

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

Updated 26 October 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 sites.

Part C lists selected websites, databases, special issues of journals, blogs and other online fora.

This bibliography is compiled and updated 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. The main format of academic research at present is still working papers and pre-published scholarship. Much of this is on open access on SSRN, which has a dedicated [Coronavirus Hub](#) for early stage non-peer reviewed research. For published scholarship, 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 and advance online articles. 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.

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A) SCHOLARSHIP AND PROFESSIONAL LITERATURE

BOOKS

Burris, Scott et al (eds), [*Assessing Legal Responses to COVID-19*](#) (Public Health Law Watch, 2020)

Jurisdiction: USA

Book Summary: As the nation continues to address the ongoing COVID-19 pandemic, which has resulted in over 170,000 deaths so far and a severe economic recession, 50 top national experts offer a new assessment of the U.S. policy response to the crisis. The research details the widespread failure of the country's leadership in planning and executing a cohesive, national response, and how the crisis exposed weaknesses in the nation's health care and public health systems. In *Assessing Legal Responses to COVID-19*, the authors also offer recommendations on how federal, state and local leaders can better respond to COVID-19 and future pandemics. Their proposals include how to strengthen executive leadership for a stronger emergency response, expand access to public health, health care and telehealth; fortify protections for workers; and implement a fair and humane immigration policy.

Note: this open access book includes 35 chapters – most of these are listed below in this bibliography under the appropriate topic headings. Each chapter concludes with 'Recommendations for Action'. The chapters are arranged thematically into:

- Part I: Using Government Powers to Control the Pandemic
- Part II: Fulfilling Governmental Responsibility in a Federal System
- Part III: Financing and Delivering Health Care
- Part IV: Assuring Access to Medicines and Medical Supplies
- Part V: Protecting Workers and Families
- Part VI: Taking on Disparities and Protecting Equal Rights

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

Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020)

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 in this bibliography 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.

Hondius, Ewoud et al (eds), [*Coronavirus and the Law in Europe*](#) (Intersentia, August 2020)

This open access book was published in September 2020 and states the law as at 1 August. It examines coronavirus-related legislation and its consequences in European states. It is intended to serve as a “toolbox” for domestic and European judges who will soon be dealing with the interpretation of coronavirus- and COVID19-related legislation and administrative measures, as well as the disruption the pandemic has caused on society and fundamental rights. The project is also aimed at assisting businesses and citizens, who wish to be informed about the implications of the virus in the existence, performance, and enforcement of their contracts. The book covers almost all European countries and legal disciplines. It contains nearly 60 chapters, written by academics from all over Europe.

Most of the chapters are listed below in this bibliography under the appropriate topic headings. The chapters are arranged thematically into:

- Part 1: Covid And Fundamental Rights
- Part 2: States Against the Pandemic
- Part 3: Compensation for Covid-19 Related Damage
- Part 4: Contract Law
- Part 5: Consumer Law
- Part 6: Labour And Social Law
- Part 7: Coronavirus Changing Europe

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

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

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](#)

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

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?

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

Abstract: Every country has experienced profound attack from the Coronavirus. Every state will now face deep economic damage, possibly for a prolonged period. The next stage of economic disruption produces some winners and many losers. It inherently carries risks of widespread unemployment, collapse of companies, services, taxation revenues, and consequential risks of social unrest, criminal exploitation, revolution, cyber exploitation and warfare, and possibly the

collapse of states and societies, and invasion by foreign powers. Much depends on how things are handled by a small number of political leaders around the world, the decisions that they take, and the actions that they are able to implement. These challenges arise on top of the other existential risk of climate change and the extinction of species, which may now risk being overlooked. The risks to civilisation could not be more serious.

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

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

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

Abstract: COVID-19 teaches us lessons about leadership, the most important of which is to put more women in charge. This Article provides an interdisciplinary analysis of these lessons, which come at the very high price of many forever disrupted and lost human lives. COVID-19 is a global tragedy. COVID-19 can also be a cruel, relentless and unforgiving teacher of valuable lessons about leadership. During COVID-19, leaders had to quickly mobilize many resources and convince many people to change their established behaviors and familiar routines. Leaders had to rely on effective and persuasive communication to achieve buy-in and voluntary compliance

by a diverse public. This is because enforcement of non-compliance is effectively infeasible. This Article introduces the phrase, thoughtful leadership, to describe such leadership and leadership communications. In response to COVID-19, some leaders have been compassionate, courageous, data-based, decisive, and kind. These leaders' communications with the media and the public were calm, caring, clear, empathetic, honest, science-driven, and transparent. This Article analyzes what leaders who were more successful during COVID-19 did and said. During COVID-19, women were many of the most admired and more successful leaders. These female leaders of cities, states and nations were exemplary. There were also some exemplary male leaders. This Article considers explanations and theories about why so many women leaders were among the most successful during COVID-19. This Article profiles in some detail three exemplars of leadership: New Zealand prime minister Jacinda Ardern, Secretary to the Governor of New York Melissa DeRosa, and New York state governor Andrew Cuomo. Finally, thoughtful leadership is applicable to parenting and teaching.

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

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

allowing well-informed, consenting human testing subjects to take on more uncertain risk than the FDA currently tolerates. In sum, we argue for a more general, systematic, and critical perspective on law in the special context of a pandemic.

Krieger, Nancy, 'ENOUGH: COVID-19, Structural Racism, Police Brutality, Plutocracy, Climate Change—and Time for Health Justice, Democratic Governance, and an Equitable, Sustainable Future' [2020] *American Journal of Public Health* e1–e4 (online advance article, published 20 August 2020)

Abstract: COVID-19 starkly reveals how structural injustice cuts short the lives of people subjected to systemic racism and economic deprivation. It is not, however, the only crisis at hand.

Macey-Dare, Rupert, '[COVID-19: Assessing Some Potential Global Economic, Business and Legal Impacts](#)' (SSRN Scholarly Paper ID 3615148, 31 May 2020)

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.

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

Abstract: The COVID-19 pandemic is a public health emergency that raises many ethical and legal issues. Of significance is that the pandemic requires emergency public health measures to be put in place by the government significantly disrupting the lives of many. Governments should however remember that emergency public health measures must be legally sound in accordance with their right to health obligations under international law, national constitution and legislation. Suffice to note, the international community has an obligation to assist and cooperate with each other towards fighting the disease. The health providers who are currently at the forefront in fighting the pandemic are being faced with numerous challenges especially in developing countries due to lack of adequate resources. This however should not be an excuse for violating ethical principles put in place including respecting the confidentiality, privacy, and autonomy of the patients. Lastly, the community has a role to play in making sure that they follow lawful orders and guidelines put in place including social distancing, washing hands and staying at home.

Puaschunder, Julia M, Martin Gelter and Siegfried Sharma, '[COVID-19-Shock: Considerations on Socio-Technological, Legal, Corporate, Economic and Governance Changes and Trends](#)' (Proceedings of the 16th International Research Association for Interdisciplinary Studies (RAIS) Conference on Social Sciences and Humanities, Princeton University, 17-18 August 2020) 82-93

Abstract: This article tries to grasp our contemporary Zeitgeist to serve as historic landmark how pandemics can influence the individual decision making, the social compound, national order, economic structures and the larger-scale international compound. The ongoing COVID-19 crisis accounts for one of the most unpredicted economic disruptions in the history of humankind. Little would we all have expected how our lives have changed since the outbreak of the pandemic if we consider the deep impact the novel Coronavirus has on all our lives, the legal, economic and political spheres. Featuring national policy strategies to cope with the pandemic grants insights about precautionary and reactionary governance during health crises balancing between medical, economic and social well-being. Concurrent with an already ongoing digitalization trend, the COVID-19 pandemic implies widespread changes for individual decision makers in their adoption of technological assistance but also in giving up decision making to

Artificial Intelligence (AI). Economic facets of collective learning processes during the crisis are outlined with a special emphasis on the currently ongoing digital disruption. As a widespread external shock to the world economy and legal order, COVID-19 affects corporate conduct profoundly. The legal implications and societal changes' impetus on corporate conduct will be depicted in order to derive future corporate governance prospects. From an evolutionary dynamics market perspective, a trends prediction sheds light on what kind of firms are likely to fail, which ones may survive and which ones could thrive in the following years and decades to come. International differences in the handling of COVID-19 are highlighted in order to envision future global public healthcare. The recommendations address the importance of well-calibrated goals to cure our contemporary humankind and protect our future common world population.

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

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

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

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

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

ADMINISTRATIVE LAW / REGULATORY & 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.

Abulude, Francis Olawale and Ifeoluwa Ayodeji Abulude, '[Impact of the COVID-19 Pandemic: Lesson from Nigeria](#)' (SSRN Scholarly Paper ID 3629598, 17 June 2020)

Abstract: COVID-19 is the deadly virus that has nearly locked down the entire universe. It has claimed several millions of lives worldwide. Presently, there is no known cure for the virus. Africa is one of the continents affected and Nigeria is one of the countries affected. The aim of the review is to report the lessons learned through out the pandemic period. To achieve the aim, journals, internet papers, and news reports were used for the write-up. The pandemic have influences on education, economy, religious, sporting, social, banking activities, and others. The federal, state governments, military, NGO, individuals, and religious bodies provided and donated palliatives to cushion the effects of the pandemic on the populace. To curb the spread of the disease, measures were put in place for the people to adhere strictly with. There were violators and adequate penalty were meted by constituted mobile courts on them. The locked down is relaxed a little bit to watch how effective is the efforts of the government to stop or reduce the pandemic.

Addicott, Jeffrey, '[COVID-19 Pandemic: Policy and Legal Issues](#)' [2020] (March-April) *The Officer Review* 7-9

Abstract: Most Americans are unfamiliar with governmental powers during a pandemic, which makes it useful to examine applicable legalities, powers and authorities. Importantly, that power can mandate quarantine, isolation, vaccination, decontamination, destruction of infected property, eviction, closing businesses, social distancing, sheltering in place, specimen testing, and mandating health information disclosure and health care responses.

Adetunji, Abdulrahman, '[Halting the Upsurge of Future Pandemics: The Role of Nigerian Government](#)' (SSRN Scholarly Paper ID 3679190, 22 August 2020)

Abstract: Humanity has faced countless threats throughout its existence. Epidemics, pandemics, natural disasters, wars, etc. All these threats have two features in common – None was truly global in its direct impacts, and despite the devastating effects these threats had, humanity always survived and thrived afterwards. Today, COVID-19 has changed the narrative. This paper examines the factors that led to the quick spread of the virus and proffer ways through which the government can prevent such occurrences in the future.

Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020),
Symposium IV: Governance, Rights, and Institutions

Note: The essays contributed to this four-week long symposium in May 2020 are from Africa, Asia, Europe, the Middle East, the Caribbean, North America and Latin America.

- Gwinyai Regis Taruvinga, '[COVID-19 and Governance in Zimbabwe](#)'
- Kethi D Kilonzo, '[Playing Tag with the Rule of Law: Balancing Fundamental Rights and Public Health in Kenya in the shadow of COVID-19](#)'
- Douglas de Castro and James Oliveira dos Santos, '[Securitization of the Health and Economy in the COVID Times](#)'

Ahdar, Rex, '[Reflecting Upon the Costs of Lockdown](#)' [2020] 11 (November) *The Western Australian Jurist* (forthcoming)
Jurisdiction: New Zealand

Abstract: This paper endeavours to show that the indirect, downstream and long-term costs of a mandated lockdown in response to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) producing coronavirus disease 2019 (COVID-19) are too often ignored. The New Zealand Government did not much talk about them at the time it implemented a strict lockdown based upon its elimination strategy. Yet rational public policy requires these costs need to be taken into account and weighed against the benefits of the strict lockdown approach that New Zealand adopted. Furthermore, the costs and benefits of a milder mitigation strategy (of the kind Sweden adopted) also need to be estimated and compared to the strict lockdown approach. I argue the mitigation strategy was and is a preferable one once the indirect and long-term costs and benefits are taken into account.

Aksoy, Cevat Giray, Barry Eichengreen and Orkun Saka, '[The Political Scar of Epidemics](#)' (NBER Working Paper No w27401, 2020)

Abstract: What will be political legacy of the Coronavirus pandemic? We find that epidemic exposure in an individual's 'impressionable years' (ages 18 to 25) has a persistent negative effect on confidence in political institutions and leaders. We find similar negative effects on confidence in public health systems, suggesting that the loss of confidence in political leadership and institutions is associated with healthcare-related policies at the time of the epidemic. In line with this argument, our results are mostly driven by individuals who experienced epidemics under weak governments with less capacity to act against the epidemic, disappointing their citizens. We provide evidence of this mechanism by showing that weak governments took longer to introduce policy interventions in response to the COVID-19 outbreak. These results imply that the Coronavirus may leave behind a long-lasting political scar on the current young generation ('Generation Z').

Allman, Kate, 'Police State or Safety Net?: How NSW Entered a Strange "New Normal"' (2020) (66) *LSJ: Law Society of NSW Journal* 30–35
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.

Alon, Titan et al, '[How Should Policy Responses to the COVID-19 Pandemic Differ in the Developing World?](#)' (NBER Working Paper No w27273, 2020)

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.

Alunaru, Christian and Lucian Bojin, '[Coronavirus and the Law in Romania](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Romanian authorities reacted to the COVID-19 pandemic with various legal instruments, applying in numerous fields of law. Some measures were implemented in order to control the spread of the disease and to ensure the maximum capacity of the healthcare service providers to deal with the situation. Other measures addressed (and tried to mitigate) the economic consequences of the pandemic and of the measures from the first category. Both

types of measures involved certain serious limitations on the exercise of certain fundamental rights, which would not have been compliant with the constitutional provisions governing Romania in normal times. Because of this, the state of emergency was declared (and was in force for 60 days) in order to allow authorities to adopt the proposed measures. These measures applied in various fields, among which: healthcare, public order, public administration, labour and social security, performance of agreements, dispute resolution, education.

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

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

Anderson, Evan, '[Is Law Working? A Brief Look at the Legal Epidemiology of COVID-19](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020)

Jurisdiction: USA

Abstract: Legal intervention has featured prominently in the response to the COVID-19 pandemic. In most places in the world, the legal response has consisted of some combination of traditional disease control measures (individualized testing, contact-tracing, distancing), population-based physical distancing (including school and business closures, stay-at-home orders, gathering bans and masking rules), travel strictures (including travel bans, border closures and quarantines), and economic support measures (which are beyond the scope of this Chapter). Researchers have tried to guide that response in real-time by measuring rapidly changing legal interventions and assessing their current and future effects. In a moment when law can have huge beneficial and deleterious effects, this legal epidemiology can fairly be regarded as a crucial element of the overall COVID-19 response. This Chapter tries to identify important take-aways from this evolving evidence base. The epidemiologic record shows that the U.S. is failing to control the virus, but little else is as clear. Understanding how much better or worse things would be with different legal interventions is complicated given that the effects of rules are dependent on settings (e.g., density), timing (e.g., in relation to population transmission rates), and social context (e.g., social norms and political conditions). It is difficult for researchers to untangle the effects of specific legal requirements, let alone to identify some ideal set of least restrictive elements. Nevertheless, previous experience, prevailing theory, and some direct evidence suggest that some early and aggressive distancing interventions have important benefits. Questions of costs, disparities and side effects remain largely unanswered.

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.

Arndt, Kathryn, '[Closest to the People: Local Government Democracy and Decision-making in Disaster](#)' (Governing During Crises Policy Brief No 6, Melbourne School of Government, University of Melbourne, 15 September 2020)

Jurisdiction: Australia

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

(a) Even before the COVID-19 pandemic hit, the 2020 Victorian local government elections were already set to break new ground. With the entry into force of the Local Government Act 2020 and Gender Equality Act 2020, significant reforms to the local government sector were expected to be implemented alongside the election of over 600 councillors across Victoria.

(b) The pandemic has added to the complexity of implementing these reforms and highlighted the democratic complexities of holding free and fair elections in an environment where the campaign activities of a majority of candidates are limited.

(c) These challenges have both demonstrated the resilience and adaptability of local government and laid bare the need for greater resourcing for local government to effectively implement the reforms envisaged by new legislation.

Aschenbrenner, Peter J, 'United States of America: Response to Covid-19 Pandemic' [2020] (October)

Public Law 803-805

Abstract: Reflects on the extensive emergency powers available to US state governors to combat the coronavirus pandemic, and the range of factors that have hampered their effective implementation, including fragmented local leadership, cultural resistance to official recommendations and the structure of the healthcare system. Discusses the high number of deaths within the jurisdiction.

Ayala Corao, Carlos, '[Challenges That the Covid-19 Pandemic Poses to the Rule of Law, Democracy, and Human Rights](#)' (Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No 2020-23, June 2020)

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.

Baccini, Leonardo and Abel Brodeur, '[Explaining Governors' Response to the Covid-19 Pandemic in the United States](#)' (IZA Discussion Paper No 13137, 20 April 2020)

Abstract: What is the response of US governors to the COVID-19 pandemic? In this research note, we explore the determinants of implementing stay-at-home orders, focusing on governors' characteristics. In our most conservative estimate, being a Democratic governor increases the probability of implementing a stay-at-home order by more than 50 percent. Moreover, we find that the probability of implementing a statewide stay-at-home order is about 40 percent more likely for governors without a term limit than governors with a term limit. We also find that Democratic governors and governors without a term limit are significantly faster to adopt statewide orders than Republican governors and governors with a term limit. There is evidence of politics as usual in these unusual times.

Bakir, Caner, '[The Turkish State's Responses to Existential COVID-19 Crisis](#)' (2020) 39(3) *Policy and Society* Special Issue: States and COVID-19 Policy-Making 424–441

Abstract: This article focuses on how the Turkish state has been responding to limit the public health effects of COVID-19 pandemic to date. It aims to explain and understand the introduction, implementation and effect of health policy instrument mixes. It argues that although 'presidentialisation' of executive, and 'presidential bureaucracy' under presidential system of government are critical to introduce policies and implement their instrument mixes without delay or being vetoed or watered down which would otherwise occur in the parliamentary system of government, these features of impositional and exclusive policy style pose risks of policy design and implementation failures when the policy problems are poorly

diagnosed, their policy solutions are wrong and/or complementary policy instrument mixes implemented ineffectively. However, a temporal, albeit temporary divergence from a dominant administrative tradition and policy style is most likely when a policy issue is esoteric (i.e. technical, scientific and expert-led) and framed as an existential crisis under high uncertainty that require scientific, expert-led, inclusive, early, quick and decisive responses to pressing policy problems.

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.

Banerjee, Bratati, '[COVID-19 Containment: Legal Framework for Regulatory Approach](#)' (2020) 8(2)

Journal of Comprehensive Health 66-73

Jurisdiction: India

Abstract: Legal instruments and frameworks authorize the Government to exercise its powers for enforcing regulations to contain the situation at the time of any health emergency. During the present pandemic of COVID-19 the International Health Regulations 2005 is being

implemented globally, in addition to individual country legislations. Several countries have also framed new Acts, Rules and Regulations or amended the existing ones, to fight the battle. With the onset of the pandemic, India has invoked its two existing laws, the Epidemic Diseases Act 1897 and the Disaster Management Act 2005. While the former lays down the public health measures required to be implemented, the latter gives the authorities the power to do so. Using both the laws together is an innovative and comprehensive way to deal with the situation. However, the century old Epidemic Diseases Act is outdated and does not address the situation in the present context. Hence, there is urgent need of revising the Act. Also, instead of multiple Acts, there can be one single Act for integrated, holistic and comprehensive actions for combating the disease. To address situation-specific issues and consequences, a special Act can also be designed and adopted by India, as has been done by many other countries.

Baniamin, Hasan Muhammad, Mizanur Rahman and Mohammad Tareq Hasan, '[The COVID-19 Pandemic: Why Are Some Countries Coping More Successfully than Others?](#)' (2020) *Asia Pacific Journal of Public Administration* (advance online article, published 15 July 2020)

Abstract: Countries have experienced varied success in controlling the COVID-19 pandemic. To understand these variations, the study used netnography on news media and websites, and social media. Factors identified as critical to success in managing the pandemic fall into two categories: state-centric and socio-demographic. State-centric factors such as policy learning and implementation structure, and technological and administrative readiness have influenced success. Contextual factors such as a country's demographic profile (e.g., age), family structure (multigenerational family), and cultural attributes (e.g., kissing and hugging to greet) also shape the effectiveness of policies for controlling the pandemic.

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

Abstract: The novel Coronavirus disease 2019 (COVID-19) is extremely contagious and currently incurable. Hence, much of the efforts to contain the pandemic have focused on social distancing, prohibiting gatherings and even curfews. The Coronavirus poses a new dual

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

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 where 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.

Benítez, María Alejandra et al, '[Responses to COVID-19 in Five Countries of Latin America](#)' (SSRN Scholarly Paper ID 3663292, 30 June 2020)

Jurisdictions: Brazil, Chile, Colombia, Ecuador and Peru

Abstract:

Background: COVID-19 reached Latin-American countries slightly later than European countries, around February/March, allowing some emergency preparedness response in countries characterized by low health system capacities and socioeconomic disparities.

Objective: This paper focuses on the first months of the pandemic in five Latin American countries: Brazil, Chile, Colombia, Ecuador and Peru. It analyses how the pre-pandemic context, and the government's responses in terms of containment and mitigation and economic measures have affected the COVID-19 health outcomes.

Methods: Extensive qualitative document analysis was conducted focused on publicly-available epidemiological data and federal and state/regional policy documents since the beginning of the pandemic.

Results: The countries were quick to implement stringent COVID-19 measures and incrementally scaled up their health systems capacity, although tracing and tracking have been poor. All five countries have experienced a large number of cases and deaths due to COVID-19. The analysis on the excess deaths also shows that the impact in deaths is far higher than the official numbers reported to date for some countries.

Conclusion: Despite the introduction of stringent measures of containment and mitigation, and the scale up of health system capacities, pre-pandemic conditions that characterize these countries (high informal employment, and social inequalities) have undermined the effectiveness of the countries' responses to the pandemic. The economic support measures put in place were found to be too timid for some countries and introduced too late in most of them. Additionally, the lack of a comprehensive strategy for testing and tracking has also contributed to the failure to contain the spread of the virus.

Berger, Loic et al, '[Uncertainty and Decision-Making During a Crisis: How to Make Policy Decisions in the COVID-19 Context?](#)' (Becker Friedman Institute for Economics Working Paper No 2020-95, University of Chicago, 10 July 2020)

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.

Beylin, Ilya, '[The Ignominious Life of the Paycheck Protection Program](#)' (SSRN Scholarly Paper ID 3661005, 26 July 2020)

Jurisdiction: USA

Abstract: The COVID-19 pandemic gravely endangers the health of millions of Americans. Private and public safety measures adopted to reduce infection, however, are also a source of

existential risk. As U.S. infection rates increased in early March, 2020, unemployment and business dislocation surged. The bipartisan Coronavirus Aid, Relief, and Economic Security Act (CARES Act) represents the first and largest federal attempt to manage economic fallout from the pandemic. The Paycheck Protection Program (PPP) is a lynchpin of the CARES Act. The PPP seeks to mitigate unemployment and closures in several vulnerable sectors of the economy including among tens of millions of small businesses, not-for-profits, and self-employed individuals. The PPP has disbursed over \$500 billion to these sectors, providing a lifeline to millions of employees. Nevertheless, media, lawmakers and economists have criticized the PPP for inefficiently or inequitably distributing funds. This Article is the first work of legal scholarship that explains and examines the PPP. As a case study, this Article also provides insight into the design of economic interventions and their limitations as well as how the lawmaking process generates a narrative allocating responsibility for social trauma.

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

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

Bouckaert, Geert et al, '[European Coronationalism? A Hot Spot Governing a Pandemic Crisis](#)' (2020) *Public Administration Review* (advance online article, published 22 May 2020)

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.

Boughey, Janina, 'Executive Power in Emergencies: Where Is the Accountability?' (2020) 45(3) *Alternative Law Journal* 168–174

Abstract: Australia's system of law and government contains a range of mechanisms through which the executive branch is held to account for its actions. However, in emergencies, these accountability mechanisms are often significantly eroded in a range of ways. This article examines how the forms and types of powers that Australian governments have relied on to respond to the COVID-19 pandemic have avoided many of the political, legal and administrative accountability mechanisms that ordinarily apply to government decision-making. It looks at whether these accountability limits are justified and asks whether we ought to be concerned.

Brahams, Diana, '[Spring in London with Covid-19: A Personal View](#)' (2020) 88(2) *Medico-Legal Journal* 57–64

Abstract: This is a personal view from London as the Covid-19 pandemic continues to spread here and the situation changes from day to day. As such it can only be a snapshot caught in time; it is not a diary of events. The Coronavirus Act 2020 gives Government enormous powers

and was passed by Parliament in one day of debate immediately before it closed early for the Easter break. In March, the government imposed a 'lockdown: the closure of all' but 'essential' businesses and people other than essential workers must work from home but are allowed out for exercise and food shopping but must maintain 2 m apart, the 'social distancing rule'. The aim is to suppress the spread of the virus, reduce the death toll and 'protect the National Health Service (NHS)' which needed time to empty wards and expand its intensive care unit (ICU) capability to deal with an expected influx of thousands of very sick patients. I discuss whether this strategy is working, how and why it has rapidly been altered to respond to criticism. Why was the Government so slow to seek the help of private laboratories to assist with testing? Why was the personal protective equipment (PPE) guidance altered only after criticism? I look at the impact of the lockdown on the UK economy, the changes to practice of medicine and speeding of scientific research. Cooperating with the lockdown has its price; is it harming the health and mental health of children, people living in households with potentially abusive partners or parents and those who are disabled or financially desperate? Is the cure worse than the disease? The Economy is being devastated by the lockdown and each day of lockdown it is worse. Is litigation being seeded even now by the pandemic? Notwithstanding unprecedented Government financial help many businesses are on the edge of collapse, people will lose their jobs and pensioners income. The winners include pharmacies, supermarkets, online food retailers, Amazon, online apps, providers of video games, services, streaming and scientific research laboratories, manufacturers of testing kits, ventilators, hand sanitisers, coffins, undertakers, etc. The British public is cooperating with lockdown but are we less productive at home? Parents with babies and children often child minders, school, grandparents or paid help which is not now available. Will current reliance on video-conferencing and video calls permanently change the way we work and will we need smaller city offices? Will we travel less? Will medical and legal practice and civil and criminal trials be generally carried out remotely? Will social distancing with self-isolation and job losses and business failures fuel depression? Is Covid-19 comparable to past epidemics like the Plague and Spanish flu?

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.

de Bruijn, Anne Leonore et al, '[Why Did Israelis Comply with COVID-19 Mitigation Measures During the Initial First Wave Lockdown?](#)' (Amsterdam Law School Research Paper No 2020-52, 27 August 2020)

Abstract: This paper investigates why Israeli citizens complied with measures taken to mitigate the spread of the COVID-19 virus in early April. At the time, Israel had relatively stringent mitigation measures that encouraged people to stay at home and keep a safe social distance. The data of 411 adult participants, gathered using survey research, showed that overall, compliance levels at that time were high. It finds that compliance depended on a combination of

moral factors, such as people's moral duty to obey the law and people's tendency to obey the law generally. In addition, people who had friends over 75 years old were more likely to comply. Furthermore, people were more likely to comply if they were able to do so, and less likely to violate if they did not have the opportunity to do so. The study did not find that fear of punishment (deterrence) was significantly associated with compliance. Overall, these findings are in line with studies conducted the United States, the United Kingdom, and the Netherlands.

Brzechczyn, Krzysztof, '[The Coronavirus In Liberal And Illiberal Democracies and the Future of Globalized World](#)' (2020) 4(2) *Society Register* 83-94

Abstract: The aim of this article is to compare the effectiveness of two political systems: liberal democracy and illiberal democracy in fighting the coronavirus pandemic. The analysis has been carried out on the basis of the theoretical assumptions and conceptualization of non-Marxian historical materialism. In the first part of my article, I present the concept of 'regulative credit' which has been introduced in that theory. In standard socio-political conditions, the growth of power regulations is usually contested by citizens. However, in a situation of danger, when social order is undermined, citizens support the authorities' extraordinary regulations. This social support, called regulative credit, lasts as long as the danger persists. In chapter two, I characterize shortly liberal and illiberal democracies. In liberal democracy, there is a balance between different branches of power, and citizens share a socio-political consciousness of the individualistic type. In illiberal democracy, the executive branch of power – although it has been democratically chosen – has an advantage over the two other kinds of power, and citizens share a socio-political consciousness of the collectivist type. Those differences result in diverse reactions of the authorities to a situation of threat. The political authorities of an illiberal democracy react faster in comparison with the political authorities in liberal democracies that react slower. Also, the attitude of citizens toward the introduced restrictions varied. Societies of illiberal democracies are more self-disciplined and more willing to accept restrictions from above. Whereas societies of liberal democracies are more individualistic and less willing to accept limitations. In the fourth part of my paper, I analyze briefly the influence of the pandemic on globalization processes and on the relations between the EU and the nation states in Europe. In the summary (chapter five), I predict that the mass use of modern technologies to control

social life and strengthening of the sovereignty of nation states will be the two most important effects of the pandemic.

Buthe, Tim, Luca Messerschmidt and Cindy Cheng, 'Policy Responses to the Coronavirus in Germany' in Gian Luca Gardini (ed), *The World Before and After COVID-19: Intellectual Reflections on Politics, Diplomacy and International Relations* (European Institute of International Relations, 2020) 97-102

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

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.

Canestrini, Nicola, '[Covid-19 Italian Emergency Legislation and Infection of the Rule of Law](#)' (2020) 11(2) *New Journal of European Criminal Law* 116–122

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.

Capano, Giliberto et al, '[Mobilizing Policy \(In\)Capacity to Fight COVID-19: Understanding Variations in State Responses](#)' (2020) 39(3) *Policy and Society* – Special Issue: States and COVID-19 Policy-Making 285–308

Abstract: The objective of this collection of essays is to gain insights into the different national-level state responses to COVID-19 around the world and the conditions that shaped them. The pandemic offers a natural experiment wherein the policy problem governments faced was the same but the responses they made were different, creating opportunities for comparison of both the kinds of policy tools being used and the factors that accounted for their choice. Accordingly, after surveying on-line databases of policy tools used in the pandemic and subjecting these to topic modelling to reveal the characteristics of a 'standard' national pandemic response, we discuss the similarities and differences found in specific responses. This is done with reference to the nature and level of policy capacity of respective governments, highlighting the critical roles played by (in)adequate preparation and lesson-drawing from past experiences with similar outbreaks or crises. Taken together the articles show how the national responses to the COVID-19 pandemic were shaped by the opportunity and capacity each government had to learn from previous pandemics and their capacity to operationalize and build political support for the standard portfolio of policy measures deployed to deal with the crisis. However, they also show how other factors such as the nature of national leadership, the organization of government and civil society, and blindspots towards the vulnerabilities of certain population segments also helped to shape policy responses to the pandemic.

Capano, Giliberto, '[Policy Design and State Capacity in the COVID-19 Emergency in Italy: If You Are Not Prepared for the \(Un\)Expected, You Can Be Only What You Already Are](#)' (2020) 39(3) *Policy and Society* – Special Issue: States and COVID-19 Policy-Making 326–344

Abstract: Italy was the first large epicentre of the COVID-19 pandemic in the Western world. Since the country has not had any serious experience with this kind of disease in recent decades, its response has been indicative of a first reaction to an (un)known and (un)expected event. At the same time, the Italian experience is an emblematic case of how a lack of specific preparedness measures drives a country to deal with this kind of crisis through a process in which the existing characteristics of the policy and political system, with all their pros and cons, prevail. This means that the existing country characteristics that affects policy design, state

capacity, institutional arrangements and political games forge the process and content of the response. Based on this observation, this paper analyses the policy dynamics of the first four months of management of the COVID-19 outbreak in Italy, focusing on how the health and economic responses were designed and implemented.

Cappe, Mel, 'Good Governance: Institutions, Processes, and People' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 163

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.

Chabibi, Busrol and Irfan Jamallullail, '[Are Government Appeals on Physical Distancing During the Covid-19 Pandemic Effective? An Analysis from Law and Public Policy](#)' (2020) 1(4) *Journal of Law and Legal Reform* 549–562
Jurisdiction: Indonesia

Abstract: This research aims to analyze attitudes, subjective norms and government appeals towards physical distance intentions during the COVID-19 pandemic in Indonesia. The study was conducted in 7 provinces in Indonesia by taking a sample of 104 respondents selected by purposive sampling. Data collection is done by collecting Likert scale questionnaires to measure 14 indicators. Multiple linear regression analysis techniques are used to measure the effect of independent variables on the dependent variable with the help of SPSS 16. The results of this study find facts, subjective norms and government appeals to have a positive and significant effect on physical distance goals.

Cheng, Yuan (Daniel) et al, '[Coproducting Responses to COVID-19 with Community-Based Organizations: Lessons from Zhejiang Province, China](#)' (2020) *Public Administration Review* (accepted manuscript, published 26 May 2020)

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.

Chiplunkar, Gaurav and Sabyasachi Das, '[Political Institutions and Policy Responses During a Crisis](#)' (SSRN Scholarly Paper ID 3629397, 17 June 2020)

Abstract: Do countries with differing political institutions respond differently to a national crisis? The coronavirus pandemic, where almost all countries were hit by the same crisis in a short span of time, provides a rare opportunity to answer this question. For a sample of 125 countries, we use high frequency data on two measures of policy response- (i) containment policies, relating to closure of public spaces and restrictions on movement of people, and (ii) health policies, relating to public information campaigns, testing and contact tracing, to examine their policy response to the crisis. We show that: first, non-democracies have more stringent containment and health policies prior to their first COVID-19 case. However, after registering their first case, democracies either close this gap (in containment policies), or surpass non-democracies (in health policies) within a week. Second, policy responses do not differ by governance systems (presidential or parliamentary) in democracies. However, elected leaders who performed better in the last election or face their next election farther in the future are more aggressive in their policy response. Third, democracies with greater media freedom respond more slowly in containment policies, but are more aggressive in health policies. Lastly, more conducive political norms (such as trust in the elected government) systematically predict a more aggressive response in both containment and health policies. Our analysis therefore suggests that political

institutions and the incentives of the political leaders embedded therein, significantly shape the policy response of governments to a national crisis.

Chng, Wei Yao (Kenny), '[Legal Constraint in Emergencies: Reflections on Carl Schmitt, the Covid-19 Pandemic and Singapore](#)' (SMU School of Law Research Collection No 3173, Singapore Management University, July 2020)

Abstract: The controversial legal theorist Carl Schmitt's challenge to the possibility of meaningful legal constraint on executive power in emergencies could not be more relevant in a world struggling to deal with Covid-19. Scrambling against time, governments around the world have declared states of emergency and exercised a swathe of broad executive powers in an effort to manage this highly infectious disease. In times like these, if Schmitt is indeed right that emergencies cannot be governed by law, we are on the cusp of (or perhaps have already entered) a post-law world – where the business of government is characterised by discretion and power instead of law. This post will suggest that such a bleak conclusion is avoidable. Indeed, if one accepts a broader conception of what “legal constraint” means, it is possible to answer Schmitt's challenge and hold to a view that even broad discretionary powers exercised during times of emergency can be (and should be) constrained by law in a meaningful way.

Chowdhury, Anis and Jomo Kwame Sundaram, “‘Flattening the Curve’ Through COVID-19 Contagion Containment’ in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 513

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.

Christensen, Tom and Per Lægreid, [‘Balancing Governance Capacity and Legitimacy: How the Norwegian Government Handled the COVID-19 Crisis as a High Performer’](#) (2020) *Public Administration Review* (accepted manuscript, published 22 May 2020)

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.

Ciacchi, Aurelia Colombi, [‘The COVID-19 Crisis: A Challenge for Numeric Comparative Law and Governance’](#) (2020) 7(2) *European Journal of Comparative Law and Governance* 109–115

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?.

Ciuriak, Dan, '[Who Knew What When: The International Transmission of Information on the COVID-19 Outbreak](#)' (Policy Brief, Asia Pacific Foundation of Canada, 25 August 2020)

Abstract: This note focuses on the question of the international transmission of information concerning the outbreak of the COVID-19 pandemic in Wuhan – who knew what when. In contrast to the dominant narrative, this review establishes, based on published information outside of mainland China, that the policy-relevant information as of 31 December 2019 concerning that outbreak had spread worldwide and was sufficient to frame the necessary preventative responses, which to this date remain essentially the same (namely the routine precautions advised for any airborne respiratory diseases). Further, notwithstanding the mix of good and poor responses to the pandemic in different jurisdictions, and regardless of the response in Wuhan, global transmission was a sealed deal because of the stealth nature of COVID-19. Moreover, the scale of the pandemic in individual countries is largely a function of choices made independently by governments and populations around the world based on the same and sufficient information.

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

Jurisdiction: Brazil

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

Policy recommendations are towards institutional designs with tighter accountability links between experts and voters.

Cloud, Lindsay K et al, '[A Chronological Overview of the Federal, State, and Local Response to COVID-19](#)' in Scott Burris et al (eds), '[Assessing Legal Responses to COVID-19](#)' (Public Health Law Watch, 2020) 10-19
Jurisdiction: USA

Abstract: Since the first case of COVID-19 was confirmed in the United States, federal, state, and local governments have taken varying degrees of legal action to prevent the spread of the virus and mitigate its impact on the public's health and health care systems. Federal action has primarily consisted of national emergency declarations, travel bans, guidance on social distancing measures, and laws aimed at mitigating the economic impacts of COVID-19. Legal action at the state and local level has focused heavily on social distancing requirements and other emergency measures to reduce the spread of the virus, including stay-at-home orders, prohibitions on large gatherings, closures of non-essential businesses and schools, and the mandatory use of face masks. This Chapter provides an overview of these actions, chronicling the federal and state legal response from January to July 2020, and highlighting policy trends at the local level from March to July 2020.

Cooper, Luke and Guy Aitchison, '[The Dangers Ahead: Covid-19, Authoritarianism and Democracy](#)' (LSE Conflict and Civil Society Research Unit, 2020) 1-20

Extract from Introduction: The world's two most powerful states are joined in a roll call of others experiencing a drift towards authoritarianism. Vladimir Putin has now been in power for two decades in Russia and shows no sign of letting go; Narendra Modi in India has pursued an aggressive ethnic nationalist agenda on the sub-continent; Jair Bolsonaro in Brazil talks positively about the country's historic dictatorship; and within Europe the far right has also made considerable gains, governing autocratically in Hungary and Poland and rising in electoral support in a host of other states. Britain's decision to leave the EU was also motivated, in part, by flag-waving jingoism. In short, prior to the Covid-19 pandemic many of the most powerful states were moving in this direction. While there is considerable hope, and even expectation,

that Coronavirus will bring about a system-change, the new global authoritarianism can also adapt to this changing context. We summarise these dangers as four threats.

Cooper, Mark, '[The Political Economy of Pandemic Policy, COVID-19 and Climate Change. Why Market Fundamentalism and the Trump Administration Fail to Protect Public Health and the Economy](#)' (SSRN Scholarly Paper ID 3693861, 20 July 2020)

Abstract: This paper makes a simple point about the U.S. response to the COVID-19 pandemic and its implications for many spheres of life in the 21st century. The U.S. had one of the worst policy responses in the world to the pandemic, certainly among the large, high-income democracies, including Asian (e.g. South Korea), European (e.g. Germany), and other nations (e.g. Australia). That response was driven by a view of political economy that rejects the idea that society can impose social responsibility on its members, even under the most dire of circumstances. This political economy rests on a belief that markets perform perfectly when government gets out of the way and the pursuit of individual interests is synonymous with the public good. Currently called market fundamentalism, it was known as laissez faire economics and social Darwinism for well over a century....

This paper concludes with a brief analysis of a parallel the knee-jerk, market fundamentalist response – to climate change. The 19th century view of political economy cannot cope with the challenges of the contemporary global community of over seven billion individuals in 200 nations interconnected in the biosphere (pandemic,) the atmosphere (climate change) and the economic sphere (financial, trade and recessionary meltdowns, and technology diffusion). The analysis of the climate challenge and the other global spheres where policy must be made in the face of great uncertainty points to an approach that emphasizes precaution, science, information gathering, flexibility, and cooperative governance and that recognizes both the importance and limitations of policy making authorities at the international, national, state and local levels. These are the exact opposite of the approach taken in the U.S.

Cordeiro, António Menezes and A Barreto Menezes Cordeiro, '[The Impact of COVID-19 in the Portuguese Legal System](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The COVID-19 pandemic led, in Portugal, to the publication of 250 exceptional laws. A number of principles may be extracted from these: (1) efficiency; (2) preservation of the status quo; (3) crystallisation of risk; (4) socialised damages. These principles operate in conjunction with the fundamental values of the system, notably those of good faith (bona fides) and related institutes: culpa in contrahendo, abuse of rights, change of circumstances and complexity of obligations.

Cormacain, Ronan, '[Keeping Covid-19 Emergency Legislation Socially Distant from Ordinary Legislation: Principles for the Structure of Emergency Legislation](#)' (2020) *The Theory and Practice of Legislation* (advance online article, published 3 July 2020)

Abstract: Domestic and international jurisprudence indicate the principles for law making in a public health emergency. These are that emergency laws should be limited, time-bounded and proportionate to the nature of the emergency. One way to give effect to these principles is to socially distance emergency legislation from ordinary legislation. This makes emergency laws separate and distinct from ordinary laws, and reduces the chances of them being used for periods and purposes beyond their initial remit. Specific structural techniques to do this are: to use sunset clauses, to use a single legislative vehicle for emergency laws, to use non-textual amendments, to avoid the standard mosaic approach to making new laws, to expressly state their temporary nature, to specifically limit their use to the emergency and to give them a title which indicates their emergency nature.

['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.

Daly, Paul, 'Governmental Power and COVID-19: The Limits of Judicial Review' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 211

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.

Davies, Gareth, '[Does Evidence-Based EU Law Survive the Covid-19 Pandemic? Considering the Status in EU Law of Lockdown Measures Which Affect Free Movement](#)' (2020) *Frontiers in Human Dynamics: Migration in the Time of COVID-19: Comparative Law and Policy Responses* (advance article, published 8 October 2020)

Abstract: When Member States restrict free movement on public health grounds they must show that their measures have a sound scientific basis. However, during the pandemic Member States have imposed a wide variety of restrictions, at the border, and internally. While Member State governments have invariably had local scientific advice, the variety of their measures suggests that their actions have also been driven, to some extent, by public opinion, contrary to what EU law generally allows. This situation could be seen as a defeat for EU law as traditionally conceived, and the triumph of local preferences over scientific standards. Perhaps we learn that

in a crisis, local desires for symbolic security and closure trump both law and science. Alternatively, it can be argued that the Court of Justice's emphasis on exclusively objective justifications for measures is unrealistic and over-strict. The pandemic responses show that (i) science is often neither clear nor determinative, and (ii) policy is invariably a mix of science and values, even in apparently technical fields. In either case, the absence of legal challenges to Member State actions leaves free movement in an uncertain state. Have we entered a new phase, where national fears are a more legitimate justification for restricting movement, or will the pandemic be treated as so exceptional as to be beyond law, and thus not a precedent?

De Leo, Andreina, 'The Italian Approach to the COVID-19 Crisis: A State of Exception Ruled by Technicians' (2020) 12(3) *Amsterdam Law Forum* 1–5

Extract: ... the President of the Council of Ministers has issued several decrees to curb the spread of the pandemic. The containment measures, in particular during the first phase of the response, strongly limited constitutional rights, and in particular, among others, the freedom of movement and assembly and the freedom of private economic initiative, insofar as a national lockdown was imposed, alongside the temporary closure of non-essential economic activities. From a legal theory perspective, Agamben is certainly correct to trace back such massive rule by decree response, to the theory of "state of exception", originating from Carl Schmitt's theory in Dictatorship. In this regard, a state of exception is realized when the sovereign (the executive power) takes the decision to suspend the Constitution, or the juridical order, by issuing decrees which are not formal laws (since they haven't been adopted by the legislative power) but that nonetheless hold force of law (due to the fact that they have its same effect). This leads to an exceptional situation where even though the law is still in force, it is not applied insofar as "acts that do not have the value [*valore*] of law acquire its force." In the Italian context, however, the fact that the normal juridical order was suspended, does not in itself imply that a dictatorship was instituted insofar as the measures were taken on a temporary basis - they have now indeed been relaxed - to respond to a specific and real emergency situation. Furthermore, the majority of the decrees adopting containing measures have now been converted into formal law by the Parliament.

Dergiades, Theologos et al, '[Effectiveness of Government Policies in Response to the COVID-19 Outbreak](#)' (SSRN Scholarly Paper ID: 3602004, 15 May 2020)

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.

Dieter, Heribert, 'Germany in the COVID-19 Crisis: Poster Child or Just Lucky?' (2020) (85) *Journal of Australian Political Economy* 101-107

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.

Divino, Sthéfano Bruno Santos, '[The Brazilian Government's Actions Against the CoViD-19](#)' (2020) (15) *BioLaw Journal / Revista di BioDiritto* 761-763

Note: this special issue contains many relevant articles, but almost all are in Italian only, and we have only included those in English in this bibliography. [Link to the entire journal issue.](#)

Extract from Introduction: One of the main actions of the Brazilian Government to control, prevent and eradicate cases involving CoViD-19 (Coronavirus) was the drafting of Law 13.979/2020. The objective of the Law is to solve possible legal problems existing between the exercise of civil liberties (for example: freedom of movement and individual health) and public interest (collective health), for the maintenance of social order.

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

Abstract: The World Health Organisation (WHO) announced the new coronavirus disease (COVID-19) it as a pandemic on March 11th, 2020. The pandemic has brought havoc globally as more than 190 countries and territories are affected as of 30 April 2020. The crisis suggests that no country can deal with the pandemic alone. International cooperation including regional cooperation is essential for any country to survive. We are particularly interested in Association of South East Asian Nation (ASEAN) cooperation and performance under COVID-19 because it has been one of the regions where regional cooperation on health security has been functioning based on lessons from SARS 2003 and H1N1 2009. The 'One Vision, One Identity, One Community' of ASEAN has merits under COVID-19 response but remains invisible. The method encompasses analysis of published materials issued by and accessible from the ASEAN website, complemented with analysis for media articles including social media, supported by published academic journal articles. All of the authors have expertise on ASEAN policies in the field of health, disasters, and regional policy and planning. Some authors have also worked from various international organisations working on issues related to the ASEAN region. This paper aims to document and analyse how ASEAN member states respond to COVID-19. It asks how to

cooperate under the One-ASEAN-One Response framework. This paper also compares the 10 member states' policy responses from January to April 2020. We utilise the framework of policy sciences to analyse the responses. We found that the early regional response was slow and lack of unity (January - February 2020). Extensive early measures taken by each member state are the key to the success to curb the spread of the virus. Although, during March and April 2020, ASEAN has reconvened and utilised its existing health regional mechanism to try to have a coherent response to the impacts. Strengthening future collaboration should be implemented by recognizing that there is a more coherent, multi sectoral, multi stakeholders and whole-of-ASEAN Community approach in ensuring ASEAN's timely and effective response to the pandemic.

Dmitrikova, Ekaterina et al, '[COVID-19 and Russian Law: Challenge and Response](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The COVID-19 epidemic has become a challenge to the Russian legal system, inspiring a number of changes in it. The greatest number of novelties is noticeable in administrative law, which has to adapt to the emergence of many new restrictions on citizens' rights related to ensuring that the population of the country complies with the sanitary and epidemiological regime prescribed by the authorities. Labor law has also undergone significant mutations, due to the mass transition of employees to remote mode of work. The changes also affected the right to social security, since the economic crisis triggered by the pandemic affected a large segment of the population, which required assistance from the state. The crisis situation in society and the economy has had the least impact on civil law, which is coping with new challenges using traditional legal regulation tools that have been tested for centuries. However, in the field of civil law, there also took place some particular innovations. In general, it can be noted that in the conditions of time constraints, the share of such forms of operational modernization of the current law has sharply increased, such as by-laws of the executive power and explanations of higher judicial instances aimed at interpreting the current legislation in relation to the new conditions.

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.

Dobson, Nicholas, 'Law Stories: A Plague Upon Us!' (2020) 170(7903) *New Law Journal* 26
Jurisdiction: UK

Abstract: Compares the restrictions imposed during the COVID-19 pandemic with those imposed in London during the Great Plague in 1665.

Du, KLi and Meng Wang, '[Chinese CoViD-19 Epidemic Prevention and Control Measures: A Brief Review](#)' (2020) (1S) *BioLaw Journal / Revista di BioDiritto* 741-746

Note: this special issue contains many relevant articles, but almost all are in Italian only, and we have only included those in English in this bibliography. [Link to the entire journal issue.](#)

Extract from Introduction: In this review, we will explore the Chinese administrative measures for preventing and controlling the CoViD-2019 epidemic. We will examine the epidemic prevention and control strategies at both the central and regional levels, and will focus on four perspectives: epidemic information disclosure; mobility and regional management; the medical system and medical service management; and resumption of work, production, and school. To

examine the prevention measures at the regional level, we chose Wuhan City, Zhejiang Province, and Guangdong Province as examples.

Dyevre, Arthur and Timothy Yu-Cheong Yeung, '[Partisanship and Compliance with Government Measures: Evidence from Belgium During the Covid-19 Pandemic](#)' (SSRN Scholarly Paper ID 3587957, 13 July 2020)

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.

- Alemanno, Alberto, '[Taming COVID-19 by Regulation: An Opportunity for Self-Reflection](#)' (Editorial) 187-194
- Delmas-Marty, Mireille, '[Governing Globalization Through Law](#)' 195-201
- Chakraborty, Sweta, '[How Risk Perceptions, Not Evidence, Have Driven Harmful Policies on COVID-19](#)' 236-239
- Dobbs, Mary, '[National Governance of Public Health Responses in a Pandemic?](#)' 240-248
- Lin, Ching-Fu, Chien-Huei Wu and Chuan-feng Wu, '[Reimagining the Administrative State in Times of Global Health Crisis: An Anatomy of Taiwan's Regulatory Actions in Response to the COVID-19 Pandemic](#)' 256-272
- Renda, Andrea and Rosa Castro, '[Towards Stronger EU Governance of Health Threats after the COVID-19 Pandemic](#)' 273-282
- Paces, Alessio M and Maria Weimer, '[From Diversity to Coordination: A European Approach to COVID-19](#)' 283-296
- Purnhagen, Kai P et al, '[More Competences than You Knew? The Web of Health Competence for European Union Action in Response to the COVID-19 Outbreak](#)' 297-306
- Alemanno, Alberto, '[The European Response to COVID19: From Regulatory Emulation to Regulatory Coordination?](#)' 307-316
- Sibony, Anne-Lise, '[The UK COVID-19 Response: A Behavioural Irony?](#)' 350–357
- Jiménez, Luis Arroyo and Mariolina Eliantonio, '[Masks, Gloves, Exports Licences and Composite Procedures: Implementing Regulation 2020/402 and the Limelight of Accountability](#)' 382-389

European Partnership for Democracy, [*Imagined Continuities: Political Scenarios after the COVID-19 Pandemic*](#) (EPD, 2020)

Extract from Introduction: This paper sketches out the medium-term consequences of the pandemic for democratic governance around the world based on a comprehensive overview of current trends and evidence. While much has been written about the short-term implications of the COVID-19 fallout for politics, there is surprisingly little published analysis with a longer time horizon beyond papers focused on economics. Much of the analysis has also focused on the policy response, with less attention paid to the more practical implications for supporters of democracy. The paper is written through contributions from organisations on the frontline of supporting democracy around the world and therefore reflects on the practical steps that could be taken to innovate and safeguard democracy in the coming years.

Evans, Kylie and Nicholas Petrie, 'COVID-19 and the Australian Human Rights Acts' (2020) 45(3) *Alternative Law Journal* 175-179

Abstract: This article considers how the response to COVID-19 in Australia may be examined and challenged by the Human Rights Act 2004 (ACT), the Charter of Human Rights and Responsibilities 2006 (Vic) and the Human Rights Act 2019 (Qld) (collectively, the Australian HRAs). It also considers the unique model of rights protection provided at the Commonwealth level under the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) (2011 Act). The authors argue the Australian HRAs and the 2011 Act have the potential to play a key role in scrutinising some laws implementing the COVID-19 measures, and action taken under those laws.

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

Extract from Introduction: The executive style now in vogue involves the introduction of new forms of 'law' making, and has far-reaching consequences for personal liberty and police powers. As I write, Parliament is in recess at the most critical point in the nation's history since the early 1940s, and effective parliamentary scrutiny is almost totally absent.... at the time of writing—15 April 2020—we see only a chronic failure on the part of our sovereign Parliament to discharge its basic constitutional duties. The government has taken unprecedented powers by

regulation without parliamentary approval, laying the regulations before Parliament on the day after Parliament rose.... In this article, I wish to make good these concerns in what is inevitably a preliminary look at this issue. The first part deals with financial powers and what I have referred to elsewhere as ‘government by Treasury’, though this should now be ‘government by Treasury Direction’. The second part deals with the restrictions on personal liberty and potentially political freedom.... a public health emergency should not be the occasion for a suspension of constitutional government.

Fabbrini, Federico, [‘The Future of the EU after Brexit, and COVID-19’](#) (BRIDGE Network Working Paper No 3, 30 April 2020)

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.

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

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

Fauvarque-Cosson, Bénédicte, '[How Did French Administrative Judges Handle COVID-19?](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: During the COVID-19 crisis, governments resorted to exceptional measures and restricted the fundamental rights of citizens in seeking to get control over the spread of the epidemic. Consequently, the citizens were in great demand for control over the administrative measures that were adopted during the Health State of Emergency. In France, the existence of an administrative judiciary allows fast and efficient access to the judge (which is almost free) and ensures judicial control on public freedoms. French administrative courts, particularly the Conseil d'État, played a crucial role during this period. This was made possible thanks to efficient judicial practices which existed before the COVID-19 crisis, notably the accelerated procedure of "référé".

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)

Fenwick, Mark, Joseph A McCahery and Erik PM Vermeulen, '[Will the World Ever Be the Same after COVID-19? Two Lessons from the First Global Crisis of a Digital Age](#)' (SSRN Scholarly Paper ID 3660078, 24 July 2020)

Abstract: Coronavirus is the first global crisis of a digital age and the divergence in policy responses reflects the challenge of navigating an unprecedented global situation under conditions of enormous uncertainty. We ask what lessons can be learned from this experience and identify two, both of which push against mainstream interpretations of recent events.

First, and contrary to the view that the crisis exposed social media and Big Tech as a source of dangerous misinformation that needs to be regulated more strictly, the paper argues that the less mediated spaces of the Internet – social media and Twitter, in particular – played an essential role in triggering a more effective policy response based around social distancing, lockdown, and containment.

Second, and contrary to the view that things will go back to normal once the worst of the crisis has passed, the paper argues that, as a direct result of lockdown, the status quo has been shifted across multiple sectors of the economy. Three examples of this shift are introduced, notably the forced experimentation with digital technologies in education and health, the increased use of remote work in many companies, and a reduction in environmentally harmful behavior and a decrease in pollution levels. The long-term effects of this ‘reset’ are impossible to predict, but a quick return to the ‘old normal’ seems unlikely.

The paper concludes with the suggestion that this reset has created a unique historical opportunity for the reappraisal of regulatory approaches across multiple domains and exposed the need for regulatory models better aligned to a less mediated, more decentralized world. COVID-19 is a global tragedy, but – given that it has happened – it should be used as a learning experience to re-imagine a better, more socially, and environmentally responsible future.

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.

Ferri, Delia, '[The Role of EU State Aid Law as a “Risk Management Tool” in the COVID-19 Crisis](#)' (2020)
European Journal of Risk Regulation (online advance article, published 27 July 2020)

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.

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

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

Flinders, Matthew, '[Democracy and the Politics of Coronavirus: Trust, Blame and Understanding](#)' (2020) *Parliamentary Affairs* Article gsaa013 (advance online article, published 23 June 2020)

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.

Flood, Colleen M and Bryan Thomas, 'The Federal *Emergencies Act*: A Hollow Promise in the Face of COVID-19?' in Flood, Colleen et al, '[Vulnerable: The Law, Policy and Ethics of COVID-19](#)' (University of Ottawa Press, 2020) 105

Abstract: Throughout March and April 2020, as the COVID-19 pandemic unfolded in Canada, Prime Minister Trudeau was repeatedly asked in his daily news conferences whether or not he would invoke the *Emergencies Act*. His response was that health care is a provincial matter, and the federal government would play a support role to the provinces. Rightly, the Act can only be triggered when a province has not been able to respond appropriately to a public health emergency, jeopardizing not only the health of people within a province but also other

Canadians. However, there are other significant limitations within the Act such that even when a matter has risen to a level requiring a federal response, the Act may prevent the federal government from intervening or at least leave its powers unclear. We test three case-scenarios in the context of COVID-19 where arguably provincial steps have been insufficient, thus triggering the need for a national response. In so doing, we demonstrate the limitations of the Emergencies Act and suggest, post-COVID-19, there must be a discussion on whether the Act is fit for purpose.

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.

Folmer, Chris Reinders et al, '[Compliance in the 1.5 Meter Society: Longitudinal Analysis of Citizens' Adherence to COVID-19 Mitigation Measures in a Representative Sample in the Netherlands](#)' (Amsterdam Law School Research Paper No 2020-33, 2020) 1-37

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.

Folmer, Chris Reinders et al, '[Sustaining Compliance with COVID-19 Mitigation Measures? Understanding Distancing Behavior in the Netherlands during June 2020](#)' (Amsterdam Law School Research Paper No 2020-54, 2020)

Abstract: In the month of June, the Netherlands had continued its singular trajectory in combating the COVID-19 pandemic. After the transition from the 'intelligent lockdown' into the '1.5 meter society,' the month of June heralded further relaxations of the prior mitigation measures. Building on our previous surveys during the month of May, this paper reports the findings of two additional survey waves collected in June (between 8-11 and between 22-26) among nationally representative samples (N = 1041 and N = 1033). The results show that the processes that sustained compliance during the month of May continued to be influential, especially citizens' intrinsic motivation to comply, their capacity to do so, their impulse control, and social norms that sustained compliance. Furthermore, there were some indications that extrinsic reasons, such as the likelihood of punishment and the fairness of enforcement, may have become more influential in shaping compliance. A comparison to the findings from May revealed, however, that compliance was gradually declining in the Netherlands, as were the resources that sustain it.

Folmer, Chris Reinders et al, '[Maintaining Compliance When the Virus Returns: Understanding Adherence to COVID-19 Social Distancing Measures in the Netherlands in July 2020](#)' (Amsterdam Law School Research Paper No 2020-53, 2020)

Abstract: After its relative lenient, 'intelligent lockdown' approach to the COVID-19 coronavirus, the Netherlands has continued its singular trajectory in combating the pandemic. The month of July introduced further relaxations to prior mitigation measures, but also saw a resurgence of infections. This working paper examines how these developments are reflected in Dutch citizens' compliance with safe-distance measures during this period. Building on our previous surveys during the months of May and June, we report the findings of two additional survey waves collected in early (7-10) and late (21-23) July among nationally representative samples (N = 1064 and N = 1023, respectively). The results show that the decline in compliance that was observed from May to June seems to have halted. At the same time, important predictors of compliance – such as citizens' capacity to comply, perceptions of the threat of the virus, and support for mitigation measures – have ceased to decrease, or are increasing. Taken together, these findings suggest that Dutch citizens' compliance with mitigation measures may be on the rise again. However, our findings also suggest that social norms for compliance continue to be eroding, which may continue to dampen citizens' tendency to comply.

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

Abstract: The coronavirus pandemic upturned Americans' lives. The profound financial effects caused by even a few weeks of the coronavirus' upheaval spurred Congress to pass the CARES Act, which purported to provide economic relief to individuals and businesses. For individuals, the CARES Act includes five provisions that were effectively designed to provide people money. Chief among those provisions are a direct payment in the form of a tax rebate and enhanced employment benefits. Ultimately, this financial support will prove to be shockingly minimal. The direct payments represent a fraction of the average American households' monthly budget. The unemployment benefits, while providing people with more money over several months, require that people be laid off and similarly are unlikely to reach people quickly enough to be effective. These corner pieces of the CARES Act are best understood as gimmicks. Through them, the

federal government told people that it would take care of them in ways that were immediately salient to them as the coronavirus crisis began. It also became quickly apparent to at least some lawmakers that Congress would need to pass at least one additional stimulus package. Indeed, Congress may have several more opportunities to craft legislation that actually will help American families survive the pandemic. This legislation must provide people with true funding to stay current with their minimum necessary expenses as these expenses are incurred. In this Essay, we discuss the gimmicks of the CARES Act's individual provisions and what Congress should do for people in future bills to address this pandemic.

Fortin, Marie-France, 'Liability of the Crown in Times of Pandemic' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 223

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.

Fracalossi de Moraes, Rodrigo, '[Determinants of Physical Distancing during the COVID-19 Epidemic in Brazil: Effects from Mandatory Rules, Numbers of Cases and Duration of Rules](#)' (SSRN Scholarly Paper ID 3632386, 21 June 2020)

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.

Gable, Lance, ‘[Mass Movement, Business and Property Control Measures](#)’ in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 34-39

Jurisdiction: USA

Abstract: Government powers support the use of physical distancing measures as a strategy to mitigate the spread of COVID-19. This Chapter examines the efforts of governments to limit mass movement and large gatherings, close businesses and schools, and restrict non-essential personal, recreational, and commercial activities. Government legal authority to impose these restrictions to stop the transmission of an infectious disease such as COVID-19 is quite broad, and these measures are essential tools to reduce the community spread of COVID-19. However, government orders that restrict movement or activity must consider the effects on constitutional rights; the economic, social, and health impacts that restrictions impose; and the potential for inequitable burdens on marginalized communities if supportive policies are not implemented along with restrictions. Movement and activity restrictions in the form of stay-at-home orders, gathering size limitations, and business and school closures have been instituted widely during the initial COVID-19 response, primarily by state governments, although local governments have also imposed these measures. Often politically controversial, numerous legal challenges have been brought against government orders restricting movement, imposing gathering limits, and closing businesses. The government has prevailed in most of these legal challenges, and this deference to government-imposed restrictions demonstrates an appropriate balancing of public health and other considerations under circumstances of scientific uncertainty. However, government officials must take affirmative steps to set up

systems that render widespread restrictions on movement and activity less necessary to contain COVID-19 and to ensure that when restrictions and closures are in place that supportive policies mitigate disparate burdens on marginalized communities.

Gajdosova, Martina, '[Legal and Paralegal Measures as the Response to an Extraordinary Situation](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Jurisdiction: Slovak Republic

Abstract: The contribution deals with normativity and norm-creation as the most important response in the development of the law to an extraordinary situation caused by coronavirus, with regard to the development in the Slovak Republic. The contribution describes the turbulence of normativity in the development of soft-normativity of the executive (recommendations), measures of the executive of a normative nature (prohibitions, obligations) and responses of the parliament (ad hoc COVID-19- acts). The contribution also deals with operational normativity manifested in all forms of self-government and internal management (internal normative acts).

Galbiati, Roberto et al, '[How Laws Affect the Perception of Norms: Empirical Evidence from the Lockdown](#)' (SSRN Scholarly Paper ID 3684710, 1 September 2020)

Jurisdiction: UK

Abstract: Laws not only affect behavior due to changes in material payoffs, but they may also change the perception individuals have of societal norms, either by shifting them directly or by providing information on these norms. Using detailed daily survey data and exploiting the introduction of lockdown measures in the UK in the context of the COVID-19 health crisis, we provide causal evidence that the law drastically changed the perception of the norms regarding social distancing behaviors. We show this effect of laws on perceived norms is mostly driven by an informational channel.

Gao, Jian et al, '[Quantifying Policy Responses to a Global Emergency: Insights from the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3634820, 24 June 2020)

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.

Geddis, Andrew and Alex Latu, '[Unlawful Commands, Bills of Rights, and the Common Law](#)' (SSRN Scholarly Paper ID 3711775, 14 October 2020)

Jurisdiction: New Zealand

Note: link to [Borrowdale v Director-General of Health \[2020\] NZHC 2090](#) (19 August 2020) on the Courts of New Zealand website.

Abstract: In *Borrowdale v Director General of Health* [2020] NZHC 2090, a full bench of the High Court issued a declaration that a series of governmental commands issued during the first 9 days of New Zealand's 'lockdown' response to COVID 19 were 'not prescribed by law and was therefore contrary to the New Zealand Bill of Rights Act.' This declaration formally records the Court's conclusion that for more than a week New Zealanders' statutorily guaranteed rights and freedoms were limited without legal basis. In this comment we explain both why this was so, and why the Court was right to recognise that fact by way of a declaration. We also examine the Court's finding that these limits did not constitute a suspension of either laws or their execution in terms of the Bill of Rights Act 1988. Finally, we suggest that the High Court missed an opportunity to clearly elucidate the constitutional limits on the executive's power to promulgate apparently coercive directives in the absence of any legal authority. The impending appeal of the High Court's judgment to the Court of Appeal perhaps provides an opportunity to revisit that last matter.

Geiringer, Claudia and Andrew Geddis, '[Judicial Deference and Emergency Power: A Perspective on Borrowdale V Director-General](#)' (2020) *Public Law Review* (forthcoming)

Jurisdiction: New Zealand

Note: link to [Borrowdale v Director-General of Health \[2020\] NZHC 2090](#) (19 August 2020) on the Courts of New Zealand website.

Abstract: In *Borrowdale v Director-General*, New Zealand's High Court made a declaration that, for its first nine days, New Zealand's COVID lockdown was not lawfully authorised. The High Court dismissed two other, and more widely framed, causes of action. In this brief commentary, we suggest two things. The first is that, despite the finding of illegality, the overall result in *Borrowdale* was predicated on a high degree of deference to executive power. The second is that this is regrettable. It constitutes a dangerous precedent available to future governments regardless of the merits of the underlying measures.

