equivalent of O*Net and find that several sectors need physical proximity to operate: the workers employed in sectors whose physical proximity index is above the national average are more than 6.5 million (mostly in retail trade). Groups at risk of complications from COVID-19 (mainly male above the age of 50) work in sectors that are little exposed to physical proximity, currently under lockdown or can work
remotely. The sectoral lockdowns put in place by the Italian Government in March 2020 targeted sectors who operate in physical proximity, but not those directly exposed to infections (the health industry is not subject to lockdown). Most of the workforce who can operate from home have not been put under lockdown.


Jurisdiction: Europe

Abstract: The COVID-19 pandemic is having a profound impact on the present world of work and will probably characterize any future debate regarding labour law. The crisis is throwing millions of people across the globe out of employment and high resonance is paid to European governments’ emergency measures to cope with this exogenous catastrophe. Public interventions are driven to protect subordinate workers and their incomes or to support self-employed workers highly affected by lockdown measures. The emergency and temporary measures for this latter group of workers are different from Country to Country, although similar patterns can be identified, varying from the extension of social security coverage to short-term support schemes. Their effectiveness is currently under discussion, alongside some concerns about the future of self-employed workers are still pending.


Abstract: The coronavirus pandemic has rendered visible the previously invisible labour that gets our food from farm to fork for minimal pay and at great personal risk to workers’ health. From grocery clerks working on the front lines without protective equipment, to truckers denied entry to restrooms, to temporary foreign workers forced to sign liability release waivers, to disease transmission at meat processing facilities, the virus is revealing the frailties and the inequities of our food system. Although the coronavirus pandemic is unprecedented, the ways the global food supply chain has responded to the crisis were, in fact, predictable. For years, scientists and food policy experts have been warning that our food system is broken, and that policies geared
towards efficiency and cheap food are exploitative of the agri-food labour force, the animals we raise and slaughter for food, and the ecosystems we inhabit. This chapter focuses on the impact of COVID-19 on labour, with particular emphasis on the meat processing industry. It also seeks to illustrate the interconnectedness of all actors across the supply chain and the need for greater compassion as we rebuild postpandemic food systems.


Abstract: Based on rich novel survey data on almost 5,000 working age adults, we document that 35.2 percent of the workforce worked entirely from home in May 2020, up from 8.2 percent in February 2020. Highly educated, high-income and white individuals were much more likely to shift to remote work and to maintain employment following the virus outbreak. Using available estimates of the potential number of home-based workers suggests that a large majority (71.7 percent) of U.S. workers that could work from home, effectively did so in May. We provide some evidence indicating that apart from the potential for home-based work, industry business conditions and labor demand also mattered for employment outcomes following the virus outbreak.


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.


Abstract: The history of the support by society of the aged is discussed in cross cultural and historical context. Various cultural traditions are compared with the forms developed in complex societies from ancient Egypt and Greece and Rome, to China, the Aztec, Inca and Maya, to those of religious organizations, or those developed under different modern ideological systems like capitalism and communism as well as social democratic nations. It is found that the way a society values the aged and views their contribution to society determines largely their willingness to provide for their support. An increasing number of companies have gone bankrupt in recent years following the 2007 credit crisis and stock market collapse. More have raided their pension funds to stay afloat or have closed them and transferred liability to the federal Pension Benefit Guaranty Corporation. Major changes to federal law concerning pensions and the responsibility of corporations to fund them has made under the Pension Protection Act of 2006. World wide workers’ retirement payments are under assault as are investments by pension funds due to laws governing priority of payment in different countries concerning stock holders vs bondholders and liability for pension funds. The need for retirement of some kind in the post-Covid-19 world will require new forms as well as recovery of pre-Covid-19 savings and investments. Changes in the law are proposed to increase the stability of pensions and reliability to workers of pension payments.


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


Abstract: The COVID-19 crisis has starkly exposed the existing economic vulnerability of temporary migrants in many countries. In Australia, many temporary migrants, who were already at risk of marginalisation due to policies restricting their bargaining power and agency, have lost their jobs and have minimal financial support due to their exclusion from public welfare.


Jurisdiction: South Africa

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

Das Acevedo, Deepa, ‘Searching for Silver Linings During COVID-19’ (SSRN Scholarly Paper ID 3568750, 4 April 2020)

Jurisdiction: USA

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


Abstract: The COVID-19 work stoppages involving employees refusing to work because they are fearful of contracting coronavirus provides a dramatic opportunity for newer workplace law observers to grasp a well-established legal rule: both unionized and non-union employees possess rights to engage in work stoppages under the National Labor Relations Act. This article explains that employees engaging in concerted work stoppages, in good faith reaction to health and safety dangers, are prima facie protected from discharge. The article carefully distinguishes between Section 7 and Section 502 work stoppages. Crucially, and contrary to Section 502 work stoppages, the health and safety-related work stoppages of non-union employees, protected by Section 7, are not subject to an ‘objective reasonableness’ test.

Having analyzed the general legal protection of non-union work stoppages, and noting that work stoppages have been on the increase during the last two years, the article considers when legal protection may be withdrawn from such concerted activities because employees repeatedly and unpredictably engage in them—so called ‘unprotected intermittent strikes.’ Discussing a recent NLRB decision, the article argues for an explicit and strengthened presumption of work stoppage protection for employees who are wholly unaffiliated with a union, even when those employees engage in repeated work stoppages in response to discrete workplace disputes or dangers.

Next, the article grapples with looming work stoppage issues emerging from expansion of the Gig economy. When workers are not ‘employees,’ peaceful work stoppages may become increasingly subject to federal court injunction. The Norris-LaGuardia Act (the venerable 1932
federal anti-injunction law) does not by its terms apply to non-employees, possibly including putative non-employee Gig workers, raising the specter of a new era of ‘Government by Injunction.’ Under existing antitrust law, non-employee workers may be viewed as ‘independent businesspeople’ colluding through work stoppages to ‘fix prices.’ The article argues that First Amendment avoidance principles should guide Sherman Act interpretation when non-employee worker activity does not resemble price fixing; and that, consistent with liability principles articulated in the Supreme Court’s recent opinion in Sessions v. Dimaya, antitrust law’s severe penalties should not be applied to Gig workers given the ambiguities in federal and state law employee definitions.

Finally, the article considers the potential for non-union private arbitration agreements exercising restraints on the NLRA rights of employees to engage in work stoppages in light of the Supreme Court’s labor law-diminishing opinion in Epic Systems.


This advance online issue includes the following open access or free access articles, all published on 6 July 2020):

COVID-19 and Labour Law in Belgium by Frank Hendrickx, Simon Taes and Mathias Wouters

Covid-19 and Labour Law in France by Tatiana Sachs

Covid-19 and Labour Law in Germany by Adam Sagan and Christian Schüller

Covid-19 and Labour Law in Ireland by David Mangan

Covid-19 and Labour Law in Italy by Marco Biasi

Covid-19 and Labour Law in Luxembourg by Luca Ratti

Covid-19 and Labour Law in the Netherlands by Hanneke Bennaars

Covid-19 and Labour Law in Spain by Manuel Antonio García-Muñoz Alhambra

Covid-19 and Labour Law in the United Kingdom by David Mangan

Abstract: The covid-19 pandemic led many countries to close schools and declare lockdowns during the Spring of 2020, with important impacts on the labor market. We document the effects of the covid-19 lockdown in Spain, which was hit early and hard by the pandemic and suffered one of the strictest lockdowns in Europe. We collected rich household survey data in early May of 2020. We document large employment losses during the lockdown, especially in "quarantined" sectors and non-essential sectors that do not allow for remote work. Employment losses were mostly temporary, and hit lower-educated workers particularly hard. Women were slightly more likely to lose their job than men, and those who remained employed were more likely to work from home. The lockdown led to a large increase in childcare and housework, given the closing of schools and the inability to outsource. We find that men increased their participation in housework and childcare slightly, but most of the burden fell on women, who were already doing most of the housework before the lockdown. Overall, we find that the covid-19 crisis appears to have increased gender inequalities in both paid and unpaid work in the short-term.


Abstract: The COVID-19 pandemic dramatically changed employment across sectors in 2020. This Viewpoint essay examines public sector labor relations during the pandemic and describes the impact bargaining process that is used to protect public employees. The authors draw on their own experience with impact bargaining negotiations and the public labor relations, conflict management, and civil service reform literatures to develop recommendations for public union labor leaders during times of crisis. They suggest that public unions have an important role in crisis management but must act strategically to develop good working relationships with leadership and successfully negotiate employee protections in uncertain times.
Ferguson, Daniel, ‘Coronavirus: Returning to Work’ (Briefing Paper No CBP 8916, House of Commons Library, 10 July 2020)  

Jurisdiction: UK

Abstract: This Commons Library Briefing Paper discusses issues relating to returning to work as the Government to re-opens parts of the economy. It provides an overview of relevant health and safety law and a discussion of recent Government guidance on working safely in the context of Covid-19. It also includes a discussion of the positions in Scotland, Wales and Northern Ireland.

Ferguson, Daniel, ‘Worker Exploitation in UK Clothing Supply Chains’ (House of Commons Library, Insight, 8 July 2020)  

Jurisdiction: UK

Abstract: On Saturday 4 July, the Government imposed a local lockdown in Leicester following a significant rise in the number of Covid-19 cases in the area. Campaign groups argued that poor working conditions in garment factories contributed to the spread of the virus. This Insight discusses exploitation in UK garment factories, how workers’ rights are enforced, and the calls to make companies responsible for rights violations in their supply chains.


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

Abstract: In this article, we explore the Federal Government’s response to COVID-19 in the form of the JobKeeper program. Described by Prime Minister Scott Morrison as ‘the biggest economic lifeline in Australia’s history’, it is a program of fiscal stimulus that, at its core, utilises the employment relationship to assist distressed businesses and its employees.


Abstract: The Fair Work Commission (‘FWC’) has responded to the COVID-19 crisis by amending modern awards to increase the flexibility available to businesses. Some 99 modern awards have been varied to include two weeks' unpaid pandemic leave and additional flexibility in relation to annual leave. The FWC is experiencing a significant increase in its caseload as a result of COVID-19, including unfair dismissals.


Abstract: The rapid spread of COVID-19 has left many workers around the world - workers in food distribution, truckers, janitors, and home and personal health care workers - deeply concerned about contracting the virus from exposure at work. In particular, older workers in frontline occupations are vulnerable to illness and to the deadly and debilitating effects of COVID-19, especially with inadequate protective gear and inadequate sick leave. In the absence of strong unions, which ensure that employers provide workers with accurate information, robust training, adequate equipment, and paid leave in the event of quarantines or illness, the COVID-19 pandemic highlights the need for additional legislation to shore up worker protections and provide paid sick leave.

Jurisdiction: South Africa

Abstract: The recent lockdown, which has been extended in several countries around the world, has posed a number of challenges from a legal perspective. This has forced us to consider the impact on the employer-employee relationship. As organisations are forced to close down temporarily, barring certain exceptions for essential services, it is necessary to consider the variety of options available in order to keep organisations afloat.


Jurisdiction: South Africa

Extract: In the second week of May, it was reported that the Commission for Conciliation, Mediation and Arbitration (CCMA) has seen an increase in both large-scale and individual retrenchments since the start of the pandemic. Unfortunately, this is creating a massive burden for an already-stretched system. As the courts will not generally second-guess a business decision made by a company, they will assess the fairness of a decision to retrench owing to operational reasons and not the correctness thereof.


Jurisdiction: Australia

Abstract: The impact of COVID-19 has led to a flurry of legislative and related changes in the area of Australian workplace relations. Initiatives such as the Federal Government’s jobkeeper scheme have brought with them changes to the ‘Fair Work Act’ 2009 (Cth) (FW Act), while award variations have given employers greater flexibility during the pandemic. In May 2020, relevant changes were also made to the ‘Privacy Act’ 1988 (Cth) (Privacy Act). The jobkeeper and award changes are presently envisaged as temporary. It is important for those affected by these changes to remain aware, however, that the changes do not have the effect of
suspending other rights and obligations under the FWAct during their period of operation. In particular, the relevance of Pt 3-1, the general protections, needs to be kept in mind.

Gruben, Vanessa and Louise Bélanger-Hardy, ‘Risking It All: Providing Patient Care and Whistleblowing During a Pandemic’ in Flood, Colleen et al, Vulnerable: The Law, Policy and Ethics of COVID-19 (University of Ottawa Press, 2020) 487

Jurisdiction: Canada

Abstract: In this chapter, we discuss the rights and responsibilities of health care workers during the COVID-19 pandemic, both as care providers (part I) and as whistleblowers (part II). Health care providers have a duty to provide care to patients during a pandemic. However, this duty may be limited by the type of practice, the implied consent to risks, the strength of competing duties such as family obligations, and the need to weigh benefits to patients and potential harm to caregivers. The duty to care of regulated health professionals such as doctors and nurses is framed by the standards of their respective professions. In contrast, personal care workers (PSWs) are not self-regulated. This group forms a large part of the workforce in long-term care homes where most deaths have occurred. We believe it may be time to consider whether PSWs should be self-regulating, as this could offer both greater clarity about the standard of care to be provided to patients during pandemics and clear disclosure standards to guide those who wish to denounce the practices they witness. As for health care providers as whistleblowers, after noting that whistleblower protection across Canada is piecemeal at best, we recommend a comprehensive approach where statutory instruments would be complemented by professional guidelines and codes of ethics issued by regulatory bodies and by professional associations.


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

Abstract: Well-designed paid sick leave is critical to ensure workers stay home when sick to prevent the spread of SARS-CoV-2 and other infectious pathogens, both when the economy is open and during an economic shutdown. To assess whether paid sick leave is available in countries around the world, we created and analysed a database of legislative guarantees of paid leave for personal illness in 193 UN member states. Original labour and social security legislation and global information on social security systems for each country were obtained and analysed by a multilingual research team using a common coding framework. While strong models exist across low- middle- and high-income countries, critical gaps that jeopardise health and economic security remain. 27% of countries do not guarantee paid sick leave from the first day of illness, essential to encouraging workers to stay home when they are sick and prevent spread. 58% of countries do not have explicit provisions to ensure self-employed and gig economy workers have access to paid sick leave benefits. Comprehensive paid sick leave policies that cover all workers are urgently needed if we are to reduce the spread of COVID-19, and be ready to respond to threats from new pathogens.


- Part 1 (2020) Noticias CIELO (online advance article, 4 April 2020)
- Part 2 (2020) 4 Noticias CIELO (16 April 2020)


Jurisdiction: UK

Abstract: Discusses the legal issues likely to arise in claims for compensation for key workers either killed or left with serious health conditions because of their exposure to COVID-19 at work. Looks at an employer's liability to provide personal protective equipment (PPE), whether
an employee is entitled to decline to work without PPE, the Government’s role, ECHR art.2, and
the Chief Coroner’s guidance on inquests.

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

Jurisdiction: South Africa

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


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

Contents:

Editorial

COVID-19 and Labour Law: Free Movement of Healthcare Personnel within the EU Giacomo Di
Federico

National Reports

COVID-19 and Labour Law: Argentina Facundo Martin Chiuffo
COVID-19 and Labour Law: Australia Anthony Forsyth
COVID-19 and Labour Law: Austria Martin Risak
COVID-19 and Labour Law: Belarus Kirill Tomashevski
COVID-19 and Labour Law: Bosnia and Herzegovina Nedim Hagic
COVID-19 and Labour Law: Brazil Ana Virginia Moreira Gomes and Eduardo Rocha Dias
COVID-19 and Labour Law: Canada David J Doorey
COVID-19 and Labour Law: Chile Pablo Arellano Ortiz, Andrés Ahumada Salvo and Natalia Astudillo Sanhueza
COVID-19 and Labour Law: China Wenwen Ding
COVID-19 and Labour Law: Colombia Juan Pablo López Moreno, Luz Angela Duarte González and Juliana Morad
COVID-19 and Labour Law: Croatia Ivana Grgurev
COVID-19 and Labour Law: Cyprus Christiana Cleridou
COVID-19 and Labour Law: Denmark Mette Soested and Natalie Videbaek Munkholm
COVID-19 and Labour Law: Dominican Republic Javier A Suarez A
COVID-19 and Labour Law: Finland by Annika Rosin
COVID-19 and Labour Law: France Nicolas Moizard
COVID-19 and Labour Law: Georgia Zakaria Shvelidze
COVID-19 and Labour Law: Germany Rüdiger Krause, Jonas Walter Kühn
COVID-19 and Labour Law: Greece Effrosyni Bakirtzi
COVID-19 and Labour Law: Hungary Tamás Gyulavári
COVID-19 and Labour Law: Iceland Elín Blöndal
COVID-19 and Labour Law: India Saurabh Bhattcharjee
COVID-19 and Labour Law: Indonesia Petra Mahy
COVID-19 and Labour Law: Iran Elaheh Zabeh
COVID-19 and Labour Law: Ireland David Mangan
COVID-19 and Labour Law: Israel Einat Albin, Guy Mundlak
COVID-19 and Labour Law: Italy Chiara Gaglione, Ilaria Purificato and Olga P Rymkevich
COVID-19 and Labour Law: Japan Qi Zhong
COVID-19 and Labour Law: Latvia Zane Rasnača
COVID-19 and Labour Law: Lebanon Sari Madi
COVID-19 and Labour Law: Mexico Alfredo Sánchez-Castañeda, José Pablo Hernández Ramírez
COVID-19 and Labour Law: The Netherlands Beryl ter Haar
COVID-19 and Labour Law: Norway Bernard Johann Mulder
COVID-19 and Labour Law: Pacific Island Countries and Fiji Elena Gerasimova
COVID-19 and Labour Law: Pakistan Iftikhar Ahmad
COVID-19 and Labour Law: Panama Tequila J Brooks
COVID-19 and Labour Law: Poland Izabela Florczak
COVID-19 and Labour Law: Portugal David Carvalho Martins
COVID-19 and Labour Law: Republic of Korea Sion Gil
COVID-19 and Labour Law: Republic of San Marino Leonardo Battista
COVID-19 and Labour Law: Republic of Serbia Dragana Randelović
Abstract: To understand the current state of industrial relations in Australia and intuit what the post-COVID-19 industrial landscape might look like it is necessary to briefly revisit the political, labour market and industrial context immediately preceding the crisis. 2019 saw another federal election in which industrial relations loomed large. The union movement bet heavily on defeating the Liberal-National Party Coalition through its campaign to ‘Change the rules’ that attempted to foment voter concern about the industrial relations regulatory framework. The campaign presented that framework as skewed in favour of employers and targeted insecure work, penalty rates and wage theft as particular issues to be addressed.

*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.


*Jurisdiction*: UK

*Abstract*: Examines the scope of the coronavirus job retention scheme (CJRS), and: whether employees need to be consulted about being furloughed; employers’ eligibility for the CJRS; how the grant is calculated; guidance on tax and pensions obligations; what employees can do during the furlough period; and interaction with other forms of leave and pay. Highlights confusion about taking and accruing holiday during furlough.

Khan, Adeel Ahmad, ‘Migrant Labor Crisis in India’ (SSRN Scholarly Paper ID 3632308, 15 June 2020)

*Abstract*: COVID-19 has brought the countries on a standstill, our country was no different. With widespread risk of infection and turmoil everywhere due to uncertainty and fear, the days became chaotic for the workers as their workplaces shut down. The lockdown was taken as a preventive measure by the government to avoid further exposure and contain the virus in a limited area. This article explores the problems faced by the workers and migrants as they were left without any work and the daily-wagers who earned their food on daily basis. With no work and less or no food majority of them were forced to migrate to their native places.


*Abstract*: The Coronavirus (COVID-19) employment law amendments are a peculiar invention arising out of the unprecedented economic times which we are facing as a nation. This article
looks at the legislative responses to the Coronavirus pandemic in the area of employment law. It sets out the pre-existing law in relation to stand down and redundancy. It then examines it in the light of the recent amendments to the Fair Work Act 2009 (Cth) contained in the new Part 6-4C. A number of the new powers given to employers have been curbed by the requirement that they be exercised reasonably. It is unclear how reasonableness will be interpreted in these unique times. The article concludes that the amendments were necessary to address the inflexibility of the stand down framework. We now have something that looks like stand down, but is not stand down, as we have known it.


Jurisdiction: Canada

Abstract: This chapter explores the occupational health and safety of Canadian workers during the COVID-19 pandemic. Analysis of information in the media shows that workers in various sectors, including health care, meat packing, warehousing, and other essential services, have contracted COVID-19 at work. Many were denied protections required by the occupational health and safety regulatory frameworks governing the prevention of occupational illness and disease. Benefits under workers’ compensation legislation are theoretically available for those who contract the illness out of and in the course of their employment, but preliminary figures from Ontario and Quebec suggest that underreporting of work-related COVID-19 is prevalent and that access to compensation is not provided in a timely manner to those affected. The chapter sheds light on violations of the right to personal protective equipment and on transmission of the virus attributable to extensive use of workers employed by temporary employment agencies. It finds that unions and professional associations have contributed to improvement of the effectiveness of OHS legislation by accessing the media and the courts. It also provides suggestions for policy going into the deconfinement period in order to ensure that the most vulnerable to COVID19 are not forced to return to work against their will.

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

Lord, Phil, ‘Incentivising Employment during the COVID-19 Pandemic’ (SSRN Scholarly Paper ID 3573176, 16 April 2020)

Jurisdictions: Canada and USA

Abstract: This paper considers government responses to unemployment caused by the COVID-19 pandemic. It analyses the two main legislative responses adopted by North American governments: a broadening of access to (un)employment insurance (EI) and the adoption of payroll subsidies for companies. It comparatively and critically assesses these two solutions, to eventually propose an alternative plan. Under this plan, access to EI would be broadened to cover those not traditionally covered by it, such as self-employed workers, contract workers, and those caring for a family member sick from COVID-19 or for a child who is at home due to school and day-care closures. Unemployed workers who have traditionally paid into the EI system would be rewarded through a tax credit. To avoid incentivising temporary layoffs, a payroll subsidy would be adopted. The subsidy would make it as attractive to keep workers on payroll as to lay them off so they can benefit from EI. It would also provide a more faithful picture of unemployment rates during the crisis. The plan would also address broader concerns regarding the unsustainability of public spending during the crisis by limiting access to both temporary layoffs and the payroll subsidy. Large and profitable companies, as well as companies
with high revenue or cash reserves, would not be able to temporarily lay their employees off during the crisis or benefit from the subsidy. For companies that face liquidity issues yet are not eligible for the subsidy, short-term, interest-bearing emergency loans would be available.

Lord, Phil and Lydia Saad, ‘Tackling the COVID-19 Pandemic’ (SSRN Scholarly Paper ID 3554436, 8 April 2020)

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


Abstract: The social and economic impact of COVID-19 has extended to industrial relations as a result of major changes to work and the labour market. Immediately after the lockdown began, 15% of the Australian workforce was laid off. Job losses have been unevenly spread, with hospitality experiencing a 33.4% reduction, and arts and recreation services 27% (ABS 2020a). Those aged under 30 lost jobs at a particularly high rate. However, the official unemployment
rate understates loss of work, because of the JobKeeper wage subsidy, reduced labour force participation and the restrictive ABS definition of unemployment: actively looking for work and less than one hour’s work per week. The Reserve Bank estimates that total hours worked fell by 20%, while Treasury estimated unemployment at close to 15% by late May, 2020 (Black 2020a).