Geiringer, Claudia, 'The "COVID-19 Public Health Response Act 2020"' [2020] (June) *New Zealand Law Journal* 159

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.

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.

Gogarty, Brendan and Gabrielle J Appleby, 'The Role of Tasmania's Subordinate Legislation Committee During the Covid-19 Emergency' (2020) 45(3) *Alternative Law Journal* 188-194

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 (and especially) during crises and emergencies.

Goldstein, Neal D and Joanna S Suder, '[Application of State Law in the Public Health Emergency Response to COVID-19: An Example from Delaware in the United States](#)' (2020) *Journal of Public Health Policy* (advance article, published 7 September 2020)

Abstract: The unprecedented COVID-19 pandemic of 2019–2020 generated an equally unprecedented response from government institutions to control contagion. These legal responses included shelter in place orders, closure of non-essential businesses, limiting public gatherings, and mandatory mask wearing, among others. The State of Delaware in the United States experienced an outbreak later than most states but a particularly intense one that required a rapid and effective public health response. We describe the ways that Delaware responded through the interplay of public health, law, and government action, contrasting the state to others. We discuss how evolution of this state's public health legal response to the pandemic can inform future disease outbreak policies.

Gostin, Lawrence O and Lindsay F Wiley, '[Government Public Health Powers in the COVID-19 Pandemic: Stay-at Home Orders, Business Closures, and Travel Restrictions](#)' (2020) 323(21) *Journal of the American Medical Association (JAMA)* 2137-2138

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

Gostin, Lawrence O, James G Hodge and Lindsay F Wiley, '[Presidential Powers and Response to COVID-19](#)' (2020) 323(16) *Journal of the American Medical Association (JAMA)* 1547-1548

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.

Grogan, Joelle and Nyasha Weinberg, '[Principles to Uphold the Rule of Law and Good Governance in Public Health Emergencies](#)' (RECONNECT Policy Brief, 18 August 2020)

Extract from Introduction: This paper presents eight principles of rule of law and good governance to guide action during a public health emergency. The principles are based on the analysis published in the "COVID19 and States of Emergency" Symposium, a global study of states of emergency and the use of the emergency powers in response to the COVID-19 crisis. The Symposium published reports on 74 countries by over 100 scholars worldwide, and so provided analysis of legal measures which impacted nearly 80% of global population. While this paper does not consider health policy choices made by states, it instead highlights the good practices which appear to have correlated with positive outcomes, including lower infection rates, lower mortality rates, and the earlier lifting of restrictions.² Building on these principles, this paper provides recommendations based on evidence of emerging best practice worldwide which are likely to result in higher levels of public trust and compliance with legal measures and policy decisions taken under an emergency. We also highlight concerning practices which may only serve to undermine efforts as well as the rule of law and good governance.

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

Abstract: The United States is currently trying to manage a fast-moving public health crisis due to the coronavirus outbreak (COVID-19). The economic and financial ramifications of the

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

Harder, Mette Marie and Christoffer Harder, [‘COVID-19 Response Strategies: Differences Between Strategies of Male and Female Heads of Governments?’](#) (SSRN Scholarly Paper ID 3679608, 15 July 2020)

Abstract: According to news media all over the world, the COVID-19 virus is showcasing gendered leadership transparently to everyone: Male leaders exemplified by Donald Trump and Boris Johnson represent a laid-back, macho-‘we are not afraid’ attitude and failed to act, whereas female leaders such as Jacinda Ardern applied extensive government measures. Or did they? This study examines whether nations with female heads of government have applied more extensive measures to combat the COVID-19 virus than countries led by men. Using the Oxford COVID-19 Government Response Tracker data set, we find no indications that female leaders apply more extensive shutdown measures or health responses over time. However, OECD countries led by women did enact their respective maximum shutdown measures significantly more quickly than OECD countries led by men.

Hartley, Kris and Darryl SL Jarvis, '[Policymaking in a Low-Trust State: Legitimacy, State Capacity, and Responses to COVID-19 in Hong Kong](#)' (2020) 39(3) *Policy and Society* Special Issue: States and COVID-19 Policy-Making 403–423

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.

Hasmath, Reza et al, '[Performance Legitimacy and COVID-19: What Are Citizens' Expectations for Crisis Management in an Authoritarian State?](#)' (SSRN Scholarly Paper ID 3615101, 2020)

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.

Häyry, Matti, '[The COVID-19 Pandemic: Healthcare Crisis Leadership as Ethics Communication](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 22 May 2020)

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.

He, Alex Jingwei, Yuda Shi and Hongdou Liu, '[Crisis Governance, Chinese Style: Distinctive Features of China's Response to the Covid-19 Pandemic](#)' (2020) *Policy Design and Practice* (advance online article, published 30 July 2020)

Abstract: Since the outbreak of the novel coronavirus (Covid-19) epidemic in Wuhan, China has remained under the international spotlight. Despite hostile sentiments toward the country that are still prevalent in many parts of the world, it is clear that China has managed to contain this unprecedented public health crisis reasonably swiftly since the lockdown of Wuhan. What accounts for this 'success'? What are the experience and lessons that can be learnt by the international community and policy practitioners? This study seeks to reveal China's highly

distinctive style of crisis governance behind its pandemic containment outcome since February 2020. We analyze how the Chinese government was able to mobilize the entire state machinery and all possible resources in this battle. Focus is given to the distinctive features at institutional, strategic, and operational levels, illustrating the country's style of crisis governance while also drawing necessary caveats.

Hicks, Elizabeth, '[Private Actors and Crisis: Scrutinising the National COVID-19 Commission Advisory Board](#)' (Governing During Crises Policy Brief No 4, Melbourne School of Government, University of Melbourne, 5 August 2020)

Jurisdiction: Australia

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

- (a) Times of crisis pose risks of executive expansion. When monitoring those risks, observers must consider the broader arrangements that shape how that executive power is wielded. This includes the relationship between private parties, private industry and the executive.
- (b) The National Covid-19 Commission Advisory Board (NCC) advises the government on Australia's longer-term economic recovery. It comprises commissioners and members of working groups from the private sector, who are personally selected and appointed by the Prime Minister's office. On 27 July 2020, the Prime Minister announced that the NCC would work 'within' government, forming part of Cabinet deliberative processes.
- (c) Several features of the NCC are of concern, including: a lack of any legislative underpinning and clear, independent appointment process typically expected of publicly-funded bodies; opaque operations; little legal clarity whether it can form 'part of' cabinet and rely on cabinet confidentiality; and the absence of a duty to publicly disclose conflicts of interest.

Hidayatullah H and N Nasrullah, '[Enforcement of Health Law in the Crisis Period of Pandemic Outbreak Covid-19: "The Policy of Large Scale Social Limitation \(LSSL\) in Indonesia Viewed of the Theory of Al-Maqashid Asy-Syar'iiyyah"](#)' (2020) 20(1) *Syariah: Jurnal Hukum dan Pemikiran* 43-58

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'iyah. 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'iyah LSSL policy is one of the best choices in the framework of overcoming the Covid-19 pandemic outbreak in Indonesia

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

Just Security (online 27 April)

Jurisdiction: USA

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

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

Future Tense (online 24 January 2020)

Abstract: Since its emergence from Wuhan, China in late 2019, novel coronavirus, 2019-nCoV, is spreading rapidly, escalating domestic and international concerns, and leading to calls for emergency declarations. By now one might think that we are globally prepared for these type of threats given the successful control of prior coronaviruses like SARS and MERS since 2002. Yet,

as Paules, Marston, and Fauci observe in their JAMA Viewpoint on January 23, 2020, '[t]he emergence of yet another outbreak of human disease caused by a [coronavirus] . . . underscores the perpetual challenge of emerging infectious diseases and the importance of sustained preparedness.' This commentary explores some of these contemporary challenges.

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

Hsu, Shi-Ling, '[Anti-Science Politics](#)' (SSRN Scholarly Paper ID 3686222, 3 September 2020)

Jurisdiction: USA

Abstract: Political attacks against scientists and scientific research are nothing new, though the Trump Administration appears to have increased both the breadth and the depth of such attacks. What is new, it seems, are attacks on science that are not in service of protecting any regulated industry that can provide political benefits. Under the Trump Administration, the attacks on science are more systemic, and aimed more at reducing scientific capacity in the federal government, rather than mere one-off policy interventions. The essay suggests that the Trump Administration, more than previous administrations, has sought to use science as part of a political culture war, reviving a populist suspicion of intellectuals that has a long and cyclical history in American culture. This current episode of anti-intellectualism, while targeting the social sciences as past episodes have, has also uniquely targeted the biological and physical sciences, the difference being that findings in these fields are more firmly grounded in empirical fact than in the social sciences. The Trump Administration's attacks on science, writ larger, are non-epistemic in nature, seeking to build an ideology of hostility to science. This strategy builds upon a decades-long and continuing misinformation campaign to discredit climate scientists, but goes further, seeking to portray scientists as part of the 'deep state' that is conspiring to victimize Americans. To be sure, federal funding for most research unrelated to industry regulation remains robust, even higher in some programs. But a manufactured suspicion of 'regulatory science' (relating to industry regulation) has begun to bleed ominously over into policy arenas completely outside of regulation. The Trump Administration's policy meanderings to deal with the covid-19 crisis are emblematic of a growing and systemic subjugation of science to political objectives, ones that can be bizarrely unscientific. A number of cultural, political, and economic factors contribute to this latest resurgence of anti-intellectualism, one with a unique

animus towards the hard sciences. A restoration of endangered and broken societal norms governing the advancement of science will require vigorous enforcement of federal administrative laws, but will also require the development of government policies that address the cultural, political, and economic roots of this latest crisis of science.

Huang, Irving Yi-Feng, '[Fighting COVID-19 through Government Initiatives and Collaborative Governance: The Taiwan Experience](#)' (2020) 80(4) *Public Administration Review* 665–670

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.

Huberfeld, Nicole, Sarah H Gordon and David K Jones, 'Federalism Complicates the Response to the COVID-19 Health and Economic Crisis: What Can Be Done?' *Journal of Health Politics, Policy and Law*, Article 8641493 (advance online article, published 28 May 2020) [[unpublished version on SSRN](#)]
Jurisdiction: USA

Abstract: Federalism has complicated the U.S. response to the novel coronavirus. States' actions to address the pandemic have varied widely, and federal and state officials have provided conflicting messages. This fragmented approach surely cost time and lives. Federalism will shape the long-term health and economic impacts of COVID-19, including plans for the future, for at least two reasons: First, federalism exacerbates inequities, as some states have a history of under-investing in social programs, especially in certain communities. Second, many of the

states with the deepest needs are poorly equipped to respond to emergencies due to low taxes and distrust of government, leading to inadequate infrastructure. These dynamics are not new, but they have been laid bare by this crisis. What can policymakers do to address the inequities in health and economic outcomes that federalism intensifies? The first section of this paper offers a case study, using the Mississippi Delta to illustrate the role of federalism in perpetuating the connection between place, health, and economics. The second section examines challenges that safety net programs will face moving beyond the acute phase of COVID-19. Our final section explores near-, middle-, and long-term policy options to mitigate federalism's harmful side effects.

Ip, Eric C, 'Hong Kong: The Unprecedented Promulgation of Public Health Emergency Regulations Against the COVID-19 Outbreak' [2020] (July) *Public Law* 580-582

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.

Jacobson, Peter D, Denise Chrysler and Jessica Bresler, '[Executive Decision Making for COVID-19: Public Health Science through a Political Lens](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 58-64

Jurisdiction: USA

Abstract: Executive decision making is the crux of using law to achieve public health objectives. But public health codes and emergency declaration laws are not self-executing. In this chapter, we examine how elected officials and public health officers have used their legal authority to address the COVID-19 pandemic. We begin with an overview of an executive decision-making tool for public health officials. Then we describe the general legal background in which these decisions have been made. Next, we apply the decision-making tool to how governors in eight states have determined whether to issue stay-at-home orders and when to relax these restrictions. In this section, we focus on the criteria governors used to re-open the state's

economy and additional restrictions, such as mask wearing, as a condition of reopening. We examined the states' political party control, the use of public health science, and equity considerations. We conclude that the COVID-19 response represents federalism at work, with considerable variation across the sample states, and that the public health science is filtered through a very thick political lens. In short, governors making political decisions drove the process, not public health officials relying on the best available science. We conclude with recommendations for future action.

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

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

Jersey Law Commission, [‘The Rule of Law and The Response To COVID-19’](#) (Proceedings of the Joint Conference of the Four Neighbouring Law Commissions, Jersey, 3 July 2020)

Jurisdictions: Jersey, Scotland and Ireland

Foreword: The COVID-19 pandemic has brought about challenges to governments globally as they have had to respond quickly to the public health emergency by adopting stringent measures to combat the spread of the virus. In the jurisdictions served by the four neighbouring Law Commissions, the responses of the respective governments have not been uniform and such differences cannot be attributed to the different levels of the spread of the virus only. The differences between these responses, at least partially, are also anchored in the diverse constitutional arrangements of the four jurisdictions. Moreover, the governments have at times struggled to balance their responses with the respect for fundamental rights and freedoms and respect for the rule of law. Striking the balance between the urgency of the responses required by a public health crisis and the rule of law is a challenge for every legitimate government. Achieving the balance not only protects human rights and safeguards institutions but may also help to support the measures required by the emergency by sustaining public trust in the institutions and in the legitimacy and necessity of the measures introduced. It is an issue that has been considered in both international instruments and national legal frameworks including the World Health Organization’s International Health Regulations; the International Covenant on Civil and Political Rights (ICCPR) and the Siracusa Principles; the UN 2030 Sustainable Development Agenda; and the Venice Commission Rule of Law Checklist. Ten principles to reconcile the immediate exigencies of a crisis with the long-term legitimacy offered by the rule of law may be derived from these sources: legality, necessity, proportionality, non-discrimination, time limits, non-derogable rights, international obligations, parliamentary scrutiny, effective remedy and transparency.¹ Bodies engaged with law reform such as the Law Commissions attending this online Joint Annual Meeting of the four neighbouring Law Commissions have a role in supporting governments achieve the best outcomes. The meeting presented a timely opportunity to take stock of what measures had been introduced and to evaluate their compatibility with human rights and the rule of law. The discussion allowed examination too of the fundamental principles which should guide the governments across the jurisdictions as they embark upon the exit strategy from the adopted measures and consideration of the principles that should govern the action of the Governments in future should similar situations arise. Presentations were made by each of the Law Commissions for

England and Wales, Ireland, Scotland and Jersey. The Law Commission of England and Wales gave an oral presentation about potential post-COVID law reform priorities and did not present a formal paper to the meeting. The papers prepared by or digests of the presentations from each of the Law Commissions of Ireland, Scotland and Jersey follow.

Johnson, Graeme and Sascha Kouvelis, 'COVID-19 and the Legislative Drafters' (2020) 94(5) *Australian Law Journal* 319–322

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.

Johnson, Walter G and Gary E Marchant, '[Legislating in the Time of a Pandemic: Window of Opportunity or Invitation for Recklessness?](#)' (2020) *Journal of Law and the Biosciences* Article Isaa042 (advance article, published 15 June 2020)

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.

Jull, Kenneth, '[Coronavirus Emergency Response: Risk Assessment and Risk Management](#)' [2020]

(March) *Toronto Law Journal* 1-13

Jurisdiction: Canada

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

Jurisdiction: USA

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

Karaseva, Asya, '[The Legal Void and COVID-19 Governance](#)' (2020) *Social Anthropology* (advance online article, published 18 May)

Abstract: COVID-19 as a matter of governance provides an opportunity for questioning taken-for-granted assumptions of 'states of exception' in the political mechanics of emergency rule. In Russia, for example, a zone of anomie is currently being produced that operates not within existing emergency laws but as what I call a new 'legal void'.

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

Jurisdiction: Turkey

Abstract: The article offers information on the challenges faced by the coronavirus in the [sic] Turkey, along with the information on the safety measure taken by the Turkey President, Recep Tayyip Erdoğan. It mentions the declaration of the coronavirus outbreak as a global pandemic by the World Health Organization.

Keitner, Chimène, '[Testimony of Chimène Keitner Before the Senate Judiciary Committee on "The Foreign Sovereign Immunities Act, Coronavirus, and Addressing China's Culpability"](#)' (SSRN Scholarly Paper ID 3662634, 28 July 2020)

Abstract: On June 23, 2020, the Senate Judiciary Committee held a hearing Committee on 'The Foreign Sovereign Immunities Act, Corona-virus, and Addressing China's Culpability.' This document contains the written testimony of Professor Chimène Keitner, as well as responses to 39 questions for the record posed by members of the committee.

Professor Keitner's opening statement emphasized three main points. First, the United States has more to lose than any other country by removing the shield of foreign sovereign immunity for a pandemic. Second, private litigation will not bring China to the negotiating table, and it will not produce answers or compensation for U.S. victims. Instead, Congress should focus on the inadequate federal response to COVID-19, and on restoring U.S. leadership in global public health.

The questions for the record covered issues including the FSIA, other obstacles to obtaining damages from civil suits, the consequences of domestic suits against foreign states, alternative methods for pursuing accountability, U.S. exposure to litigation risk, discovery of U.S. government records in cases against China, regulating live wildlife markets and the international wildlife trade, and President Trump's praise of China's COVID-19 response.

On July 20, Senator Martha McSally (R-AZ) and seven Republican cosponsors introduced a new bill entitled the 'Civil Justice for Victims of COVID Act' that combines features of previous bills introduced to amend the Foreign Sovereign Immunities Act (FSIA) 'to strip foreign sovereign immunity of certain foreign states to secure justice for victims of novel corona-virus in the

United States.’ A business meeting to consider the bill, along with several judicial nominations, was scheduled for July 30.

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

Kempf, Hubert, ‘[One Foe, so Many Fights: Making Sense of Covid-19 Policies](#)’ (CESifo Working Paper No. 8325, 2020)

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.

Kitajima, Shusaku, '[An Analysis of Japanese Responses to COVID-19 from an Administrative Law Perspective](#)' (Asian Law Centre, Melbourne Law School, Asian Legal Conversation: COVID-19, 8 October 2020)

Abstract: This article examines the legal basis for the restrictions on the daily lives of citizens and business activities in Japan in light of the spread of COVID-19 from the perspective of administrative law. Japanese citizens were restricted from going out and some businesses were asked to cease activities during the period under the declaration of a state of emergency from 7 May to 25 May 2020. The restrictions in Japan were based on the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response which was enacted in 2012 after Japan's experience with the novel influenza (A/H1N1) pandemic in 2009. The article examines the mechanisms set out in the Act which are available to governments in Japan to implement pandemic responses. The article argues that the four main measures for restrictions known as requests and instructions are characterized by their non-obligatory or non-compulsive nature. The article argues that these characteristics reflect long-standing approaches in Japanese administrative jurisprudence that are embedded in the Act and thus Japan's COVID-19 response measures.

Knight, Dean R, '[Lockdown's Legality and the Rule of Law](#)' (SSRN Scholarly Paper ID 3666613, 4 August 2020)

Abstract: This short note explains the context to, and the arguments made in, the judicial review proceedings challenging the legality of the lockdown in New Zealand (*Borrowdale v Director-General of Health*).

Note: the decision referred to in this article is *Borrowdale v Director-General of Health* [\[2020\] NZHC 1379](#)

Konnoth, Craig, '[Narrowly Tailoring the COVID-19 Response](#)' (2020) 11 *California Law Review Online* 193-208

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.

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

Jurisdiction: USA

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

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

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

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.

Kosnik, Lea-Rachel D and Allen Bellas, '[Drivers of COVID-19 Stay at Home Orders: Epidemiologic, Economic, or Political Concerns?](#)' (SSRN Scholarly Paper ID 3638501, 29 June 2020)

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.

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

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

capacity to follow the measures and for those who have the opportunity to break the measures. Sustained compliance, therefore, relies on support to aid people to maintain social distancing and restrictions to reduce opportunities for unsafe gatherings. These findings suggest several important practical recommendations for combating the COVID-19 pandemic.

Labuschaigne, M, '[Ethicolegal Issues Relating to the South African Government's Response to COVID-19](#)' (2020) 13(1) *South African Journal of Bioethics and Law* 23-28

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.

Lat, Tanya and Michael Henry Yusingco, '[Reimagining Governance: Reclaiming Solidarity and Subsidiarity in the Time of COVID-19](#)' (ASOG Working Paper 20-006, 8 July 2020)

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.

Lee, Sabinne, Changho Hwang and M Jae Moon, '[Policy Learning and Crisis Policy-Making: Quadruple-Loop Learning and COVID-19 Responses in South Korea](#)' (2020) 39(3) *Policy and Society* Special Issue: States and COVID-19 Policy-Making 363–381

Abstract: This study aims to analyze how the Korean government has been effective in taming COVID-19 without forced interruptions (i.e. lockdowns) of citizens' daily lives. Extending the

theory of organizational learning, we propose the quadruple-loop learning model, through which we examine how a government can find solutions to a wicked policy problem like COVID-19. The quadruple-loop learning model is applied to explain how the Korean government could effectively tame COVID-19 in the initial stage through its agile as well as adaptive approach based on effective interactions of backstage (time, target, and context) and frontstage of policy processes mainly focusing on the initial stage until the highest alert level was announced. Based on the Korean case, this study also examines critical factors to effective learning organizations such as leadership, information and transparency, as well as citizen participation and governance.

[‘Legislatures in the Time of COVID-19’](#) (2020) 8(1-2) *The Theory and Practice of Legislation*

This Special Issue includes the following articles:

- Bar-Siman-Tov, Ittai, [‘COVID-19 Meets Politics: The Novel Coronavirus as a Novel Challenge for Legislatures’](#) 11-48
- Griglio, Elena, [‘Parliamentary Oversight under the Covid-19 Emergency: Striving against Executive Dominance’](#) 49-70
Jurisdiction: Europe
- Petrov, Jan, [‘The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks?’](#) 71-92
Jurisdiction: global, illustrated by Czech Republic case study
- Windholz, Eric, [‘Governing in a Pandemic: From Parliamentary Sovereignty to Autocratic Technocracy’](#) 93-113
Jurisdiction: Australia
- Uhlmann, Felix and Eva Scheifele, [‘Legislative Response to Coronavirus \(Switzerland\)’](#) 115-130
- Popelier, Patricia, [‘COVID-19 Legislation in Belgium at the Crossroads of a Political and a Health Crisis’](#) 131-153
- Serowaniec, Maciej and Zbigniew Witkowski, [‘Can Legislative Standards Be Subject to “Quarantine”? The Functioning of the Tablet Sejm in Poland in the COVID-19 Era’](#) 155-170
- Drinóczi, Tímea and Agnieszka Bień-Kacała, [‘COVID-19 in Hungary and Poland: Extraordinary Situation and Illiberal Constitutionalism’](#) 171–192

- Pinheiro, Victor Marcel, Marcelo Ilarraz and Melissa Terni Mestriner, '[The Impacts of the COVID-19 Crisis on the Brazilian Legal System: a Report on the Functioning of the Branches of the Government and on the Legal Scrutiny of Their Activities](#)' 193-212
- Maxeiner, James R, '[America's Covid-19 Preexisting Vulnerability: A Government of Men, Not Laws](#)' 213–235

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 counterbalancing 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.

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

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

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

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

Abstract: The radical uncertainty around the current COVID19 pandemics requires that governments around the world should be able to track in real time not only how the virus spreads but, most importantly, what policies are effective in keeping the spread of the disease

under check. To improve the quality of health decision-making, we argue that it is necessary to monitor and compare acceleration/deceleration of confirmed cases over health policy responses, across countries. To do so, we provide a simple mathematical tool to estimate the convexity/concavity of trends in epidemiological surveillance data. Had it been applied at the onset of the crisis, it would have offered more opportunities to measure the impact of the policies undertaken in different Asian countries, and to allow European and North-American governments to draw quicker lessons from these Asian experiences when making policy decisions. Our tool can be especially useful as the epidemic is currently extending to lower-income African and South American countries, some of which have weaker health systems.

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.

Lynch, Michelle, 'Is the Rule of Law Under Threat? (2020) 114(6) *Gazette of the Law Society Ireland* 48

Abstract: Raises concerns that emergency legislation, enacted around the world in response to the COVID-19 pandemic to control the spread of the disease, could be used to break down the rule of law and place restrictions on democracy, and individual rights and freedoms.

MacDonnell, Vanessa, 'Ensuring Executive and Legislative Accountability in a Pandemic' in Flood, Colleen et al, '[Vulnerable: The Law, Policy and Ethics of COVID-19](#)' (University of Ottawa Press, 2020) 141

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.

Maerz, Seraphine F et al, '[Worth the Sacrifice? Illiberal and Authoritarian Practices during Covid-19](#)' (V-Dem Working Paper 110, 2020)

Abstract: Excessive use of emergency powers and limitations of media freedoms have raised concerns that Covid-19 is infecting democracy itself. How do government responses to Covid-19

violate democratic standards? How do such violations relate to the countries' success in limiting the Covid-19 death tolls? We propose a novel conceptualization of which government responses to Covid-19 qualify as a violation of democratic standards and measure such violations using a regularly updated dataset covering 143 countries from March 2020 onward. Our data track seven types of violations of democratic standards for emergency measures during the Covid-19 pandemic: discriminatory measures, derogation of non-derogable rights, abusive enforcement, no time limit on emergency measures, disproportionate limitations on the role of the legislature, official disinformation campaigns, and restrictions on media freedoms. In this article, we provide a comprehensive overview of the extent to which governments have violated democratic standards in their response to Covid-19. Using a regression analysis, we find no relationship between violations of democratic standards for emergency measures and Covid-19 death rates. Thus, violations of democratic standards during the Covid-19 pandemic cannot be justified by the achievement of better public health outcomes. Rather, such crisis driven violations need to be carefully observed as they could signal autocratization.

Marique, Yseult, '[A "New Normal": Legality in Times of Necessity: French Administrative Law under the Health Emergency](#)' 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) 63-71 (published 30 June 2020)

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)

Jurisdiction: USA

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 Rankin 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.

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

Jurisdiction: USA

Abstract: The COVID-19 pandemic has prompted most state governments to order residents to stay at home. The goal of such orders is to mitigate infection rates to prevent health care system overload, thereby dramatically reducing the death toll of the pandemic. This article investigates the effectiveness of stay-at-home orders in decreasing COVID-19 infections and fatalities. Using a differences-in-differences approach, I estimate that stay-at-home orders between mid-March and May 9 prevented 1.7 million COVID-19 cases and 55,000 deaths in the United States. Orders

that state governments issued were more effective than local government orders, suggesting that consistent policy approaches across geographic areas is key. The effects were concentrated in urban and higher wage counties. Based on the day of the week that infections are prevented, I also find some evidence that the cases stay-at-home orders prevent are largely those that would have occurred at work rather than from recreation.

Matthieu Le Roux, Mattieu, Olivier Bustin and Carolina Reis, 'Priority Measures' [2020] (Summer)

International Financial Law Review 69-72

Abstract: Reports on the measures taken to counter the coronavirus pandemic in Gabon, including restrictions on travel and business, employment regulation, and tax and spending policies.

Mazey, Sonia and Jeremy Richardson, '[Lesson-Drawing from New Zealand and Covid-19: The Need for Anticipatory Policy Making](#)' (2020) *The Political Quarterly* (advance online article, published 12 August 2020)

Abstract: The Covid-19 pandemic has seen most governments worldwide having to think on their feet rather than implementing detailed and well-rehearsed plans. This is notwithstanding the fact that a pandemic was bound to happen, sooner or later (and will happen again). The effectiveness of national responses has varied enormously. Globally, New Zealand has been perceived as setting the gold standard in 'curve crushing', and for a short period achieved Covid-free status. For this achievement, much credit is due to the New Zealand government, especially to Prime Minister, Jacinda Ardern. However, post-lockdown the New Zealand government has encountered a number of Covid policy implementation problems (many of which could have been anticipated). Nevertheless, Covid-19 might still turn out to have been a seismic shock to existing policy processes and policy frames (such as austerity). If so, there are grounds for hope that in the future, governments and voters might be less short-term in their outlook. Perhaps anticipatory, rather than reactive policy making, might become more fashionable?

Mei, Ciqi, 'Policy Style, [Consistency and the Effectiveness of the Policy Mix in China's Fight against COVID-19](#)' (2020) 39(3) *Policy and Society* – Special Issue: States and COVID-19 Policy-Making 309–325

Abstract: As the first country stricken by the COVID-19 pandemic, China deployed a policy response that was chaotic at the start but effective in the end. A complete account to explain China's COVID-19 experience should explain both. By examining policy changes in China's fight against the pandemic, I show that pandemic as an exogenous shock invalidated the normal policy logics followed by multiple policy actors, resulting in policy inconsistency and chaos. A policy mix comprised traditional measures, i.e. strict community lockdown, cross-jurisdictional mobilization of resources and officials' sanction contributed to the eventual effectiveness of China's response to the pandemic. I argue that the policy mix during crises should conform with rooted national policy style to be consistent and effective.

Meßerschmidt, Klaus, '[COVID-19 Legislation in the Light of the Precautionary Principle](#)' (2020) *The Theory and Practice of Legislation* 1–26 (advance online article, published 19 June 2020)

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.

de Miguel, Iñigo and Elena Atienza-Macías, '[What Can we Expect from the EU Legal Framework in a Pandemic Outbreak?](#)' (2020) (15) *BioLaw Journal / Revista di BioDiritto* 541-545

Note: this special issue contains many relevant articles, but almost all are in Italian only, and we have only included those in English in this bibliography. [Link to the entire journal issue.](#)

Extract from Introduction: The arrival of a new form of Coronavirus at the end of 2019 and its subsequent expansion to multiple countries has already caused severe consequences whose final extent we are unfortunately still far from seeing. In our geographical context, Italy has been particularly affected by this threat. In such circumstances, it is worth asking what the EU could do to help any of its Member States (MS) to cope with such a situation. This paper will try to answer it. To this end, we will focus on the most important legal instrument: the so-called, “Solidarity Clause” and the most relevant political tool, the Integrated Political Crisis Response arrangements (IPCRs).

Mikelenas, Valentinas, ‘[Coronavirus and the Law: Lithuanian Experience](#)’ in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: As in many other countries of the world, the pandemic of the coronavirus came to Lithuania unexpectedly, both for society as a whole and the public authorities, as well as for the country's health system and business. Although the Government decided quickly enough to introduce quarantine, discussions have arisen upon the Government's powers to introduce quarantine. The introduction of quarantine has raised not only the problem of the distribution of competence between Parliament and the Government but also many other issues in both public and private law. The pandemic has shown that many pieces of legislation do not provide for the specificities of legal regulation in quarantine or other extreme situations. As a result, both Parliament and the Government have had to adopt a number of new laws and other legal acts or amend legislation already in force during the pandemic. The pandemic has also shown weak support of the European Union and its institutions, as a result of this, the Member States have, in practice, dealt with pandemic problems on their own rather than centrally. For this reason, trust in the European Union can be further weakened.

Miller, Katie, ‘Finding Law in a Time of Emergency: COVID-19’ (2020) 27(2) *Australian Journal of 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.

Mistur, Evan, John Wagner Givens and Daniel Matisoff, '[Policy Contagion During a Pandemic](#)' (SSRN Scholarly Paper ID 3662444, 28 July 2020)

Abstract: The spread of the COVID-19 pandemic has necessitated rapid policy changes at the national level. In response, social distancing policies, which use non-pharmaceutical methods to reduce the spread of the virus by keeping people apart, have been implemented globally. The rapid spread of social distancing policies across the globe invites questions as to how and why countries adopt these social distancing policies, and whether the causal mechanisms driving these policy adoptions are based on internal resources and problem conditions, political institutions and economic conditions, or external factors from other countries. In this paper we leverage daily changes in social distancing policies across countries to understand the impacts of problem characteristics, institutional and economic context, and peer effects on social distancing policy adoption. We find that peer effects, particularly mimicry of geographic neighbors and political peers, drive policy diffusion and shape countries' policy choices.

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.

Morison, John, '[Towards a Democratic Singularity? Algorithmic Governmentality, the Eradication of Politics: and the Possibility of Resistance](#)' in S Deakin and C Markou (eds), *Is Law Computable?: Critical Perspectives on Law & Artificial Intelligence* (Hart, forthcoming)

Abstract: This contribution steps back from considering the operation of AI within the legal process directly and considers a more foundational issue surrounding democracy, and the basic legitimacy for any legal system that can be gained from a connection with 'the will of the people'. The first section considers briefly how the promise of online consultation has not fully delivered on its democratic potential. The paper then considers new developments in surveillance, where almost all aspects of everyday life are transformed into quantified data, and subject to monitoring and predictive analysis. It is argued that this amounts to a new, pervasive and totalising form of surveillance and control which can be understood best as a form of 'algorithmic governmentality'. Building upon arguments about consultation, it is contended that developments in technology may in future have the effect of making existing ideas about consultation and democracy redundant as actual preferences can be measured directly without the need for an intermediary political process to represent preferences. This direct presentation of preferences, created by inference from the radical datafication process, offers a false emancipation by appearing to be, by its very nature, all-inclusive and accurate. This is a novel form of governance, seemingly beyond traditional politics and it is one that has the potential to undermine, and then transcend, many of fundamental attributes of citizenship which presently

appear as part of the bargain within the government – governed relationship. This contribution seeks to explore the parameters of this development of ‘algorithmic democracy’, and the potential of law and other strategies to operate as resistance.

Extract (page 9): The Covid-19 health crisis has provided a perfect conjunction of political conditions to produce a government response that aligns with developing technology to extend this further, and produce a new regime of ‘bio-surveillance’.

Morshead, Tim, ‘The Law and COVID-19: The Prime Minister’s Muddle About the Government’s Own Rules (as of 27 March 2020) and a Call for Clarity’ (2020) *Judicial Review* (advance online article, published 10 August 2020) [unpublished version of article available [here](#)]

Jurisdiction: UK

Introduction: The prime minister’s message to the nation on 23 March 2020 was made in anticipation of regulations actually made on 26 March 2020. But he did not accurately describe the restrictions imposed by those regulations. He has created the impression that people may only leave their homes for work that is itself in some undefined sense “absolutely necessary” or “essential”. That is not what the regulations require. So far as the regulations are concerned, anyone may leave home for work, if the work itself means they cannot reasonably do it from home. The regulations do not require anyone to make value judgments about the relative importance of their work in the fight against COVID-19 or the like. Unless or until they are changed, the current regulations do not do what the prime minister said they would do.

Moulds, Sarah, ‘Scrutinising COVID-19 Laws: An Early Glimpse into the Scrutiny Work of Federal Parliamentary Committees’ (2020) 45(3) *Alternative Law Journal* 180-187

Abstract: Australia’s parliamentary model of rights protection depends in large part on the capacity of the federal Parliament to scrutinise the law-making activities of the Executive government. Emergency law-making undertaken in response to the COVID-19 pandemic has challenged the Australian Parliament’s capacity to provide meaningful scrutiny of proposed laws, particularly identifying and addressing the impact of emergency powers on the rights of individuals. In this context, the work of parliamentary committees has become increasingly important. Special committees, such as the Senate Select Committee on COVID-19, have been

set up to provide oversight and review of Australia's response to the pandemic. This article gives an early glimpse into the key features of the COVID-19 Committee and the way it may interact with other committees within the federal system to scrutinise the government's legislative response to the pandemic. It also offers some preliminary thoughts on the capacity of these committees to deliver meaningful rights scrutiny.

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

Jurisdiction: Indonesia

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

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

Jurisdiction: UK

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

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

Nomani, Nomani, Md. Zafar Mahfooz and Faisal Sherwani, '[Legal Control of Covid-19 Pandemic and National Lockdown in India](#)' (2020) 11(4) *Journal of Cardiovascular Disease Research* 32–35

Abstract: The legal control of COVID-19 pandemic during two month's national lockdown in India derives its sustenance from Article 47 and Entry 29 of the seventh schedule of the Constitution of India, 1950. The controlling mechanism administered through the vintage law contained under the Indian Penal Code, 1860 and Epidemic Diseases Act, 1897. India witnessed COVID-19 infection in the states of Maharashtra, Tamil Nadu, Gujarat and Delhi. They account for two-thirds of India's total cases surpassing Wuhan of Hubei province in China. On the legal front, the COVID-19 pandemic invented an innovative strategy under the Disaster Management Act, 2005 by the legitimate assumption of catastrophe and calamity. The implementation of quarantine law spearheaded the security of health professions as a significant problem. The public health reform discerned into Presidential promulgation of Epidemic Diseases (Amendment) Ordinance, 2020. The socio-economic fall out of the COVID-19 pandemic and consequent lockdown calls for judicial intervention to meet the goals of health care and equity. The paper examines the comparative case studies for testing the legitimacy of quarantine law enforcement. It delves deep into the Indian Supreme Court decisions in meeting the contemporary challenges posed by the COVID-19 pandemic in the framework of public health law reform in India.

Nordberg, Ana and Titti Mattsson, '[COVID-19 Pandemic in Sweden: Measures, Policy Approach and Legal and Ethical Debates](#)' [2020] Special Issue 1/2020 *BioLaw Journal: Rivista di BioDiritto* 731-739

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.

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

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

Oseni, Alexandra Adetutu, 'Examining Implementation of Policy Effects on Coronavirus (Covid-19) in United State of America' (2020) 96 *Journal of Law, Policy and Globalization* 123–129

Abstract: This particular study examines public policy implementation theories on the various interventions to combat the Coronavirus (COVID-19) pandemic. As underscored in the literature COVID-19 is perceived to be a respiratory disease caused by a novel Coronavirus. The virus was first noticed in Wuhan in China. This global killer-COVID19 has caused many countries, including the United States of America, to get on rigorous policies measures to help contain the spread. Some of the perceived preventive measures taken by the United States of America include travel restrictions, official and self quarantines, postponements of events facility closures and curfews. All these are possible immediate solution proposed by healthcare experts and professionals to flatten the COVID- 19 curve. As a result of adding to public policy literature and to also assist policymaker to understand the implication of their choice of intervention procedures, the study uses the two main approaches of policy or program implementation top-down and bottom-up to all governors, decision makers on possible ways to approach pandemic

issues. In the face of this COVID-19 pandemic, the study recommended that all preventive care, possible treatment tools (or medication), screening and if possible vaccination must be either free or demanded at a subsidized rate in order make eradication possible.

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

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

Palrecha, Harshita and Dhruv Nyayadhish, '[Invoking the Epidemic Diseases Act, 1897 in Light of the Epidemic Diseases \(Amendment\) Ordinance, 2020](#)' (SSRN Scholarly Paper ID 3627581, 12 June 2020)

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

Jurisdiction: 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.

Pandey, Poonam and Mario Pansera, ‘[Learning Beyond Boundaries: Policy-Making in the Time of a Pandemic](#)’ (SSRN Scholarly Paper ID 3581378, 20 April 2020)

Abstract: This commentary critically analyses the recent policy response to the COVID 19 crisis in India. By debunking the illusion of control through intelligent use of science and technology, we argue for the recognition of multiple vulnerabilities that are often excluded in narrow, elitist and top-down S&T based accounts. In order to devise an apt response for the current outbreak we propose for democratic governance of science and technology, learning across disciplinary boundaries and knowledge communities and inclusive and empowered knowledge sharing mechanisms.

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

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

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

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

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

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

Pati, Umi Khaerah, '[Indonesian Government Policy in Mitigating Economic Risks Due to the Impact of the Covid-19 Outbreak](#)' (2020) 1(4) *Journal of Law and Legal Reform* 577–590

Abstract: Covid-19 pandemic have a negative impact on economies globally, including in Indonesia. The disease is advancing at great speed since the first Indonesian patient was referred to the hospital due to confirmed covid-19 (26 February 2020) until on 15 June 2019 [sic] there have been 50,187 patients infected. Several government policies have been implemented by regarding the economic sector as a main concern to prevent the breaking of the Indonesian economic chain. To anticipate, March 31, 2020 Indonesian President signed Government Regulation No. 21 of 2020, which regulates the implementation of PSBB (Large-Scale Social Restrictions), yet economic growth in the first quarter of 2020 showed a declining performance at 2.97 percent on 17 April 2020. Bank Indonesia views the level of the Rupiah exchange rate as fundamentally "undervalued". The objective of this paper is, therefore, to overview the negative impact of the covid-19 outbreak on the Indonesian economy and the policies implemented by the government to mitigate the economic risks. Moreover this article is a normative economic analysis on the basis of secondary data, this study found that Indonesia is facing up an economic domino effect of covid-19 and Bank of Indonesia (BI) has taken several steps by strengthens policy coordination with the government and other authorities to stabilize the rupiah exchange rate and mitigate the impact of Covid-19 risk on the domestic economy.

Paton, Calum, '[World-Beating? Testing Britain's Covid Response and Tracing the Explanation](#)' (2020) *Health Economics, Policy and Law* (accepted manuscript, published 19 August 2020)

Abstract: The UK, and England in particular, has suffered egregiously poor outcomes in managing the Covid-19 pandemic. This short perspective points to the explanation in terms of both current British politics and the public health policy inheritance. Boris Johnson's Premiership was born in an opportunistic assertion of British exceptionalism, and Johnson's initial, fate-tempting reaction to the novel Coronavirus set the UK on the wrong path. Furthermore, the gradual erosion of professionalism in (especially health) policy-making over almost four decades, and the hollowing-out of the health protection infrastructure, both facilitated and accentuated a toxic approach to managing Covid-19.

Pearce, Neil et al, '[Accurate Statistics on COVID-19 Are Essential for Policy Guidance and Decisions](#)' (2020) 110(7) *American Journal of Public Health* 949–951

Introduction: Disease surveillance forms the basis for response to epidemics. COVID-19 provides a modern example of why the classic mantra of “person, place, and time” remains crucial: epidemic control requires knowing trends in disease frequency in different subgroups and locations. We review key epidemiological concepts and discuss some of the preventable methodologic errors that have arisen in reporting on the COVID-19 crisis.

Pesutto, John, '[New Strategy, New Voices: Time to Change Victoria's Crisis Approach?](#)' (Governing During Crises Policy Brief No 5, Melbourne School of Government, University of Melbourne, 10 August 2020)

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

- (a) Daily appearances by a single political leader, with or without senior officials by that leader's side, may be viewed as serving one of the cardinal principles of crisis management. However, we might consider whether the Victorian Premier's strategy of appearing daily is working.
- (b) There is a risk that any head of government, who is always going to be understandably political, may not be able to sustain the unusually high levels of public faith – that we see at the beginning of many crises – for any extended period of time.
- (c) Ballooning COVID-19 cases raise issues about whether the Government is hearing internally from all the voices it should be heeding and whether other people need to be brought into the room.

Pierre, Jon, '[Nudges against Pandemics: Sweden's COVID-19 Containment Strategy in Perspective](#)' (2020) 39(3) *Policy and Society* – Special Issue: States and COVID-19 Policy-Making 478–493

Abstract: Sweden's strategy to contain the COVID-19 pandemic stands out internationally as more liberal in terms of not ordering a complete lockdown of society. Sweden kept its primary schools, daycare centers and industries largely open. The government financially supported furloughed workers and increased its support to regional and local governments delivering healthcare and elderly care. However, the death toll in Sweden which passed 4000 by late May

2020 stands in stark contrast to those of other, comparable countries, raising questions about the design of the strategy, and its appropriateness. The paper argues that key assumptions sustaining the strategy, for instance that symptom-free people do not carry, and cannot transmit the Coronavirus, or that local and regional government staff had the necessary training and equipment to tackle the pandemic, along with problems associated with coordinating a decentralized healthcare system, may explain the poor performance of the Swedish containment strategy.

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.

Pospelova, Svetlana I et al, 'Violation Liability in the Context of the Spread of COVID-19: Russian Experience' (2020) 27(4) *Journal of Law and Medicine* 877

Abstract: The article investigates the legal regime of restrictive measures introduced in Russia due to the COVID-19 pandemic and provides statistical data on the spread of the infection. It describes special administrative violations and criminal offences first introduced during the pandemic: violation of therapeutic and epidemiological rules, dissemination of false information, and failure to follow the procedures introduced during the high-alert regime. Judicial and investigative practice is analysed. The most frequent violations of the legislation

establishing requirements and restrictions to organisations and individuals during the spread of the new coronavirus infection are identified and issues of classification and differentiation of administrative and criminal liability for violation of sanitary and epidemiological rules and dissemination of false information about COVID-19 are addressed. Judgments by the Russian Supreme Court ensuring a uniform approach to court cases in all Russian regions are analysed.

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.

Price, Anna and Louis Myers, '[United States: Federal and State Executive Responses to COVID-19](#)' (Law Library of Congress, September 2020)

Abstract: The executive branches of federal and state governments in the United States have authority to enact rules and regulations designed to implement, enforce, and carry out laws passed by Congress. The executive branch generally relies on government agencies to perform these actions. Typically, the process is lengthy, including time for public comment and congressional oversight. Under certain circumstances, however, exceptions can apply to the

process, allowing agencies to act immediately, lawfully bypassing normally longer regulatory procedures.

Although emergency rulemaking has been used in response to previous emergent situations, the COVID-19 pandemic has resulted in emergency rulemaking affecting every jurisdiction in the United States. The functional effects of emergency rulemaking are wide-ranging and can be contentious. The nature of emergency rulemaking creates difficulties for oversight at both the federal and state level. The rules and regulations enacted under the emergency framework will shape current and future generations as the United States begins to recover from COVID-19's economic and societal impacts.

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.

Raposo, Vera Lúcia and Man Teng long, '[The Struggle Against the CoViD-19 Pandemic in Macao](#)' (2020) (1S) *BioLaw Journal / Revista di BioDiritto* 747

Note: this special issue contains many relevant articles, but almost all are in Italian only, and we have only included those in English in this bibliography. [Link to the entire journal issue.](#)

Extract from Introduction: Unlike the tragic scenarios experienced in other regions, Macao keeps the infection controlled given that the Macao government has adopted efficient and suitably targeted measures against the CoViD-19 pandemic. Contrary to other countries where a

declaration of the state of emergency is required to take further action, namely, to provide a legal basis to suspend individual rights and guarantees, such a drastic measure was not necessary in Macao. In the aftermath of the SARS epidemic of 2002- 2004 Macao, created a proper legal framework to deal with health crisis, Law n. 2/2004 (Law on the Prevention, Control and Treatment of Communicable Disease). All measures taken to deal with the pandemic come in the form of decisions of the Chief Executive, the highest executive authority in Macao (therefore, they are administrative decisions), and are legally grounded in Law n. 2/2004.

Raposo, Vera Lucia, '[Can China's "Standard of Care" for COVID-19 Be Replicated in Europe?](#)' (2020) 46(7) *Journal of Medical Ethics* 451–454

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.

Ray, Debraj and S Subramanian, '[India's Lockdown: An Interim Report](#)' (NBER Working Paper No. w27282, 2020)

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.

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

Jurisdiction: UK

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

Robertson, Christopher T et al, '[Indemnifying Precaution: Economic Insights for Regulation of a Highly Infectious Disease](#)' (2020) *Journal of Law and the Biosciences* Article Isaa032 (advance online article, published 30 May 2020)

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](#)' (2020) 39(3) *Policy and Society* Special Issue: States and COVID-19 Policy-Making 458-477

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.

Rundle, Kristen, '[Reassessing Contracting-Out: Lessons from the Victorian Hotel Quarantine Inquiry](#)' (Governing During Crises Policy Brief No 7, Melbourne School of Government, University of Melbourne, 21 September 2020)

Jurisdiction: Australia

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

(a) The role of private security contractors in Victoria's hotel quarantine system has been the subject of intense public interest ever since the connection between actions of the guards and Victoria's 'second wave' of COVID-19 infections became apparent.

(b) Despite extensive efforts to ascertain who made the decision to contract-out responsibility for maintaining the quarantine system to private security guards, and why, both points remain unclear as the COVID-19 Hotel Quarantine Inquiry progresses to its conclusion.

(c) This Policy Brief sets out the sequence of events that led to this Inquiry and seeks to clarify the questions raised. It argues that we need to look beyond standard mechanisms of political accountability in order to address the structural problems posed by contracting-out highstakes government functions.

(d) Specifically, we need to analyse more deeply the appropriateness of contracting-out in cases that carry serious consequences for public safety and security, and develop frameworks to achieve better decision-making on when, and whether, to contract out complex government functions. The failures in this case underscore that choices about who delivers such government functions, and how, matter to those directly affected by them.

Russell, David and Toby Graham, '[Götterdämmerung](#)' (2020) 26(5) *Trusts & Trustees* 381–388

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.

Saad-Filho, Alfredo and Alison J Ayers, “‘A Ticking Time-Bomb’: The Global South in the Time of Coronavirus’ [2020] (85) *Journal of Australian Political Economy* 84-93

Abstract: At the time of writing, in May 2020, the spread of COVID-19 seems to have peaked in most Western countries; in contrast, the pandemic has been accelerating in the Global South, home to 75% of the world’s states and 85% of its population (TNI, 2020), with dramatic outcomes in Algeria, Brazil, Ecuador, India, Iran, Mexico, the Philippines, Turkey and elsewhere. This article offers a political economy overview of the coronavirus pandemic in the South. Our starting point is that COVID-19 met a world already gripped by overlapping differences, divisions and crises (Boffo ‘et al.’ 2018; Saad-Filho 2020), and these fragilities will intensify disproportionately the impact of the pandemic on the South. Yet, the Global South has not figured prominently in the booming literature (Davis 2020). Left debates have been similarly circumscribed, with attention focusing overwhelmingly on Europe and North America (Hanieh 2020). Our first thesis is that examination of the pandemic must be global, in order to capture its highly-differentiated and closely interrelated histories and dynamics.

‘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.

Sabri, Ahmad Zaharuddin Sani Ahmad et al, '[Movement Control Order on Legal and Social Aspects: Malaysian and Indonesian Government Initiatives During Covid-19](#)' (2020) 1(4) *Journal of Law and Legal Reform* 563–576

Abstract: The Covid-19 pandemic hit another grim milestone on as worldwide deaths from the disease exceeded 100,000. Many countries have enforced social distancing rules and even lockdowns in an effort to contain the spread of the virus. Malaysian Government, in almost daily bases proposed initiatives and efforts to uphold Malaysia social, economic and national stability. This article deliberates an analysis on social media sentiment index by topics mentions in Malaysian government. The Malaysian government Covid19 major initiative discuss within this article is the proposition to reopening selected business sectors during Movement Control Order (MCO). This analysis was conducted using Social Media Engagement Growth components such as likes, comments and shares. The social media platform mentions in this study include all mentions or discussion of the initiatives across all public social media, Facebook, Twitter, Instagram, Forums and blogs.

Saha, Atrayee and Eswarappa Kasi, '[Pandemics and State Response: A Socio-Anthropological Analysis of West Bengal and Andhra Pradesh States](#)' (SSRN Scholarly Paper ID 3637771, 29 June 2020)

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.

Samuels, Alec, '[Coronavirus Act 2020: An Overview by a Lawyer Interested in Medico-Legal Matters](#)' (2020) 88(2) *Medico-Legal Journal* 86–89

Jurisdiction: UK

Abstract: The Act and the regulations. How long they might last. The suspension of the renewals. Enforcement and the role of the police. Protection of whistleblowers. The trial scene. The ultimate impact.

Sanchez-Graells, Albert, '[COVID-19 PPE Extremely Urgent Procurement in England. A Cautionary Tale for an Overheating Public Governance](#)' in D Cowan and Ann Mumford (eds), *Pandemic Legalities* (Bristol University Press, forthcoming)

Abstract: In this short paper, I reflect on the case study of the procurement of personal protective equipment (PPE) for the English NHS during the first wave of the COVID-19 pandemic. I put forward two main claims. My first claim is that the UK Government not only was particularly ill-positioned to deal with the pandemic as a result of years of austerity and the institutional unsettling resulting from the continuous reform of the NHS, its internal market and its supply chain—but also due to the imminence of Brexit and its political ramifications. My second contribution is that, in its desperate reaction to the PPE fiasco, the UK Government misused and abused the disapplication of the standard procurement rules on the basis of the 'extremely urgent need' exemption. This resulted in the opaque award of large numbers of high value contracts to companies that would not survive basic screening under normal conditions. Overall, my goal is to lay bare the more general problems in the UK Government's approach to the governance of public procurement and its increasing insularity as a result of Brexit, with the hope that this will show a path for change that could avert even more significant fiascos in the face of the massive challenges that climate change will bring.

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.

Schmitter, Philippe, '[Food for Thought about the Impact of the COVID-19 Virus Upon the Institutions and Practices of "Real-Existing" Democracy](#)' (COVID-DEM Exclusive, 17 April 2020)

Introduction: Ab initio, what most has impressed me is the political ambiguity embedded in the COVID-19 crisis and, hence, the uncertainty of its outcome. The core of this ambiguity seems to me to lie in the radical distance between what it could and should do to 'real-existing' democracy (RED) in principle and what it is more likely to do in practice, i.e. between what might be done and what probably will be done in terms of public policy and institutional reform... One thing is indisputable (to me), namely, that RED – regardless of its many variants – will not remain the same. This is an affirmation based both on the history of the previous impact of such large-scale plagues upon pre-existing political regimes, and on the fact that contemporary REDs were already in a crisis of fundamentals before the virus appeared.

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

Shiels, Robert, 'The Instant Law of Coronavirus: Part 1' (2020) 24 *Scots Law Times* 153-159

Jurisdiction: UK

Abstract: Discusses criminal and civil case law arising from the coronavirus pandemic which has resulted in the enactment of instant legislation using emergency procedures.

Shvetsova, Olga et al, '[Policy Error and Policy Rescue in COVID-19 Responses in the United States and United Kingdom](#)' (Binghamton University, Citizenship, Rights and Cultural Belonging Transdisciplinary Area Of Excellence (TAE) Working Papers Series No 103, April 2020)

Abstract: The ongoing COVID-19 pandemic represents an existential threat to societies around the world. There has been considerable variation in both rhetoric and policy responses among the many national governments. This piece explains how democratic institutions, in particular federalism, can impact the speed and degree of policy responses protecting citizens, even when national leaders share similar public rhetoric that is non-conducive to speedy policy response. Comparing the policies of United States and United Kingdom with the backdrop of their national leaders' public stances, we argue that having multiple decision points due to the redundancy inherent in federalism increases the chances that a citizen will receive the "correct" policy, even when policy-makers at some levels of government put forth "wrong" policy responses. However, in unitary government, society must rely on the central leader to determine the "correct" policy as sub-national policy-makers are constrained by institutions in their ability to respond. That, due to inherent error probability, delays policy response.

Silverman, Ross D and , '[Contact Tracing, Intrastate and Interstate Quarantine, and Isolation](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 28-33

Jurisdiction: USA

Abstract: Contact tracing, quarantine, and isolation are core communicable disease control measures used by public health departments as part of a comprehensive case ascertainment and management strategy. These are practices with historic roots enabled by state laws and policies and have been used by other countries to slow and stop the spread of COVID-19. To date, their implementation as part of U.S. response efforts at the national, state, and local levels has been confounded by the scale of the COVID-19 outbreak; lack of a systemic infectious disease response; insufficient and fragmented funding streams; low levels of public accountability; and concerns about the impact of such efforts on individual privacy, liberty, and travel rights, as well as the financial and personal costs that may arise out of a positive diagnosis. Recommendations have been offered by expert groups on both the scaling up of contact tracing and ensuring ethical implementation of such measures. One state has passed legislation establishing an oversight framework for state contact tracing and associated data

collection and use. Legal challenges to interstate quarantine rules have, thus far, been unsuccessful. Recommendations include: appropriating federal funding adequate to mount and sustain rapid, comprehensive, culturally-appropriate state and local testing, treatment, contact tracing, and supported quarantine and isolation service efforts; building contact tracing systems that cover social as well as health care supports for those affected; and, to bolster trust and participation in public health efforts, implementing contact tracing-related health communication efforts targeted to reach the diverse array of communities affected by the pandemic.

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

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.

Simoni, Alessandro, '[Limiting Freedom During the Covid-19 Emergency in Italy: Short Notes on the New "Populist Rule of Law"](#)' (2020) *Global Jurist* 1-13 (advance article, published 9 June 2020)

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.

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

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

Smit, Anneke, '[States of Emergency: Decision-making and Participatory Governance in Canadian Municipalities During COVID-19](#)' (Windsor Law Centre for Cities Paper, September 2020)

Extract from Executive Summary: Against a backdrop of the provincial legislative frameworks enabling municipal states of emergency across the country, this study presents a scan of municipal decision-making practice during the early weeks of the 2020 pandemic. While responses were as varied as the underlying governance cultures of Canadian municipalities, some patterns emerged: the exercise of unilateral mayoral powers, the cancellation of council and committee meetings, and deep limitations on public participation in all levels of municipal decision-making. The study also highlights some encouraging signs, including some municipalities that managed to continue robust public consultation and participatory decision-making even at the beginning of the pandemic, and some new practices which will continue to improve municipal governance when the pandemic recedes. The study concludes with recommendations for reform of provincial state of emergency legislation as well as changes to municipal governance practice, to ensure that Canada's local governments are better prepared for the next emergency — whether another wave of COVID-19 or something new.

Staunton, Ciara, Carmen Swanepoel and Melodie Labuschagine, '[Between a Rock and a Hard Place: COVID-19 and South Africa's Response](#)' (2020) *Journal of Law and the Biosciences*, Article Isaa052 (advance online article, published 7 July 2020)

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.

Stefan, Oana Andreea, '[The Future of European Union Soft Law: A Research and Policy Agenda for the Aftermath Of COVID-19](#)' (2020) *Journal of International and Comparative Law* (forthcoming)

Abstract: Following an analysis of selected COVID-19 emergency instruments, this paper shows that the current crisis increases the salience of both the advantages and the drawbacks of soft law instruments. It argues that now is a decisive moment for the future of the EU soft law, from the point of view of research, as well as of policy-making. It is necessary to use the opportunity offered by this crisis to clarify, without impairing flexibility, the processes through which soft law should be issued, as well as the potential effects that such instruments can have absent legally binding force.

Stern, Shai, '[Pandemic Takings: Compensating for Public Health Emergency Regulation](#)' (SSRN Scholarly Paper ID 3632203, 21 June 2020)

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.

Sulistiawati, Linda Yanti, '[Indonesia's Legal Framework in Combating Covid-19](#)' (NUS Law Working Paper No 2020/021, 2020)

Abstract: This paper depicts the laws and regulations used by the Government of Indonesia in tackling the COVID-19 Pandemic. To combat COVID-19, the Indonesian government opted to act via the Contagious Diseases Law without having to enact the Emergency Situation Law. Moreover, the Government of Indonesia also utilized the Health Quarantine Law, established the COVID-19 Expediting Management Task Force, and Large-Scale Social Distancing. There are at least 4 different types of regulations and policies utilized by the Government of Indonesia during the COVID-19 Pandemic period: (1) General policies, eq. Large-scale social distancing, School closures, etc; (2) Policies toward COVID-19 patients, eq. Presidential Regulation on the development of observation and containment facilities in Galang Island, Batam City, Riau Province in relation to COVID-19 or other infectious diseases; (3) Stay-home policy to prevent spread of COVID-19, enacted by Ministerial Offices; (4) Travel bans to prevent spread of COVID-

19 within and outside Indonesia; (5) Softening the economic impact of COVID-19 eq.various regulation from the Central Banks, Industrial and Trade Ministry, and Financial Services Authority on exports, imports, international currency, Giro, regular banking, Syariah banking, stock exchange, etc, in relation to COVID-19; and (6) Financing the Management of COVID-19. The legal framework for combatting COVID-19 is already in place in Indonesia. There are many laws and regulations that are available, including the Constitution, presidential, governmental and ministerial regulations. However, overlaps and inconsistencies can be seen in some cases, and these make situation more dire for the people of Indonesia. These inconsistencies should be resolved quickly by the government.

Sunstein, Cass R, '[The Meaning of Masks](#)' (2020) 4 (COVID-19 Special Issue) *Journal of Behavioral Economics for Policy* 5-8

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.

Tănăsescu, Camil, '[Behavior during the Pandemic: A Problem of the Rule of Law](#)' (Proceedings, Consciens Conference, 28-29 September 2020) 108-112

Abstract: With the recession generated by the sudden appearance of the infectious agent SarsCOV-2, the whole world has amazingly, unusually, limited its economic and social activity. At the same time, this collapse represents an exogenous and symmetrical opposition to the systems of law, health, education, economy, finance, transport, protection and defense of fundamental rights and freedoms. The pandemic is a state of security, government and population to adhere or not to what was obvious: the virus is still alive and we are preferences. From here, we mean firm attitudes to comply with special provisions to help negative attitudes, such as to justify stray outings in groups, denial of dangers or amnesia on compliance with regulations. Throughout this article, we aim to review the consequences that the behavior of the individual or companies will support and translate into grouplevel behavior. It is understandable that this period is a crossroads and that, as soon as the phenomena return to normal, we will realize the behavior acquired during the COVID-19 pandemic, as well as how it affects the protected social relations protected by legal norms. Another coordinate proposed for debate and analysis is whether the state of the pandemic affects the social value of trust and what implications may have the distrust of individuals in the measures taken by state authorities, but also distrust of the authorities in citizens, and the repercussions on implementing new rules with character prohibitive.

Tang, Shui Yan and Brian An, '[Responses to COVID-19 in China and the United States: How Governance Matters](#)' (SSRN Scholarly Paper ID 3602172, 5 June 2020)

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.

Teichman, Doron and Kristen Underhill, '[Infected by Bias: Behavioral Science and the Legal Response to COVID-19](#)' (2020) *American Journal of Law and Medicine* (forthcoming)

Abstract: This Article presents the first comprehensive analysis of the contribution of behavioral science to the legal response to the COVID-19 pandemic. At the descriptive level, the Article shows how behavioral insights were incorporated into the political debate regarding the legal response to the pandemic, and it highlights the potential misuse of such insights by interested parties. The Article further considers how different psychological phenomena such as loss aversion and cultural cognition influenced the way policymakers and the public perceived the pandemic, and how these phenomena and other cognitive biases affected the design of laws and regulations responding to COVID-19. At the normative level, the Article compares nudges (i.e., choice-preserving, behaviorally informed tools that encourage people to behave as desired) and mandates (i.e., obligations backed by sanctions that dictate to people how they must behave), and it argues that mandates rather than nudges should serve in most cases as the primary legal tool used to promote risk reduction during a pandemic. The Article nonetheless highlights the role nudges can play as complements to mandates.

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

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.

Thomson, Stephen and Eric C Ip, '[COVID-19 Emergency Measures and the Impending Authoritarian Pandemic](#)' (2020) *Journal of Law and the Biosciences*, Article Isaa064 (advance article, published 29 September 2020)

Abstract: COVID-19 has brought the world grinding to a halt. As of early August 2020, the greatest public health emergency of the century thus far has registered almost 20 million infected people and claimed over 730,000 lives across all inhabited continents, bringing public health systems to their knees, and causing shutdowns of borders and lockdowns of cities, regions, and even nations unprecedented in the modern era. Yet, as this Article demonstrates—with diverse examples drawn from across the world—there are unmistakable regressions into authoritarianism in governmental efforts to contain the virus. Despite the unprecedented nature of this challenge, there is no sound justification for systemic erosion of rights-protective democratic ideals and institutions beyond that which is strictly demanded by the exigencies of the pandemic. A Wuhan-inspired all-or-nothing approach to viral containment sets a dangerous precedent for future pandemics and disasters, with the global copycat response indicating an impending 'pandemic' of a different sort, that of authoritarianization. With a gratuitous toll being inflicted on democracy, civil liberties, fundamental freedoms, healthcare ethics, and human dignity, this has the potential to unleash humanitarian crises no less devastating than COVID-19 in the long run.

'The Threat of Covid-19' (2020) 24(2) *Jersey and Guernsey Law Review* 131-139

Abstract: Reviews the range of emergency regulations enacted by Jersey and Guernsey in response to the coronavirus pandemic, including key features of measures concerning screening, education and day care, restrictions on movement, and residential tenancies.

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

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.

Tobyn, Graeme William, '[How England First Managed a National Infection Crisis: The Plague Orders of 1578](#)' (SSRN Scholarly Paper ID 3608582, 4 June 2020)

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.

Trein, Philipp, '[Authoritarian Rule and Liberal Democracy in Times of Crisis](#)' (SSRN Scholarly Paper ID 3625523, 12 June 2020)

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.

Tyagi, Deepika, 'Isolation, Quarantine and Law: An Overview during Covid-19 Crisis' (2020) 14(1) *IME Journal* 81-89
Jurisdiction: India

Tzifakis, Nikolaos, '[The Western Balkans during the Pandemic: Democracy and Rule of Law in Quarantine?](#)' (2020) *European View* (advance article, published 11 October 2020)

Abstract: In the Western Balkans, as elsewhere around the world, governments took extraordinary measures to effectively contain the spread of COVID-19, measures that entailed serious restrictions to individual freedoms. They also introduced extra powers that upset the ordinary division and balance of governmental power. In this context, several analysts have

expressed concern that the authoritarian trend observed in the region during the last decade will become further entrenched. The worst fear, that some of the Western Balkan leaderships may retain extraordinary powers indefinitely, has not been confirmed. However, constitutionally prescribed procedures were disregarded and the operation of formal and informal mechanisms of checks and balances ignored. The article argues that the ease with which the Western Balkan leaders removed any checks and controls over their rule raises the valid question of how they may deal with future circumstances which may endanger their power.

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 tackling 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.

Vera-Cruz Pinto, Eduardo, '[Law After the COVID-19 Pandemic: The Fundamental Binomials](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The COVID-19 pandemic suspended the world and affected the political, social and economic constructions in which we lived. The law cannot be the same. It is necessary to separate the legal legitimacy to create and apply the rule of law and the political legitimacy to create and apply the law. This implies preparing the critique of the current dominant doctrine about the sources of "Law" based on the fundamental binomials posed by the post- COVID-19 situation. Placing State law in the Rule of Law involves confronting installed powers that violate with impunity fundamental rules of law that protect the human person and his dignity, by reforming state institutions and by changing mentalities. This goes through the media and journalists, through the courts, judges and lawyers, through the University and the legal profession schools, through the cult of fear and the risk of freedom, through the debate about the Constitution.

Vese, Donato, '[Managing the Pandemic: The Italian Strategy for Fighting Covid-19 and the Challenge of Sharing Administrative Powers](#)' (2020) *European Journal of Risk Regulation* (advance online article, published 3 September 2020)

Abstract: The article analyses the administrative measures and, more specifically, the administrative strategy implemented in the immediacy of the emergency by the Italian government in order to determine whether it was effective in managing the Covid-19 pandemic throughout the country. In analysing the administrative strategy, the article emphasises the role that the current system of constitutional separation of powers plays in emergency management and how this system can impact health risk assessment. An explanation of the risk management system in Italian and EU law is provided and the following key legal issues are addressed: i) the notion and features of emergency risk regulation from a pandemic perspective, distinguishing between risk and emergency; ii) the potential and limits of the precautionary principle in EU law; iii) the Italian constitutional scenario with respect to the main provisions regulating central government, regional and local powers. Specifically, this article argues that the administrative strategy for effectively implementing emergency risk regulation based on an adequate and correct risk assessment requires “power sharing” across the different levels of government with the participation of all the institutional actors involved in the decision-making process: Government, Regions and local authorities.

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.

Waismel-Manor, Israel et al, '[Online Supplement for COVID-19 and Legislative Activity: A Cross-National Study](#)' (Bar Ilan University Faculty of Law Research Paper No 20-13, 3 July 2020)

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.

Walker, Neil, '[The Crisis of Democracy in a Time of Crisis](#)' (Edinburgh School of Law Research Paper No 2020/15, 3 July 2020)

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.

Wang, Zhiqiong June, '[Law in Crisis: A Critical Analysis of the Role of Law in China's Fight against COVID-19](#)' (2020) *Griffith Law Review* (advance online article, published 15 July 2020)

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.

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

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

Webber, Grégoire, 'The Duty to Govern and the Rule of Law in an Emergency' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 175

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.

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

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

Woo, JJ, '[Policy Capacity and Singapore's Response to the COVID-19 Pandemic](#)' (2020) 39(3) *Policy and Society* Special Issue: States and COVID-19 Policy-Making 345–362

Abstract: Despite its excellent public healthcare system and efficient public administration, Singapore has been severely affected by the COVID-19 pandemic. While fatalities in the city-state remain low and contact tracing efforts have been largely successful, it has nonetheless experienced high rates of infection and the emergence of large infection clusters in its foreign worker dormitories. This paper analyses this dual-track policy outcome – low fatalities but high infection rates – from a policy capacity perspective. Specifically, the policy capacities that had contributed to Singapore's low fatality rates and effective contact tracing are identified while the capacity deficiencies that may have caused its high rates of infection are discussed. In doing so, I argue that the presence of fiscal, operational and political capacities that were built up after the SARS crisis had contributed to Singapore's low fatality rate and contact tracing capabilities while deficiencies in analytical capacities may explain its high infection rate.

Yang, Kaifeng, '[Unprecedented Challenges, Familiar Paradoxes: COVID-19 and Governance in a New Normal State of Risks](#)' (2020) 80(4) *Public Administration Review* 657–664

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.

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

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

Zhangrun, Xu, '[Viral Alarm: When Fury Overcomes Fear](#)' 31(2) *Journal of Democracy* 5-23

Jurisdiction: China

Abstract: The coronavirus (COVID-19) epidemic has revealed the corruption of Chinese authoritarianism under Xi Jinping. In an unsparing critique, Tsinghua University professor Xu Zhangrun argues that Chinese governance and political culture under the Chinese Communist Party have become morally bankrupt. The Party deceived the Chinese people as the viral outbreak in Wuhan spread across China before developing into a global pandemic. Chinese officials were more concerned with censoring the internet and news of the disease to preserve Xi's one-man rule than with protecting the people from a public-health disaster. Xu calls on his fellow citizens to reject the strongman politics of the People's Republic in favor of greater reform and the creation of a constitutional democracy.

Zhao, Suisheng, '[Rhetoric and Reality of China's Global Leadership in the Context of COVID-19: Implications for the US-Led World Order and Liberal Globalization](#)' (2020) *Journal of Contemporary China* (advance online article, published 7 July 2020)

Abstract: When President Trump-led America abandoned the global leadership, China casted itself as the global leader in response to COVID-19, placing challenges to the US-led world order and liberal globalization. China's rhetoric, however, has not matched its actions in comprehensively providing global public goods and developing universally accepted values. As neither the US and China have taken the global leadership that most countries can trust and count on, the world is in the danger of moving toward the vicious power rivalry, hampering the multilateral responses to global crisis such as COVID-19.

BUSINESS LAW (INCLUDING FRANCHISES)

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

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

Berman, Douglas A et al, '[Struggling Through the Pandemic: Cannabis Social Equity During COVID-19](#)' (Ohio State Public Law Working Paper, forthcoming, 2020)

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.

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

Abstract: The COVID-19 Pandemic is the biggest challenge for the world since World War Two, warned UN Secretary General, António Guterres, on 1 April 2020. Millions of lives may be lost. The threat to our livelihoods is extreme as well. Job losses worldwide may exceed 25 million. Legal systems are under extreme stress too. Contracts are disrupted, judicial services suspended, and insolvency procedures tested. Quarantine regulations threaten constitutional liberties. However, laws can also be a powerful tool to contain the effects of the pandemic on our lives and reduce its economic fallout. To achieve this goal, rules designed for normal times might need to be adapted to 'crisis-mode', at least temporarily. Business Laws in particular fulfil an important function in this context. Our livelihoods depend on how well businesses are able to navigate through the current crisis. Beginning in early February 2020, the Oxford Business Law Blog has published posts on how Business Laws could contribute to containing the effects of the COVID-19 Pandemic, and on how they need (or need not) to be adapted to achieve the desired

effect. This working paper collects the posts published throughout March in chronological order. Thematically, the focus is on finance, financial regulation and insolvency laws. This is not surprising as the most pressing problem businesses face right now is to manage their cash flow. We hope that the contributions in this paper inspire more work by scholars and help policymakers worldwide to adopt the right measures to reduce the damage caused by the Pandemic.

Buchan, Jenny and Rob Nicholls, 'The Challenges of Navigating the COVID-19 Pandemic for Australia's Franchise Sector' (2020) 48(2) *Australian Business Law Review* 126-137

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.

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

Jurisdiction: USA

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

Deere, Kelly and Christine Gottesman, '[We Can Do This: Reopening the Non-Public Office Sector and Keeping It Open During the COVID-19 Pandemic](#)' (2020) 16 *Rutgers Business Law Review* 10-36

Jurisdiction: USA

Abstract: In March 2020, COVID-19 forced many non-essential businesses with non-public office settings to physically close their doors and conduct their businesses remotely. For many non-essential businesses, physical office space shut down and many employees began working from home or telecommuting. As states reopened their economies, the CDC, OSHA and a number of state agencies provided guidance for employers to reopen and/or maintain a safe workplace in these office setting businesses. While these guidelines are not uniform in size, scope or content, we conclude that there is sufficient guidance for these employers to safely open their businesses and stay open. We recommend that CDC and OSHA issue joint guidance to create a uniform and not piecemeal approach for office workplace safety and that the guidance be updated regularly. Since the non-public office settings are at a low-risk of COVID-19 exposure, we recommend that both federal and state governments provide guidance and not more formal standards or regulations. There is no one-size fits all approach to the non-public office setting therefore these employers should have the flexibility to implement the recommendations that work best for them.

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

Jurisdiction: USA

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

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

Franchising World 24–27

Jurisdiction: USA

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

CHARITY / NON-PROFIT LAW

Hasan, Samiul, '[Public and Non-Profit Organisation Management in the Post-COVID-19 World: Possible Issues and Options for Bangladesh](#)' (SSRN Scholarly Paper ID 3632711, 21 June 2020)

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.

Langford, Rosemary Teele, 'Insolvent Trading, Charitable Companies and COVID-19' (2020) 37(6) *Company and Securities Law Journal* 435-439
([available on SSRN as University of Melbourne Legal Studies Research Paper No 885, published 28 May 2020](#))

Jurisdiction: Australia

Abstract: The unprecedented crisis caused by the outbreak and rapid spread of COVID-19 has raised challenges for directors as concerns insolvent trading laws. The federal Government recently announced temporary suspension of insolvent trading laws in order to ease the pressure on directors to enter their companies into administration out of personal liability concerns. It is, however, important to note that other core directors' duties continue to apply. These include the duty of care and diligence and the duty to act in good faith in the interests of the company. This latter duty includes a requirement that directors consider the interests of creditors as the company approaches insolvency. An issue arises as to the application of the

insolvent trading provisions to directors of charitable companies registered with the Australian Charities and Not-for-profits Commission (ACNC). This application is complicated by the complex interaction between the provisions of the 'Corporations Act 2001' (Cth) and the 'Australian Charities and Not-for-profits Commission Act 2012' (Cth) and the addition of the Australian Charities and Not-for-profits Commission (ACNC) Governance Standards. Charities face enormous challenges due to the onset of COVID-19, including decreased donations and increased demand for their services. It is opportune to clarify the most pertinent duties applicable to directors of charitable companies that are facing straitened financial circumstances. This note critically analyses the legal issues for directors of charitable companies in terms of insolvent trading and related directors' duties.

Molk, Peter and D Daniel Sokol, '[The Challenges of Nonprofit Governance](#)' (2020) *Boston College Law Review* (forthcoming)

Jurisdiction: USA

Abstract: The stakes for proper nonprofit governance are extremely high. Over 1.5 million nonprofits are registered with the IRS, collectively employing 12 million people and accounting for 5.4% of US GDP. Yet while for-profit companies have significant checks on the behavior of boards and management, nonprofit firms lack many of the same types of internal and external governance control mechanisms. COVID-19 is just the latest in a long history of shocks to expose the lack of preparedness and capability of many nonprofit boards in fulfilling their essential governance functions.

This Article contributes to the corporate governance literature by identifying aspects of nonprofit governance that create unnecessary risk to nonprofit entities and to society overall. Currently many governance failures that would be corrected in traditional for-profit entities go unaddressed among nonprofits. We make unique contributions to addressing these governance shortcomings by suggesting an enforcement reorientation by both public and private actors. Our novel solutions encompass disclosure, certification, oversight by state attorneys general, and federal actors.

COMPETITION AND CONSUMER LAW

Alderman, Richard M et al, '[Consumer Law and Policy Relating to Change of Circumstances Due to the COVID-19 Pandemic](#)' (2020) 43(3) *Journal of Consumer Policy* (forthcoming)

Abstract: An unprecedented number of consumer problems has been caused by the COVID-19 pandemic, not least with regard to refunds of prepayments and the ability of consumers to keep up their monthly payments under loan and rental agreements. Based on a notion of societal force majeure sketched in this paper, we propose guiding principles in respect of the introduction of moratoria on recurring payments, the use of refunds or vouchers in respect of prepayments, and associated enforcement challenges. This analysis draws on experiences around the globe. The COVID-19 pandemic has swept around the world. As well as huge suffering and high numbers of fatalities, it has had a heavy negative economic impact. Millions of consumers around the world are suffering financially, because many have lost their regular income, and many are fighting to obtain refunds of prepayments from struggling businesses whilst having to service loans and rental payments. In this contribution, we, a research group on consumer law with a global reach, offer an initial assessment of the legal difficulties consumers face. We argue for a principles-based way forward and evaluate a range of global initiatives taken thus far.

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

Abstract: Merger review in the United States has overlooked a significant competition harm: increasing risk. Mergers can increase both counterparty risk and systemic risk—the risk of idiosyncratic firm shocks harming trading partners and the national economy. There is now clear evidence that negative shocks to a firm can impose significant harm to that firm's trading partners, leading to national economic effects. And as the COVID-19 pandemic has shown all too clearly, how we structure our markets can, in a crisis, become a matter of life and death overnight. I argue that mergers that increase counterparty and systemic risk by harming the competitive process can be blocked as violations of the Clayton Act. Systemic and counterparty risk should therefore be treated like innovation in merger review as factors that can increase or decrease merger legality. I show when a merger is likely to change risk, to whom, and in what direction. Important factors include pre- and post-merger market power, counterparty

exposure, and network centrality. When a merger increases risk because of a harm to competition, that increased risk is an antitrust harm under the consumer welfare standard and can therefore be used to condemn the merger. Moreover, the agencies' prosecutorial discretion allows them to consider risk harms in merger review even when such harms are not directly caused by reduced competition. To illustrate, I apply merger risk analysis to a large generic pharmaceuticals deal. I conclude with recommendations on how to incorporate risk analysis into merger review. Bringing risk analysis into merger review reveals otherwise invisible but significant merger harms and demonstrates that merger efficiencies have not just benefits but also serious costs. In an Appendix, I propose language for a new section in the Department of Justice and Federal Trade Commission's Horizontal Merger Guidelines.

Calboli, Irene, '[Trade Mark Licensing and Covid-19: Why Fashion Companies Have a Duty to Comply with Their Legal Obligations](#)' (2020) 15(7) *Journal of Intellectual Property Law & Practice* 489–490

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

Carvalho, Jorge Morais and Sandra Passinhas, '[Consumer Law and COVID-19 in Portugal](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The periods of crisis have a negative impact on the level of consumer protection, with the emphasis on other objectives, in particular those linked to the functioning of the market. This text aims at demonstrating that. In Portugal, measures adopted to face the economic and social effects of COVID-19 can be characterised twofold: those that reduce the level of consumer protection and those that aim to protect particularly vulnerable consumers. Evidence will be given in the following fields: tourism (package travel, hotel or short-term accommodation

bookings), services of general interest (specially, water, electricity, gas and telecommunications provision), credit agreements (both mortgage credit and consumer credit), electronic payments, sale of goods, and the price-reduction commercial practice of sales.

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

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

Chakraborti, Rik and Gavin Roberts, '[Anti-Price Gouging Laws, Shortages, and COVID-19: Big Data Insights from Consumer Searches](#)' (SSRN Scholarly Paper ID 3613726, 9 June 2020)

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.

Coorey, Adrian, 'COVID-19 (Coronavirus): What Help, If Any, Can the Consumer Guarantees Have for a Consumer in Circumstances Where a Travel Ban Is in Effect?' (2020) 23(8/9) *Inhouse Counsel* 110–111
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.

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

Abstract: This paper explores how EU competition law enforcement might be affected by the COVID-19 pandemic. Each section of this paper reviews how various components of EU competition law are impacted. The paper evaluates the state of play and, where relevant, it

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

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

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

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.

Dannemann, Gerhard, Christoph Busch, and Hans Schulte-Nölke, '[Digital Platforms and Covid-19](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The present article discusses the impact of the COVID-19 pandemic on the platform economy and in particular on the triangular contractual relationships between online platforms, suppliers and customers. It places this discussion in the context of the ongoing debate about the future of platform regulation, including the Model Rules for Online Platforms which were recently adopted by the European Law Institute. Particular attention is given to 'price gauging' for products such as face masks or sanitizers, policies to prioritize essential products on platforms selling goods, and measures undertaken by accommodation platforms to regulate pandemic-related frustration and non-performance of supplier-customer contracts. The article explores the legality of adopted measures. It furthermore argues that imposing a general duty of transparency and fairness on platform operators as market-shapers could help platform operators, platform users and courts as guidelines when they have to adapt to unforeseen future developments.

De Stefano, Gianni, '[Covid-19 and EU Competition Law: Bring the Informal Guidance On](#)' *Journal of European Competition Law & Practice*, Article lpa024 (advance online article, published 5 May 2020)

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.

Drake, Sara, '[Delays, Cancellations and Compensation: Why Are Air Passengers Still Finding It Difficult to Enforce Their EU Rights under Regulation 261/2004?](#)' (2020) 27(2) *Maastricht Journal of European and Comparative Law* 230–249

Abstract: The aim of this article is to identify why air passengers travelling in the European Union, endowed with the highest standard of consumer protection in the world under EU law, are still being denied their rights and finding it difficult to seek effective legal redress. This article argues that the principal cause of airlines' non-compliance is the poor regulatory design of Regulation 261/2004, which has been compounded by inadequate application by the Member States and regulatory resistance by the airlines. This contribution will then demonstrate how the European Commission ('Commission') has responded through the adoption of both deterrence and compliance-based enforcement strategies, and maps out the mechanisms, tools and actors harnessed by the Commission to create a complex hybrid, multi-layered system of enforcement. The article reveals that enforcement gaps persist and argues that the effectiveness of the regime is unlikely to improve without legislative reform.

Feliszewski, Tomasz, 'Poland Safeguards Competition in Midst of COVID-19 Outbreak' (2020) 4(2) *European Competition and Regulatory Law Review* 144-146

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.

Flores da Silva, Marta and Sofia Rebelo Ladeira, 'Portugal: Procedure - Continuity of Operations' (2020) 41(7) *European Competition Law Review* N58-N59

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.

Folliot Lalliot, Laurence and Christopher R Yukins, '[COVID-19: Lessons Learned in Public Procurement. Time for a New Normal?](#)' [2020] (3) *Concurrences: Competition Law Review* 46-58

Abstract: The COVID-19 crisis upended markets and assumptions in public procurement, and posed an almost existential threat to traditional procurement systems. Seismic changes in economic relationships – governments were no longer monopsonists, government officials failed as economic intermediaries between suppliers and the public, and supplies that were traditionally treated as private (such as medical equipment) suddenly became 'public' goods under worldwide demand. Traditional trade rules were rendered irrelevant, as the goal was no longer simply to open individual procurements but rather to open borders to intense global demand. Although the disruption was revolutionary, ironically the solution is to return to first principles of transparency and integrity to preserve governments' fragile legitimacy in a crisis.

Frank, Lior, 'Prohibiting Monopolistic Excessive Pricing During the Time of COVID-19' (2020) 41(7) *European Competition Law Review* 317-322

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.

Fumagalli, Chiara, Massimo Motta and Martin Peitz, '[Which Role for State Aid and Merger Control During and After the Covid Crisis?](#)' (2020) *Journal of European Competition Law & Practice*, Article Ipa36 (advance online article, published 6 August 2020)

Abstract: In this article, starting from the observation that the crisis has affected sectors in different ways, we argue that policy responses should reflect the conditions of the sector at hand. In sectors in which the crisis has no negative impact (see Section II), there is no reason to resort to state aid, to sector-specific demand side measures, or to relax competition rules. In fact, for certain products which experienced exceptional price hikes in response to a positive demand or negative supply shock, excessive price actions—a rarely used instrument in competition law—might be a 'last resort' tool to prevent prices from increasing beyond socially acceptable levels, at least when supply is not responsive, and in those jurisdictions where anti-price gouging or consumer protection provisions were not available. Furthermore, for some services, the temporary boost in demand due to confinement and home working may turn out to have permanent *positive* effects. Among these expected winners of the Covid crisis there are the big digital platforms, which reinforce the need for competition policy to deal with their increasingly dominant positions.

Giancaspro, Mark, '[Consumer Law and Policy Relating to Change of Circumstances Due to the COVID-19 Pandemic](#)' (2020) 43(3) *Journal of Consumer Policy* 437

Jurisdiction: global, with focus on Australia, Belgium, EU, Germany, Italy, Spain, South Africa, Switzerland, UK, USA

Abstract: An unprecedented number of consumer problems has been caused by the COVID-19 pandemic, not least with regard to refunds of prepayments and the ability of consumers to keep up their monthly payments under loan and rental agreements. Based on a notion of societal force majeure sketched in this paper, we propose guiding principles in respect of the introduction of moratoria on recurring payments, the use of refunds or vouchers in respect of prepayments, and associated enforcement challenges. This analysis draws on experiences around the globe.

Giosa, Penelope-Alexia, '[Price Regulation: An Alternative to Competition Law Enforcement in the Time of COVID-19?](#)' (2020) 39 *Centre for Competition Policy Research Bulletin* 24-27

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.

Giosa, Penelope-Alexia, '[Exploitative Pricing in the Time of Coronavirus: The Response of EU Competition Law and the Prospect of Price Regulation](#)' (2020) *Journal of European Competition Law and Practice*, Article Ipa029 (advance online article, published 15 July 2020)

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.

Grochowski, Mateusz, '[Towards a Renaissance of Price Control in Contract Law?: Preliminary Observations on COVID-19 and Price Regulation on Consumer Market](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The text addresses the dilemma of retail price regulation on the consumer market in the economic realities triggered by the COVID-19 pandemic. The text discusses the

reinvigoration of discussion over price control that ensued in numerous countries as a result of the rapid increase of prices of certain goods (such as medical products and every-day-use utensils). It attempts to preliminarily frame the underlying policy premises of price regulation triggered by the pandemic. It also seeks a more in-depth understanding of the rationale of price review in the extraordinary market conditions, as well as the general rules for allocation of tasks in this regard between public and private law. In so doing, the text focuses primarily on the EU consumer law and attempts to understand what concept of price control it rests on and to what extent it may provide a response to the price concerns in the outcome of COVID-19.

Gurgula, Olga, '[Strategic Patenting by Pharmaceutical Companies: Should Competition Law Intervene?](#)' (2020) *International Review of Intellectual Property and Competition Law* (forthcoming)

Abstract: As the COVID-19 pandemic is affecting the lives of thousands of people worldwide, the problem of timely access to affordable medicines has intensified today. Based on past experience of accessing medicines for life-threatening diseases there is a justifiable fear that access to any vaccines and treatments that are eventually developed may be hindered by patents, leading to unaffordable prices. In particular, one of the reasons that typically leads to high prices is strategic patenting employed by pharmaceutical companies. While this practice is currently considered lawful, this article argues that strategic patenting requires a long-overdue intervention by competition authorities and aims to attract their attention to its harmful effects. It maintains that, along with a more immediate negative effect in the form of high drug prices, strategic patenting affects dynamic competition by stifling innovation of both originators and generic companies. The article outlines the current approach to strategic patenting and provides arguments for the intervention of competition law. This, in turn, will open the possibility for competition authorities to investigate this practice and prevent its harmful effect on drug prices and pharmaceutical innovation, for the benefit of consumer welfare.

Howarth, David and Harriet Alexander, 'COVID Collaboration and Competition Policy: Authorisation vs Forbearance as Crisis Responses' (2020) 48(2) *Australian Business Law Review* 189-201

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.

Hutchings, Michael, 'Comments on Coronavirus and Competition Act Exclusion Orders' (2020) 41(8)

European Competition Law Review 413-425

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.

Irvine, Heather, 'Minster of Trade Industry and Competition Responds Swiftly to COVID-19' (2020) 20(3)

Without Prejudice 6-7

Jurisdiction: South Africa

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

Jane, Alex and Jeannie Marie Paterson, 'Frustratingly Unclear? The Interplay Between Common Law, Statute and the ACL in Assessing Consumer Rights in a Time of Crisis' (2020) 48(2) *Australian Business Law Review* 169-179

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.

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

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

in detail the responses of a number of competition authorities, analyzes the differences in the responses to the COVID-19 crisis of various governments and competition authorities and discusses whether these responses imply a departure from the traditionally accepted goals and enforcement principles of competition.

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.

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Juhart, Miha, '[Deferral of Payments under a Credit Agreement as an Extraordinary Measure Due to the Epidemic: A Slovenian Approach](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The SARS-CoV-2 epidemic (COVID-19) poses a particular challenge to many disciplines and requires the state to take action at various levels of engagement. One of those specials is also a credit agreement. To mitigate the effects of the epidemic on the solvency of borrowers, the Slovenian legislator adopted the Intervention Measure Act on Deferred Payments of Borrowers' Obligations. The essential measure is the deferral of payment as stipulated, what means the termination of the maturity of all obligations under the credit agreement until the end of the deferral period of 12 months. During this period, the interest shall be charged on the deferred part of the principal at the regular interest rate. The borrower may apply for the

deferral of payment, if the epidemic affects his ability to repay the loan. The bank must offer him the conclusion of annex to the credit contract, if he fulfils all conditions for the application. In the deferral period, the borrower is bound by special reporting obligation concerning his solvency and ability to make a repayment.

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

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

Lande, Robert H and Sandeep Vaheesan, [‘Can COVID-19 Get Congress to Finally Strengthen U.S. Antitrust Law?’](#) [2020] (21 May) *Washington Monthly*

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

Luna, Álvaro and Pablo Salvador Coderch, [‘The Spanish Consumer Law in the COVID-19 Emergency’](#) in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: As a consequence of the Covid-19 emergency, the Spanish law on consumer contracts has been mainly modified by one legal provision, Section 36 of Royal Decree-Law 11/2020, of 31st March. Paragraphs 1, 2 and 3 of section 36 generally provide the possibility to adjust sales and services consumer contracts. If the parties to the contract do not reach an adjustment or adaptation agreement within 60 days, the consumer can terminate the contract. Nevertheless,

both the adjustment and termination requests must clearly fulfill a standard of good faith and fair dealing.

Marchisio, Emiliano, 'EU Competition Law Response to the Coronavirus Crisis' (2020) 41(8) *European Competition Law Review* 373-383

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.

Mehra, Salil K, '[Price-Discrimination Driven Algorithmic Collusion: Platforms for Durable Cartels](#)' (2020) *Stanford Journal of Law, Business, and Finance* (forthcoming)
Jurisdiction: USA

Abstract: Algorithmic competition has arrived. With it has come the specter of algorithmic collusion – rapid detection of co-conspirators' defection via technologically enhanced price monitoring and setting capability can encourage anticompetitive collusion. Strikingly, the ability to track consumers' willingness-to-pay and price discriminate among them may synergize with algorithmic collusion into something antitrust scholars had previously thought impossible: stable cartels. In particular, consumer-facing digital platforms increasingly can determine consumers' individual willingness to pay. Doing this allows them to deploy sophisticated forms of price discrimination, and thereby effect large welfare transfers from consumers to producers. This Article is the first to describe and analyze the potential interaction between price discrimination and algorithmic collusion. Algorithm-driven platforms now knit together large numbers of previously-independent firms and agents; some platforms set the price these participating firms and agents will charge. Crucially, if the gains to producers from collusive price discrimination are big enough, a qualitative change may take place: participants may find that they are no longer are in a Prisoner's Dilemma tempting them to undercut each other on price, but rather in a coordination game with a single, rational choice: keep their collusion going. This Article sets forth how this dynamic can produce agreements by competitors, facilitated by price-

discriminating, price-setting platforms that transfer wealth from consumers to producers – arguably a violation of Section 1 of the Sherman Act. Indeed, in contrast to the traditional view that firms need to first obtain Section 2 monopoly power, and only then can implement price discrimination, the model presented here shows the causation can run the other way: The ability to price discriminate effectively can drive the joint maintenance of monopoly power by colluding competitors. This dynamic takes on new urgency as more and more commerce shifts to the Internet and smartphone apps, a trend that has been accelerated by the COVID-19 pandemic and its associated acceleration of the shift to e-commerce. Potential solutions to this problem will be complicated by antitrust law’s current relegation of price discrimination to the dead letter office – no Federal Trade Commission complaint under the Robinson-Patman Act, the main relevant statute, has been brought this century. Indeed, during the past decade, the most recent edition of the leading antitrust casebook in the U.S. deleted its section on price discrimination and the Act. This Article proposes three actions: (i) revive some enforcement against price discrimination, (ii) prioritize action against price discriminating platforms that inhibit switching by participants, including scrutinizing mergers between firms whose Big Data-based ability to gauge willingness-to-pay may, if combined, have negative ramifications for consumers, and (iii) factor price discrimination-driven algorithmic collusion into the current reevaluation of vertical restraints.

Meyer, Susan, Preanka Gounden and Charissa Barden, ‘More Bark and Bite: Competition Law as an Additional Means of Post-Pandemic Support’ (2020) 20(5) *Without Prejudice* 29–30

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.

Moss, Diana L, '[From Competition to Conspiracy: Accessing the Federal Trade Commission's Merger Policy in the Pharmaceutical Sector](#)' (SSRN Scholarly Paper ID 3701158, 3 September 2020)

Jurisdiction: USA

Abstract: Prescription drugs safeguard Americans from numerous life-threatening maladies. Competition in pharmaceutical R&D, and for generic entry, produces essential drugs and ensures that medications are accessible and affordable. That promise is fading. There is mounting evidence that connects high market concentration and high drug prices. Price gouging for important drugs, conspiracies to fix generic drug prices, and ever more innovative schemes by branded drug manufacturers to keep generic rivals out of the market put merger control at center stage.

The AAI White Paper 'From Competition to Conspiracy: Accessing the Federal Trade Commission's Merger Policy in the Pharmaceutical Sector' examines a major root of this problem—the Federal Trade Commission's (FTC's) policy of settling virtually all challenged horizontal pharmaceutical mergers with consent orders requiring divestitures. This stands in contrast to agency decisions to seek injunctions to stop highly concentrative, harmful mergers—arguably the most effective remedy for fully restoring competition. AAI's macro-analysis of pharmaceutical mergers challenged by the FTC between 1994-2020 (to date) reveals that many drug makers engaged in serial mergers and/or repeatedly went to the till to purchase divestiture

assets in other challenged mergers. Many of these firms were subsequently acquired by other pharmaceutical manufacturers, sometimes shortly after purchasing divestiture assets.

The effect of the FTC's policy has been the swapping of assets within a relatively small group of large and increasingly powerful firms. Just under 20% of all unique branded and generic firms that engaged in repeated mergers and acquisitions (M&A) and/or purchases of divestiture assets account for almost 45% of pharmaceutical assets 'changing hands' from 1994-2020. Many of the very firms that were the most active in M&A, and as purchasers of divestiture assets, appear as defendants in private, state, and federal non-merger antitrust litigations and in federal criminal indictments. These accumulating lawsuits serve as powerful evidence that something has gone awry with merger policy in the pharmaceutical sector, leading to the exercise of market power by dominant firms and oligopolies.

The FTC's role in managing the allocation and ownership of important pharmaceutical assets through its extraordinary approach toward merger control has unduly involved it in shaping the industry. This resembles a form of 'industrial planning' rather than antitrust law enforcement, which is designed to deter future anticompetitive conduct and relies on market forces to determine market structures. The FTC's policy has also deprived the antitrust community and public of important transparency. Because no challenged merger between 1994-2020 was litigated in federal court, there is no judicial record detailing how highly concentrative mergers were likely to have survived a presumption of illegality. There is thus no way to evaluate claims that pharmaceutical mergers were likely to have delivered lower prices through claimed cost savings or consumer benefits due to improved quality and innovation.

This White Paper begins with background on drug pricing and competition in the pharmaceutical supply chain. It then turns to the drug mergers themselves and the asset divestitures required in FTC consent orders. Next is an assessment of private, state, and federal antitrust cases against the companies involved in M&A and as buyers of divestiture assets. It concludes with policy recommendations on reframing competition policy in the pharmaceutical sector. The FTC, which has devoted considerable resources and expertise to understanding the pharmaceutical sector, should take the lead in reforming its own policy on merger control. Competition problems in pharmaceuticals now rise to the level a public policy concern, addressable only through a coordinated policy response, of which stronger antitrust enforcement and legislative reform should be central components. The imperative for wholesale change in the FTC's merger policy

in the pharmaceutical sector is more pressing than ever. Only robust competition among drug makers will result in the availability and affordability of drugs more generally, but also essential drug therapies and vaccines relating to the COVID-19 pandemic.

Nicolaides, Phedon, '[Application of Article 107\(2\)\(b\) TFEU to Covid-19 Measures: State Aid to Make Good the Damage Caused by an Exceptional Occurrence](#)' (2020) *Journal of European Competition Law & Practice*, Article Ipa026 (advance online article, published 16 June 2020)

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.

Nigam, Mudit and Shreya Chandhok, 'COVID-19 Crisis and CCI's Response: Lessons to be Learned from Australian and British Regulators' (2020) 41(8) *European Competition Law Review* 419-421

Jurisdiction: India

Abstract: Reviews the approach of the Competition Commission of India (CCI) towards co-operation 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.

Ormosi, Peter and Andreas Stephan, '[Should Competition Law be Suspended to Help Deal With the COVID-19 Crisis?](#)' (2020) 39 *Centre for Competition Policy Research Bulletin* 28-33

Jurisdiction: UK

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.

Note: the Competition and Markets Authority document referred to in this article is Competition and Markets Authority, '[CMA Approach to Business Cooperation in Response to COVID-19](#)', (CMA118, 25 March 2020).

Papazova, Mariya, 'Bulgaria: Competition Protection Commission, Antitrust Activity and the COVID-19 Outbreak' (2020) 4(2) *European Competition and Regulatory Law Review* 115-119

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.

Power, Vincent JG, 'Ireland: Competition - COVID-19 Crisis' (2020) 31(8) *International Company and Commercial Law Review* N66-N69

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.

Rakić, Ivana, '[Competition Law in the Age OF COVID-19](#)' (2020) 68 (2) *Anali Pravnog fakulteta u Beogradu* 25-61

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).

Riefa, C, '[Coronavirus as a Catalyst to Transform Consumer Policy and Enforcement](#)' (2020) *Journal of Consumer Policy* (advance online article)

Jurisdiction: UK, with comparison with EU countries

Abstract: A review of the unfair commercial practices (including price gouging) that have emerged in the context of the pandemic lead us to reflect on how effective consumer law enforcement is at this juncture. This article calls for the pandemic to act as a catalyst to review the way consumer law has so far approached markets and their regulation. It argues that now, more than ever, consumer law needs to protect the vulnerable and public enforcement mechanisms must be able to prevent harm as much as possible rather than repair it. Fairness should be by design and not something that is offered to consumers simply as a remedy. The article explores some viable solutions to effect this transformation of consumer policy and enforcement beyond the pandemic.

Schinkel, Maarten Pieter and Abel d'Ailly, '[Corona Crisis Cartels: Sense and Sensibility](#)' (Amsterdam Law School Research Paper No. 2020-31, 2020)

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/II/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.

Tagara, Myrto et al, '[The EU Commission and EU Member State Competition Authorities Issue a Joint Statement on the Application of Competition Law during the COVID-19 Crisis in the Context of the European Competition Network](#)' (2020) *Concurrences e-Competitions Bulletin* (25 March 2020)

Abstract: The life sciences industry is facing unprecedented demands due to COVID-19. From front line carers to researchers and scientists, significant efforts are being put towards caring for those suffering from COVID-19 and preventing the spread of the virus. Amidst the fierce competition to develop vaccines and treatments, there may also be the need to collaborate. As companies develop testing kits, trial drugs, manufacture ventilators, and step up medical supply distribution, they may be concerned about whether their collaboration efforts could draw the scrutiny of competition law enforcers.

The European Commission and EU Member State competition authorities have issued a joint statement on the application of competition law during the COVID-19 crisis in the context of the European Competition Network. While there is recognition that in these extraordinary times cooperation may be necessary, the competition rules remain relevant and fully applicable.

Togo, Federica, 'Italy: Anti-Competitive Agreements – Coronavirus' (2020) 41(9) *European Competition Law Review* N77-N78

Abstract: Notes the Italian Competition Authority's April 2020 communication on co-operation agreements between companies operating in response to urgent situations created by the coronavirus pandemic, including the general criteria to be applied in such circumstances. Highlights the Authority's May 2020 announcement that it was taking no further action over a co-operation project between pharmaceutical distributors involving single-use surgical masks.

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.

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

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

CONSTITUTIONAL LAW

Addadzi-Koom, Maame Efua, '[Quasi-State of Emergency: Assessing the Constitutionality of Ghana's Legislative Response to Covid-19](#)' (2020) *The Theory and Practice of Legislation* 1–17 (advance online article, published 15 June 2020)

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.

Armeanu, Andrei, '[Legal Limitations of the Constitutional Rights of Institutionalized Persons Imposed during the SARS-CoV-2 Pandemic](#)' (Proceedings, Consciens Conference, 28-29 September 2020)

Jurisdiction: Romania

Abstract: The rapid emergence and evolution of the SARS-COV-2 epidemic in Romania has led national state authorities to adopt a series of measures limiting citizens' constitutional rights. These measures were ordered to limit the spread of the pandemic on national territory and were established by Presidential Decree on March 16, 2020. The Presidential Decree no. 195/2020 - on the establishment of emergency status on Romanian territory, allowed the limitation of certain constitutional rights, including those of institutionalized persons, for 30 days. The main rights affected were the right to free movement, the right to intimate, family and private life, the right to education, and the right to private property. Later, the government decree under which the state of alert was ordered extended some of these legal limitations, to the present day. In Romania, the persons in institutions, including the elderly, persons with disabilities and children, remain among the most vulnerable during the current state of alert. In the present study, we will analyse the effects of limiting the constitutional rights of institutionalized persons during the state of emergency and state of alert, pointing out the main issues raised by the Ombudsman and referencing some legal and practical solutions proposed by NGOs and the EU institutions

Attaran, Amir and Adam R Houston, 'Pandemic Data Sharing: How the Canadian Constitution Has Turned into a Suicide Pact' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 91

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.

Bender, Matt, '[Unmuted: Solutions to Safeguard Constitutional Rights in Virtual Courtrooms and How Technology Can Expand Access to Counsel and Transparency in the Criminal Justice System](#)' (2021) 66 *Villanova Law Review* (forthcoming)

Jurisdiction: USA

Abstract: A defendant's fundamental right to a public trial, and the press and community's separate right to watch court have been threatened by the shift to virtual hearings. These independent constitutional rights can be in harmony in some cases and clash in others. They cannot be incompatible. Public interest in criminal justice transparency is increasingly

crystallized, but courts have often become more opaque, which jeopardizes First and Sixth Amendment rights.

This paper addresses the conflict and confronts a key question: how can we be assured that remote and virtual hearings like Zoom arraignments or trials guarantee the same rights as traditional court hearings? Instead of rejecting virtual criminal hearings outright, new proposals are offered for how virtual courtrooms can safeguard constitutional rights. The prevailing belief that criminal defendants should reject virtual trials is questioned. Virtual trials may lead to better outcomes for defendants than traditional trials, specifically during the ongoing pandemic. Beyond preserving rights in a virtual courtroom, the ways technology can improve the criminal justice system are explored.

Through an analysis of existing indigent defense and First Amendment scholarship, the myth that traditional court decorum should trump open court and virtual hearings is addressed. Judicial legitimacy and transparency may benefit when criminal cases are accessible on virtual platforms or livestreamed. Transparency can help safeguard defendants's rights and improve indigent clients's representation and outcomes. Instead of disrupting the courtroom—whether a hearing is virtual or traditional—convenient public access helps a community learn more about the criminal justice system and evaluate cases, judges, and attorneys.

These proposals have significant implications for courts and clients by providing a framework for virtual litigation, and leveraging technology for a more equitable criminal justice system. Livestreams and virtual, remote hearings can improve the right of representation for indigent defendants by increasing access to quality counsel, reducing costs, creating a more competitive legal market, and expanding a client's choice of attorneys.

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.

Blackman, Josh, [‘What Rights Are “Essential”? The 1st, 2nd, and 14th Amendments in the Time of Pandemic’](#) (Liberty and Law Center Research Paper No 20-04, 2020)

Jurisdiction: USA

Abstract: Under conventional constitutional doctrine, courts pose familiar questions. Is a right ‘fundamental’ or ‘non-fundamental’? Is a classification ‘suspect’ or ‘non-suspect’? Should a law be reviewed with ‘strict scrutiny’ or with “rational basis scrutiny? But during the COVID-19 pandemic, a novel question prevailed: was a right ‘essential’ or ‘non-essential.’ If a right was deemed ‘non-essential,’ then the state could regulate, restrict, and even prohibit that right. Modern constitutional doctrine was simply set aside during the emergency. Different states drew different lines. Some states deemed the free exercise of religion and the right to keep and bear arms as ‘essential,’ but access to abortions were deemed ‘non-essential.’ Other states did the opposite: religion and guns were ‘non-essential,’ but abortions were ‘essential.’ And in general, the courts declined to intervene so long as the state also restricted ‘comparable’ activities.

Can the free exercise of religion be anything but essential? Can the sole method of obtaining a firearm be deemed non-essential? And under controlling Supreme Court precedent, can abortions be deemed mere elective surgeries? This article provides an early look at how the courts have interpreted the First, Second, and Fourteenth Amendments during the time of pandemic.

Part I begins with a detailed survey of the emergency lockdown measures issued in March and April of 2020. First, we will study the limits placed on religious worship. Second, we will review how Governors regulated firearm stores—the sole means in many states by which people can obtain a gun. Third, we will recount how four states interpreted their ban on ‘non-essential’ surgeries to prohibit certain types of abortions.

Part II revisits an old, but timely precedent from 1905: *Jacobson v. Massachusetts*. During the COVID-19 pandemic, Governors viewed Jacobson as a constitutional get-out-of-jail-free card. It isn't. Jacobson concerned a challenge based on the Due Process Clause of the Fourteenth Amendment—what we would today call substantive due process. It is a mistake to simply graft Jacobson onto the modern framework of constitutional law.

Part III introduces two competing approaches to understand the free exercise of religion during the pandemic. Chief Justice Roberts articulated the first view in his concurrence in *South Bay Pentecostal Church v. Newsom*. Here, the Court deferred to the government's determination of what is 'non-essential.' Justice Kavanaugh developed the second model in his dissent in *Calvary Chapel Dayton Valley v. Sisolak*. With this approach, the Court does not defer to the government's designation of what is 'non-essential.' Under the Calvary Chapel approach, the free exercise of religion is presumptively 'essential,' unless the state can rebut that presumption.

Part IV extends these two frameworks to the context of the Second Amendment. Under the South Bay framework, prospective firearm owners would have to show that these decisions were irrational. But with the Calvary Chapel approach, the right to sell firearms would presumptively be deemed a 'most-favored right.'

We are still in the early stages of the COVID-19 pandemic. To date, the courts have largely settled on the South Bay approach. Perhaps this framework may have made sense in the tumultuous beginning. However, as our understanding of the pandemic settles, and we learn to live with COVID-19, the courts will resume a normal approach to constitutional law. And Justice Kavanaugh's Calvary Chapel approach charts the path forward.

Brandes, Tamar Hostovsky, '[Solidarity as a Constitutional Value](#)' (2020) *Buffalo Human Rights Law Review* (forthcoming)

Abstract: In the face of the threats posed by the COVID-19 pandemic, Solidarity has become the term of the hour. The World Health Organization organized a 'solidarity series of events', under the hashtag 'together at home', and chose the title 'Solidarity' for the ambitious global initiative to find a treatment to the virus, establishing a 'Solidarity' response fund. Within countries, solidarity was raised as a value requiring the imposition of various social distancing measures

and limitations, needed, it was argued, in order to protect both society as a whole, as well as individuals who were especially vulnerable to the virus.

The different approaches taken by countries in responding to the COVID-19 crisis can, in part, be explained by the different social perceptions regarding the importance of social solidarity and the duties that stem from it. The notion of solidarity, explored below, underlies the web of mutual commitments among members of a community, and, in the case of states, among members of the political community.

This article examines the role solidarity can play when recognized as a constitutional value. Narratives of solidarity are prevalent in constitutions world-wide, both implicitly and explicitly. Despite this prevalence, constitutional scholarship has paid relatively little attention to the notion of solidarity. The article aims to take a step in filling this gap. It calls for recognition and discussion of the significance, potential and perils of recognizing solidarity as a constitutional value and of applying it in constitutional adjudication.

The article argues that despite the liberal aversion of the notion of solidarity, which is understandable in light of potential abuses of the concept to justify limitations of individual freedom, solidarity is a precondition for the existence of just societies and for distributive justice, as well as for ensuring that human rights are equally and inclusively realized.

The article argues that the relationship between collective identity and solidarity is complex, that solidarity is a multi-layered phenomenon, and that these complexities can and should be reflected in the constitutional manifestation of solidarity. Constitutions do and should refer to more than one layer of solidarity, and courts can and should play a part in instilling substance in these layers. Where solidarity is recognizing as a value, it can serve to examine the effect of laws and policies on under-privileged members of society, and as a source for deriving duties towards them.

Finally, the article argues that although constitutional solidarity may intuitively be expected to endorse only intra-state solidarity, that is, solidarity among members of the political community, constitutions can and do endorse notions of transnational solidarity. The article argues that constitutionalism can thus be an important source of 'bottom-up' transnational and global solidarity.

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 Institutions during the Pandemic](#)' (2020) 46(1) *Commonwealth Law Bulletin* 110–123

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.

Civitarese Matteucci, Stefano, 'Italy - The Italian Response to Coronavirus was Constitutionally Legitimate: Was it Suitable as Well?' [2020] (October) *Public Law* 796-798

Abstract: Assesses whether the measures introduced by Italy in response to the coronavirus pandemic were constitutionally justified. Examines whether such Governmental powers were legitimate, the considerations of necessity and urgency, and the proportionality test. Discusses the limited role of Parliament, the confusing level of regulations issued, the tentative nature of

some decisions and whether creeping privatisation of health services is likely.

ConLawNOW (2020) 12(1) - Symposium Issue: [Pandemics and the Constitution](#)

This special issue contains the following articles:

- Henry F Fradella, '[Why the Special Needs Doctrine Is the Most Appropriate Fourth Amendment Theory for Justifying Police Stops to Enforce COVID-19 Stay-at-Home Orders](#)' 1-14
- Ruthann Robson, '[Positive Constitutionalism in a Pandemic: Demanding Responsibility from the Trump Administration](#)' 15-37
- Jeffrey D Jackson, '[Tiered Scrutiny in a Pandemic](#)' 39-55
- Michael Gentithes and Harold J Krent, '[The New Predictive Policing](#)' 57-74
- Kyle J Connors, '[Reevaluating the Role of the CDC](#)' 75-94
- Maggie Davis, Christine Gentry, and Trudy Henson, '[Calling Their Own Shots: Governors' Emergency Declarations During the COVID-19 Pandemic](#)' 95-106

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.

Drinóczi, Tímea and Agnieszka Bień-Kacała, [‘COVID-19 in Hungary and Poland: Extraordinary Situation and Illiberal Constitutionalism’](#) (2020) *The Theory and Practice of Legislation* 1–22 (advance online article, published 23 June 2020)

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.

Draper, Brandon, '[And Justice for None: How COVID-19 Is Crippling the Criminal Jury Right](#)' (SSRN Scholarly Paper ID 3666261, 3 August 2020)

Jurisdiction: USA

Abstract: The jury trial is meant to be the beacon of the criminal justice system in the United States. Amid the COVID-19 pandemic, access to fair and constitutional jury trials has largely come to a halt. Courts correctly decided to stop all jury trials and other in-person proceedings as the nation learned more about a new and deadly virus. Nevertheless, this decision denied access to this important constitutional right. Additionally, courts employed video conference technology such as Zoom and WebEx platforms to conduct arraignments, general docket appearances, and some pretrial hearings. Overall, this technology has greatly assisted in the continued function of most aspects of the criminal justice system.

Four months into the pandemic, some criminal courts are beginning to consider and test two adaptations of jury trials to attempt to meet the needs of the system: (1) trials that are both in-person and compliant with social distancing policies; and (2) trials conducted exclusively via video conference.

This Essay argues that at best, these solutions are grossly unfair to all of those who participate in the criminal justice system. And at worst, they likely violate the Sixth Amendment rights of the accused and create ethical concerns for prosecutors, defense attorneys, judges, and jurors. Despite these legitimate concerns, courts should attempt to resume jury trials that are both in-person and compliant with social distancing policies. Courts may also allow remote trials for defendants who on advice of counsel wish to proceed on that basis. While an imperfect solution, it allows the accused to maintain their Sixth Amendment confrontation right or give a knowing and voluntary waiver, and provides the criminal justice system the best opportunity to mitigate the other issues created to attempt to ensure a fair jury trial.

Dubey, Uttam, '[Right to Emergency Medical Services in India](#)' (SSRN Scholarly Paper ID 3639124, 30 May 2020)

Abstract: The onslaught of the Novel Corona Virus (COVID-19) pandemic has awakened the individuals and governments globally from the delusion of possessing an efficient public health care system to the worst of the nightmares. The nightmare of people from most advanced countries dying on the streets due to non-availability of beds in hospitals is turning into reality during this pandemic.

Although the intellectuals worldwide are busy painting the post-COVID-19 scenario, it is difficult for anyone to paint a conclusive picture of pandemic aftermath. Nonetheless, this pandemic has white-washed the farce created by the States in providing efficient healthcare to its citizens.

The situation in India is much grave. Developed countries worldwide became helpless at the peak of the pandemic as the number of patients exceeded the public health care infrastructure. However, in India, the helplessness in providing adequate medical care is imposed on the citizens due to non-cooperation from private hospitals.

During the pandemic, the private Hospitals, on the one hand, refused to treat non- COVID 19 patients by mandating a COVID 19 negative certificate and on the other hand did not open up their infrastructure for the COVID-19 patients by citing health concerns of its negative patients. This non-cooperation of private hospitals was precipitated by inaction of the government in enforcing their writ on these hospitals.

These dire circumstances compel everyone to ponder upon a pertinent question related to emergency medical care in India. Whether as an Indian citizen, do we have any right to emergency medical care and whether the authorities are doing enough to ensure such right is not violated due to whims of management of private hospitals?

The question is as tricky as any question related to rights of Indian citizens enshrined in Constitution of India as it provides a dream of utopian State for its citizens, like the delusion of the efficient public health care system as stated above. However, Indians most often wake to the reality of their rights trampled upon without any redress by institutions created under the Constitution.

Farber, Daniel A, '[The Long Shadow of Jacobson v Massachusetts: Epidemics, Fundamental Rights, and the Courts](#)' (SSRN Scholarly Paper ID 3635740, 25 June 2020)

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.

Fierlbeck, Katherine and Lorian Hardcastle, 'Have the Post-SARS Reforms Prepared Us for COVID-19? Mapping the Institutional Landscape' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 31

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.

Flynn, Alexandra, 'Municipal Power and Democratic Legitimacy in the Time of COVID-19' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 127

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.

Flynn, Tom, '[Crisis, Opportunism, and Opportunity: How the Pandemic has Exacerbated Pre-existing Constitutional Tensions in the European Union](#)' 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) 51-61 (published 30 June 2020)

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?

Gatter, Robert, [‘Reviving Focused Scrutiny in the Constitutional Review of Public Health Measures’](#) (2020) *Washington University Journal of Law and Policy* (forthcoming)

Abstract: This article re-examines the ‘focused scrutiny’ standard proposed by Prof. Scott Burris in 1989 and argues for its application particularly during an infectious disease emergency such as the COVID-19 pandemic. Focused scrutiny seeks to tie judicial review of the constitutionality of public health measures closely to the facts of the particular disease and to evidence of the efficacy of each governmental action to prevent the spread of that disease, even when courts adopt rational basis testing.

Giacomelli, Luca and Elisabetta Lamarque, [‘The Italian Constitutional Court and the Pandemic’](#) in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Never before have the world’s democracies simultaneously experienced such a major contraction of civil liberties as during the “new” coronavirus pandemic, producing massive debates about the role of government power during times of crisis. This essay focuses on the response provided by constitutional courts to face the emergency. The attitude of the Italian court can be effectively summarized by the following key words: continuity, loyal cooperation, autonomy, step-by-step approach, working methods. From a comparative perspective, the

reaction of many other national and supranational courts was not so different and inspired by the same criteria.

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

Jurisdiction: Ireland

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

Kabumba, Busingye, '[The 1995 Constitution and Covid-19](#)' (2020)

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.

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

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.

Kohm, Lynne Marie, '[The Assault on Parental Rights in America](#)' (SSRN Scholarly Paper ID 3664216, 30 July 2020)

Abstract: It is a well-established constitutional principle protected as fundamental that parents have the right to direct the upbringing of their children. A fit parent is presumed to be the best authority to accommodate the best interests of his or her children. The United States Supreme Court has traditionally protected parental rights, but today in America governments and third parties are interfering with fit parents exercising their rights over their children in caring for their best interests. What is happening in America today to parents is an assault on their rights as parents, resulting in the law being used as a vehicle of opposition to those rights, toward deconstruction of parental authority and America's best interest legal structure. This article considers these concerns, highlighting recent attacks on parental rights and authority in the wake of the Covid-19 pandemic, in life support, in education, in gender dysphoria, illustrating

that parents have been undermined and denied their rights to protect the best interests of their children. Section I details recent events surrounding Covid-19, and then illustrates that long before the pandemic parents have been fighting for the very lives of their children, and losing. Section II discusses state efforts to protect parental rights in statutory code and legislative measures, in the context of constitutional authority already granted to parents to protect the best interests of their children. Section III then examines the difference between children's rights and parental rights to protect the best interests of the child, and why emerging international notions on children's rights should never replace constitutional parental rights in America. They do only to the harm of children and their parental protection. By examining these concerns, this article raises and explains some of the most important policy debates on parental rights, children's rights, and families today. It will reveal the unwitting if not active deconstruction of the family, and how we think about rights and duties between family members, while arguing that the relationship between a parent and child is a constitutionally protected liberty interest that deserves renewed protection under parental rights.

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.

Malecki, Mikolaj and Marek Slawinski, '[The Repressive Nature of Selected COVID-19 Regulations in the Polish Legal System](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The subject of this paper is the question of the constitutionality of the sanctions for violation of restrictions and prohibitions introduced during the outbreak of the SARS-CoV-2 coronavirus epidemic in Poland. The starting point for our considerations is the distinction made by the Polish Constitution between extraordinary and ordinary measures in dealing with dangers. Extraordinary measures (which include, inter alia, the state of a natural disaster) allow for more severe limitations of constitutional rights and freedoms than is permitted by the ordinary ones. The state of epidemic introduced in Poland on March 31, 2020, is an ordinary measure. However, the comparison between sanctions used during this state, and sanctions that are possible to be imposed during the extraordinary state of natural disaster shows that the former are more severe than the latter. This observation leads to the conclusion that the sanctions of the state of epidemic are in breach of one of the basic rules that govern the

limitation of constitutional rights and freedoms in the Polish Constitution, that is the proportionality rule.

Maor, Moshe, Raanan Sulitzeanu-Kenan and David Chinitz, '[When COVID-19, Constitutional Crisis, and Political Deadlock Meet: The Israeli Case from a Disproportionate Policy Perspective](#)' (2020) 39(3) *Policy and Society* Special Issue: States and COVID-19 Policy-Making 442–457

Abstract: This article describes the efforts made by the Israeli government to contain the spread of COVID-19, which were implemented amidst a constitutional crisis and a yearlong electoral impasse, under the leadership of Prime Minister Benjamin Netanyahu, who was awaiting a trial for charges of fraud, bribery, and breach of trust. It thereafter draws on the disproportionate policy perspective to ascertain the ideas and sensitivities that placed key policy responses on trajectories which prioritized differential policy responses over general, nation-wide solutions (and vice versa), even though data in the public domain supported the selection of opposing policy solutions on epidemiological or social welfare grounds. The article also gauges the consequences and implications of the policy choices made in the fight against COVID-19 for the disproportionate policy perspective. It argues that Prime Minister Netanyahu employed disproportionate policy responses both at the rhetorical level and on the ground in the fight against COVID-19; that during the crisis, Netanyahu enjoyed wide political leeway to employ disproportionate policy responses, and the general public exhibited a willingness to tolerate this; and (iii) that ascertaining the occurrence of disproportionate policy responses is not solely a matter of perception.

Massa, Michele, '[A General and Constitutional Outline of Italy's Efforts Against COVID-19](#)' [The Corona Crisis and Fundamental Rights from the Point of View of EU Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: During the COVID-19 pandemic, in Italy no aspect of individual and social life remained untouched, nor did the legal system. Several constitutional problems arose, concerning all the principles which form the core of the republican form of State. After an overview of the COVID-19 outbreak and the main legal tools employed to face it in Italy, some of these problems are surveyed. In brief, at the peak of the emergency, democracy, rights of the human person and

regional and local autonomy have been put to the test, but not breached. However, in the aftermath, during the recovery phase, the solidarity and internationalism principles face particularly difficult challenges, in which the destiny of Italy and the European Union are intertwined.

Massaro, Toni M, Justin R Pidot and Marvin Slepian, '[Constitutional Norms for Pandemic Policy](#)' (Arizona Legal Studies Discussion Paper No 20-29, 25 June 2020)

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.

Mathen, Carissima, 'Resisting the Siren's Call: Emergency Powers, Federalism, and Public Policy' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 115

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.

Migone, Andrea Riccardo, '[Trust, but Customize: Federalism's Impact on the Canadian COVID-19 Response](#)' (2020) 39(3) *Policy and Society* Special Issue: States and COVID-19 Policy-Making 382–402

Abstract: This article explores how Canadian federalism, with its complex mix of competencies, and the country's punctuated gradualism policy style interface with urgent, complex decision-making like the COVID-19 pandemic. We find that while punctuated gradualism favors tailored responses to pandemic management it is weaker when coordination and resourcing are to be undertaken during non-crisis situations and that, while the level of cooperation among Canadian jurisdictions has progressively increased over the years, policy is still almost exclusively handled at the federal, provincial and territorial levels. Furthermore, the model appears to have critical 'blind spots' in terms of vulnerable communities that do not emerge as such until after a crisis hits.

Nomani MZM and Madiha Tahreem, '[Constitutionality and Legality of Corona Virus \(COVID-19\) Induced Lockdowns in India: Limits of Sanction and Extent of Liberation](#)' (2020) 11(3) *International Journal on Emerging Technologies* 14-18

Abstract: The Corona Virus (COVID-19) and its global spread have resulted in declaring a pandemic by the World Health Organization. India rapidly responded and clamped Lockdown from March 25, 2020, to April 14, 2020. The Government legitimized move on the constitutional mandate of Article 47 and Entry 29 of the seventh schedule of the Constitution of India, 1950. It has also utilized time tested quarantine law contained under Indian Penal Code, 1860, and Epidemic Diseases Act, 1897. Such a health emergency was not contemplated under the Constitution of India, 1950; therefore, it has envisioned calamitous situation underpinned Disaster Management Act, 2005, to chart the preventive strategy of COVID-19. The innovation of COVID-19 as disaster and catastrophe fitted into the phrase 'beyond the coping capacity of the community.' The Central Government assumed the role of the custodian to undertake all preventive and anticipatory measures. Because of rising death cases after two weeks of Lockdown, it wanted to extend for the prevention of infectious and contagious diseases further. The paper is a critical appraisal of the constitutionality and legality of COVID-19 induced Lockdown and attendant sanction and liberation in the context of social and egalitarian context.

Padula, Carlo and Giacomo Delledonne, '[Italy: The Impact of the Pandemic Crisis on the Relations Between the State and the Regions](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: An analysis of the impact of the COVID-19 pandemic on the Italian constitutional order must focus on the relations between the State and the regions during the crisis. The pandemic crisis was a national one, although it affected Italian regions unequally. Furthermore, healthcare represents the core of regional policies: for this reason, regions almost inevitably came to the forefront during the crisis. This chapter investigates the regional response to the COVID-19 crisis against the background of the relations between the State and the regions. The chapter is divided into three parts. First, it focuses on the most important legal tool during the crisis, the Prime Minister's decrees, and their impact on the Italian regional model. Second, it focuses on how, in legal terms, the state and regional acts dealing with COVID-19 can coexist. Third, it

presents and the measures adopted by the presidents of the regions for this purpose. In doing so, the chapter focuses on three cases: Lombardy, Veneto, and Campania.

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

Jurisdiction: USA

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

state governments utterly fail to support the efficacy and necessity of their COVID-19 'emergency' actions.

Parmet, Wendy E, '[Rediscovering Jacobson in the Era of COVID-19](#)' (Northeastern University School of Law Research Paper No. 377-2020, 2020)

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 it 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.

Platon, Sébastien, '[Reinventing the Wheel ... and Rolling over Fundamental Freedoms? The Covid-19 Epidemic in France and the "State of Health Emergency"](#)' (2020) *The Theory and Practice of Legislation* (advance online article, published 12 August 2020)

Abstract: In order to cope with the Covid-19 crisis, the French Parliament has adopted an Act creating a new emergency powers regime, dubbed state of health emergency, which is currently in force. The present paper aims at analysing and providing a critical appraisal of this regime. In particular, it will be demonstrated that this regime is rather imbalanced in that it confers important powers to the executive with limited checks and balances. It will also be contended that the creation of a new regime was not necessary, and that it would have been wiser to amend the existing state of emergency.

Raposo, Vera Lúcia, '[Portugal: Fighting CoViD-19 in the Edge of Europe](#)' (2020) (1S) *BioLaw Journal* / *Revista di BioDiritto* 723-730

Note: this special issue contains many relevant articles, but almost all are in Italian only, and we have only included those in English in this bibliography. [Link to the entire journal issue](#).

Extracts from Introduction: Portugal has been praised, amongst its European pairs¹ and outside Europe, for its answer to the CoViD-19 pandemic. The key – or one of the keys – for the Portuguese (moderate) success was the timely declaration of the state of emergency, done in a moment in which the country was not yet in a real public health crisis.... Basically, a large set of acts have been issued, not all of them clear enough, making it difficult to assess the regime under the State of Emergency in Portugal.

The decision to impose the state of emergency was very debated among Portuguese constitutionalists. Some argued that the Constitution does not provide legal grounds to impose compulsory isolation and compulsory quarantine, therefore, such measures could only be imposed under the state of emergency...The necessity to impose the state of emergency in Portugal had a very clear purpose: to provide legal grounds for the suspension of some individual rights and liberties, as required to deal with the pandemic.

Robitaille, David, '[COVID-19 in Canada: The Division of Powers Over Quarantine and Borders](#)' *National Journal of Constitutional Law* (forthcoming 2020-2021)

Abstract: The Canadian Constitution rests on the principle of federalism and its underlying principles of coordinated interpretation, balance between the powers of Parliament and those of the provinces, and the conciliation of diversity with unity. These principles continue to apply in a time of health emergency, like the COVID-19 pandemic. This crisis raised some new issues regarding which order of governments, or both, can regulate and make decisions over matters such like quarantine and interprovincial borders. We will argue that, according to the principles of federalism, those powers must be shared between the federal and the provinces based on their international, interprovincial and local impacts. Our analysis will essentially be prospective since there is no Supreme Court of Canada's decision on those specific head of powers.

Rozenshtein, Alan Z, '[Digital Disease Surveillance](#)' (2021) 70 *American University Law Review* (forthcoming)

Jurisdiction: USA

Abstract: Fighting the coronavirus pandemic will require digital disease surveillance: the use of digital technology to enhance traditional public-health techniques like contact tracing, isolation, and quarantine. But legal scholarship on digital disease surveillance is still in its infancy. This Article fills that gap.

Part I explains why disease surveillance will play a key role in responding to coronavirus and future infectious-disease outbreaks. Part II explains how the 'special needs' exception to the Fourth Amendment's warrant requirement permits almost any rationally designed disease surveillance program. Part III suggests safeguards beyond what Fourth Amendment doctrine currently requires that could protect rights without diminishing surveillance effectiveness, including: review for effectiveness and equality, procedural requirements, and periodic legislative authorization. Part IV proposes a mixed standard for judicial review: courts should require these safeguards under an evolving understanding of Fourth Amendment reasonableness while tempering their review with deference to the political branches. Part IV concludes by outlining how the doctrinal evolution spurred by digital disease surveillance programs—the development of a 'special needs with teeth' standard—might advance a key research agenda in criminal procedure: how to apply the Fourth Amendment to modern, data-driven surveillance regimes.

Shammas, Michael and Michael Pressman, '[Advocacy through the Computer Screen: The Permissibility & Constitutionality of Jury Trial by Video Conference](#)' (SSRN Scholarly Paper ID 3664014, 30 July 2020)

Jurisdiction: USA

Abstract: The coronavirus pandemic has uprooted life as we know it. No institution is immune. As a result of the crisis, trials in every state (jury and bench, criminal and civil) have been continued until later dates. But must they be continued? Can they be constitutionally conducted over remote videoconferencing platforms like Zoom? And can they be conducted digitally even absent the consent of one (or both) parties? While due process concerns may render a digital jury trial unconstitutional in criminal cases, applying a balancing test to our current public health crisis weighs in favor of allowing videoconference jury trials in civil cases. In fact, the right to a

civil jury trial by Zoom may be not only permissible but necessary in order to actualize the Seventh Amendment's protections, especially if the Covid-19 pandemic continues longer than expected. If courts eventually allow digital jury trials, certain pitfalls—such as the possibility of someone recording the proceedings—must be clearly communicated to the parties in advance.

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.

Sullivan, Barry, '[COVID-19 and American Democracy](#)' (2020) 66(102) *Il diritto dell'economia* 123-146

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.

Thomas, Robert H, '[Hoist the Yellow Flag and Spam® Up: The Separation of Powers Limitation on Hawaii's Emergency Authority](#)' (2020) 43 *University of Hawaii Law Review* (forthcoming) 1-52

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.

Tomkins, David, 'Constitutional Law: The Constitutional Challenge to End the COVID Border Closures' [2020] (71) *LSJ: Law Society of NSW Journal* 72-74

Jurisdiction: Australia

Abstract: On 25 May 2020, Clive Palmer and Mineralogy Pty Ltd commenced proceedings in the original jurisdiction of the High Court alleging that Western Australia's ('WA') border restrictions are in breach of s 92 of the 'Constitution'. On 16 June, Kiefel CJ remitted part of those proceedings - essentially the determination of contested questions of fact - to the Federal Court. On 25 August, Rangiah J issued a number of findings of fact and the case is now set to return to the High Court for further argument - most likely over two days before a Full Court in November 2020. Not only is the constitutionality of state border restrictions a matter of significant public interest and practical importance, in the words of the Western Australian Solicitor-General this case may also be 'one of the most significant cases on s 92 for some time'.