Abstract: The ‘re-opening’ of the American economy while the coronavirus that causes COVID-19 is still circulating puts workers at heightened risk of contracting the deadly virus. In some blue-collar industries, the risk is particularly acute because of the inherent nature of the work itself and of the workplaces in which it is conducted. And the risk, for a variety of reasons, falls disproportionately on people of color and low-income workers. With governors stay-at-home orders and other pandemic safety restrictions, Center for Progressive Reform Member Scholars Thomas McGarity, Michael Duff, and Sidney Shapiro examine the federal government’s many missed opportunities to stem the spread of the virus in the nation’s workplaces, and make recommendations for what needs to happen next to protect employees on the job.


Abstract: Argues for the revision of UK labour and social security laws to prevent a downward spiral of unemployment and job insecurity resulting from the COVID-19 pandemic. Highlights 10 potential reforms which could be introduced quickly by executive order or secondary legislation, in areas including working time, employees' rights, dismissals and state aid.

Jurisdiction: UK

Abstract: Evaluates the Coronavirus Job Retention Scheme, which redefined the concept of furlough. Explains how the scheme operates and highlights some of its negative implications. Comments on the estimated cost of the scheme and its uptake by employers. Speculates on potential litigation resulting from the scheme and how working methods are likely to change as a result of the COVID-19 pandemic.


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.


Abstract: The COVID-19 pandemic has had a great impact in Spain. With the purpose of slowing down the spread of the virus and controlling the situation, the Government declared the state of alarm and imposed restrictions to people’s movement and social contact (including temporary confinement of the population at home). Most economic and working activities were temporarily paralysed, leaving apart those considered ‘essential services’ and other exceptions. With the aim of reducing the economic and social impact of such extraordinary circumstances, protecting workers and allowing to resume working activities after the crisis, the Government approved a package of urgent legislation, including a large list of measures in the area of Labour Law and Social Security: among others, promoting telework; facilitating the adaptation of working time to family care needs; favouring the temporary suspension of employment
contracts or the reduction of working time due to force majeure or other grounds related to COVID-19, while dismissals were limited; establishing an extraordinary paid leave for workers of undertakings forced to stop their activity; finally, adapting and enhancing unemployment benefits and other forms of social protection. This paper provides a panoramic explanation on this legislation aiming to face the COVID-19 health, economic and employment crisis.


Abstract: This paper shows that the labour market opportunities available to an agent has a significant bearing on how that agent experiences the outbreak of an epidemic. I consider two types of labour (i) market labour that can only produce output in close physical proximity, and (ii) remote labour that can produce output at a distance. This paper develops a Two Agent New Keynesian model extended to include an epidemic bloc and dual feedback between economic decisions and the evolution of the epidemic. I show that an agent restricted to only supply market labour experiences higher death rates vis-a-vis their share of the population, and suffers larger declines in labour and consumption over the course of the epidemic. Post-epidemic, these agents are significantly worse off than their counterparts who have the opportunity to work from home and hence a more unequal society emerges. I then show that simple containment policies, while leading to larger losses in economic prosperity as measured by output loss, can significantly reduce death rates across the population, bring the death rates of the two groups closer together, and reduce the inequality that emerges post epidemic.


Abstract: ‘No work is insignificant. All labor that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence’ – Dr. Martin Luther King Jr. Today, the important issue is how to save the human rights & dignity of migrant workers. The problems of migrant workers have become very important in many developing countries of the world. Migration of labour started in India during the period of British colonial rule. The National Commission on Rural Labour in India (NCRL,1991) estimates more than 10 million circular
migrants in the rural areas alone. These include an estimated 4.5 million interstate migrants and 6 million inter-state migrants in India. One of the reasons behind the Human Rights Violation of State Migrants workers in India are political and economic. State Migrants are outsiders in other State, they do not vote and thus cannot put governments under electoral pressure. On 24th March 2020, the Government of India ordered a nationwide lock down in India- starting midnight to stop the Corona virus from spreading in Country. Lock down in India has impacted millions of migrant’s workers. Lack of food and basic amenities, loss of employment, fear of unknown and lack of social support were major reasons for struggle in this huge part of population. Due to the lock-down, more than three hundred deaths were reported, with reasons ranging from starvation, suicides, exhaustion, road and rail accidents, police brutality and denial of timely medical care. Eighty migrants died while travelling back home on the Shramik Special trains. Several incidents, viral videos of police misbehavior, brutality (beating with cane-charged) on migrant workers, have been reported from across the country. The Indian Judiciary has also not protected itself in glory by failing in its duty to protect the rights and dignity of migrant labour citing the ground of non-interference in policy. India is a founding member of the ILO and it has been a permanent member of the ILO Governing Body since 1922. India has ratified six out of the eight-core/fundamental ILO conventions. India has not ratified the two core fundamental conventions (Convention No 87,98). It is necessary to maintain important aspects of labour standards & labour rights (Migrants Rights) and aim of achieving a system where there are no barriers to the smooth process of the Rule of Law.


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.


Introduction: The Families First Coronavirus Response Act (FFCRA) represents the second phase of Congress’s response to the COVID-19 crisis. The FFCRA provides eligible employees with paid sick leave through the use of two new acts: (1) the Emergency Paid Sick Leave Act (EPSLA) and (2) the Emergency Family and Medical Leave Expansion Act (EFMLEA). These provisions took effect on April 1, 2020 and expire on Dec. 31, 2020. Additionally, the new law includes refundable payroll tax credits for employers who are required to provide paid leave under the EPSLA or EFMLEA.


Jurisdiction: Canada

Abstract: This chapter offers a narrative of a COVID-19 outbreak at Participation House Markham. It is a not-for-profit group home for adults with disabilities, established in 1972 by the Cerebral Palsy Parent Council of Toronto. With this outbreak, 95% of the home’s residents were infected. Six of them died. Fifty-seven workers were infected. The story illustrates themes discussed elsewhere in this book, but focuses particularly on the role of the labour force in a care home. It notes the pre-pandemic vulnerability of any congregate setting without a full staffing complement. In any group home or long-term care facility, an infectious outbreak exacerbates workforce challenges, as workers may be exposed to the virus; become ill; or become restricted to a single place of employment. By describing the clinical cases of three residents in one group home, this chapter demonstrates why the shortage of nurses, personal
support workers, kitchen staff, and others, would trigger a crisis in this institution or others like it. The chapter includes policy recommendations that are amplified elsewhere in this section. These could contribute to a national review of how to provide residential care for people living with disabilities in a manner that is safe, healthy, and dignified.

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

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


Abstract: The closure of borders between countries in the wake of the outbreak of the coronavirus COVID-19 suspended the flows of the international labor migration, thus creating risks to the agriculture, particularly, fruit farming and horticulture. In this survey, the information is presented on the employment of foreign workers in the agriculture of various countries, as well as the measures taken to solve the problem of labor shortages in different countries whose experience can be useful to Russia.


Jurisdictions: Botswana, Lesotho, Mozambique and Namibia

Abstract: The global COVID-19 pandemic has brought about unprecedented changes to the employment landscape and thrust us into a ‘new normal’. In looking beyond COVID-19, this article seeks to give a cursory overview of what constitutes an employment relationship, to determine whether an employment contract may be terminated on the basis of operational requirements and, lastly, to examine whether employees who have been retrenched on the
basis of operational requirements are entitled to severance packages in Botswana, Lesotho, Mozambique and Namibia.


Abstract: In 2017, ILO issued recommendation no. 2015 on employment and decent work for peace and resilience, which is an international labour standard of particular relevance and importance for managing the labour market in times of crisis, and especially so in the wake of the Covid-19 pandemic. A body of generally applicable international labour standards provides social protection to workers during the pandemic and applies to the challenges to the labour market in such times. The Report describes the labour policy of ILO and international labour standards in relation to the Covid-19 pandemic, as well as ILO’s concrete response to the present crisis. Finally, the Report presents a reminder that ILS and social protection in the future must be able to handle social risks resulting from biological vulnerabilities on part of workers and the importance of the principle of universality in social protection.

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 "unprecented" 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.


Abstract: The Coalition Government’s response to the COVID crisis appears, at least temporarily, to have upended political economic certainties. Having only recently won an election fighting for lowers taxes and less spending, the Government announced the unemployment benefit would
(temporarily) be doubled through a new JobSeeker payment. In amidst a renewed attempt to pass anti-union legislation, Coalition Ministers now lined up to praise ACTU Secretary Sally MacManus, who in turn praised the Government for implementing JobKeeper, a version of the union’s call for a wage subsidy.


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.

Tham, Joo-Cheong, ‘The COVID-19 Crisis, Labour Rights and the Role of the State’ (2020) (85) Journal of Australian Political Economy 71-83 (pre-published version of this paper is available on SSRN)

Jurisdiction: Australia

Abstract: This article assesses the impact of the COVID-19 crisis on labour rights in Australia. It considers this impact according to three labour rights (the right to work; the right to social protection; the right to safe and healthy working conditions) and three cross currents (the forces of inequality; the increase in employer power; social dialogue). Threading through this analysis are the relevant international labour standards, particularly the standards set by International Labour Organisation (ILO). These standards are normative standards – they point to what is morally significant. They also assist in considering how the COVID-19 crisis has altered the role of the state in relation to labour rights. Before the crisis, this role corresponded with neoliberal understandings of a market-friendly and minimal state. By comparison, international labour standards offer a different understanding of the role of the state - a social democratic understanding where the state performs an active role in regulating the market in the interest of promoting decent work. What seems to be emerging from the crisis is, however, a state that is neither fully neoliberal nor social democratic – a ‘JobMaker’ state.

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.
Jurisdiction: Canada

Yearby, Ruqaiijah and Seema Mohapatra, ‘Structural Discrimination In COVID-19 Workplace Protections’
(Saint Louis University Legal Studies Research Paper No 2020-09, 2020) 1-7

Abstract: Workers, who are being asked to risk their health by working outside their homes during the COVID-19 pandemic, need adequate hazard compensation, safe workplace conditions, and personal protective equipment (PPE). Sadly, this is not happening for many essential workers, such as those working in home health care and in the meat processing industry. These workers are not only being unnecessarily exposed to the virus, but they are also not receiving paid sick leave, unemployment benefits, and affordable health care and childcare. The lack of these protections is due to structural discrimination and has disproportionately disadvantaged women of color and low-wage workers. This leaves them and their families more vulnerable to COVID-19 infection and death. In this context, structural discrimination refers to the ways in which laws are used to advantage those in power, while disadvantaging powerless workers. In the COVID-19 pandemic, the lack of legal protections for many workers is a reflection of structural discrimination.

LEGAL EDUCATION

Allen, Renee Nicole et al, ‘Recommendations for Online Teaching’ (St. John's Legal Studies Research Paper No 20-0012, 22 July 2020)

Abstract: This is a collection of recommendations drawn from a variety of sources, including our colleagues, students, webinars, books, articles, podcasts, and our own experimentation. It is not our expectation that any individual professor would adopt all of these suggestions and indeed no one of us intends to. Instead, we hope that some of these are helpful to you. Some suggestions deal with the nuts and bolts of teaching online while others with how to accomplish broader goals. The general recommendations are broadly applicable to all courses taught online, while the individual class-type recommendations are intended to complement and augment the
general recommendations. Additionally, these recommendations will be revised as we continue to learn from our experiences in online instruction.


Jurisdiction: USA

Abstract: In order to understand the impact of the COVID-19 pandemic on higher education, we surveyed approximately 1,500 students at one of the largest public institutions in the United States using an instrument designed to recover the causal impact of the pandemic on students’ current and expected outcomes. Results show large negative effects across many dimensions. Due to COVID-19: 13% of students have delayed graduation, 40% lost a job, internship, or a job offer, and 29% expect to earn less at age 35. Moreover, these effects have been highly heterogeneous. One quarter of students increased their study time by more than 4 hours per week due to COVID-19, while another quarter decreased their study time by more than 5 hours per week. This heterogeneity often followed existing socioeconomic divides; lower-income students are 55% more likely to have delayed graduation due to COVID-19 than their higher-income peers. Finally, we show that the economic and health related shocks induced by COVID-19 vary systematically by socioeconomic factors and constitute key mediators in explaining the large (and heterogeneous) effects of the pandemic.


Jurisdiction: South Africa

Abstract: For many people (including myself), the 1st of January 2020 felt like a day that couldn’t come sooner. 2019 had been an especially difficult study year, with the leap from first to second year comparable to an Olympic long jump. However, what I didn’t anticipate is that 2020 would spiral into disaster, almost from the get-go.
Abstract: The global COVID-19 pandemic is affecting people’s work-life balance across the world. For academics, confinement policies enacted by most countries have implied a sudden switch to home-work, a transition to online teaching and mentoring, and an adjustment of research activities. In this article we discuss how the COVID-19 crisis is affecting our profession and how it may change it in the future. We argue that academia must foster a culture of care, help us refocus on what is most important, and redefine excellence in teaching and research. Such re-orientation can make academic practice more respectful and sustainable, now during confinement but also once the pandemic has passed. We conclude providing practical suggestions on how to renew our practice, which inevitably entails re-assessing the social-psychological, political, and environmental implications of academic activities and our value systems.


Jurisdiction: USA

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


Abstract: Deciding whether, how, and when to re-open universities, colleges, and law schools is a complex problem. There are multiple considerations: public health in our communities and the communities our students may return to after their time here; the health of our students, faculty, and staff; the social, emotional, and mental toll of continuing to rely on remote
teaching; and, the social, emotional, and mental benefits of engaging with each other. This article discusses the personal health risks for law school faculty of teaching in person and how cultural processes and institutional incentives may affect perceptions of and analysis of risks when deciding to teach in person.


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

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

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

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

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

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

Abstract: There was a time when we as academics used to love debating about online exams, its nuances, pros and cons...and then like all academics we went back to our favourite pastime: answering emails! And, of course, marking research essays and conducting our own research. The thought that we will ever depart from our comfortably set routine of traditional end-of-semester exams was limited to seminars and staff meetings... and then a one-in-a-hundred-year event jolted us into action. What was once an interesting option suddenly became the only viable way forward.

Abstract: I can talk about changes needed to help one group that is also being unfairly hammered by this virus, one that I know well: academics with family responsibilities. Yes, these are problems of a relatively elite, secure, and well paid group and less serious that many losing homes, friends, and family to the pandemic, but, for us academics, they are our problems. We can and should do something to mitigate them.

Huang, Peter H and Debra S Austin, ‘Unsafe at Any Campus: Don’t Let Colleges Become the Next Cruise Ships, Nursing Homes, and Meat Packing Plants’ (University of Denver Legal Studies Research Paper No 20-16, 2020)

Abstract: The decision to educate our students via in-person or online learning environments while COVID-19 is unrestrained is a false choice, when the clear path to achieve our chief objective safely, the education of our students, can be done online. Our decision-making should be guided by the overriding principle that people matter more than money. We recognize that lost tuition revenue if students delay or defer education is an institutional concern, but we posit that many students and parents would prefer a safer online alternative to riskier in-person options, especially as we get closer to fall, and American death tolls rise. This Essay argues the extra stress of trying to maintain safety from infection with a return to campus will make teaching and learning less effective. While high density classrooms promote virus transmission and potentially super-spreader events, we can take the lessons we learned during the spring, and provide courses without the stressors of spreading the virus. We argue the socially responsible decision is to deliver compassionate, healthy, and first-rate online pedagogy, and we offer a vision of how to move forward into this brave new world.

Hubble, Sue and Paul Bolton, ‘Coronavirus: Easing Lockdown Restrictions in FE and HE in England’ (Briefing Paper No 8932, House of Commons Library, 2 July 2020)

Abstract: This House of Commons briefing paper discusses the impact of easing lockdown restriction on the FE and HE sectors in England. The paper outlines issues such as: re-opening campuses, prospective students numbers in 2020/21, temporary students numbers controls and
delivery of courses in 2020/21. It also highlights issues such as the impact on graduate employability and the lack of catch up funding for FE colleges.


Abstract: This House of Commons library briefing paper gives a brief overview of the possible impact of the coronavirus pandemic on the further and higher education sectors on England. It outlines the implications for funding and recruitment of students and sets out issues of concern to students.

Kanter, Arlene S, ‘Can Faculty Be Forced Back to Campus?’ (2020) (16 June) Higher Education Chronical 1-4

Jurisdiction: USA

Abstract: This essay discusses the right of faculty to work from home during this COVID-19 pandemic. Various laws, including the Americans with Disabilities Act, provide protections for faculty who do not feel safe returning to campus.

Kohn, Nina A, ‘Teaching Law Online: A Guide for Faculty’ (SSRN Scholarly Paper ID 3648536, 10 July 2020)

Abstract: As law school classes move online, it is imperative that law faculty understand not only how to teach online, but how to teach well online. This article therefore is designed to help law faculty do their best teaching online. It walks faculty through key choices they must make when designing online courses, and concrete ways that they can prepare themselves and their students to succeed. The article explains why live online teaching should be the default option for most faculty, but also shows how faculty can enhance student learning by incorporating asynchronous lessons into their online classes. It then shows how faculty can set up their virtual teaching space and employ diverse teaching techniques to foster an engaging and rigorous online learning environment. The article concludes by discussing how the move to online education in response to COVID-19 could improve the overall quality of law school teaching.
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.


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


Abstract: The context in which academic libraries operate is fast evolving, and the current COVID pandemic has underscored the new demands on libraries to reinvent themselves and their scholarship role. The library’s role has always been focused on scholarly dissemination and preservation, more recently by archiving their faculty work on mirror sites known as academic repositories. Libraries connect scholarship and users by offering the space for users to come and use the archived knowledge. However, if historically their role was to collect and provide secure access to sources, that role is in the midst of radical transformations. In our age of the Internet, the connection between knowledge and library users has become more complex. First, users have formed attachments to print or digital knowledge according to the type of reading they engage in, moving fluidly from one to the other. In that respect, as James M. Donovan has recently explained, the library space remains an intrinsic facilitator of a type of academic reading. Second, when knowledge is accessed digitally, the flow of content becomes decentralized. Instead of expecting their needs to be found in the library, users seek out
resources wherever they may be stored, anywhere on the planet. More interestingly, technology enables users to develop a different connection to the digital content, creating it while accessing it, from the mere ‘likes’ or ‘dislikes’ to virtual annotations through reader comments, for instance. Either way, libraries are seeing their passive intermediary role dissipate: even when shelving knowledge, as this article advocates, libraries may choose to become engaged in new ways as active participants in the scholarship enterprise. After reviewing the background against which these challenges have appeared, we suggest that libraries define for themselves a more active role within scholarship production, which we define to include publication, distribution, access, and the process of scholarship impact assessment. The argument rests on the practical considerations of business organization. It is simply good business for law schools to curate the output of faculty scholarship, and many already do it through faculty repositories. Given that foundation, it seems logical for the library, as the institution which already manages those repositories, and which supports the students’ law reviews and journals in numerous ways, to step up and manage the full range of scholarship publication. This library management of student-edited scholarship production could cover all its aspects, excluding editorial publication decision and manuscript editing, from training and assisting to gather sources for cite checks, adding journal content to institutional platforms, administering technology services, and advising on copyright. Another reason for supporting a more active role for libraries in the scholarly enterprise rests on the flaws of the current academic ranking of scholarship. Without human input, no automated system—including the newly-promoted Hein database—can meaningfully contextualize the value of a citation. For instance, only librarians can find the equivalent (if any) of scholarship cited and reviewed in the New Yorker or the New York Review of Books among scholarship cited in another law journal or review article, or calibrate the value of an article citation in a court decision. To the extent there is agreement that quantifying scholarship citation impact requires human expertise, then we argue for librarian expertise.

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

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

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

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

Robinson, Jenna and Sumantra Maitra, ‘Higher Education After COVID-19: How Universities can Preserve Core Functions and Reduce Spending’ (James G Martin Centre for Academic Renewal, Policy Brief, 17 May 2020)

Abstract: The current crisis will raise existential questions for small and mid-tier institutions. Only universities with massive endowments and highly competitive admissions will escape the effects of the coming enrollment cliff. Special coronavirus relief funding from state and federal
governments will improve cash flow in the short term, but they are not permanent solutions. Colleges must act now to cut unnecessary expenses while preserving core academic functions.

Ryznar, Margaret, ‘Common Mistakes in Online Teaching’ (SSRN Scholarly Paper ID 3634399, 24 June 2020)

Abstract: This article explains five common mistakes in online teaching and how to fix them. To do so, this article draws on student comments coming from mid-semester surveys in an Online Trusts & Estates course, as well as focus groups on online law courses.


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

Extract (page 3): It is important to note that this Online Trusts & Estates course is fully asynchronous and was built over time. In an asynchronous course, teaching and learning is done through an online learning management system (in this case, Canvas), with lessons organized by modules containing prerecorded lectures by the professor, readings, supplemental videos, and student assessment activities that often receive faculty feedback. This differs from synchronous courses done live but online through video conferencing, such as Zoom, which most faculty adopted during the COVID-19 pandemic because they were confronted with an emergency and lacked the time to build a course in advance. Nonetheless, many of the lessons for asynchronous courses presented in this Article hold true for synchronous courses as well.

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

Jurisdiction: USA

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

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

LEGAL GEOGRAPHY


*Dialogues in Human Geography* 1-4 (advance online article)

*Abstract:* Drawing on non-representational theories in geography and beyond, this commentary provides an autoethnographic account of the material and spatial dimensions of the law as well as its effects and affects on bodies in-between two countries, Italy and Finland, during the COVID-19 pandemic.

LEGAL PROFESSION / LEGAL PRACTICE


*Jurisdiction:* Australia

*Abstract:* As office spaces have been forced shut by COVID-19, many law firms have shifted the bulk of their legal work online in the space of a few weeks. Some have been left wondering
whether this rapid transition could introduce previously not-contemplated privacy and security risks for lawyers and their clients.


Jurisdiction: Australia

Abstract: During the past few months, lawyers and their teams have been forced to make significant changes to the way they work on a day-to-day basis because of the COVID-19 crisis, but is this just a temporary hiatus in change resistance for the profession? Mark Andrews urges firms to think about change beyond the pandemic.


Jurisdiction: USA

Abstract: The COVID-19 pandemic and resulting shutdowns are affecting every aspect of society. The legal profession and the justice system have been profoundly disrupted at precisely the time when there is an unprecedented need for legal services to deal with a host of legal issues generated by the pandemic, including disaster relief, health law, insurance, labor law, criminal justice, domestic violence, and civil rights. The need for lawyers to address these issues is great but the prospect of licensing new lawyers is challenging due to the serious health consequences of administering the bar examination during the pandemic. State Supreme Courts are actively considering alternative paths to licensure. One such alternative is the diploma privilege, a path to licensure currently used only in Wisconsin. Wisconsin’s privilege, limited to graduates of its two in-state schools, has triggered constitutional challenges never fully resolved by the lower courts. As states consider emergency diploma privileges to address the pandemic, they will face these unresolved constitutional issues. This Article explores those constitutional challenges and concludes that a diploma privilege limited to graduates of in-state schools raises serious Dormant Commerce Clause questions that will require the state to tie the privilege to the particular competencies in-state students develop and avenues they have to demonstrate those competencies to the state’s practicing bar over three years. Meeting that standard will be particularly difficult if a state adopts an in-state privilege on an emergency basis. States should
consider other options, including privileges that do not prefer in-state schools. The analysis is important both for states considering emergency measures and for those that might restructure their licensing after the pandemic.


*Jurisdiction*: USA

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

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


*Jurisdiction*: USA

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

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


Abstract: In an effort to understand the long-term changes that the COVID-19 pandemic may have on the legal profession, Trish Carroll taps into the minds of final-year law students and also ponders what the fallout will mean for lawyers’ engagement with clients.


Abstract: Artificial intelligence is programmed on computers to depict human intelligence. It has created a huge hype and has evolved to revolutionize almost every profession including legal sector. New lawful simulated AI programming software like Ross intelligence and Catalyst along with Machine Learning and Natural Language Processing give viable fight goals, better legitimate clearness, and better permission to justice and new difficulties to ordinary law firms offering legal assistance utilizing leveraged cohort correlate model. Also, AI enabled lawyer bots are performing tasks that normally requires human intellect and needs to be performed by lawyers. In such a situation, a question strikes- Will these lawyer bots replace human lawyers? This question becomes all the more important in the present scenario when the whole globe is facing challenges imposed by global pandemic ‘COVID-19’. How is COVID-19 going to change the justice delivery system, and what does it look like? Therefore, this study is conducted to evaluate the role of artificial intelligence in transforming the justice delivery system post COVID-19. The study tries to examine the various areas in which AI is affecting the legal profession, evaluate the extent of its impact on the legal employment, assess the tasks in legal sector which cannot be undertaken by AI, and discuss the legal issues in the implementation of AI. The study
also suggests the way forward with regards to the future of legal sector to help practitioners and researchers

Denis-Smith, Dana, ‘Exaggerating Inequalities’ (2020) 163(6) Solicitors Journal 16

Jurisdiction: UK

Abstract: Highlights the findings of a survey of 900 women in the legal profession to see how the coronavirus pandemic has affected their working life. Raises concerns that diversity initiatives might not be followed through as a result of the health crisis, although notes that one benefit of the crisis may be an increased acceptance of flexible working.

Dowell, Katy, ‘Three-Quarters of the UK’s Biggest Firms Are Furloughing Staff’ (2020) Lawyer (Online Edition) 1

Abstract: The article several law firms in Great Britain are furloughing staff due to the Covid-19.

Dowell, Katy, ‘A 20 per Cent Cut to Salaries Is Now the COVID Norm’ (2020) Lawyer (Online Edition) 1

Jurisdiction: UK

Abstract: The article talks about a deduction in salaries of law firm personnel due to the Covid-19 pandemic.


Jurisdiction: UK

Jurisdiction: UK

Abstract: The Covid-19 pandemic has the potential to spell the demise of access to justice for all but a select few. Prior to the crisis, the infrastructure for free and low-cost legal advice had been severely weakened by UK government policy and austerity-era budget cuts. Now, as solicitors are on furlough, law centres are on the brink of collapse and lockdowns have led to widespread service closures and restrictions, the legal needs of many members of society are set to multiply and may remain unmet. In the face of other crises (9/11, Bushfires, Grenfell), members of the legal support sector (legal aid providers, law centres, pro bono practitioners) worked together. This resulted in much needed help in the form of free legal advice to the affected communities. This paper surveys the lessons learned from such interventions. It explores the extent to which these experiences may serve as guidance to address the legal needs arising from the current crisis posed by the pandemic. It also highlights the unique features of the Covid-19 crisis. This suggests the need to look beyond ad hoc and technologically based measures (which worked in the past) to assert a more prominent role for the state in the legal advice sector.


Abstract: What does it mean to be an advocate? In its broadest sense, advocacy means ‘any public action to support and recommend a cause, policy or practice…’. Advocacy is a communicative act. Advocacy is also a persuasive act…. Throughout much of history advocacy has been recognized as a necessary component of our society; a component that has been both respected and ridiculed. Advocacy on behalf of another developed as a cultural adaptation and a societal innovation to facilitate both dispute resolution and business transaction. In fact, third party advocacy birthed the legal profession which in turn evolved over time to adapt to cultural changes in society. Today the legal profession is fully entrenched in society and far from being thought about as an innovation. Instead, the legal profession finds itself confronted by the
innovations of the digital age. Technology is challenging both the legal profession’s adaptability and the nature of the attorney-client relationship.

The attorney-client relationship likely originated in Ancient Greece and Rome. While scholars have documented much earlier findings of various societies establishing and imposing laws on their citizens, the concept of employing an advocate and the rise of a legal profession did not take root until much later. In fact, [t]here is not the slightest trace in ancient times of a distinct legal profession in the modern sense.”

The enactment of law much before the establishment of a legal profession is consistent with the concept that ‘almost any sect, cult, or religion will legislate its creed into law if it acquires the political power to do so.’ Moreover, the literature suggests that in preclassical times, there was no need for the role of a lawyer because the law was ‘divinely sanctioned and revealed.’ The answers to legal issues could be provided by a king, oracle or priest who possessed ‘the divine stamp of approval’ and served in a judicial function. In fact, ancient civilizations relied on the divine connection between kings, oracles, and priests to various recognized gods and goddesses who channeled messages of acceptable conduct. Court proceedings involved a review of documents and testimony from witnesses who took an oath to the gods.

Ancient Greece’s evolution of its legal system eventually provided for informal representatives and laid the foundation for a new profession. Ancient Rome elevated the status of legal representatives to paid professionals. From Ancient Rome through today, both the law and the legal profession continued to evolve to incorporate historical, cultural, and technological changes throughout the world. Contemporary lawyers practice in diverse environments and differing legal systems throughout the world. Yet, the attorney-client relationship—an interpersonal relationship that demands competence, confidentiality, and loyalty—remains remarkably the same in its essential components. What continues to change is the expression and facilitation of the relationship, especially as technology continues to impact our lives. This article will briefly explore the development of the legal profession from its origin in Ancient Greece and Rome to its emergence from the Dark Ages in England, and then will fast forward to the beginnings of the legal profession in the United States. Next, the article will explore the historical impact of technology on the legal profession and its ongoing challenge to adapt to the digital age. Finally, the article will conclude with some observations about technology, the COVID-19 pandemic, and the future of the legal profession.
Johnson, Lance G1, ‘My Top 12 Growth Predictions for the Post-COVID Days’ [2020] (July/August) Law Practice Today 7
Jurisdiction: USA


Abstract: What follows are some vignettes of law in the time of coronavirus, written perhaps more with an eye to the interested readers of the future than for those of you reading it today, for whom this crisis is a pressing reality - the parliament, the courts, solicitors, barristers, law schools, and the future.

Jurisdiction: UK

Abstract: Highlights the Government's grant of an additional £5.4 million of additional funding to law centres during the coronavirus pandemic, and notes how the grant will be administered.


Abstract: This research paper aims to discuss about the background, role of lawyers in administration of justice, pre post conditions, economic crisis of Indian Lawyers during COVID-19 Epidemic. An advocate’s duty is as important as that of a Judge. Advocates have a large responsibility towards the society. India ranks 68 out of 126 countries, down 3 places from last year in ‘Rule of Law Index’ which measures how the rule of law is experienced and perceived by the general public. The Indian Law profession is one of the largest in the world, with more than 2 million enrolled advocates Nationwide. The Nationwide lock down has brought to the fore the great disparity in the legal profession & lock down has financially damages lawyers. Lawyers in India are the most neglected and overlooked during COVID19 comparative of other professional. 70% Lawyers are almost daily wage workers who earn per
appearance hearing. COVID-19 has impacted deep and triggered many social, mental and psychological issues as well.

In past four months many State Bar Councils came up with circular for Conditional Financial Assistance to Advocates. On 28-05-2020 I have drafted the petition ['Seeking Financial & Moral Support of Hon’ble Supreme Court of India’: ‘Save the dignity of Advocates’] campaign on change.org platform and sent the petition along with more than six hundred (600) Advocate signatories, on 15-06-2020 to Hon’ble Prime Minister, Hon’ble Home Minister, Hon’ble Law Minister, Hon’ble Chief Justice of India & Companion Judges, Hon’ble Chairman, Law Commission of India, Hon’ble Chairman Bar Council of India with three key demand & payers namely:


The fundamental principle which determines the privileges and responsibilities of lawyer in relation to the court is that he is an officer to justice and a friend of the court. Lawyers status as an officer of justice does not mean he is subordinate to the judge. It only means that he is an integral part of the machinery for the administration of justice.


*Jurisdiction*: UK

*Extract from Introduction*: For some time now, university law clinics have played an important role in filling the gap between those who qualify for legal aid and those who can afford to pay for legal services. This is a need which continues to grow as legal aid is inexorably cut back in terms of both those who qualify and those issues it covers. More recently there have been calls for lawyers and more latterly law clinics and other not for profit organisations to use the rapidly evolving capacity of the internet and digital computing facilities to expand the ability of service
providers to both assist their clients and to develop ways, through technology, to help clients help themselves.

... as we show in this paper, law clinics which had slowly begun to embrace new digital technologies, have been forced by Covid-19 to bring this means of delivering services to the fore. However, it is important to examine whether such forms of services are merely a necessary response to the Covid-19 crisis or whether they herald a ‘brave new world’ for law clinics.

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

Abstract: This paper analyzes servant leadership demonstrated by the Twin Cities hospitality industry during the COVID-19 pandemic, and what lessons this industry can teach attorneys who are advising clients during this public health crisis. In response to government-mandated shutdowns, many local businesses are pivoting their business models to serve community needs. Despite being one of the hardest-hit industries by the pandemic, they are demonstrating servant leadership by prioritizing service to others and being good stewards of resources. Lawyers can learn from the leadership modeled by this business community by engaging their clients on issues that go beyond the law. Lawyers continue to limit their advising to just the legal issues their clients face, and this approach to the lawyer-client relationship deprives the client of the full value the lawyer can provide. By adopting the servant leadership model, attorneys can focus their efforts on helping the client grow and succeed during the pandemic and beyond. Lawyers should pay attention to the servant leadership being demonstrated by the hospitality industry because it shows that clients are concerned about more than just the bottom line and complying with the law. Attorneys should be engaging with clients to learn about their values and objectives to help the client make the most informed decision that best protects their interests. This article explores the ways in which local businesses are demonstrating servant leadership and how attorneys can use servant leadership to strengthen client relationships and provide added value to clients.
Priestley, Rebecca, ‘Managing Chambers through COVID-19’ [2020] (July) *Counsel* 18-19

*Jurisdiction*: UK

*Abstract*: Highlights lessons learned in managing chambers during the coronavirus pandemic.

Queensland Law Society Ethics and Practice Centre, ‘COVID-19 Has Not Altered the Law of Capacity or a Practitioner’s Obligation to Assess Client Capacity’ (2020) 40(4) *Proctor* 32

*Abstract*: It is recommended that you abandon a video conference if you are unable to clearly see and confirm your client’s identity, the documents being signed, or if you are unable to hear your client (or your client is unable to hear you clearly) due to technical difficulties.


*Abstract*: Law firms are taking a major financial hit and cutting employee salaries as the economic crisis caused by COVID-19 deepens.


*Abstract*: The legal profession has experienced a lot of ups and downs since the outbreak of COVID-19. As Kirrily Schwarz reports, it’s a mixture of camaraderie and concern as the justice system is turned on its head.

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

*Jurisdiction*: UK

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


Jurisdiction: Australia

Abstract: Just like that our world changed. And while we weren't ready for it, we do need to be ready for the new normal by refining and adapting our practice and procedures. This month ‘Proctor’ provides some perspectives, guidance and information to assist you personally and professionally in this pandemic world we find ourselves in. The immediate crisis and panic of those last weeks in March may have passed, but the ‘new normal’ is likely to be here for some months to come.

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.


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

Abstract: The unprecedented public health and financial crisis resulting from the COVID-19 pandemic calls upon the legal profession to go beyond traditional, adversarial, ‘rights’-based representation and disputing force majeure liability, towards working with clients and collaborating with counterparts as partners in joint problem-solving, innovative thinking, and developing viable options to help meet the parties’ mutual interests in safety, surviving, and perhaps even thriving, during and after, the pandemic. A lawyer’s professional conduct duties extend to ensure fairness to others and to find ways to preserve and nourish the relationships, partnerships, goals, and enterprise that brought the parties together. A crisis requires immediate attention, careful management, and methodical strategic planning. Yet, as it has also been said, ‘crisis’ can mean both danger and opportunity. The danger of the COVID-19 pandemic is tangible and certain; the opportunity to adapt, learn, create, plan and nourish partnerships, in light and despite thereof, is likewise possible. This essay explores those responsibilities and opportunities.

MEDIA LAW / COMMUNICATION


Abstract: In the COVID-19 pandemic, whistleblowers have become the essential watchdogs disrupting suppression and control of information. Many governments have intentionally not disclosed information or failed to do so in a timely manner, misled the public or even promoted false beliefs. Fierce public interest defenders are pushing back against this censorship. Dr Fen and Dr Wenliang were the first whistleblowers in China to report that a new pandemic was possibly underway and ever since numerous other whistleblowers around the world have been reporting on the spread of the virus, the lack of medical equipment and other information of public interest. This paper maps the relevant whistleblowing cases in China, US and Europe and shows that many whistleblowers are initially censored, face disciplinary measures or even dismissals. At the same time, whistleblowing during the COVID-19 pandemic has drawn public attention to the shortcomings of institutional reporting systems and a wider appreciation of
whistleblowers as uniquely placed to expose risk at early stages. Ultimately, whistleblowing as a means to transparency is not only becoming ever less controversial, but during COVID-19 it has become the ‘remedy’ to censorship.


Arora, Himanshu, ‘Manifestations of Fake News: Possible Legal and Policy Issues to Be Considered before Formulating Any Law in India’ (SSRN Scholarly Paper ID 3636716, 4 June 2020)

Abstract: During this lockdown situation, we have witnessed array of rumors or fake news; from Amul Company shutting down its milk chilling centers to the effective use of ginger, lemon and honey to counter the virus or to dispersing or spraying of the medicine by helicopters. Clearly, the proliferation of inaccurate or misleading news is spiraling upwards, especially during COVID-19 Pandemic situation. Our mobile phones and social media accounts are flooded with fake posts, doctored videos and congenial but unverified theories (especially qua the origin of Corona Virus and its cure), which are quickly shared or forwarded, especially through Whatsapp, Tiktok and Facebook, and out of which some may tickle your fancies at one hand, but some may create tension and unrest amongst people at large. For instance, just couple of days ago, a video on social media went viral where the soldiers of two different armies were shown to be engaged in a provocative incursions and it was being claimed that Chinese soldiers are provoking the Indian army soldiers at the Ladakh Indo-China Border, but the original video was traced back to the year 2014 and pertaining to Arunachal Pradesh Border, though the Indian army has never avowed for the video as well. Such unverified claims or rumors are dangerous and have the ability to instill fear and terror in the minds of people and may cause chaos and disruption in the society and tensions between the countries. Hence, the question is that what is this concept of ‘Fake News’ and why it has assumed immense significance and it is also important to know that in what forms, it exists or reaches to us.

Jurisdiction: USA

Abstract: We study the effects of COVID-19 coverage early in the pandemic by the two most widely-viewed cable news shows in the United States – Hannity and Tucker Carlson Tonight, both on Fox News – on downstream health outcomes. We first document large differences in content between the shows and in cautious behavior among viewers. Through both a selection-on-observables strategy and a novel instrumental variable approach, we find that areas with greater exposure to the show downplaying the threat of COVID-19 experienced a greater number of cases and deaths. We assess magnitudes through a simple epidemiological model highlighting the role of externalities and provide evidence that misinformation is a key underlying mechanism.


Abstract: A defining characteristic of this pandemic has been the spread of misinformation. The World Health Organization (WHO) famously called the crisis not just a pandemic, but also an “infodemic.” Why and how misinformation spreads and has an impact on behaviours and beliefs is a complex and multidimensional phenomenon. There is an emerging rich academic literature on misinformation, particularly in the context of social media. In this chapter, I focus on two questions: Is debunking an effective strategy? If so, what kind of counter-messaging is most effective? While the data remain complex and, at times, contradictory, there is little doubt that efforts to correct misinformation are worthwhile. In fact, fighting the spread of misinformation should be viewed as an important health and science policy priority.


This open access report includes the following chapters:

- Alimardani, Mahsa and Mona Elswah, ‘Trust, Religion, and Politics: Coronavirus Misinformation in Iran’ (23 June 2020)
- False Health Information in Kenya
Cox, Caitríona L, “‘Healthcare Heroes’: Problems with Media Focus on Heroism from Healthcare Workers during the COVID-19 Pandemic” (2020) 46(8) *Journal of Medical Ethics* 510–513

**Abstract:** During the COVID-19 pandemic, the media have repeatedly praised healthcare workers for their ‘heroic’ work. Although this gratitude is undoubtedly appreciated by many, we must be cautious about overuse of the term ‘hero’ in such discussions. The challenges currently faced by healthcare workers are substantially greater than those encountered in their normal work, and it is understandable that the language of heroism has been evoked to praise them for their actions. Yet such language can have potentially negative consequences. Here, I examine what heroism is and why it is being applied to the healthcare workers currently, before outlining some of the problems associated with the heroism narrative currently being employed by the media. Healthcare workers have a clear and limited duty to treat during the COVID-19 pandemic, which can be grounded in a broad social contract and is strongly associated with certain reciprocal duties that society has towards healthcare workers. I argue that the heroism narrative can be damaging, as it stifles meaningful discussion about what the limits of this duty to treat are. It fails to acknowledge the importance of reciprocity, and through its implication that all healthcare workers have to be heroic, it can have negative psychological effects on workers themselves. I conclude that rather than invoking the language of heroism to praise healthcare workers, we should examine, as a society, what duties healthcare workers have to work in this pandemic, and how we can support them in fulfilling these.

‘Freedom of Speech’ [2020] (July) *Public Law* 558-560

**Jurisdiction:** UK

**Abstract:** Reviews developments concerning freedom of expression, including: OFCOM's publication of a note on broadcasting related to the coronavirus pandemic; the complaints received by OFCOM about the broadcast of a coronavirus-related interview with conspiracy theorist David Icke, and about comments made on ITV's current affairs programme ‘This Morning’; and OFCOM's publication of its review of public service broadcasting between 2014 and 2018.
Geldenhuys, Kotie, ‘Disinformation Spreads Faster than the Real Threat’ (2020) 113(6) Servamus
Community-based Safety and Security Magazine 34–36
Jurisdiction: South Africa

Abstract: During times of crises, pandemics and elections, unreliable and false information quickly surfaces. Such false information creates fear and often puts lives at risk. The ongoing worldwide COVID-19 pandemic has not been immune to the problem of rampant disinformation and the dangerous spread of disinformation about COVID-19 has to be tackled alongside the virus itself.


Abstract: Social media platforms are the public square of our era – a reality that has been entrenched by the widespread closure of physical public spaces in response to the Covid-19 pandemic. And this online space is global in nature, with over 2.5 billion users worldwide. Its governance does not fall solely to governments. With the rise of social media, important decisions about what content does - and does not - stay online are made by private technology companies. Reflecting this reality, cutting-edge scholarship has converged on a triadic approach to understanding how the global public square operates - with states, users, and technology companies marking out three points on a ‘free speech triangle’ that determines what content appears online. While offering valuable insights into the nature of online speech regulation, this scholarship—which has influenced public discussion—has been limited by drawing primarily on a recurring set of case studies arising from the U.S. and the European Union. As a result, the free speech triangle has locked in assumptions that make sense for the U.S. and the EU, but that regrettably lack broad applicability. This Essay focuses our attention on the global public square that actually exists, rather than the narrow U.S. and European-centric description that has commanded public attention. Drawing on interviews with civil society, public sources, and technology company transparency data, it introduces a new set of case studies from the Global South, which elucidate important dynamics that are sidelined in the current content moderation discussion. Drawing on this broader set of materials, I supplement the free speech triangle’s analysis of who is responsible for online content, with the question of what these actors do. In this way, activity within the global public square can be grouped into four categories: content
production, content amplification, rule creation, and enforcement. Analyzing the governance of the global public square through this functional approach preserves important insights from the existing literature while also creating space to incorporate the plurality of regulatory arrangements around the world. I close with prescriptive insights that this functional approach offers to policymakers in a period of unprecedented frustration with how the global public square is governed.

Parvin, Gulsan et al, ‘Media Discourse About the Pandemic Novel Coronavirus (COVID-19) in East Asia: The Case of China and Japan’ (SSRN Scholarly Paper ID 3603875, 18 May 2020)

Abstract: Irrespective of the nations and media, from 20 January 2020 to the date, the term ‘coronavirus’ is uttered and or written most frequently. Recent emergence of this coronavirus related disease, which is called COVID-19, first reported from Wuhan city of the capital of Hubei Province of China (mainland) during December 2019, and this virus has caused today’s pandemic. As of 14 April 2020, this pandemic has affected 1,925,811 persons across 232 countries and territories. Not only every sectors of all these affected countries are concerned to the pandemic but also all sorts of medias are imposing their highest concerns to present news, perceptions and opinions related to the outbreak. Notably, the English version of e-newspapers of affected countries played a pivotal role in informing the world about the spread and infection, preparedness and awareness situation, institutional efforts and such other critical issues. During this pandemic created by COVID-19, how English version of e-newspapers of first two affected countries, China and Japan, which are not English speaking and have different socio-economic and political settings, have highlighted their news and informed global communities are essential to analyze. It is now well known that COVID-19 has imposed high impacts on every aspect of our lives. Health, society, economy, politics, environment, sports, technology, and media all are now somehow shaped by the outbreak of COVID-19. How experts’ thoughts and perceptions published in newspapers are highlighting, and developing these aspects of our lives is crucial to understand. Therefore, this paper aims to explore the thoughts and highlights presented by the two leading English newspapers in China and Japan from January to March. Within three months, both in China and Japan media shifted their focuses from health and preparedness to economy, politics and social welfare. However, the shift and focus were different in China and Japan. Governance and social welfare were key concerns of
China; in contrast, global politics received the highest attention by the experts of Japan’s newspaper. Understanding and analysis of this study can give guidance to other countries’ news media to play effective roles to manage health crisis. It also offer direction to the leading media to shape their role and contribution to society and policy making during crisis and catastrophe.


Abstract: The paper looks at the formidable challenges that have shaken the news media industry over the past weeks. The COVID-19 outbreak has aggravated to critical proportions the threats that have long plagued news media for the public good. Ironically, as is the case in all times of crises, this comes at a time when trusted, accurate, impartial and timely information is more essential than ever. The pandemic has ravaged newsrooms, intensified the pressure on media freedom, produced an avalanche of disinformation and put journalists’ lives at risk. In this fast-moving, treacherous landscape, could there also be scope for opportunities?

Ratzan, Scott C et al, COVID-19: ‘An Urgent Call for Coordinated, Trusted Sources to Tell Everyone What They Need to Know and Do’ National Academy of Medicine Perspectives (5 March, 2020)

Santos Rutschman, Ana, ‘Mapping Misinformation in the Coronavirus Outbreak’ (Saint Louis University Legal Studies Research Paper No 2020-14, 2020)

Abstract: The coronavirus outbreak has sent ripples of fear and confusion across the world. These sentiments—and our collective responses to the outbreak—are made worse by rampant misinformation surrounding the new strain of the virus, COVID-2019. In this post, I survey some of the most pervasive areas of tentacular coronavirus-related misinformation that has proliferated online—as well as the responses of social media companies like YouTube, Facebook, Pinterest and TikTok that may ultimately prove inadequate given the magnitude of the problem.