Trstenjakin, Verica, '[The Corona Crisis and Fundamental Rights from the Point of View of EU Law](#)' in Ewoud Hondius et al (eds), '[Coronavirus and the Law in Europe](#)' (Intersentia, September 2020)

Abstract: In 2020, the world was surprised by the so-called Corona crisis, which has adverse effects in several areas. Although initially it appeared only as a major public health emergency, it turned into a crisis of solidarity, economic and also legal crisis. The Corona crisis also highlighted some other problems in the EU, in particular the issue of solidarity and the effectiveness of adoption of legal acts and decision-making. The issue of fundamental rights violations was often raised. The Member States have adopted specific measures, which have also restricted fundamental rights in certain cases. In practice, the protection of public health has almost always been balanced against all fundamental rights, which were at least partially restricted. There were restrictions based on considerations for public health such as: restriction of free movement, infringements of protection of data protection, and restriction of free economic activities and enterprise (e.g. compulsory closure of shops). Against this background, this contribution provides a protection of fundamental rights in the EU, their possible limitations and restrictions, and discusses key Charter's fundamental rights during the Corona crisis.

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

20(4) *Without Prejudice* 20-22

Jurisdiction: South Africa

Extract: Section 21 of our Constitution concerns the rights to freedom of movement and residence, in terms of which every person is guaranteed the right to freedom of movement and every citizen is guaranteed the right to enter, remain and reside anywhere in the Republic. The importance of the rights enshrined in s21 cannot be overstated. Its effect is to preclude the former policy of segregation and the severe restrictions imposed on the black populace. It, like many of the rights enshrined in our Constitution, also serves as a stark reminder of the conditions and status quo that warranted the inclusion of a right seemingly manifest. Remarkably, this section is not comprehensively dealt with in some of our most esteemed academic works dealing with our Constitutional Law. The reason for this is, in all likelihood, axiomatic – this right is so manifest that academic scholars have found neither the need nor the inclination to expand on it. There are also not (as of yet) any groundbreaking Constitutional

Court judgments in our jurisprudence opining on this section, as this has never been seriously challenged in our young democracy. But now the national lockdown is infringing upon this very right; our personal movements are curtailed, which halts our ability to trade and disallows something as significant as attending funeral of a loved one. How is it that this right can be so fundamentally and so drastically impeded?

Wetter, Sarah and Eric A Friedman, '[U.S. Withdrawal From the World Health Organization: Unconstitutional and Unhealthy](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 83-88

Abstract: On May 29, 2020, during the same week that U.S. deaths from COVID-19 topped 100,000, President Trump announced that the United States would end relations with the World Health Organization (WHO). In the beginning of July, the administration formally notified the United Nations of the decision to withdraw. Withdrawing the United States from the WHO would threaten both national and global health interests. The loss of U.S. funding would derail WHO's ability to detect and respond to emergencies like COVID-19, and could reverse hard-won progress in combatting infectious and noncommunicable diseases, and addressing the social determinants of health globally. The United States also would cede its position as a global health leader, curtailing its ability to engage in global health diplomacy. Yet President Trump's apparent attempt to unilaterally withdraw the United States from the WHO raises major constitutional implications, and Congress must not let the move go unchallenged. As the United States entered the WHO through a joint congressional resolution, the same process should be required to exit the WHO. That joint resolution also imposes withdrawal requirements of one year's notice and full payment of dues for that year. These two conditions indicate Congress' intent to maintain a role in any decision to vacate the WHO. Congress must now step into that role and prevent the president from ending WHO membership and funding.

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.

Wiley, Lindsay F, '[Federalism in Pandemic Prevention and Response](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 65-70

Jurisdiction: USA

Abstract: Federal-state conflicts over business regulations, controls on personal movement, and financial support and coordination of supply chains have dominated headlines during the coronavirus pandemic. States hold the reins on most community mitigation measures (e.g., quarantine and isolation, physical distancing, and mask wearing), which may vary depending on local conditions. The federal government has authority to promulgate national guidelines and surveillance capabilities that states rely on when implementing, modifying, and easing community mitigation measures, but these guidelines have been inconsistent or absent. The federal government has provided limited financial support and coordination of supply chains to provide a foundation for state and local implementation of more targeted mitigation measures, which depend on widespread testing and disease surveillance. Federal-state conflicts have stymied efforts to ramp up and coordinate need-based distribution of resources for: 1) implementing widespread testing, tracing, and supported isolation and quarantine of

individuals; 2) ensuring widespread availability of adequate personal protective equipment for health workers, other essential workers, and the general public; and 3) ensuring widespread access to therapeutics and vaccination based on equitable and public health-based criteria.

Williamson, Myra, '[A Stress-Test for Democracy: Analysing the New Zealand Government's Response to the COVID-19 Pandemic from a Constitutional Perspective](#)' (2020) *Kuwait International Law School Journal*, Special Issue on COVID-19 and the Law (forthcoming)

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 the pandemic. 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

Barrett, Nick, 'Straws Worth Clutching At' (2020) 31(6) *Construction Law* 1

Jurisdiction: UK

Abstract: Discusses the views of economic forecasters on how the economy will respond following the COVID-19 lockdown, and the renewed focus of the UK and devolved governments on infrastructure investment. Highlights research by Turner & Townsend on the impact of COVID-19 on the construction industry and how it may be able to improve productivity through smarter working practices.

Bowes, Ashley, 'Emergency Covid-19 Grants to Help Heritage Projects Unveiled' [2020] (9) *Journal of Planning and Environment Law* 983-984

Jurisdiction: UK

Abstract: Highlights the announcement by Historic England that grants from the COVID-19 Emergency Response Fund will be made to 70 heritage projects. Details the purpose of the grants, the maximum amounts available, and the types of project that have benefitted, including Aldeburgh's heritage collections and the Mary Rose Museum in Portsmouth.

Bryden, Chris and Georgia Whiting, 'To Terminate or not to Terminate, that is the Question' (2020) 31(6) *Construction Law* 27-29

Jurisdiction: UK

Abstract: Examines case law on: the right of an innocent party under common law to treat a contract as repudiated where there is no express termination clause; what amounts to a repudiatory breach; how the innocent party can minimise the risk of being found to be in repudiatory breach of contract themselves; and how the risk of losing the right of election can be minimised including where a potential repudiatory breach is cured prior to purported repudiation.

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

Jurisdiction: UK

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

Caine, Catherine Ann, ‘Applying for Development Consent During Lockdown: The Sizewell C Nuclear Power Station’ (2020) 22(2) *Environmental Law Review* 81-84

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.

Cannon, Josef and Cristina Howick, ‘Disinfectant’ [2020] (9) *Journal of Planning and Environment Law* 979-982

Jurisdiction: UK

Abstract: Discusses, using an analogy with disinfectant’s role in combating COVID-19, the potential effects of the coronavirus pandemic on UK housebuilding targets. Reflects on the cessation of housebuilding, the likelihood of recession, and whether a “tilted balance” would help the planning system to deliver homes. Considers whether planning permission actually results in new houses, and the arguments for relaxing the ban on green belt development.

Clark, Gordon, ‘Scotland’s Divergent Path of Planning Reform’ (2020) 2036 *Estates Gazette* 42

Jurisdictions: Scotland and England

Abstract: Contrasts planning reform in Scotland and England, focusing on use classes, permitted

development, proposals for future reform and COVID-19-related changes.

Findlay, David, 'Don't Go it Alone' (2020) 2039 *Estates Gazette* 63

Jurisdiction: UK

Abstract: Explains the importance for valuers of collaborating with letting agents, capital markets peers and clients during the coronavirus pandemic, in light of the RICS' recommendation in March 2020 that a material valuation uncertainty clause (MVUC) be included in valuation reports. Notes that, although the MUVU has seen a gradual exclusion as recovery has progressed, the RICS still endorses the inclusion of a market condition clause.

Holdstock, Emily, 'Six Months On' (2020) 381 *Property Law Journal* 1-5

Jurisdiction: UK

Abstract: Reflects on the impact of the COVID-19 pandemic on the construction industry. Discusses contractual risk allocation and key provisions in both the NEC and JCT suites of contracts, negotiation of new construction contracts, and the implications of contractor insolvency.

Hughes, Paul, 'COVID-19 and Construction Contracts' (2020) 38(12) *Irish Law Times* 179-184

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.

Kirkham, Karen 'Hard Cases Make Bad Contracts' (2020) 31(6) *Construction Law* 6-7

Jurisdiction: UK

Abstract: Examines the implications of rare or unforeseen compensation events or force majeure for JCT and NEC construction contracts in light of the impact on the construction

industry of the COVID-19 pandemic. Argues that crisis-driven amendments to contracts may result in excessive risk for the contractor and prove to be ineffective.

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.

Longley, Nick, 'COVID-19 and the Concept of Damage for Construction Insurance Claims' (2020) 36(1) *Australian Insurance Law Bulletin* 11–14

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.

Massey, Peter and James Hallas, 'Covid-19 and the Challenges for Implementing Changes to the Building Safety Regime' (2020) (July / August Supplement) *Housing Law Monitor* vii-ix
Jurisdiction: UK

Abstract: Reports on Government pledges to ensure building safety measures are a continued focus, despite the coronavirus pandemic, which include: the introduction of a new national building Safety Regulator; reforms to the duty holder regime; improving resident engagement; increased regulation of construction products; and promoting competence in the construction industry.

McLeod, Glen, Chelsea White and Lea Hiltenkamp, 'COVID-19 and Its Impact on Town Planning Law' (2020) 47(4) *Brief* 10–11
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 years¹ or the implementation of a subdivision approval within the statutory period of three or four years² (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?

Quinn, Kelly, 'Suspension of Construction Contracts in the Time of COVID-19' [2020] (May) *New Zealand Law Journal* 144-147

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.

Sergeant, Michael, 'Variations and COVID-19 Claims' (2020) 15 *Building* 40-41
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.

Stewart, Edward et al, 'Storm Covid Blows Through the Wind Industry' (2020) 31(6) *Construction Law* 12-13
Jurisdiction: UK

Abstract: Analyses the effect of COVID-19 on the wind power industry where forecasts estimate reductions as high as 9GW in 2020 installations, and what reliefs there may be for such projects under FIDIC Silver Book 1999 edition.

Summerell, Tracey, 'Good Behaviour' (2020) 31(6) *Construction Law* 33

Abstract: Considers the UK Government's call for good contractual behaviour by parties to construction contracts to support an economic recovery following the COVID-19 pandemic, and how businesses can observe best practice in meeting their contractual obligations.

Turner, Duncan and Amy Roberts, 'Covid: A Catalyst for Change?' (2020) 31(6) *Construction Law* 24-26
Jurisdiction: UK

Abstract: Examines the legal implications relating to the implementation of new technologies and processes that aim to help the construction industry ensure compliance with ongoing COVID-19-related restrictions in the workplace and how such technologies may be adopted in the longer term. Highlights the need for the purchaser to carefully review contracts with suppliers of such technology.

Viljoen, Nick, 'Covid-19 and Change in Law' 31(6) *Construction Law* 21-23
Jurisdiction: UK

Abstract: Considers whether changes to a contractor's working methods or procedures in compliance with the Government's COVID-19 Standard Operating Procedures could qualify as a change in law or a variation or whether such changes fall within the principal contractor's pre-existing obligations under the Construction (Design and Management) Regulations 2015.

Vines, Katherine, Scott Watson and Steve Swan, 'Lock down Your Rights: Practical Tips for Administering Construction Contracts during COVID-19' (2020) 31(4) *Australian Construction Law Bulletin* 45-47

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.

Wright, John D, 'Covid-19: The Insurance Implications' (2020) 31(6) *Construction Law* 30-32
Jurisdiction: UK

Abstract: Discusses what insurance covers may be applicable and to what extent losses may be recoverable in COVID-19-related claims where "fundamental" risks including pandemics are generally outside the scope of the insurance market. Highlights the need for a joint approach

between insurers and the Government to deal with the financial implications of future pandemics

CORPORATIONS LAW

Literature on corporate insolvency and restructuring are listed below under the *Insolvency* heading.

Literature on corporate/business insurance is listed below under the *Insurance* heading.

Alon-Beck, Anat, '[Times They Are A-Changin': When Tech Employees Revolt!](#)' (2020) *Maryland Law Review* (forthcoming)

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 company depends on, then, as long as the decision is an informed calculated business decision, the director is protected by the BJR rule.

Amm, Michael D and J Robert S. Prichard, 'The Post-Pandemic World: Key Considerations for Business Leaders' (22 July 2020) 5 *Emerging Areas of Practice Series - COVID-19 (Coronavirus)* Westlaw Canada
Jurisdiction: Canada

Introduction: As companies emerge from a protracted crisis mode--evolving from their immediate response to the COVID-19 pandemic to managing through the crisis and preparing for resumption of on-site operations--business leaders have been stabilizing their organizations and are looking ahead to plan for a post-pandemic world.

How they address the strategic challenges before them will determine the success of their organizations for years to come. Below we consider some key themes that business leaders are navigating.

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.

Atwell, Barbara L, 'From Public Health to Public Wealth: The Case for Economic Justice' (2019) 108(3) *Kentucky Law Journal* 387–430

Extract from Introduction (page 392): This Article examines how we can overlay the principle of serving the common good, which undergirds public health law, onto financial well-being. It suggests that we apply public health law principles to corporate law and culture. In matters of public health, we view quite broadly states' police power to protect the public good. Government is also empowered to protect the general welfare in matters of financial well-being. Using the "general welfare" as a guidepost, this Article challenges the conventional wisdom that corporations exist solely to maximize profit and shareholder value to the exclusion of virtually everything else.² It proposes two areas of change for improving our collective financial well-being. First, it suggests new rules for corporate board composition and accountability, specifically, proposing the elimination of the business judgment rule for executive compensation decisions. Second, it proposes that employees of large corporations elect 40% of the board members. Finally, this Article also highlights the link between financial wellbeing and democracy and urges that voting rights and campaign finance laws be strengthened. Part I of this Article explores the community-focused mission of public health law. Part II examines the more individualistic nature of corporate law and culture. Part III suggests policy changes that would apply community-focused public health law concepts to the economy, making for a more equitable society.

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.

Bernstein, Adam and Paul Taylor, 'Coronavirus Update: Actions for Business to Consider' (2020) 44(3)

Company Secretary's Review 3-16

Jurisdiction: UK

Abstract: Examines COVID-19-related developments that businesses should consider: HMRC's aim to recoup monies falsely and fraudulently claimed under the Coronavirus Job Retention Scheme; Government support for businesses facing eviction due to the impact of the coronavirus; the Government-supported Bounce Back loan; and the effect of the Corporate Insolvency and Governance Act 2020.

Bullock, Susy and Georgina Peters, 'Directors' Duties in the Age of COVID-19: Where to From Here?

(2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 445-451

Abstract: Reviews changes to directors' environmental, social and governance duties arising from the coronavirus pandemic. Examines key features of corporate governance prior to COVID-19, the growing focus on investors, the main reforms affecting the banking and financial sectors, and how they interact with the regime under the Companies Act 2006, including the duty under s.172 to promote the company's success. Considers the duty to distressed companies.

'Chartered Governance Institute Issues New Guidance on Shareholder Meetings' (2020) 41(10) *Company*

Lawyer 317-318

Jurisdiction: UK

Abstract: Highlights the Chartered Governance Institute's July 2020 publication of "[Shareholder Meetings Under the Corporate Insolvency and Governance Act 2020](#)", updating its guidance on annual general meetings during the coronavirus pandemic. Details the organisations involved in producing the update, and summarises the issues it covers, including how shareholder meetings

may be held under the 2020 Act, and companies' rights to limit attendance.

Note: link to [Corporate Insolvency and Governance Act 2020](#)

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.

Christensen, Sharon, 'Corporate Signing Goes Digital' (2020) *Australian Property Law Bulletin* 72-74

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 face due to negligent advice in the advent of Covid-19 pandemic. It mentions that COVID-19 pandemic has caused historic losses across financial markets and business, exacerbated by the oil price war between OPEC and Russia. It also mentions about addressing claims related to disadvantageous transactions in the situation.

Crabb, John, 'World on Pause' [2020] (Summer) *International Financial Law Review* 8-11

Abstract: Reports on corporate finance developments during the coronavirus pandemic, including the suspension of share buybacks, due diligence in mergers and acquisitions, private

investment in public equities deals, postponed annual general meetings, and material adverse change clauses.

Du Plessis, Jean and Andrea Anastasi, '2020 Vision: Current Reflections and Stakeholder Governance in a Post-COVID-19 World' (2020) 37(7) *Company and Securities Law Journal* 495-501

Abstract: COVID-19 is rapidly changing the world. How will it affect the unsolved simmering tensions between the interests of shareholders and the interests of other corporate stakeholders? This note explores how the COVID-19 "systemic shock" will cause a welcome corporate governance shift from short-term monetary gain towards a long-term corporate outlook.

Enriques, Luca, '[Pandemic-Resistant Corporate Law: How to Help Companies Cope with Existential Threats and Extreme Uncertainty During the Covid-19 Crisis](#)' (Law Working Paper No 530/23020, European Corporate Governance Institute, 2020)

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 pretence 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.

Freeburn, Lloyd and Ian Ramsay, '[Capital Raising by Companies During the COVID-19 Crisis: An Analysis of Recent ASX Reforms](#)' (2020) 37(7) *Company and Securities Law Journal* 502-507

Jurisdiction: Australia

Abstract: The effects of the COVID-19 crisis have driven many listed Australian companies to raise emergency capital. These share issues have been facilitated by a relaxation of the rules applying to capital raising by the Australian Securities Exchange, a move supported by the Australian Securities and Investments Commission. The reforms to the rules draw on the experience of the financial crisis in 2008 - 2009. They are designed to assist companies adversely affected by the COVID-19 crisis to raise capital to survive the crisis. The nature of the reforms and the capital raisings to which they relate have been the subject of competing concerns. In particular, the enhanced disclosure requirements that have accompanied the relaxation of the capital raising rules have been criticised by some as unwarranted and by others as insufficient. In this research note, the authors provide information on the number of capital raisings since the beginning of COVID-19 and evaluate the competing arguments regarding the recent capital raising reforms.

Guest, Lara et al, 'How to Reduce Exposure Associated with Pandemic-Related Corporate Misconduct' (22 July 2020) 2 *Emerging Areas of Practice Series - COVID-19 (Coronavirus)* Westlaw Canada

Jurisdiction: Canada

Introduction: The economic and workplace upheaval associated with the COVID-19 pandemic has placed unique and intense pressures on businesses and market sectors.

History has taught us that the more downward pressures there are on businesses, the more likely that bad employee and business partner behavior will occur. This kind of conduct can give rise to class action and regulatory liability.

At the same time, work-from-home protocols, travel restrictions and shifting demands within workplaces can put a strain on investigative priorities. However, proactive, focused and remedial internal review and investigation at the first sign of questionable behavior should continue to be prioritized as a powerful tool to mitigate and neutralize the pernicious effects of misconduct.

This article highlights issues that business leaders should be on the watch for, and how they should mobilize to address them in our changed and challenged workplaces.

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'.

Hill, Maud, 'South African M&A: The COVID-19 Legacy' (2020) 20(6) *Without Prejudice* 12–13

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.

Keanly, Kendall and Belinda Scriba, 'Decisions by Companies during COVID-19 Lockdown: Oppressive or Prejudicial?' (2020) 20(6) *Without Prejudice* 6–7

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.

Lalafaryan, Narine, '[Material Adverse Change Uncertainty: Costing a Fortune If Not Corporate Lives](#)' (2020) *Journal of Corporate Law Studies* (online advance article, published 23 July 2020)

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.

Larcker, David F et al, '[The Spread of Covid-19 Disclosure](#)' (Rock Center for Corporate Governance at Stanford University Closer Look Series: Topics, Issues and Controversies in Corporate Governance No CGRP-84, 29 June 2020)

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?

Levenstein, Eric, Roxanne Webster and Malachizodok Mpolokeng, 'Business Rescue When Liquidation Proceedings Have Been "Initiated"' (2020) 20(6) *Without Prejudice* 8–9

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.

Li, Kai et al, '[The Role of Corporate Culture in Bad Times: Evidence from the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3632395, 21 June 2020)

Abstract: After fitting a topic model to 79,597 COVID-19-related paragraphs in 11,183 conference calls over the period January to April 2020, we obtain measures of firm-level exposure and response to COVID-19 for 3,019 U.S. firms. We show that despite many different ways through which COVID-19 affects their operations, firms with a strong corporate culture do better in the midst of a pandemic than their peers without a strong culture. Moreover, firms with a strong culture are more likely to emphasize community engagement and adopt digital technology, and are no more likely to engage in cost cutting than their peers without a strong culture. To explore the channels through which culture makes firms resilient to the pandemic, we show that firms with a strong culture have higher sales per employee and lower cost of goods sold per employee during the first quarter of 2020. Our results provide support for the notion that corporate culture is an intangible asset designed to meet unforeseen contingencies as they arise (Kreps 1990).

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

Jurisdiction: USA

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

Miles, Roger and Chris Stears, 'Getting the Measure of "Good Business Culture"' (2020) 41(10) *Company Lawyer* 320-323

Jurisdiction: UK

Abstract: Discusses how the coronavirus pandemic has assisted regulatory efforts to require financial businesses to rate and report on their moral health. Notes the sense of community purpose demonstrated by some firms, their initiatives to foster psychological safety and promote true diversity, and efforts to establish revised reporting benchmarks for culture and

conduct.

Miller, Robert T, '[Material Adverse Effect Clauses and the COVID-19 Pandemic: How Sophisticated Parties Allocate Risk Contractually](#)' (SSRN Scholarly Paper ID 3707282, 7 October 2020)

Abstract: Currently pending in the Delaware Court of Chancery and other courts around the country are numerous cases in which the parties to a public-company merger agreement are disputing whether the target (the company being sold) has suffered a 'material adverse effect' (an MAE) because of the COVID-19 pandemic. Tremendous amounts of money are at stake in such cases. In the LVHM-Tiffany transaction, for example, if Tiffany has suffered an MAE, LVHM may terminate the agreement and walk away from the deal; otherwise, it will likely have to close and pay the full \$16.6 billion purchase price for a company that, it says, is no longer worth anywhere near that amount. Sophisticated commercial parties allocate between them risks that may materialize during the pendency of the merger through MAE clauses, extremely elaborate contractual provisions that have given rise to more litigation than any other standard provision in public-company merger agreements. This short essay considers how courts will construe MAE clauses in connection with the COVID-19 pandemic and, in so doing, explains more generally how sophisticated parties allocate risks efficiently in order to create value in business combination transactions.

Miller, Robert T, '[Material Adverse Effect Clauses and the COVID-19 Pandemic](#)' (University of Iowa Legal Studies Research Paper No 2020-21, 2020)

Jurisdiction: USA

Abstract: This paper considers whether the COVID-19 pandemic, the governmental responses thereto, and actions taken by companies in connection with both of these constitute a "Material Adverse Effect" (MAE) under a typical MAE clause in a public company merger agreement. Although in any particular case everything will depend on the exact effects suffered by the company and the precise wording of the MAE clause, this paper concludes that, under a typical MAE clause, given the current tremendous contraction in economic activity, most companies will have suffered a material adverse effect as such term is used in the base definition of most MAE clauses. The question thus becomes whether the risks of a pandemic or of governmental responses thereto have been shifted to the acquirer under exceptions to the base definition.

This paper considers some of the difficult causal questions that would arise in answering this question, including the relation of actions taken by the company to remain solvent while suffering the effects of COVID-19 and governmental lockdown orders, and concludes that, in some instances, a company will have suffered an MAE even if the MAE clause contains exceptions for pandemics, changes in law, or both.

Niekerk, Bouwer van and Parveen Munga, 'A Perspective on Directors' Duties in the Time of COVID-19' (2020) 20(5) *Without Prejudice* 16–18

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.

Nili, Yaron and Megan W Shaner, '[Back to the Future? Reclaiming Shareholder Democracy Through Virtual Annual Meetings](#)' (University of Wisconsin Legal Studies Research Paper No 1606, 26 August 2020)

Abstract: From demanding greater executive accountability to lobbying for social and environmental policies, shareholders today influence how managers run American corporations. In theory, shareholders exert that influence through the annual meeting: a forum where any shareholder, large or small, can speak their mind, engage with the corporation's directors and managers, and influence each other. But today's annual meetings, where a widely diffused group of owners often vote by proxy, are largely pro forma: only handful of shareholders attend the meeting and voting results are largely determined prior to the meeting. In many cases, this leaves Main Street investors' voice unspoken for. But modern technology has the potential to resurrect the annual meeting as the deliberative convocation and touchstone of shareholder democracy it once was. COVID-19 has forced most American corporations to hold their annual meetings virtually. Virtual meetings allow shareholders to attend meetings at a low cost, holding the promise of re-engaging retail shareholders in corporate governance. If structured properly,

virtual meetings can reinvigorate the annual meeting, reviving shareholder democracy while maintaining the efficiency benefits of proxy voting. The Article makes three key contributions to the existing literature. First, using a comprehensive hand collected dataset of state reactions to COVID-19 and of all annual meetings held between March 11 and June 30, 2020, it offers a detailed empirical account of the impact that COVID-19 and the move to virtual annual meetings had on shareholder voting. Second, it uses the context of COVID-19 to show how modern-day annual meetings have drifted away from its democratic function. Finally, the Article argues that technology can revive the shareholder democracy goals of annual meetings, and underscores how virtual meetings can meet that important goal.

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.

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

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

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

international liquidity and trade flows

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

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

Quaid, Jennifer A, 'Balancing Risk and Reward in the Time of COVID-19: Bridging the Gap Between Public Interest and the "Best Interests of the Corporation"' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 233

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.

Schwartz-Ziv, Miriam, '[How Shifting from In-Person to Virtual Shareholder Meetings Affects Shareholders' Voice](#)' (SSRN Scholarly Paper ID 3674998, 16 August 2020)

Abstract: Shareholder meetings are one of the only opportunities for most investors to interact directly with management. Due to Covid-19, however, shareholder meetings have moved to a virtual format. Analysis of transcripts and recordings of in-person and virtual shareholder

meetings in 2019–2020 shows that, relative to in-person meetings, the overall time of virtual meetings is 18% shorter, and 29% less time is spent by firms on answering each question. These findings indicate that communication between companies and shareholders is more limited at virtual meetings. To examine if shareholders face challenges in their attempts to increase such communication in virtual meetings, I construct a dataset on shareholders' attempts to submit questions to virtual shareholder meetings and document several tactics firms use to avoid addressing them. For example, firms explicitly state that no (additional) questions were submitted, whereas I document that multiple questions were submitted by shareholders, but were ignored. Finally, a mechanism that imposes severe restrictions on shareholders' ability to submit questions at virtual shareholder meetings is uncovered: the use of a non-Broadridge platform to broadcast the meeting. Overall, the paper documents that with regard to 55% of the firms to which shareholders attempted to submit questions, shareholders faced obstacles. The paper concludes with policy recommendations on how virtual shareholder meetings can be designed in ways that foster communication between management and companies.

Society for Corporate Governance Nigeria, '[An Insight to the Corporate Governance Implications of Changes to the Companies and Allied Matters Act 2020](#)' (SSRN Scholarly Paper ID 3673326, 13 August 2020)

Abstract: The Companies and Allied Matters Act (CAMA) can be accurately described as the bible or grundnorm of corporate dealings and governance in Nigeria, which should account, in part, for the pomp and pageantry ensuing the August 7th, 2020 presidential assent of the CAMA 2020 Bill into law. As it signifies the first major overhaul of the CAMA 1990 (its predecessor) which was crafted in line with the English Companies Act of 1985 and although its English compadre has undergone numerous amendments since its inception, the CAMA 1990 continued its reign, which accounts for the overwhelming buzz following its repeal. The other reason can be cited from the innovations embedded in the Seven (7) Part, Eight Hundred and Seventy (870) sections of the CAMA 2020, with about 167 new sections, some of which could not have come at a better time. This is so, seeing as boards and management alike have been thrown into unique perplexing positions as they continue to navigate their corporations through the unusual normal brought about by the COVID 19 pandemic and efforts to flatten the curve of infected cases. For instance, one of the unique perplexing positions for corporates was, could companies hold

AGMs virtually in Nigeria? To which, the CAMA 1990 did not clearly prescribe the mode of conducting such meetings. Hence, leaving eager companies, at the time, to fall to the cardinal principle of law, that what is not expressly forbidden is permitted. CAMA 2020 remedies this as it provides for remote or virtual general meetings. This is just one of several innovations inserted into the new Act. This explains the thrill surrounding its presidential assent and reasons as to the expectations of these new sections as well as the amendments to our body of corporate law. This paper provides an insight and analysis of relevant introductions of the CAMA 2020 as it relates to governance and postulates how these provisions will affect corporate governance going forward

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

Abstract: This Article charts the decline of the two leading twentieth-century paradigms of corporate governance: the agency-cost theory, which produced the limited 'monitoring board,' and the 'separate realms' theory, which deferred consideration of all matters other than profit to government regulation. Repeated stock market crashes and hedge fund activism have exposed the limits of the agency-cost theory. A global pandemic and financial crisis, investor demands for corporate social responsibility and stewardship, and corporations' own participation in the political process have made separate realms thinking nearly irrelevant. We argue that, while much of corporate law theory remains constrained by these twin paradigms, the practice of board governance has largely moved beyond them. The economic shock of the COVID-19 pandemic, in particular, has sent public company boards into high gear, forcing them to look beyond stock prices, to engage the firm's full capacity for information gathering and synthesis, and to actively command the firm's systems of internal and external communication. Even before a global pandemic placed heightened demands on corporate boards, the trend toward information-based governance was well underway, catalyzed by new legal requirements, industry best practices, committee charters, fiduciary duties, and investor demands for more active board governance. It has been observable in audit committees' increased participation in financial reporting, the expanding application of boards' knowledge about the firm to strategic advising and to executive compensation decisions, and boards' greater role in decision-making about risk management, legal compliance, and ESG matters. To

capture the board's investment in data gathering, deliberation, and reporting processes as constitutive of the firm's status, and the board's strategic management and authoritative deployment of knowledge and communication, we label this new board governance 'informational governance.' Informational governance includes a robust role for corporate boards in communicative action—the active creation and deployment of the firm's self-knowledge—recognizing an important, value-creating role for boards that has long been discouraged by the 'monitoring board' conceit. Focusing on informational governance helps sharpen our understanding of the board's role in corporate strategy, an overlooked subject in the corporate law literature, but one that has assumed new importance in the postpandemic era. We identify some areas in which the law is likely to evolve as this new, technologically-enhanced, information-rich paradigm continues to cohere.

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

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

Walters, Adrian, 'The Small Business Reorganization Act: America's New Tool for SME Restructuring for the COVID and Post-COVID Era' (2020) 41(10) *Company Lawyer* 324-325

Abstract: Highlights the passage of the US Small Business Reorganization Act 2019 and its implications for corporate restructuring in the wake of the coronavirus pandemic. Reflects on its key provisions, its aim of facilitating consensual plans of organisation within short timeframes and at low cost, the significant role of the supervisory trustee, and the difficulties it is likely to face.

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

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

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.

Zetzsche, Dirk A et al, '[The COVID-19-Crisis and Company Law - Towards Virtual Shareholder Meetings](#)' (University of Luxembourg Faculty of Law, Economics & Finance WPS 2020-007, 2020)

Abstract: Legislation responding to COVID-19 allows us to examine how, and to what effect, the corporate governance framework can be amended in times of crisis. Almost all leading

industrialized nations have already enacted crisis legislation in the field of company law. Here, given the difficulties or indeed the impossibility of conducting in-person meetings currently, the overall trajectory of company law reforms has been to allow for digitalization. We note five fields in which legislators have been particularly active. First, the extension of filing periods for annual and quarterly reports to reflect the practical difficulties regarding the collection of numbers and the auditing of financial statements. Second, company law requires shareholders to take decisions in meetings – and these meetings were for the most part in-person gatherings. However, since the gathering of individuals in one location is now at odds with the measures being implemented to contain the virus, legislators have generally allowed for virtual only meetings, online-only proxy voting and voting-by-mail, and granted relief to various formalities aimed at protecting shareholders (including fixed meeting and notice periods). Third, provisions requiring physical attendance of board members, including provisions on signing corporate documents, have been temporarily lifted for board matters. Fourth, parliaments have enacted changes to allow for more flexible and speedy capital measures, including the disbursement of dividends and the recapitalization of firms, having accepted that the crisis impairs a company's equity. Fifth and finally, some countries have implemented temporary changes to insolvency law to delay companies' petitioning for insolvency as a result of the liquidity shock prompted by the imposition of overnight lockdowns. This working paper seeks to (1) document the respective crisis legislation; (2) assist countries looking for solutions to respond rapidly and efficiently to the crisis; (3) exchange experiences of crisis measures; and (4) spur academic discussion on the extent to which the crisis legislation can function as a blueprint for general corporate governance reform. Countries considered in full or in part include Australia, Austria, Belgium, Canada, China, France, Germany, Hong Kong, India, Italy, Luxembourg, the Netherlands, Norway, Portugal, Singapore, South Korea, Spain, Switzerland, Thailand, the United Kingdom, and the United States. Readers are encouraged to highlight any inaccuracies on the part of the authors in their presentation of the respective laws, and to bring further crisis-related legislation not considered in this working draft to the attention of the authors. Moreover, readers are invited to indicate where there is room for improvement therein, and/or to signal the need for policy reform.

Zhou, Haiyan et al, 'Optimising Business Environment During the COVID-19 Epidemic: China's Experience' (2020) 41(10) *Company Lawyer* 332-334

Abstract: Reviews the measures implemented by China during the coronavirus pandemic to promote a business-friendly environment that follows the rule of law. Examines key features of initiatives to improve the administrative efficiency of the approval process needed to establish a business, strengthen information disclosure to protect the interests of minority shareholders, facilitate online litigation, and optimise the conduct of bankruptcy proceedings.

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

Abstract: This Article presents a critique of corporate governance theory against the background of a fundamental transformation of the political economy in which the corporation is embedded. This transformation is effectuated, on the one hand, by the denationalization and privatization of corporate governance rule making, which now encompasses a wide range of new transnational fora and actors. On the other hand, this transformation is a substantive one which touches on the core beliefs that have shaped corporate law and corporate governance for more than a century. The coalescence of these two driving forces places the current debate around 'corporate purpose' and alternative visions of the corporation in the context of political economy changes which require a serious engagement with the question how it can be prevented that the corporation continues to become even further insulated from democratic political intervention. With these two forces in mind, this Article makes a socio-legal intervention, exploring the actual, regulatory landscape of corporate governance norm production today. We study the connections between law and norm creation on both the nation-state and the global level – rather than treating transnational law as the exception – and seek to engage corporate governance as part of a larger critique of law's troubled relationship with the business corporation as an entity that exists not only in legal doctrine but in a wealth of actual socio-economic relationships. Complementing this analysis, the Article engages with the question whether the corporation's purpose can be exhaustively be captured by tying it to the maximization of shareholder value. In light of the global financial crisis and its devastating consequences not so long ago, particularly for retail investors, workers and mortgage debtors, and the present-day collapse of world-wide economic activity due to Covid-19, it would seem

unlikely were we to find that the allegation, uttered some two decades ago, whereby the shareholder value maximization paradigm constituted the 'end of history of corporate law', was still seen to be true. But, this very belief seems alive and well so that when, in the spring of 2020, business appeals to government for 'rescue' in an historically unknown fashion, we must take a closer look at the historical relationship between 'the state' and 'the market.' What becomes evident from a historical perspective is the linearity of how mainstream corporate law has over time prepared the ground for a far-reaching autonomization and insulation of corporate governance from 'society at large.' The Article analyzes the arguments and policies in support of this alleged autonomy of corporate governance and finds that the roots reach deeper than even the current debates over 'stakeholderism' let on. While we are intrigued with the recent advances made in these debates and by important 'players' such as the Business Roundtable, it is not at all clear what their lasting impact might be. Our analysis shows that corporate law's distance from 'non-shareholder' interests has long been tied into an economistic concept of the business corporation, from which all memory of the corporation as creature of law is eventually removed. By depicting the corporation through the concept of an itself reductionist 'nexus of contracts' that prioritizes investor-management relations at the exclusion of all other contractual and affected stakeholders of the firm, corporate governance can 'take off' into Rudolf Ihering's heaven of 'pure legal concepts', all the while betraying its deeply ideological character and actual economic and political power.

COURTS / DISPUTE RESOLUTION

- This section includes literature on civil and criminal proceedings.
- 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](#).

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

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

Allman, Kate, ‘Courts: Jury Trials to Resume from 15 June’ (2020) (67) *LSJ: Law Society of NSW Journal* 22

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.

Allman, Kate, ‘Hot Topic: Legal Threat or Mere Puff?’ (2020) (66) *LSJ: Law Society of NSW Journal* 24–25

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?

Anniwell, Brin and Alanna Van der Veen, 'Practice and Procedure: Navigating the New Normal: The Virtual Court' (2020) (67) *LSJ: Law Society of NSW Journal* 74-75

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.

Bailey, Diggory, '[Judicial Anticipation of Legislation](#)' (2020) *Statute Law Review*, Article hmaa014 (advance online article, published 5 August 2020)

Jurisdiction: UK

Abstract: This note considers *Re: A Company (Injunction to Restrain Presentation of Petition)* [2020] EWHC 1406 (Ch) and *Travelodge Ltd v. Prime Aesthetics Ltd* [2020] EWHC 1217 (Ch) in the context of earlier case law and looks at the circumstances in which the courts have shown a willingness to have regard to the likelihood of future legislation.

Note: the litigation concerns a press release by the Secretary of State for Business, Energy and Industrial Strategy on 23 April 2020 which announced certain proposals designed to mitigate the effects of the Covid-19 pandemic on businesses and the economy. The legislation in question is the Corporate Insolvency and Governance Bill ('the Bill') was introduced into the House of Commons on 20 May 2020.

Baksi, Catherine, 'Access Denied' (2020) 163(6) *Solicitors Journal* 28-31

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.

Bandes, Susan A and Neal Feigenson, '[Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom](#)' (2020) 68(5) *Buffalo Law Review* (forthcoming)

Abstract: Faith in the legitimating power of the live hearing or trial performed at the place of justice is at least as old as the Iliad. In public courtrooms, litigants appear together, evidence is presented, and decisions are openly and formally pronounced. The bedrock belief in the importance of the courtroom is rooted in common law, constitutional guarantees, and venerated tradition, as well as in folk knowledge. Courtrooms are widely believed to imbue adjudication with 'a mystique of authenticity and legitimacy.' The covid-19 pandemic, however, by compelling legal systems throughout the world to turn from physical courtrooms to virtual ones, disrupts and calls into question longstanding assumptions about the conditions essential for the delivery of justice. These questions are not merely tangential – they implicate many of the core beliefs undergirding the U.S. system of justice, including the whole notion of 'a day in court' as the promise of a synchronous, physically situated event with a live audience. Rather than regard virtual courts as just an unfortunate expedient, temporary or not, we use them as an occasion to reflect on the essential goals of the justice system, and to re-examine courtroom practices in light of those goals. We draw on social science to help identify what can be justified after the myths are pared away. Focusing on three interrelated aspects of traditional courts – the display and interpretation of demeanor evidence; the courtroom as a physical site of justice; and the presence of the public – we prompt a reassessment of what our legal culture should value most in courtroom adjudication and what we are willing to trade off to achieve it.

Beck, Andrew, 'Litigation: COVID and the Courts' [2020] (June) *New Zealand Law Journal* 177-180, 200

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.

Bielik, Larysa et al, '[Features of Criminal Proceedings \(Pre-Trial and Trial Investigation\) in the Time of Pandemic Covid-19](#)' (2020) 9(2) *Ius Humani Law Journal* 203-224

Jurisdiction: Ukraine

Abstract: The work is devoted to the main problems and features that have emerged in the field of criminal justice (pre-trial investigation and trial) in a pandemic. The relevance of this article is that criminal justice, like other areas of human activity, has been affected after the spread of Covid-19 and its recognition as a pandemic. The introduction of quarantine was accompanied by some problematic issues, including uncertainty in the work of the judiciary and law enforcement agencies, lack of a unified approach to court schedules, and the conduct of certain investigative actions. Thus, it is necessary to analyze the peculiarities of criminal proceedings in a pandemic. An explorative and collative methodology (that considers the comparative law) was used. The proposals have been made to address the problems that arise during the pre-trial investigation and criminal proceedings in a pandemic, in particular: the need to allow videoconferencing in criminal proceedings out of court; a list of programs for video communication have been defined; to provide adequate funding for technical re-equipment; to suspend the terms of criminal proceedings, and; to prevent in the future the situation of cancellation of previously adopted decisions on the strengthening of criminal liability for intentional infection.

Bicknell, Rachael, "ODR: The Next Leap Forward?" (2020) 65(5) *Journal of the Law Society of Scotland* 26

Abstract: Discusses the benefits of online alternative dispute resolution (ODR) as part of measures globally to support individuals and businesses affected by the COVID-19 pandemic, and how ODR gives lawyers in Scotland an opportunity to better serve their clients where litigation through the Scottish courts is disproportionately expensive, slow and uncertain.

Brazile, Kevin C and Sherri R Carter, 'Accessing Justice in a Pandemic' (2020) 43(4) *Los Angeles Lawyer* 30-34

Jurisdiction: USA

Extract (page 32): Reinventing the largest court in the nation during a pandemic crisis required an extraordinary effort. Full-time working groups in every litigation area, and across the court's

administrative areas, worked tirelessly to create solutions, guided by a common set of principles: 1) preserve essential functions, 2) find ways to support those functions in a manner that supports social distancing of at least six feet, 3) appropriately delay non essential functions that cannot be safely supported, 4) craft solutions that are supported by key stakeholders and authorized by law, and 5) implement changes rapidly albeit in a way that can be sustained throughout the crisis. Court leadership had to figure out what it means to stay committed to access to justice while also being committed to flattening the curve.

Byrom, Natalie, Sarah Beardon and Abby Kendrick, [*Rapid Review: The Impact of COVID-19 on the Civil Justice System: Report and Recommendations*](#) (Report, Civil Justice Council and Legal Education Foundation, June 2020) 1-93

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.

For an excellent summary and analysis of the Report's key findings and recommendations, see Paul McGrath, '[Civil Justice Council Report on the Impact of COVID-19 on Civil Courts](#)', *ICLR Blog* (Blog Post, 8 June 2020)

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.

'Case Updates: COVID-19 Case Updates' (2020) 32(4) *Judicial Officers Bulletin* 35–36

Jurisdiction: Australia

Abstract: Supreme Court : 'Bail Act' 2013, sections 16A, 16B, 17, 18, 19 - release application - evidence of effect of COVID-19 pandemic on criminal justice and prison systems - pandemic relevant to bail considerations - 'Rakielbakhour v DPP' [2020] NSWSC 323. Procedure - Trial procedure COVID-19 pandemic adjournment application granted trial in virtual courtroom impractical given technological difficulties accused's right to a fair trial compromised - 'R v Macdonald; E & M Obeid (No 11)' [2020] NSWSC 382. Federal Court - Civil procedure - COVID-19 pandemic civil trial adjournment application refused virtual trial would have some adverse impact but not unjust to proceed to extent possible under public health regulations - 'Capic v Ford Motor Company of Australia Ltd' [2020] FCA 486

Dernikovic, Fiona and Marion Wright, 'Practice and Procedure: Adjournments and e-Trials in the COVID-19 Context' (2020) (67) *LSJ: Law Society of NSW Journal* 68-70

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.

Dodson, Scott, Lee Rosenthal and Christopher Dodson, '[The Zooming of Federal Civil Litigation](#)' (2020) 104 (Fall) *Judicature* (forthcoming)

Abstract: Federal civil practice has adapted to the COVID-19 pandemic by using new technologies, including, prominently, remote technology. How will reliance on remote technology during this pandemic transform lawyers, courts, and the law going forward? What changes to civil litigation practice should be embraced, what changes should be discarded, and what changes should await further technological advances? We explore these questions. Surveying some key pandemic-fueled developments of remote technology in federal civil

litigation, we conclude that the pandemic's push toward the zooming of legal practice is likely to leave enduring marks. We identify the most promising uses for remote technology, strike cautionary notes for more pervasive implementation, and offer some suggestions for moving forward.

Dresner, Stewart, 'Courts will not go Back to Where They Were Pre-Pandemic' (2020) 110(July) *Privacy Laws and Business United Kingdom Newsletter* 16-17

Jurisdiction: UK

Abstract: Anticipates a lasting shift to the use of online courts beyond the COVID-19 pandemic in light of the argument by Richard Susskind, President of the Society for Computers and Law, that a court is a service, rather than a place and that users should become familiar with this method of justice. Considers the types of case which are suited to the online court process. Outlines the advantages and limitations of online courts.

Edmondson, Alison, 'Opinion' (2020) 65(5) *Journal of the Law Society of Scotland* 5

Abstract: Reflects on the response of the Scottish Courts and Tribunals Service to remote hearings following the COVID-19-related lockdown compared to court services in other jurisdictions, due to the Scottish Government's view that civil courts are merely a private dispute resolution service. Argues that individuals must in principle have unimpeded access to the courts in compliance with ECHR art.6.

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

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

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.

Embley, PL, '[Managing Evidence for Virtual Hearings](#)' (SSRN Scholarly Paper ID 3638363, 25 June 2020)

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.

Engstrom, David Freeman, '[Post-COVID Courts](#)' (2020) *UCLA Law Review Discourse* (forthcoming)

Jurisdiction: USA

Abstract: As with so much else in American life, COVID-19 delivered a gut punch to our justice system. And the worst is yet to come, as federal and state courts alike are soon to fill with cases reflecting the failing finances and fraying relationships of our sheltered-in-place lives. But in truth, our courts were already at a crossroads: chronically underfunded, increasingly politicized, behind the curve technologically, and shockingly out of touch with the justice needs of ordinary

Americans. This Essay argues that it is time—with states, for better or worse, reopening—to begin thinking longer term. For the coronavirus pandemic is quickening a pair of tectonic shifts, both well underway when the first diagnoses were made, with the power to reshape the legal system for good and for ill by fundamentally altering the role lawyers play within it. The first is the erosion of the professional monopoly that lawyers have long enjoyed over the delivery of legal services and the steady empowerment of new legally trained professionals to help satisfy justice needs. The second is the adoption of new technologies, many using artificial intelligence, to supplement or even supplant lawyers' work. Looking back, the coronavirus's greatest legacy for the legal system may well be its hastening of the arrival of an age of supersession—the decentering and displacement of lawyers by nonlawyers of both the human and nonhuman sort. The question judges, lawyers, rulemakers, and legislators should be asking is not merely how to safely reopen the courts. We should also ask how the post-pandemic justice system will look different—and how it might even emerge from the current crisis better than before.

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.² 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.

Fowowe, Adetomiwa, '[The Reality of Nigerian Legal System After COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3709757, 20 August 2020)

Abstract: There is no gainsaying the fact that the coronavirus (COVID-19) caught the world and every of its sector unawares as we are still napping as to what the solution to it is, more so that the virology is yet known. Within a very short period of its hit, it became a pandemic and has crippled the socio-political and the economic life of the world, the judiciary not spared. In relation to the vast importance of the judiciary, it necessitated its desperation to find a new means of operation; a virtual court system. This paper scrutinizes the importance of a virtual court system in Nigeria vis-à-vis the COVID-19 pandemic. Amongst other recommendations, this paper subscribes to an adequate funding in order to ensure an efficient operation of a virtual court system in Nigeria.

Golder, Papiya, '[Future of Virtual Courts in India Post Pandemic: An Analysis](#)' (2020) 7(2) *International Journal of Research and Analytical Reviews* 982-987

Abstract: The COVID-19 pandemic has surely caused an economic depression and various other catastrophes (like that to the health sector and industrial sector). A similar impact has been made to the legal sector of the country. Due to the nation-wide lockdown, The Supreme Court of India, almost every High Court has been temporarily closed. But can this crisis be used as an opportunity?

Grayson-Morison, Reegan and Stacey Steele, '[Judicial Responses to COVID-19: Japanese and Victorian Courts' Use of Technology](#)' (Asian Legal Conversations: COVID-19, Asian Law Centre, Melbourne Law School, 23 June 2020)

Grolman, Leah, 'Remote Hearings: The New Normal?' [2020] (June) *Computers and Law* 50-51
Jurisdiction: UK

Abstract: Presents the experience of the author, an associate solicitor, of attending two remote hearings at the Technology and Construction Court and the Chancery Division during the COVID-19 lockdown, and her thoughts on whether such hearings should become the default option following the COVID-19 crisis.

Ha-Redeye, Omar et al, '[Being Innovative in Exploring Litigation Alternatives](#)' (Ontario Bar Association, Innovation in Trusts & Estates Law, 15 June 2020)

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.

Hack, Andrew and Jeff Brown, 'Legal Update: COVID-19: Will My Hearing Go Ahead?' (2020) 32(2) *Australian Restructuring Insolvency & Turnaround Association Journal* 33-36

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.

Harvey, David, 'Courts and COVID-19: Delivering the Rule of Law in a Time of Crisis' (2020) 9(1) *Journal of Civil Litigation and Practice* 59-63

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

Heinsch, Milena et al, '[Death Sentencing by Zoom: An Actor-Network Theory Analysis](#)' (SSRN Scholarly Paper ID 3646607, 9 July 2020)

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.

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

'House of Commons Justice Committee Issues Report on Effect of Covid-19 on the Courts' (2020) (August) *Computers and Law* 46-47

Jurisdiction: UK

Abstract: Discusses the House of Commons Justice Committee's report on the effect of COVID-19 on the courts and tribunals in England and Wales. Highlights issues surrounding the use of remote hearings and the need to ensure that court users, particularly those who may be considered to be vulnerable, are sufficiently able to follow and participate in virtual processes.

Note: this report is Justice Committee, [Coronavirus \(COVID-19\): The Impact on Courts](#) (House of Commons Paper No 519, Session 2019-21 (2020))

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

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

few court orders included express provisions aimed at decreasing the number of people entering prisons or authorizing proactive steps to release people from detention.

Jacobi, Tonja et al, '[Oral Argument in the Time of COVID: The Chief Plays Calvinball](#)' (SSRN Scholarly Paper ID 3678316, 20 August 2020)

Jurisdiction: USA

Abstract: In this Article, we empirically assess the Supreme Court's experiment in hearing telephonic oral arguments. We compare the telephonic hearings to those heard in-person by the current Court and examine whether the justices followed norms of fairness and equality. We show that the telephonic forum changed the dynamics of oral argument in a way that gave the Chief Justice new power, and that Chief Justice Roberts, knowingly or unknowingly, used that new power to benefit his ideological allies. We also show that the Chief interrupted the female justices disproportionately more than the male justices and gave the male justices more substantive opportunity to have their questions answered.

This analysis transcends the significance of individual cases. The fact that the Court experimented with telephonic oral argument, the way it did so, and how the practice could be improved are all issues of profound national importance. The new format had the potential to influence the outcome of cases that have broad national significance, to shift norms of equality and transparency at the Court, and more generally to affect judicial legitimacy. If the Court favors certain parties or certain ideological camps by its choice of forum in a time of crisis, then that will undermine not only the Court's claim to legitimacy but it also raises doubts whether any of our national institutions have the capacity to adapt to crises more generally.

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.

Keilitz, Ingo et al, ‘[Racial Inequality and Systemic Injustice, the Coronavirus Pandemic, and the Courts](#)’ (SSRN Scholarly Paper ID 3695661, 10 August 2020)

Jurisdiction: USA

Abstract: The twin crises of systemic injustice and the vulnerabilities of the COVID-19 pandemic in 2020 have caused unprecedented social and economic upheaval – including economic contraction and sometimes violent street protests. Combined and entwined in a shameful way, systemic injustices and the relentless pandemic constitute existential threats to society disproportionately affecting marginalized and disadvantaged people. Confronting these threats is not just about the reform and revamping of one or two unjust institutions or units of government – the police and the health care system. It is instead an overdue reckoning on white supremacy, pervasive racial and ethnic injustices, and a deadly lack of preparedness for crises that were long anticipated. It is a challenge of transformative change that calls for a holistic response, a whole-of-society approach (WOSA) that must include the courts and the entire justice system, including the police, prosecution, defense, pretrial services, jail, prison, probation, and parole. This article is a call to action for the judicial branch of governments, including judges, court administrators, and their justice systems partners, not only to continue to provide critical justice services but also to advocate and to execute a whole-of-society approach (WOSA). This approach is essential to begin to root out racial biases and to combat the threats to our safety, security, and health during the Covid-19 pandemic. The authors present three reasons for court leaders and court administrators to get off the sidelines, to make their voices heard, and to become proactive participants in the fight against the existential threats of the admixture of systemic injustice and inequality, combined with our vulnerability to COVID-19: (1) the crises of disease, injustice, protests, and violence demand a

WOSA that must include the courts and the justice system; (2) the courts' silence and reluctance to join fight cannot be defended; and (3) judges, court administrators, and their justice system partners must close the gap between the de jure and de facto law, i.e., the law on the books and the law in practice.

Larkin, Jr, Paul J, '[Suing China Over COVID-19](#)' (2020) 100 *Boston University Law Review Online* 91-116

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.

Legg, Michael, '[The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality](#)' (2021) *Federal Law Review* (forthcoming)

Abstract: The COVID-19 pandemic and the ensuing mandated health protections saw courts turn to communications technology as a means to be able to continue to function. However, courts are unique institutions that exercise judicial power in accordance with the rule of law. Even in a pandemic courts need to function in a manner consistent with their institutional role and its essential characteristics. This article uses the unique circumstances brought about by the

pandemic to consider how courts can embrace technology but maintain the core or essential requirements of a court. This article identifies three essential features of courts - open justice, procedural fairness and impartiality – and examines how this recent adoption of technology has maintained or challenged those essential features. This examination allows for both an assessment of how the courts operated during the pandemic, but also provides guidance for making design decisions about a technology-enabled future court.

Legg, Michael, 'COVID-19 and Online Courts' (2020) 9(1) *Journal of Civil Litigation and Practice* 3-4

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.

Lindsey, Jaime, '[Open Justice, Participation and Materiality: Virtual Hearings and the Court of Protection](#)' 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) 257-264 (published 30 June 2020)

Jurisdiction: UK

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.

McGrath, Sinead, 'Pandemic Protocol Must Maintain Public Trust' (2020) 117(31) *Law Society's Gazette* 18

Jurisdiction: UK

Abstract: Reports on the exemption to COVID-19 quarantine restrictions which means barristers, solicitors and court users can break quarantine to attend tribunals or hearings and raises concerns that this practice will put other court users at risk.

McHattan, Natasha, "'Obstacles, Not Roadblocks'" (2020) 32(2) *Australian Restructuring Insolvency & Turnaround Association Journal* 13-15

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.

McIntyre, Joe, Anna Olijnyk and Kieran Pender, 'Civil Courts and COVID-19: Challenges and Opportunities in Australia' 45(3) *Alternative Law Journal* 195-201

(Unpublished version available as [University of Adelaide Law Research Paper No 2020-143](#), 2020 – on SSRN)

Abstract: This article provides an overview of the response of Australian courts to the COVID-19 crisis, and critically examines a number of structures and systemic issues that arise from the shift to the online deliver of justice. It places the current responses in the context of the emerging literature regarding online dispute resolution, and draws upon that literature to consider issues including open justice, symbolism and 'court architecture' in the digital space, technological limitations, access to justice and issues of systemic bias. It argues that by examining these issues, the present crisis will help map opportunities for future reform.

Mihailovich, Pooja, '[Post Pandemic: The New Normal for Tax Litigation](#)' [2020] (June) *Toronto Law Journal* 1-2

Jurisdiction: Canada

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.

Abstract: On July 17, 2020 the Texas Supreme Court dismissed a challenge to Governor Greg Abbott's executive orders issued pursuant to the TEXAS DISASTER ACT in efforts to contain the spread of COVID-19. *In re Hotze*, No. 20-0430 (Tex. Jul. 17, 2020) (orig. proceeding)

This legal action challenging the use of emergency powers during the pandemic—one of several—was brought by Steven Hotze, MD, a conservative political activist, joined by an assortment of affiliated co-petitioners. All were represented by the same Texas attorney, Jared Woodfill, himself a prominent Republican.

The fact that the Texas Supreme Court dismissed the case was no surprise because it was initiated directly in the court of last resort, with no constitutional or statutory authorization for it. The statute that provides for mandamus relief expressly excludes the Governor as a target. What is more noteworthy, however, is the issuance of a dissenting opinion in the guise of a concurrence sympathetic to Hotze's challenge to Governor Greg Abbott's handling of the pandemic.

The all-Republican SCOTX disposed of Case No. 20-0430 by ordering dismissal for want of jurisdiction without any additional explanation; one justice however, John P. Devine, nevertheless issued a five-page opinion, which none of the other justices joined.

This stands in contrast to an earlier challenge of similar nature, which was likewise rejected but managed to attract four justices for a concurring opinion that was not essential to the disposition of the case. *In re Salon a La Mode*, No. 20-0340, ___ S.W.3d ___ (Tex. 2020) (Blacklock, J., concurring in the denial of the petition for writ of mandamus).

Justice Devine cited the earlier opinion by Justice Blacklock, but did not garner the support of any of his colleagues in the Hotze case. Justice Devine also parted ways with his colleagues on the dismissed of a mandamus petition relating the GOP's state planned in-person convention in Houston for lack of jurisdiction. In that case, he wrote a ten-page dissent. See *In re Republican Party of Texas*, No. 20-0525 (Tex. July 13, 2020). In a companion mandamus case, Hotze complained of the denial of a temporary restraining order relating to the convention in a Houston trial court, which as docketed as No. 20-0524 in the supreme court. The SCOTX denied

mandamus relief in that case at the same time it dismissed the GOP's petition, but Justice Devine dissented, albeit without a separate opinion.

Clearly, Justice Devine stands apart from the rest – at least on COVID-related issues -- even though the other eight members of the Court are fellow Republicans and resolve the majority of cases unanimously. Which raises the question: How and why?

I conclude that the answer can be found in judicial politics, with no need to delve into the matter of distinctive jurisprudential theories or doctrine-driven explanations.

Seven members of the Texas Supreme Court were initially chosen and appointed by a Republican Governor. John Devine is one of two who was not, and is the only associate justice on the SCOTX who won election after having defeated a Republican incumbent in a Republican primary. He did so with Tea Party support. While the Court has a long-standing statist bias and has sided with the Governor and the Attorney General in COVID-19-related cases, Justice John P. Devine caters to a different constituency: the far right of the Texas GOP. His actions on the Court reflects that.

In multiple cases involving different legal issues, Devine has demonstrated his willingness to go out of his way to lend legitimacy to conservative activist Steven Hotze, who is a prolific cause-driven litigant, and widely viewed as a right-wing extremist.

In the Texas Republicans' fight over the 2020 State Convention, Justice Devine would have used the High Court's mandamus power to force the City of Houston to host the GOP Convention at the George R. Brown Convention Center in the midst of the current pandemic after the event was cancelled by local officials pursuant to a force majeure clause in the contract to avert the occurrence of a super-spreader event. See *In re Republican Party of Texas*, No. 20-0525 (Tex. July 13, 2020) (per curiam dismissal; dissent to dismissal by Justice Devine).

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.

Parodi, Giampaolo, Concetta Locurto, and Roberta Bardelle, '[Urgent Measures to Contrast the COVID-19 Epidemic in Relation to Civil and Criminal Justice](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The following sections deal with the issues arising from the impact of the legislative measures adopted in Italy during the outbreak of the COVID-19 epidemic in the field of criminal and civil justice. They also contain, in summary, a reference to the constitutional framework on the basis of which the emergency legislation has been enacted. The analysis focuses on the measures adopted both in criminal and civil justice in relation to a first emergency phase, characterized by general postponements of hearings and suspension of procedural time limits, and to a second phase, where the Italian Legislator has foreseen that only specific measures may be adopted locally by the Presidents of the courts, aimed at avoiding gatherings in the courtrooms and close contacts between people.

Phelan, Sara, 'In the Interests of Justice' (2020) 25(3) *Bar Review* 83

Jurisdiction: Ireland

Abstract: Discusses how the Irish court system has adapted to the coronavirus restrictions to maintain access to justice via a mix of remote and physical hearings. Stresses that remote hearings are not suitable for all matters and that a balance between fairness and expediency must be reached.

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

Jurisdiction: South Africa

Abstract: As a consequence of the COVID-19 pandemic and the resulting national lockdown, the use of technology by legal practitioners, courts, tribunals and other adjudicators has become more important than ever before. The lockdown has prevented adjudicators such as the

Competition Tribunal, from conducting proceedings in a “business as usual” manner by restricting its ability to conduct physical hearings. The South African competition authorities responded swiftly to the crisis, and have adapted to new means of ensuring the continuity of competition litigation. This has been achieved through the use of virtual working platforms such as Microsoft Teams and Zoom. Could this crisis usher in a new way of conducting proceedings before the Tribunal, particularly in uncontested matters or matters having limited issues in dispute?

Pollard, Matt, Mathilde Laronche and Viviana Grande, ‘The Courts and Coronavirus’ ([Part 1](#) and [Part 2](#)) in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Introduction: Our contribution (in two parts) will consider the specific context of restrictions on access to or operation of courts. Around the world, in response to COVID-19, courts are adopting different modalities for the hearing of matters and limiting the range of matters than can be brought before them to only the most “urgent”, while postponing all others.

The first post sets out the most relevant provisions on the role of courts in international human rights law, including in situations of emergency. The second look in more detail at specific issues, including the suspension of ‘non-urgent’ cases, changes in the modality of hearings, dealing with the consequences of postponement of cases, and risk-tolerance and the fundamental role of judges.

Pryde, Naomi, ‘A Tale of Two Systems: COVID-19 and the Courts’ (2020) 65(5) *Journal of the Law Society of Scotland* 20-21

Abstract: Compares the approach taken by Scottish Courts and Tribunals Service to that of HM Courts and Tribunals Service in facing the challenges associated with the COVID-19 shutdown, including on: their initial responses; the use of virtual courts; adapting rules of service; electronic filing of documents; and principles in relation to adjournment and remote hearings.

Rathey, Justin D, '[Gap Filling: Assessing the Constitutionality of Virtual Criminal Trials in Light of Ramos v. Louisiana](#)' (2020) *Penn State Law Review* (forthcoming)

Abstract: Court closures in response to the COVID-19 pandemic have led some to consider the possibilities of virtual jury trials, with at least one state court already conducting a virtual trial in a civil case. The Supreme Court's recent decision in *Ramos v. Louisiana*, in which the Court held that jury verdicts must be unanimous, sheds light on the constitutionality of virtual trials in criminal cases. But the answer that *Ramos* suggests—that virtual criminal trials are unconstitutional—is difficult to square with the answer offered by constitutional theory. Though the author of the Court's opinion in *Ramos*, Justice Neil Gorsuch, is ostensibly an originalist, originalist theory (reflected in the scholarship of, among others, Professors Larry Solum, Randy Barnett, and Jack Balkin) would seem to allow for virtual trials because that inquiry falls in the Constitution's 'construction zone.' The Constitution says nothing about whether jury trials must be in-person, affording legal actors greater (although not unlimited) latitude to adjust jury practices to take account of current circumstances. This essay compares the *Ramos* Court's analysis to that of prominent originalists to preliminarily address whether virtual jury trials are constitutional. Additionally, through that comparison, this essay demonstrates the extent to which originalist theory has yet to succeed in shaping Supreme Court decision-making.

'Remote Hearings in Employment Tribunals' (2020) 1129 *IDS Employment Law Brief* 23-30

Jurisdiction: UK

Abstract: Reviews the impact of the coronavirus pandemic on employment tribunals. Considers Practice Directions and Presidential guidance relevant to remote employment tribunal hearings and offers guidance on case management in remote hearings, electronic bundles, video technology, and equal access for litigants in person and other vulnerable participants.

Riley-Smith QC, Toby, Adam Heppinstall and Freya Foster, '[Is Covid-19 Sowing the Seeds for Future Litigation?](#)' (2020) 88(2) *Medico-Legal Journal* 90–97

Jurisdiction: UK

Abstract: We consider various types of litigation that may follow the Covid-19 pandemic, including: claims against National Health Service (NHS) Trusts by patients who have contracted the coronavirus (or by their bereaved families), claims by NHS staff against their employer for a failure to provide any or adequate personal protective equipment or testing, commercial claims arising from the procurement of medical supplies, the potential liabilities to those who suffer adverse reactions to any vaccine and the guidance issued by the regulators in relation to subsequent disciplinary action.

Sandoval, Clara, Michael Cruz and Camila Ruiz Segovia, '[Victims' Participation in Times of Covid-19 in Transitional Justice Accountability Mechanisms: What Is Needed for Virtual Hearings to Fulfil This Right? The Case of Colombia and the Special Jurisdiction for Peace](#)' 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) 73–81 (published 30 June 2020)

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.

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

Abstract: In this short essay we provide a preliminary analysis of the lawsuits filed by Missouri against China, and New York against the World Health Organization over the COVID-19

pandemic. We also situate the lawsuits against the expanding coronavirus-related misinformation ‘epidemic.’