*Jurisdiction*: Canada

**Abstract**: The COVID-19 pandemic struck the media financially, depressing advertising revenues and imperiling already shaky balance sheets. At the very moment when demand for news rose, as it usually does in crises, the media had fewer financial and personnel resources to meet that demand. Similarly, the media generally has few reporters and editors educated and experienced in science, as opposed to politics, economics, and culture. Nonetheless, the media mobilized the resources it had and did a creditable job covering the facts of the crisis as provided by public health officials and political leaders, who took their cue from those officials. Perhaps belatedly, the media did focus on problems revealed by the crisis, notably in the long-term care and nursing home sectors.

**OBLIGATIONS**


*Jurisdiction*: Australia

**Abstract**: COVID-19 has touched every aspect of Australian society, including the law of obligations. This comment considers how the pandemic could affect contracts – a topic which is already a very popular subject of law firms’ client updates. After discussing frustration and force majeure, it addresses a few relevant torts, including trespass to the person, the tort recognised in *Wilkinson v Downton*, and negligence. The comment is intended to provoke further dialogue on how COVID-19 is affecting Australian law, including in the forthcoming thematic issue of the University of New South Wales Law Journal on ‘Rights Protection amidst COVID-19’.

**Contract Law**

(SSRN Scholarly Paper ID 3588069, 26 March 2020)
Jurisdiction: Nigeria

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


Abstract: Force Majeure and hardship provide legal tools to deal with the effect of unexpected future events and unforeseen changes in circumstances, particularly in long-term contracts. Given its global and unprecedented dimensions, its lethal potential and its drastic effects on international contracts the COVID-19 pandemic will generate years, if not decades, of post-pandemic litigation and arbitration focusing on the application of these two concepts. The paper examines the two concepts, from their historic origins over the different paths they took in civil and common law to modern transnational contract law as applied by international arbitral tribunals. Based on this historic and comparative analysis, the paper shows that in such extraordinary times, the doctrines of Force Majeure and Hardship assume the role of regular,
rather than exceptional legal remedies, allowing for the risks emanating from the unprecedented crisis to be evenly distributed between the players in the global economy.

Blair, Sir William et al, ‘“Breathing Space”: Concept Note 2 on the Effect of the 2020 Pandemic on Commercial Contracts’ (SSRN Scholarly Paper ID 3612937, 1 May 2020)

Abstract: This paper shows which steps should be taken to minimise the risk of a deluge of disputes following the Covid-19 crisis and to increase the prospect of constructive outcomes.


Extract: COVID-19 has impacted businesses and communities, leaving in its wake infections, death, shortages of essential services, unpreparedness and mental and physical uncertainty. One question is, what is the impact of COVID-19 lockdown on pre-existing contractual obligations?

Dagan, Hanoch and Ohad Somech, ‘When Contract’s Basic Assumptions Fail: From Rose 2d to COVID-19’ (SSRN Scholarly Paper ID 3605411, 2 July 2020)

Abstract: This Article explores the normative foundations of the rules governing mutual mistake, impossibility, impracticability, and frustration and studies their doctrinal implications. These familiar doctrines, which make contracts voidable or excusable whenever they are grounded on a shared basic assumption that failed, puzzle commentators and courts. We claim that the key to properly understanding their role and interpret their doctrinal elements lies in appreciating the core principles of a genuinely liberal – that is: autonomy-enhancing – contract law. The rules that delineate the scope of these doctrines are guided by liberal contract’s commitment to ensure that promisors’ future selves are not unacceptably encumbered. The rules that regulate these doctrines, in turn, follow liberal contract’s principles of proactive facilitation and relational justice. Together, these rules exemplify both the power of the liberal foundation of modern contract law and the subtlety of its doctrinal workings.
German, Peter, ‘Coronavirus (COVID-19) and Force Majeure’ [2020] *Lawyer (Online Edition)* 1

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


*Abstract*: During the COVID-19 pandemic, the social isolation measures, the closure of borders and the restrictions on business activity (including the provision of goods and services in the ordinary course of business) have seriously disrupted private contractual arrangements between commercial parties on both a domestic and cross-border basis. This article provides a high-level overview of the contractual impact of COVID-19 on corporate and financial transactions in three areas: material adverse change clauses; force majeure clauses; and the doctrine of frustration. The analysis highlights both the complexities of these concepts and also the extent to which their operation is subject to the specific circumstances, even in the context of the COVID-19 pandemic.


*Abstract*: The Covid-19 pandemic is a significant disruption for the performance of contractual obligations. Contracts often contain a force majeure clause that lays out the circumstances under which a contract can be terminated or suspended. However, not all contracts contain such a clause, or the clause might not cover the current situation. In the absence of a force majeure or similar type clause the applicable law fills that gap. This paper concentrates on international commercial law contracts and transnational commercial law; it specifically focuses on the Convention for the International Sale of Goods,1 the UNIDROIT Principles of International
Commercial Contracts, and the principles of the lex mercatoria. This paper analyses how these instruments could be applied if the contractual parties do not meet their obligations because of the Covid-19 pandemic.


Abstract: Reviews the debate over whether contractual disruptions caused by the coronavirus pandemic are covered by force majeure clauses. Examines the general position, the tradition of interpreting such clauses narrowly, and the factors likely to be considered by the courts, including the natural meaning of the relevant words. Sets out practical guidance on drafting force majeure clauses, and whether a widely-drawn catch-all provision is advisable.


Abstract: While businesses are battling the coronavirus disease 2019 (COVID-19) — the most challenging epidemic the world has faced since the Spanish Flu outbreak that occurred after World War I — their contractual obligations do not disappear. Force majeure may, however, excuse those obligations. But as discussed below, force majeure may be a limited potential solution, rather than a panacea.


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

**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.


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


**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.


**Jurisdiction:** UK, USA and Europe

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


Abstract: Beyond the alarming spread of COVID-19 across the globe and the social distancing measures being put in place by the government authorities all over the world, the sting of the pandemic has had far reaching effects and has found its way into almost every sector of the economy. Businesses are at risk of being wind up, contractual obligations are likely to be breeched if not properly reviewed, terms of contract between employers and employees have become airy-fairy and the atmosphere has become a false dawn for potential investors, stakeholders and growing industries. This article seeks to address the imminent issues that may arise from the impact of the pandemic as it relates to contractual agreements and proffer possible recommendations.


Introduction: The COVID-19 pandemic of 2020—as well as government orders to contain it—has prevented countless people, babysitters to basketball players, from fulfilling their contracts. Are all of these parties legally liable for breaching their contracts? Or are they excused due to this
extraordinary event? What about payments made in advance, such as tickets bought for a concert that has now been canceled, or a dorm room leased at a college that is now closed?

This coronavirus is new, but wars, floods, and even other pandemics have upset innumerable contracts over the years. In response, our courts have established a fairly clear set of legal rules—most importantly the doctrines of ‘Impossibility’ and ‘Restitution’—to answer these questions. Beyond that, contracting parties can, and often do, “contract around” these legal doctrines by including a ‘Force Majeure’ clause, which specifies what should happen in case of an ‘Act of God’ like the coronavirus.

Part I of this Essay will describe the legal doctrines of Impossibility and Restitution and how they might apply to a contract undermined by the COVID-19 pandemic. Part II will explain how a Force Majeure clause alters those background doctrines to give—or withhold—relief to a party whose performance has been thwarted by the pandemic.

Finally, Subpart II.C will peer into the future and predict that many parties will likely revise their Force Majeure clauses to ensure they cover a pandemic like this. While such a revision may seem obvious from a legal perspective, it may not be optimal from a business perspective, as it may lead counterparties to greatly lower the price they are willing to pay—or even refuse entirely to make a deal. Indeed, some parties may conclude that the default Impossibility doctrine provides better protection than a Force Majeure clause, as it covers any and all unexpected cataclysms, not just those expressly listed in the contract.


Abstract: Any country undertakes several actions to fulfill the public needs of its people or to achieve economical and financial targets. One of the most famous actions is contracts, the state is usually engaged in several contractual relationships to achieve the aforementioned targets. In Civil Law countries, the Administration concludes two types of contracts, Public Law Contracts and Private Law Contracts. The overwhelming opinion in the Egyptian Administrative Law, jurists and judgments are that there are 3 main criterion to distinguish administrative contract from civil and commercial contracts, which had been explained in the judgment of the Supreme Administrative Court ‘It is recognized that the Administrative Contract is the contract concluded
by a public law person with the intention of managing of public utility and for showing its
intention to adopt the Public law method, which includes a clause or conditions that are
unfamiliar to private law contracts.’. Through the performance of Administrative Contracts
certain obstacles appeared, some of them are foreseeable and others unforeseeable. After the
announcement by WHO on 13th March 2020, that COVID-19 is a pandemic, several states
declared the state of emergency due to the outbreak of COVID-19 which caused many
economical and financial disasters, to both public and private sectors. In this research I will focus
on the outbreak of COVID-19 as unforeseeable events which led to overturn the financial and
economical equilibrium of the Administrative Contract in Egypt. This is what we will illustrate
together in the following pages.

Sherman, John, ‘The Contractual Balance Between “Can I?” and ‘Should I?” Mapping the ABA’s Model
Supply Chain Contract Clauses to the UN Guiding Principles on Business and Human Rights”’ (Corporate

Abstract: This paper examines the efforts of the American Bar Association to draft proposed
Model Contract Clauses for businesses that prohibit modern slavery and child labor in supply
chain contracts. This involves a careful balancing of a buyer’s desire to avoid consuming goods
manufactured with human rights abuse and its desire to protect itself legally, in order to ensure
that the company is acting in alignment with its responsibility to respect universally recognized
human rights under the UN Guiding Principles on Business and Human Rights. This subject is
quite timely in light of the current efforts of many companies, in response to the COVID-19
pandemic, to exercise force majeure clauses in their contracts to dump suppliers without regard
to the impacts of vulnerable workers in their supply chains.

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

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

Jurisdiction: USA

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


Extract from Introduction: Since the very start of 2020, international business actors have become increasingly concerned with the “viral exceptionalism” caused by the various governmental pandemic-mitigation restrictions (PMRs) enacted in response to COVID-19..... in all jurisdictions the issue arises as to the impact of COVID-19 on the ability of the parties to duly perform their contractual obligations. This circumstance is not confined to domestic settings, but extends to international business transactions, where the risks arising both from pandemics and from the subsequent PMRs are typically regulated through appropriate force majeure clauses. However, unlike the corresponding national provisions regarding force majeure, which tend to exclude the party’s liability for failure to perform, the above-mentioned clauses regulate the effects of force majeure events in several different fashions by offering the parties ways to preserve their contractual relationships.

This article offers a threefold analysis of force majeure clauses in light of PMRs. First, it proposes an overview of force majeure clauses and their effects. Second, it assesses the possible use of such clauses in relation to PMRs. Finally, it examines the possible extraterritorial reach of such PMRs.

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


Extract: The consequences of this crisis have raised many legal issues, particularly for consumer and commercial contracts. For example, many consumers who prepaid for services to be provided at a later date (such as flights, accommodation, or venues for family celebrations) have struggled to obtain refunds from their service providers, with many offering vouchers instead in an attempt to preserve some of their cash reserves, thereby inadvertently turning consumers into unsecured lenders to business. Moreover, businesses and consumers with long-term loans or rental commitments may not be able to keep up their contractual instalment payments, and face being in default and, at worst, being evicted from homes or retail premises. Many long-term contracts, whether for the regular supply of goods or services or subscription-style contracts, cannot be performed on time, with performance either suspended or at least subject to delays. There are many other ways in which the crisis and its consequences have affected the performance of contracts, but this brief account suffices to set the scene. The central legal issue in respect of contracts can be boiled down to one seemingly simple question: what is the impact of the crisis and its consequences on the rights and obligations of the parties to a contract which can no longer be performed as expected? However, answering that question is far from simple and will depend on the reason why, and the extent to which, a contract can no longer be performed as expected, the relevant rules of the governing law which provide relevant legal solutions in respect of that reason, and any contract terms which might cover the circumstances which have arisen.
Torts


Abstract: A multitude of medical products are being developed and produced as part of efforts to tackle COVID-19. They are varied in nature and range from test kits to tracing apps, protective equipment, ventilators, medicines and, of course, vaccines. The design, testing and manufacture of many of these products differs from production in normal times due to the urgency of the situation and the rapid increase in demand created by the pandemic. This article considers the legal issues arising as a result of the production of emergency products, particularly from a products liability perspective. To what extent do existing concepts under the European Product Liability Directive, such as defect, causation and the various defences, permit the pandemic to be taken into account when a Court is considering issues of liability? What is the impact on liability of the modified regulatory regime? In light of that discussion, the case for alternative responses is examined from a comparative and European perspective, including the issue of Government indemnities for the manufacturers of products, legal exemptions from liability and alternative no-fault compensation schemes.


Abstract: This analysis summarises the particular injury compensation arrangements that are needed to support adequate take-up of vaccines for COVID-19 and the compensation of those who are unlucky enough to suffer harm arising out of their use. It indicates the inadequacies of the standard liability rules and arrangements, and the advantages of compensation schemes. It notes the widespread use of vaccine compensation schemes but also differences in their design and evolution, before summarising the state of the art on the design of such a scheme for Europeans and on how it may be funded.
Allman, Kate, ‘Privacy Concerns over Mobile Tracing App’ (2020) (66) LSJ: Law Society of NSW Journal 22

Abstract: Legal bodies have sounded alarm bells over the federal government’s plan to release a mobile-tracing app that would help track the contacts and movement of people infected with COVID-19.


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.


Abstract: Digital technologies and data-gathering and analytics are gaining prominence in the strategies adopted by governments all over the world as they address many of the challenges associated with the COVID-19 pandemic. Contact-tracing applications, in particular, promise to help contain the spread of the virus and allow societies to slowly relax social distancing measures. However, digital solutions pose a variety of risks to the security of individuals, and the enjoyment of human rights. This document proposes a framework to analyze how technical design and governance interplay in contact-tracing applications and how this interplay balances the safety needs of individuals and society at large. The document focuses on the two most prominent models at the time of writing, the Google-Apple protocol, announced on April 10, 2020, and the Decentralized Privacy Preserving Proximity Tracing protocol (DP3T), proposed by a group of technologists, legal experts, engineers and epidemiologists. It also considers the EU toolbox for the use of mobile applications for contact tracing. This document evaluates the two above mentioned protocols, and what is known about their governance and design at the time of writing. The document should be useful for policy-makers and members of civil society currently looking to evaluate these two different contact-tracing applications as a means to ease the lockdown imposed on most of the world to flatten the curve of infection of COVID-19. Similarly, understanding on how the enjoyment of a variety of human rights interacts vis-à-vis the voluntary adoption of these applications, should offer guidance for policymakers, civil society and developers to decide whether to promote these options, and how these applications should be deployed, and when they should be dismantled.
Bradford, Laura, Mateo Aboy and Kathleen Liddell, ‘COVID-19 Contact Tracing Apps: A Stress Test for Privacy, the GDPR and Data Protection Regimes’ (Article Isaa034) Journal of Law and the Biosciences (advance article, published 28 May 2020)

Abstract: Digital surveillance has played a key role in containing the COVID-19 outbreak in China, Singapore, Israel and South Korea. Google and Apple recently announced the intention to build interfaces to allow Bluetooth contact tracking using Android and iPhone devices. In this article we look at the compatibility of the proposed Apple/Google Bluetooth exposure notification system with Western privacy and data protection regimes and principles, including the General Data Protection Regulation (GDPR). Somewhat counter-intuitively, the GDPR’s expansive scope is not a hindrance, but rather an advantage in conditions of uncertainty such as a pandemic. Its principle-based approach offers a functional blueprint for system design that is compatible with fundamental rights. By contrast, narrower, sector-specific rules such as the US Health Insurance Portability and Accountability Act (HIPAA), and even the new California Consumer Privacy Act (CCPA), leave gaps that may prove difficult to bridge in the middle of an emergency.

Calzada, Igor, ‘Europe Needs a Revolution in the Administration’ (SSRN Scholarly Paper ID 3619407, 4 June 2020)

Abstract: In the current global digital realm, localised privacy policies that protect the data and digital rights of citizens will inevitably emerge as timely in the aftermath of the social disruption caused by Covid-19. The European Union’s General Data Protection Regulation (GDPR) provides a thorough framework for organisations to adhere to, with hefty fines that can run into hundreds of thousands of euros for those who do not comply with the rules.


Abstract: This chapter identifies two of the key elements in accountable artificial intelligence infrastructure globally—ethical modelling and responsible data. The chapter takes a global perspective and highlights issues of particular relevance to countries that were already in humanitarian crises, such as food insecurity and conflict, explaining how these play into the way
that epidemiological models should be constructed. Furthermore, it examines vulnerability from the perspective of aid recipients and migrants, to evoke the type of guidelines and laws that should be taken into account for data protection and privacy.


Abstract: Advances in communication technologies offer new opportunities for the conduct of qualitative research. Among these, Zoom—an innovative videoconferencing platform—has a number of unique features that enhance its potential appeal to qualitative and mixed-methods researchers. Zoom has become nearly synonymous with office meetings and socializing as people around the world have adapted to life at home amid the coronavirus outbreak. That has put the roughly 9-year-old company in the spotlight more than ever before - for both the good and the bad, as an onslaught of security issues have come to light. As the coronavirus pandemic forced millions of people to stay home over the past month, Zoom suddenly became the video meeting service of choice: Daily meeting participants on the platform surged from 10 million in December to 200 million in March. Many Cybersecurity research companies research says that it found security flaws in videoconferencing platform Zoom that would have allowed a potential hacker to join a video meeting uninvited and listen in, potentially accessing any files or information shared during the meeting. While Zoom has addressed the issue, the report raises deeper concerns about the safety of videoconferencing apps that require access to microphones and cameras.


Introduction: Considering the rapid and massive changes underway, the IAPP and EY launched a research initiative to gain more insight into the unique ways privacy and data protection practices have been affected by the pandemic. The initial phase of the project included a survey of privacy professionals, taking a deeper look at how organizations, in general, and privacy programs, in particular, are handling the privacy and data protection issues that have emerged alongside COVID-19, such as privacy and security issues related to working from home,
monitoring the health of employees, and sharing data with governments, researchers and public health authorities. It also looks at the unique economic impact of the crisis on the privacy profession. A total of 933 respondents completed the survey, and responses were collected between April 8 and 20.


Abstract: Privacy risks to individuals tend to be neglected due to the emphasis placed on privacy risks to organizations. Considering privacy risks to individuals, however, is critical to effective privacy risk management. More specifically, privacy risks that threaten individuals — and, in turn, society — ultimately also present risks to businesses. An individual in this context means an employee, customer, client, board member, donor or any other person with whom an organization has a relationship.

Given the urgency of the public health emergency due to the COVID-19 pandemic, it is worth analyzing the unique privacy risks that have emerged. Organizations that take these privacy risks to the individual and society into account in their risk management programs will be better equipped to manage the overall risks to privacy brought about by the pandemic.

Finnegan, Matthew, ‘Zoom Hit by Investor Lawsuit as Security, Privacy Concerns Mount’ [2020]

Computerworld (Online) 4

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

Abstract: Examines what procedures employers should follow after the coronavirus ban is lifted and employees return to the workplace, to provide a safe working environment while protecting employees' personal data and privacy.


Abstract: Digital contact tracing and analysis of social distancing from smartphone location data are two prime examples of non-therapeutic interventions used in many countries to mitigate the impact of the COVID-19 pandemic. While many understand the importance of trading personal privacy for the public good, others have been alarmed at the potential for surveillance via measures enabled through location tracking on smartphones. In our research, we analyzed massive yet atomic individual-level location data containing over 22 billion records from ten ‘Blue’ (Democratic) and ten ‘Red’ (Republican) cities in the U.S., based on which we present, herein, some of the first evidence of how Americans responded to the increasing concerns that government authorities, the private sector, and public health experts might use individual-level location data to track the COVID-19 spread. First, we found a significant decreasing trend of mobile-app location-sharing opt out. Whereas areas with more Democrats were more privacy-concerned than areas with more Republicans before the advent of the COVID-19 pandemic, there was a significant decrease in the overall opt-out rates after COVID-19, and this effect was more salient among Democratic than Republican cities. Second, people who practiced social distancing (i.e., those who traveled less and interacted with fewer close contacts during the pandemic) were also less likely to opt out, whereas the converse was true for people who practiced less social-distancing. This relationship also was more salient among Democratic than Republican cities. Third, high-income populations and males, compared with low-income populations and females, were more privacy-conscientious and more likely to opt out of location tracking. Overall, our findings demonstrate that during COVID-19, people in both Blue and Red cities generally reacted in a consistent manner in trading their personal privacy for the greater social good but diverged in the extent of that trade-off along the lines of political affiliation, social-distancing compliance, and demographics.
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.

Goldenfein, Jake, Ben Green and Salome Viljoen, ‘Privacy Versus Health Is a False Trade-Off’ Jacobin (17 April 2020)

Abstract: As tech firms team up with governments to fight the coronavirus pandemic, we’re being asked to accept a trade-off between our digital privacy and our health. It’s a false choice: we can achieve the public health benefits of data without accepting abusive and illicit surveillance.


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.


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.


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.


Abstract: With the objective of controlling the spread of the coronavirus, the UK has decided to create and, since 5 May 2020, is live testing a digital contact tracing app, under the direction of NHS X, a branch of NHS Digital, and with the help of the private sector. Given the lack of details as to what the app will exactly do or not do, there are fears that the project will increase government surveillance beyond the pandemic. While I share these concerns, I argue that we need to simultaneously tackle one of the most significant, yet overlooked, contributors to the problem of government surveillance: our inflated digital footprint, stemming from our use of digital technology, and the basis of ‘surveillance capitalism’, a business model left largely unchallenged, which results in surveillance, and stems from the non-compliance with data protection laws. A systematic enforcement of the General Data Protection Regulation (GDPR) on the private sector would disrupt the current dynamics of surveillance which are hidden in plain sight.


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.

Abstract: The recent COVID-19 outbreak has pushed the tension of protecting personal information in a transnational context to an apex. Using a real case where the personal information of an international traveller is illegally released by Chinese media, the article analyses Chinese law for personal information protection in the context of the COVID-19 pandemic.

Huang, Jie (Jeanne), ‘COVID-19 and Applicable Law to Transnational Personal Data: Trends and Dynamics’ (Sydney Law School Research Paper No 20/23, 2020)

Abstract: The recent COVID-19 outbreak has pushed the tension of protecting personal data in a transnational context to an apex. Using a real case where the personal data of an international traveller was illegally released by Chinese media, the paper identifies that three trends have emerged at the each stage of conflict-of-laws analysis for lex causae: (1) the EU, the US, and China characterize the right to personal data differently, (2) the spread-out unilateral applicable law approach comes from the fact that all three jurisdictions either consider the law for personal data protection as a mandatory law or adopt connecting factors leading to the law of the forum, and (3) the EU and China strongly advocate de-Americanisation of substantive data protection laws. The trends and their dynamics provide valuable implications for developing the choice of laws for transnational personal data. First, this finding informs parties that jurisdiction is a predominant issue in data breach cases because courts and regulators would apply the forum law. Second, currently there is no international treaty or model law on choice-of-law issues for transnational personal data. International harmonization efforts will be a long and difficult journey considering how the trends demonstrate not only the states’ irreconcilable interests, but also how states may consider these interests as their fundamental values that they do not want to trade off. Therefore, for states and international organisations, a feasible priority is to achieve regional coordination or interoperation among states with similar values on personal data protection.
Jalabneh, Rawan et al, ‘Use of Mobile Phone Apps for Contact Tracing to Control the COVID-19 Pandemic: A Literature Review’ (SSRN Scholarly Paper ID 3641961, 1 July 2020)

Abstract:

Background: Contact tracing is a widely adopted surveillance system that is used to identify, evaluate, and handle people who have been exposed to novel infectious diseases. The mobile phone apps using a digital technological system, called ‘proximity tracking,’ is used as a surveillance system to control the COVID-19 pandemic.

Objective: The aim of this review is to examine the use of mobile phone apps for contact tracing to control the COVID-19 pandemic worldwide.

Method: A search of different electronic databases, such as PubMed, PubMed Central, Google Scholar, and Google, was carried out using search items ‘mobile app,’ ‘tracing’, and ‘COVID-19’. The search was conducted between 18 to 31 May 2020.

Findings: The search revealed that a total of 15 countries in the world developed and actively using 17 mobile apps for contact tracing to control the COVID-19 pandemic during the selected time frame. China and Malaysia were only using two apps. Out of 17 apps, three were protected by the country’s data protection laws. The results indicate that the mobile apps were used to monitor self-isolated individuals, identify individuals not wearing masks, whether they had close contact with an infected person, provides exact time and place of the encounter, and possible risk of infection.

Conclusion: Contact tracing is found to be an essential public health approach to fight the spread of COVID-19 pandemic and other novel infectious diseases. However, caution is warranted to generalize the usability of apps, especially in the LMICs, and to address the concerns regarding data anonymizing, data privacy and usage, and data rights.


Abstract: COVID-19 has highlighted the shortcomings of healthcare systems globally as countries struggle to meet the high demand for patient care. The spread of COVID-19 has resulted in unprecedented circumstances that necessitate a shift towards adopting infrastructure to enable
care to be provided virtually. This shift is critical to minimize insufficiencies and maximize the quality of care in healthcare systems. While COVID-19 has dramatically accelerated the adoption of technology into care delivery, ongoing work is needed to ensure that our technology infrastructure provides an environment for safe and effective care delivery.

Telemedicine usage has substantially increased over the past decade, and many hospital systems have robust telemedicine programs. Yet traditional in-person visits remain the cornerstone of clinical care, despite the fact that a significant amount of these visits, including follow-ups, treatment for minor illnesses, and chronic disease management could be substituted by virtual communication. Telemedicine has previously been identified as particularly important during disasters, due to the inaccessibility of traditional care services. This is especially salient for the COVID-19 pandemic where in-person healthcare visits pose a high risk to exposure. Additionally, responses to COVID-19, specifically social isolation and the intensified burden on essential workers, are eliciting detrimental psychological effects on large populations, while simultaneously making mental health resources highly inaccessible. Overall, with the increased strain and demand on traditional medical resources, telemedicine has emerged as an essential component of clinical care delivery during the COVID-19 pandemic with many healthcare organizations reporting substantial increases in telemedicine use during COVID-19. For example, NYU saw an increase in non-urgent care virtual visits from a pre-COVID-19 average of 95 daily to 4,209 post COVID-19 expansion (4,330% increase). However, as we continue the shift to telemedicine, new issues unravel that need to be addressed, particularly in regard to technology infrastructure. In the US, the Department of Health and Human Services recently lifted many of the restrictions on communication apps, reducing barriers that previously prevented the use of telemedicine services for individuals. That being said, the substantial information security and privacy concerns surrounding telemedicine cannot be overlooked. For example, Zoom, currently one of the most popular video conferencing platforms, has had a 10-fold increase in usage over just a few months including increasing use in healthcare, leading to several important privacy considerations—outsiders joining video conferences, or inadequate encryption of communications, leading to the possibility of eavesdropping.

State and federal agencies have warned of increased risk of cyberattacks towards healthcare and public health sector and organizations doing research on COVID-19. Ransomware attacks—a type of cybersecurity threat that involves encrypting data and demanding payment in return for
unencrypting the data—have continued unabated during the pandemic, with many targeting hospitals specifically. Recent ransomware attacks have included the Illinois Public Health District website and a medical testing facility in the UK. Successful cyberattacks negatively impact hospital operations, delay access to clinical services, and lead to significant economic loss, all of which would be particularly devastating to organizations already under unprecedented economic and clinical strain during this pandemic.

Therefore, while global healthcare systems should allocate significant resources towards improving telemedicine capabilities, improvements must ensure that the technology delivers care that is both safe and effective. Balancing the significant privacy and information security concerns with the enormous potential benefits of virtual care during this pandemic will remain a vital component to our continuously evolving response to COVID-19. Now more than ever, health care workers and organizations need to follow best practices to reduce cyber incidents.

Klein, Kris, ‘Privacy Issues Arising from the COVID-19 Pandemic’ (4 June 2020) 2 Emerging Areas of Practice Series - COVID-19 (Coronavirus) 2 Westlaw Canada

Jurisdiction: Canada

Abstract: As the COVID-19 pandemic creeps into its fourth month in Canada, the privacy issues to which it has given rise are wide-ranging and ever-evolving. This article provides commentary on some of the areas we see as being at the forefront of the privacy challenges in Canada as they relate to COVID-19.

Note: the main two areas considered in this article are the privacy of employees working from home, and contact tracing technologies and surveillance.


Abstract: We respond to a recent work by de Motjoye et al. on privacy issues with COVID-19 tracking. Our discussion is structured around three ‘toy’ protocols for the design of an app which can maximise the utility of contact tracing information while minimising the more general risk to privacy. On this basis, the paper proceeds to introduce eight questions against which they
should be assessed. The questions raised and the protocols proposed effectively amount to the creation of a game with different categories of players able to make different moves. It is therefore possible to analyse the model in terms of optimal game design.

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.


Jurisdiction: Australia

Abstract: The global Coronavirus disease 2019 (COVID-19) pandemic is creating unprecedented disruption to all industries globally through its direct and indirect impact on health and wellbeing, the needs of citizens, the way we work, and the needs of our clients. It is estimated that over the course of a year, the pandemic could impact the Australian economy alone by a reduction of AUD34.2 billion or an approximately 1.3% decrease in Gross Domestic Product (GDP). The challenges we face in addressing the risks of the pandemic are well-documented. Perhaps less documented however are the role of privacy frameworks in assisting with such
statutory and day-to-day risk mitigation efforts, as well as the fact that we cannot avoid compliance with the ‘Privacy Act 1988’ (Cth) and other similar privacy frameworks including the ‘General Data Protection Regulation’ (GDPR).

Marks, Mason, ‘Emergent Medical Data: Health Information Inferred by Artificial Intelligence’ (2021) U.C. Irvine Law Review (forthcoming)

Abstract: Artificial intelligence can infer health data from people’s behavior even when their behavior has no apparent connection to their health. AI can monitor one’s location to track the spread of infectious disease, scrutinize retail purchases to identify pregnant customers, and analyze social media to predict who might attempt suicide. These feats are possible because in modern societies, people continuously interact with internet-enabled software and devices. Smartphones, wearables, and online platforms monitor people’s actions and produce digital traces, the electronic remnants of their behavior. In their raw form, digital traces might not be very interesting or useful; one’s location, retail purchases, and internet browsing habits are relatively mundane data points. However, AI can enhance their value by transforming them into something more useful—emergent medical data. EMD is health information inferred by artificial intelligence from otherwise trivial digital traces. This Article describes how EMD-based profiling is increasingly promoted as a solution to public health crises such as the COVID-19 pandemic, gun violence, and the opioid crisis. However, there is little evidence to show that EMD-based profiling works. Even worse, it can cause significant harm, and current privacy and data protection laws contain loopholes that allow public and private entities to mine EMD without people’s knowledge or consent. After describing the risks and benefits of EMD mining and profiling. The Article proposes six different ways of conceptualizing these practices. It concludes with preliminary recommendations for effective regulation. Potential options include banning or restricting the collection of digital traces, regulating EMD mining algorithms, and restricting how EMD can be used once it is produced.

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.


Abstract: Artificial Intelligence (AI) is a potentially powerful tool in the fight against the COVID-19 pandemic. Since the outbreak of the pandemic, there has been a scramble to use AI. This article provides an early, and necessarily selective review, discussing the contribution of AI to the fight against COVID-19, as well as the current constraints on these contributions. Six areas where AI can contribute to the fight against COVID-19 are discussed, namely i) early warnings and alerts, ii) tracking and prediction, iii) data dashboards, iv) diagnosis and prognosis, v) treatments and cures, and vi) social control. It is concluded that AI has not yet been impactful against COVID-19. Its use is hampered by a lack of data, and by too much data. Overcoming these constraints will require a careful balance between data privacy and public health, and rigorous human-AI interaction. It is unlikely that these will be addressed in time to be of much help during the present pandemic. In the meantime, extensive gathering of diagnostic data on who is infectious will be essential to save lives, train AI, and limit economic damages.

Parker, Michael J et al, ‘Ethics of Instantaneous Contact Tracing Using Mobile Phone Apps in the Control of the COVID-19 Pandemic’ (2020) 46(7) Journal of Medical Ethics 427–431

Abstract: In this paper we discuss ethical implications of the use of mobile phone apps in the control of the COVID-19 pandemic. Contact tracing is a well-established feature of public health practice during infectious disease outbreaks and epidemics. However, the high proportion of pre-symptomatic transmission in COVID-19 means that standard contact tracing methods are too slow to stop the progression of infection through the population. To address this problem, many countries around the world have deployed or are developing mobile phone apps capable of supporting instantaneous contact tracing. Informed by the on-going mapping of ‘proximity
events’ these apps are intended both to inform public health policy and to provide alerts to individuals who have been in contact with a person with the infection. The proposed use of mobile phone data for ‘intelligent physical distancing’ in such contexts raises a number of important ethical questions. In our paper, we outline some ethical considerations that need to be addressed in any deployment of this kind of approach as part of a multidimensional public health response. We also, briefly, explore the implications for its use in future infectious disease outbreaks.


Abstract: Contact-tracing apps to combat the COVID-19 pandemic have increasingly been mentioned as useful tools to accompany and contribute to a return to normality despite the many ethical and legal questions they raise. The pressure exerted by business circles and lobbies to restart and ‘save the economy’ has been intense. What started as a public health crisis morphed into an economic crisis and we are now faced with a ‘trick-or-treat’ choice: accept to ‘pay the price’ and use invasive tracing apps, and by so doing facilitate a gradual reopening of business, or fight for privacy and delay the return to normality.

‘Privacy Is Protected, Even during a Pandemic’ (2020) 113(6) Servamus Community-based Safety and Security Magazine 58

Abstract: Many South Africans have expressed valid concerns about the potential for abuse of personal information collected by government as part of tracking and tracing those exposed to COVID-19 infection.

Yet, the approach taken appears to be well-balanced, even though the Protection of Personal Information Act of 2013 (POPI) has not yet come fully into operation. Electronic Communication Service Providers (ECSPs) such as Internet Service Providers (ISPs) can only provide personal information required to combat COVID-19 to the Director-General of the Department of Health for inclusion in a database which is subject to several restrictions.

Jurisdiction: USA

Abstract: This Article assesses whether and under what circumstances the United States ought to embrace the use of epidemiological surveillance programs, including the use of cell phone location data for contact tracing purposes. Part I analyzes the constitutionality of programs like digital contact tracing, arguing that the Fourth Amendment’s protection against unreasonable searches and seizures may well regulate the use of location data for epidemiological purposes, but that the legislative and executive branches have significant latitude to develop these programs within the broad constraints of the ‘special needs’ doctrine elaborated by the courts in parallel circumstances. Part II cautions that the absence of a firm warrant requirement for digital contact tracing should not serve as a green light for unregulated digital location tracking, whether in the form of individual or aggregate surveillance, and by means of location or proximity tracking. In light of substantial risks to privacy that a digital contact tracing program might entail, this Article argues for a thoughtful, constitutionally sufficient, legislative scheme that does not indulge the hubris of emergency, assert claims of broad, unchecked power, or follow the siren’s song of technovelocity. Policymakers must instead ask hard questions about efficacy and the comparative advantages of location tracking versus more traditional means of controlling epidemic contagions, take seriously threats to privacy, tailor programs parsimoniously, establish clear metrics for determining success, and set plans for decommissioning surveillance programs. Should the political branches fail to perform on these duties, then the courts, as guardians of the Fourth Amendment’s sacred trust, must act.


Abstract: This note selectively unpacks the rapid evolution of the (Western) debate around the opportunity to deploy contact tracing apps, alongside other digital tools such as apps for symptoms sharing and immunity certificates to mitigate the Covid-19 pandemics. I do so from the perspective of a social scientist interested in the implications of the development of digital tools at times of emergency in terms of data governance. I argue that a more articulated reflection is needed towards the development of a healthy institutional structure that regulates
the role of large tech platforms, such as Google and Apple (G&A), and public institutions, in governing data, particularly when health data and public value are involved. I unravel the saga of contact tracing apps in the UK and EU, looking at the technical, legal and ethical aspects and I attempt to draw more general lessons for data governance.


Abstract: Data and analytics are being enlisted to play a role in understanding and preventing the spread of COVID-19. This chapter focuses on digital “apps,” which are being deployed by governments around the world to supplement the manual contact-tracing efforts typically performed by public health officials. Contact-tracing apps have been developed rapidly, with little time for user testing, and their adoption raises important privacy and ethical concerns. In this chapter, we outline some of these potential concerns. We begin by tracing the history of contact tracing as a pre-digital, or manual, method and then detail the current contact-tracing efforts, distinguishing among different types of apps and data use approaches. We then draw from our complementary expertise in law, ethics, and sociology to outline potential risks of contact-tracing apps along these dimensions. Risks include misuse of personal data for surveillance and insufficient uptake leading to inaccurate information for individuals, which could lead to increased infection. Risks also include differential access and thus the reproduction of vulnerability among marginalized communities. Overall, the chapter identifies issues relevant to the responsible development and use of big data and AI for COVID-19 mitigation efforts.

Shabani, Mahsa, Tom Goffin and Heidi Mertes, ‘Reporting, Recording and Communication of COVID-19 Cases in Workplace: Data Protection as a Moving Target’ *Journal of Law and the Biosciences* Article Isaa008 (advance article, published 22 April 2020)

Abstract: In response to concerns related to privacy in the context of COVID-19, recently European and national Data Protection Authorities (DPA) issued guidelines and recommendations addressing variety of issues related to processing of personal data for preventive purposes. One of the recurring questions in these guidelines related to the rights and responsibilities of employers and employees in reporting, recording and communicating COVID-
19 cases in workplace. National Data Protection Authorities in some cases adopted different approaches regarding duties in reporting and communicating the COVID-19 cases, however, they unanimously stressed importance of adopting privacy preserving approaches to avoid raising concerns about surveillance and stigmatization. We stress that in view of increasing use of new data collection and sharing tools such as ‘tracing and warning’ apps, associated privacy related risks should be evaluated on an ongoing manner. In addition, the intricacies of different settings where such apps may be used should be taken into consideration when assessing the associated risks and benefits.


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’.


Introduction: National electronic health record (EHR) systems containing more or less comprehensive data on a person’s medical history have recently become increasingly popular, as they enable different healthcare providers to treat a patient more accurately by sharing all available health data on this person. At the same time, this comprehensive accessibility of health data raises concerns with respect to data protection. A possible answer to these concerns is the implementation of voluntary participation, be it in the form of an opt-in or an opt-out regime. Another strategy chosen by certain EHR system operators is to limit access to personal data to health care providers treating the patients, while state institutions are usually not allowed access to personal data in EHRs. Such EHR systems which are as a result “controlled” by
the patient (either through an opt-in or an opt-out decision concerning all or parts of the content), have been established particularly in parts of Europe. Currently, EHR systems based on an opt-in or opt-out scheme are in operation or about to be established in more than ten European states.


Abstract: When disease becomes a threat to security, the balance between the need to fight the disease and obligation to protect the rights of individuals often changes. The current COVID-19 crisis shows that the need for surveillance and contact tracing poses challenges to the right of privacy. We focus on the European Union (EU), which has some of the strongest fundamental rights and data protection regimes, yet requires its member states at the same time to exchange personal data gathered through contact tracing. While public authorities may limit the right to privacy in case of threats to public health, the EU provides little guidance when such limitations are proportionate. To define standards, we analyse existing EU case law regarding national security measures. We conclude that on the proportionality of contact tracing in the EU it is difficult to reconcile public health measures and individual rights, but guidance can be taken from understandings of proportionality in the context of security, particularly in the current COVID-19 emergency.


Abstract: As the current COVID-19 pandemic sweeps the globe and dramatically alters society, governments and corporations are turning to novel uses of biometric technologies to limit contagion and maintain economic opportunities. Technologies that may have once seemed like the province of science fiction - such as thermal facial recognition, remote fever detection, or smartphone-based immunity certificates - are now not only possible but already in use. This raises important questions about the potential privacy implications of the widespread collection and use of such personal data. While multimodal biometric surveillance technologies such as
these may prove useful in slowing the spread of SARS-CoV-2, we caution that the ability of
governments and corporations to leverage these technologies will likely persist beyond the
current public health emergency. Just as many of the privacy concessions made in the USA
Patriot Act have become permanent since the emergency circumstances of September 11, 2001,
the privacy-limiting technologies unleashed during this pandemic may well persist unless
policies are enacted now to regulate their use and ensure responsible oversight. Recognizing
that these emergent technologies may become entrenched long after this public health crisis
subsides, we focus here on the case of fever checks and thermal facial recognition technology to
illustrate the current state of the technology, existing policies related to its use, and suggestions
for proactive policies to govern its deployment during and beyond the present pandemic.

Viljoen, IM et al, ‘Contact Tracing during the COVID-19 Pandemic: Protection of Personal Information in

Abstract: Containing the COVID-19 pandemic necessitates the use of personal information
without the consent of the person. The protection of personal information is fundamental to the
rights that ensure an open and democratic society. When regulations that limit the right to
privacy are issued outside of the democratic process, every effort must be made to protect
personal information and privacy. The limitation of human rights must be treated as an
exception to the norm, and any regulations should be drafted to ensure minimum limitation of
rights, rather than to the minimum acceptable standard. The contact tracing regulations
included in the COVID-19 disaster regulations include some basic principles to ensure privacy;
however, other important principles are not addressed. These include principles of transparency
and data security. The envisaged future use of human data for research purposes, albeit de-
identified, needs to be addressed by the COVID-19 designated judge appointed under the
regulations.

Watts, David, ‘COVIDSafe, Australia’s Digital Contact Tracing App: The Legal Issues’ (SSRN Scholarly
Paper ID 3591622, 2 May 2020)

Abstract: The Australian government has developed a digital contact tracing app, COVIDsafe,
accompanied by a temporary legal framework that is designed to support its deployment until a
legislative framework is developed. This preliminary analysis argues that the temporary legal framework does a creditable job in addressing privacy concerns. Despite this, there are a variety of legal risks that remain. These centre on the ability of the courts to issue orders to obtain and inspect the data produced by or through the app; police warrant powers; metadata retention and its availability to local law enforcement agencies; the vulnerability of data to US law enforcement agencies through the US CLOUD Act; inaccurate assurances about proximity restrictions and more general concerns that users’ consent to the use of their app data for contact tracing may not be valid. These are issues that must be addressed by government when it develops its permanent legislative framework for COVIDSafe. A failure to do so will erode the community’s trust in COVIDSafe and thus undermine its efficacy as a means by which COVID-19 risks can be managed until a vaccine or an effective treatment become available.


Abstract: The Coronavirus disease (Covid-19) outbreak has not only caused disruptions worldwide in social, economic and political arenas, but also raises a plethora of issues in the data privacy protection arena. Government authorities and businesses around the world seek to respond to this public health emergency by using personal data and information of their employees, visitors, customers and/or suppliers, including by deploying technologies to collect individuals’ health and location data to manage health and safety issues arising from the Covid-19 virus and for targeted crowd monitoring. As the increased use by health authorities and businesses/employers rise in the collection and use of personal data and health information for tracking and identifying Covid-19 carriers for public health emergency purposes, privacy discussions and concerns abound over potential personal data misuse, mishandling and a more permanent stretch of government powers for long-term privacy-intrusive monitoring even after the virus ends. At this juncture, we examine how data protection regulators in the Asia Pacific (APAC) and the UK have approached data privacy issues and guidelines in the context of Covid-19, to shed light on how privacy rights balance against the countervailing interests of public health emergency and to what extent APAC and UK data privacy laws are able to protect individuals’ rights.
On 7 April 2020 the Australian Prime Minister announced that the National Cabinet had agreed to a Mandatory Code of Conduct for small to medium enterprises (SMEs), outlining commercial leasing principles to be implemented during the COVID-19 pandemic (National Code). The National Code applies to tenants that suffer financial stress or hardship as a result of the COVID-19 pandemic, as defined by their eligibility for the Commonwealth Government’s Job Keeper program, with an annual turnover of up to $50 million. While the National Code is intended to apply nationally, each State and Territory is responsible for its practical implementation.

Volume 35(4)-(5) of the *Australian Property Law Bulletin* comprises a nationwide analysis of the landlord and tenant relief measures during the COVID emergency enacted by each State and Territory under the umbrella of the National Leasing Code.

35(4)

- Cameron, Max and Maria Amato, ‘The Legislative Framework of the “COVID-19 Omnibus (Emergency Measures) Act” 2020 (Vic) and the “COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations” 2020 (Vic)’ 52-56
- Jebeile, Maged, ‘New South Wales’ 57-62
- Alberghini, Julia and Peter Beekink, ‘Western Australia’ 66-71

35(5)

- Cameron, Max and Maria Amato, ‘The Legislative Framework of the “COVID-19 Disease Emergency (Commercial Leases) Act” 2020 (Tas)’ 82-87
- Alberghini, Julia and Peter Beekink, “‘Commercial Tenancies (COVID-19 Response) Regulations 2020” (WA)’ 88-91
Hautop, Mark, “‘Tenancies Legislation Amendment Act 2020” (NT)’ 92-94


Bates, Justin, ‘Housing During Lockdown’ (2020) 23(4) Journal of Housing Law 68-71

**Jurisdiction**: UK

*Abstract*: Reflects on the problems of housing provision during the coronavirus pandemic, and potential solutions. Examines the measures for combating homelessness, highlighting the uncertainties over eligibility and the importance of guidance on priority need. Discusses the temporary suspension of possession proceedings, the lack of clarity over future policy when lockdown is lifted, and the pressures on private landlords regarding gas safety inspections.


*Abstract*: Housing...shelter...is a fundamental part of what it means to be human. The current COVID-19 public health crisis is causing economic hardship on families and individuals, hurting disproportionately people already living in tenuous economic situations. Sectors most severely impacted by the economic shutdown employ notable numbers of such families and individuals, who now are without jobs, receiving temporary unemployment assistance, without certainty that their jobs will again be made available. In order to mitigate the additional negative outcomes of these unprecedented twin global health and economic crises, policy makers across levels of government must work together to prevent an extreme loss of housing and the related negative consequences outlined in this paper. Given Michigan has experienced one of the worst sets of recessions over the last 20 years, it is an important case study in understanding the economic impact, particularly on housing, of these crises. This paper presents an overview of the concerns in the ability to pay for housing springing from the economic impact of the public health shutdowns using west Michigan as an illustrative example. It further recommends policy actions to mitigate the most negative impacts on housing access applicable both in Michigan and nationwide.
‘Coronavirus: Protecting Rough Sleepers and Renters: Interim Report, Communities and Local Government Select Committee May 2020’ (2020) 23(4) *Journal of Housing Law* D62

**Jurisdiction:** UK

**Abstract:** Highlights the May 2020 interim report by the Communities and Local Government Select Committee on how to safeguard homeless people during the coronavirus pandemic and when the restrictions are eased, and the position regarding the possible implementation of a pre-action protocol on rent arrears for private landlords.