Schmitz, Amy J, [‘Arbitration in the Age of Covid: Examining Arbitration’s Move Online’](#) (2021) *Cardozo Journal of Conflict Resolution* (forthcoming)

Jurisdiction: USA

Abstract: Arbitration has been moving online over time with the growth of the Internet and Online Dispute Resolution (ODR), which includes use of technology to assist online negotiation, mediation, arbitration, and variations thereof. Online Arbitration (OArb) is nonetheless a unique subset of ODR because it usually culminates in a final and binding award by a neutral third party that is enforceable under the Federal Arbitration Act (FAA). Indeed, I have written about OArb on prior occasions, due to its unique status under the FAA and other arbitration laws. However, OArb was relatively limited until the Covid-19 pandemic sparked the acceleration of arbitration’s move online. At the same time, jurisprudence around the FAA has sent various signals that both help and hinder the growth of OArb. Furthermore, the 1925 FAA was not built to address innovations like virtual hearings, creating need for policies that adapt for technological progress. Accordingly, this Article discusses how recent jurisprudence and institutional promulgations may impact OArb, and offers considerations for courts, policymakers and practitioners shepherding OArb development.

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, '[The Verdict Is In: Online Jury Trials Are Possible](#)' (SSRN Scholarly Paper ID 3685422, 31 August 2020)

Jurisdiction: USA

Abstract: At the start of the COVID-19 pandemic, it was uncertain whether it would be possible to continue conducting civil jury trials. Now, however, the successful completion of both mock and real civil jury trials proves that online jury trials are possible, but that (due to confidentiality requirements) they will need to be at least partly conducted in person.

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?

Shanahan, Colleen F et al, '[COVID, Crisis and Courts](#)' (GWU Legal Studies Research Paper No 2020-51, 31 July 2020)

Jurisdiction: USA

Abstract: Our country is in crisis. The inequality and oppression that lies deep in the roots and is woven in the branches of our lives has been laid bare by a virus. Relentless state violence against black people has pushed protestors to the streets. We hope that the legislative and executive branches will respond with policy change for those who struggle the most among us: rental assistance, affordable housing, quality public education, comprehensive health and mental health care. We fear that the crisis will fade and we will return to more of the same. Whatever lies on the other side of this crisis, one thing is certain: one part of our government grapples with the individual consequences of inequality and oppression day in and day out and it will continue to do so with even more urgency in the future: the state civil courts. Even before the current crisis, as other branches of government have failed to address inequality, state civil courts have become the government actor of last resort for the tens of millions of Americans each year who suffer the consequences of these failures. Now, these same courts — for the first time in history — have quickly and nimbly changed the way they provide justice. Courts' improvisation in the face of a global public health crisis present a permanent opportunity for social change. In contrast to burgeoning attention to state criminal courts, this role for state civil courts was hidden from those not directly involved and largely ignored by scholars. Now it is unavoidable. This essay lays out a framework for change that state civil courts should embrace as they reopen to the tidal wave of litigants.

Shang, Carrie Shu, Wenli Guo and Charles Ho Wang Mak, '[Two Paths Leading to the Same End? A Discussion of Development and Regulation of Online Mediation Under the COVID-19 in the People's Republic of China and the United States](#)' (2020) *World Arbitration and Mediation Review* (forthcoming)

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.

Song, Anthony and Michael Legg, 'Technology: The Courts and the Pandemic: The Role and Limits of Technology' (2020) (66) *LSJ: Law Society of NSW Journal* 65–67

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.

Sourdin, Tania, Bin Li and Donna McNamara, '[Court Innovations and Access to Justice in Times of Crisis](#)' (2020) *Health Policy and Technology* (forthcoming)

Abstract: COVID-19 has disrupted not only the health sector but also justice systems. Courts around the world have had to respond quickly to the challenges presented by the pandemic and the associated social distancing restrictions. This has created significant challenges for the justice system and such challenges are likely to be further compounded in the post-pandemic era as there is a 'tsunami' of COVID-19-related disputes predicted. This article argues that courts should embrace newer technologies that support court services while being mindful of possible tech-related issues that can impact on justice objectives. We argue that by placing further emphasis on alternative dispute resolution methods and ODR into the future, this might offset the likely tsunami of COVID-related litigation which would enable courts, hospitals, medical professionals and patients to settle disputes in a just, equitable and more efficient manner.

Sourdin, Tania and John Zeleznikow, 'Courts, Mediation and COVID-19' (2020) 48(2) *Australian Business Law Review* 138-158 ([unpublished version of article available on SSRN](#))

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.

Strong, SI, '[Procedural Law in a Time of Pandemic: Australian Courts' Response to COVID-19](#)' (Legal Studies Research Paper Series No 20/38, University of Sydney Law School, July 2020)

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.

Swoboda, John-Paul, 'Remote Hearings: The New-Normal? (Are They Fair? Are They Just?)' [2020] (3)

Journal of Personal Injury Law 208-211

Jurisdiction: UK

Abstract: Reflects on the growth of remote personal injury hearings due to the coronavirus pandemic, and whether such proceedings are both fair and just. Reviews the distinction between the two concepts illustrated by SC (A Child) v University Hospital Southampton NHS Foundation Trust (QBD), the lack of guidance on when hearings should be remote, whether a permanent move towards such hearings is emerging, and whether this will lower the quality of justice.

Tallodi, Timea, '[Love of Video Mediation in the Time of Covid-19: An Initial Insight into Benefits and Challenges](#)' 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) 247-255 (published 30 June 2020)

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.

Tao, Frank, 'Remote Court Hearings in a COVID-19 World: What We Can Learn from the Case Law to Date' (2020) 22(9/10) *Internet Law Bulletin* 134–136

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.

Thomson, David K, 'Appellate Advocacy in the Age of COVID-19' (2020) 23(4) *Judicial Division Record* 1–4

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.

Thornburg, Elizabeth G, '[Observing Online Courts: Lessons from the Pandemic](#)' (SSRN Scholarly Paper ID 3696594, 21 September 2020)

Jurisdiction: USA

Abstract: Before the COVID-19 pandemic, few adults would have asked themselves the question, 'what are courts?' If they did, the most likely answer would have talked about the courts in terms of buildings. Suddenly a pandemic was upon us, and that forced us to think again. Courts went online, and looking at what happened helps us to consider more clearly what courts really are. In fact, courts are providers of important services. Focusing on that mission of service provides a filter for considering both current adaptations and future plans. When in-

person hearings can resume safely, there will be a tendency to try to go back to the way things were before. But should we? To answer that question, we need to know more about what has been happening in those online hearings.

In March, to keep vital legal processes moving while keeping participants and the public safe, the Texas Office of Court Administration purchased Zoom licenses for all Texas judges and provided training on how to create public access to those proceedings on YouTube. During the period from March to August, Texas judges held an estimated 440,000 remote hearings in every case type and type of proceeding, including bench and jury trials, with 1.3 million participants lasting almost 1 million hours. In so doing, it provided a unique gift: a window into the crucial proceedings of everyday trial courts, hearings that are normally ignored and that almost never result in reported opinions.

This article describes the findings of an observational study of hearings in those courts. A team of six law students observed online hearings between May 11th and June 30th and reported what they saw. In addition, the findings include input from interviews with judges, lawyers, and CASA staff. This article focuses on proceedings in the family courts because those courts were among the first large-scale users of online Zoom hearings and because they faced many of the most difficult situations in using the online format. The observations provide a look at the experience of judges, lawyers, parties and witnesses in family cases. Did the hearings ‘work’? Are there best practices for judges and lawyers? And how did the online setting impact the parties whose lives are before the courts?

The students observed 305 hearings. Of those, 198 were family law hearings. About sixty percent of the hearings were contested (at least at the outset of the hearing). To help manage the hearings, 26 used Zoom breakout rooms, 54 used waiting rooms, and 34 used screensharing (60 involved documents in evidence). As expected, there were technological difficulties: 95 of the hearings had some kind of problem with technology, but many of the problems were extremely minor and quickly resolved (e.g. problems logging in, audio quality, or speaking while muted) as the judges took on a new role by providing tech support. Many of those will disappear as judges and lawyers become familiar with the technology and the technology itself improves. From a human standpoint, consider some snapshots: an adoption ceremony was witnessed by 75 people from around the world; an out-of-state witness was able to testify; a mother was able to participate in her hearing without having to give up a day’s pay; an

arresting officer was able to appear by taking a few moments off rather than spending hours traveling and waiting to testify; a lawyer avoided two hours of travel for a fifteen minute hearing; another lawyer was able to work productively while in a Zoom waiting room instead of sitting on the courtroom benches for docket call; a judge serving multiple rural counties saved hours that would have been spent driving among courthouses.

After reporting on the observations, the article turns to lessons for the future. Even when courts are able to return to fully in-person hearings, should they? What processes should continue to be done online? What absolutely needs to hang onto in-person processes unless completely infeasible? More fundamentally, what has this taught us about what courts are really about? Courts and judges have done an admirable job adapting to the online environment, but can we also see opportunities for more fundamental innovation? When the pandemic is no longer forcing the issue, there will be a tendency to reach for the familiar, to return to doing everything in person, at the courthouse. It does not have to be that way. These lessons should not be lost, and the courts can reach beyond 'normal' -- they can reach for better.

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.

Turner, Jenia Iontcheva, '[Remote Criminal Justice](#)' (SMU Dedman School of Law Legal Studies Research Paper No 487, 2020)

Jurisdiction: USA

Abstract: The coronavirus pandemic has forced courts to innovate to provide criminal justice while protecting public health. Many have turned to online platforms in order to conduct

criminal proceedings without undue delay. The convenience of remote proceedings has led some to advocate for their expanded use after the pandemic is over. To assess the promise and peril of online criminal justice, I surveyed state and federal judges, prosecutors, and defense attorneys across Texas, where virtual proceedings have been employed for a range of criminal proceedings, starting in March 2020. The survey responses were supplemented with direct observations of remote plea hearings and the first criminal jury trial conducted via Zoom.

The survey responses paint a complicated picture. They suggest that, on the whole, online proceedings can save time and resources for the participants in criminal cases and can provide broader access to the courts for the public. Yet respondents also noted the dangers of remote justice, particularly in contested or evidentiary hearings and trials. These include the inability of the parties to present evidence and confront witnesses effectively, and the challenges of providing adequate legal assistance remotely. Respondents also expressed concern that the court's perception of defendants may be negatively skewed by technology and that indigent defendants might be disproportionately harmed by the use of remote hearings. Defense attorneys were especially likely to be concerned about the use of the online format and to believe that it tends to harm their clients. Federal judges and prosecutors were also more likely than their state counterparts to be skeptical of the benefits of online criminal proceedings outside the context of the pandemic.

Based on the survey responses, an analysis of scholarship and case law, and first-hand observations of virtual criminal proceedings, the Article concludes with several recommendations about the future use of online criminal justice. It argues that states should be wary of expanding the use of remote proceedings after the pandemic is over. Online technology could be used more broadly to conduct status hearings and hearings on questions of law and to increase the frequency of attorney-client consultations. Beyond these narrow circumstances, however, remote hearings post-pandemic should be used only sparingly, as they carry too many risks to the fairness of the proceedings. If jurisdictions make the choice to use virtual proceedings in circumstances beyond status hearings and legal arguments, this should be done only after obtaining an informed and voluntary consent from the defendant, and with great care taken to reduce the risks of unfairness and unreliable results.

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.

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

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

Wilson, Melanie D, '[The Pandemic Juror](#)' (SSRN Scholarly Paper ID 3678923, 21 August 2020)

Jurisdiction: USA

Abstract: While the deadly and highly contagious COVID-19 virus rages across the country, courts are resuming criminal jury trials. In moving forward, judges reference case backlogs, speedy trial rights, and concern for the rights of the accused. Overlooked in this calculus is the importance of juror safety. The Sixth Amendment guarantees 'the right to a speedy and public trial, by an impartial jury.' There is no justice without jurors. Even before the COVID-19 pandemic, the justice system sometimes took advantage of juror vulnerability, treating jurors callously, if not rudely, during voir dire by asking them intensely personal questions. During the pandemic, courts have intensified this mistreatment of jurors by exposing them to serious health risks – sometimes to decide cases with minor charges. This exploitation of jurors is irresponsible and short-sighted. By endangering jurors, courts are creating serious due process concerns for the accused and eroding public confidence in an already beleaguered system. If jurors are forced to serve on jury duty without adequate protections, verdicts will be suspect,

mistrials will prevail, and many citizens who are fearful or susceptible will fail to appear, creating juries less representative of the community. Concerns about the virus are already resulting in some jurors defying their legal obligation and refusing to appear for service. Recent surveys show that because of COVID-19, three out of four jurors are at least somewhat nervous about attending a trial and that people of color, Democrats, and older Americans are very concerned about spreading and contracting the virus. When jurors are worried and distracted, they may rush to a verdict – any verdict – or fail to appreciate all of the evidence, resulting in wrongful convictions and erroneous acquittals. And, if even one juror tests positive during the trial, a mistrial may be declared to allow trial participants to quarantine. If we are going to require jurors to serve during this dangerous time, we must protect them to protect the criminal justice system itself.

CRIMINAL LAW / CRIMINAL JUSTICE

This section includes literature on domestic / family / intimate partner violence, law enforcement/policing and prisons.

Literature on criminal court proceedings are in the *Courts / Dispute Resolution* section above.

Abraham, Leola A, Timothy C Brown and Shaun A Thomas, '[How COVID-19's Disruption of the U.S. Correctional System Provides an Opportunity for Decarceration](#)' (2020) *American Journal of Criminal Justice* 1-13 (advance online article, published 19 June 2020)

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.

Abrams, David, '[COVID and Crime: An Early Empirical Look](#)' (University of Pennsylvania, Institute for Law and Economics, Research Paper No. 20-49, 14 August 2020)

Jurisdiction: USA

Abstract: We collect data from over 25 large cities in the U.S. and document the short-term impact of the COVID-19 pandemic on crime. There is a widespread immediate drop in both criminal incidents and arrests most heavily pronounced among drug crimes, theft, residential burglaries, and most violent crimes. The decline appears to precede most stay-at-home orders, and arrests follow a similar pattern as reports. We find no decline in homicides and shootings, and an increase in non-residential burglary and car theft in most cities, suggesting that criminal activity was displaced to locations with fewer people. Pittsburgh, New York City, San Francisco, Philadelphia, Washington DC and Chicago each saw overall crime drops of over 35%. There was also a drop in police stops and a rise in Black detainee share in Philadelphia, which may reflect the racial composition of essential workers. Evidence on police-initiated reports and geographic variation in crime change suggests that most of the observed changes are not due to reporting changes.

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

Jurisdiction: USA

Extract: Because of policies of mass incarceration over the past four decades, the United States has incarcerated more people than any other country on Earth. As of the end of 2016, there were nearly 2.2 million people in U.S. prisons and jails. People entering jails are among the most

vulnerable in our society, and during incarceration, that vulnerability is exacerbated by restricted movement, confined spaces, and limited medical care. People caught up in the U.S. justice system have already been affected by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and improved preparation is essential to minimizing the impact of this pandemic on incarcerated persons, correctional staff, and surrounding communities.

...

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

Altheimer, Irshad, Janelle Duda-Banwar and Christopher J Schreck, '[The Impact of COVID-19 on Community-Based Violence Interventions](#)' (2020) *American Journal of Criminal Justice* 1-10 (advance article, published 19 June 2020)

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.

Arenas-Arroyo, Esther, Daniel Fernández-Kranz and Natalia Nollenberger, '[Can't Leave You Now! Intimate Partner Violence Under Forced Coexistence and Economic Uncertainty](#)' (IZA Discussion Paper No. 13570, 10 August 2020)

Jurisdiction: Spain

Abstract: With the COVID-19 outbreak imposing stay at home and social distancing policies, warnings about the impact of lockdown and its economic consequences on domestic violence has surged. This paper disentangles the effect of forced coexistence and economic stress on intimate partner violence. Using an online survey data set, we find a 23% increase of intimate partner violence during the lockdown. Our results indicate that the impact of economic consequences is twice as large as the impact of lockdown. We also find a large increase of domestic violence when the relative position of the man worsens, especially in contexts where that position was already being threatened. We view our results as consistent with the male backlash and emotional cue effects.

Ashby, Matthew PJ, '[Changes in Police Calls for Service During the Early Months of the 2020 Coronavirus Pandemic](#)' (2020) *Policing: A Journal of Policy and Practice* Article paaa037 (advance online article, published 25 June 2020)

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.

Ashby, Matthew P J, 'Initial Evidence on the Relationship Between the Coronavirus Pandemic and Crime in the United States' (2020) 9 *Crime Science*, Article 6 (advance article)

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.

Bagaric, Mirko, Dan Hunter and Jennifer Svilar, '[Prison Abolition: From Naïve Idealism to Technological Pragmatism](#)' (2021) 111(2) *Journal of Criminal Law and Criminology* (forthcoming)

Abstract: The United States is finally recoiling from the mass incarceration crisis that has plagued it for half a century. The world's largest incarcerator has seen a small drop in prison numbers since 2008. However, the rate of decline is so slow that it would take half a century for incarceration numbers to reduce to historical levels. Further, the drop in prison numbers has occurred against the backdrop of piecemeal reforms, and there is no meaningful, systematic mechanism to reduce incarceration levels. Despite this, there is now, for the first time, a growing public acceptance that prison is a problematic, possibly flawed, sanction. Prison is expensive, inflicts serious unintended suffering on offenders, and profoundly damages families.

Alternatives to prison are finally being canvassed. In one respect this is not surprising. The manner in which we deal with serious offenders has not meaningfully changed for over 500 years—during all this time, we have simply locked offenders behind high walls. The way we deal with serious criminals has been more resistant to scientific and technological advances than any other aspect of society. The most radical suggestion regarding prison reform is to abolish prisons. Abolition of prisons has been a theme in some limited academic quarters for many decades. It has never received anything approaching mainstream credibility as a reform option. This is now changing. Prominent politicians, social groups, university organisations, and the mainstream media commentaries have recently advocated prison abolition. This proposal is no longer a fringe idea. It has gained considerable more currency in light of the dual society-changing phenomenon of the COVID-19 pandemic and the Black Lives Matters movement. Yet, the persuasiveness of the proposal to abolish prison evaporates hastily when any degree of intellectual rigor is cast over the proposal. It is likely to go down as naïve idealism due to the absence of any practical alternatives to prison. This Article shores up the notion of prison abolition by carefully outlining an alternative to prison and hence addresses what is thought to be an insurmountable flaw in abolitionist proposal. We advance a viable alternative to prison that involves the use and adaption of existing monitoring and censoring technology, which will enable us to monitor and observe the actions of offenders in real-time and, when necessary, to halt potentially harmful acts of offenders before they harm other people. In proposing this new sanction, we give pragmatic weight to the prison abolition proposal and provide lawmakers and the community a pathway to abolishing most prisons. The reforms suggested in this Article can result in prison numbers being reduced by over ninety percent, without any diminution in public safety.

Balmori de la Miyar, Jose Roberto, Lauren Hoehn-Velasco and Adan Silverio-Murillo, '[Druglords Don't Stay at Home: COVID-19 Pandemic and Crime Patterns in Mexico City](#)' (SSRN Scholarly Paper ID 3667160, 15 July 2020)

Abstract: Objective: To investigate the effect of the COVID-19 pandemic on conventional crime and organized crime in Mexico City, Mexico. Methods: Mexico City's Attorney General's Office reported crime data, covering domestic violence, burglary, robbery, vehicle-theft, assault-battery, homicides, kidnapping, and extortion. We use an event study for the intertemporal

variation across the 16 districts (municipalities) in Mexico City for 2019 and 2020. Results: We find a sharp decrease on crimes related to domestic violence, burglary, and vehicle theft; a decrease during some weeks on crimes related to assault, battery and extortion, and no effects on crimes related to robbery, kidnapping, and homicides. Conclusions: While our results show a decline in conventional crime during the COVID-19 pandemic, organized crime remains steady. These findings have policy implications for catastrophic events around the world, as well as possible national security issues in Mexico.

Barnert, Elizabeth, Cyrus Ahalt and Brie Williams, '[Prisons: Amplifiers of the COVID-19 Pandemic Hiding in Plain Sight](#)' (2020) 110(7) *American Journal of Public Health* 964–966

Introduction: On February 29, 2020, nearly half of incident cases (233 of 565) of COVID-19 reported in Wuhan, China, were from the city's prison system. A separate prison outbreak, 450 miles away, in Shendong, China, was traced to officials who had visited Wuhan and infected seven prison guards and 200 inmates. Modern prisons have faced infectious outbreaks but none at the scale of COVID-19's. On March 26, 2020, the United States reported its first death of an incarcerated patient, in Georgia, and New York City jails reported an infection rate seven times higher than in the rest of the city, a current US epicenter of COVID-19.

For many Americans, it is easy to forget the experiences of our detained community members. But custodial facilities are vulnerable to devastating COVID-19 outbreaks that pose disproportionately high health risks to detained and incarcerated people, elevate transmission risk in surrounding communities, and would likely trigger an occupational health crisis for hundreds of thousands of professionals performing essential work in custodial facilities around the nation. In view of the considerable yet poorly understood and little discussed health risks, public health and custodial leadership must take urgent measures to keep COVID-19 out of custodial settings and develop stringent mitigation strategies for when it does.

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

Jurisdiction: USA

Abstract: To combat the spread of COVID-19, many primary and secondary schools in the United States canceled classes and moved instruction online. This study examines an unexplored consequence of COVID-19 school closures: the broken link between child maltreatment victims and the number one source of reported maltreatment allegations - school personnel. Using current, county-level data from Florida, we estimate a counterfactual distribution of child maltreatment allegations for March and April 2020, the first two months in which Florida schools closed. While one would expect the financial, mental, and physical stress due to COVID-19 to result in additional child maltreatment cases, we find that the actual number of reported allegations was approximately 15,000 lower (27 percent) than expected for these two months. We leverage a detailed dataset of school district staffing and spending to show that the observed decline in allegations was primarily driven by school closures. Finally, we discuss policy implications of our findings and suggest a number of responses that may mitigate this hidden cost of school closures.

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.

'Beware of Coronavirus Scams' (2020) 113(5) *Servamus Community-based Safety and Security Magazine*

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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.

Biswas, Debajyoti and Parvin Sultana, '[Policing During the Time of Corona: The Indian Context](#)' (2020) *Policing: A Journal of Policy and Practice* Article paaa024 (advance online article, published 31 May 2020)

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.

Bresler, Jessica and Leo Beletsky, '[COVID-19, Incarceration, and the Criminal Legal System](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 228-233

Jurisdiction: USA

Abstract: Even before the pandemic, contact with the criminal legal system resulted in health harms on both individual and community levels, with disproportionate impact on people of color. The COVID-19 crisis magnified the deleterious public health impact of policing, prisons, community supervision, and other elements of the United States' vast system of control and punishment. Despite the scientific consensus that prisons and jails needed to be rapidly depopulated to avert disaster, the number of people released has remained small, resulting in explosive outbreaks of COVID-19 behind bars. Depopulation of correctional settings is also rarely paired with meaningful efforts to connect reentering individuals to vital supports. Community supervision systems failed to relax onerous probation/parole requirements, while police have taken on enforcement of physical distancing and other public health orders. Even as COVID-19 is

raging, the criminal legal system is resisting changes necessary to facilitate pandemic response. With a focus on incarceration, this Chapter provides an overview of how the U.S. criminal legal system has shaped its COVID-19 response, situating prescriptions in the current debate about divestment from structures of social control in favor of a renewed focus on the social contract. This Chapter will discuss (1) how criminal legal system has exacerbated the current public health emergency and (2) how the United States can use this moment to reform this system and its legal underpinning.

Bruce, Raphael, Alexsandros Cavgias and Luis Meloni, '[Filling the Void? Organized Crime and COVID-19 in Rio De Janeiro](#)' (SSRN Scholarly Paper ID 3678840, 21 August 2020)

Abstract: How does the presence of organized crime affects the intensity of the COVID-19 epidemic? Rio de Janeiro is the perfect laboratory to answer such an overlooked question because two distinct types of criminal organizations operate in its territory. First, there are drug trafficking gangs comprised of slum dwellers. Second, there are the *milícias*, paramilitary groups with links to the police, usually financed by extortion. We estimate two-way fixed effects models comparing the number of cases (deaths) caused by Severe Acute Respiratory Syndrome (SARI) before and after the COVID-19 outbreak in neighborhoods with and without the presence of organized crime. We document two findings. First, the number of SARI deaths in neighborhoods controlled by gangs increased 43% less than in areas without any form of organized crime. In neighborhoods controlled by *milícias*, however, this outcome increased 29% more than areas without any form of organized crime. We find similar effects for SARI hospitalizations. These results are robust to various specifications. Overall, our results show that the reaction of organized crime to a public health crisis depends on its form of criminal governance.

Cadman, Tobu, '[The Impact of Coronavirus \(COVID-19\) on Prisoners](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Introduction: As a general concept, it is an established principle of international human rights law that in addition to the negative obligation *not* to commit acts in breach of rights contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the overriding principle in Article 1 extends a positive obligation on States to protect individuals

and *secure* rights under their jurisdiction. Thus, an act not directly imputable to the State *may* generate the responsibility of the State, not because of the act in and of itself, but due to the lack of due diligence to prevent or remedy the act. A failure by the State or its public authorities, such as the law enforcement and its penal institutions, to exercise due diligence may give rise to State responsibility even if the act in question is committed by non-state actors, but also where an individual is placed in an environment where their physical and mental well-being is foreseeably at risk.

Carrington, Kerry et al, '[Impact of COVID on Domestic and Family Violence Workforce and Clients: Submission to the Australian Parliament Standing Committee on Social Policy and Legal Affairs Inquiry into and Report on Family, Domestic and Sexual Violence](#)' (QUT Centre for Justice, 30 July 2020)

Abstract: A research team from the Queensland University of Technology (QUT) Centre for Justice has prepared this interim select report drawn from our nation-wide survey on the impact of COVID-19 on the domestic and family violence (DFV) workforce and clients for submission to the Standing Committee on Social Policy and Legal Affairs inquiry into and report on family, domestic and sexual violence. The interim (July 24, 2020) findings of a nation-wide survey on the impact of COVID-19 on the domestic and family violence (DFV) sector and their clients based on 288 responses confirm concerns raised early in the COVID-19 pandemic. Australian healthcare and women's safety professionals predicted an 'impending increase' in cases (Hegarty & Tarzia, 2020; Forster, 2020). Advocates have also reported increased complexities and challenges in assisting victims/survivors amidst COVID-19 (Forster, 2020). A huge proportion, 88% of respondents to our survey so far, have reported an increase in the complexity of their client needs. They also reported increases in controlling behaviours, such as isolation, increased sense of vulnerability, forced to co-habitat during lock-down, and inability to seek outside help, increased fear of monitoring by abuser, and increased use of technology to intimidate. Perhaps one of the most concerning of our findings is the number of DFV workers reporting new clients seeking their help for the first time during the COVID-19 crisis. This is evidence that the pandemic conditions are affecting the rate of domestic violence consistent with international research. We asked the DFV workforce what extra resources they needed to better cope with a crisis like the COVID-19 pandemic in the future. They need more of everything, but front-line workers emphasised the need for: • better technology and technology support for workers,

technology checks for clients, more safe mobile phones for clients and better internet connectivity; • more government funding for crisis supplies and emergency and long-term accommodation; • transport for home delivery of services; • the continuation of tele-health provisions; • more resources for male perpetrator programs (especially for Indigenous men). They also need systems to be flexible, especially courts and magistrates and they called for improved policing and better communication and translation services and supports for Culturally and Linguistically Diverse (CALD) communities.

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

Jurisdiction: USA

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

however, COVID-19 brings to light the persistent reality that communities are often weakened, not made safer, by the removal of defendants during pretrial periods.

Cioffi, Andrea, 'COVID-19 and the Release of Mafia Bosses: The Importance of Medico-Legal Evaluations' (2020) 60(3) *Medicine, Science and the Law* 239-240

Abstract: Reproduces a letter discussing Italy's rule that, during the coronavirus pandemic, prisoners with less than 18 months of their sentence remaining should serve it at home under house arrest. Notes the release of leading Mafia figures and suggests the need for medico-legal evaluations before release.

'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. Finding a likely impasse through these mechanisms, the article turns to international law and in particular customary international criminal law to see if it can provide a method of analyzing the human endangerment. Drawing from the Statute of the International Criminal Court as a possible crystallization of certain types of crimes against humanity, I identify particular groups against which such crimes might be seen as being in the process of being perpetrated. But, even if the particular crimes against humanity in the Statute of the International Criminal Court are seen as progressive development rather than crystallization, the article suggests that they are useful tools in helping to have an organize principle as to how to address the monstrous US response to the COVID-19 pandemic. The article ends with examples of how this method can help those concerned with human life to examine in a clear eyed manner the hundreds or thousands of intentional acts being done by public and private actors that endanger human life. And it also points a way as to how to think about the myriad acts being done by persons to protect human life. In the end, the monstrous response is seen as placing populations and particularly vulnerable populations before Hobbesian choices between protecting their health

and venturing out into society in a time of uncertain information, uncertain resources, and pressure to reopen and pressure to reopen or lose unemployment or other benefits.

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.

Ferstman, Carla, '[Detention and Pandemic Exceptionality](#)' 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)177–185

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.

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

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

Flanders, Chad et al, [“‘Terroristic Threats’ and COVID-19: A Guide for the Perplexed’](#) (Saint Louis University Legal Studies Research Paper No 2020-05, 2020)

Jurisdiction: USA

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

Foffani, Luigi, ‘Covid-19 Outbreak, Criminal Law and Role of the EU’ (2020) 10(2) *European Criminal Law Review* 137–139

Freckelton, Ian, ‘COVID-19: Criminal Law, Public Assemblies and Human Rights Litigation’ (2020) 27(4) *Journal of Law and Medicine* 790-806

Jurisdiction: Australia

Abstract: Australia’s criminal law was affected by the COVID-19 pandemic from the outset and then progressively as statutory measures and judicial rulings on matters such as bail

entitlements, judge-alone trials, sentences and applications for demonstrations and public assemblies were made by courts. This column identifies some of the major decisions made during the period of the lockdown measures between March and July 2020, and reviews significant New South Wales judgments in relation to the lawfulness of mass gatherings during the period of lockdown as expert assessments of risks of community transmission of the virus waxed and waned. It explores the importation into Australia's criminal law of public health principles for the protection of the community, and its compatibility with traditional principles of criminal justice.

Froimson, Jill R et al, 'COVID-19, Home Confinement, and the Fallacy of "Safest at Home"' (2020) 110(7) *American Journal of Public Health* 960–961

Extract: IPV is a public health crisis amid and exacerbated by the COVID-19 pandemic. In the United States, one in four women and one in seven men experience severe physical IPV at some point in their lives. Transgender individuals report even higher levels, with some studies quoting lifetime prevalence of IPV of up to 50%.³ Restricted economic resources, unemployment, and high stress levels all correlate with an increase in both the incidence and the severity of IPV.

Fuentes, Gabriel A, 'Federal Detention and "Wild Facts" during the COVID-19 Pandemic Criminal Law' (2020) 110(3) *Journal of Criminal Law and Criminology* 441–476

Extract from Introduction (page 442): This Article offers a framework for considering defendants' arguments for release based on the COVID-19 pandemic. It suggests that the shifting landscape of facts and scientific knowledge about this disease, as well as governmental responses to it, challenge practitioners and courts to grapple with an additional layer of complexity in applying the Bail Reform Act and the Constitution to federal detention decisions. It is now crucial for courts to push past the parties' representations and into the facts and science behind them. The challenge is to try to rely on our experience to search for the line between the known and unknown about the risk this new virus poses in jail environments, by venturing past the open grasslands in a hunt for the less visible "wild facts" lurking in the forest. The lore of "wild facts," an abstract concept first articulated in the early twentieth century by philosopher William James, tells us that "wild facts" are "subtle, unexpected particulars" that lie not in law but in

human experience, and that militate against the mechanical and impersonal application of a society's laws. 2 Now that COVID-19 has injected a new level of complexity into federal detention decisions, this Article uses the "wild facts" concept as an inspiration for meeting the new challenge of complexity in federal detention.

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.

Gradoń, Kacper, '[Crime in the Time of the Plague: Fake News Pandemic and the Challenges to Law-Enforcement and Intelligence Community](#)' (2020) 4(2) *Society Register* 133-148

Abstract: The Paper explores the problem of fake news and disinformation campaigns in the turmoil era of the COVID-19 coronavirus pandemic. The Author addresses the problem from the perspective of Crime Science, identifying the actual and potential impact of fake news propagation on both the social fabric and the work of the law-enforcement and security services. The Author covers various vectors of disinformation campaigns and offers the overview of challenges associated with the use of deep fakes and the abuse of Artificial Intelligence, Machine-, Deep- and Reinforcement-Learning technologies. The Paper provides the outline of

preventive strategies that might be used to mitigate the consequences of fake news proliferation, including the introduction of counter-narratives and the use of AI as countermeasure available to the law-enforcement and public safety agencies. The Author also highlights other threats and forms of crime leveraging the pandemic crisis. As the Paper deals with the current and rapidly evolving phenomenon, it is based on qualitative research and uses the most up-to-date, reliable open-source information, including the Web-based material.

Grayson-Morison, Reegan and Stacey Steele, '[Responses to COVID-19 and Japanese Criminal Justice](#)' (Asian Legal Conversations: COVID-19, Asian Law Centre, Melbourne Law School, 24 June 2020)

Abstract: A/Professor Stacey Steele and Reegan Grayson-Morison discuss Japanese criminal justice in this second post on the Japanese justice system and responses to COVID-19. In this post, they consider detention applications (勾留 *kōryū*), bail (保釈 *hoshaku*), the management of detention houses (拘置所 *kōchisho*, 留置施設 *ryūchisasetu*) and prisons (刑務所 *keimusho*, 少年刑務所 *shōnen keimusho*), and the ability of lawyers to interact with clients. Reegan also offers some comparative insights into the measures being taken in Victoria in relation to these matters.

Harwood, Jo, '[Domestic Abuse and Covid-19: The Legal Challenges](#)' 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) 237–245 (published 30 June 2020)

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.

Hartmann, Mia RK and Rasmus Koss Hartmann, '[Frontline Innovation in Times of Crisis: Learning from the Corona Virus Pandemic](#)' (2020) *Policing: A Journal of Policy and Practice*, Article paaa044 (advance online article, published 30 July 2020)

Abstract: The current COVID-19 pandemic brings about dramatic challenges for frontline police officers and their organizations. This will, we argue, likely have two implications for frontline learning and innovation. First, the pandemic will surely occasion a surge of frontline improvisation and innovation in police organizations responding to the crisis as the experienced needs for new solutions dramatically increase. Secondly, but equally importantly, this wave of frontline innovation is likely to be more transparent than is typically the case for innovations developed in frontline police work, because of changes in formal mandates and informal tolerance for procedural deviance. At this moment of unusually widespread and transparent frontline innovation, we propose an approach to capturing and diffusing this frontline innovation. By taking seriously the unique dynamics of frontline innovation, such an approach is likely to capture valuable innovations that might otherwise rapidly dissipate and be lost.

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 cyber routines 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.

Hoehn-Velasco, Lauren, Adan Silverio-Murillo and Jose Roberto Balmori de la Miyar, '[COVID-19 and Crimes Against Women: Evidence from Mexico](#)' (SSRN Scholarly Paper ID 3701472, 1 September 2020)

Abstract: This paper considers whether the COVID-19 stay-at-home order affected crimes targeting women. We use national municipal-level crime data from Mexico's National Public Security System, which reports sexual crimes, lapses in alimony, domestic violence, and femicides. We track monthly changes in crime using an event-study design. Our results show three main patterns. First, lapses in alimony, sexual crimes, and domestic violence follow a U-shaped trend. Each crime declined and then rose back to their pre-COVID levels. Second, femicides, the most violent crime against women, remained constant during the pandemic. Third, we find that femicides declined in municipalities with alcohol sales prohibition

Howard League Scotland, 'Things are Improving in our Prisons... Aren't They?' (2020) 65(5) *Journal of the Law Society of Scotland* 27

Abstract: Highlights the work of Howard League Scotland: ensuring that certain prisoners are released under the Coronavirus (Scotland) Act 2020; upholding prisoners' human rights during the COVID-19 lockdown restrictions; campaigning for the publication of prison-specific COVID-19-related data; and highlighting the need for prisons to continue to be monitored during COVID-19 when prison inspections have been suspended.

Iftene, Adelina, 'COVID-19 in Canadian Prisons: Policies, Practices and Concerns' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 367

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'

Jefferson-Bullock, Jalila, 'Let My People Go: A Call for the Swift Release of Elderly Federal Prisoners in the Wake of COVID-19' (2020) 32(5) *Federal Sentencing Reporter* 286–291

Jurisdiction: USA

Jennings, Wesley G and Nicholas M Perez, '[The Immediate Impact of COVID-19 on Law Enforcement in the United States](#)' (2020) *American Journal of Criminal Justice* 1-12 (advance article, published 6 June 2020)

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.

Jones, Daniel J, '[The Potential Impacts of Pandemic Policing on Police Legitimacy: Planning Past the COVID-19 Crisis](#)' (2020) *Policing: A Journal of Policy and Practice* Article paaa026 (advance online article, published 5 June 2020)

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 build on procedurally just operations resulting in the rebuilding of police legitimacy post-pandemic.

Kemboi, Leo Kipkogei, '[Two COVID-19 Lessons That Were Long Overdue to Kenya's Justice Sector](#)' (SSRN Scholarly Paper ID 3625502, 12 June 2020)

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.

Kirchmaier, Tom and Carmen Villa-Llera, '[Poverty and Crime: COVID and the "New Normal"](#)' (SSRN Scholarly Paper ID 3700329, 27 September 2020)

Abstract: The ultimate aim of this paper is to shed light on the direction of causality between poverty and crime. For this we use the unexpected economic COVID-19 shock as an instrument, as different regions got hit in different ways, and at different times. We show preliminary results, which we are planning to update every month and hence are subject to change. We also document the spatial and temporal uptake of furlough and unemployment support schemes. We provide near-time insight into the economic impact of the pandemic on crime rates in England and Wales.

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.

Koshan, Jennifer, Janet Eaton Mosher and Wanda Anne Wiegers, '[COVID-19, the Shadow Pandemic, and Access to Justice for Survivors of Domestic Violence](#)' (2020) *Osgoode Hall Law Journal* (forthcoming)

Jurisdiction: Canada

Abstract: The COVID-19 pandemic has co-existed alongside a far less visible 'shadow pandemic' of violence against women, with COVID-19 impacting the number and complexity of domestic violence cases and enabling new tactics for coercive control. This article provides a preliminary assessment of the extent to which Canada's responses to the COVID-19 pandemic have prioritized the safety of women and children, with a focus on the courts and women's access to justice. We examine court directives and judicial decisions triaging which cases would be heard as 'urgent,' as well as courts' decisions on the merits in cases involving domestic violence and COVID-19, spanning the areas of family, child welfare, criminal law, and civil protection orders. In the sixty-seven reported decisions in our sample, we find very little awareness overall of the heightened risks for survivors during COVID-19, in keeping with the pre-pandemic tendency of decision makers to focus on incident-based physical violence instead of patterns of coercive control. Our analysis also suggests that survivors' ability to prove domestic violence and secure court orders that would help to ensure their safety was hampered not only by procedural complexity but also by the reduced availability of a range of services—health, counselling, housing, and supervised access centres, for example— as a result of COVID-19. The cases further reveal significant differences in judicial interpretation of the risks of COVID-19 relative to the risks of domestic violence, often depending on the area of law in question. This again aligns with observations of the judicial treatment of domestic violence prior to the COVID-19 pandemic, with different and sometimes conflicting norms and assumptions prevailing in different legal contexts. We conclude that despite some positive government responses and judicial decisions, COVID-19 has further exposed many of the gaps in knowledge about domestic violence and in the supports and resources necessary to make women and children safe that long pre-dated COVID-19. In addressing the ongoing pandemic of violence against women, we offer some suggestions of measures to improve access to justice during this and future disasters.

Kovarsky, Lee, '[Pandemics, Risks and Remedies](#)' (2020) 106 *Virginia Law Review Online* 71-98

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.

Kugler, Matthew B et al, '[American Law Enforcement Responses to COVID-19](#)' (2020) *Journal of Criminal Law and Criminology Online* (forthcoming)

Abstract: During the spring and summer of 2020, what role did law enforcement play in promoting COVID-19 restrictions in the United States? Because most law enforcement in the US occurs at the local level, we conducted a survey of local police departments to examine their responses to the COVID-19 pandemic. Our results show that most departments, especially departments in smaller jurisdictions, played a minimal role in enforcing COVID-related restrictions and tended to only encourage compliance. Further, it was extremely rare for a department to use sophisticated surveillance technology to monitor COVID compliance. This lack of monitoring stands in stark contrast to both the regimes employed by several comparable

industrialized countries and the broad surveillance powers permissible under the U.S. Constitution.

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

Jurisdiction: USA

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

Levin, Anthony and Trish Kashyap, 'Law Enforcement and Police Powers in NSW during COVID-19' (2020) 32(4) *Judicial Officers Bulletin* 29–33

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.

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

Abstract: In this Essay, I offer a brief account of how the COVID-19 pandemic lays bare the realities and structural flaws of the carceral state. I provide two primary examples or illustrations, but they are not meant to serve as an exhaustive list. Rather, by highlighting these issues, problems, or (perhaps) features, I mean to suggest that this moment of crisis should

serve not just as an opportunity to marshal resources to address the pandemic, but also as a chance to address the harsh realities of the U.S. criminal system. Further, my claim isn't that criminal law is in some way unusual in this respect (i.e., similar observations certainly could be and have been made about the pandemic's exposure of long-lasting problems associated with the health care/insurance system, the tethering of social benefits to employment, pervasive inequality, and many other features of U.S. political economy). Nevertheless, the current moment provides an opportunity to appreciate the ways in which some of the most problematic aspects of criminal law in times of crisis are basic features of the U.S. carceral state in times of 'normalcy.' To this end, my argument proceeds in two Parts, each addressing one of the aspects or pathologies of U.S. criminal policy that the pandemic has exacerbated. In Part I, I address the absence of 'sentencing realism' or, perhaps more accurately, the failure to consider the reality of jails and prisons when imposing sentences or pretrial detention. In Part II, I address the basic limitations of thinking of 'the criminal system' as a single monolithic 'system,' or, even, as 'systematic' at all. What do commentators and lawmakers miss when they suggest or assume that criminal law and its administration are the same in a rural county in Colorado as in an urban county in New York? In each Part, I explain how the pandemic has made each phenomenon more easily identifiable, but also how each phenomenon defined the criminal system in pre-coronavirus days. Ultimately, I argue that the 'crisis' frame provides an opportunity for reform, but we must not allow the crisis frame to obscure the ways in which the criminal system was in crisis well before the first COVID-19 tests came back positive.

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

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

Summers, "'Everyone will be contaminated': prisons face strict coronavirus controls', 'The Guardian Australia Edition' (online), 24 March 2020).

Mack, Dallas, 'COVID-19' [2020] (6) *Mack's Criminal Law Bulletin*

Jurisdiction: Canada

Abstract: This issue reviews recent cases that have considered the COVID-19 pandemic; in particular, this issue looks at the impact of this pandemic on bail and sentencing.

Maphumulo, Mtho, 'COVID-19 Law Enforcement Incompetence and Brutality Not a New Thing' (2020) 20(5) *Without Prejudice* 56–57

Jurisdiction: South Africa

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.

Marsons, Lee and Sarah Nason, 'Prisoners and Mental Health Detainees' [2020] (October) *Public Law* 785

Jurisdiction: UK

Abstract: Summarises key features of the Parole Board's annual report for 2019-20, including statistics on the number of prisoners released, the number it deemed necessary to retain in custody for public protection, and the number of Board members from ethnic minorities. Details the Board's guidance on the conduct of online hearings during the coronavirus pandemic, and the treatment of vulnerable prisoners.

Marsons, Lee and Sarah Nason, 'Criminal Justice Inspectorates' [2020] (October) *Public Law* 764-768

Jurisdiction: UK

Abstract: Reports on the publication of significant reviews by criminal justice inspectorates, including the Crown Prosecution Service Inspectorate's report into its [response to the coronavirus pandemic between March and May 2020](#), reports by Her Majesty's Inspectorate of Constabulary

and Fire and Rescue Services into the policing of roads and data reporting practices, and reports by Her Majesty's Inspectorate of Prisons into young offender institutions.

Mazepa, Svitlana, '[COVID-19 and Its Impact on Ukrainian Criminal Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: At the end of 2019 and the beginning of 2020, a new dangerous disease appeared in the world, which was named "Coronavirus 2 (SARS-CoV-2)". Each country decided how to react and what steps should be taken as a first priority. The fact that national governments were taking exceptional measures to slow down the spread of the virus and to deal with the pandemic has implications not only for criminal proceedings that are already underway but also for future ones. In this scrutiny, the author highlighted the legal response of Ukraine to the pandemic from the criminal law perspective. A number of restrictive measures and prohibitions were adopted, which were aimed at self-isolation. The focus in this contribution is on criminal law, as the pandemic has prompted changes to existing law, including criminal law and legislation. The immediate reaction of the Ukrainian parliament to the pandemic was to increase criminal liability and introduce administrative liability for violating quarantine. These changes have become the subject of this article. Also, a number of bills on inclusion in the current Criminal Code in connection with the coronavirus were analysed.

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

Jurisdiction: USA

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

McKay, Tara, Jonathan Metzl and Jennifer Piemonte, '[Effects of Statewide Coronavirus Public Health Measures and State Gun Laws on American Gun Violence](#)' (SSRN Scholarly Paper ID 3680050, 24 August 2020)

Abstract: The coronavirus (COVID-19) pandemic dramatically shifted American public life, and with it patterns of gun violence. In this paper, we show that states' efforts to contain COVID-19 infections through statewide emergency declarations, Stay at Home orders, and phased reopening have significantly altered prevailing patterns of firearm injuries and deaths. We provide a systematic analysis of how state policy responses to COVID-19 affected overall levels of gun violence and specific kinds of shootings, including multiple victim and mass shootings. While emergency declarations and Stay at Home orders had a dampening effect on many forms of gun violence, we find that the number of people injured or killed by a firearm per day increased more than 15% following state reopening, on average. Over the first 30 days of reopening, we estimate that the average state had an additional 5 mass shootings than would be predicted absent the epidemic in the first 30 days of reopening. Additionally, we examine how COVID-related public health measures affect the composition of gun violence. We find that gun violence has followed workers and children home; even though workplaces and schools have closed, gun violence has likely reappeared in Americans' lives as domestic violence related shootings and child involved shootings during Stay at Home and school closure periods. Finally, we show that state gun laws worked together with COVID-related emergency declarations and Stay at Home orders to further decrease gun violence in some states. Conversely, in states with decreased criminal liability for firearm use, as in states with Stand Your Ground laws, we observe an exacerbating effect on firearm injuries and deaths during the emergency declaration and Stay at Home order periods. Only one policy, waiting periods for handgun purchases, significantly dampened reopening surges in gun violence. These findings suggest that state policy environments can substantially reduce the impacts of exogenous shocks like COVID-19 on American gun violence and provides guidance on which policies can be helpful and which can be harmful.

Miller, Antonia, 'Lawcodes Report: New Criminal Penalties for COVID-19 Related Offences' (2020) 32(4)

Judicial Officers Bulletin 33–34

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.

Milo, Dario et al, 'The Effect of COVID-19 on Cybersecurity and Cyber Breaches: Cyber Law' (2020) 20(6)

Without Prejudice 19–20

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.

Minkler, Meredith, Joseph Griffin and Patricia Wakimoto, '[Seizing the Moment: Policy Advocacy to End Mass Incarceration in the Time of COVID-19](#)' (2020) 47(4) *Health Education & Behavior* 514–518

Abstract: The mass human and economic casualties wrought by the COVID-19 pandemic laid bare the deep inequities at the base of the disproportionate losses and suffering experienced by diverse U.S. populations. But the urgency and enormity of unmet needs requiring bold policy action also provided a unique opportunity to learn from and partner with community-based organizations that often are at the frontlines of such work. Following a review of Kingdon's model of the policy-making process, we illustrate how a partnership in a large California county navigated the streams in the policy-making process and used the window of opportunity provided by the pandemic to address a major public health problem: the incarceration of over 2 million people, disproportionately African American and Latinx, in overcrowded, unsafe jails, prisons, and detention centers. We highlight tactics and strategies used, challenges faced, and implications for health educators as policy advocates during and beyond the pandemic.

Mishra, Anubhav, '[Prisoners' Dilemma: Is India a Real Follower of Reformatory Theory?](#)' (SSRN Scholarly Paper ID 3710364, 3 October 2020)

Abstract: Every citizen of India has fundamental rights guaranteed under the Indian Constitution and hence the Nation is obligated to furnish the quality of life to its subjects the citizens. But on the other hand it is unfortunate to say that a country like India has no proper implementation of prisoner's rights. This paper mainly focuses on the right of Prisoners including those who are under trial and the responsibility of both legislation and judiciary to provide such fundamental rights which are very essential for the survival of humans which also includes personal liberty not just mere animal existence. This paper also covers the International as well as judicial perspective regarding the rights of prisoners as the honorable Supreme Court has highlighted that a prisoner, be it a convict or an under-trial, does not cease to be a living being and, while lodged in four walls of jail, he appreciates all his fundamental rights pleaded under the Constitution including the right to life. The author of this paper also focuses on the role of Jail authority and their liability for the suffering of prisoners during the time of Pandemic 'COVID-19'.

Mohler, George et al, '[Impact of Social Distancing During COVID-19 Pandemic on Crime in Los Angeles and Indianapolis](#)' (2020) 68 (May/June) *Journal of Criminal Justice* Article 101692

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.

Moreira, Diana Nadine and Mariana Pinto da Costa, '[The Impact of the Covid-19 Pandemic in the Precipitation of Intimate Partner Violence](#)' [2020] *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101606 (advance article, published 26 June 2020)

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.

Nicolson, Donald and Jago Russell, '[Covid-19 and Criminal Justice: Temporary Fixes or Long Term Reform?](#)' 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) 207-215 (published 30 June 2020)
Jurisdiction: UK and Scotland

Nigam, Shalu, '[COVID-19: Right to Life with Dignity and Violence in Homes](#)' (2020) 11(1) *SPRI Vision* 97-120
Jurisdiction: India

Abstract: COVID-19 has caused illness and deaths worldwide, and at the same time, it has also re-exposed many other worst vulnerabilities that exist within the society since ages. The fragility of the pandemic has gender dimensions. Patriarchal violence is existing for ages, yet it is manifesting itself extensively now. For instance, during the lockdown, the violence against women and children has risen within homes. This is despite the fact that during COVID-19, home has emerged as a significant space which could provide safety from the spread of the disease. Countries worldwide have enacted special policies and programs to deal with increasing violence against women in homes during the pandemic. In India, the stakes are high as almost half a billion women stay at risk. Therefore, there is a need to evolve a comprehensive robust response plan to tackle the emerging challenges. The Supreme court recently gave directions regarding the provisions of Shramik trains, food and work among other facilities to the migrant workmen, however, the urgent need is also to permanently notify domestic violence as an 'essential service' to ensure that in calamities or otherwise support to women victims remain available round the clock. Also, plans have to be made to support women who walked back while facing adversities. Schemes for compensation and rehabilitation packages are essential to support children who are being orphaned or are facing risk due to the pandemic. Moreover, as

the restrictions are being eased down, it is crucial to recognize the link between the consumption of liquor by men and its proportionality to the incidences of abuse against women as been highlighted by several anti-arrack movements led earlier. While dealing with the virus, it is vital that all other existing ailments that this pandemic is fueling, be taken care of, such as patriarchy, discrimination, poverty, inequalities among others which are adversely affecting the society. Scientists will find the treatment for coronavirus, but for all other anathemas, the society has to find a permanent cure. Article 21 of the constitution guarantees life with dignity. But the fact remains that domestic violence existed earlier and is increasing during the pandemic denying women their basic survival. Unless the state holds perpetrators accountable, it is not going to disappear. A campaign to spread a strong message that there is a zero-tolerance for violence against women is essential. In the long term, the need is to address entrenched structural discrimination in order to eliminate patriarchy and to restore the right to dignified life for every person. In the post-COVID world, the society needs to isolate the patriarchal notions and quarantine the misogyny to reimagine the violence-free gender-just world.

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

Abstract: COVID-19 is posing challenges larger challenges in terms of human rights including health rights of women and children. Since the mandatory lockdown has been imposed, violence against women is exponentially rising world over. Several countries have enacted special policies, laws and programs to deal with violence against women in homes. However, India which since the 90s has witnessed widening inequalities since the policy of Liberalization, Globalization and Privatization has been introduced, right now is again facing the disastrous impact due to coronavirus. The pandemic is making adverse gender impact in two ways – 1) Middle- or upper-class women facing abuse in homes during the lockdown and 2) Poor women who have no homes or are surviving in slums or those on the roads walking back home or those awaiting in villages for migrant men to come back. The National Commission for Women has reported a rise of 94 percent in complaint cases where women have been abused in their homes during lockdown. Also, another aspect that has not received attention is increasing number of cases where migrant women, along with men, are walking hundreds of miles, some in their

advanced stage of pregnancy along with their children, without food. Some are being forced to deliver babies on the roadside while others are receiving devastating news of migrant men being dead while walking on roads. Deprivation and denial of health and other services to women and children during the COVID crisis is aggravating the disaster. Therefore, almost half a billion women are at risk in India due to the pandemic. Yet, the state has not made any comprehensive COVID response plan to tackle these challenges. Neither any formal statement is being issued to declare domestic violence as an essential service nor plans have been made to support pregnant women workers walking hundreds of miles without food and water with their children. Rather, the state after 40 days of lockdown, while easing down the restrictions, opened the liquor shops as a first step. In doing so, earning revenue is prioritized over genuine serious concerns of women. This is despite of the fact that the women's movement has shown evidences that consumption of liquor by men is proportional to increase in incidences of abuse. This essay investigates the gaps in the state's response in India to the increase in incidents of violence during the lockdown and argues that a robust comprehensive plan is required to address different aspects of violence women are facing in the largest democracy. The government cannot miss the chance to protect women from violence. In order to imagine a gender just violence free world, the need is to impose the lockdown on the collective imagination that reiterate gender stereotypical notions and to put the viruses of patriarchy and poverty in quarantine and isolation forever. By maintaining social distancing with the misogynist ideas and developing a plan to eliminate inequalities in all forms, gender justice and human rights could be achieved and the rights guaranteed under the Article 14, 15 and 21 of the Constitution can be reclaimed.

Nomani, Md. Zafar Mahfooz et al, '[Quarantine Law Enforcement and Corona Virus \(COVID-19\) Pandemic in India](#)' (2020) 14(4) *Journal of Xidian University* 536- 542

Abstract: The classical remedies for quarantine law enforcement are rooted to development of legal theory as a body of rules and principles of common law. The earliest precedent of quarantine law dates back to the 1824 in Gibbons v. Ogden ruling of full bench of United States Supreme Court. The Indian Penal Code, 1860 contains provisions on public health and safety to deal the quarantine enforcement. The Epidemic Diseases Act, 1897 as a special law applied to the containment of epidemics like cholera, malaria, dengue, swine flu and COVID-19 in India.

The nation-wide lockdown, from March 25, 2020 to April 14, 2020 uniquely added Disaster Management Act, 2005 for the preventive strategy of the COVID-19. The paper takes a legal stance on the quarantine law enforcement in sanctioning the lockdown and social distancing rule in the light ruling of Federal Court of San Francisco in *Jew Ho v. Williamson* and Indian Supreme Court decisions in *Municipal Council Ratlam v. Vardichand* and *Alakh Alok Srivastava v. Union of India* to meet the contemporary challenges posed by the COVID-19 pandemic in India.

Nowotny, Kathryn et al, '[COVID-19 Exposes Need for Progressive Criminal Justice Reform](#)' (2020) 110(7) *American Journal of Public Health* 967–968

Jurisdiction: USA

Extract: Although some correctional entities have embraced the need for temporary reforms, many others remain opposed. This crisis reiterates the need for progressive criminal justice policy reforms—in particular, the wider adoption of compassionate release and the elimination of cash bail—and has shown that policy change is possible. Immediate action will have a positive impact on slowing the spread of COVID-19 and should become standard practice to alleviate the health harms caused by mass incarceration.

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.

Oliva, Jennifer D, '[Policing Opioid Use Disorder in a Pandemic](#)' (2020) *University of Chicago Law Review Online* (forthcoming)

Jurisdiction: USA

Abstract: This essay examines the federal government's pandemic-provoked waiver of long-standing legal and regulatory barriers to evidence-based opioid use disorder (OUD) treatment aimed at enhancing access to OUD care while mitigating the risk of exposure to COVID-19. OUD

is a highly stigmatized, chronic neurological disease with a poorly understood etiology. The prevailing approach in the United States, however, has been to criminalize individuals with OUD. This is because U.S. drug policy has been long dominated by the antiquated view that OUD is a deviant moral failing that deserves prosecution instead of a complex health care condition that demands evidence-based treatment. The persistence of such anti-scientific theories about OUD motivated the federal government's creation of a surveil-and-supervise regulatory regime that isolates OUD treatment from the traditional health care delivery system and prioritizes the policing of individuals with OUD over the provision of expansive access to care. Unlike prior U.S. drug crises, which were attributed to the alleged immoral nature of targeted racial and ethnic minority groups, the country's current drug use and overdose dilemma has been characterized as a predominantly rural and suburban white American problem instigated by clinical overprescribing and the aggressive and fraudulent marketing of opioid analgesics. This popular narrative, which shifts blame for use disorder from the white 'victim,' to unscrupulous prescribers and Big Pharma, changed the substance use disorder solutions rhetoric from policing and punishment to public health interventions. Consequently, federal health officials were more amenable to policies aimed at enhancing access to OUD treatment as the novel coronavirus began to sweep over the United States in early months of 2020. In fact, they quickly waived several of the rigid federal legal requirements that attend to OUD treatment—and have long-obstructed access to OUD therapeutics—at the inception of the COVID-19 national health emergency. The federal government's decision to waive certain access to treatment barriers for individuals with OUD was a long overdue positive development. There is no question that the federal agencies that oversee the draconian U.S. OUD therapeutic regulatory regime ought to make those waivers permanent post-pandemic. This essay argues, however, that the benefits of the OUD-related COVID-19 waivers have disproportionately inured to individuals who use buprenorphine and are overwhelmingly white at the expense of individuals who use methadone and are overwhelmingly persons of color. This is particularly tragic given that it was considerably easier to obtain a prescription for office-based buprenorphine than access methadone administration treatment under the drug control regulatory regime pre-pandemic. The essay concludes by advancing a series of additional reforms beyond the current COVID-19 waivers that the federal government should adopt to ensure more equitably enhance access to OUD treatment.

'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.

Peršak, Nina, 'Covid-19 and the Social Responses Thereto: Penal and Criminological Lessons, Human Rights and Rule of Law Implications' (2020) 28(3) *European Journal of Crime, Criminal Law and Criminal Justice* 205–216

Abstract: There are many humbling lessons to be learnt from the social response to this virus, lessons that criminal law and criminological field can put into perspective, and it is a few of those lessons that will be addressed in this editorial.

Piquero, Alex R et al, '[Staying Home, Staying Safe? A Short-Term Analysis of COVID-19 on Dallas Domestic Violence](#)' (2020) *American Journal of Criminal Justice* (advance article, published 14 June 2020)

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.

Pires de Vasconcelos, Natalia, Máira Rocha Machado and Daniel Wang, '[COVID-19 in Prisons: A Study of Habeas Corpus Decisions by the São Paulo Court of Justice](#)' (2020) *Revista de Administração Pública* (forthcoming)

Abstract: Brazil has become the epicenter of the COVID-19 pandemic in the Global South—a pandemic that disproportionately affects vulnerable populations, especially those detained and imprisoned. Legal institutions are struggling to respond. In this paper, we focus on the National Council of Justice's Recommendation 62, issued March 17, 2020, which recommends that judges take several measures to reduce the risk of COVID-19 infection in prisons. We test this recommendation's impact by looking at habeas corpus decisions in the São Paulo Court of Justice. The exploratory findings presented here indicate that Recommendation 62 has little impact on habeas decisions. In general, citing the recommendation does not lead the Court to grant early release or house arrest to those detained, and most habeas actions are decided against petitioners. This is true even when petitioners claim to be part of a risk group or their alleged offense did not involve violence or serious threat—factors that should favor habeas relief under Recommendation 62.

'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.

Pyrooz, David C et al, '[Views on COVID-19 from Inside Prison: Perspectives of High-Security Prisoners](#)' (2020) *Justice Evaluation Journal* 1–13 (advance online article, published 12 June 2020)
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.

Quirk, Hannah, 'Covid-19 and Jury-Less Trials?' [2020] 7 *Criminal Law Review* 569-571

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.

Ramaswamy, Megha et al, '[Criminal Justice–Involved Women Navigate COVID-19: Notes from the Field](#)' (2020) 47(4) *Health Education & Behavior* 544–548

Abstract: In March–April, 2020, we communicated with a cohort of criminal justice–involved (CJI) women to see how they were navigating COVID-19, chronic illness, homelessness, and shelter-in-place orders in Oakland, Birmingham, and Kansas City. We report on conversations with N = 35 women (out of the cohort of 474 women) and our own observations from ongoing criminal justice involvement studies. Women reported barriers to protecting themselves given

widespread unstable housing and complex health needs, though many tried to follow COVID-19 prevention recommendations. Women expressed dissatisfaction with the suspension of research activities, as the pandemic contributed to a heightened need for study incentives, such as cash, emotional support, and other resources. COVID-19 is illuminating disparities between those who can follow recommended actions to prevent infection and those who lack resources to do so. Concerted efforts are required to reduce inequities that put the 1.3 million U.S. women under criminal justice supervision at risk for infection and mortality.

Reicher, Stephen and Clifford Stott, '[Policing the Coronavirus Outbreak: Processes and Prospects for Collective Disorder](#)' (2020) *Policing: A Journal of Policy and Practice* Article 014 (advance online article, published 19 April 2020)

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.

Sacco, Matteo Antonio et al, '[The Impact of the Covid-19 Pandemic on Domestic Violence: The Dark Side of Home Isolation during Quarantine](#)' (2020) 88(2) *Medico-Legal Journal* 71–73

Abstract: Domestic violence is a global public health problem. It takes many different forms and leads to significant physical and psychological consequences for the victim and the whole family. Situations that may prompt episodes of violence in the family include stress, emotional disappointment, economic factors, bad and cramped housing, and alcohol or drug abuse. How does the government's forced home isolation to contain Covid-19 infections impact on this type of abuse? Numerous articles have reported a decrease in reports of domestic violence since quarantine began but how reliable is these data? Is it a potential wake-up call for public institutions? We discuss the risks associated with quarantine measures during the pandemic and suggest the measures to prevent and improve the reporting of abuse cases.

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 policies.

Saraswati, Putu Sekarwangi and I Nengah Susrama, '[Law Enforcement During the Covid-19 Pandemic in Indonesia](#)' (2020) 5(7) *International Journal of Arts Humanities and Social Sciences Studies* 32-36

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.

Sarel, Roei, '[Crime and Punishment in Times of Pandemics](#)' (SSRN Scholarly Paper ID 3621478, 12 June 2020)

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.

Setyadi, Yusuf, '[Social and Security Impact of Covid-19 Outbreak in West Kalimantan Based on the Police Law Perspective](#)' (2020) 20(1) *Syariah: Jurnal Hukum dan Pemikiran* 14-27

Jurisdiction: Indonesia

Abstract: 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.

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

Jurisdiction: USA

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

Sheptycki, James, 'The Politics of Policing a Pandemic Panic' (2020) 53(2) *Australian and New Zealand Journal of Criminology* 157-173

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.

Shree Pant, Shiwanee, '[The Surge of Domestic Violence during the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3699388, 25 August 2020)

Abstract:

Introduction: Domestic violence is a violation of human rights where a person is abused by a partner or someone close to them. The COVID-19 pandemic has caused a lot of mental distress and escalated the number of cases. This research aims to investigate what causes the surge in domestic violence and what can be done to stop it.

Methods: Based on online researches and journals on domestic violence, its causes and impacts, a qualitative research was carried out to see what causes the surge in domestic violence, especially in times of disaster.

Results: Analysis of the research demonstrated that the disruption in normalcy caused by disasters and the mental distress that follows might develop into violence.

Conclusion: The research indicates that disruption of social and protective networks, and decreased access to services can exacerbate the risk of violence at home. On this basis, it is recommended that a safe and supportive environment is created for the victims of domestic violence. Further research is needed to identify what can be done to prevent domestic violence and protect the victims.

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

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

Skolnik, Terry, '[Criminal Law During \(and After\) COVID-19](#)' (2020) 43 *Manitoba Law Journal* (forthcoming)

Jurisdiction: Canada

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

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

Smith, Stephen, '[The Right to a Public Trial in the Time of COVID-19](#)' (2020) 77(1) *Washington and Lee Law Review Online* Article 1

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.

Spohr, Thomas, 'Criminal Law' (2020) (66) *LSJ: Law Society of NSW Journal* 97–98

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.

Starodubov, Sergii, Viktoriia Vladyshevska and Maryna Pyzhova, '[Liability for Violation of Quarantine: Novelties of Administrative and Criminal Legislation](#)' (2020) 9(2) *Ius Humani Law Journal* 137-158

Jurisdiction: Ukraine

Abstract: Public legislation has long failed to meet such large-scale challenges as the SARS-CoV-2 pandemic. In emergencies, to protect the lives and health of the population, it is necessary to promptly make decisions on the legal regulation of public relations that have developed due to the spread of Covid-19. For this purpose, the state has created legal mechanisms that are designed to ensure compliance with the rule of law and which need the scientific-legal assessment. The objective of the work is to analyze the novelties of administrative and criminal legislation, which regulate the liability for violation of quarantine. The object of research is the norms of administrative and criminal law. The subject of the study is public relations that have developed as a result of the introduction of quarantine and which are governed by administrative and criminal law. To achieve this goal, the situation in foreign countries was firstly analyzed; general patterns were identified; alternative solutions were proposed, with a minimum restriction of human rights and freedoms. Then, the novelties of the national legislation were studied in more detail; additional specific problems were identified; and a more balanced legislative policy was proposed. As a result of the study, the current state of legal regulation in the areas of administrative and criminal law related to quarantine violations was analyzed; the liability for such offenses was characterized; some

conclusions regarding the existing related problems were made and options for their solution were proposed, as well as propositions for modernization of legislation were made.