**Note:** the Select Committee’s Interim Report ‘Protecting Rough Sleepers and Renters’ is available on open access on the UK Parliament website.

Cough, Emily and Polly Storey, ‘COVID-19 and Rental Housing for Older Adults’ (2 April 2020) 3 *Emerging Areas of Practice Series: COVID-19 (Coronavirus)*, Westlaw Canada

**Jurisdiction:** Canada

**Abstract:** For many adults, the first of the month means that rent is due. Due to measures intended to curb the spread of COVID-19, however, many renters are struggling to make their monthly payment today. Many British Columbians have found themselves out of work and, as a result, with no or reduced income. To address this issue, on March 25, 2020, the Province announced a plan that modifies the rights and obligations of renters and landlords.

Cromarty, Hannah and Wendy Wilson, ‘Coronavirus: A Ban on Evictions and Help for Rough Sleepers’ (Briefing Paper No 08867, House of Commons Library, 25 June 2020)

**Jurisdiction:** UK

**Abstract:** This briefing paper explains measures the Government has put in place during the coronavirus outbreak to assist households to retain their homes and to enable local authorities to tackle the specific challenges faced by rough sleepers. The paper is being updated regularly to take account of new developments.
Ekhator, Ekhromwen Gabriel, Andrew Ogaribo and Samuel Iyobosa Ebughe, ‘The Impact of Pandemics Such as the COVID-19 and Other Unforeseeable Events on Leases: Force Majeure or Frustration?’ (SSRN Scholarly Paper ID 3616831, 2 June 2020)

Abstract: In a world of unforeseen occurrences and unpremeditated events, anything can happen. However, following the security consciousness of mankind, parties to a leasehold contract are usually mentally and obligatorily inclined to secure their contract thereby putting measures in place to oblige each other to perform his part in the contract. One of these efficacious measures that have been adopted by parties to a leasehold contract is the making and signing of lease agreements. Many a times, the landlord and his tenant carefully and with the help of an astute lawyer, draft a lease agreement to outline their obligations under the contract. While doing this they are careful enough to input when and how the contract should be put to an end such as including a force majeure clause to the lease agreement. Sadly sometimes, unforeseen occurrences make the contract impossible to carry out by either of the parties. In a bid to put an end to the contract, most times the tenant, resort to the store room of weapons which is the lease agreement, seeking clauses that he may use against the landlord to put an end to their contract. Unfortunately, he does not find any useful because the events he leans upon was never included in the lease agreement nor was it part of the force majeure clause. The recent outbreak of the 2019 Novel Corona virus (‘COVID-19’) in China and its widespread over the world has caused many business activities to come screeching to a halt, as many countries issue orders and advisories for residents to stay at home and for any nonessential business activities to be performed remotely. During this period of COVID-19, many businesses and tenants such as students do not have access to their premises, and this has called for a legal answer to the effect of the stay at home order on the lease. This article seeks to answer the questions; do pandemics such as the COVID-19 give rise to a frustrating event or force majeure? What position should the parties take when other unforeseen or unpremeditated events such as war, government restrictions, strikes, natural disasters, and acts of God make the contract impossible of being performed? The article also examines the position of landlord and tenant in the country during this ‘lockdown’ order.

Abstract: COVID-19 has laid bare the failure of Canadian governments to effectively implement the right to housing. In this chapter, we argue the pandemic presents Canada with the opportunity to correct the structural weaknesses of our housing system to ensure housing for all and reposition housing as a social good rather than a commodity. We explore how housing status has been determinative of outcomes for three vulnerable populations during the pandemic—people experiencing homelessness, survivors of intimate partner violence, and low-income renters. Their experiences demonstrate the urgent need for a rights-based approach to housing, highlighting the importance of breathing life into the National Housing Strategy and the National Housing Strategy Act. We argue that Canadian governments must act before this opportunity passes them by; otherwise they will find that though the pandemic itself is over, housing inequality has only worsened.


Jurisdiction: USA

Abstract: Eviction moratoria are set to expire across the country, unemployment is high, and many renter advocates are predicting a ‘tsunami’ of eviction filings. In a legal eviction, a landlord obtains a court judgment against a tenant who has violated his or her lease, either by causing a nuisance or damage on the property or failing to pay. To reduce exposure to COVID-19 for all involved, many localities suspended eviction procedures in March 2019. The sudden end of moratoria will almost certainly result in a surge in eviction filings, if only owing to pent-up requests. Policymakers can avoid a drastic shock to the rental market by encouraging renegotiation, limiting the pace of evictions, and creating incentives for landlord forbearance.


Abstract: In what can only be described as unprecedented times, both federal and state governments seek to prepare for the impact of the COVID-19 coronavirus outbreak. The ‘COVID-19 Legislation Amendment (Emergency Measures) Bill 2020’ (NSW) was passed by both houses of NSW Parliament and received assent on 25 March 2020. Institutions such as NSW Land Registry Services (NSW LRS), NSW Office of the Registrar General (ORG) and the Australian Registrars National Electronic Conveyancing Council (ARNECC) have released statements setting out some guidance on conveyancing practices in response to increased social distancing measures put in place by the federal government. The federal Treasurer has announced changes to Australia’s foreign investment review framework. This article sets out an outline of the legislative response to COVID-19 and new conveyancing practices applying to property transactions in New South Wales.


Jurisdiction: USA

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


Jurisdiction: South Africa

Abstract: To pay or not to pay has become an imperative question asked by retail tenants in the context of rental due pursuant to lease agreements. The question is raised in the wake of an extension of the lockdown as announced on 9 April by President Cyril Ramaphosa.

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.


Abstract: In the wake of the COVID-19 pandemic, all levels of government are considering how to protect public health by keeping people in their homes, even if they can no longer afford their monthly mortgage or rent payments. The protections that have emerged thus far have been far more protective of homeowners than renters. This essay exposes how the disparity in legal protections for these two groups is not unique to this pandemic. Rather, the crisis has merely uncovered longstanding, deep-rooted patterns within legal doctrines, governmental programs, and public policies that bestow favorable treatment upon homeowners at the expense of renters. This essay situates the current crisis within our existing research addressing the disparate treatment of renters and owners. It examines the historic distinctions between freeholds and leaseholds that have resulted in different treatment of the two groups, exposes the ways the existing legal doctrine primarily harms poor people and people of color, and proposes steps that can be taken to bring more parity to the legal treatment of renters and owners.


Abstract: One of the hallmarks of COVID-19 is that it disproportionately impacts vulnerable individuals and groups. The State’s punitive legal responses to the pandemic are no different. This chapter shows why coercive physical distancing laws disparately impact homeless people. It argues that harsh financial penalties for violating these laws can constitute cruel and unusual punishments that contravene s. 12 of the Canadian Charter of Rights and Freedoms. It challenges prevailing s. 12 Charter jurisprudence and demonstrates why expensive fines amount
to cruel and unusual punishments even when judges have discretion to modify their severity. After situating the regulation of homelessness within its historical context, it concludes by setting out why homeless people are uniquely vulnerable to over-policing. Ultimately, this chapter elucidates why a public health approach to both COVID-19 and homelessness are necessary and why neither can be punished out of existence.


Jurisdiction: Northern Ireland

Abstract: Considers the doctrine of frustration as it applies to property contracts during the COVID-19 crisis. Refers to cases on war-time frustration and their application to leases and contracts for the sale of land. Suggests that the concept of partial excuse for breach of contract may be applicable.


Jurisdiction: Singapore

Abstract: The impact of the COVID-19 pandemic on retail businesses raises the pertinent question of whether commercial leases can be deemed to be frustrated, so that tenants may be released from their rental obligations. Focusing on the plight of restauranteurs, but relevant to the retail sector in general, this paper discusses the doctrine of frustration with respect to restaurant leases affected by the COVID-19 crisis. It puts forward the view that the doctrine does, and should, apply to these leases in these COVID-19 circumstances, not least because in spite of Government relief measures, frustration may be the only way out for restauranteurs.


Jurisdiction: UK

Abstract: Discusses the impact of the coronavirus pandemic on the position of persons occupying Airbnb properties. Reviews the status of Airbnb users, whether they are to be classed as tenants or licensees, what constitutes "home", and the distinction between a lessee's sole
occupation and whether transitory use means a property is not a private dwelling. Considers the factors that may affect Airbnb hosts' ability to recover their property.


Abstract: The COVID-19 pandemic brought into stark relief the intimate nexus between health and housing. This extraordinary infectious disease outbreak combined with the astounding lack of a clear, coordinated, prompt, and effective public health response in the United States created conditions and introduced practical challenges that left many disoriented—not only health care providers but also housing providers. Projected health care surges sent health care providers scrambling for ways to procure personal protective equipment for employees; to develop and implement clinical triage policies for the responsible and fair allocation of scarce critical care resources to COVID-19 and non-COVID-19 patients; and to make ethically and scientifically sound decisions regarding the conduct of research during the pandemic. Concurrently, individualized directives for self-quarantining and isolation as well as localized and statewide ‘stay at home’ orders sent housing providers scrambling to make sense of their own ethical and legal responsibilities. Innumerable issues are worth examination, such as implications of moratoria on evictions and foreclosures, the triggering of force majeure clauses in contracts, insurability of pandemic-related damages and disruptions, holdover tenancies and delayed occupancies, and even possible abatement of rent or homeowner/condominium association dues in light of closed common facilities (such as fitness areas) or reduced benefits to be enjoyed with residential property; however, this article focuses on fair housing law and the ‘direct threat’ exemption during a pandemic; finds it unlikely that COVID-19 is a disability, likely that the ‘direct threat’ defense is available, and both determinations to be case-specific inquiries dependent upon rapidly-changing scientific understanding of this disease. By highlighting adequate housing as a human right for which the government has primary responsibility for ensuring its achievement, this article underscores the importance of finding a holistic solution to public health and adequate housing problems in the U.S. before the next public health emergency arises.

Jurisdiction: USA

Abstract: This Special Alert for Powell on Real Property looks at governmental measures, enacted on an emergency basis, regarding real property during the COVID-19 pandemic — especially moratoria on residential evictions and foreclosures. The Alert uses examples of COVID-19 emergency measures by state governments as well as examples of emergency measures by the federal government. It anticipates ongoing changes to such measures as the COVID-19 situation evolves, suggesting that we not wait until the governmental measures abate before considering their impact and implications. The current stream of property-related COVID-19 litigation promises to become a flood. Litigators are relying on provisions of federal and state constitutions to challenge the emergency measures on behalf of landlords, lenders, and business owners. The Alert identifies several key U.S. Supreme Court precedents that will almost certainly form part of the judicial response to those challenges. Those cases, discussed in the Alert, provide the foundation for judicial consideration of the constitutional legitimacy of eviction and foreclosure moratoria.

REFUGEE & ASYLUM SEEKER / IMMIGRATION LAW

Bellissimo, Mario D, ‘COVID-19: Practicing Immigration Law in the Face of Closing Borders’ (2020) 16(3) ImmQuest 1-5

Jurisdiction: Canada


Jurisdiction: UK

Extract: Perhaps the first significant issue arising out of the COVID-19 pandemic to come before the Administrative Court has been the question of the continued legality of immigration detention in the face of the risks and practical difficulties arising from the crisis. The pandemic raises two stark issues affecting the legality of immigration detention; on the one hand, that
detainees may face an increased risk of infection by reason of the “congregate” setting of detention centres, and on the other that removals in the short term will be impossible and that the prospects of removal are at best uncertain even in the medium term.

The first such claim was brought by the NGO Detention Action, seeking wide-ranging generic interim relief in relation to all current detainees. The application for interim relief (discussed in more detail below) did not succeed, and the Home Office has sought to rely upon certain of the court’s remarks to resist claims by individuals.


Jurisdiction: Canada

Abstract: International migrants—including, among others, immigrants, refugees, asylum seekers, foreign workers, and international students— are at greater risk of being affected by COVID-19. However, following the onset of the pandemic, many of them continue to be denied publicly funded health care and income supports in Canada. For migrants who are granted entitlement to these government programs, significant access barriers exist. These exclusionary policies underscore a dynamic of us-versus-them, in which migrants are portrayed as a threat to public health and undeserving of the Canadian society’s help. This process of “othering” fails to adequately appreciate migrants’ belonging in and contributions to Canada. It runs counter to the principles of equality and reciprocity that are central to our legal order, and it also risks compromising our collective pursuit of public health. An effective response to the current pandemic requires solidarity among all members of society instead of insistent line drawing between citizens and migrants who are similarly situated.


Jurisdiction: USA

Abstract: The petition for a writ of habeas corpus is an important tool in the arsenal of immigration attorneys who seek to fully represent their clients. Going to federal court in an attempt to obtain habeas relief may be the only remaining remedy after all other administrative
options have been exhausted. Traditionally, habeas has been used to challenge prolonged detention post-final order of removal, prolonged detention pre-final order, and to challenge unlawful detention, but increasingly it is used to challenge such related issues as unlawful deportations in violation of the statute or regulatory provisions, and/or violations by CBP, USCIS or other agency actions during the expedited removal process under 8 U.S.C. § 1225(b). In response to the Covid-19 pandemic, the federal courts have changed operations to limit the spread of the disease. Also, there have been other significant changes to the operations of USCIS and EOIR, in recent days. The article addresses some of the issues to be considered by the habeas petitioner when going forward in federal court proceedings given the Covid-19 pandemic.


Abstract: Covid-19 has limited ‘access’ by refugees and internally displaced persons (IDPs). First, access to protection at the frontiers of states and access to services in a state. Covid-19 was defined in terms of a disease from abroad, so refugees who were always seen as ‘other’ are seen as tainted in yet a new way. Nevertheless, states have a right to control their own borders and in a time of a global pandemic, entry can be restricted. This paper will argue, however, that those controls cannot be arbitrary and must respect international refugee law and international human rights law, as well as the international rule of law. Those seeking asylum from persecution cannot be sent back to the frontiers of a territory where their life or freedom would be threatened, even if they are Covid-19 infectious. Secondly, those admitted to the state must have the same access to life saving health care as anyone else within the territory of the state; to deny access to health care is not to make the problem go away, but to drive those fearing expulsion underground, placing even more people at risk during a pandemic. Beyond health care, refugees and IDPs must have access to all other rights during any lockdown and there can be no discrimination based on forced displacement status.

Abstract: COVID-19 provoked unprecedented national border closures. Some countries stopped travel from particular regions, despite evidence that such closures are ineffective and illegal under the International Health Regulations (IHRs). Even more countries banned all incoming travel by non-citizens. It has been suggested that these more restrictive total border closures are theoretically effective and arguably permissible under international law. Yet a closer analysis reveals that total border closures are probably still illegal given the IHRs require countries to adopt less restrictive alternatives when possible, such as a 14-day quarantine order for incoming travellers. If border closures are largely ineffective and illegal, then why have at least 142 countries implemented them? The answer lies in the realities of politics. Even if governments know the science and law of border closures, they still feel compelled to enact them because of intense domestic pressure and to avoid blame for not acting. Therefore, border closures are best regarded as powerful symbolic acts that help governments show they are acting forcefully, even if these actions are not epidemiologically helpful and even if they breach international law. As a result, citizens should be critical of border closures when these symbolic acts are motivated by political advantage without regard to immense collateral damage.


Jurisdiction: UK

Abstract: Considers changes to immigration policy as a result of the coronavirus pandemic and how this is likely to affect employers and migrant workers. Looks at the effect on applicants who are unable to enter the country, foreign national employees outside the UK and foreign national employees inside the UK. Discusses how the Government has adapted right to work checks for new starters where employees are working at home, and the duties of Tier 2 sponsor licence holders.
‘Immigration, Extradition, Deportation and Asylum’ [2020] (July) Public Law 563-566

Jurisdiction: UK

Abstract: Reviews immigration-related developments including R. (on the application of Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department (CA) on whether measures preventing landlords from letting to persons without leave to remain in the UK was discriminatory and breached ECHR arts 8 and 14. Notes the automatic extension of the visas of overseas health care workers beyond 1 October 2020.

Note: link to R (on the application of Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department [2020] EWCA Civ 542 on BAILII.


Abstract: Australia’s post-COVID fortunes hinge on rapid and sustained economic growth. That will simply not be possible without employers being able to sponsor foreign workers from overseas. But COVID-19 has shut our borders and created an army of unemployed Australians, making people movement much more difficult for employers and a political issue for government. So, what will COVID-19 mean for our immigration laws and policies, and the ability of employers to access the skilled people they will need?


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.


Abstract: The U.S. immigration system has not escaped the challenges presented by the COVID-19 pandemic. Concerns have been raised about policy changes, enforcement actions, immigrant detention, and deportation practices during the outbreak. In response, dozens of lawsuits have been brought against the government on behalf of undocumented immigrants and detainees, ranging from the conditions of ICE detention facilities to the public charge rule. While most cases continue to move through the federal court system, a number of district court judges have already ruled in favor of the plaintiffs. This paper focuses on three particular areas of immigration policy and practice during COVID: ICE enforcement actions, immigrant detention, and deportations. We summarize the current state of extant data and evidence on each of these and examine questions that remain for further research.


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.

Abstract: Refugees are people who leave their countries and go to other countries to ask for protection. During the Covid-19 pandemic, refugees also became one of the groups affected by the spread of the virus that has claimed many lives almost throughout the country and became a global disaster. Countries that are affected by the spread of this virus are very vulnerable, both susceptible to disease, exposed to the virus are also vulnerable to eviction, especially for a number of countries that apply lockdown. Therefore there needs to be a study that examines the protection and efforts that can be made by countries that are currently accommodating refugees as well as UNHCR as a UN organization that deals with this refugee problem, so that refugees remain protected during this pandemic.


Abstract: This paper exploits cross-country differences in coastline distances (and drug trafficking inflows) to estimate the relative risk of trafficking in persons (TIP) inflows, finding smoking gun evidence that countries with higher risk of TIP inflows have higher local confirmed cases during the H1N1 and COVID-19 pandemic. Institutional and health factors mainly influence confirmed numbers through the TIP channel, with their effects largely muted in the second stage. In addition, once the instrumented risk of TIP inflow is controlled for, migration flows, including flows originating from the pandemic source country, is no longer positively associated with local confirmed numbers. Countries with a larger dependence on tourism in the export sector however, face systematically higher confirmed numbers. Controlling for COVID-19 testing numbers also produces the most precise estimates, indicating that the accuracy of reported numbers are indeed increasing in testing efforts.

Tepepa, Martha, ‘Public Charge in the Time of Coronavirus’ (SSRN Scholarly Paper ID 3571721, 8 April 2020)

Abstract: The United States government recently passed legislation and stabilization packages to respond to the COVID-19 (i.e., coronavirus disease 2019) outbreak by providing paid sick leave,
tax credits, and free virus testing; expanding food assistance and unemployment benefits; and increasing Medicaid funding. However, the response to the global pandemic might be hindered by the lassitude of the state and the administration’s conception of social policy that leaves the most vulnerable unprotected. The administration’s ‘zero tolerance’ immigration campaign poses public health challenges, especially in the prevention of communicable diseases. In addition to the systemic obstacles noncitizens face in their access to healthcare, recent changes to immigration law that penalize recipients of some social services on grounds that they are a public charge will further restrict their access to treatment and hinder the fight against the pandemic.

SOCIAL PROTECTION / WELFARE

This section includes general literature on measures to protect and assist those in need. Specific topics such as housing and food security are included above in the relevant sections eg: *Property and Housing*; and *Food, Agriculture and Animals*.

Foster, David, ‘Coronavirus: Local Authorities’ Adult Social Care Duties (the Care Act Easements)’ (Briefing Paper No 8889, House of Commons Library, 10 July 2020)

*Jurisdiction: UK*

*Abstract:* This Commons Library Briefing paper provides an overview of changes to local authority duties around the provision of adult social care during the coronavirus outbreak.


*Abstract:* We study the effect of social distancing, food vulnerability, welfare and labour COVID-19 policy responses on riots, violence against civilians and food-related conflicts. Our analysis uses georeferenced data for 24 African countries with monthly local prices and real-time conflict data reported in the Armed Conflict Location and Event Data Project (ACLED) from January 2015 until early May 2020. Lockdowns and recent welfare policies have been implemented in light of COVID-19, but in some contexts also likely in response to ongoing conflicts. To mitigate the potential risk of endogeneity, we use instrumental variables. We exploit the exogeneity of global
commodity prices, and three variables that increase the risk of COVID-19 and efficiency in response such as countries colonial heritage, male mortality rate attributed to air pollution and prevalence of diabetes in adults. We find that the probability of experiencing riots, violence against civilians, food-related conflicts and food looting has increased since lockdowns. Food vulnerability has been a contributing factor. A 10% increase in the local price index is associated with an increase of 0.7 percentage points in violence against civilians. Nonetheless, for every additional anti-poverty measure implemented in response to COVID-19 the probability of experiencing violence against civilians, riots and food-related conflicts declines by approximately 0.2 percentage points. These anti-poverty measures also reduce the number of fatalities associated with these conflicts. Overall, our findings reveal that food vulnerability has increased conflict risks, but also offer an optimistic view of the importance of the state in providing an extensive welfare safety net.


Jurisdiction: USA

Abstract: This is a preliminary guide to legal issues that impact groups engaged in mutual aid. It is targeted to groups that have been responding to the COVID-19 crisis in New York, but has information that may be relevant for groups engaged in mutual aid in other contexts and other places. It gives legal information on topics including: risk of liability; questions around governance and incorporation; safety policies, liability waivers, and insurance; banking and mutual aid; funding mutual aid and taxation of mutual aid; crowdfunding regulations; and food storage and safety rules.


Abstract: The COVID-19 pandemic has delivered an unprecedented shock to the United States and the world. It is unclear precisely how long the twin crises, epidemiological and economic, will last. And it is difficult to gauge the extent and direction of the changes in American life these crises will cause. Nonetheless, it is beyond dispute that the COVID-19 pandemic is putting
significant strain on both the ability of Americans to meet basic needs and our government’s capacity to assist them. Federal, state, and local government have responded in various ways to deploy existing safety net programs like Medicaid, SNAP (food stamps), tax credits, and unemployment insurance to meet the surge in need. At this early stage of the crisis, it is worth a) identifying the ways in which the pandemic feeds on and exacerbates both racial and economic inequality in America, b) analyzing the government response in detail, c) considering which changes should outlast the current crisis, and d) how government, in the future, should build social welfare programs that are better suited to meet the needs of all Americans in the coming years. This Essay tries to do these four things in a way that is cogent and useful to legal and lay audiences alike.

Harris, Neville et al, ‘Coronavirus and Social Security Entitlement in the UK’ (2020) 27(2) *Journal of Social Security Law* 55-84

*Abstract:* Examines reforms made to UK social security administration in response to the coronavirus pandemic. Discusses the rise in benefit claims, and changes to universal credit, housing benefit, jobseeker’s allowance, the appeals procedure, statutory sick pay, and the position in Scotland. Considers the implications of the reforms, including issues of benefit access for the disabled and digital exclusion.