Stickle, Ben and Marcus Felson, 'Crime Rates in a Pandemic: The Largest Criminological Experiment in History' (2020) *American Journal of Criminal Justice* (advance article, published 16 June 2020)

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 place-based. The results will reveal not only why, where, when, and to what extent crime changed, but also how to influence future crime reduction.

Stoianova, Tatiana, Liudmyla Ostrovska and Grygorii Tripulskyir, '[Covid-19: Pandemic of Domestic Violence](#)' (2020) 9(2) *Ius Humani Law Journal* 111-136

Jurisdiction: Ukraine

Abstract: The article is devoted to the analysis of domestic violence in the context of Covid-19. The research is carried out for the first time in the focus of several sciences: psychology, sociology, and jurisprudence. To study the legal regulation of domestic violence, knowledge from different branches of law was used: international, criminal, administrative, and civil procedural law. Attention was paid to the historical retrospective—how the concept of domestic violence first appeared at the world level, and how it was differentiated and implemented in the national legislation of the participating countries. The problems of signing the Istanbul Agreement are highlighted. Special attention was paid to the current wave of domestic violence as a result of the Covid-19 pandemic. The prerequisites of a

general psychological, social, and economic nature, their interdependence, and connection with the pandemic were investigated. The scale of the scourge of domestic violence in the context of a pandemic in different countries is indicated, and its short-term and long-term consequences for the well-being of the nation. The specific mechanisms for preventing family violence at three levels are considered: general criminogenic, a comprehensive mechanism for preventing violence at the level of interaction between the state and public organizations, and directly special means. The study concludes that Covid-19 pandemic has a direct impact on the exacerbation of domestic violence. The solutions are proposed, from legislative amendments to the redistribution of state and public forces to address the problem of domestic violence.

Stott, Clifford, Owen West and Mark Harrison, '[A Turning Point, Securitization, and Policing in the Context of Covid-19: Building a New Social Contract Between State and Nation?](#)' (2020) *Policing: A Journal of Policy and Practice* Article 021 (advance online article, published 29 April 2020)

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

Strassle, Camila and Benjamin Berkman, '[Prisons and Pandemics](#)' (SSRN Scholarly Paper ID 3644635, 6 July 2020)

Jurisdiction: USA

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.

Sun, Nina and Livio Zilli, 'The Use of Criminal Sanctions in COVID-19 Responses: ([Exposure and Transmission, Part 1](#), and [Enforcement of Public Health Measures, Part 2](#)) in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Abstract: this piece is split into two parts – the first focuses on criminalization of COVID-19 exposure and transmission, and the second on criminal sanctions for the enforcement of public health measures.

Temprosa, Francis Tom and Darwin Simpelo, '[Rights under Lockdown: Not Releasing Vulnerable Prisoners in the Time of a Pandemic Is a Cruel, Inhuman or Degrading Treatment or Punishment](#)' (2020) *Michigan Journal of International Law (MJIL) Online*

Abstract: This argues that the non-release of vulnerable prisoners in this time of a pandemic constitutes a cruel, inhuman or degrading treatment or punishment, a grave violation of the Torture Convention in international law. With the quick and far-reaching spread of the novel coronavirus or COVID-19, prisoners are among the most vulnerable people in the world. Prisoners face the real danger of COVID-19 while being held in environments that make basic health measures of personal protection and distancing impossible. While the situations of prisons, jails, and other detention centers in each country differs, there could be instances when the danger of being afflicted with the disease is grave and imminent in all carceral States.

Terziev, Venelin, Marin Georgiev and SM Bankov, '[Increasing the Risk of Corruption Activities during a COVID-19 Pandemic](#)' (2020) 92(12) *International Scientific Journal, Internauka* 58-59

Jurisdiction: Bulgaria

Abstract: The actions of the Prosecutor's Office of the Republic of Bulgaria are positively recognized not only by the Bulgarian society, but also by the previous European Commission in relation to the Cooperation and Verification Mechanism in the field of justice and home affairs. Thus, the last Monitoring Report on the progress of Bulgaria acknowledged the fulfillment of all criteria and the Commission expressed the opinion that the progress made by the Republic of Bulgaria on the Cooperation and Verification Mechanism is sufficient to meet the country's commitments made at the moment of EU accession. This opinion does not minimize the expectations for outcomes in the fight against corruption and organized crime in the country. The refore the efforts of the law enforcement authorities in recent years will not remain on an occasional basis, but will impose a lasting trend to strengthen the rule of law in the Republic of Bulgaria.

Tessler, Hannah, Meera Choi and Grace Kao, '[The Anxiety of Being Asian American: Hate Crimes and Negative Biases During the COVID-19 Pandemic](#)' (2020) *American Journal of Criminal Justice* 1-11

(advance article, published 10 June 2020)

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.

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

Vose, Brenda, Francis T Cullen and Heejin Lee, '[Targeted Release in the COVID-19 Correctional Crisis: Using the RNR Model to Save Lives](#)' (2020) *American Journal of Criminal Justice* 1-11 (advance article, published 19 June 2020)

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.

White, Michael D and Henry F Fradella, '[Policing a Pandemic: Stay-at-Home Orders and What They Mean for the Police](#)' (2020) *American Journal of Criminal Justice* 1-16 (advance article, published 9 June 2020)

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.

ELDER LAW

Cahapay, Michael, '[Senior Citizens during COVID-19 Crisis in the Philippines: Enabling Laws, Current Issues, and Shared Efforts](#)' (2020) 9(1) *Research on Ageing and Social Policy* 1-25

Abstract: While the COVID-19 crisis has affected people of all walks, there is an unheard side of the vulnerable aged group across the globe. This article discusses the condition of senior citizens in the Philippines during the COVID-19 crisis. The review showed that various enabling laws through the constitution, republic acts, and executive orders, have been enacted to secure the welfare of senior citizens. However, the current crisis has revealed ageism issues such as deprivation of income sources, inaccessibility to essential needs, inadequate physical space, and

spoken negative perceptions. Shared efforts have been focused to improve social pension payout, guidelines for mobility, different approaches of remote access to goods and services, and meaningful internet connectivity within the context of the senior citizens. This paper suggests the need to translate the laws into effective programs, discuss related ageism issues with sensitivity, and consider evidence of successful international efforts to further improve the condition of the senior citizens in the country.

ELECTION LAW / VOTING

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

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

Becker, David J, '[Conducting Elections During a Pandemic](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 47-53

Jurisdiction: USA

Abstract: At the beginning of 2020, many believed that the biggest threat to our elections was foreign interference, consistent with disinformation campaigns launched by our adversaries. But even with this lingering threat, it was expected that voter turnout in the 2020 presidential election would break records – perhaps even reaching the highest level of turnout since the nation saw more than 65% of eligible voters participate in the election of 1908, over a century

ago (USEP, 2020). The onset of the pandemic brought much uncertainty, as election officials faced unprecedented challenges, unsettled law, and diminishing resources, while voters were torn between concern about our democracy and fear of contracting COVID-19. Widespread shortages of poll workers and safe polling locations, rushed transitions to mail voting, and insufficient funding could not diminish the democratic spirit, however, and we've seen primary turnout break records in some states. Most experts in the field believe that we should plan for the highest turnout in generations this fall, even as we expect that restrictions and fears due to the pandemic will be in full force. What's also apparent, however, is that law, policy, and perhaps most importantly, administrative and informational practices in our highly decentralized administration of elections are not yet fully equipped to facilitate safe, secure, and convenient voting for 150 million Americans in the midst of a global health crisis. And while solutions like expanding mail voting will be necessary, no one solution will solve this problem, nor will all states find themselves able to offer the same options to all voters. We will need a multifaceted approach including easy mail voting, a massive recruitment of new poll workers to allow for safe and convenient inperson voting, and an unparalleled voter education effort to meet this challenge.

Benkler, Yochai et al, '[Mail-In Voter Fraud: Anatomy of a Disinformation Campaign](#)' (Berkman Center Research Publication No 2020-6, 2020)

Jurisdiction: USA

Abstract: The claim that election fraud is a major concern with mail-in ballots has become the central threat to election participation during the COVID-19 pandemic and to the legitimacy of the outcome of the election across the political spectrum. President Trump has repeatedly cited his concerns over voter fraud associated with mail-in ballots as a reason that he may not abide by an adverse electoral outcome. Polling conducted in September 2020 suggests that nearly half of Republicans agree with the president that election fraud is a major concern associated with expanded mail-in voting during the pandemic. Few Democrats share that belief. Despite the consensus among independent academic and journalistic investigations that voter fraud is rare and extremely unlikely to determine a national election, tens of millions of Americans believe the opposite. This is a study of the disinformation campaign that led to widespread acceptance of this apparently false belief and to its partisan distribution pattern. Contrary to the focus of

most contemporary work on disinformation, our findings suggest that this highly effective disinformation campaign, with potentially profound effects for both participation in and the legitimacy of the 2020 election, was an elite-driven, mass-media led process. Social media played only a secondary and supportive role. Our results are based on analyzing over fifty-five thousand online media stories, five million tweets, and seventy-five thousand posts on public Facebook pages garnering millions of engagements. They are consistent with our findings about the American political media ecosystem from 2015-2018, published in *Network Propaganda*, in which we found that Fox News and Donald Trump's own campaign were far more influential in spreading false beliefs than Russian trolls or Facebook clickbait artists. This dynamic appears to be even more pronounced in this election cycle, likely because Donald Trump's position as president and his leadership of the Republican Party allow him to operate directly through political and media elites, rather than relying on online media as he did when he sought to advance his then-still-insurgent positions in 2015 and the first half of 2016. Our findings here suggest that Donald Trump has perfected the art of harnessing mass media to disseminate and at times reinforce his disinformation campaign by using three core standard practices of professional journalism. These three are: elite institutional focus (if the President says it, it's news); headline seeking (if it bleeds, it leads); and balance, neutrality, or the avoidance of the appearance of taking a side. He uses the first two in combination to summon coverage at will, and has used them continuously to set the agenda surrounding mail-in voting through a combination of tweets, press conferences, and television interviews on Fox News. He relies on the latter professional practice to keep audiences that are not politically pre-committed and have relatively low political knowledge confused, because it limits the degree to which professional journalists in mass media organizations are willing or able to directly call the voter fraud frame disinformation. The president is, however, not acting alone. Throughout the first six months of the disinformation campaign, the Republican National Committee (RNC) and staff from the Trump campaign appear repeatedly and consistently on message at the same moments, suggesting an institutionalized rather than individual disinformation campaign. The efforts of the president and the Republican Party are supported by the right-wing media ecosystem, primarily Fox News and talk radio functioning in effect as a party press. These reinforce the message, provide the president a platform, and marginalize or attack those Republican leaders or any conservative media personalities who insist that there is no evidence of widespread voter fraud associated with mail-in voting. The primary cure for the elite-driven,

mass media communicated information disorder we observe here is unlikely to be more fact checking on Facebook. Instead, it is likely to require more aggressive policing by traditional professional media, the Associated Press, the television networks, and local TV news editors of whether and how they cover Trump's propaganda efforts, and how they educate their audiences about the disinformation campaign the president and the Republican Party have waged.

Clinton, Joshua David et al, '[Trumped by Trump? Public Support for Vote By Mail Voting in Response to the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3630334, 16 June 2020)

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.

Douglas, Joshua A and Michael Zilis, '[Bring the Masks and Sanitizer: The Surprising Bipartisan Consensus About Safety Measures for In-Person Voting During the Coronavirus Pandemic](#)' (SSRN Scholarly Paper ID 3693286, 16 September 2020)

Abstract: Americans overwhelmingly support various safety measures at polling places for the November 2020 election. Issues like face mask requirements, social distancing, and sanitizing polling equipment after each voter have strong support, regardless of party, even if adopting them might mean longer lines or wait times to vote. For instance, 79 percent of Americans support face mask requirements at the polls, with little difference among the views between

Democrats and Republicans. That surprising statistic comes from a representative, nationwide survey of Americans we conducted in August 2020 about their views of the election during a pandemic. Although beliefs about expanded vote-by-mail have significant partisan overtones, support for safety measures for in-person voting does not. As of mid-September, five states (Indiana, Louisiana, Mississippi, Tennessee, and Texas) will not allow concerns about COVID-19 to qualify as a valid excuse for absentee voting. These states will therefore likely have a high rate of in-person voting. But the states vary slightly on the safety measures they will employ, with only some requiring poll workers to wear masks and none imposing a mask mandate for voters. Although no voter should be turned away for not wearing a mask, the data in our survey suggests that states can do more to make voters feel more comfortable when voting in person. Given that Americans broadly support some modifications to in-person voting and also express safety concerns about polling places, the failure to adopt them could depress turnout, particularly in states that do not make absentee voting easy. This paper presents the survey data and offers policy recommendations regarding safety measures states should employ to make Americans more comfortable when voting this fall.

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.

Landman, Todd and Luca Di Gennaro Splendore, '[Pandemic Democracy: Elections and COVID-19](#)' (2020) *Journal of Risk Research* (advance online article, published 13 May 2020)

Abstract: This article provides an initial assessment of the many risks posed by the COVID-19 pandemic on the conduct of genuine and transparent elections in the world. It begins with explaining why elections are a vital part of democracy, and then using the notion of the electoral cycle, constructs a risk matrix that assesses the relative impact and likelihood of risks to the cycle, as well as proposes a number of potential mitigations to these risks. The variety and number of elections, dimensions of the electoral cycle that can be disrupted, and the need for solutions raises significant questions about the future of democracy itself.

Lee, Sang-Oun, '[Vote-from-Home? Evaluation Framework for Election Security on Remote Voting in Response to COVID-19](#)' (SSRN Scholarly Paper ID 3685381, 2 September 2020)

Abstract: This article poses a question on whether the remote voting by online or vote-by-mail is trustworthy under the COVID-19 pandemic situation. One of the worldwide efforts to contain the virus was to work-from-home and restriction orders. Besides, because of the human contact is critical in the dissemination of the virus, possibilities of alternative methods of voting such as online voting, blockchain voting, vote-by-mail are proposed. In light of such a situation, the article proposes a framework to evaluate the election security of remote voting methods. Further, the article provides a case of best practice for election administration from the case of the Republic of Korea. Based off of the assessment results from the proposed evaluation framework, the article provides modest suggestions and policy implications to the election administrators.

Martin, John J, '[Mail-In Ballots & The Dormant Presidential Electors Clause](#)' (SSRN Scholarly Paper ID 3702995, 30 September 2020)

Jurisdiction: USA

Abstract: Crisis often begets crisis, and the COVID-19 pandemic has proven to be no exception. With rising concerns over crowding at the polls, many states have opted to allow voters to use mail-in ballots to vote in the general election. The Trump administration, nevertheless, has been proactively enacting policy changes to hamper the U.S. Postal Service's ('USPS') ability to effectively handle the rise in mail-in voting. Some states have sued the administration in response, raising a variety of claims in their lawsuits. One of the lesser discussed claims, though, is that the Executive's actions violate Article II, § 1, cl. 2, otherwise known as the 'Presidential Electors Clause.' This clause confers onto the states the exclusive power to appoint their electors 'in such Manner as the Legislature thereof may direct.' Thus, the Presidential Electors Clause is unique in that it provides states one of their few enumerated constitutional powers—it is a power that may not be preempted by federal action. But when the federal government uses its own powers, such as the Executive's delegated authority over USPS, to undermine a state's chosen manner of appointing its electors, such as popular vote by mail-in ballots, a conflict of powers arises. This Essay attempts to resolve this conflict of power, ultimately concluding that within the Presidential Electors Clause exists an implied obligation on the federal government to not deliberately undermine a state's choice to use mail-in ballots in a Presidential election—what this Essay calls the 'Dormant Presidential Electors Clause.'

Mazo, Eugene D, '[Voting During a Pandemic](#)' (2020) 100 *Boston University Law Review Online* 283-297

Jurisdiction: USA

Abstract: Richard Hasen dedicates his book 'Election Meltdown' to illuminating four threats that undermine the trust American voters have in their elections. These include voter suppression, administrative incompetence, dirty tricks that spread false information to voters, and the incendiary rhetoric uttered by public officials. An example of the last threat includes President Trump's repeated statements to the public that American elections are 'rigged' or 'stolen,' when, in fact, no evidence exists to support this claim. Professor Hasen is an astute observer of the American electoral landscape, and his book deserves our attention for its elucidation of these four threats. However, these threats, important as they are, have also recently been

overshadowed by an additional threat to American elections: the COVID-19 pandemic. COVID-19 has transformed the way we work, travel, shop, socialize--and, importantly, vote. COVID-19 has changed the playbook for voting dramatically. Prior to March, most voters cast their ballots in person. In November, most voters will be casting their ballots by mail. This fact alone threatens to impede the participation of ordinary citizens in the electoral process to an extent most American voters have rarely witnessed. How states decide to register new voters, how new and existing voters will choose to cast their ballots, and which segments of the population will vote in the presidential election are all questions for which we do not have good answers. This Essay explains how several aspects of the voting process have changed as a result of the pandemic, focusing in particular on voter registration, voting by mail, and voting in person. It also explains how COVID-19 has spawned an unprecedented amount of election-related litigation. As of late-September, more than 260 COVID-19-related election cases have been filed. They seek to determine how candidates will compete and how voters will exercise their voice in November. The challenges posed by COVID-19 for our elections do not render the threats identified by Professor Hasen irrelevant. Rather, this Essay argues that COVID-19 will exacerbate the effects of any incompetence that might be displayed by our state and local election officials. Moreover, those who engage in voter suppression, dirty tricks, or incendiary rhetoric will now be able to use COVID-19 as cover for their wrongdoing. If the past few months have taught us anything, it is that the excuse of a pandemic can be used to block access to the ballot box just as much as the four threats to democracy that Hasen identifies in his book.

De Mino, Wolfgang P Hirczy, '[Coronavirus Election Jurismalprudence](#)' (SSRN Scholarly Paper ID 3684951, 1 September 2020)

Abstract: Judicial Branch of the Texas GOP Showcases Use of Judicial Power to Make Elections Hazardous to Both Liberty and Health

Election Law Guru Richard Hasen recently laid out three pathologies in the American way of practicing electoral democracy. Not only is Texas afflicted by all three of them, the Lone Star State merits an in-depth clinical case study of its own to explore the etiology of how democracy itself can suffer a bad health outcome under partisan judicial leadership in times of a raging pandemic.

Not only has official voter suppression been given the imprimatur of judicial approval in Texas; the highest court for all matters civil has gone so far as to criminalize voting by mail, leaving the precise definition of the contours of the crime to the prosecutorial discretion of the Republican Attorney General, along with the ability to select absentee voters for prosecution after the fact for wrongful voting. See, relatedly, *Mason v. State*, No. 02-18-00138-CR, 598 S.W.3d 755 (Tex.App. – Fort Worth, Mar. 19, 2020, motion for reh’g denied Aug. 27, 2020) (holding that State did not have to prove mens rea to obtain conviction for second-degree felony illegal voting involving the casting of a provisional ballot, Tex. Elec. Code Ann. § 64.012(a)(1), (b)).

The Supreme Court of Texas (SCOTX) -- composed solely of Republicans -- set the new low in partisan jurisprudence in an opinion handed down on May 27, 2020, only seven days after oral argument (held via Zoom) and only 14 days after the case arrived in its inbox. The High Court’s haste wasn’t motivated by the exigencies of the COVID-19 crisis. The perceived imperative was instead to curtail voting by mail (VBM) in times of pandemic. The supreme jurists did so at the behest of fellow-Republican Attorney General Ken Paxton in an original proceeding brought for the purposes of securing a favorable ruling, rather than in a declaratory judgment case brought by advocates for voters that was making its way through the regular appeals process.

Under the motto SAFETY FOR ME, BUT NOT FOR THEE, the nine Supreme Court Republicans voted remotely from their respective homes to deny all Texas citizens the ability to vote remotely from their homes under the absentee voting provisions of the Texas Election Code. In *re State of Texas*, No. 20-0394, 2020 WL 2759629, 602 S.W.3d 549 (Tex. May 27, 2020).

Construing the absentee voting provision of the Texas Election Code as urged by the Attorney General, the High Court proclaimed that lack of immunity to COVID-19 does not, without more, constitute a physical condition that entitles the voter to vote absentee to avoid the risk of infection at the polling place.

This paper recounts the course of the litigation, and presents a critique of the actors and the outcome.

Abstract: On May 27, 2020, the Supreme Court of Texas (SCOTX) handed down an opinion on mail-in voting in record time, only seven days after oral argument (held via Zoom) and only 14 days after the case arrived in its inbox. The High Court's haste, however, was to curtail voting by mail (VBM) in times of pandemic--rather than expand it--and they did so upon an emergency mandamus petition filed by Attorney General Paxton, the state's chief legal officer, rather than in a case brought by advocates for voters.

In a glaring disconnect, the members of the SCOTX voted remotely from their respective homes to deny all Texans the ability to vote remotely from their home under the absentee voting provisions of the Texas Election Code. In re State of Texas, No. 20-0394, __ S.W.3d ___, 2020 WL 2759629 (Tex. May 27, 2020).

In construing the absentee voting provision as urged by the Attorney General, the Court held that lack of immunity to COVID-19 does not, without more, constitute a 'physical condition' that entitles the voter to vote absentee to avoid the risk of infection at the polling place.

Part I and II of this article will show how the all-Republican state supreme court went out of its way to interpret the Election Code contrary to the best interest of Texas voters when there was no good reason to do so, and will dispel the notion that the state supreme court was merely giving effect to the Legislature's will in a nonpartisan fashion.

In Part III I will argue that the Texas Supreme Court's ruling does not have the force of binding precedent because the question of statutory construction was improperly addressed in an unsuccessful mandamus case against election clerks who had done nothing wrong. No writ of mandamus was issued against them. The Court's interpretation of the 'disability' provision to exclude a lack of immunity to COVID-19 as a valid reason to apply for a mail ballot therefore constitutes dictum because it was not essential to the disposition of the case.

In Part IV and V I will explore the partisan political dimension of the dispute over absentee voting in Texas, and describe and assess the conduct of the state supreme court and the major players in the legal wrangling over mail-in voting in Texas.

Integrating the various strands of analysis, I conclude that the Supreme Court did Texans a disservice by thwarting a remedy for the better management of health risks inherent in election

administration under pandemic circumstances; - a remedy that was available within the letter and the spirit of the existing absentee voting provision in the Texas Election Code; that the Court ruled contrariwise for extra-jurisprudential reasons; and that the Court's disposition of the case leaves voters and others at the risk of being criminally prosecuted for not 'correctly' reading and heeding the Supreme Court's ruling.

I also conclude that the proponents of easier access to mail-in voting (most notably, the Texas Democratic Party) pursued a suboptimal litigation strategy, and should not have capitulated to Attorney General Paxton after being bested by him.

AG Paxton's successful gambit consisted of by-passing a pending state-court appeal (in the case in which he had lost at the trial court level and in the first round on appeal) so as to obtain a favorable ruling against the Democrats on an emergency basis in a separate case against different parties; a mandamus case filed directly in the all-GOP Texas Supreme Court while at the same time excluding his political nemesis from that arena.

In the wake of the Texas Supreme Court's ruling, the Texas Democrats abandoned their state-court litigation in favor of their federal strategy centered on an age-discrimination argument under the Twenty-Sixth Amendment. That bid for a federal remedy, however, does not look promising, given the current jurisprudential climate and ideological complexion of the Fifth Circuit and the U.S. Supreme Court.

In the first salvo, a panel of the Fifth Circuit ruled against the Democrats on the Texas Solicitor General's motion for stay, and the SCOTUS declined to get involved on an emergency basis so early in the game. Justice Sotomayor noted that the articulated concerns were weighty, and the arguments seemingly novel, but concurred in the denial of extraordinary relief. *Texas Dem. Party v. Abbott*, 2020, 961 F.3d 389 (5th Cir. Jun. 4, 2020) (staying preliminary injunction order) (motion to vacate stay denied by *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015 (Jun. 26, 2020)).

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.

Rubin, Nathaniel, '[The Electors Clause and the Governor's Veto](#)' (2020) 106 *Cornell Law Review Online* (forthcoming)

Jurisdiction: USA

Abstract: This Essay examines whether the United States Constitution allows a governor to veto a state legislature's bill governing presidential elections. The Constitution does not support this seemingly intuitive proposition directly, and on its face appears to vest control over presidential elections solely in the hands of state legislatures: while Article II of the Constitution explicitly provides for the 'Legislature' of each state to control the 'manner' in which electors are chosen,

it makes no mention of state governors. This vagary in the Constitution's text takes on particular import in light of political polarization over election administration in recent years. Moreover, the COVID-19 pandemic has prompted numerous states to make emergency modifications to their election systems, including delaying elections or attempting to cancel marginally competitive presidential primaries. Commentators have even expressed fear that a state legislature may eventually attempt to exercise its plenary authority to determine how presidential electors are appointed under Article II, Section 1 of the Constitution to choose electors without holding a popular vote. This Essay answers these concerns by arguing that a state governor can veto state legislatures' bills governing presidential elections on the same terms as any other legislation. Although the Constitution may not explicitly provide for a state governor's role, the Supreme Court's precedents and longstanding practice strongly suggest that a state governor has the same powers over bills governing presidential elections as over other state legislation. This conclusion has further implications for other potential conflicts between state legislatures and governors over presidential elections, including rules for absentee balloting, awarding electors by congressional district, using ranked-choice voting, or entering the National Popular Vote Interstate Compact.

Shapiro, Ilya and James Knight, '[Election Regulation during the COVID-19 Pandemic](#)' (CATO Institute Legal Policy Bulletin No 5, 2020)

Introduction: The ongoing pandemic has necessitated dramatic changes to nearly every aspect of American life. The ways we work, shop, eat, and socialize have been radically restructured to protect our own health and that of our communities. This November, that radical restructuring will extend to the way we vote. Changes to our voting systems to safeguard public health, such as by allowing mail-in voting, are sorely needed, particularly if fears of another COVID-19 wave in the fall come true. At the same time, hastily switching from in-person voting to more-anonymized systems with which the states lack experience creates the potential for chaos, errors, and decreased electoral legitimacy in the eyes of voters. With little more than two months until the election, states must finalize decisions on what they are doing and communicate those plans to their citizens and the country as a whole.

Wald, Ezekiel, '[Election Law's Efficiency-Convergence Dilemma](#)' (SSRN Scholarly Paper ID 3678254, 24 September 2020)

Jurisdiction: USA

Abstract: We are facing a moment of unique reflection in American democracy. Data suggests that marginalized communities feel persistently ignored by political actors—on a bipartisan basis. The scale of wealth inequality is soaring to unprecedented heights. Domestic indifference to foreign interference in our elections has poisoned public confidence in the political process. Mass reckonings with institutionalized racism and police violence have rocked major cities, facing deep and violent resistance from the President and the federal government. A global pandemic disproportionately devastated Black and Brown communities, and the federal government's response prioritized economic liberty over health and safety. Americans are reconsidering the nature of our relationship to the federal government, and the pressure for reform may now exceed any moment since the New Deal.

In this setting, Iowa's dramatic failure to efficiently administer the Democratic Presidential Caucus hardly seems worthy of a footnote in the history of 2020. Yet, at the time, it became a national story. Iowa's failure to administer an efficient election was new—but election law's marriage to economic efficiency is much older. Understanding the depth of efficiency's roots in the law of democracy requires turning back to that same New Deal era. The conflict between the American Legal Realists and the laissez faire Lochnerism of the Supreme Court laid the groundwork for efficiency's lasting role in law—and for the century of criticism that sprung up to contest it. Efficiency—and specifically, the conceptions of efficiency proffered by Chicago School Law and Economics and Virginia School Public Choice Theory—emerged victorious from those contests. But, we are facing a moment of unique reflection, and in such a moment, an opportunity arises. By looking back through efficiency's rise, we can chart a course forward.

This article offers a framework with which to do so: the efficiency-convergence dilemma. Part I builds the efficiency-convergence, outlining the intellectual history of efficiency's role in election law. Part II builds the dilemma, highlighting critical legal theory and heterodox economics traditions that contour the normative concerns with the efficiency-convergence. Part III presents the framework. I develop a typology of efficiency arguments within election law, derived from novel primary source analysis of the legislative history for the Voting Rights Act and the National Voter Registration Act, along with case law and scholarship across election law. I theorize that

this typology demonstrates an efficiency-convergence dilemma, functioning to institutionalize racial subordination as a neutral principle undergirding legal thought in the law of democracy. I offer a series of critiques for this efficiency-convergence, built from the critical theories discussed. Finally, Part IV offers two normative implications of the efficiency convergence. The first is to look outside the law, developing an operationalized definition of equity based on similar research in public health and public policy. The second is to highlight election law scholarship that bucks the efficiency convergence, charting a path forward. I present one such path: reimagining the right to vote as a constructive right implemented through constitutional conventions and norms and protected as an instrumental right.

ENERGY AND NATURAL RESOURCES LAW

Marreiros Moreira, Tiago and Guilherme Daniel, 'Natural Wealth' [2020] (Summer) *International Financial Law Review* 73-75

Abstract: Reports on Mozambique's response to the coronavirus emergency and its economic policy aimed at encouraging foreign investment in natural gas production.

Marreiros Moreira, Tiago and Vanusa Gomes, 'Parallel Battles' [2020] (Summer) *International Financial Law Review* 73-75

Abstract: Reports on how Angola is addressing the challenges of reduced oil prices and the coronavirus pandemic. Considers the privatisation initiative to encourage foreign investment.

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

Abstract: As this issue of the journal goes to press, the COVID-19 virus continues its relentless march around the world. He notes, however, that uninterrupted power supplies, which are 'key to sustaining necessary utility infrastructure', are 'only as reliable as their access to fuel'. There are a number of key issues/concerns regarding utilities' operations during these uncertain times: Should water and electricity utilities shut off connections for nonpayment? However,

during a pandemic, mutual assistance either may not be available or may be severely limited'. That said, the fact is that in these circumstances many utility workers must be in the field repairing the lines that distribute electricity. Electricity demand is being affected by the virus.

ENVIRONMENTAL & CLIMATE CHANGE LAW / DISASTER LAW

Ahmad, Nadia, '[Climate Cages: Connecting Migration, the Carceral State, Extinction Rebellion, and the Coronavirus through Cicero and 21 Savage](#)' (2020) *Loyola Law Review, New Orleans* (forthcoming)

Abstract: This article addresses the unmapped linkage of mass incarceration and encagement as responses to climate change and the coronavirus. I coin the phrase, climate cages, to highlight how public policy responses to atmospheric dynamics limit mobility, worsen prison conditions, and increase carcerality. In this article, I use the song lyrics of 21 Savage's 'A Lot' and his subsequent arrest as an example to highlight the intersectionality of race, climate change, migration, protest movements, and COVID-19. Further, I reexamine Cicero's adage of 'summum ius summa iniuria' to show problematic configurations of the carceral state and the edifice of the law generally. A warming planet has decreased available land, freshwater, and clean air to live and earn a livelihood. The world's megacities from New Delhi to Houston are choking from air pollution of their vehicles, power plants, factories, and industrial facilities. Not even rural areas are immune from the impacts of chemicals from agricultural activities. These natural resource stresses have served as threat multipliers for conflict, compounding centuries of economic and racial inequality. Economic and environmental chokepoints are leading to migration, movement, and higher rates of mass incarceration. Currently, the level of income inequality is at its peak, and record high and low temperatures are becoming the norm. The governmental response from the halls of Congress to the desk of the Oval Office has not been to find solutions to the climate crisis, but to restrict mobility and incarcerate black and brown people to maximize available land and space for those who are either more affluent and/or of the more preferred race, religion, and national origin. While historically human hierarchies and caste systems have existed for thousands of years, the impacts of intensified global warming have correlated with the increased prison populations and worsening prison conditions in the age of the Anthropocene.

Alibegovic, Mia et al, '[COVID-19 & SDGs: Does the Current Pandemic Have an Impact on the 17 Sustainable Development Goals? A Qualitative Analysis](#)' (FEEM Policy Brief No 07-2020, 2020)

Jurisdiction: Italy

Abstract: The following Policy Brief proposes a qualitative analysis on the impact the COVID-19 pandemic and the current Italian crisis could have on the achievement of the 17 Sustainable Development Goals. The analysis considers all the 169 targets of the 2030 Agenda, in order to study, specifically, which will be the effects of the crisis concerning the three dimensions of sustainable development: economy, society and environment. The reflection emerging from this document attempts to understand for each Goal and target which could and can be the impacts of the pandemic, of the lockdown and of the overall economic crisis caused by the previous. The results presented in the Brief are based on the evolution of the crisis and on the decree-laws of the Italian government in order to contain it; nevertheless, those outcomes cannot be taken as final, considering the subsisting nature of the crisis, the still outstanding lockdown measures, and the absence of quantitative data related to the post-crisis.

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.

Bronin, Sara C, '[Law's Disaster: Heritage at Risk](#)' in Susan Kuo, John Marshall and Ryan Rowberry (eds) *The Cambridge Handbook of Disaster Law* (forthcoming, 2021)

Abstract: If COVID-19 has taught us anything, it is that our laws and legal institutions are ill-prepared for disasters of all kinds. Even as we continue to consider the ramifications of the pandemic, we must also grapple with natural hazards – large-scale meteorological and geological events such as hurricanes, tropical storms, tornadoes, floods, blizzards, wildfires, earthquakes, extreme heat, and drought – that will inevitably wreak havoc during our long recovery.

Some consequences of these disasters are well-known: loss of life, economic catastrophe, and destruction of homes. Perhaps less well-known are the threats to the historic and cultural sites that speak to human identity and create a sense of connection across generations. A hurricane or earthquake could destroy completely an old building, especially one that has not been structurally reinforced. Extreme heat and intense precipitation can weaken joints, erode paint or other protections, and bring mold, reducing the lifespan of historic materials. Climate change, exacerbated by man, has made many of these events more frequent and more intense.

Given the increasing risks to historic sites, one might think that disaster-related planning, mitigation, and recovery efforts are being undertaken with increased urgency. Unfortunately, this is not the case.

This Essay argues that legal reforms at the intersection of disaster law and historic preservation law are desperately needed to protect historic places before they succumb to flame, water, wind, or the earth itself. It starts by explaining what's at stake: archaeological sites, vulnerable buildings, and even threatened national landmarks like Mesa Verde and the Statue of Liberty. It then establishes the three stages where disaster-related legal protection of historic resources is needed: before, during, and after disaster. The Essay next critiques the multi-governmental, federalist framework for heritage-related disaster planning, and highlights two states and four local governments starting to make necessary reforms. While no physical or legal intervention will ever be able to make historic sites last forever, we should try to make them more resilient to the avoidable consequences of obvious threats by changing the laws that render them vulnerable.

Bronin, Sara C, '[What the Pandemic Can Teach Climate Attorneys](#)' (2020) 72 (May) *Stanford Law Review Online* 155-164

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

Burrows, David, 'Has the Lockdown Changed Green Regulation for Good?' (2020) 546 *ENDS Report* 8-9

Abstract: Reports on how the environmental regulation bodies of England, Wales and Scotland changed their working practices but continued to carry out their obligations during the coronavirus pandemic. Examines whether new approaches based on technology will continue to be useful in the long term.

Choudhury, Barnali, '[Climate Change as Systemic Risk](#)' (SSRN Scholarly Paper ID 3704962, 4 October 2020)

Abstract: Hindsight tells us that COVID-19, thought by Trump and others to have come out of nowhere, is more aptly labelled a 'gray rhino' event, one that was highly probable and one that we had the power to prevent. Indeed, despite considerable evidence of the impending threats of pandemics, for the most part, pandemic preparation was ignored, resulting in wide-scale social and economic losses.

The lessons from COVID-19 however should remind us of the perils of ignoring gray rhino risks. Nowhere is this more apparent than with climate change, a highly probable, high impact threat that has largely been ignored to date. Despite those who deny climate change, there remains ample evidence of the increasing temperature of the earth, which like COVID-19, has the potential not only to create public health emergencies but also to create wide scale, enormous adverse impacts on the economy. Indeed, the risks posed by climate change to the economy have the potential to be so far-reaching that it should, as this article argues, be termed a systemic risk. As such, the economic implications of climate change need to be mitigated in order to preserve economic stability. This is necessary not only for prudential and economic reasons, but also to protect citizens' health and safety, and to ensure that business does not exceed the limits of the planet.

While there has been some attention to addressing the economic implications of climate change at the global level, progress in the US has been minimal. This is surprising, not only because climate change has already caused unprecedented damage in certain parts of the country, but also because, to some extent, existing legislation and models may offer the tools to address the systemic risks of climate change. Drawing inspiration from the Dodd-Frank Act, SEC rules, and the FDIC model, among others, this article proposes regulatory approaches for mitigating climate change systemic risks in hopes that COVID-19 does not foreshadow our fate for climate change.

Donati, Alessandra, '[Climate Change and Pandemics: The EU Risk-Management Strategy Under Scrutiny](#)' (Max Planck Institute Luxembourg for Procedural Law, Research Paper No 2020 (4), 10 July 2020)

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.

Drenovak-Ivanović, Mirjana, '[Standing in Environmental Law After Urgenda, Juliana and Covid-19 Crises](#)' (2020) 4 *EU and Comparative Law Issues and Challenges Series (ECLIC)* 3–20

Abstract: Teaching environmental law and climate change issues one may open a number of questions on relations between environmental protection, governmental duties and public rights, starting with: has a government duty to care and maintain a dissent environment and stable climate conditions?; what is a ground for governmental decision-making on actions threatening sustainability of the climate conditions?; where is the beginning and the end of the responsibility of an individual or of an country? The article outlines the elements that provide the criteria under which one may discuss on whether it should be the court to force the government to act or should it be a parliament to set laws initiating actions to protect citizens and their human rights from irreversible climate change? The article points out the recent cases *State of the Netherlands v. Urgenda Foundation* (court decision from December 2019) and *Kelsey Cascadia Rose Juliana v. USA* (court decision from January 2020). In *Urgenda*, the court concerned questions: whether the Netherlands is obliged to reduce the emission of greenhouse gases from its soil by at least 25% by the end of 2020 compared to 1990, whether the court can order the State to do so and whether the government is bound to protect human rights in climate crisis? In *Juliana*, a group of children between the ages of eight and nineteen filed suit against the federal government, claiming that the government violated their constitutional rights by causing dangerous carbon dioxide concentrations. Although the court had found the injury and evidence on causation between government's actions and climate crisis, it found a lack of redressability. The aim of the article is to examine if the concepts of European Green Deal presented on January 2019 by the Von der Leyen Commission to enshrine the 2050 climate neutrality target into life are in line with conclusions from analysed cases and lessons learned from COVID-19 crisis.

Duvic-Paoli, Leslie-Anne, '[The COVID-19 Pandemic and the Limits of International Environmental Law](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Abstract: What can a global health crisis tell us about international environmental law? To answer this question, this short piece maps the interconnections between the COVID-19 pandemic and international environmental law at three stages of the crisis: its origins, policy

responses, and consequences. It argues that the pandemic sheds light on the weaknesses of international environmental law.

Engel, Kirsten H, '[Climate Federalism in the Time of COVID-19: Can the States “Save” American Climate Policy?](#)' (Arizona Legal Studies Discussion Paper No 20-28, June 2020)

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.

Engstrom, Gustav et al, '[What Policies Address Both the Coronavirus Crisis and the Climate Crisis?](#)' (CESifo Working Paper No. 8367, 2020)

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.

Etty, Thijs et al, 'Transnational Environmental Law in a Transformed Environment' (2020) 9(2)

Transnational Environmental Law 197-209

Abstract: The events over the first few months of 2020 have cast doubt on many perceived certainties related to societal relationships, professional and private life, and the shape of the future. The deadly pandemic responsible for these uncertainties has created widescale human suffering, with effects that will be felt for some time. The tireless work of medical professionals and other related professionals is central to mitigating the effects of this crisis. As environmental scholars, with various skills, our work can help in contributing to new visions of the future with changing behaviour and changing impacts on nature. As transnational scholars, our work can be a reminder of the need to continue to collaborate, even at times where borders are closing and global supply chains are strained.

Fletcher, Robert et al, "'Close the Tap!': COVID-19 and the Need for Convivial Conservation' (2020) (85)

Journal of Australian Political Economy 200-211

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.

Ghaleigh, Navraj Singh and Louise Burrows, '[Resetting or Reversion in the New Climate Normal](#)'
(Edinburgh School of Law Research Paper No 2020/13, 2020)

Jurisdiction: Asia

Abstract: This chapter makes the case that ambitious climate action should be 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.

Grodzińska-Jurczak, Małgorzata, '[Environmental Choices vs. Covid-19 Pandemic Fear: Plastic Governance Re-Assessment](#)' (2020) 4(2) *Society Register* 49-66

Abstract: Alarming plastic production growth worldwide reinforces the public debate about the prevailing environmental crisis, whereby single-use-plastic (SUP) items are considered as by far the most harmful to the environment and public health. Accordingly, European environmental policy aims at eliminating SUP. Recently, we presented a model of plastic governance that derives from a circular economy approach identifying and taking into consideration perspectives of different actors in the plastic governance, such as producers, wholesalers, shop keepers, consumers, citizen scientists, and academia. Our results illustrate that the vast majority of stakeholders cared for the natural environment and understood the need to phase out SUP from the global economy. We proposed that a knowledge brokerage, undertaken by scientists via means of citizen science, as the most effective method to implement elimination policy, as it provides stakeholders with knowledge on why and how to handle SUP issues. However, at the time of the global COVID-19 pandemic, a plastic governance model required a re-assessment. The perceived role of SUP has changed, as it reflects the health emergency. Namely, due to the health safety reasons stakeholders and consumers are requesting even more SUP than previously. Following up on our data gathered prior to the pandemic, we suggest that under the new circumstances health concerns outweigh the environmental concerns being determined by a shift in the value hierarchization. The paper discusses preliminary results.

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.

Klasche, Benjamin, '[After COVID-19: What Can We Learn About Wicked Problem Governance?](#)' (SSRN Scholarly Paper ID 3637837, 30 June 2020)

Abstract: The governance of the coronavirus crisis has shown some promising results as the spread of the disease to a critical level was avoided. Due to its complex nature, the crisis must be considered a wicked problem and its successful governance could, therefore, serve as a resource for governing other wicked problems such as the climate crisis. This short article suggests that the principles of metagovernance are useful in governing wicked problems and places governance tactics of the coronavirus crisis and the climate crisis in analytical categories derived from it. By doing so, possible lessons for the governance of the climate crisis were extracted. Based on these, the key for governing wicked problems lies in the acceptance and embracing of failure as a governance outcome which leads to the ability to modify or abandon policies swiftly. It also stresses the responsibility of the population to support policies and their execution pro-actively.

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.

Levenson, Laurie L, '[Climate Change and the Criminal Justice System](#)' (Loyola Law School, Los Angeles Legal Studies Research Paper No 2020-22, 2020)

Abstract: The past decade has been the warmest decade in history. But while there has been a great deal of attention paid to issues of infrastructure sustainability, less attention has been focused on the impact of climate change on our criminal justice system. This paper identifies how we can anticipate climate change will affect and create new challenges for law enforcement, prisons, prosecutorial and defense agencies, government offices, and communities. This article first examines three ways climate change is challenging our criminal justice system—from altering the types of crimes committed, to detrimentally impacting prisons, jails, and other criminal justice institutions, to challenging traditional doctrines of criminal law such as the necessity and duress defenses and causation. Drawing in part on lessons from the response to the COVID-19 pandemic, this article makes ten recommendations on how such challenges can be met.

Lokhandwala, Zainab, '[Environmental Law in the Middle East and North Africa](#)' (2020) *Opinio Juris in Comparatione* (pre-print)

Abstract: This paper analyses the impact of the Covid-19 pandemic on the Middle Eastern and North African (MENA) region against the backdrop of two themes: climate action and human rights. In the climate context, the renewable energy sector will certainly suffer in the immediate aftermath of Covid 19. At the same time, globally, renewables have shown more resilience than fossil fuels during this crisis, which may lead to increased investments in the long-term. Nevertheless, pre-Covid commitments and estimated future gains (if any) in renewables were not enough for combating climate change. The trajectory of regional climate action was slow and inadequate to begin with, and it is likely to suffer even further, owing to economic slowdown and relief measures that will pull resources away from climate action. In the human rights context, the Covid 19 crisis has led to increased authoritarianism and has added a new layer to existing human rights and humanitarian issues. As political stability is a prerequisite for

the growth and execution of environmental law, public discontent against governments will only delay and detract the environmental agenda. Overall, these two legs of analysis show how the pandemic has led to a retraction of environmental law. Coming out of the crisis, there are many lessons to be learnt. Interdisciplinary approaches that draw a human-ecological-health nexus may offer solutions in the Middle East as in the world. The Berlin Principles 2019 are a positive step in this direction which could pave the way for more ecosystemic and holistic environmental legal development.

Ortiz, Andrea Monica D et al, '[Implications of COVID-19 on Progress in the UN Conventions on Biodiversity and Climate Change](#)' (SSRN Scholarly Paper ID 3665170, 30 July 2020)

Abstract: 2020 was to be a landmark year to set new targets to halt biodiversity loss and prevent dangerous climate change. However, due to COVID-19, the 15th Conference of the Parties (COP) of the Convention on Biological Diversity, in Kunming, China and the 26th COP of the United Nations Framework Convention on Climate Change in Glasgow, Scotland, where negotiations on the Global Biodiversity Framework (GBF) towards the 2050 vision of 'Living in harmony with nature', as well as the second submission of Nationally Determined Contributions to keep global warming well below 2°C following the Paris Agreement, were to take place. The pandemic has caused many country priorities to shift towards responding to the health crisis and economic recovery, and this may affect how driven parties will be in upcoming negotiations. Agreement on higher climate ambition, as well as conservation targets, may become even more tenuous. However, weak and unambitious climate and biodiversity policies, and a rapid return to business as usual could have catastrophic consequences for the planet. Biodiversity and climate policy frameworks should recognize that the biodiversity, climate change, and health crises are deeply interlinked, and take advantage of opportunities for higher ambition in climate and biodiversity targets.

Puaschunder, Julia M, '[The Green New Deal: Historical Foundations, Economic Fundamentals and Implementation Strategies](#)' (SSRN Scholarly Paper ID 3676872, 19 August 2020)

Abstract: The Green New Deal (GND) serves as market solution to implement global environmental governance as 'the sum of the many ways individuals and institutions, public and

private, manage their common affairs.’ This paper discusses the historical foundations, underlying economic mechanisms of the GND and contemporary implementation strategies of the GND. GND spending should target social and green causes fostering concepts such as eco-commerce, environmental enterprise, environmental finance, fiscal environmentalism, green accounting, economy, jobs and trading as well as sustainable energy. The economic policies proposed comprise of fiscal and monetary means, innovation efforts and behavioral changes. Concrete recommendations are given on carbon tax, emissions trading, green bonds, absorbing CO2 and forestation, insurance policies, intergenerational conscientiousness, engaging portfolio managers, ecotax, environmental pricing reform, environmental tariffs, net metering, Pigovian tax and sustainable tourism. All these efforts are to support global environmental governance. The paper closes with a prospective outlook of changes implied to the GND due to the novel Coronavirus (COVID-19) crisis.

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

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

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.

Santos Silva, Marta and Luisa Cortat Simonetti Gonçalves, '[Nudging Consumers Towards Sustainable Practices Regarding Plastics in a Post-COVID-19 Europe](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Producers and consumers play an important role in the fight against plastic pollution, particularly as far as single-use plastics (SUPs) are concerned, that depend on product eco-design and change in consumption patterns. The EU acknowledges this role of producers and consumers, and established goals for Member States, often in the form of rules addressed to the industry. The challenges caused by SUPs were, however, increased by the COVID-19 pandemic that led to an exponential production of protective equipment, such as masks and gloves, food packaging and take-away containers. This paper thus purports to address the question of how nudging can foster sustainable practices regarding plastics in Europe during and after the coronavirus crisis. Based on the understanding that behavioural insights are useful to both policy and lawmakers and on statistical information available on the impact in consumer

choice and the environment, this paper demonstrates the utility of nudges in the particular COVID-19 scenario and concludes that consumers shall be given a prominent role in the orchestration of the transition to a sustainable plastics economy. In order to do so, the paper (1) describes the omnipresence of plastics in the products offered to consumers; (2) contextualizes the European approach to SUPs on the search for a circular economy; (3) summarises the impacts of the coronavirus crisis on the environment and on the law in Europe; (4) describes the role of stakeholders in a sustainable plastics economy; and (5) sets the importance of addressing consumer behaviour through nudging in the fight against SUPs.

Stump, Nicholas, '[Critical Legal Research and Contemporary Crises: Climate Change, COVID-19, and the Mass Black Lives Matter Uprising](#)' (2020) *Unbound: Harvard Journal of the Legal Left* (forthcoming)

Abstract: This Article explores intertwined contemporary crises via the Critical Legal Research framework ('CLR'), as initially developed by the critical legal scholars Richard Delgado and Jean Stefancic. CLR as conceived of in this Article entails a truly radical approach to the legal research and analysis regime. While the traditional research regime—i.e., as taught in law schools and utilized in practice—functions to homogenize research outcomes towards hegemonic ends, a critically 'reconstructed' approach to legal and broader socio-legal research permits more transformative futures. Specifically, CLR as deployed within such modes as radical cause lawyering can help engender genuine systemic 're-formations' of the ecological political economy beyond mere law 'reform.' Next, this Article applies the CLR framework to three intertwined crises: climate change and the broader ecological crisis (i.e., termed the 'Capitalocene' by critical commentators); the COVID-19 global pandemic and accompanying social and economic catastrophe, and; the racial state violence and intersecting oppressions along lines of class, gender, LGBTQ+ status, immigrant status, etc. that catalyzed the mass 2020 Black Lives Matter uprising. This illustrative CLR application demonstrates that such crises ultimately emanate from the unjust and ecologically unsustainable white patriarchal capitalist paradigm—and that, correspondingly, CLR-influenced radical cause lawyering modes could help drive transformative futures beyond this paradigm in its entirety.

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.

Tanimura, Steven, '[Are There Limits to Growth? Climate Change... Coronavirus... Is There a Connection?](#)' (SSRN Scholarly Paper ID 3684881, 1 September 2020)

Abstract: Over the past decade, the world has witnessed the unfolding of climate change—the extension of our limited abatement of pollution and uncontrolled consumption of resources. We have also in the midst of the third coronavirus event. The first was the Severe acute respiratory syndrome or SARS-CoV in 2003; then there was the Middle East respiratory syndrome or MERS-CoV in 2012; and finally, the current SARS-CoV-2 virus which is the cause COVID-19. Although it is tempting to assert that a causal relationship does in fact exist, there may not be a substantive line of argument to support such a claim, nor sufficient evidence that is available. The intent of this paper is to examine whether a causal relationship can be at least hypothesized. No attempt will be made to produce an analytical or statistical model of such a relationship. The approach used will be primarily argumentative in nature, drawing upon the body of literature that may be available to assist in its rationalization. There may be arguments that may not have been considered—and for that, it was not intentional.

Viola, Pasquale, '[Climate and Environmental Approaches in the United States and Canada at the Outbreak of the 2020 Pandemic](#)' (2020) *Opinio Juris in Comparatione* (pre-print)

Abstract: The essay deals with the issues triggered by environmental policies and Covid-19 pandemic in the United States and Canada. The analysis starts with an outline of the environmental law systems and the main responses to the pandemic, then emphasizing the focal legal concerns about the emergency measures and environmental policies. The last section draws critical conclusions that show some current patterns and the way forward in the entanglement environmental law/pandemic.

Wilson, Catherine, 'The Growing Plastic Mountain of PPE Waste' (2020) 44(3) *Company Secretary's Review* 42-43

Jurisdiction: UK

Abstract: Highlights the growing global environmental challenge of plastic waste, which has been exacerbated by the use of personal protective equipment (PPE) during the COVID-19 pandemic. Examines how corporations should review, measure and reduce their plastic waste.

FAMILY LAW

Bewley, Amanda, 'Mental Health Awareness and Suicide Prevention in The Family Justice System: A Different Covid-19 Issue' (2020) 50 (July) *Family Law* 795-798

Jurisdiction: UK

Abstract: Discusses the issue of suicide prevention in the specific context of the family justice system and the need for training in how to respond to suicidal litigants. Considers the effect of the coronavirus pandemic on the well-being of both practitioners and clients.

Byars, Kaleb, 'Coronavirus, Caregivers and Child Custody: A Pragmatic Solution for Parents Who Seek to Protect Their Children During the COVID-19 Crisis' (2020) 56(5) *Tennessee Bar Journal* 28-29

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?

Chandler, Alexander, 'Is Coronavirus a *Barder* Event?' (2020) 50(June) *Family Law* 701-712

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.

Douglas, Gillian, 'Abduction' (2020) 50 (July) *Family Law* 822-823

Jurisdiction: UK

Abstract: Comments on the approach in *Re PT (A Child)* (Fam Div) to the argument that ordering the return of a child from England to Spain during the coronavirus pandemic would amount to a grave risk of physical harm under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.13b.

Doughty, Julie, 'Remote Justice: Family Court Hearings During the Pandemic' (2020) 42(3) *Journal of Social Welfare and Family Law* 377-380

Jurisdiction: UK

Abstract: Discusses [Re A \(Children\) \(Remote Hearing: Care and Placement Orders\)](#) (CA) and other cases on holding a hearing remotely or in a hybrid form during the coronavirus pandemic, noting the guidance given by the President of the Family Division in this case.

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.

Fraser, Graeme, 'Family Justice Post COVID-19: The Road to Recovery' (2020) 170(7900) *New Law Journal* 8

Jurisdiction: England & Wales

Abstract: Considers the Sixth Report of the House of Commons Justice Committee on the delivery of court services during the coronavirus pandemic. Highlights the backlog of cases in the Family Court and the need for a government recovery plan on how to reduce the backlog.

Freckelton, Ian, 'COVID-19 and Family Law Decision-Making' (2020) 27(4) *Journal of Law and Medicine* 846

Abstract: All aspects of family law have been affected by the COVID-19 pandemic. It has posed challenges for the operation of the Family Court of Australia and the Federal Circuit Court, the obtaining of expert reports, the conduct of hearings, the functioning of contact centres, and the mode of delivery of children's schooling. In Australia and in Ontario an attempt has been made to be clear about what is expected of parents during the period of crisis. An Australian innovation has been the establishment of a COVID-19 List and communication by the Chief Justice of the Family Court about what is expected of parents by way of compliance with orders from chief health officers and safe practices to protect children against infection, especially those with particular health vulnerabilities. This column reviews such initiatives and a number of the significant family law decisions during the early phase of Australia's response to the COVID-19 pandemic.

Harker, Lisa, 'Children's Contact with Birth Families: Lessons Emerging During the Pandemic' (2020) 50 (July) *Family Law* 929-931

Jurisdiction: UK

Abstract: Considers how child contact arrangements have been managed during the coronavirus lockdown with restrictions on face-to-face contact. Refers to findings from Nuffield Family Justice Observatory research on the use of video calls for children in residential, foster and kinship care to facilitate contact with birth families.

Healing, William, 'Divorce in the Time of Covid-19: an English Perspective' [2020] 2 *International Family Law* 118-124

Abstract: Considers how the coronavirus pandemic has affected divorce proceedings in England, and reflects on whether the changes will have long-term implications. Details relevant guidance on issues such as remote hearings, cases involving children, and financial provision questions including asset valuations.

Hitchings, Emma and Mavis Maclean, '[Unprecedented Times: Some Thoughts on the Consequences of the COVID-19 Pandemic from a Family and Social Welfare Law Perspective](#)' (2020) *Journal of Social Welfare and Family Law* (advance online article, published 21 Jul 2020)

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.

Holt, Kim and Nancy Kelly, 'The Adoption and Children (Coronavirus) (Amendment) Regulations 2020: Regulations Introduced During a Global Coronavirus Pandemic that will have Implications for the Most Vulnerable Children' (2020) 50 (July) *Family Law* 869-874

Jurisdiction: UK

Abstract: Reviews changes made by the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 to the Care Planning, Placement and Case Review (England) Regulations 2010 and the Adoption Agencies Regulations 2005. Expresses concern about the lack of consultation and scrutiny and argues that the changes are disproportionate and unjustified.

Key, Aimee and Lindsey Obenhaus, 'COVID-19 and Family Law: What Every Attorney Needs to Know' (2020) 83(5) *Texas Bar Journal* 310–311

Jurisdiction: USA

Extract from Introduction: In addition to transforming the way matters are handled in court, the COVID-19 pandemic poses a number of new issues for family law clients and their children, which are considered here.

Leedam, Kirsty and Hannah Nicholls, 'The Importance of Habitual Residence in International Children Proceedings after Covid-19' [2020] 2 *International Family Law* 143-148

Abstract: Discusses the impact of the coronavirus pandemic on international children proceedings, including the extent to which the travel ban may have changed some children's place of habitual residence. Details the factors determining such residence, how it is assessed, and how it may be lost.

Lyon, Fiona, 'The Surrogacy Journey' (2020) 170(7900) *New Law Journal* 12-14

Jurisdiction: UK

Abstract: Outlines the legal and practical steps involved in a surrogacy arrangement, including surrogacy agreements, parental orders, relevant case law, and the effects of COVID-19 on international surrogacy.

Masson, Amanda, 'Reflections on Child Law in the Pandemic' (2020) 166 *Family Law Bulletin* 1-3

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.

McCosker, Alexandra, 'Family Law: Parenting during a Pandemic: Best Interests of the Child Remain Paramount' (2020) (66) *LSJ: Law Society of NSW Journal* 78–79

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.

Robins, Imogen, 'Financial Remedies after Covid-19: What can we Expect?' (2020) 50 (July) *Family Law* 904-908

Jurisdiction: UK

Abstract: Discusses how the coronavirus pandemic may affect litigation for financial remedies on divorce. Considers the impact of lockdown on courts' procedure, advantages of alternative dispute resolution, valuation of investments, and the possibility of varying existing orders.

Rosenberg, Lee, '[Love and Family Law in the Time of COVID-19](#)' (2020) 52(2) *NYSBA Family Law Review* 4-12

Jurisdiction: USA

Extract from Introduction: As New York State gradually entered "Phase 1" and then moved forward to where are standing at the time of this editorial, those who practiced "family law"

were, with limited exceptions, incredulously considered “nonessential.” How that was even remotely possible, given the kind of services we perform for families already in crisis, is an absurdity. The bench and bar and their staffs were given short-shrift, and families, except in the most exigent circumstances, could not get their day in court nor even file new actions for a prolonged period of time. Despite the court system requiring special “Matrimonial Rules” for practicing in this field and the talk of the need to protect families, for some reason, it still feels as if other areas of law take precedence. It seems rare that any matrimonial lawyers are even asked to participate and serve on those task forces empowered to offer opinions on overarching policy matters that affect what we do and those we represent. Clients and self-represented litigants frustrated—as the bench and bar were—with the lack of access to the system, which was finally and miraculously pulled into the age of technology, could not understand how they were in limbo at home as well as in court. Through it all, lawyers, judges, legal assistants, paralegals, court personnel, with a built-in need to serve justice, still had to rightfully worry about themselves and their own families. “Balance,” a repeated mantra for some time now, but rarely found and usually beyond our grasp, is now thrust squarely to the forefront—sometimes as a mandate in our own households.

And so, as we have transitioned to virtual appearances, electronic filing, and with in-person matters at hand—at least to some degree, where do we go from here and how does this still ongoing experience affect the practice of law and the advice we give?

Saladino, Rosa and Suzanne Christie, ‘Family Law: The Limits of the “Hague Convention” in Child Abduction Cases’ (2020) (67) *LSJ: Law Society of NSW Journal* 84-85

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.

Smyth, Bruce M et al, '[COVID-19 in Australia: Impacts on Separated Families, Family Law Professionals, and Family Courts](#)' (2020) *Family Court Review* (online advance article, published 24 September 2020)

Abstract: Around the globe, many families are experiencing significant anxieties linked to COVID-19. These include health concerns and economic pressures, both of which are frequently taking place against a backdrop of various levels of social isolation. In addition, many parents have been juggling home schooling requirements in the face of radically different work arrangements including the loss of employment altogether. Unsurprisingly, additional challenges and stresses are emerging for separated families, family law professionals, and family courts. In this article – written at a point-in-time in a rapidly evolving COVID-19 context – we reflect on key challenges for separated families in Australia, and some of the emerging professional responses.

Walklett, Chris, 'Coronavirus and the Expert Witness: Valuation Instructions, (2020) 50 (July) *Family Law* 909-910

Jurisdiction: UK

Abstract: Discusses how the coronavirus pandemic has affected share valuation for the purposes of financial remedies on divorce. Considers the significance of earnings, multiples and assets.

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 are listed below in the *International Law > International Economic Law* section.

Adegoke, Taiye, '[Banks and Other Financial Institutions Act \(Amendment\) Bill 2020 \(A Comprehensive Analysis of the BOFIA 2020\)](#)' (SSRN Scholarly Paper ID 3670773, 7 August 2020)

Jurisdiction: Nigeria

Abstract: In July 2020, the Senate of the Federal Republic of Nigeria for the first time since 29 years passed a Bill to repeal the Banks and Other Financial Institutions Act (BOFIA) Cap B3 Laws of the Federation of Nigeria 2004 and re-enact the Banks and Other Financial Institutions Act (BOFIA) Cap B3 Laws of the Federation of Nigeria 2004 (Amendment) Bill, 2020. The Bill seeks to regulate banking and businesses of other financial institutions by prohibiting the carrying on of

such businesses in Nigeria except under licence and by a company incorporated in Nigeria. This article examines section by section, the innovative provisions of the Bill and how they clearly improved on the old Act to meet the nuances of the current business world. It is hopeful that just as the new CAMA received the assent of the President of the Federal Republic of Nigeria, the new BOFIA scales through the House of Representatives and eventually gets the President's assent as the new Act is poised to strengthen the legal framework for the regulation of banks and bring it in line with global best practices, and prevent distress especially during and after this turbulent period of COVID-19, so that the country can adequately prepare and deal with potential post COVID-19 challenges in the banking sector.

Ahmed, SheharYar, '[Impact of COVID-19 on Performance of Pakistan Stock Exchange](#)' (SSRN Scholarly Paper ID 3643316, 4 July 2020)

Abstract: The objective of this study is to determine the impact of COVID-19 on the performance of Pakistani Stock Market. This study uses the data of COVID-19 related positive cases, fatalities, recovers and the closing prices of PSX 100 index of the first half of 2020. The findings of the study suggest that only COVID-19 recoveries are influencing the performance of the index and the daily positive cases and fatalities are insignificantly related to the performance. Further studies can be performed by incorporating other variables such as economic growth, interest rate and inflation rate along with the COVID-19 related variables at a cross-country level.

Arner, Douglas W, Emiliios Avgouleas and Evan Gibson, '[Financial Stability, Resolution of Systemic Banking Crises and COVID-19: Toward an Appropriate Role for Public Support and Bailouts](#)' (University of Hong Kong Faculty of Law Research Paper No. 2020/044, 2020)

Abstract: A wide range of approaches has been applied to address banking and other financial crises. The nature of the approach depends on the nature of the crisis, its origins, evolution and context. Systemic banking crises are among the most common and costly to address. The experiences of the three major international financial crises of the past 25 years – the Asian Financial Crisis, the Global Financial Crisis, and the European Debt Crisis – offer critical lessons regarding the most effective approaches in tackling bank solvency during a systemic crisis. One of the most common and also effective methods has been the transfer of non-performing loans

(NPLs) to an Asset Management Company (AMC) that performs workouts or liquidates stressed loan portfolios at a more opportune time to amortize losses. In most cases the use of AMCs has delivered positive results for the taxpayer.

Contemporary consensus as regards tackling bank solvency during a systemic financial crisis focuses heavily on prevention of government bailouts in order to protect state finances and curb moral hazard. However, an overly dogmatic focus on preventing public financial support in the context of a systemic bank solvency crisis may place insurmountable obstacles to the use of state-backed AMCs and other forms of resolution of NPLs and bank recapitalization. This paper provides a new perspective on the common belief that public support in the context of systemic bank insolvency – i.e. bank bailouts – is an inefficient use of public funds or conducive to moral hazard.

Our study finds that state-backed AMCs can be effective in recapitalizing banking systems, depending on the modus operandi of the restructuring, funding and the conditions attached to the fiscal backstop. With respect to systemic banking crises or those caused by exogenous factors, such as the unprecedented disruption of economic activity due the COVID-19 pandemic, preservation of financial stability and not containment of moral hazard should be policy-makers' predominant goal. Thus, we suggest that a combination of balance sheet restructuring and the use of AMCs to manage NPLs is the optimal approach.

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

Abstract: The COVID-19 coronavirus crisis is putting unprecedented strain on markets, governments, businesses and individuals. The human, economic and financial costs are increasing dramatically, with potentially huge impact on developing countries and emerging market countries in addition to developed countries and regions. Across all of these, the greatest toll is likely to fall on those least able to bear it, with terrible damage to human development across the world. This paper examines how the digital financial infrastructure that emerged in the wake of the 2008 Global Financial Crisis is being, and can be, leveraged to overcome the immediate challenges presented by the pandemic and manage the impending economic fallout. The origins of the 2008 crisis and current crisis are different: 2008 was a financial crisis spilling over into the real economy. 2020 is a health and geopolitical crisis, spilling

over simultaneously into financial markets and the real economy. As such, this crisis requires different approaches. This study operates at two levels:

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

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

Arner, Douglas W et al, '[After Libra, Digital Yuan and COVID-19: Central Bank Digital Currencies and the New World of Money and Payment Systems](#)' (University of Hong Kong Faculty of Law Research Paper No 2020/036, 2020)

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.

Avgouleas, Emiliios and Aggelos Kiayias, '[The Architecture of Decentralised Finance Platforms: A New Open Finance Paradigm](#)' (Edinburgh School of Law Research Paper No 2020/16, 2020)

Abstract: The evolving merger of payments technology with technology underpinning investment markets' infrastructure can have a great impact on the mode of supply of financial services, notwithstanding technical, legal and regulatory restrictions. One-stop-shop multi-purpose and multi-asset platforms will be a key characteristic of post-COVID-19 finance bringing a radical transformation of the marketplace. Anticipated benefits range from a drastic reduction of intermediary rents and transaction costs to repatriation of investor control and alteration of today's narrow asset allocation strategies. To facilitate this transformation, we offer a model of decentralised finance that goes far beyond so-called 'autonomous' finance. As the technical and regulatory challenges of increasing automation and integration in the supply of investment services will be considerable, a proactive approach is required to resolve these problems. Integrated decentralised platforms are the most promising route to: (a) counter the competitive threat of BigTech, (b) reform investment industry's narrow asset allocation practices whose fragility has been badly exposed by the pandemic, and, (c) spread equally the dividend of financial development.

de Bandt, Olivier, Celine Lecarpentier and Cyril Pouvelle, '[Determinants of Banks' Liquidity: A French Perspective on Interactions between Market and Regulatory Requirements](#)' (Banque de France Working Paper No. 782, 2020)

Abstract: The paper investigates the impact of solvency and liquidity regulation on banks' balance sheet structure. The Covid-19 pandemics shows that periods of sharp increase in risk aversion often result in liquidity strains for banks due to the volatility of long-term funding markets. According to a simple portfolio allocation model banks' liquidity increases when the regulatory constraint is binding. We provide evidence, using the 'liquidity coefficient' implemented in France ahead of Basel III's Liquidity Coverage Ratio, of a positive effect of the solvency ratio on the liquidity coefficient. We also show that in times of crisis, measured by

financial variables, French banks actually decreased the liquidity coefficient, with the transmission channel materialising mainly on the liability side.

Barr, Michael S, Howell E Jackson and Margaret E Tahyar, '[The Financial Response to the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3666461, 1 August 2020)

Abstract: We are living through extraordinary times as the United States has struggled to deal with the global COVID-19 pandemic, and as of the writing of this paper, we remain in the midst of the crisis. We still do not know what the full economic and financial consequences of the pandemic will be, but they are likely to persist for an extended period, as many people are unlikely to return to normal work or consumption patterns soon, and household and business defaults are likely to increase and negatively affect the financial sector. This paper, written to assist faculty in teaching about the pandemic, focuses on key actions taken by the financial regulators in response to the crisis so far, giving a detailed summary of the actions taken by the Federal Reserve, the Treasury Department, and Congress. We discuss the Federal Reserve's monetary policy actions, emergency lending facilities, and supervisory forbearance by the federal banking agencies. We also provide a summary of financial provisions of the CARES Act, including an analysis of the Paycheck Protection Program. We explore a number of central themes already emerging, including the blurry line between monetary policy and fiscal policy. We also highlight the fact that unlike the Financial Crisis of 2008, today's economic crisis is caused by the failure to take sufficient public health actions to contain a global pandemic, not poor policy and risk choices in the financial markets; the fact that the crisis is caused by a public health failure poses unique problems for economic and financial policymakers in crafting responses.

Billio, Monica and Simone Varotto (eds), [A New World Post COVID-19: Lessons for Business, the Finance Industry and Policy Makers](#) (Ca' Foscari University Press, 2020) [open access book]

This book presents its chapters under the following thematic headings:

- Part 1. Historical Perspective
- Part 2. Fiscal and Monetary Policy
- Part 3. Banking, Risk and Regulation

- Part 4. Financial Markets
- Part 5. Commodities and Real Estate Markets
- Part 6. Business Performance, Funding and Growth
- Part 7. Pensions and Insurance
- Part 8. Climate Change
- Part 9. Labour Market
- Part 10. Ai and Big Data
- Part 11. Travel, Tourism and Entertainment
- Part 12. Politics: Protectionism and Populism

Bischoff, Charles and Tom Maclean, 'Approaches of Lenders and Borrowers in the Speciality Finance Space to the COVID-19 Pandemic' (2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 492-493

Abstract: Reviews the measures introduced by borrowers and lenders in the speciality finance sector in response to the coronavirus pandemic. Discusses the scrutiny of facility documentation, the position where borrowers seek accreditation under government schemes to make loans available, the questions for borrowers before breach of facility agreements occur, the questions arising after breach, and how mutual waivers may be documented.

Bitar, Mohammad and Amine Tarazi, '[A Note on Regulatory Responses to Covid-19 Pandemic: Balancing Banks' Solvency and Contribution to Recovery](#)' (SSRN Scholarly Paper ID 3631131, 19 June 2020)

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.

Bostoen, Friso et al, 'Corona and EU Economic Law: Competition and Free Movement in Times of Crisis' (2020) 4(2) *European Competition and Regulatory Law Review* 72-95

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, Emiliós 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.

Busch, Danny, '[Is the European Union Going to Help Us Overcome the COVID-19 Crisis?](#)' (2020) *Capital Markets Law Journal* Article kmaa010 (advance online article, published 30 May 2020)

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.

Chan, Elaine and Jenny Tsin, 'The Coronavirus COVID-19 Pandemic: Testing the Adequacy of a Financial Institution's Pandemic Measures' (2020) 35(6) *Butterworths Journal of International Banking & Financial Law* 400-402

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.

'Commission Adopts Capital Markets Recovery Package' (2020) 395 *EU Focus* 11-12

Abstract: Reports on the European Commission's adoption of a Capital Markets Recovery Package, as part of its coronavirus recovery strategy, which contains targeted adjustments to key EU legislation on capital markets to help them to support European businesses recovering

from the crisis.

Corke, Clare, 'Coronavirus and Financing Arrangements: Practice Tips for Avoiding Turmoil' (2020) 36(2) *Australian Banking and Finance Law Bulletin* 27–29

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?

Crabb, John, 'The Anti-Social Social Bond Club' [2020] (Summer) *International Financial Law Review* 6–7

Abstract: Surveys banking lawyers about whether COVID-19 allocated social bonds could be used to finance not only the development of vaccines but also social projects unrelated to the coronavirus pandemic.

Daniele, Gianmarco et al, '[Wind of Change? Experimental Survey Evidence on the Covid-19 Shock and Socio-Political Attitudes in Europe](#)' (Max Planck Institute for Tax Law and Public Finance, Working Paper No 2020-10, 11 August 2020)

Abstract: This paper investigates whether the COVID-19 crisis has affected the way we vote and think about politics, as well as our broader attitudes and underlying value systems. We fielded large online survey experiments in Italy, Spain, Germany and the Netherlands, well into the first wave of the epidemic (May-June), and included outcome questions on trust, voting intentions, policies & taxation, and identity & values. With a randomised survey flow we vary whether respondents are given COVID-19 priming questions first, before answering the outcome questions. With this treatment design we can also disentangle the health and economic effects of the crisis, as well as a potential 'rally around the flag' component. We find that the crisis has brought about severe drops in interpersonal and institutional trust, as well as lower support for the EU and social welfare spending financed by taxes. This is largely due to economic anxiety rather than health concerns. A rallying effect around (scientific) expertise combined with

populist policies losing ground forms the other side of this coin, and hints at a rising demand for competent leadership.

Davis, Glen, 'Adopting the Contracts of Furloughed Employees: The Decisions in *Carluccio's* and *Debenhams*' (2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 482-488
Jurisdiction: UK

Abstract: Reviews *Re Carluccio's Ltd (In Administration)* (Ch D) and *Re Debenhams Retail Ltd (In Administration)* (CA) on whether employees' contracts were adopted, for the purpose of priority in the administration, by their variation to take advantage of the Coronavirus Job Retention Scheme, or by administrators making an application under the scheme or making payments to a furloughed employee, noting the relevance to priority of the variations agreed.

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

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

that the sooner non-pharmaceutical interventions are implemented, the better are the economic and health outcomes.

'Disease and Recovery in (COVID-afflicted) Europe' (2020) 57(3) *Common Market Law Review* 919-629

Abstract: Discusses how the EU will respond to the economic and political challenges as Member States recover after the coronavirus pandemic. Reports on public health co-operation initiatives, derogations from freedom of movement and the state aid rules, and the implications for international relations.

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

Abstract: After the COVID-19 crisis struck, equity prices abruptly plunged across the world. The clear prospect of an almost unprecedented decrease in supply and demand, coupled with extreme uncertainty about the longer-term prospects for the economy worldwide, justified the price adjustments. Yet, in conditions of plummeting prices and high volatility, policymakers around the world felt under pressure 'to do something' to stop the downward trend in market prices. As was the case during the financial crises of 2008-09 and 2011-12, these pressures have quickly led to the adoption of market-wide short-selling bans. In addition, both in Europe and in the US, there have been calls for an even more drastic measure: a lasting 'stock exchange holiday'. This chapter reviews the evidence on the effects of short-selling bans during the financial crisis and discusses the merits of stock exchange holidays and concludes that neither of these measures bring benefits to financial markets.

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

Abstract: The impact of COVID-19 on the generation of a massive corruption in developing countries (DC's) and least developed countries (LDC's) is obviously possible anytime and anywhere, but measuring such impact to get a sense of the intensity of its effects on the

corruption expansion is subject to a great deal of uncertainty. As such, this paper primarily attempts to close this gap by introducing the massive corruption in times of pandemic crisis evaluation simulator (MCTPCE-Simulator), a new economic instrument that could be used to evaluate how COVID-19 crisis can generate a massive corruption. Based on five key indicators, the (MCTPCE—Simulator) considers and draws its assessment from different indicator available from our simulator. Hence, in this article, a simulation was used to illustrate the applicability of the simulator from where analyses provide a coherent evaluation how the COVID-19 can promote the country's corruption in high and middle levels.

Foohy, Pamela, Dalié Jiménez and Christopher K Odinet, '[The Debt Collection Pandemic](#)' (2020) 11 *California Law Review Online* 222-241

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.

Foohy, 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.

Glanzmann, Lukas et al, 'Masterclass in Swiss efficiency: Spotlight on Switzerland's Government-Backed COVID-19 Loan Programme for SMEs' (2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 475-477

Abstract: Reviews key features of Switzerland's government-backed bridge loans for small and medium-sized enterprises, introduced in response to the coronavirus pandemic. Discusses the types of loan available, the requirements for "COVID-light" and "COVID-plus" loans, the potential disadvantages of participation, including a ban on borrowers making loans themselves and the penalties for non-compliance. Considers the implications for cash-pooling schemes.

Gowing, Rachel, 'New Zealand: COVID-19 Pandemic - Legislative Response' (2020) 35(9) *Journal of International Banking Law and Regulation* N110-N112

Abstract: Summarises legislative reforms relevant to the banking and finance sectors which have been implemented by New Zealand in response to the coronavirus pandemic. Details key features of initiatives including the mortgage repayment deferral scheme, the business finance guarantee scheme, the removal of loan-to-value ratio restrictions, protections relating to credit contracts and changes to insolvency law relief.

Groenleer, Martijn LP and Daniel Bertram, '[Plus Ça Change...? How the COVID-19 Crisis May Lead to a Revaluation of the Local](#)' (SSRN Scholarly Paper ID 3673583, 13 August 2020)

Abstract: With COVID-19 unfolding its deadly and disruptive force, calls from all across the political spectrum for putting an end to globalization are becoming louder. But will the pandemic really constitute a stumbling block to the inexorable machinery of growing interconnection? We argue that, as with previous global crises such as the financial crisis, it is not obvious that the COVID-19 crisis will lead to a process of de-globalization. However disastrous the consequences of international cross-linking may be for economies and societies. It is much more likely that the 'new common' will see an acceleration of the process of localization, already occurring as part of globalization in the 'old common'.

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

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

Hanif, Saima, 'Potential Legal Implications of the Regulatory Response to COVID-19' (2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 431-432

Abstract: Considers the main regulatory interventions by the UK banking and financial sectors in response to the coronavirus pandemic, and their potential legal implications. Reviews the commercial impact of key interventions and the possible legal consequences of government loan schemes, restrictions on capital distribution and mortgage forbearance. Discusses whether certain regulatory measures may be unlawful.

Hayes, Peter, Philip Stopford and Helen Walsh, 'Loans in the Time of COVID-19: How Loan Documentation Has Fared in this Challenging Environment' (2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 441-444

Abstract: Discusses how loan agreements have evolved in response to the coronavirus pandemic. Considers the similarities and differences between the loan documentation reforms made during the pandemic and during the global financial crisis, how financial covenant issues have been addressed, borrower adjustments to terms concerning annual audited financial statements and flexibilities for incurring additional debt. Anticipates potential future developments.

Hinarejos, Alicia, 'Next Generation EU: on the Agreement on a COVID-19 Recovery Package' (2020) 45(4) *European Law Review* 451-452

Abstract: Reflects on the EU's July 2020 agreement on a recovery package to tackle the damage caused by the coronavirus pandemic, including the creation of a "Next Generation EU" (NGEU) recovery fund and an updated EU budget. Details how revenue for the NGEU will be raised and explains the significance of the agreement, including its unprecedented joint debt issuance and burden sharing, and its distribution of funds to Member States by grants and loans.

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

Jurisdiction: USA

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

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

Ibrahim, Ahmed, Malack El Masry and Dania Yassin, 'Embracing Change' [2020] (Summer) *International Financial Law Review* 49-51

Jurisdiction: United Arab Emirates

Abstract: Discusses how the coronavirus pandemic has affected corporate transactions and prospects of investment in the United Arab Emirates.

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

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

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

Abstract: The coronavirus has produced a public health debacle of the first-order. But the virus is also propagating the kind of exogenous shock that can precipitate – and to a considerable degree is already precipitating – a systemic event for our financial system. This currently unfolding systemic shock comes a little more than a decade after the last financial crisis. In the intervening years, much as been written about the global financial crisis of 2008 and its systemic dimensions. Additional scholarly attention has focused on first devising and then critiquing the

macroprudential reforms that ensued, both in the Dodd-Frank Act and the many regulations and policy guidelines that implemented its provisions. In this essay, we consider the coronavirus pandemic and its implications for the financial system through the lens of the frameworks we had developed for the analysis of systemic financial risks in the aftermath of the last financial crisis. We compare and contrast the two crises in terms of systemic financial risks and then explore two dimensions on which financial regulatory authorities might profitably engage with public health officials. As we are writing this essay, the pandemic's ultimate scope and consequences, financial and otherwise, are unknown and unknowable; our analysis, therefore, is necessarily provisional and tentative. We hope, however, it may be of interest and potential use to the academic community and policymakers.

James, Benedict and Elli Karaindrou, 'COVID-19 Measures from a Lender's Perspective' (2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 460-464

Abstract: Considers, from the perspective of lenders, the main banking regulations introduced in response to the coronavirus pandemic. Outlines changes including reductions to some liquidity and capital buffers, the creation of payment moratoria for mortgages, the postponing of non-essential reporting, the distribution of dividends, and measures to maximise banks' lending capacity. Discusses the uncertainties for banks and anticipates future developments.

Kazzaz, Zachary, '[Emergency Disbursements During COVID-19: Regulatory Tools for Rapid Account Opening and Oversight](#)' (SSRN Scholarly Paper ID 3656651, 20 July 2020)

Abstract: More than 100 countries have launched emergency cash disbursement programs to alleviate financial hardships for individuals and households in light of the COVID-19 pandemic. Many of these programs are based in digital payments; however, a lack of official identification, mobile data services and the difficulties in face-to-face interactions restrict potential users from a standard customer due diligence process. Guidance from the Financial Action Task Force (FATF), the global anti-money laundering standards-setting body, encourage the use of innovative solutions for customer onboarding, specifically the risk-based approach and simplified due diligence (SDD). This paper summarizes the range of practice across jurisdictions that have employed a combination of SDD (also known as tiered CDD), licensing of non-bank

financial institutions, and digital identification to enroll unbanked individuals into financial accounts so that they could receive COVID-19-related relief cash transfers. As this note concludes, jurisdictions that had adopted such practices were able to quickly ramp-up disbursement programs, bringing tens of millions of beneficiaries into the formal financial system. This report provides an analysis of varied SDD implementations and provides considerations for financial regulators looking to promote appropriate risk mitigation while digitally delivering emergency financial assistance.

Kokkinis, Andreas and Andrea Miglionico, '[The Role of Bank Management in the EU Resolution Regime for NPLs](#)' (2020) *Journal of Financial Regulation*, Article fjaa007 (advance online article, published 5 August 2020)

Abstract: During the global financial crisis, the growth of non-performing loans (NPLs) was partly a consequence of lack of regulatory oversight and poor bank internal processes. NPLs require intrusive monitoring tools and effective corporate governance is crucial in dealing with the deterioration of loans; however, perverse incentives to delay their recognition leave the process at risk. The EU legislation has adopted a set of regulatory measures to resolve and restructure non-performing exposures. While existing literature approaches NPLs from a regulatory and accounting perspective, this article takes a distinctive corporate governance view in order to conceptualize the NPL problem. The strategies through which senior management and shareholder incentives may undermine regulatory objectives on NPL disclosure are identified and an evidence-based approach to reconsidering and settling these problems is advanced.

Kreltzhheim, David, 'Creating Deeds in Electronic Form: Why We Should Not Be Deterred by the Ghosts of the Past' [2020] *Australian Banking and Finance Law Bulletin* 68-74

Abstract: The electronic transactions laws have been on the statute books in Australia for 20 years. But 5 years ago, a highly influential text advanced a powerful argument that deeds cannot be entered into by electronic communications. And last year a Supreme Court judge opined in passing that had it been necessary to decide the question, the judge would have concluded that it remains a common law requirement of a deed that it be written on paper. Why is it so? This article considers how we got to where we are. It suggests that the electronic transactions laws

can be used to facilitate parties' entry into deeds by means of electronic communications. It concludes, however, that given the experience of the last 20 years the best course would be for there to be further legislative intervention, ideally on a national basis. It suggests that the temporary COVID-19-driven reforms relating to deeds could be extended from time to time until the further legislative intervention happens.

Levitin, Adam J, Lindsay A Owens and Ganesh Sitaraman, '[No More Bailouts: A Blueprint for a Standing Emergency Economic Resilience and Stabilization Program](#)' (Roosevelt Institution Great Democracy Initiative Report, June 2020)

Abstract: Since the COVID-19 pandemic first landed our shores in late January, Congress has scrambled to pass five relief and recovery packages to deal with the health and economic fallout. The first included just \$8.3 billion in spending—an astonishingly small sum given the threat of the virus. The third bill included critical spending priorities for struggling families, but was paired with a no-strings-attached \$500 billion slush fund for corporate America. The fourth and fifth bills remedied problems with the third bill—Congress didn't appropriate enough money for its signature small business relief program, the Payroll Protection Program, and needed to top it up (fourth bill), and then needed to extend the loan repayment period (fifth bill) for the program because most businesses had yet to reopen and begin generating new revenue. Congress is likely to take up a sixth bill in late July, in part to deal with the imminent expiration of the temporary expanded unemployment insurance benefits passed in the third bill.

This ad hoc approach to crisis policymaking is inefficient at best and malpractice at worst. Delays have resulted in bankruptcies and closures for businesses large and small and countless hardships for the more than 40 million Americans who have filed jobless claims since March. There is a better way.

In this paper we propose a standing emergency economic resilience and stabilization program that will be deployed in the event of an economic emergency. The program has four central components:

1. An off-the-shelf, bankruptcy-based restructuring process for large or publicly- traded firms that involves a federal equity stake and a potential federal senior secured loan;

2. A program for smaller businesses to cover payroll and operating expenses to prevent mass layoffs and closures on Main Street;
3. A financial system infrastructure reform to enable direct government payments to consumers and businesses without reliance upon private intermediaries; and,
4. A system of automatic stabilizers to engage policy tools without repeated and recurrent congressional action, including a suite of programs to address housing insecurity for both renters and homeowners.

This emergency economic resilience program would blunt the foreseeable impacts common to all recessions—unemployment, income shocks, and liquidity constraints— so that Congress can focus its attention on the unique causes of the particular downturn. In the case of the most recent downturn, had such a program been in place, Congress would have been able to spend the lion’s share of the spring narrowly focused on testing production, building out a community health corps of contract tracers, and supporting the development of a vaccine, instead of scrambling to patch together an economic relief program.

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

Abstract: The world is experiencing the worst pandemic crisis in one hundred years. By mid-April 2020, more than 80 percent of countries around the world had imposed strict containment and mitigation measures to control the spread of the disease. The economic fallout has been immense, with dire consequences for poverty and welfare, particularly in developing countries. This Brief first documents the global economic contraction and its potential impact on developing countries regarding macroeconomic performance, poverty rates, and incomes of the poor and vulnerable. It then argues that the pandemic crisis may hurt low- and middle-income countries disproportionately because most of them lack the resources and capacity to deal with a systemic shock of this nature. Their large informal sectors, limited fiscal space, and poor governance make developing countries particularly vulnerable to the pandemic and the measures to contain it. Next, the Brief reviews recent epidemiological and macroeconomic modelling and evidence on the costs and benefits of different mitigation and suppression strategies. It explores how these cost-benefit considerations vary across countries at different

income levels. The Brief argues that, having more limited resources and capabilities but also younger populations, developing countries face different trade-offs in their fight against COVID-19 (coronavirus) than advanced countries do. For developing countries, the trade-off is not just between lives and the economy; rather, the challenge is preserving lives and avoiding crushed livelihoods. Different trade-offs call for context-specific strategies. For countries with older populations and higher incomes, more radical suppression measures may be optimal; while for poorer, younger countries, more moderate measures may be best. Having different trade-offs, however, provides no grounds for complacency for developing countries. The Brief concludes that the goal of saving lives and livelihoods is possible with economic and public health policies tailored to the reality of developing countries. Since 'smart' mitigation strategies (such as shielding the vulnerable and identifying and isolating the infected) pose substantial challenges for implementation, a combination of ingenuity for adaptation, renewed effort by national authorities, and support of the international community is needed. The lockdowns may be easing, but the fight against the pandemic has not been won yet. People and economies will remain vulnerable until a vaccine or treatment are developed. The challenge in the next few months will be to revive the economy while mitigating new waves of infection.

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

Jurisdiction: USA

Abstract: In response to the spread of COVID-19, the Federal Reserve has established fourteen ad hoc facilities to lend to financial firms, foreign central banks, nonfinancial businesses, and state and local governments. This Article reviews these facilities, explains what they are for, and examines the statutory rules that govern them. It distinguishes between seven liquidity facilities designed to backstop deposit substitutes issued by shadow banks and seven credit facilities designed to invest directly in the real economy. Ten of these facilities – three of the liquidity facilities and all seven of the credit facilities – are contemplated by the CARES Act, which appropriates money for the Treasury Secretary to invest in them. But all ten are inconsistent with at least one of the following three provisions of existing law, none of which the CARES Act explicitly amends: (1) section 13(3)(B)(i) of the Federal Reserve Act, which requires the Fed to ensure that 13(3) lending is 'for the purpose of providing liquidity to the financial system'; (2)

section 13(3)(A), which requires the Fed to ‘obtain evidence’ that participants are ‘unable to secure adequate credit accommodations’ from other banks; and (3) section 10(a) of the Gold Reserve Act, codified at 31 U.S.C. § 5302, which limits the Treasury Secretary to using the Exchange Stabilization Fund to ‘deal’ in ‘securities’ consistent with ‘a stable system of exchange rates.’ Of the four liquidity facilities not contemplated by the CARES Act, two are inconsistent with any reasonable interpretation of section 14(2)(b) of the Federal Reserve Act, which authorizes the Fed to buy and sell government debt only ‘in the open market,’ and one is inconsistent with a similar requirement in section 14(1) regarding foreign currency. (Although these facilities are permitted by sections 13(13) and 13(3) respectively.) Hence thirteen of the Fed’s fourteen facilities as currently constituted are in tension with either the Federal Reserve Act, the Gold Reserve Act, or both. Three conclusions follow. First, most of the Fed’s current, critical lending activities are an exception to the baseline statutory framework, permissible only in conjunction with the CARES Act. Second, Congress’s failure to amend that framework is obscuring the fact that it is asking the Fed to take on substantial new responsibilities – ones for which it was not designed and which it may struggle to discharge. Third, Congress should update our money and banking laws to clarify the rules governing Fed lending, reduce the need for monetary backstops, and improve the government’s ability to respond quickly and effectively to fiscal emergencies in the future.

Micklitz, Hans-W, [‘The COVID-19 Threat: An Opportunity to Rethink the European Economic Constitution and European Private Law’](#) (2020) 11(2) *European Journal of Risk Regulation*: Special Issue - ‘Taming COVID-19 by Regulation’ 249-255

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.

Mooij, Annelieke AM, '[The Legality of the European Central Bank's Pandemic Emergency Purchase Programme](#)' (BRIDGE Network Working Paper 5, 19 August 2020)

Abstract: The COVID-19 crisis has a big impact upon the European economy. To restore its transmission mechanisms and mitigate the financial impact the European Central Bank (ECB) introduced its Pandemic Emergency Purchase Programme (PEPP). A €750 million purchasing plan. This paper discusses the legality of these plans using the European legal framework and the recent framework generated by the German Constitutional Court (GCC). This paper claims the PEPP is legal under the European framework. The PEPP would not have been considered legal by the German Constitutional Court, though this probably changed with some of the recent developments. This paper furthermore analyzes the impact of this programme upon the mandate of the ECB. It describes the change of the role of the ECB from a cautious bank to a bank ready to fight a crisis. This role has generated tension between the core and periphery countries. These tensions result from the underlying flaw in the EMU which can only be solved by further integration or disintegration.

Neurath, Daniel, 'Circuit Breakers: A Legal Analysis of Volatility Safeguards in the Rules of Stock Exchanges on the Occasion of the COVID-19 Crisis' (2020) 32(4) *Zeitschrift für Bankrecht und Bankwirtschaft* 259–264

Abstract: This paper examines circuit breakers (CBs), i. e. emergency systems of trading venues that interrupt or restrain trading when significant price movements of financial instruments occur. After a description of the ratio legis and the economic fundamentals, the genesis and the different forms of CBs are presented. The European legal framework is then outlined. The relevant rules of the Frankfurt Stock Exchange (FWB) serve as an example.

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

Jurisdiction: USA

Abstract: Investors tend to litigate large stock price declines, i.e., file 'stock-drop lawsuits'. Enterprising plaintiffs' attorneys seek to take advantage of the stock market declines that have accompanied the COVID-19 outbreak in early 2020 by filing class action lawsuits. However, it is

less clear whether the ex-ante threat of security class actions can deter stock price crashes. To address this question, we exploit the 1999 ruling of the Ninth Circuit Court of Appeals that discourages security class actions as a quasi-exogenous shock, and find that reducing the threat of security class actions leads to a significant increase in stock price crash risk. This effect is more pronounced for firms faced with higher litigation risk, with worse earnings quality and weaker monitoring from auditors, and is partially driven by decreased timeliness of bad-news disclosure. Our overall findings highlight the importance of security class actions in constraining bad-news hoarding and maintaining market stability.

Odinet, Christopher K, '[Predatory Fintech and the Politics of Banking](#)' (2021) *Iowa Law Review* (forthcoming)

Abstract: With American families living on the financial edge and seeking out high cost loans even before COVID-19, the term financial technology or 'fintech' has been used like an incantation aimed at remedying everything that's wrong with America's financial system. Scholars and supporters from both the public and private sector proclaim that innovations in financial technology will 'bank the unbanked' and open new channels to affordable credit. This exuberance for all things tech in finance has led to a quiet yet aggressive deregulatory agenda, including, as of late, a federal assault via rulemaking on the ability of states to police the cost and privilege of extending credit within their borders. This deregulation and the ethos behind it have made space for growth in high cost, predatory lending that reaches across state lines via websites and smart phones and that is aggressively targeting cash-strapped families. These loans are made using a business model whereby funds are funneled through a group of lightly regulated banks in a way designed to take advantage of federal preemption. Fintech companies rent out and profit from the special legal status of these bank partners, which in turn keeps the bank's involvement in the shadows. Stripping down fintech's predatory practices and showing them for what they really are, this Article situates fintech in the context of this country's longstanding dual banking wars, both between states and the federal government and between consumer advocates and banking regulators. And it points the way forward for scholars and regulators willing to shake off fintech's hypnotic effect. This means, in the short term, using existing regulatory tools to curtail the dangerous lending identified here, including by taking a more expansive view of what it means for a bank to operate safely and soundly under the law.

In the long term, it means having a more comprehensive and national discussion about how we regulate household credit in the digital age, specifically through the convening of a Twenty-First Century Commission on Consumer Finance. The Article explains how and why the time is ripe to do both. As the current pandemic wipes out wages and decimates savings, leaving desperate families turning to predatory fintech finance ever more, the need for reform has never been greater.

Ojo D Delaney, Marianne, '[Achieving Targeted Aims and Objectives of Fiscal, Monetary, Prudential Policy Responses Post Regulatory Crises and Global Pandemics](#)' (SSRN Scholarly Paper ID 3682765, 28 August 2020)

Abstract: Even though it has recently been highlighted that the timeline for recovery from the ongoing pandemic is highly uncertain and 'will depend heavily on the course of the pandemic', consumer confidence and expectations, also impact the level of consumer spending and the role of providing greater certainty as regards the resumption of economic activity, ultimately, lies with respective governments. What measures could be introduced as incentives to encourage banks to make greater use of macro prudential policy tools and particularly those targeted towards Basel III objectives and tools introduced through the conservative, countercyclical buffers, as well as liquidity (Liquidity Coverage Ratio, Net Stable Funding Ratios) and leverage ratio tools of supervision? How can bank lending be encouraged as a means of achieving the targeted aim of boosting economic activity? As well as addressing the afore mentioned issues, this paper aims to consider the impact of recent Covid-19 regulatory measures on bank activities, incentives and risk taking activities. Further, it aims to explore possibilities whereby Basel III measures, which have been designed to address banking and economic problems during periods of economic downturns could be implemented and taken greater advantage of, more effectively. As the paper will further highlight, innovative approaches are increasingly being embraced and adopted by many businesses who recognize the need to adapt to a changing environment and way of life. Herein lies a role, not only for governments, employees and employers in facilitating speedier resumption of economic activities and a return to economic recovery, but also in ensuring that efforts undertaken by regulatory bodies, as well as central bank and federal regulators, achieve their intended and maximal objectives.

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

Abstract: In its recent March report, two particularly note worthy observations are made in relation to the OECD’s projections and predictions about possible outcomes of the recent COVID-19 outbreak (See Le Figaro, 2020): ‘The OECD put forward two main possible scenarios: The first, the basic one, which considers that the epidemic will peak in the first quarter following, and that its distribution in the rest of the world will be relatively contained...’The COVID-19 has not only impacted on a social, unprecedented magnitude as never before seen, with the cancellation of major sports tournaments and events, the deferral of the 2020 Olympics, but also highlights the importance of never under estimating a potentially devastating – and particularly unknown unprecedented uncharted phenomenon. Whilst the magnitude and consequences of the outbreak can certainly not be compensated – at least for many, or even quantified, it is hoped that greater cooperation between global economies, will be fostered in the ongoing efforts to find a solution to address the outbreak. This paper is aimed at contributing to the literature on a topic on which previous literature, at least prior to December 12 2019, practically and literally, in respect of COVID-19, did not exist. Many major economies and global economies have extended shut downs from excluding essential workers, to 80-90% of its citizens being ordered to stay at home. Whilst it is certainly crucial to ensure that the outbreak is contained, it appears that certain economies, given uncertainties associated with the nature, scope of recent developments, are willing to take risks at salvaging their economies. At what stage does a government decide that prevailing restrictive social distancing measures should be relaxed? What are possible mental, long term consequences associated with, and attributable to a protracted economic shut down? What options exist for monetary policy and central banks in particular, given less options available amidst historically low interest rate levels? These constitute some of the questions which this paper aims to address.

Parchimowicz, Katarzyna and Ross Spence, [‘Basel IV Postponed: A Chance to Regulate Shadow Banking?’](#) [2020] (2) *Erasmus Law Review* (unpaginated until issue is complete)

Abstract: In the aftermath of the 2007 global financial crisis, regulators have agreed a substantial tightening of prudential regulation for banks operating in the traditional banking

sector (TBS). The TBS is stringently regulated under the Basel Accords to moderate financial stability and to minimise risk to government and taxpayers. While prudential regulation is important from a financial stability perspective, the flipside is that the Basel Accords only apply to the TBS, they do not regulate the shadow banking sector (SBS). While it is not disputed that the SBS provides numerous benefits given the net credit growth of the economy since the global financial crisis has come from the SBS rather than traditional banking channels, the SBS also poses many risks. Therefore, the fact that the SBS is not subject to prudential regulation is a cause of serious systemic concern. The introduction of Basel IV, which compliments Basel III, seeks to complete the Basel framework on prudential banking regulation. On the example of this set of standards and its potential negative consequences for the TBS, this paper aims to visualise the incentives for TBS institutions to move some of their activities into the SBS, and thus stress the need for more comprehensive regulation of the SBS. Current coronavirus crisis forced Basel Committee to postpone implementation of the Basel IV rules – this could be perceived as a chance to complete the financial regulatory framework and address the SBS as well.

Salah, Omar, 'Netherlands: Economic Conditions: COVID-19' (2020) 35(7) *Journal of International Banking Law and Regulation* N83-N85

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.

Schillig, Michael, '[The Too-Big-To-Fail Problem and the Blockchain Solution](#)' (SSRN Scholarly Paper ID 3680759, 25 August 2020)

Abstract: The paper seeks to ascertain whether and to what extent blockchain technology may contribute to solving the politically and socially intractable problems of effectively resolving distressed TBTF financial institutions. It revisits the TBTF problem in the light of the Global Financial Crisis and the COVID-19 crisis and provides an overview of the constantly evolving DLT/blockchain ecosystem. It further seeks to address the main arguments commonly advanced

by blockchain sceptics/opponents against the more widespread adoption of crypto-assets. Given blockchain's capacity for decentralization, transparency and automation, the technology seems particularly well suited for tackling TBTF. On that basis, the paper discusses the potential impact of blockchain technology on (TBTF) bank resolution in three possible scenarios. Gradual adoption over the next five years may significantly improve the resolution process primarily through enhanced transparency of the blockchain-recorded history of assets and transactions. Over the next decade, a 'smart securities world' may emerge where bail-in could be automated and systemically important assets and liabilities resolved through distributed financial market infrastructures (dFMIs). The final scenario, with a 20-year horizon, is a fiat cryptocurrency in a reformed financial system where banking panics are eradicated. These scenarios are speculation. However, the basic technological building blocks are already available today and with improved scalability, more reliable smart contract execution and widespread adoption over time they could help to significantly improve the resolvability of TBTF institutions.

Schillig, Michael, '[EU Bank Insolvency Law Harmonization: What Next?](#)' (SSRN Scholarly Paper ID 3678723, 21 April 2020)

Abstract: After the COVID-19 crisis has subsided, the (further) harmonization of bank insolvency law will again be high on the agenda of EU regulators and policy makers. On the basis of an analysis of the status quo pain points, the paper advocates the extension of the BRRD resolution regime to all bank failures, regardless of their systemic relevance. This could be achieved by removing the public interest requirement as part of the resolution trigger. The ensuing consolidation would significantly reduce complexity and enhance the transparency and legitimacy of the EU crisis management framework.

Seelye, Nancy and Paul Ziegler, '[Impacts of COVID-19 on Banking](#)' (SSRN Scholarly Paper ID 3645556, 30 June 2020)

Abstract: COVID-19 has had major impacts for banking, with the United States government making various efforts to shore up the financial system. These have included temporary and permanent rule changes, easing Capital requirements in an effort to spur lending and maintain bank solvency. Using publicly available data on bank holdings, we constructed tests for the

changes in lending and allocation for pending loan loss. Our study finds that there has been a significant increase in loan loss reserves, yet the ratio of these reserves to total lending is not significant. This work will be extended with 2020-Q2 data when it becomes available.

Shelby, Cary Martin, '[Profiting from Our Pain: Privileged Access to Social Impact Investing](#)' (2021) 109 *California Law Review* (forthcoming)

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.

Stokes, Linda and Kyriacos Xenophontos, 'Fitch Provides a Welcome Beam of Light for Cyprus Amid COVID-19 Gloom' (2020) 35(7) *Journal of International Banking Law & Regulation* N-82-N83

Abstract: Notes the April 2020 announcement by the Fitch rating agency of its maintenance of Cyprus's long-term credit rating at BBB, amidst the coronavirus pandemic. Details Cyprus's rapid response to COVID-19, its economic flexibility, its prediction of future GDP growth, and the issues it should address to increase its chance of obtaining an "A" category rating.

Stuber, Walter, 'Purchase and Sale of Private Assets by the Central Bank of Brazil during the Covid-19 Pandemic' (2020) 35(10) *Journal of International Banking Law and Regulation* N120-N122

Abstract: Notes the June 2020 publication by the Board of the Central Bank of Brazil of Circular No.4.028 governing the purchase and sale of private assets by the Central Bank in the Brazilian secondary markets during the coronavirus pandemic. Details the range of assets to which the rules apply, the use of public offerings, the role of risk management, the classification of companies by their gross operating revenues, and the concentration limits.

Stuber, Walter, 'The Effects of Coronavirus on Financial Statements in Brazil' (2020) 35(6) *Journal of International Banking Law and Regulation* N72-N73

Introduction: The Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários* —CVM) has closely monitored the impacts of coronavirus in the world capital markets and particularly in the Brazilian market. Given the interconnectivity of the global production chain, some entities regulated by CVM may be subject to economic and financial impacts arising from the epidemic. Such impacts should be, to the possible extent reflected, in the financial statements of companies registered with CVM.

Sutcliffe, Charles, 'The Implications of the COVID-19 Pandemic for Pensions' in Monica Billio and Simone Varotto (eds), [*A New World Post COVID-19: Lessons for Business, the Finance Industry and Policy Makers*](#) (Ca' Foscari University Press, 2020) [open access book]

Abstract: COVID-19 and the lockdowns have had a big global economic effect, as well as increasing mortality. We examine the effects of COVID-19 and the resulting relaxations of pension regulations on pension schemes. Those who transfer their pension or withdraw cash from their pension pot while asset prices are depressed by COVID-19 are losers; as are members of defined benefit schemes with a deficit whose employer fails due to COVID-19. The increased mortality from covid-19 will have a minimal effect on pensions. If economies recover to pre-covid-19 levels, the long run effects on pensions should be small.

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

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.

Tesche, Tobias, '[The European Union's Response to the Coronavirus Emergency: An Early Assessment](#)' (LSE 'Europe in Question' Discussion Paper Series No. 157, 11 June 2020)

Abstract: This article provides an assessment of the EU institutions' response to the coronavirus pandemic. It contends that it followed the new intergovernmental tendency to empower de novo bodies like the European Stability Mechanism, the European Investment Bank and the European Central Bank. The European Central Bank's early and unconstrained action structured European politics. Its pandemic emergency purchase programme ensured that euro area

member states were able to maintain market access and lowered the financial attractiveness of the subsequently created instruments to tackle the corona crisis. The European Commission was relegated to the role of 'cheerleader of European solidarity'. It partially redeemed itself by creating a new temporary loan-based instrument to support national short-term work schemes and by proposing a large-scale recovery instrument termed 'Next Generation EU'.

Truong, Quang-Thai et al, '[COVID-19 in Vietnam: What Happened in the Stock Market?](#)' (SSRN Scholarly Paper ID 3633754, 23 June 2020)

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.

Wai, Kok Chee and Tan Kai Liang, 'Singapore: COVID-19 Pandemic - Additional Support' (2020) 35(9) *Journal of International Banking Law and Regulation* N112-N115

Abstract: Highlights the April 2020 announcement by the Monetary Authority of Singapore of additional support for those experiencing financial problems due to the coronavirus pandemic. Details key features of: measures to ease cashflow problems, including the deferred repayment of commercial loans and mortgage equity withdrawal loans; debt reduction measures involving removal of the total debt servicing ratio; and improved access to banking services.

Walt, Johan van der, 'Forensic Practitioners Will Play Key Role in Recovery of South African Economy Post COVID-19' (2020) 20(6) *Without Prejudice* 35–36

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.

Walters, Robert, 'Close Out Netting Provisions in a time of International Uncertainty' (2020) 31(10) *International Company and Commercial Law Review* 564-595

Jurisdictions: Australia, EU, UK and USA

Abstract: The world is facing significant geopolitical and economic challenges. This article explores the current value of close-out netting provisions as a result of the recent coronavirus outbreak. It examines the netting provisions of Australia, European Union, United Kingdom and the United States. The article makes the argument that as states increasingly turn inward, upholding the current international legal framework will be more important.

Warna-kula-suriya, Sanjev and Christopher Anthony Sullivan, 'Can the ECB Keep European ABS Markets Moving During the COVID-19 Crisis?' (2020) 35(6) *Butterworths Journal of International Banking & Financial Law* 406-407

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.

Yeoh, Peter, 'COVID-19 Legal-Economic Implications of a Pandemic' (2020) 41(3) *Business Law Review* 74-84

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, and trade in wildlife.

Akram-Lodhi, AHaroon, 'COVID-19 and the World Food System' (2020) (85) *Journal of Australian Political Economy* 11-16

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.

Buchanan, Kelly et al, '[Regulation of Wild Animal Wet Markets](#)' (Research Report, Law Library of Congress, August 2020)

Summary: Of particular concern in the context of the novel coronavirus and other zoonoses (diseases that can spread from animals to humans) has been the sale of "wild" or "exotic" animals, either alive or the meat of such animals (sometimes called "bushmeat" or "game meat"), at wet markets or other types of traditional markets in different countries. This report examines aspects of the regulation of such trade, including wildlife protection laws, hunting laws, food safety laws, and market management and sanitation laws. It covers 28 jurisdictions around the world, including countries in Asia, Africa, the Middle East, South and Central America, and Europe.

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

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

'Coronavirus: Advice to Land Managers and Landowners' (2020) 275 *Farm Law* 6-8

Jurisdiction: UK

Abstract: Reproduces government coronavirus guidance for land managers and landowners on managing access to land in the countryside, and refers to separate guidance on working safely outdoors.

Heled, Yaniv, Ana Santos Rutschman and Liza Vertinsky, 'Regulatory Reactivity: FDA and the Response to COVID-19' (2021) *Food and Drug Law Journal* (forthcoming)

Jurisdiction: USA

Abstract: Public health-oriented agencies play a critical role to play in pandemic preparedness and response. Yet, the current pandemic has exposed significant shortcomings in these agencies' preparedness and response efforts. Using FDA's response to COVID-19 as a case study, this article introduces the concept of 'regulatory reactivity' to describe and analyze regulatory agency response to external pressures that rely on the adoption of tailored-to-the-moment measures. The article delineates the conceptual and practical differences between the application of standard agency procedures and agency response under what we term 'reactive modes,' which often result in the setting-aside of agency procedures, expertise and priorities to the detriment of public health standards. We further explain how these ex post, narrowly construed modifications to the regulatory modus operandi contrast with goals of pandemic preparedness, which require ex ante, forward-looking regulatory interventions. While we utilize COVID-19 as a lens through which to examine reactive regulatory responses to public health crises, the article anchors its analysis in broader trends displayed by the FDA in previous large-scale crises, as well as within the regulatory apparatus as a whole. We conclude with some

suggestions for how the FDA might avoid slipping into reactivity mode in response to future pandemics.

Holland, Kerri, '[Canada's Food Security During the COVID-19 Pandemic](#)' (School of Public Policy Research Paper 13:13, University of Calgary, June 2020)

Abstract: The COVID-19 pandemic has drawn public attention to Canada's food security. Access to a safe, stable and high-quality food supply is often taken for granted by many citizens, but providing it is one of the key roles that our agricultural industry serves and underlines why it is designated an essential service. Despite the federal government's assurance that our nation's food supply remains stable, concerns have been mounting from both consumers and the agricultural industry that disruptions in the food supply chain will cause food insecurity and severe economic distress. As a whole, Canada's agri-food industry is well-positioned to adapt to the present crisis and continue supplying domestic and export markets. However, this does not mean that our food system is impermeable to disruption. In fact, challenges caused by COVID-19 have highlighted vulnerabilities in the food supply chain. Labour shortages, major shifts in consumer demand, and the slowdowns/closures at processing plants have already exacerbated food insecurity among Canadians and increased financial pressure on primary producers. As the foundation of the food supply chain, Canadian farmers are key to its stability. As many farms were experiencing severe economic hardship prior to the pandemic, the challenges of market uncertainty and increased production costs put these operations at greater financial risk. Policy action will be key to ensure the short and long-term viability of our primary industry and maintain the capacity to meet domestic and export market demands. Canada is still in the early stages of crisis management but government support of Canadian agriculture has so far been largely inadequate in alleviating the financial impact on farmers. The Canadian government should take additional steps to alleviate the financial burden on primary producers, ensure export markets remain open and free from trade barriers, and commit to establishing a long-term agri-food strategy and action plan.

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.

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

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

Kiragu, Alex and Patricia Ahawo Gwambo: '[Proposed Solutions for Sub-Saharan Africa for Food and Agriculture in the Context of COVID-19](#)' (Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020), Symposium II: Intellectual Property, Technology and Agriculture)

Introduction: The world is facing unprecedented times and with the wake of COVID19. In addition to the already strained economies struggling to stay afloat, the fact that food is made largely available through human contact and the fact that social distancing and stringent measures on food handling has resulted in food supply declines and unmet demand because of food limited availability. A look at the global south with a focus on Sub-Saharan Africa (SSA) right now brings to light the fact that most governments are struggling with the decision to call for total lockdown in part because of the impact on making food available for its lowest-income earners or lower-income settlement dwellers who are often the most vulnerable. Agriculture also suffers a double fate with many countries having their agriculture adversely impacted by the latest locust movement across Sub-Saharan Africa (SSA). In addition, the changing weather patterns and in effect lower agriculture performance than expected means that COVID19 will compound these challenges. Some of the challenges that are being faced can be addressed by a review of policies to alleviate food problems in SSA. We also then need to strengthen policy by ensuring greater implementation and support through new laws.

Kjær, Gundula, 'Denmark: Food Inspections During the Covid-19 Crisis' (2020) 15(3) *European Food & Feed Law Review* 260–261

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.

Lee, Angela and Adam Houston, '[Diets, Diseases, and Discourse: Lessons from COVID-19 for Trade in Wildlife, Public Health, and Food Systems Reform](#)' *Food Science* (forthcoming, 2020)

Abstract: The COVID-19 pandemic has brought to light significant failures and fragilities in our food, health, and market systems. Concomitantly, it has emphasized the urgent need for a critical re-evaluation of many of the policies and practices that have created the conditions in which viral pathogens can spread. However, there are many factors that are complicating this process; among others, the uncertain, rapidly evolving, and often poorly reported science surrounding the virus' origins has contributed to a politically charged and often rancorous public debate, which is concerning insofar as the proliferation of divisive discourse may hinder efforts to address complex and collective concerns in a mutually cooperative manner. In developing ethical and effective responses to the disproportionate risks associated with certain food production and consumption practices, we argue that the focus should be on mitigating such risks wherever they arise, instead of seeking to ascribe blame to specific countries or cultures. To this end, this article is an effort to inject some nuance into contemporary conversations about COVID-19 and its broader implications, particularly when it comes to trade in wildlife, public health, and food systems reform. If COVID-19 is to represent a turning point towards building a more equitable, sustainable, and resilient world for both humans and nonhuman animals alike, the kind of fractioning that is currently being exacerbated by the use of loaded terms such as 'wet market' must be eschewed in favour of a greater recognition of our fundamental interconnectedness.

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

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

Petiten, Ludivine, '[The COVID-19 Crisis: An Opportunity to Integrate Food Democracy into Post-Pandemic Food Systems](#)' *European Journal of Risk Regulation* (2020) 11(2) Special Issue - 'Taming COVID-19 by Regulation' 326-336

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.¹ 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.

Ploeg, Jan Douwe van der, '[From Biomedical to Politico-Economic Crisis: The Food System in Times of Covid-19](#)' (2020) 47(5) *The Journal of Peasant Studies* 944–972

Abstract: The Covid-19 disease is quickly developing into a deep, global and enduring politico-economic crisis that involves a rapid disarticulation of the production, processing, distribution and consumption of food. The badly balanced world market and the high degree of financialization of both primary agricultural production and food chains are decisive factors in this. The crisis highlights that the real economy is far too dependent on the financial economy. Financial capital operates as a paralyzing force. In this situation food sovereignty, peasant agriculture, territorial markets and agroecology emerge as indispensable ingredients for a recovery.

Raifman, Julia, Jacob Bor and Atheendar Venkataramani, '[Unemployment Insurance and Food Insecurity among People Who Lost Employment in the Wake of COVID-19](#)' (2020) *medRxiv* (pre-print – not yet peer reviewed)

Introduction: The impacts of Coronavirus Disease 2019 (COVID-19) extend well beyond morbidity and mortality. In the United States, COVID-19-related business closures and reductions in economic activity have led to a sharp rise in unemployment rates, from 3.5% in February 2020 to 14.7% in April 2020. As of June 2020, the unemployment rate stands at 11.1%.

Job losses over this period have been concentrated among people living in low-income households, and resulting drops in income have made many individuals and families vulnerable to food insecurity. Food insecurity is defined by the U.S. Department of Agriculture as “household-level economic and social condition of limited or uncertain access to adequate food.” Food insecurity is associated with worse general health and well-being, physical hunger pangs and fatigue, psychological depression, anxiety, suicidal ideation, and interpersonal stress and challenges, as well as chronic disease, and worse developmental outcomes for children. Initial evidence suggests that food insecurity has more than doubled among all households and tripled among households with children during the COVID-19 pandemic relative to February 2020.

Reich, Arie, '[Globalization, the Corona Pandemic and the Need for Joint Action against Illicit Trade in Wildlife](#)' (2020) 65 *Justice: The Legal Magazine of the International Association of Jewish Lawyers and Jurists* (forthcoming)

Abstract: This article discusses the negative impact that the Corona pandemic has had on global cooperation and on public sentiments towards globalization. It shows that globalization is not only a victim of the pandemic, but is also blamed to be responsible for it. The article, however, argues that globalization, in the sense of global cooperation and joint action to strengthen international law, is also the solution to the problem. The effort to find a vaccine against COVID-19 can only be successful through global cooperation. Moreover, the article notes that the origin of both this virus and the 2002-2004 SARS virus is from wild-animals, and that around 75% of new or emerging infectious diseases that have affected humans over the past three decades originate in animals. Hence, joint action, through the strengthening of the international conventions against illicit trade in wildlife (in particular the Convention on International Trade in Endangered Species of Wild Fauna and Flora –CITES) and protection of biodiversity is urgently needed. The article argues that the aftermath of a mega-crisis, such as the Corona pandemic, is a golden opportunity for a major reform of this field of law in order to reduce significantly the trade in wild animals, in particular endangered species, and preserve their natural habitat. If, in the past, these objectives were seen as conflicting with economic interests, with the latter quite clearly having taken the upper hand, we can now see that preserving wildlife and its habitat is also very much in the economic interest of the world.

de Sadeleer, Nicolas and Jacques Godfroid, '[The Story Behind Covid-19: Animal Diseases at the Crossroads Of Wildlife, Livestock And Human Health](#)' *European Journal of Risk Regulation* (2020) 11(2)

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.

Swinburne, Mathew, '[Using SNAP to Address Food Insecurity During the COVID-19 Pandemic](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 211-216

Jurisdiction: USA

Abstract: The United States Department of Agriculture’s most recent food insecurity data indicated that 37.2 million Americans were food insecure, meaning they did not have access to enough food to lead happy and healthy lives. Food insecurity is linked to a plethora of health issues including diabetes, hypertension, hyperlipidemia, asthma, poor mental health, birth

defects, and impaired cognitive development in children. Like many public health challenges, there are severe racial disparities. White Americans experience food insecurity at a rate of 8.1%, while Black Americans and Latinx Americans experience it at rates of 21.2% and 16.2%, respectively. The COVID-19 pandemic has devastated the US economy with over 44 million Americans filing for unemployment by mid-June 2020. This economic devastation is expected to force an additional 17.1 million Americans into food insecurity. Federal and state governments are adapting key food security programs and implementing new interventions to meet these challenges. This Chapter will examine how the Supplemental Nutrition Assistance Program (SNAP), the nation's largest nutrition program, is being leveraged during the pandemic. While key adaptations are being made to increase the effectiveness of these programs, additional measures are needed to protect vulnerable Americans during the pandemic. This Chapter's recommendations include, but are not limited to: increasing the maximum SNAP allotment; withdrawing or repealing regulations that limit access to SNAP; repealing the national ban that prohibits individuals with drug felonies from accessing SNAP; making online SNAP utilization available in all states; and providing for the delivery of online SNAP orders with no additional cost to the beneficiary.

Toffolutti, Veronica, David Stuckler and Martin McKee, '[Is the COVID-19 Pandemic Turning into a European Food Crisis?](#)' (2020) *European Journal of Public Health*, Article ckaa101 (advance online article, published 8 July 2020)

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:
 - public health
 - mental health
 - the ethics of discrimination in relation to treatment
 - medical malpractice / liability
 - the rationing and allocation of equipment such as ventilators in hospitals
 - access to vaccines
 - vaccine development and testing (but note that literature on intellectual property issues of vaccine development is listed below in the *Intellectual Property* section).
- 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.
- Literature on medical insurance is listed below in the *Insurance Law* section.
- Literature on privacy of medical data is listed below in the *Privacy* section.

Abbas, Muhammad Zaheer, '[Treatment of the Novel COVID-19: Why Costa Rica's Proposal for the Creation of a Global Pooling Mechanism Deserves Serious Consideration?](#)' (2020) *Journal of Law and the Biosciences* Article Isaa049 (advance online article, published 26 June 2020)

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?

Aboyeji, Faith O, 'Access to Health and Medical Research: Lessons from the COVID-19 Pandemic' (2020) 27(4) *Journal of Law and Medicine* 901

Abstract: The outbreak of COVID-19 in China and the resulting global pandemic have necessitated vigorous research into how this new virus works, how it can be cured and prevented, what kind of vaccine will work, and various other issues. To facilitate this research and enable quick scientific progress, rapid and immediate knowledge sharing among researchers globally became essential, including access to existing and new coronavirus-related research publications. This article discusses international responses to the need for immediate and rapid access to global health and medical research to combat the COVID-19 pandemic, and demonstrates how the exercise of copyright control restricts widespread access to knowledge, especially when published in journals. Ultimately, it recommends open access publishing as an effective way of circumventing copyright restrictions on health and medical research.

Abramson, Brian Dean, '[Preparing Health Care Providers for a COVID-19 Vaccine](#)' (2020) 13(3) *Journal of Health & Life Sciences Law* 2–11

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 Isaa012 (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.

Alberti, Philip M, Paula M Lantz and Consuelo H Wilkins, 'Equitable Pandemic Preparedness and Rapid Response: Lessons from COVID-19 for Pandemic Health Equity' *Journal of Health Politics, Policy and Law*, Article 8641469 (advance online article, published 28 May 2020)

Jurisdiction: USA

Abstract: The novel coronavirus pandemic has set in high relief the entrenched health, social, racial, political, and economic inequities within American society as the incidence of severe morbidity and mortality from the disease caused by the virus appears to be much greater in Black and other racial/ethnic minority populations, within homeless and incarcerated populations, and in lower-income communities in general. The reality is that the U.S. is ill equipped to realize health equity in prevention and control efforts for any type of health outcome, including an infectious disease pandemic. In this article, we address an important question: When new waves of the current pandemic emerge or another novel pandemic emerges, how can the U.S. be better prepared and also ensure a rapid response that reduces rather than exacerbates social and health inequities? We argue for a health equity framework to pandemic preparedness, grounded in meaningful community engagement that, while recognizing the fundamental causes of social and health inequity, has a clear focus on upstream and midstream preparedness and downstream rapid response efforts that put social and health equity at the forefront.

Amarillo, Claudia Rivera, 'Feminism on Lockdown' (2020) 52(3) *NACLA Report on the Americas* 274–281

Abstract: In the Southern Cone, feminist movements leading the “green tide” and setting the tone for struggles for legal abortion across latin america are finding new ways to support the right to choose despite the pandemic.

Anderson, Evan and Scott Burris, '[Assuring Essential Medical Supplies During a Pandemic: Using Federal Law to Measure Need, Stimulate Production, and Coordinate Distribution](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 170-176

Jurisdiction: USA

Abstract: The global COVID-19 pandemic has temporarily increased demand for basic medical equipment and supplies, and disrupted global supply chains. Governments at all levels and the

private sector have found themselves scrambling — and often competing — for the supplies they need. Federal law anticipates that emergencies can generate this kind of sudden demand for medical equipment. Federal agencies not only have ample legal authority to respond to shortages, but also the duty and the authority to prepare for emergencies by planning, supply-chain monitoring, investment and partnership with the private sector, and stockpiling. Perhaps the most important federal law for preventing and ameliorating shortages, and the primary focus of this Chapter, is the federal Defense Production Act (DPA). The DPA provides a menu of powers to stimulate production, strengthen supply chains, coordinate expertise, and resolve market failures. Although the shortfall in personal protective equipment and other basic medical equipment was anticipated by planners and demonstrated in simulation exercises, federal action to address the problem in the face of the pandemic have landed somewhere between failing and making matters worse. This Chapter recommends an independent commission be established to investigate and draw lessons from the federal public health response, but in the meantime points to two core, fixable problems related to law and administration: (1) the failure of Congress and successive administrations to provide sufficient resources to staff and maintain a vigorous infrastructure to prepare for surges in demand, and (2) the failure of the current administration to use its legal authority to lead, manage, rationalize and stimulate production and distribution of needed equipment.

Armstrong, Pat, Hugh Armstrong, and Ivy Bourgeault, 'Privatization and COVID-19: A Deadly Combination for Nursing Homes' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 447

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 responsabilization 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.

Aslim, Erkmen Giray and Murat C Mungan, '[Access to Substance Use Disorder Treatment During COVID-19: Implications from Reduced Local Jail Populations](#)' (George Mason Law & Economics Research Paper No 20-27, 2020)

Jurisdiction: USA

Abstract: Many states have responded to the spread of COVID-19 by implementing policies which have led to a dramatic reduction in jail populations. We consider benefits associated with providing the population of individuals who would, but for these policies, be incarcerated with substance use disorder (SUD) treatment. We discuss problems that may prevent this population from receiving SUD treatment as well as policies which may mitigate these problems.

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

Abstract: European Union and the United States have experienced some of the most severe outbreaks of Covid-19. Paper investigates the EU and US divisions of power and suggest that due to the relative advantages and disadvantages of centralized federal responses and decentralized state responses, actions seeking to limit the impact of Covid-19 on society need to reflect a 'smart mix' of both centralized and decentralized responses to the pandemic. Centralized procurement and distribution of necessary medical goods can solve problems related to harmful competition between states to procure these goods and allows states to exercise buying power. Centralized responses to procurement and distribution may solve a problem of moral hazard which leads to the hoarding of necessary medical goods, which represents a cross border externality when other states within the federal system face a shortage of necessary medical goods. This also applies to the procurement of medical goods related to testing for CV. However, paper argues the use of these goods and implementation of testing programs may be best done through a decentralized process because localized authorities have an information advantage over centralized authorities. Decentralized responses may also be necessary to gather

information about which form of public health intervention works best, given that there is uncertainty as to which approach is most efficient. States must weigh not only the benefits of implementing public health interventions, but also the costs of these interventions on society.

Auriemma, Catherine L, 'Eliminating Categorical Exclusion Criteria in Crisis Standards of Care Frameworks' (2020) *The American Journal of Bioethics* (advance online article, published 18 May 2020)

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.

Bagenstos, Samuel R, '[Who Gets the Ventilator? Disability Discrimination in COVID-19 Medical-Rationing Protocols](#)' (2020-21) 130 (27 May) *Yale Law Journal Forum* 1-25

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.

Note: see review of this article by Trudo Lemmens, '[Addressing the Tension between Discrimination Law and Pandemic Clinical Triage Protocols](#)' (2020) *Jotwell: The Journal of Things We Like (Lots)* (published 31 July 2020)

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.

Bard, Jennifer, '[The President's Remedy: Taking Another Look at Off-Label Prescribing in the Context of President Trump's Relentless Promotion of Hydroxychloroquine](#)' (SSRN Scholarly Paper ID 3680199, 21 August 2020)

Abstract: In the spring of 2020 the world watched as the President of the United States became 'Salesman-in-Chief' for a long outdated FDA approved malaria drug, which he called HYDROXYCHLOROQUINE, as a miracle cure for Covid-19. Although not approved by the FDA for use outside of a hospital, the effects of the President's advocacy became visible almost immediately. Prescriptions for the drug increased to a point that it became difficult to obtain for patients who depended on hydroxychloroquine for its other FDA approved uses, Lupus and rheumatoid arthritis.

But the prescriptions weren't for Covid-19 patients. They came from a wide range of health professionals stockpiling the drug for themselves, their family, and the worried well. This was all legal because once a drug is approved by the FDA for any use, it can, through a backdoor process called 'off-label' use, be prescribed for any purpose.

'Off-label prescribing' has become so integrated into contemporary medical practice that by some estimates up to 80% of oncology drugs and a substantial percentage of psychiatric drugs are prescribed off-label. Increasingly, researchers around the world have found that contrary to the beliefs of the doctors who prescribe off-label, the results for patients are often poor. Yet the practice is so powerful that it has evaded all attempts to implement commonsense measures such as mandatory tracking of off-label prescribing. Moreover, in no state must a doctor specifically inform a patient when they prescribe off-label.

In light of events like the President induced run on hydroxychloroquine, now is the time to revisit the continued existence of a practice more suited to a time when doctors made house-calls by horse and buggy than today's world where genomics and AI have revolutionized medical practice and drug development. It may be several years before we know how much death or cardiac damage was caused by the unnecessary use of hydroxychloroquine for treating Covid-19, but this very public display of how off-label prescribing can be abused needs to be a catalyst for getting the states and the FDA working together to develop a patient centered approach that creates a framework for assuring that everyone who is prescribed a drug can rely that it has been proven safe and effective.

Barranco, Rosario and Francesco Ventura, '[The Role of Forensic Pathologists in Coronavirus Disease 2019 Infection: The Importance of an Interdisciplinary Research](#)' (2020) 60(3) *Medicine, Science and the Law* 237-238

Abstract: Discusses the risks faced by forensic pathologists when performing post-mortem examinations involving confirmed or possible cases of coronavirus infection, the importance of following recommended procedures, the medico-legal implications, and the need for interdisciplinary research.

Barranco, Rosario and Francesco Ventura, '[Covid-19 and Infection in Health-Care Workers: An Emerging Problem](#)' (2020) 88(2) *Medico-Legal Journal* 65–66

Abstract: The 2019 coronavirus infection (called SARS-CoV-2) began in Wuhan, spread rapidly throughout the world. In many countries the exponential growth of Covid-19 cases is overwhelming health care systems with overcrowding of hospitals and overflowing Intensive Care Units. While people must stay at home to reduce the spread of this virus health-care

workers do the exact opposite. In some countries doctors are working with insufficient protection and are constantly at risk of contracting Covid-19. Health-care workers should be constantly monitored because if they are infected they may spread the virus to colleagues, hospitalized patients and even family members. Increased rates of infection in health-care workers could cause the health-care system to collapse and a further worsening of the pandemic; if there are too few doctors it will be even more difficult to manage.

Bartlett, Oliver, '[COVID-19, European Health Union, and the CJEU: Lessons from the Case Law on Banking Union](#)' (2020) *European Journal of Risk Regulation* (online advance article, published 1 September 2020)

Introduction: The Court of Justice of the European Union (CJEU) has given a number of pivotal judgments in cases that dealt with the intersection of health policy and EU law, and in so doing has played a key role in the emergence of EU health law as a distinct field. EU health law has developed to a point that scholars have called for the creation of a distinct European Health Union, to consolidate common European rules and standards that will contribute to improving the health of all Europeans.¹ As the implications of the COVID-19 pandemic for European cooperation on health issues become clearer, the calls for a European Health Union have been reinforced.² In light of such a seismic shift in how the world perceives the health, economic and social risks inherent in an uncontrolled global infectious disease outbreak, there will probably never be a better stimulus for EU Member States to develop the tools for enhanced formal cooperation on health issues.

Beazley, Ashlee, '[Contagion, Containment, Consent: Infectious Disease Pandemics and the Ethics, Rights, and Legality of State-Enforced Vaccination](#)' *Journal of Law and the Biosciences*, Article Isaa021 (advance article, published 7 May 2020)

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.

Berlin, Joey, 'Pandemic Poses Legal Pitfalls: TMA Seeks Better Liability Shields' (2020) 116(8) *Texas Medicine* 38–40

Abstract: Under Texas law, physicians treating COVID-19 patients in a volunteer capacity have potential defenses against lawsuits that might arise from that care. But for non-volunteer physicians on the COVID battlefield - often working in harrowing, overloaded settings, high on patient count and low on equipment - the same liability shields don't exist. And with a resurgence in COVID-19 cases and hospitalizations taking hold in June, the Texas Medical Association continued its pandemic-long push to extend liability protections to all frontline physicians, volunteer or not.