*Jurisdiction:* UK

*Abstract:* Reviews key reforms made to the social security benefits regime in response to the coronavirus pandemic by the Coronavirus Act 2020 and secondary legislation. Summarises the main amendments concerning universal credit, carer’s allowance, tax credits, housing benefit, statutory sick pay and the social fund.

*Abstract:* This article speculates about the future of Australia’s welfare model given the severe disruption of the COVID-19 pandemic. First, it offers a brief description of the major features of Australia’s political handling of the welfare state over the past decade or so, with a focus on the Newstart benefit and the tight policing of the benefit system.

**SPORTS LAW**


*Abstract:* This article explores some of the legal and ethical challenges for college sports in the time of COVID-19, and it explains why it would be entirely inappropriate for colleges that are not planning to offer live classes this fall to have student-athletes return to campus this summer to prepare for a college football season.


*Abstract:* It will take considerable time before it is possible to fully gauge the impact of Covid-19 on sports, but it is possible to see some possible and significant consequences and related legal issues that will follow in the wake of the virus. As often, most of these are related to the commercial aspects of sports and there are both short- and more long-term issues.


*Abstract:* The COVID-19 pandemic has wrought unprecedented havoc across the globe. Every sector of society has been impacted and forced to change business as usual, to re-evaluate priorities and systems, and to innovate amid the unknown and possible lasting impacts of this threat to public health and commerce. Sport worldwide is also profoundly impacted. Since the
World Health Organization declared COVID-19 a pandemic on March 11, 2020, nearly all competitive sports have been suspended, postponed, or cancelled, raising significant questions about how to deal with the severe financial impacts, legal issues, and when and how to resume play safely amid continued uncertainty. Like other sectors, the impact on sports is likely to far outlast the pandemic. Sports has been, and will continue to be, forced to pivot, innovate, and remain vigilant to survive as an industry and to ensure player, personnel, and spectator health, safety, and security. Recognizing that the crisis is not yet over and the impact of COVID-19 on the global sports industry is in the nascent stage, this article nonetheless seeks to examine the impact of COVID-19 on major competitive sports, from a financial, legal, and problem-solving perspective. The article contends that, while many financial, legal, and practical outcomes remain pending and unresolved, the rules for operating sports as we knew it have changed. To survive, sport must put safety first, anticipate and plan for this and future crises, innovate, and find common ground, despite technical force majeure rights that could pose a disparate impact on one party, to preserve industry and the very sports we adore. The challenges and lessons that can be learned from this crisis will have a lasting impact on and throughout the sport industry.

**TAX LAW**


*Jurisdiction: UK*

*Abstract:* Discusses aspects of transfer pricing policies which groups should review if the coronavirus pandemic has affected profitability. Considers supplies of services, limited risk distribution or contract manufacturing of goods, intellectual property licensing, and intercompany financing.
Borden, Bradley T, ‘Universal Deadline Extensions Draw Attention to Section 1031 Periods’ (2020) 167 Tax Notes Federal 601

Jurisdiction: USA

Abstract: The IRS published Notice 2020-23 extending section 1031 periods, but that guidance lacks clarity related to several key issues. The IRS has indicated that it will issue additional guidance in the form of FAQs, which should add clarity. Until then, exchangers, qualified intermediaries, and tax advisors must make decisions based upon the existing guidance. We hope the IRS will soon address issues that are central to those decisions. In the meantime, this article does the following: Provides three criteria that apply to the analysis and application of Notice 2020-23 and inform future guidance the IRS may publish for exchanges affected by COVID-19: (i) extend generous relief to exchangers, (ii) be simple to apply and explain, and (iii) vivify real estate markets. Explains the technical aspects of IRS extension guidance, assisting parties making decisions prior to the IRS additional guidance or will make decisions regarding issues that the IRS guidance may not cover. Demonstrates that the 120-day extension in Rev. Proc. 2018-58 should apply to exchanges covered by Notice 2020-23. Warns that qualified intermediaries should err on the side of caution by interpreting Notice 2020-23 as applying the 120-day extension to avoid distributing proceeds prior to the expiration of the (g)(6) restrictions. Suggests that IRS guidance should apply the Notice 2020-23 extensions to all exchanges entered into on or before any date from January 20, 2020, until July 15, 2020. The detailed analysis in the article will serve as a reference for parties dealing with pending or planned exchanges and for parties who must carefully analyze the application of extension guidance in the future.

Brown, Harriet, ‘Justice Delayed’ (2020) 185(4742) Taxation 8-9

Jurisdiction: UK

Abstract: Discusses whether the stay of proceedings in the First-tier Tribunal Tax Chamber, in response to the coronavirus outbreak, has affected taxpayers’ rights so adversely that the administration of justice is at risk, and proceedings should start again as soon as possible.

Abstract: At a doctrinal level, the subject of this Article is timely. During this time of the coronavirus pandemic, casinos have been closed and large populations have been subject to stay-home orders from local and state authorities. One can reasonably expect a large increase in electronic gaming and thus an increased need for proper consideration of its taxation. This Article argues for a cash-out rule of taxation.

At a deeper level, the subject of this Article is timeless. Tax law is wickedly complex for a reason. This Article explores that complexity using the example of electronic gaming. It grapples with the source of that complexity: an inherent and unresolvable tension between economic theories of income and the practical needs of administering a system of taxation to a large population in a democracy. That tension led some scholars to argue for a standards-based approach to taxation. This Article considers and rejects that argument. Legal rules are necessary to mediate between theory and practice. Hence, this Article demonstrates the continued relevance and importance of doctrinal analysis in legal scholarship.


Jurisdiction: New Zealand

Abstract: As New Zealand moves closer to containing the COVID-19 outbreak, the focus of the Government will be shifting from battling the public health crisis to restarting the embattled economy. While the temporary tax loss carry back scheme announced by the Government on 15 April 2020 was intended to provide immediate cash flow relief to businesses suffering losses as a result of COVID-19, the permanent tax loss carry-back scheme and relaxation of the tax loss continuity rules announced at the same time are longer term reforms of broader application that will hopefully assist in that recovery.


Jurisdiction: UK

Abstract: Calls for a coherent approach to tax and spending policy, to achieve the UK targets for reducing emissions and mitigating climate change, while facilitating economic recovery from the coronavirus pandemic.

Abstract: Many universities around the United States are attempting to grapple with their direct and indirect involvement with the institution of slavery. Lolita Buckner Inniss’s book The Princeton Fugitive Slave: the Trials of James Collins Johnson (2019) enters directly into the conversation taking place on university campuses and nation-wide about what responsibilities institutions have to acknowledge their past and to create racially inclusive campuses in the twenty-first century. Because most universities are tax-exempt, it is important to understand that their activities are indirectly subsidized by local, state and federal governments. The lens of tax law facilitates better understanding of universities’ unique historic role in American economic activity as well as contemporary arguments about their obligations to workers and community constituents during the COVID-19 crisis.

Curtis, Richard, ‘Eat, Drink, Be Merry’ (2020) 186(4752) Taxation 11-13

Jurisdiction: UK

Abstract: Reports on Chancellor Rishi Sunak’s proposals of 8 July 2020 to stimulate employment and growth. Notes the job retention bonus for furloughed workers and kickstarter scheme for young persons, restaurant meal discount, reduced VAT rate on hospitality, and reduced stamp duty land tax on homes.

‘Cyprus: Tax Measures to Support Local Businesses during Covid-19 Crisis’ [2020] Lawyer (Online Edition) 1

Abstract: The article reports that Cyprus Government have announced a number of tax measures in an attempt to support local businesses and economy to overcome the crisis related to the effect of COVID-19 pandemic. It also mentions that the tax measures are yet to be finalized and submitted for the Parliament’s approval.

Abstract: As part of the Commonwealth Government’s economic response to assist people who are economically affected by the coronavirus, legislation has been passed to allow them to withdraw up to $10,000 from their superannuation fund or funds in the 2019/20 financial year and up to another $10,000 in the 2020/21 financial year. Those amounts are received tax free.


Abstract: Every government is desirous of expanding its tax net, increasing revenue and creating a business ambience that will enhance business growth and enthrall investors. The question of how government policies should be structured to tackle excessive expenses, source for funds to meet these needs and properly manage resources are problems governments always attempt to remedy. For a long time, companies in Nigeria groaned about the underlying issues that troubled the tax system which in turn affected the ease of doing business. The tax laws seemed divorced from the societal changes that were occurring and the government in reaction, started by reviewing its Tax policy and subsequently amended its Tax Laws. This paper assesses how the Nigerian Tax Policy of 2017 has influenced and impacted certain aspects of the Finance Act of 2019, especially in the light of the COVID-19 pandemic. It also addresses issues bordering on the legal status of the policy, multiple taxation and enforcement of the policy. Finally, it canvases arguments for the policy to be rooted in the Constitution; however this is insuperable without the amendment of the Constitution. If done, it’s imagined that it will address the issue of the taxing powers including provisions for enforcement and deliberate internalization of taxation principles for the regulation of a healthy economy and achieving an effective tax administration. The author however applauds the reforms certain to impact Nigeria’s digital economic climate.

Jurisdiction: USA

Abstract: The CARES Act provides cash-flow relief for individuals who want to access their savings and retirement plan benefits without adverse tax consequences. There are significant outstanding issues with those provisions. The article discusses and proposes technical corrections to address three such issues. • Is there a single certification procedure to determine who is eligible to access their own savings and retirement benefits? The HEROES Act, the multi-trillion-dollar proposal to supplement the CARES Act that the House of Representatives approved in mid-May, addresses this issue differently than both the IRS guidance and the article’s proposal. • Are those eligible to so obtain their own benefits defined sufficiently broadly? The HEROES Act broadens the eligibility for the Covid-19 enhanced family and medical care leave relief. The Act does not address the far narrower CARES Act eligibility criteria for individuals who wish to access their own savings and retirement benefits. • Is there an unambiguous and intuitive method to determine the new amortization schedule for an eligible individual who wishes to take advantage of the CARE Act deferral of 2020 due dates for plan loans? The HEROES Act, again, does not address this issue. The article also proposes a state law change to prevent adverse state and local personal income tax consequences for plans, participants, and beneficiaries who wish to take advantage of the cash-flow relief of the CARES Act to access their own savings and retirement benefits. For example, the CARES Act permits in-service distributions that would otherwise cause savings and retirement plans to lose their tax-exemption. State and local tax laws that are not coupled with the Internal Revenue Code may tax plans that decide to provide such cash-flow relief, and also prevent participants and beneficiaries from deferring tax on their plan benefits. The article therefore presents a technical correction to state and local personal income tax laws that conformed to the Code before the enactment of the CARES Act, such as those of New York State, to assure that those laws conform to the Code provisions changed by these relief provisions and only those provisions.

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.


Jurisdiction: USA

Abstract: Plan administrators may permit participants and beneficiaries to access their own plan benefits to address their cash-flow problems without adverse tax consequences with more
favorable plan loan policies. These policies are not limited to the CARES Act provisions permitting ‘qualified individuals’ to obtain more generous loans and giving those individuals one-year deferrals of loan due dates. Loan repayment relief and loan percentage increases will provide more vital COVID-19 relief than maximum loan amount increases because most plan accounts are substantially below the current $50,000 loan maximum. Plan administrators may help all their participants and beneficiaries by choosing to make loans available, having generous cure period for loan payment default, and deferring loan due dates for employees on furloughs. They must also defer all loan due dates between March 27, 2020 and July 14, 2020 until July 15, 2020. Finally, an individual whose outstanding plan loans were an offset against the individual’s benefits following the termination of employment may avoid taxation on such a deemed distribution by contributing such amount to another plan or individual retirement arrangement before the individual files her or his federal income tax return for the tax year of the distribution.


Jurisdiction: USA

Abstract: We use U.S. Securities and Exchange Commission (SEC) filings to provide initial large-sample evidence regarding utilization of corporate tax provisions by U.S. firms under the Coronavirus Aid, Relief, and Economic Security Act (CARES). These tax provisions were intended to provide firms immediate liquidity to prevent widespread bankruptcies and layoffs in response to the COVID-19 pandemic. However, critics have argued that the provisions were poorly targeted and amounted to “giveaways” for shareholders of large corporations. We find that 38 percent of firms discuss at least one of the CARES tax provisions in their SEC filings, a result primarily attributable to the net operating loss (NOL) carryback provision. Firms experiencing lower stock returns during the COVID-19 outbreak are more likely to discuss CARES tax provisions, but not firms in states or industry sectors exhibiting large increases in unemployment. Further, we find a higher likelihood of tax provision discussions for firms with pre-pandemic losses and higher financial leverage. Finally, we document some evidence that firms facing potential reputational or political costs from discussing these tax provisions may
have avoided doing so. Our analyses suggest that tax provisions under CARES were not material for most publicly-traded U.S. firms, were not likelier to benefit firms in greater need of liquidity during the pandemic, and that some firms perceived that disclosing benefits would be costly. These findings are important for policymakers as they consider additional economic relief for U.S. corporations while the coronavirus pandemic lingers.

Gamage, David and Darien Shanske, ‘States Should Consider Partial Wealth Tax Reforms’ (2020) (18 May) Tax Notes State 859

Abstract: This essay argues that, if the federal government fails to act sufficiently regarding the COVID-19 budget crisis, states should consider either real property surtaxes on their wealthiest residents or partial deemed realization of the unrealized capital gains of the very wealthy.


Abstract: Law firms globally must prepare for a wave of COVID-created litigation work over the next three months as more than 400 senior counsel and business executives say they are outsourcing the burden.

A comprehensive survey conducted by Euromoney’s Legal Media Group (LMG), which includes ITR, IFLR, MIP and Euromoney Thought Leadership Consulting, found that in-house legal and tax departments will ask their advisors to tackle the problems created by the COVID-19 pandemic.


Abstract: COVID-19 pandemic is presenting unprecedented crisis, primarily of health and human tragedy but has also far reaching economic ramification. The crisis is disrupting millions of people’s livelihood, with severe impact on business and especially small and informal businesses. Across the Globe governments are taking decisive actions to protect their economies and affected sectors. One such sector that is likely to be disrupted is the process of tax collection and administration. Although we are in the early stages of the potential impact,
tax agencies must focus and prioritize their response in order to make the most of the limited time and resources available. To address these needs and help inform the responses, this paper presents - An analysis of COVID-19 impacts on the collection of various forms of taxes, in which the paper postulates that although reduction of tax collected is to be expected across the board, income tax and corporate tax are likely to be hit hard due to combination of factors such as job losses, pay reduction and filing of net losses. - Challenges expected to be faced by the tax agency in collecting tax during ongoing pandemics, the paper argues that tax agencies are likely to encounter several challenges including reduction in tax compliance, disruption to tax filing schedules, reduction in the ability to collect tax and complications arising out of adopting to the government economic stimulus. - A framework for policy response by the tax agency and the government to mitigate the challenges. These Policy actions are drawn from a global scan of interventions implemented by various agencies and governments. The suggested responses include increase tax payer assistance, clear communication and making use of digital platforms. The paper concludes by sending clear message that tax agencies and government needs to double down their efforts to safeguard their tax base and help their tax payers cope with the uncertainties brought by the current pandemic.

Kess, Sidney, ‘First Look at the CARES Act’s Provisions for Tax Relief’ (2020) 90(4) CPA Journal 8–9

Jurisdiction: USA

Abstract: The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748), signed into law on March 27, 2020, is a $2.2 trillion package enacted to help individuals and businesses get through the health and economic crisis triggered by the coronavirus pandemic. Rebate Checks for Individuals Rebate checks are advance payments of a new refundable tax credit [Internal Revenue Code (IRC) section 6428]. These rebate checks for individuals with adjusted gross income (AGI) below set amounts are being paid via the IRS.

Lind, Yvette, ‘Sweden and Denmark Incorporate Anti-Tax-Avoidance Rules into Very Different COVID-19 Responses’ (2020) 98(10) Tax Notes International 1127-1133

Abstract: After initially focusing on the medical aspects of the coronavirus, many jurisdictions have begun instituting economic measures to mitigate the economic consequences of the
pandemic and prepare for the financial crisis that will unavoidably follow in its wake. Because these solutions are still in their infancy, states have generally focused on short-term solutions such as offering various financial support packages to both individuals and companies for 2020 and 2021. This paper concerns EU state aid packages implemented in Sweden and Denmark. Despite being closely connected in both geography and law, with their legal systems sharing many important characteristics, the two member states have taken different approaches to the pandemic. Denmark was among the first states to close both its borders and its society, with the government implementing far-reaching protocols on social distancing. Meanwhile, Sweden left its borders and society open and relied on its citizens’ common sense to limit transmission of the coronavirus. This explains why Denmark had to enact various state aid measures relatively early while Sweden is still processing its economic response. Denmark has also instituted state aid measures that are more generous and far-reaching than those that have been proposed by the Swedish government (at least thus far). However, despite the differences between the two states, both have decided to implement anti-tax-evasion agendas. The two states have reacted differently in terms of economic support measures, in part because of the conflicting approaches to social distancing. The paper focuses on these differing approaches to state aid, particularly measures that the governments provide through the tax system. The highly debated Danish decision to exclude tax-evading companies from COVID-19 aid — a move that Sweden and several other states followed — is given particular attention. The paper concludes that both states must take steps to more clearly delineate their rules excluding tax-evading companies from COVID-19 aid to ensure that these provisions remain applicable and adhere to the principle of legal certainty.


Abstract: As I write this, we are preparing to emerge blinking from lockdown, or Alert Level 4, into the sunlight of Alert Level 3. The first meaningful tax related announcement made in relation to COVID-19 happened early March 2020. That seems like a lifetime ago. Our tax laws change quickly and often, but the Government has outdone itself recently. Deadlines have been extended, promises to waive penalties have been made and, in the blink of an eye, the Government has decided to make wholesale reforms to the loss carry-forward rules, something businesses and tax practitioners have been requesting for years.

Abstract: In the wake of the unprecedented environment arising from the COVID-19 crisis, it is likely that we will begin to see an increase in companies seeking to utilise the newly enacted similar business test (SiBT). The authors specifically consider the community-minded business response through production lines "hacks". A number of business pivots publicised in the COVID-19 environment are examined to consider whether they stretch the SiBT beyond its scope, resulting in the potential loss of tax losses. In doing so, the authors reflect on how COVID-19 leads to established businesses facing similar limitations as start-up businesses, the likelihood of numerous pivots being required to get back on economic track and the anti-avoidance considerations that the appearance of such pivots create. It is concluded that COVID-19 creates a particular need to capture in sufficient detail these unusual activities to support any claim of tax losses.


Jurisdiction: USA

Abstract: Self-quarantining expenses are probably not a deductible medical expense, under current law. I propose a statutory amendment to make them deductible under IRC section 213, provided: 1) they are required by the CDC or a comparable governmental authority; 2) they are limited to $200 per day for 14 days; 3) there is no reasonable alternative to moving out of the taxpayer’s home; and 4) the place of quarantine is within 25 miles of taxpayer’s principal residence.

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.


Abstract: While the importance of the charitable deduction decreased in the 2017 tax reform, it has returned during the COVID-19 pandemic with the CARES Act. This Article lays out the reasons that the limited above-the-line charitable deduction authorized by Congress during the coronavirus pandemic should remain a permanent feature of U.S. tax law.


Jurisdiction: UK

Abstract: Examines the option for claimants who are already in receipt of tax credits to remain in the tax credits system rather than claiming universal credit, and how claimants can reclaim their tax credits or challenge a decision to terminate tax credits. Notes changes to working tax credit entitlements due to the coronavirus concerning working hours and the childcare element, changes to income rules and the suspension of overpayment recovery.


Abstract: For 2020, New York should tax neither the incomes of nonresident telecommuters nor the incomes of the volunteers who came from across the country to help New York confront the COVID-19 emergency. If New York will not act in this sensible fashion, Congress should. In the next round of coronavirus legislation, Congress can prohibit the states from taxing, for the duration of the coronavirus emergency, the incomes of nonresident telecommuters and out-of-state medical volunteers.
Zelinsky, Edward A, ‘Coronavirus, Telecommuting, and the “Employer Convenience” Rule’ (2020) 95(13)
*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.

**TRANSPORT LAW**

This section includes literature on maritime / shipping law, and the law on air and land transport

*Maritime Affairs: Journal of the National Maritime Foundation of India* 1–14 (advance online article, published 14 June 2020)

*Abstract:* The Indo-Pacific, combines a panoply of regions and blends multiple security architectures. Some regions are dominated by non-traditional security threats, while others are unstable and rife with security dilemma. Instability and disorder are most palpable in the maritime domain, especially in the geographical region of the western Pacific. From the beginning of 2020, China has intensified its assertiveness in the South China Sea, including the announcement of two administrative districts and transgressions by its survey ship Haiyang Dizhi 8. Some attribute these developments to the COVID-19 outbreak. Enhanced US posture in the region seems to have little effect on Chinese revanchism. This article assesses the spurt of developments in the South China Sea during the COVID-19 pandemic. It establishes the conceptual framework for analysing the change in the regional order. It evaluates the regional security architecture of the western Pacific and the efficacy of the putative order. The prospective change in the security order of the western Pacific and response is also examined.


*Abstract:* Many of the most severe restrictions imposed in the COVID-19 pandemic relate to overseas arrivals and border control. Currently, the most fatal cluster of cases is the Ruby
Princess cruise ship, which docked in darkness as the outbreak was taking hold in Australia. In triggering emergency powers, what are our responsibilities to those stranded at sea?


Jurisdiction: Australia

Abstract: One matter that dominated headlines internationally and in Australia at the start of the COVID-19 pandemic was the situation of cruise ships and access to ports. Media coverage of large ships at sea, or in port under quarantine, was widespread, and the fates of these ships meant their names, such as Ruby Princess, Diamond Princess, and Westerdam, became common knowledge. This article considers the applicable law dealing with entry of ships into Australian ports and quarantine restrictions, as well as the circumstances wherein they can remain or be expelled, and what obligations exist to provide assistance.


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


Abstract: Drone use in commercial contexts has increased exponentially over the last several years. In the context of COVID-19 contagion and isolation restrictions, use and deployment technology has benefitted multiple users and operators as well as the wider community. While bringing new horizons in efficiency, the rapid upswing in use hastens the need for well thought out and properly integrated regulation. This article provides an overview of fast-tracked
legislation in the form of the Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft – Registration and Accreditation) Regulations 2019 (Cth). Promulgated in July 2019, in response to recommendations from the 2018 Senate Inquiry into drone operations, the legislation responds in limited ways to drone registration and training requirements. The article outlines the current landscape, proposed changes and additional essential steps to achieve optimal outcomes both in terms of safety and cost for drone operators and the wider community.

**WILLS & SUCCESSION**


*Abstract*: Home-made administration of home-made will - allegation of testamentary fraud - bank acts to prevent elder abuse - Australian Financial Complaints Authority is constitutionally valid - COVID-19 affected decision - leave to retract renunciation - apportionment of dividend.


*Jurisdiction*: Canada

*Introduction*: In a matter of weeks, the COVID-19 outbreak has changed the world in completely unprecedented ways. The vast majority of us are staying home and practicing social distancing and self-isolation to do our part in flattening the curve of infection.

Estate planning and administration have been impacted as well. It is important that lawyers and clients alike take note of certain adjustments that should be taken and issues in this area of law that have since emerged.


*Abstract*: Most Americans do not have a will. The reasons are easy to understand. Thinking about death is unpleasant, and hiring a lawyer is expensive. However, as COVID-19 sweeps
through the country, some Americans urgently need an estate plan. Unfortunately, U.S. law makes it difficult to create a will during crises like these. Indeed, twenty-five states and the District of Columbia recognize only one type of will: a ‘formal’ will executed in compliance with the Wills Act. Under this ancient statute, wills must be written, signed by the testator, and also witnessed by two people who were present at the same time. As journalists and lawyers are recognizing, the Wills Act’s insistence that the parties physically occupy the same space creates unprecedented roadblocks during a time of widespread quarantine and shelter-in-place orders. Yet the pandemic has also arrived during a period in which wills law is in flux. In the last two decades, a handful of jurisdictions have begun excusing harmless errors during the will-execution process. And, in an even sharper departure from the Wills Act’s stuffy norms, four states have recently authorized electronic wills. This Essay argues that COVID-19 vividly highlights the shortcomings of formal wills. Indeed, the outbreak has exposed the main problem with the Wills Act: it makes will-making inaccessible. As a result, we urge lawmakers in states that cling to the statute to liberalize the requirements for creating a will. Our argument proceeds in three Parts. Part I details the social value of will-making. Part II describes the Wills Act and explains why it creates formidable obstacles for testators who are caught in the jaws of a pandemic. Part III explores four ways in which policymakers can solve this problem: by permitting holographic wills, adopting the harmless error doctrine, enacting electronic will legislation, or temporarily suspending certain elements of the Wills Act during public health emergencies.


Jurisdiction: South Africa

Abstract: Every aspect of life has been affected by COVID-19. Estate planning is no exception, especially the execution of wills. The stark reminder of mortality, coupled with the extra free time at most individuals’ disposal during lockdowns has resulted in more enquiries directed to fiduciary practitioners. Would-be testators and practitioners were, however, confronted with major practical obstacles in giving effect to these instructions.
Kirkpatrick, Andrew, ‘Updated Guidance on the Execution of Wills During the Covid-19 Crisis’ (2020) 233(Spring) Writ 16

**Jurisdiction:** Northern Ireland

**Abstract:** Summarises the guidance issued by the Law Society of Northern Ireland's Non Contentious Business Committee on the execution of wills during the COVID-19 lockdown period where face to face meetings are difficult.


**Jurisdiction:** Canada

**Abstract:** As a result of COVID-19, lawyers across the country have had to temporarily alter their practices. In a profession where in-person meetings are expected by clients and/or necessary to see to the proper execution of legal documents, social distancing has forced the legal system to rapidly adapt to allow us to continue serving our clients in these unprecedented circumstances. This has posed a challenge for members of the Estates Bar in particular, as client meetings, will signings, hearings, and mediations have all been affected. During this time, however, it remains crucial that estate lawyers continue to help clients in creating or amending estate plans and in moving estate litigation matters forward. Familiarizing ourselves with the tools that have recently become available can be of great assistance in this regard.

Scott, Michael and Aaron Pearl, ‘Executing Estate Planning Documents During COVID-19’ (16 April 2020) 1 Emerging Areas of Practice Series: COVID-19 (Coronavirus), Westlaw Canada

**Jurisdiction:** Canada

**Introduction:** Physical distancing protocols during the COVID-19 pandemic have complicated the execution process for wills (“Wills”), enduring powers of attorney (“EPOAs”) and representation agreements (“RAs”). Each of these documents has a specific set of rules for proper execution. The main challenge amidst physical distancing is the witnessing part. Witnessing the signing of documents requires individuals to be in close proximity with one another, which is discouraged by BC health care providers at this time. Although our law makers have established work arounds for witnessing affidavits and certain land title documents during COVID-19 through use
of video technology, no such work arounds are currently permitted for Wills, EPOAs or RAs.

Below is an overview of the execution requirements and the work arounds adopted by our firm while COVID-19 remains at large.


Jurisdiction: Australia

Abstract: It seems that no matter how fast I type, I can’t match the speed with which things are changing as a result of COVID-19. At the time of writing, succession lawyers are grappling with how we might address the issues thrown up where there is a legislative requirement for witnessing and for it to occur ‘in the presence of’, particularly with respect to affidavits, wills, powers of attorney, advance health directives and superannuation binding death benefit nominations.
B) INTERNATIONAL, REGIONAL & DOMESTIC ORGANISATIONS

This section includes statements, guidelines, reports and other publications.


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

Commonwealth Parliamentary Association, CPA Toolkit for Commonwealth Parliaments and Legislatures on the COVID-19 (Coronavirus) Pandemic and Delivering Parliamentary Democracy

The Commonwealth Parliamentary Association (CPA) conducted research amongst its membership of 180 Commonwealth Parliaments and Legislatures to synthesise this toolkit, which provides various measures and recommendations that can be adopted by Parliaments and Parliamentarians in order to continue to deliver on the Legislatures’ role of scrutinising legislation and delivering democracy during a global pandemic.

European Union: European Agency for Fundamental Rights, Fundamental Rights of Refugees, Asylum Applicants and Migrants at the European Borders (27 March 2020)

Council of Europe (CoE) and European Union (EU) Member States have an undeniable sovereign right to control the entry of non-nationals into their territory. While exercising border control, states have a duty to protect the fundamental rights of all people under their jurisdiction, regardless of their nationality and/or legal status. Under EU law, this includes providing access to asylum procedures. In recent weeks, states in Europe have taken measures to protect their borders to address public order, public health, or national security challenges. This note
summarises some key safeguards of European law as they apply at the EU’s external borders, bearing in mind that relevant CoE instruments apply to all borders.


*Abstract:* The Guidance illustrates how to ensure continuity of procedures as much as possible while fully ensuring the protection of people’s health and fundamental rights in line with the EU Charter of Fundamental Rights. At the same time, it recalls the fundamental principles that must continue to apply, so that access to the asylum procedure continues to the greatest extent possible during the COVID-19 pandemic. In particular, all applications for international protection must be registered and processed, even if with certain delays. Emergency and essential treatment of illness, including for COVID-19, must be ensured.

**European Union: 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.


This statement discusses the effect of the COVID-19 pandemic in Europe and globally, and the value of a concept of solidarity that is inclusive of everyone when confronting such a threat. Recommends actions Member States can take in addressing the threats posed by the pandemic and in protecting fundamental rights following the crisis.
Global Protection Cluster (GPC), COVID-19 Pandemic: Trafficking in Persons (TIP) Considerations in Internal Displacement Contexts (March 2020)

Abstract: This guidance on TIP considerations during the COVID-19 pandemic is intended as a quick reference tool to support colleagues in the field working directly with internally displaced persons (IDPs) and/or engaged in protection advocacy. It has been developed in response to requests for further guidance on how the evolving COVID-19 pandemic may disproportionally impact internally displaced trafficked persons and people at risk of trafficking. It should be read in conjunction with the Global Protection Cluster COVID-19 guidance and anti-trafficking response guidance.

International Justice Resource Centre, COVID-19 Guidance from Supranational Human Rights Bodies

This webpage collects the resolutions, press releases, and other statements from human rights bodies and their parent intergovernmental organisations on States’ obligations to respect human rights in mitigating COVID-19. The Thematic Overview section organizes the most significant of these statements by issue area.

Statements are then organised by body or organisation, beginning with United Nations entities and then regional human rights bodies. Within those sections, statements are listed chronologically. Note that joint statements are listed under each co-authoring entity. For human rights bodies only (ie: not intergovernmental organisations or their agencies), included are statements that address procedural changes and other adjustments in these bodies’ functioning, in the section for each body.

International Labour Organization, COVID-19 and the World of Work

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

Inter-Parliamentary Union (IPU)

The IPU Parliaments in a Time of Pandemic site includes information about the response from national Parliaments to the Coronavirus pandemic, as well as guidance notes and opinion pieces – such as:

- Country compilation of parliamentary responses to the pandemic
- How to run a parliament during a pandemic: Q and A
- Gender and COVID-19: A guidance note for parliaments
- Human rights and COVID-19: A guidance note for parliaments
- Legislating in times of pandemic
- Video: Parliaments in a time of pandemic

Judicial College of Victoria

This open access site includes a summary of the provisions of the COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic) as it relates to the operations of Victorian courts and tribunals – see Coronavirus Emergency Act Summary.

The site also provides regularly updated comprehensive information on:

- Coronavirus and the Courts - detailed information on changes to court practices and procedures across all Australian jurisdictions.
- Coronavirus Jurisprudence – uses decided cases in all Australian jurisdictions to track the developing impact of the pandemic on the common law and the application of general principles in the areas of Sentencing, Bail, Conduct of hearings and adjournment, Open Courts, Judge alone criminal trials, Leave to withdraw, Civil trials and appellate proceedings, Commercial Proceedings, Amending or staying orders and decisions, Making orders, Family Law, Guardianship, Immigration, Tort, Property / Residential Tenancies, Constitutional Law, Costs, and Employment Law. More information about the cases discussed in this section is available in the companion document, Coronavirus cases.
UK Parliament

House of Commons Library - the Coronavirus Research page has produced many quick-read articles and longer briefings on the UK Government’s response to the coronavirus and its impact on key sectors such as health, social care, housing, employment rights, education, childcare, welfare, and the economy. The research is arranged by topic. The Home Affairs topic includes research and analysis on how emergency powers may affect areas such as policing, prisons, funerals and access to domestic abuse services during the coronavirus ‘lockdown’. The Government and Parliament topic includes research explaining parliamentary consent, the Coronavirus Bill, and how the pandemic may affect Brexit. Lastly, the Around the World topic provides research briefings on the response to coronavirus from across the world.

House of Lords Library – the Coronavirus page contains articles and commentary on various topics, such as:

- International impact of Covid-19 on parliaments (16 July 2020)
- Covid-19: The impact on human trafficking (10 July 2020)
- House of Lords: Timeline of response to Covid-19 pandemic (10 July 2020)
- Face coverings on public transport: Parliamentary approval of Covid-19 regulations (3 July 2020)

United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, 

Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights, 

UN Doc E/C.12/2020/1 (17 April 2020)

Extract from Introduction: The pandemic has profoundly negative impacts on the enjoyment of economic, social and cultural rights, especially the right to health of the most vulnerable groups in society. As explained below, States parties are under an obligation to take measures to prevent, or at least to mitigate, these impacts. Nevertheless, if States do not act within a human rights framework, there exists a clear risk that the measures taken might violate economic, social and cultural rights and increase the suffering of the most marginalized groups. No one should be left behind as a result of the measures it is necessary to take to combat this pandemic.1 These circumstances have led the Committee to issue the present statement to highlight the most important impacts of this pandemic on economic, social and cultural rights and to make some recommendations to States parties to combat the COVID19 pandemic in a manner consistent with their obligations under the Covenant.
**United Nations COVID-19 Response portal**

Included on this portal is the recently added (25 June 2020) UN response page which links to policy briefs listed by theme (eg: human rights), by population group (such as children people with disabilities etc) and by region.

**United Nations High Commissioner for Human Rights (OHCHR), COVID-19 and its Human Rights Dimensions**

*Note:* This site contains many news items, guidance notes on specific topics and other publications. See for example:

- ‘Seven Actions”: A Guide to Protect African Women’s Rights during COVID-19’
- ‘Racial Discrimination and the Protection of Minorities in the COVID-19 Crisis’
- ‘Children and COVID: Agenda for Action’
- ‘Inter-agency Statement on COVID-19 in Prisons and Other Closed Settings’
- ‘COVID-19 and the Human Rights of Migrants: Guidance’

**United Nations High Commissioner for Refugees (UNHCR)**

The UNHCR COVID-19 website contains global, regional and national information, including the following publications:

- ‘Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the Context of the COVID-19 Response’ (UNHCR, 2020)
- *Age, Gender and Diversity Considerations – COVID-19* (UNHCR, 21 March 2020)
- *Gender-based Violence Prevention, Risk Mitigation and Response During COVID-19*, (UNHCR, 26 March 2020)
UN Network on Migration

- ‘COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?’ (Policy Brief, April 2020) This publication includes a useful and regularly updated list of COVID-19-specific guidance and policy documents, as well as tools and practical resources on alternatives to immigration detention.
- ‘Forced Returns of Migrants Must be Suspended in Times of COVID-19’ (Statement, United Nations Network on Migration, 14 May 2020)

World Trade Organization, COVID-19 and World Trade

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

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

C) JOURNALS, WEBSITES & BLOGS

Note: This section features selected blogs, website and journals (including special issues) that contain COVID-19 literature. An excellent resource of such literature has been compiled by the George C Marshall European Centre for Security Studies in Germany, and is being regularly updated – see Jonathan G Odom, ‘COVID-19 and the Law: A Compilation of Legal Resources’. This is a list arranged by topic, and includes mostly international law commentary, and some US domestic commentary, using such authoritative sources such as EJIL: Talk! and OpinioJuris. We have included below resources not included in the list by Professor Odom.
Administrative Law in the Common Law World - adminlawblog.org

This blog contains many COVID-19 blog posts, such as:

- Joe Tomlinson et al, ‘Judicial Review during the COVID Pandemic’
  - Part I (26 May 2020)
  - Part II (28 May 2020)
- Goutham Shivshankar, ‘Debating the Applicability of India’s Disaster Management Law to COVID-19’ (19 May 2020)
- Lee Marsons, ‘Covid-19 and the UK Administrative State’ (31 March 2020)

Asian Law Centre, Melbourne Law School - Asian Legal Conversations - COVID-19

This site provides a platform to ‘discuss and compare experiences on issues either raised or exacerbated by COVID-19, which are shared by the jurisdictions of the Asia Pacific region. It also discusses country-specific issues. Contributions range in format from written blog posts, short written pieces or video recordings in the broad areas of:

- Celebrating Asian Australians
- Civil Society
- Courts, Lawyers and the Administration of Justice
- Daily Life
- Finance and Business
- Government / Governance
- Health Care
- Labour

AUSPUBLAW: Australian Public Law

This blog is from the Gilbert + Tobin Centre of Public Law at UNSW Law and the Australian Association of Constitutional Law. It has a dedicated COVID-19 and Public Law site.

Posts include:
• Evans, Kylie and Nicholas Petrie, ‘COVID-19 and the Australian Human Rights Acts’ (6 May 2020)
• Moulds, Sarah, ‘Keeping Watch on COVID-19 Laws: Are Parliamentary Committees up to the Job?’ (1 May 2020)
• McIntyre, Joe, Anna Olijnyk and Kieran Pender ‘Courts and COVID-19: Challenges and Opportunities in Australia’ (4 May 2020)
• Faux, Margaret, ‘Frenetic Law Making During the COVID-19 Pandemic: The Impact on Doctors, Patients and the Medicare System’ (24 April 2020)
• Orr, Graeme D, ‘The Demos in a Pandemic: Staging Elections in a Health Emergency’ (6 April 2020)

BRILL – open access
This publisher of scholarly books and journals has created a COVID-19 Collection, which includes content from many journals and on several topics, including law. Law journal titles include International Human Rights Law Review, European Journal of Comparative Law and Governance, and Journal of International Humanitarian Legal Studies. BRILL scholarship is normally only available via subscription or purchase, but all scholarship on the BRILL platform COVID-19 Collection is available on open access until 30 April 2021.

Cambridge University Press, Coronavirus Free Access Collection
CUP has made a collection of COVID-19 journal articles freely available. To access law articles, click on Refine Listing, scroll to Subject, click Show More and then select Law. The results appear at the bottom of the page.

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).

**The International Association of Constitutional Law (IACL-AIDC) Vlog Symposium: Constitutional Reflections on the Pandemic**

This series of videos comprises an introduction to the Symposium by IACL Blog Co-Editors, Dr Erika Arban and Dr Dinesha Samararatne, and insights from experts on constitutional law in individual countries – including Argentina, Australia, Ethiopia, Mexico, Nigeria, Palestine, Papua New Guinea, Philippines, South Korea, Sweden and Uzbekistan.

**International Association of Privacy Professionals (IAPP), COVID-19 Guidance and Resources**

This website provides a collection of privacy news, resources, reports, guidance and tools covering the COVID-19 global outbreak.

**International Bar Association** includes the following publications:

- [IBAHRI Covid-19 Human Rights Monitor](#)
- [IBA Global Insight](#) – this includes many articles on coronavirus.


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](#)
International Law Blog COVID-19 page

This page includes posts such as:

- Valerio Mazzuoli, ‘State Responsibility and COVID-19: Bringing China to the International Court of Justice?’ (15 May 2020)

Journal of Law and the Biosciences: Special Pandemic Issue

This special issue is constantly adding articles. We include each article in Part A above, but a complete list is available and regularly updated on the Stanford Law School Law and Biosciences Blog. To stay up to date you can receive email or rss alerts when new articles are added.

Just Security This online journal is based in the Reiss Center on Law and Security at New York University School of Law. The journal website contains a section dedicated to Coronavirus Coverage, including a regularly updated topical index of COVID-19 articles in Just Security, and a useful and regularly updated Timeline of the Coronavirus Pandemic and U.S. Response.

Law Librarians Monitoring COVID-19 in Latin America and the Caribbean

This site includes Biweekly Reports, sections for each cluster of countries, top sources and publications/presentations. You can also subscribe to updates regarding upcoming reports, publications, etc.

Law Library of Congress Global Legal Monitor (‘GLM’)

This is a very useful resource to keep up with COVID-19 legal developments across the world, particularly in the area of legislation. You can set up an email or rss alert to GLM by topic (COVID-19 articles are in the topic ‘Epidemics’) or country - see https://www.loc.gov/subscribe/. To see a list of all GLM COVID-19 articles published to date, see the ‘Law Library GLM articles’ heading in the Coronavirus Resource Guide - this list is arranged by country.
**LexisNexis: Law360 COVID-19**

Law360's dedicated page includes breaking news, features, analysis and commentary on all aspects of COVID-19 and the law. Access to all content is free. The content is mostly US with selected foreign content. Alerts can be set up by registering.

**Melbourne Asia Review**

This open access online journal is from the University of Melbourne Asia Institute. It includes a COVID-19 Analysis section, which includes articles such as:

- Tanya Spisbah, ‘**India is Shaping a ‘New Multilateralism’ in a post-COVID World**’
- Rafiq A Qurara 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”**’

**OpenGlobalRights**

The COVID-19 part of this organisation’s website contains articles on the human rights challenges of the pandemic. See for example:

- Dominique Virgil, ‘**The Right to Employment Security in Post-COVID Indonesia**’ (9 July 2020)
- Gunnar Ekeløve-Slydal and Liv H Kvanvig, ‘**Lockdowns vs. Religious Freedom: COVID-19 is a Trust Building Exercise**’ (8 July 2020)
- Guillermo Torres, ‘**A Post-Pandemic World: Well-Being for All or Deepening Inequality?**’ (7 July 2020)

**Oxford COVID-19 Government Response Tracker**

This database, created by the University of Oxford’s Blavatnik School of Government, collects information on several different common policy responses that governments have taken to respond to the pandemic on 17 indicators such as school closures and travel restrictions. It has data from more than 160 countries. Datasets can be downloaded in various formats, viewed as a timeseries, and explored in various ways. There are guidance notes and notes on how the data is collected and how the indices are calculated. There are also visualisations, including data visualisations of country data or heat map over
time, and interactive visualisations of each policy indicator. The data is provided free of charge, and the data use policy governed by a Creative Commons licence.

The COVID-19 Government Response Tracker states on its site that:

*Governments are taking a wide range of measures to tackle the COVID-19 outbreak. We aim to track and compare worldwide government responses to the coronavirus rigorously and consistently. Systematic information on which measures governments take, and when, can help us understand the responses in a consistent way, aiding efforts to fight the pandemic.*

*Our team collects information on common policy responses, scores the stringency of such measures, and aggregates these into a Stringency Index.*

*The data is also used to inform a ‘lockdown rollback checklist’ which looks at how closely countries meet four of the six World Health Organisation recommendations for relaxing ‘lockdown’.*

Oxford University Press [COVID-19 Resources](https://press.oup.com/covid-19/)

OUP has made COVID-19 journal articles, book chapters and other scholarly publications freely available. To access law articles, click on [Browse all relevant journal articles](https://press.oup.com/covid-19/law), and then select Law from the subject list in the left-hand menu.

The Regulatory Review - [Comparing Nations’ Responses to COVID-19](https://press.oup.com/covid-19/regulatory-review/)

This publication of the Penn Program on Regulation from the University of Pennsylvania in the US, is a freely available and constantly updated special series of essays. Articles include:

- Josefina Court and José Tomás Correa, [Chile’s Political and Institutional Response to COVID-19](https://press.oup.com/covid-19/chile.html) (24 June 2020)
- Ana Santos Rutschman, [Portugal’s Response to COVID-19](https://press.oup.com/covid-19/portugal.html) (1 July 2020)

**Transparency International**

Transparency International is a global coalition against corruption. The *News* section has regular COVID-19 articles such as:

- ‘*Anti-corruption Response to COVID-19 Must Include Women*’ (10 June 2020)
- ‘*Corruption and the Coronavirus*’ (18 March 2020)

The *Blog* section includes posts such as:

- ‘*Protection of Whistleblowers during COVID-19*’ (22 June 2020)
- ‘*Speaking up to Save Patients’ Lives*’ (22 June 2020)

**Verfassungsblog on Matters Constitutional**

This blog is published by the Berlin Social Science Centre’s Centre for Global Constitutionalism. It has a dedicated *COVID 19 and States of Emergency* Debates site, which states ‘As states of emergency are declared throughout the world in response to the spread of COVID-19, concerns arise as to the use – and potential abuse – of power in a time of crisis. In this Symposium, comparative country reports show the use of emergency powers from the perspective of democracy, human rights, and the rule of law’.

From 6 April to 26 May 2020, the Verfassungsblog and Democracy Reporting International Symposium reported on states of emergency and measures taken in response to COVID-19 in 74 countries, analysing legal measures and the use of emergency powers which impact nearly 80% of global population. The fifty days of the Symposium covered the height of the global legal reaction to the pandemic, offering a snapshot of countries in collective crisis. Link to all individual *Country Reports*, which cover:

- Albania, Argentina, Australia, Austria, Bangladesh, Belarus, Belgium, Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Croatia, Cyprus, Czechia, Denmark, Ecuador, Egypt, Estonia, European Union, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kenya, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Nepal, Netherlands, New Zealand, Nigeria, Norway, Peru, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore,
Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, United Kingdom, Ukraine, United States of America, Venezuela and Vietnam

The final contribution is ‘States of Emergency’ by Joelle Grogan, the Coordinator of the Symposium. It ‘aims to trace the central themes, questions and issues raised by the Symposium. It considers constitutional safeguards on a ‘state of emergency’, and whether this is preferable to the use of ordinary legislation in managing a crisis. It examines the dangers of executive action, and whether countries have been successful in limiting the potential for abuse, as well as preventing or sanctioning it. It examines how states have struggled to maintain some degree of legislative and judicial normality, while other states have given it up entirely. It considers the relevance of trust and transparency of government action, and the concerns related to an approach driven by surveillance and sanction. Finally, it identifies the most successful approaches adopted, and the most detrimental. In doing so, it aims to form part of that global conversation which seeks to identify the most concerning legal developments in a global emergency, but also to advocate for the best practices emerging worldwide’.