Bhuiyan, ASM Anwarullah, '[Seeking an Ethical Theory for the COVID-19 Pandemic Outbreak with Special Reference to Bangladesh's Law and Policy](#)' (2020) *Developing World Bioethics* (advance online article, published 6 September 2020)

Abstract: Globally, a traditional management model has generally been used to manage disaster situations, including in Bangladesh. In Bangladesh, the government mostly uses the preparedness policy for pandemic outbreak case management. With regard to the limitations arising from the pandemic outbreak the current research will investigate the following questions: when facing a devastating situation, what exactly is the nature of the pandemic outbreak management model incorporated at the governmental level? Keeping these questions in mind, the intention of the existing model is to provide smooth and appropriate assistance to

recover from a pandemic outbreak, and to implement effective governance of the situation. This research will identify deficiencies in the current epidemic management policy in Bangladesh, and will assist in forming a new model and developing a systematic procedure for managing future pandemic outbreak situations. The main deficiency in Bangladesh's pandemic management is that the policy paper has failed to identify all hazardous events that may occur in a pandemic outbreak. In most cases, it has underestimated the issues of bioethical responsibility toward the different stakeholders affected during the devastating situation of a pandemic outbreak. The policy does not emphasize the bioethical model; therefore, it fails to encourage support for either public protection or an ethically friendly management system. The model proposed in this article demonstrates an appropriate way to reduce or, if possible, avoid potential damages and losses from a pandemic outbreak. The model aims to prioritize the problems that need assistance to recover from the outbreak.

Billauer, Barbara Pfeffer, '[On the Proposal Not to Vaccinate the Aged for COVID-19](#)' (SSRN Scholarly Paper ID 3694407, 17 September 2020)

Abstract: Public Health Practice champions the objective of saving lives when allocating scarce resources. Bioethical precepts advocate equal respect for individuals. Anti-discrimination laws forbid making decisions on the basis of class or stereotypes. What happens when academics propose vaccine- allocation plans (in an article in The Conversation) which trespass on all three- promising that their plan will stop the epidemic? Insidious schemes which seem to promise nirvana while violating human and civil rights need to be examined very carefully. In this case, a careful examination discloses the proposed plan is inherently flawed, not just from a legal and ethical perspective, but from a public health perspective as well.

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.

Bilotta, Clio et al, '[The Medico-Legal Implications in Medical Malpractice Claims during Covid-19 Pandemic: Increase or Trend Reversal?](#)' [2020] *Medico-Legal Journal* (advance online article, published 10 June 2020)

Jurisdiction: Italy

Abstract: The Covid-19 pandemic caused a marked increase in admissions to intensive care units. The critically ill patients' condition from the infection resulted in their deaths. The healthcare facilities have got into trouble because of the pandemic. In fact, they had to create additional beds in a very short time and to protect health workers with personal protective equipment. Healthcare professionals fear that there will be an increase in complaints and medico-legal malpractice claims and hence they have urged politicians to discuss this. The Italian Parliament recently debated the topic of medical liability and passed the Decree-Law no. 18 of 17 March 2020 (DL – so called Cura Italia) by which they want to extend the concept of 'gross negligence' to healthcare facilities. Several Extended Care Units have suffered from outbreaks of Covid-19, so the Prosecutor's Office of several cities initiated investigations against them. This situation has reached Sicily, where the Prosecutor's Office of Palermo has opened an inquiry against an Extended Care Unit. Simultaneously, the Covid-19 pandemic may change patients' attitudes towards healthcare professionals, who are risking their lives daily. So the Italian medico-legal community is debating these questions, with one last pending question remaining: is the number of medico-legal claims likely to increase or trend down?

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.

Bollyky, Thomas J, Lawrence O Gostin and Margaret Hamburg, '[The Equitable Distribution of COVID-19 Therapeutics and Vaccines](#)' (2020) 323(24) *Journal of the American Medical Association* 2462-2463

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.

Brown, Christian et al, '[Isolation of Patients in Psychiatric Hospitals in the Context of the COVID-19 Pandemic: An Ethical, Legal, and Practical Challenge](#)' (2020) 71 (July/August) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101572 (advance article, published 8 May 2020)

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.

Brown, Teneille R, '[When the Wrong People are Immune](#)' [2020] *Journal of Law and the Biosciences* Article Isaa018 (advance article, published 8 May 2020)

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.

Burnett, Martha, 'When Did Saving Lives Become a Decision on Who Gets to Live?' (2020) 20(5) *Without Prejudice* 7–8

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.

Capps, Benjamin, '[Where Does Open Science Lead Us During a Pandemic? A Public Good Argument to Prioritize Rights in the Open Commons](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 5 June 2020)

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.

Caputo, Fiorella et al, '[Covid-19 Emergency in Prison: Current Management and Forensic Perspectives](#)' [2020] *Medico-Legal Journal* (advance online article, published 21 May 2020)

Abstract: The Covid-19 pandemic is currently a major worldwide public health problem. Contagion within prisons and in other custodial settings will need to be addressed promptly, but the management of preventive measures will be difficult due to overcrowding and inmates and officers' close physical contact. There may also be less access to care than in community settings. Accordingly, prisons are particularly vulnerable to outbreaks of infection, and in addition to the likely greater risks of contagion attention must be paid to the psychological problems that the pandemic can have on the prison population. Riots and episodes of violence have already taken place in various prisons. With the inevitable restrictions on social contact and family meetings, prisoners who already are at increased risk of mental illness and suicide are more susceptible to adverse psychological repercussions. From a forensic point of view, therefore, we stress the need for the development of a strong support network by mental health workers for the prison population.

Carroll, Andrew, '[Forensic Mental-Health Assessments after Coronavirus Disease 2019: Will Telehealth Lead Us to Trade Psychological Depth for Convenience?](#)' (2020) 60(3) *Medicine, Science and the Law* 169–171

Introduction: Courts, tribunals and other decision-making bodies frequently rely on the expert reports of forensic mental-health practitioners (principally psychiatrists and psychologists) to assist with their deliberations in both criminal and civil matters. Less than a year ago, a leading Australian judge asserted that 'in other than the rarest of circumstances',¹ courts were entitled to expect forensic assessments to be based on direct face-to-face contact between assessor and subject. With the imposition of the restrictions arising from the coronavirus disease 2019 (COVID-19) global pandemic, however, the usage of telehealth in forensic assessment work has

shifted from an occasional exigency to a day-to-day necessity. A consideration of the advantages and disadvantages of telehealth, and recent learnings garnered from the necessary constraints of lockdown, suggest that rigid insistence on traditional face-to-face interaction between assessor and subject is no longer tenable. As we anticipate the nature of forensic mental-health assessment work in a financially constrained post-COVID-19 world, it therefore behoves us to reflect on the risks of telehealth becoming the new default mode for forensic mental-health assessments.

Castelyn, C de V et al, '[Resource Allocation during COVID-19: A Focus on Vulnerable Populations](#)' (2020) 13(2) *South African Journal of Bioethics and Law* (advance online article)

Abstract: South Africa (SA) is a country of contrasts, with abundant resources, hard-won civil rights and a diverse population. Woven into the fabric of our society is a large divide between its poorest and its wealthiest members. In this article we highlight the vulnerabilities in our society that have been amplified by the COVID-19 crisis. Based on recent projections, it is very likely that the healthcare system will be overwhelmed. We acknowledge the recognition by government and civil society of these vulnerabilities, and note that difficult decisions will need to be made with regard to resource allocation. Our plea, however, is to ensure that human dignity and the principle of distributive justice are maintained, and that when difficult decisions are made, vulnerable people do not suffer disproportionately. Furthermore, it is of great concern that there is no national directive guiding resource allocation, prioritisation and triage decisions in both public and private hospitals. The Health Professions Council of SA should, as a matter of urgency, issue guidance on priority-setting and triage decisions in the context of COVID-19, based on distributive justice principles.

Cattuto, Ciro and Alessandro Spina, '[The Institutionalization of Digital Public Health: Lessons Learned from The COVID-19 App](#)' *European Journal of Risk Regulation* (2020) 11(2) Special Issue - 'Taming COVID-19 by Regulation' 228-235

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.

Chan, Hui Yun, 'Hospitals' Liabilities in Times of Pandemic: Recalibrating the Legal Obligation to Provide Personal Protective Equipment to Healthcare Workers' [2020] *Liverpool Law Review* (advance article, published 17 October 2020)

Abstract: The Covid-19 pandemic has precipitated the global race for essential personal protective equipment in delivering critical patient care. This has created a dearth of personal protective equipment availability in some countries, which posed particular harm to frontline healthcare workers' health and safety, with undesirable consequences to public health. Substantial discussions have been devoted to the imperative of providing adequate personal protective equipment to frontline healthcare workers. The specific legal obligations of hospitals towards healthcare workers in the pandemic context have so far escaped important scrutiny. This paper endeavours to examine this overlooked aspect in the light of legal actions brought by frontline healthcare workers against their employers arising from a shortage of personal protective equipment. By analysing the potential legal liabilities of hospitals, the paper sheds light on the interlinked attributes and factors in understanding hospitals' obligations towards healthcare workers and how such duty can be justifiably recalibrated in times of pandemic.

Chandler, Jennifer A et al, 'Weighing Public Health and Mental Health Responses to Non-Compliance with Public Health Directives in the Context of Mental Illness' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 433

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.

Chen, Bo and Donna Marie McNamara, '[Disability Discrimination, Medical Rationing and COVID-19](#)' (2020) *Asian Bioethics Review* (advance article, published 3 September 2020)

Abstract: The current public health crisis has exposed deep cracks in social equality and justice for marginalised and vulnerable communities around the world. The reported rise in the number of 'do not resuscitate' orders being imposed on people with disabilities has caused particular concerns from a human rights perspective. While the evidence of this is contested, this article will consider the human rights implications at stake and the dangers associated with using 'quality of life' measures as determinant of care in medical decision-making and triage assessments.

Cheong, Mark Wing Loong, Pascale Allotey and Daniel D Reidpath, '[Unequal Access to Vaccines Will Exacerbate Other Inequalities](#)' (2020) *Asia Pacific Journal of Public Health* (advance online article, published 25 July 2020)

Extract: There is a consensus that a vaccine, and the immunity that it confers, is required for countries to lift their restrictions and restart their economies. This has led to countries competing for supplies of potential COVID-19 vaccines. A corresponding surge of activism has occurred to ensure that vaccines will be equitably distributed. Equal access to a vaccine will be needed to prevent the development of health disparities between the vaccinated and unvaccinated.

Unfair access to vaccines will also create inequalities in rights and freedom. There are numerous reports of communities who are perceived to be at higher risk of being infected, being targets of discrimination, and having their rights curtailed. It requires no stretch of the imagination to see how unequal access to a vaccine will result in the rise of a 2-caste system: the clean, who are immune and noncontagious, and the untouchables, who are nonimmune and a feared source of infection.

Chin, H Paul and Guillermo Palchik, '[Telepsychiatry in the Age of COVID: Some Ethical Considerations](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 24 June 2020)

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 beneficence, 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.

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

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

Cioffi, Andrea and Raffaella Rinaldi, '[Covid-19 and Medical Liability: A Delicate Balance](#)' [2020] *Medico-Legal Journal* (advance online article, published 3 July 2020)

Abstract: During the Covid-19 pandemic, many countries around the world are considering whether and how to provide liability protection to front-line healthcare staff. The guiding principle of liability protection for physicians and others is to ensure that, in a serious emergency situation, health professionals can devote themselves exclusively to their work and

to patient care, without the fear of future claims for unforeseeable, but above all unavoidable, injury, loss and damage caused by their conduct. Great care is needed to balance the interests and rights of all those involved. Liability protection could have risky consequences with the final result that doctors will not be protected, but institutions such as health facilities will be even if they were in fact responsible for foreseeable and avoidable damage.

Clemens, Timo and Helmut Brand, '[Will COVID-19 Lead to a Major Change of the EU Public Health Mandate? A Renewed Approach to EU's Role Is Needed](#)' (2020) *European Journal of Public Health*, Article ckaa103 (advance online article, published 8 July 2020)

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.

Coggon, John and Lawrence O Gostin, '[Postscript: COVID-19 and the Legal Determinants of Health](#)' (2020) *Public Health Ethics* (advance online article, published 25 May) 1-2

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.

Coghlan, N et al, '[COVID-19: Legal Implications for Critical Care](#)' (2020) *Anaesthesia* 1-12 (online advance article 23 May 2020)

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.

Cohen, I Glenn, Andrew M Crespo and Douglas B White, '[Potential Legal Liability for Withdrawing or Withholding Ventilators During COVID-19: Assessing the Risks and Identifying Needed Reforms](#)' (2020) 323(19) *JAMA* 1901–1902

Jurisdiction: USA

Abstract: This Viewpoint discusses the legal risks to health care workers and hospital systems from withdrawing or withholding ventilation from COVID-19 patients and cites a Maryland statute that offers legal immunity to clinicians making good faith decisions under emergency conditions.

Coleman, Doriane Lambelet and Philip M Rosoff, '[The Enhanced Danger of Physicians' Off-Label Prescribing During a Public Health Emergency](#)' (2020) *Journal of Law and the Biosciences* Article Isaa031 (advance online article, published 27 May 2020)

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.

Cordasco, Fabrizio et al, '[The Silent Deaths of the Elderly in Long-Term Care Facilities during the Covid-19 Pandemic: The Role of Forensic Pathology](#)' (2020) 88(2) *Medico-Legal Journal* 66–68

Abstract: The Covid-19 pandemic is currently a major global public health problem. We know that the elderly and people with chronic diseases contract the infection more easily and they develop clinically more serious and often lethal forms. To date, the reasons for this have been generically attributed to old age and underlying diseases. Most Covid-19 deaths occurred in long-term care facilities because the residents are elderly people with chronic illness living in close contact. Therefore, facilities have become epidemic outbreaks. Forensic knowledge is very limited because an autopsy is rarely performed. Post-mortem investigations can help increase knowledge about Covid-19 and identify any undiagnosed pathologies in life. Therefore, forensic investigations play a role in protecting a frail population. Autopsies should be encouraged on elderly people who died of Covid-19.

Costa, Eva Dias and Micaela Pinho, '[Does Implicit Healthcare Rationing Impose an Unfair Legal Burden on Doctors? A Study of Portuguese Jurisprudence](#)' (2020) 20(1) *Medical Law International* 31–57

Abstract: Healthcare rationing is inevitable, never more so than during the COVID-19 pandemic. In Portugal, rationing is largely implicit and relies too much on bedside decisions, made in stressful circumstances, involving ethical dilemmas and being prone to error. This study uses a qualitative approach by exploring the public records of Portuguese courts for malpractice suits

between the years of 2008 and 2019 to ascertain whether the damage suffered by patients in these cases could in any part be attributed to a lack of resources. During this research, we found that a large number of lawsuits against doctors and hospitals might have in fact been the unfortunate result of the constraints of implicit prioritization. We concluded that lawyers and judges must be made aware of the impact of implicit rationing decisions on healthcare professionals, who are judged against a professional standard and an inverse onus rule that places on them a heavy burden of proof.

Coughlin, Christine Nero and Nancy MP King, '[The Stories We Tell: Narrative, Policymaking, and the Right to Try](#)' (2020) *Wake Forest Journal of Law and Policy* (forthcoming)

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.

Dahlen, Hannah G, Bashi Kumar-Hazard and Mary Chiarella, 'How COVID-19 Highlights an Ongoing Pandemic of Neglect and Oppression When it Comes to Women's Reproductive Rights' (2020) 27(4) *Journal of Law and Medicine* 812
Jurisdiction: Australia

Abstract: The coronavirus disease-19 (COVID-19) pandemic has exposed an underlying pandemic of neglect affecting women’s reproductive rights, particularly in the provision of abortion

services and maternity care. The systemic neglect in the Australian context has resulted in a rise in demand for the services provided by privately practising midwives (PPMs) that is not matched by systemic support for, nor recognition of, women choosing to birth at home. As a result, PPMs are unable to meet the rise in demand, which in itself reflects decades of limited State support for the choice to birth at home and opposition by incumbent stakeholders in the provision of maternity care to healthy women with low-risk pregnancies. We discuss the historical backdrop to these currently erupting issues, along with the real reasons for the opposition to PPMs in Australia. Finally, we offer solutions to this ongoing issue.

Davis, Corey S and Amy Judd Lieberman, '[Access to Treatment for Individuals with Opioid Use Disorder](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 133-137

Jurisdiction: USA

Abstract: The United States is currently facing two severe public health emergencies: COVID-19 and the continuing epidemic of preventable opioid-related harm. While these epidemics share some similarities, there is one key difference: while there are currently no approved pharmaceutical treatments for the novel coronavirus, highly effective medications to treat opioid use disorder (OUD) have existed for decades. Despite their proven efficacy, access to these medications has long been limited by federal and state laws, limitations that disproportionately impact those who are made particularly vulnerable by structural factors including economic injustice and structural racism. In response to the COVID-19 epidemic, the U.S. Drug Enforcement Administration and other federal agencies have taken steps to temporarily remove some legal and regulatory barriers to these medications. These changes are not comprehensive, and most are tied to the COVID-19 public health emergency declaration. The epidemic of opioid-related harm will not end when the new coronavirus is controlled or the related emergency declaration expires. Indeed, it seems likely that steps taken to attempt to control the virus' spread may result in an even more unhealthy risk environment for people with OUD, with a resulting increase in treatment need. This Chapter briefly highlights the potential positive impact of increased access to OUD treatment, current changes to increase access to that treatment, and recommendations for making those changes permanent.

Dawson, Angus and Marcel Verweij, '[Law, Ethics, and Politics in the Face of a Global Pandemic](#)' (2020)
13(1) *Public Health Ethics* 1–3

Introduction: We are in the midst of a global pandemic caused by the novel SARS-CoV-2 virus. Millions of people have been infected, hundreds of thousands have died and health care systems have been stretched to breaking point. Unprecedented work is going on around the world to discover effective treatments and vaccines. In their absence, we are reliant upon traditional public health measures that aim to both prevent transmission (through the use of isolation, quarantine, physical distancing, restrictions on movement, shutting of borders, etc.) and detect infected individuals and those possibly exposed to infection (through testing and contact tracing, etc.). The implementation of such actions, particularly physical distancing, has caused massive disruption to social life and economic activity, resulting in significant costs to physical and mental health, increased unemployment and the exacerbation of existing inequalities. The impact of the pandemic and our response will be with us for decades to come.

De Gama, Rafia, '[COVID-19, Clinical Trials Regulations: Making Sure Africa is Not an Unregulated Testing Ground](#)' (Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020), Symposium II: Intellectual Property, Technology and Agriculture)

Introduction: Recently, there has been discussion in the media, about vaccine trials for COVID-19 that may take place on the African continent. This discussion had been in the offing, mainly because Africa has sometimes been left out of vaccine trials. The discussions stirred more controversy when two top French scientists suggested that clinical trials should take place in Africa. Since the interview, The World Health Organisation (WHO) Director General (DG) Dr. Tedros Adhanom Ghebreyesus addressed the utterances to state categorically that this problematic colonial mindset was unacceptable. At the same time, the Democratic Republic of Congo has agreed to be one of the countries to test a COVID-19 vaccine, further 'muddying the waters.'

Dineen, Kelly K and Elizabeth Pendo, 'Substance Use Disorder, Discrimination, and The CARES Act: Using Disability Law to Strengthen New Protections' (2020) (Fall) *Arizona State Law Journal Online* (forthcoming)

Jurisdiction: USA

Abstract: The COVID-19 pandemic is having devastating consequences for people with substance use disorders (SUD). SUD is a chronic health condition—like people with other chronic health conditions, people with SUD experience periods of remission and periods of exacerbation and relapse. Unlike people with most other chronic conditions, people with SUD who experience a relapse may face criminal charges and incarceration. They are chronically disadvantaged by pervasive social stigma, discrimination, and structural inequities. People with SUD are also at higher risk for both contracting the SARS-CoV-19 virus and experiencing poorer outcomes. Meanwhile, there are early indications that pandemic conditions have led to new and increased drug use, and overdose deaths are surging. More than ever, people with SUDs need access to evidence-based treatment and other services without structural barriers and with civil rights protections. To that end, a new provision in the Coronavirus Aid, Relief, and Economic Securities Act (CARES Act) strengthens penalties for the wrongful disclosure of SUD treatment records as well as addresses discrimination in multiple settings based on the misuse of those records. People with SUD reasonably fear negative treatment and discrimination if their condition is exposed. To address this barrier, federal law strictly protects the confidentiality of SUD treatment records. These protections have existed for nearly 50 years; however, the stringent requirements have been blamed for hampered and even deadly treatment decisions by health care providers who do not have access to SUD treatment records. Section 3221 of the CARES Act, effective March 2021, enacts the first major statutory changes to SUD treatment record confidentiality since 1992 and is aimed at improving information sharing among SUD treatment providers and other health care providers. But increased information sharing also creates concerns about information misuse and discrimination, and the possibility of renewed treatment avoidance. To address the tension between the benefits of information sharing and the possible harms of discrimination after disclosure, Section 3221 strengthens the disclosure penalties to align with HIPAA. It also adds an entirely new nondiscrimination provision which prohibits discriminatory use by recipients of disclosed SUD treatment information in areas including health care, employment and receipt of worker's compensation, rental or sale of housing, access to courts, and social services and benefits funded by federal, state, or local

governments. This essay provides the first analysis of the new nondiscrimination protections in Section 3221 of CARES Act for individuals with SUD using the framework of existing protections against disability-based discrimination in the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Section 1557 of the Patient Protection and Affordable Care Act, and the Fair Housing Act. We propose that as the new protections of Section 3221 are implemented through regulations, guidance, and enforcement, they should be understood within the context of existing disability nondiscrimination laws as well as the specific purpose of Section 3221 to ensure that discrimination against such people does not continue to serve as a barrier to seeking treatment. We offer three insights to achieve this goal. First, the new protections should be understood to include current illegal substance users and should be construed broadly. Second, the scope of entities covered by the new protections should be interpreted consistently with existing definitions in laws that prohibit disability-based discrimination in employment, public programs, services, and activities, health care, and housing. Finally, robust enforcement must be coupled with educational initiatives about the pervasive discrimination faced by people with SUDs, and new and existing nondiscrimination requirements that protect them.

Doerr, Megan and Jennifer K Wagner, '[Research Ethics in a Pandemic: Considerations for the Use of Research Infrastructure and Resources for Public Health Activities](#)' (2020) *Journal of Law and the Biosciences* Article Isaa028 (advance article, published 18 May 2020)

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.

Dorfman, Doron, '[Can the COVID-19 Interstate Travel Restrictions Help Lift the FDA's Blood Ban?](#)' (2020) *Journal of Law and the Biosciences* (advance article, published 22 April 2020)

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.

Drogin, Eric Y, '[Forensic Mental Telehealth Assessment \(FMTA\) in the Context of COVID-19](#)' (2020) 71 (July/August) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101595 (advance article, published 4 June 2020)

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.

Dubov, Alex and Steven Shoptaw, 'The Value and Ethics of Using Technology to Contain the COVID-19 Epidemic' (2020) *The American Journal of Bioethics* 1–5 (advance online article, published 18 May 2020)

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.

Dudzinski, Denise M, Benjamin Y Hoisington and Crystal E Brown, 'Ethics Lessons From Seattle's Early Experience With COVID-19' (2020) *The American Journal of Bioethics* (advance online article, published 18 June 2020)

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.

Duignan, Kieran and Chloe Bradbury, '[Covid-19 and Medical Negligence Litigation: Immunity for Healthcare Professionals?](#)' [2020] *Medico-Legal Journal* (advance online article, published 23 July 2020)

Abstract: This article considers the recent calls to provide doctors with immunity from medical negligence claims arising out of the Covid-19 pandemic. It provides a critical analysis as to the conditions that would need to be considered for such a policy as well as exploring the wider ramifications.

Abstract:

Introduction: Despite clinical trials, there are still no approved specific therapies or any vaccine against COVID-19. The only option available is using investigational drugs for compassionate use. The update of the existing regulation regarding compassionate use is to ensure the effective and sustainable development of health policies and technologies over the COVID-19 pandemic and beyond.

Aim: The present short communication aimed to highlight the need for early and expanded access to investigational drugs for compassionate use as well as a call for an update of the existing regulation in Bulgaria concerning compassionate use in the era of COVID-19.

Materials and Methods: In EU and Bulgaria as well, the legal framework for compassionate use was introduced by Article 83 (1) of Regulation (EC) No 726/2004 of the European Parliament and of the Council; in principle, Regulations of the European Parliament and of the Council are mandatory for all Member States. Remdesivir appears to have a favorable clinical and safety profile, as reported in a case involving patients with severe COVID-19 through a compassionate use programme.

Results: The overall probability of clinical improvement observed in 36 of 53 COVID-19 patients received intravenous remdesivir as part of a compassionate use programme was 68% (95% CI 40% to 80%). Thirty two patients (60%) demonstrated at least one adverse event, twelve 12 patients (23%) experienced serious adverse events and seven patients (13%) died. **CONCLUSION:** The global pandemic mandates Bulgarian Drug Agency for a reasonable update of the existing national regulation concerning compassionate use and off-label therapies. In the era of COVID-19, it is important for Bulgarian patients to have early and expanded access to investigational drugs for compassionate use.

Elberg, Jacob, '[Health Care Fraud Means Never Having to Say You're Sorry](#)' (2020) *Washington Law Review* (forthcoming)

Jurisdiction: USA

Abstract: For decades, the Department of Justice has issued a steady flood of press releases announcing False Claims Act (FCA) settlements against health care entities and extolling the purportedly sharp message sent to the industry through these settlements about the consequences of engaging in wrongdoing. The FCA is the primary mechanism for government enforcement against health care entities engaged in wrongdoing, and it is expected to be DOJ's key tool for addressing fraud arising out of government programs in response to the COVID-19 pandemic. While DOJ has pointed to three key goals of its enforcement efforts – deterrence, incentivizing cooperation, and building a culture of compliance in the health care industry – careful examination of the settlements touted in those DOJ press releases calls into question whether DOJ's settlement practices – which almost uniformly lack any admission of responsibility by defendants – are conveying the message DOJ seeks to impart or having the impact it hopes to achieve.

Erwin, Cheryl et al, 'Rural and Remote Communities: Unique Ethical Issues in the COVID-19 Pandemic' (2020) *The American Journal of Bioethics* (online advance article, published 14 May 2020)

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.

Farrell, Anne-Maree and Patrick Hann, '[Mental Health and Capacity Laws in Northern Ireland and the COVID-19 Pandemic: Examining Powers, Procedures and Protections under Emergency Legislation](#)' (2020) 71 (July/August) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101602 (advance article, published 22 June 2020)

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.

Farrella, Anne-Maree and Patrick Hann '[Mental Health and Capacity Laws in Northern Ireland and the COVID-19 pandemic: Examining Powers, Procedures and Protections Under Emergency Legislation](#)'

(2020) 71 (July-August) *International Journal of Law and Psychiatry* (advance online article)

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.

Farringer, Deborah, '[A Telehealth Explosion: Using Lessons from the Pandemic to Shape the Future of Telehealth Regulation](#)' (SSRN Scholarly Paper ID 3681070, 5 August 2020)

Abstract: The coronavirus pandemic has changed the way individuals work and live, with an ever increasing reliance on technology to carry out daily life. Like schools and business, physicians and physician offices around the country not tasked with treating patients suffering from COVID-19 shuttered their doors and turned to technology, through telehealth, to render necessary healthcare services. Telehealth services, generally defined as being able to diagnose and/or treat a patient via technology as opposed to in-person, have been around for some time, but there have been significant barriers that have hindered widespread growth. Despite this, telehealth advocates have been doggedly and slowly pushing for expansion and trying to break through the known obstacles for decades in an effort to hopefully achieve the touted gains from telehealth, such as enhanced health care services to rural and medically underserved populations, more integrated care across platforms to coordinated providers all treating the same episode of care, and greater convenience and efficiency for the patients and providers for some of the more basics health care needs. Now, the global pandemic has pushed telehealth services into the mainstream and, like a set of dominoes, various federal and state restrictions and limitations that have been built up over the years around telehealth were suddenly waived in order to allow patients to continue to seek necessary medical care. Unlike before, however, patients now found themselves able to access such services from their homes or other places of residence. While some of the restrictions previously in place are likely to return, many are speculating that the pandemic has finally been telehealth's 'tipping point' and could usher in more robust and widespread use of telehealth even after the pandemic has passed or at least waned. As telehealth services have become more widely available and proven to be useful, it now seems unlikely there will be a return to the previous status quo for the industry, but this still leaves the industry, regulators, and enforcers to contemplate what the telehealth industry should look like in a post-pandemic environment. This is a unique time to be able to observe the use of telehealth in an unfettered state and, through that lens, provide legislators and policymakers with valuable data to reconsider the delivery of telehealth and its regulatory structure with the goal of enacting practical and workable regulations that advance efficient and effective health care delivery. To this end, Part I of this Article will examine the history of telehealth, from its early origins, and define what telehealth means today in all of its various forms. Part I will further explain the restrictions and regulatory structure, both federal and state,

that applied to telehealth prior to the coronavirus pandemic and the then-current enforcement trends. Next, Part II will describe all of the various waivers and regulatory changes that went into effect in response to the coronavirus pandemic and examine how the pandemic has fueled increased telehealth growth. Part II will also analyze trends realized during the pandemic and other usage data to consider the impact and effect of the waivers and loosening of restrictions on telehealth services. This Article will then argue in Part III that legislators and regulators should avoid either a return to status quo or a permanent adoption of all of the waivers in effect and should instead utilize data and evidence gathered during this time period when restrictions were largely lifted to understand the true concerns raised by telehealth usage and consider a revised regime that focuses its attention and efforts on those aspects of the regulatory structure that are most detrimental to the health and safety of patients and consumers. It will further provide some general recommendations for reconsidering the telehealth regulatory regime once the public health emergency has subsided in order to promote the use of telehealth in a way that enhances and enriches the benefits of telehealth, without harming patients and consumers. Finally, Part IV will conclude with some final thoughts regarding the importance of reimagining the telehealth infrastructure for a sustained and successful future.

Finch, John, 'Care Homes, COVID-19 and Legal Liability' (2020) 22(9) *Nursing and Residential Care* 1–3
Jurisdiction: UK

Abstract: The UK response to the pandemic has been characterised by a focus on the NHS, to the detriment of the adult social care sector. Official guidance has often been muddled and opaque, and legal action regarding duty of care and equipment provision may be on the horizon.

Fins, Joseph J, '[Resuscitating Patient Rights during the Pandemic: COVID-19 and the Risk of Resurgent Paternalism](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 24 June 2020)

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.

Font, Joan Costa, Rosella Levaggi and Gilberto Turati, '[Resilient Managed Competition during Pandemics: Lessons from the Italian Experience during COVID-19](#)' (2020) *Health Economics, Policy and Law* (accepted manuscript, published 4 September 2020)

Abstract: In the last decades, several European health systems have abandoned their vertically integrated health care in favour of some form of managed competition (MC), either in a centralised or decentralised format. However, during a pandemic, MC may put health systems under additional strain as they follow some form of „organisational self-interest“, and hence face reduced incentives for both provider coordination (e.g., temporary hospital close down, change in the case-mix), and information sharing. We illustrate our argument using evidence for the Covid-19 pandemic outbreak in Italy during March and April 2020, which calls for the development of „coordination mechanisms“ at times of a health emergency.

Frankford, David M, '[Sick at Heart: A Fundamental Reason the United States Was Unprepared for the COVID-19 Emergency](#)' (2020) 72(5) *Rutgers University Law Review* (forthcoming)

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.

Freckelton, Ian, 'COVID-19: Fear, Quackery, False Representations and the Law' (2020) 43 (September-October) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101611 (advance article, published 10 July 2020)

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.

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

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

Freckelton, Ian, 'COVID-19 Research and Patient Best Interests' (2020) 28(1) *Journal of Law and Medicine* (in press)

Freckelton, Ian, 'Perils of Precipitate Publication: Fraudulent and Substandard COVID-19 Research' (2020) 27(4) *Journal of Law and Medicine* 779-789

Abstract: The COVID-19 pandemic has created an environment highly conducive to substandard and fraudulent research. The incentives and temptations for the unethical are substantial. The articles published during 2020 in *The Lancet* and the *New England Journal of Medicine* that were based on spurious datasets, allegedly hosted by a cloud-based health care analytics platform, are deeply confronting for research integrity. They illustrate the perils of precipitate publication, inadequate peer-reviewing and co-authorship without proper assumption of responsibility. A period of crisis such as that in existence during the COVID-19 pandemic calls for high-quality research that is robustly evaluated. It is not a time for panic to propel premature publication or for relaxation in scholarly standards. Any other approach will replicate errors of the past and result in illusory research breakthroughs to global detriment.

Freckelton, Ian and Vera Lúcia Raposo, 'International Access to Public Health Data: An Important Brazilian Precedent' (2020) 27(4) *Journal of Law and Medicine* 895-900

Abstract: Accurate, up-to-date data are the bedrock of effective public health responses, including in the context of the suffering caused by COVID-19. Any action to inhibit the compilation of such data has ramifications locally, nationally and internationally, and risks impairing the global capacity to respond to the virus. This article contextualises the decision of the government of President Bolsonaro of Brazil to reduce the accessibility of contemporary data about COVID-19 infections in Brazil within his views about, and responses to, the virus. It identifies the nature of actions taken to suppress such data by the Brazilian Ministry of Health and then scrutinises a decision by De Moraes J of Brazil's High Court in *Sustainability Network v The President of the Republic of Brazil* (ADPF 690 MC/DF, 8 June 2020), which quashed the attempted suppression of public health data. The article hails the decision as an important public health law precedent.

Friedman, Eric et al, '[Global Health in the Age of COVID-19: Responsive Health Systems Through a Right to Health Fund](#)' (2020) 22 (1) *Health and Human Rights Journal* 199-207

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.

Gable, Lance, '[Allocation of Scarce Medical Resources and Crisis Standards of Care](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 177-182

Jurisdiction: USA

Abstract: Potential shortages of medical resources and services related to COVID-19 present government officials and emergency planners with difficult choices. If resources become too scarce, health care professionals and institutions may need to implement triage protocols adopting crisis standards of care. COVID-19 patient surges tested the health care system in March and April 2020, and highlighted the need to prepare to accommodate larger patient capacity in the near future. As a primary consideration, governments and health care institutions should utilize existing powers and resources to avoid shortages and mitigate their severity. If shortages do occur, most states have begun to develop crisis standards of care protocols to assist in making decisions about allocating scarce resources. These protocols

attempt to maximize the number of lives saved. Many protocols give priority access to health care and other essential workers. These protocols should be structured to facilitate fair and equitable access, although several have been found to be inconsistent with federal antidiscrimination law. Legal issues that may arise in this context include liability for health care professionals and institutions who decide to not allocate resources to patients who later suffer harm, and civil rights concerns over discrimination arising from the protocols or their implementation. Liability shields have been put in place by many states to protect health care professionals from lawsuits based on allocation decisions. Federal and state officials should support efforts to clarify and incorporate protections into crisis standards of care plans that prioritize antidiscrimination, fairness, and equity in allocation decision making.

Gable, Lance, Natalie Ram and Jeffrey L Ram, '[Legal and Ethical Implications of Wastewater SARS-CoV-2 Monitoring for COVID-19 Surveillance](#)' (2020) *Journal of Law and the Biosciences* Article Isaa039 (advance online article, published 24 June 2020)

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.

Garner, Craig B, '[Ignorance Is Not Bliss: The Consequences of How Little We Know about COVID-19](#)' [2020] 3 *California Lawyers Association Business Law News*

Abstract: An expensive endeavor, hospital disaster preparedness focuses on a rapid response to an unexpected event, designed to protect, stabilize, and bring calm to shaken communities following a disaster's aftermath. The 2019 novel coronavirus disease (COVID-19) has presented a different type of disaster necessitating just as novel a response. In pandemic's early days, it moved in slow-motion as the health care community initiated disaster protocol over a period of weeks, not hours. While mobilizing any hospital to battle a pandemic is not easy, legally at least, hospitals benefitted from unprecedented support by practically every federal and state agency, the assistance from which eliminated most barriers overnight so hospitals could establish and maintain momentum in the face of an epic disaster that, over several months, has moved forward, backward, and forward again

Germain, Sabrina, '[Will COVID-19 Mark the End of an Egalitarian National Health Service?](#)' (2020) 11(2) *European Journal of Risk Regulation*: Special Issue - 'Taming COVID-19 by Regulation' 358–365
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.

Ghosh, Sriparna, Agnitra Roy Choudhury and Alicia Plemmons, '[Certificate-of-Need Laws and Healthcare Utilization During COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3663547, 29 July 2020)

Abstract: This paper investigates the impact of state-level Certificate-of-Need (CON) laws on COVID and non-COVID deaths in the United States during the SARS-CoV-2 pandemic. CON laws are legal limitations to the expansion and acquisition of medical services within a state and were not structured in a way to prepare or stockpile medical goods and services to the volume that has been required to meet demand swells during the recent pandemic. Our investigation primarily focuses on mortality caused by COVID and non-COVID related reasons, and in understanding how these laws affect access to healthcare for illnesses that might require similar medical equipment. Our baseline results suggest that mortality rates are higher in states with CON laws relative to that in states without any CON laws. Furthermore, states with high healthcare utilization due to COVID that reformed their CON laws during the pandemic saw a significant reduction in mortality resulting from natural death, Septicemia, Diabetes, Chronic Lower Respiratory Disease, Influenza or Pneumonia, and Alzheimer's Disease in addition to reduction in COVID deaths.

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.

Gold, Azgad, '[Are Healthcare Workers Obligated to Risk Themselves during the COVID-19 Pandemic According to Jewish Law? A Response to Solnica et al](#)' (2020) *Journal of Medical Ethics* (advance online article, published 13 July 2020)

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 patient 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.

Goldman, Matthew L et al, '[Mental Health Policy in the Era of COVID-19](#)' (2020) *Psychiatric Services* (online advance article, published 10 June 2020)

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.

Gostin, Lawrence O, Safura Abdool Karim and Benjamin Mason Meier, '[Facilitating Access to a COVID-19 Vaccine through Global Health Law](#)' (2020) 48(3) *Journal of Law, Medicine and Ethics* 622–626

Introduction: This column explores the global health law reforms necessary to progressively realize universal access to a future COVID-19 vaccine. We begin by explaining the importance of global health law in the distribution of essential vaccines as a determinant of public health. The column then turns to examine the human rights foundations of global health law, conceptualizing vaccination access as a universal human right. We find that it will be crucial to develop legal commitments to ensure vaccine access prior to a scientific breakthrough, analyzing the legal barriers that impede global access and the global health law reforms necessary to facilitate global solidarity.

Gostin, Lawrence O, James G Hodge and Donna E Levin, '[Legal Interventions to Address US Reductions in Life Expectancy](#)' (2020) *JAMA* (advance online article, published 24 August 2020)

Abstract: In a 2019 report by Woolf and Schoomaker, average life expectancy in the U.S. was revealed to be in decline from 2014-2017, a trend which the COVID-19 pandemic is anticipated to exacerbate in 2020. As we assess in this commentary, concerted actions to address these declines are highly warranted. Among many potential solutions, “legal determinants of health,” namely how law can address underlying causes of premature mortality, provide clear options for policymakers seeking to reverse these trends for the next decade. Cost-effective, evidence-based laws can safeguard the public’s health, reduce disparities, and extend life expectancy across socio-economic groups, especially in disproportionately impacted U.S. regions. These benefits are often achievable without substantial public sector funding increases. Yet, public health laws are underutilized. Variations in legal innovations lead to uneven applications of evidence-based laws and geographic disparities in key health indicators. Federal inaction lends to legal inconsistencies in socially controversial spheres, including firearms, reproductive health, and commercial taxation and regulation. Federal and state authorities increasingly preempt lower level public health laws, impeding grassroots initiatives in food and

nutrition, environment, or consumer litigation.

Declinations in U.S. life expectancy requires a resetting of national health priorities especially against the backdrop of the greatest public health infectious disease threat of the 21st century. Evidence-based, cost-effective laws can reverse ongoing declines in health and longevity, and help improve social determinants.

Gostin, Lawrence O, I Glenn Cohen and Jeffrey Koplan, 'Universal Masking in the United States: The Role of Mandates, Health Education, and the CDC' (2020) *Journal of the American Medical Association (JAMA)* E1-E2 (advance online article, published 10 August)

Abstract: The Centers for Disease Control and Prevention (CDC) recommends cloth face coverings in public settings to prevent spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the virus that causes coronavirus disease 2019 (COVID-19). Face coverings decrease the amount of infectious virus exhaled into the environment, reducing the risk an exposed person will become infected.¹ Although many states and localities have ordered mask use, considerable variability and inconsistencies exist. Would a national mandate be an effective COVID-19 prevention strategy, and would it be lawful? Given the patchwork of state pandemic responses, should the CDC have enhanced funding and powers to forge a nationally coordinated response to COVID-19 and to future health emergencies?

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

Jurisdiction: USA

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

What ethical duties do we owe to vulnerable people separated from their families and communities? And how do we ethically and legally balance public health with civil liberties?

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

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

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

Gostin, Lawrence O and Daniel Salmon, '[The Dual Epidemics of COVID-19 and Influenza: Vaccine Acceptance, Coverage, and Mandates](#)' (2020) *Journal of the American Medical Association (JAMA)* Online First E1-E2 (published 11 June 2020)

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.¹ 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.

Greely, Henry T, '[COVID-19 Immunity Certificates: Science, Ethics, Policy, and Law](#)' (2020) *Journal of Law and the Biosciences* Article Isaa035 (advance article, published 28 May 2020)

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.

Greer, Scott and Anniek de Ruijter, '[EU Health Law and Policy in and after the COVID-19 Crisis](#)' *European Journal of Public Health* (2020) *European Journal of Public Health*, Article ckaa088 (advance online article, published 8 July 2020)

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.

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

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

Grobler, C, '[COVID-19: Mental Health and Clinical Equipoise in the Face of Moral Injury](#)' (2020) 13(1) *South African Journal of Bioethics and Law* 21-22

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 creating mechanisms to offer psychosocial support.

Gulati, Gautam and Brendan D Kelly, '[Domestic Violence against Women and the COVID-19 Pandemic: What Is the Role of Psychiatry?](#)' (2020) 71 (July-August) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101594 (advance article, published 2 June 2020)

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.

Gunnarsdóttir, Hrefna D et al, '[Applying the Proportionality Principle to COVID-19 Antibody Testing](#)' *Journal of Law and the Biosciences*, Article Isaa058 (advance online article, published 4 August 2020)

Abstract: As the COVID-19 pandemic continues to ravage the globe, many nations have started to relax stringent restrictions in an effort to restart the economy. While Member States of the European Union have approached reopening without the use of antibody testing for COVID-19, such testing may be central to a long-term, sustainable strategy for international travel, employment, and the allocation and monitoring of vaccines. As the use of antibody testing to dictate the enjoyment of individual freedom remains highly controversial, we describe its use in the context of three case studies (return to the workplace, travel and vaccination), applying the substantive legal balancing entailed in the proportionality principle. Differential treatment of individuals based on COVID-19 antibody test results can be justified through the proportionality principle, which offers a sound dividing line between a reasonable and responsible response and an unjust and discriminatory response.

Haddow, Kim et al, '[Preemption, Public Health, and Equity in the Time of COVID-19](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 71-76

Jurisdiction: USA

Abstract: Preemption is a legal doctrine that allows a higher level of government to limit or eliminate the power of a lower level of government to regulate a specific issue. As governments seek to address the myriad health, social, and economic consequences of COVID-19, an effective response requires coordination between state and local governments. Unfortunately, for many localities, the misuse of state preemption over the last decade has increased state and local government friction and weakened or abolished local governments' ability to adopt the health- and equity-promoting policies necessary to respond to and recover from this crisis. The broad misuse of preemption has left localities without the legal authority and policy tools needed to respond to the pandemic. Existing state preemption of paid sick leave, municipal broadband, and equitable housing policies, for example, forced local governments to start from behind. Moreover, many state executive orders issued in response to COVID-19 outlawed local efforts to enact stronger policies to protect the health and wellbeing of communities. And, preemption in the time of COVID-19 has exacerbated the health and economic inequities affecting people of color, low-wage workers, and women. Conflict between state and local governments has cost lives, delayed effective responses, and created confusion that continues to undermine public health efforts. The new coronavirus pandemic has made it clear that the overwhelming majority of state preemption occurring today harms public health efforts and worsens health inequities. The crisis also has underscored the need to reform and rebalance the relationship between states and local governments.

Haggai, Yoga Khirari, Erikson Arintonang and Pandini Riata M, '[Legal Protection of Hospital Patients in the Corona Virus Pandemic Period](#)' (2020) 1(4) *Journal La Sociale* 18–25

Jurisdiction: Indonesia

Abstract: This study aims to explain the legal protection for patients during the Covid-19 pandemic and the protection mechanism for patients as consumers. This research used doctrinal research. Basically, health development involves all aspects of life, physical, mental and socio-economic. In the growth of health development so far, there has been a change in orientation, both value and thought, especially regarding effort to solve problem in the health

sector which are influenced by politic, economic, socio-cultural, defence and security as well as science and technology. The change of orientation will affect the implementation process of health development. Health development, which is basically the responsibility of the state, becomes very important because the private sector also participates in creating a product in the health sector. This society is generally referred to as consumer. Indonesia and all over the world are currently in a pandemic of the Covid-19 virus, where the virus is spreading so fast. Not yet found anti-virus against this virus, the only way is that everyone is obliged to maintain immunity in the body. But it is very unfair for other patients, currently the focus of medical personnel and hospital is to deal with the Covid-19 outbreak, so that the rights of other patients cannot be fulfilled.

Hansmann, Lisa and Ganesh Sitaraman, '[Designing an Interstate Compact for a Pandemic Testing Board](#)' (Vanderbilt Law Research Paper No 20-41, 2020)

Abstract: Analysts have recently focused their attention on two pathways for the United States to reopen prior to the development of a vaccine for COVID-19. The first is to accept a series of rolling openings and closings: reopening as infection rates decrease, then reclosing as they rise again due to increased interactions. This approach is generally thought to be enormously costly economically and socially, as people will be kept in their homes and commerce restrained for considerable amounts of time. The second approach is to massively ramp up the production of testing, either through a universal testing regime (which would require capacity to test all 300+ million Americans every week or two) or a system of testing, tracing, and supported isolation (which would require testing 5 million Americans a day, plus tracing those who were in contact with the infected and isolating them). The testing pathway would enable the United States to reopen without having to close repeatedly and it would, as a result, save billions of dollars. The problem is that we do not have the number of tests necessary to pursue a testing pathway to reopening. Scaling up testing presents a variety of challenges -- including supply of the underlying materials within the supply chain; coordination problems that link supply to demand; and personnel and plans for how to deploy millions of tests per day. One solution to these challenges, which the Harvard Roadmap for Pandemic Resilience has outlined, is to establish a single coordinating body—a Pandemic Testing Board—to be tasked with ensuring the necessary supply of tests, deploying those tests, and facilitating a tracing program. There are two ways to

design this body. It could be a federal government institution, part of the Executive Branch. Or it could be built through an interstate compact, with federal appropriations but not federal administration. This paper offers a blueprint for how to design a pandemic testing board via an interstate compact.

Note: the Harvard Roadmap for Pandemic Resilience discussed in this article is [here](#).

Harel, Alon, Alon Klement and Eyal Klement, '[Regulated Voluntary Exposure to the COVID-19 Virus: Welfare and Ethical Analysis](#)' (SSRN Scholarly Paper ID 3697209, 22 September 2020)

Abstract: This Essay examines the societal and ethical implications of a regulated voluntary exposure strategy for addressing the COVID-19 pandemic crisis. Under the proposed strategy the state would allow healthy and young individuals to voluntarily expose themselves to the virus and thus get immunized against future infection. These individuals would be certified as immune, and then be allowed to return to lead normal life without risking others. This strategy would reduce the time for bringing about herd-immunity, and would also reduce overall mortality and demand for the health care system. We show that under certain conditions the voluntary exposure strategy is welfare enhancing and Pareto-superior to any other strategy. We then examine the proposal's ethical implications and discuss potential concerns relating to the voluntariness of program participants, and to the proposal's allocative and redistributive implications. We show that objections to the proposal by-and-large rest on 'the Nirvana fallacy', which compares a perfect (and, consequently, unrealistic) world in which there is no voluntary exposure with the imperfect world in which voluntary exposure is encouraged.

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 *raison d'être*.

Häyry, Matti, '[The COVID-19 Pandemic: A Month of Bioethics in Finland](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 30 April 2020)

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. 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.

Note: see review of this article by Trudo Lemmens, '[Addressing the Tension between Discrimination Law and Pandemic Clinical Triage Protocols](#)' (2020) *Jotwell: The Journal of Things We Like (Lots)* (published 31 July 2020)

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

Jurisdiction: USA

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

including older and/or immunocompromised individuals—to SARS-CoV-2, generating significant negative externalities. Second, even if younger adults can self-infect without exposing others to risk, large numbers of self-infections over a short timeframe after introduction of the immunity passport regime may impose significant congestion externalities on health care infrastructure. We then evaluate several interventions that could mitigate moral hazard under an immunity passport regime, including the extension of unemployment benefits, staggered implementation of passports, and controlled exposure of individuals who seek to self-infect. Our results underscore the importance of careful planning around moral hazard as part of any widescale immunity passport regime.

Herreros, Benjamin, Pablo Gella and Diego Real de Asua, '[Triage during the COVID-19 Epidemic in Spain: Better and Worse Ethical Arguments](#)' (2020) 46(7) *Journal of Medical Ethics* 455–458

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.

Hill, B Jessie, '[Essentially Elective: The Law and Ideology of Restricting Abortion During the COVID-19 Pandemic](#)' (Case Legal Studies Research Paper No 2020-7, 2020)

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.

Hodge, James G et al, '[Legal "Tug-of-Wars" During the COVID-19 Pandemic: Public Health v Economic Prosperity](#)' (SSRN Scholarly Paper ID 3623516, 9 June 2020)

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.

Hoffman, David A, '[Increasing Access to Care: Telehealth During COVID-19](#)' (2020) *Journal of Law and the Biosciences* Article Isaa043 (advance online article, published 16 June 2020)

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.

Horielova, Veronika, '[Conceptual Provisions of Law and Morals in a Pandemic Condition](#)' (2020) 2(22)

Актуальні проблеми правознавства / Actual Problems of Law 18-21

Jurisdiction: Ukraine

Abstract: The article is devoted to the problem of morality and law in a pandemic, because the COVID-19 pandemic has put doctors around the world in front of a tough issue of priority. In this regard, the question of the ethical choice of the doctor and what regulations he should be guided by is relevant. The purpose of the article is to comprehensively assess the rights of the patient and the doctor in a pandemic, justify and identify the moral guidelines of the doctor in a pandemic. The patient's rights are analyzed in a broad sense: the legal relations in the field of health care are enshrined in the law, and in a narrow sense, as a subjective, real relationship between the doctor (medical institution) and the patient in need of care. It is revealed that the actions of a doctor cannot be prescribed as a certain algorithm, and each action and decision of a doctor in a certain extreme situation is only his independent, moral choice. It has been studied that Ukraine takes responsibility for a sick person, giving him a number of additional rights, but there are certain restrictions in the law that can cause harm. It is proposed at the legislative

level to develop ethical guidelines for doctors who must act in a pandemic, which will reduce the morale in which the health worker and the patient find themselves

Hurford, James E, '[The BMA COVID-19 Ethical Guidance: A Legal Analysis](#)' (2020) *The New Bioethics* 1–14 (advance online article, published 2 May 2020)

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.

Ino, Hiroyasu, Eisuke Nakazawa and Akira Akabayashi, '[Drug Repurposing for COVID-19: Ethical Considerations and Roadmaps](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 5 June 2020)

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.

Iserson, Kenneth V, '[SARS-CoV-2 \(COVID-19\) Vaccine Development and Production: An Ethical Way Forward](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (advance online article, published 5 June 2020)

Abstract: The world awaits a SARS-CoV-2 virus (i.e., COVID-19 disease) vaccine to keep the populace healthy, fully reopen their economies, and return their social and healthcare systems to 'normal.' Vaccine safety and efficacy requires meticulous testing and oversight; this paper describes how despite grandiose public statements, the current vaccine development, testing, and production methods may prove to be ethically dubious, medically dangerous, and socially volatile. The basic moral concern is the potential danger to the health of human test subjects and, eventually, many vaccine recipients. This is further complicated by economic and political pressures to reduce government oversight on rushed vaccine testing and production, nationalistic distribution goals, and failure to plan for the widespread immunization needed to produce global herd immunity. As this paper asserts, the public must be better informed to assess promises about the novel vaccines being produced and to tolerate delays and uncertainty.

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.

Johnson, Stephanie B, '[Advancing Global Health Equity in the COVID-19 Response: Beyond Solidarity](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: In the coming weeks and months SARS-CoV-2 may ravage countries with weak health systems and populations disproportionately affected by HIV, tuberculosis (TB), and other

infectious diseases. Without safeguards and proper attention to global health equity and justice, the effects of this pandemic are likely to exacerbate existing health and socio-economic inequalities. This paper argues that achieving global health equity in the context of COVID-19 will require that notions of reciprocity and relational equity are introduced to the response.

Jones, Evan, 'COVID-19 Hits the French Health System' (2020) (85) *Journal of Australian Political Economy* 94-100

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. T

Kahn, Robert, '[Masks, Culture Wars, and Public Health Expertise: Confessions of a Mask "Expert"](#)' (2020) *University of St Thomas Law Journal* (forthcoming)

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.

Kaminer, Debbie, '[Vaccines in the Time of COVID-19: How Government and Businesses Can Help Us Reach Herd Immunity](#)' (SSRN Scholarly Paper ID 3712739, 16 October 2020)

Abstract: The COVID-19 pandemic continues to wreak havoc on American society. Public health experts agree that the best way to end it is with the development, distribution and implementation of a safe and effective vaccine program. However, a vaccine will only be successful if the number of Americans inoculated is sufficient to reach herd immunity. Unfortunately, recent polls indicate this may not be achieved because the majority of Americans appear unwilling to be vaccinated against the SARS-CoV-2 coronavirus. Such a failure might be prevented by action of both the government and private entities. This Essay addresses the potential strategies available to government and private businesses to either mandate or encourage people to get vaccinated. First, the Essay examines the broad power state governments have to pass mandatory vaccination laws and how this would apply to a vaccine against the SARS-CoV-2 coronavirus. In doing so, it distinguishes between broad mandatory vaccination policies that apply to all residents of a given location and more targeted policies that condition receipt of a government benefit on vaccination. Next the Essay focuses on how private businesses could mandate vaccination for both employees and customers, highlighting potential legal issues involving medical and religious exemptions. Finally, the Essay discusses how lessons learned from behavioral economics can be used by both government and employers to nudge people to be vaccinated. The Essay concludes by explaining that the best approach for ensuring that a sufficient number of Americans are immunized is a combination of targeted government mandates, employer mandates and nudging by both government and private businesses.

Kaplan, Bonnie, 'Revisiting Health Information Technology Ethical, Legal, and Social Issues and Evaluation: Telehealth/Telemedicine and COVID-19' (2020) *International Journal of Medical Informatics*, Article 104239 (advance online article, published 31 July 2020) [[link to unpublished article on SSRN](#)]

Abstract:

Background: Information technologies have been vital during the COVID-19 pandemic. Telehealth and telemedicine services, especially, fulfilled their promise by allowing patients to receive advice and care at a distance, making it safer for all concerned. Over the preceding years, professional societies, governments, and scholars examined ethical, legal, and social issues (ELSI) related to telemedicine and telehealth. Primary concerns evident from reviewing this literature have been quality of care, access, consent, and privacy.

Objectives: To identify and summarize ethical, legal, and social issues related to information technology in healthcare, as exemplified by telehealth and telemedicine. To expand on prior analyses and address gaps illuminated by the COVID-19 experience. To propose future research directions.

Methods: Literature was identified through searches, forward and backward citation chaining, and the author's knowledge of scholars and works in the area. EU and professional organizations' guidelines, and nineteen scholarly papers were examined and categories created to identify ethical, legal, and social issues they addressed. A synthesis matrix was developed to categorize issues addressed by each source.

Results: A synthesis matrix was developed and issues categorized as: quality of care, consent and autonomy, access to care and technology, legal and regulatory, clinician responsibilities, patient responsibilities, changed relationships, commercialization, policy, information needs, and evaluation, with subcategories that fleshed out each category. The literature primarily addressed quality of care, access, consent, and privacy. Other identified considerations were little discussed. These and newer concerns include: usability, tailoring services to each patient, curriculum and training, implementation, commercialization, and licensing and liability. The need for interoperability, data availability, cybersecurity, and informatics infrastructure also is more apparent. These issues are applicable to other information technologies in healthcare.

Conclusions Clinicians and organizations need updated guidelines for ethical use of telemedicine and telehealth care, and decision- and policy-makers need evidence to inform decisions. The variety of newly implemented telemedicine services is an on-going natural experiment

presenting an unparalleled opportunity to develop an evidence-based way forward. The paper recommends evaluation using an applied ethics, context-sensitive approach that explores interactions among multiple factors and considerations. It suggests evaluation questions to investigate ethical, social, and legal issues through multi-method, sociotechnical, interpretive and ethnographic, and interactionist evaluation approaches. Such evaluation can help telehealth, and other information technologies, be integrated into healthcare ethically and effectively.

Kavanagh, Matthew M and Renu Singh, 'Democracy, Capacity, and Coercion in Pandemic Response: COVID 19 in Comparative Political Perspective' *Journal of Health Politics, Policy and Law*, Article 8641530 (advance online article, published 28 May 2020)

Abstract: The COVID-19 pandemic has challenged governments around the world. It has also challenged conventional wisdom and empirical understandings in the comparative politics and policy of health. Three major questions present themselves: First, some of the countries considered to be the most prepared—having the greatest capacity for outbreak response—have failed to respond effectively to the pandemic. How should our understanding of capacity shift in light of COVID-19, and how can we incorporate political capacity into thinking about pandemic preparedness? Second, several of the mechanisms through which democracy has been shown to be beneficial for health have not traveled well to explain the performance of governments in this pandemic. Is there an authoritarian advantage in disease response? Third, after decades in which coercive public health measures have increasingly been considered counterproductive, COVID-19 has inspired widespread embrace of rigid lockdowns, isolation, and quarantine enforced by police. Will these measures prove effective in the long run and reshape public health thinking? This article explores some of these questions with emerging examples, even amid the pandemic when it is too soon to draw conclusions.

Kavanaugh, Matthew M et al, '[Access to Life-Saving Medical Resources for African Countries: COVID-19 Testing and Response, Ethics, and Politics](#)' (2020) 395 *The Lancet* 1735-1738

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

Keane, Michael, '[Hydroxychloroquine, Parachutes and How to Understand "The Evidence"](#)' (SSRN Scholarly Paper ID 3676982, 19 August 2020)

Abstract: It is deliberately misleading to make general claims that hydroxychloroquine doesn't work for CoViD-19. It is even more misleading to claim that 'the evidence' proves that hydroxychloroquine doesn't work. To understand this, consider the use of parachutes. Consider someone who claimed that parachutes don't work to stop death or serious injury when jumping out of a plane. What if they further claimed that 'the evidence' proves that parachutes don't work? Now consider if this same person advocated that because parachutes 'don't work', we should ban their use and demanded that conscientious pilots who give a parachute to someone jumping out of a plane should lose their pilot's license. Surely, such claims would be considered false and misleading. Two classic parodies, published in the British Medical Journal, showed that the above statements about parachutes are technically true. In 2003, a straight-faced literature search found no high quality, randomized, placebo-controlled trials of parachutes. The fact that people usually get squashed to smithereens when they hit the ground without a parachute was just epidemiological data. There's no proof the parachute makes any difference.

It could be due to confounding factors or bias. Subsequently, in 2018, a group of researchers actually did a randomized, placebo-controlled trial of the use of parachutes when jumping from a plane. There was no difference in death or serious injury in those who wore a parachute and those who didn't. However, the participants jumped out of a plane 60cm off the ground while it was stationary. So, it would, of course, be misleading to make the claim that the 'evidence says that parachutes don't work.' That is, the general claim that parachutes 'don't work' cannot be derived from studies where they are not used in the situation where they can provide benefit. Of course, everyone is going to survive whether you give them a parachute or not when jumping from 60 cm. It is egregiously misleading, and it would be lethal, to deprive someone of a parachute when jumping from 10,000 feet based on a study that tested a parachute at 60 cm. Now let's look at hydroxychloroquine. CoViD-19 is a disease with very different stages. And the vast majority of people, especially young people, are not going to die from CoViD-19. The suggestion from a significant amount of epidemiological data is that, if given early in the course of the disease, HCQ might prevent progression to critical illness or death in at-risk population groups. However, the randomized controlled trials (RCTs) performed to test the effect of hydroxychloroquine have been the equivalent of testing the effect of parachutes in the following circumstances: after a 60 cm jump; or pulling the rip-cord 2 feet above the ground after free-falling; or putting the parachute on someone after they hit the ground. Different RCTs on hydroxychloroquine have had variable characteristics including the following: control groups with average ages in the 30s and 40s; a cohort with 99% of patients with mild to moderate disease; a cohort with death rates of 0.4%; a cohort with zero incidence of death or mechanical ventilation; patients already on ventilators or even ECMO; patients having symptoms up to 14 days before being commenced on hydroxychloroquine; patients having symptoms an average of 16 days before commencement of hydroxychloroquine.

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

Jurisdiction: Australia

Abstract: Front-line healthcare personnel, particularly anesthetists and others dealing with acute cases of coronavirus, face a high risk of infection and thus mortality. The scientific evidence establishes that to protect them, hospital protocols should require that wearing of the

highest levels of personal protective equipment [PPE] be available for doctors and nurses performing intubation of COVID-19 patients. Although several international bodies have issued recommendations for a very high-level PPE to be used when intubation procedures are undertaken, the current PPE guidelines in Australia are more relaxed, and hospital authorities relying on them might not comply with legal obligations to their employee healthcare workers. Failure to provide high level PPE in many hospitals is of concern for large number of healthcare workers; this article examines the scientific literature on the topic and provides a legal perspective on hospital authorities' possible liability in negligence.

Kelly, Brendan D et al, 'Editorial: [Mental Health, Mental Capacity, Ethics and the Law in the Context of Covid-19 \(Coronavirus\)](#)' (2020) *International Journal of Law and Psychiatry*: Special Issue on Mental Health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101632 (advance article, published 1 October 2020)

Note: the articles in this special issue are being progressively added to the journal's website. We have listed them in the relevant place in this bibliography.

Abstract: The emergence of the Covid-19 (coronavirus) pandemic in late 2019 and early 2020 presented new and urgent challenges to mental health services and legislators around the world. This special issue of the *International Journal of Law and Psychiatry* explores mental health law, mental capacity law, and medical and legal ethics in the context of Covid-19. Papers are drawn from India, Australia, the United Kingdom, Ireland, Germany, Portugal and the United States. Together, these articles demonstrate the complexity of psychiatric and legal issues prompted by Covid-19 in terms of providing mental health care, protecting rights, exercising decision-making capacity and a range of other topics. While further work is needed in many of these areas, these papers provide a strong frame-work for addressing key issues and meeting the challenges that Covid-19 and, possibly, other outbreaks are likely to present in the future.

Kelly, Brendan D et al, '[Emergency Mental Health Legislation in Response to the COVID-19 \(Coronavirus\) Pandemic in Ireland: Urgency, Necessity and Proportionality](#)' (2020) 70 (May/June) *International Journal of Law and Psychiatry* Article 101564 (advance article, published 22 April 2020)

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.

Knoppers, Bartha Maria et al, '[Modelling Consent in the Time of COVID-19](#)' *Journal of Law and the Biosciences* Article Isaa020 (advance article, published 8 May 2020)

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.

Koch, Valerie Gutmann, 'COVID in NYC: What New York Did, and Should Have Done' (2020) 20(7) *American Journal of Bioethics* 153-155

Abstract: New York is in the unenviable position of being the first and largest COVID-19 hotspot in the United States, forcing city and state leaders to make difficult — if not impossible — policy decisions in order to avoid community spread, reduce the burden on health care institutions and providers, and distribute scarce resources such as tests, personal protective equipment, medical equipment, and staff. In their evaluation of New York's response to the coronavirus' assault on the state, Powell and Chuang enumerate three things the state could do better. As the New York State Task Force on Life and the Law's staff members who oversaw the publication of New York's Ventilator Allocation Guidelines (2015), we believe their second recommendation, that 'communities should insist that political representatives demonstrate responsible leadership by implementing, and updating as needed, crisis standards of care in public health disasters,' is crucial to ensuring public trust and the greatest benefit to as many patients as possible.

Kolber, Adam J, '[Why We \(Probably\) Must Deliberately Infect](#)' (2020) *Journal of Law and the Biosciences* (advance online article, published 11 May 2020)

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.

Kompas, Tom et al, '[The Scythe versus the Hammer: Health and Economic Costs of COVID-19 Control in Australia](#)' (SSRN Scholarly Paper ID 3608596, Social Science Research Network, 23 May 2020)

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'.

Kothari, Radha et al, '[COVID-19 and Prisons: Providing Mental Health Care for People in Prison, Minimising Moral Injury and Psychological Distress in Mental Health Staff](#)' (2020) 60(3) *Medicine, Science and the Law* 165–168

Introduction: The coronavirus disease 2019 (COVID-19) pandemic presents substantial challenges to global health and social care systems. Mental health services have faced restrictions in service delivery, risking the deterioration of already vulnerable individuals. Mental health staff have been working with new risks, in unfamiliar ways, for which they often feel

inexperienced and untrained, for example accessing and using personal protective equipment (PPE).

Prisons face unique additional hazards to both prisoners and staff. Public Health England's recent report describes limited and variable COVID-19 testing, concerns about an outbreak in prisons and the unsuccessful follow-through of the early release strategy which, according to modelling, would considerably reduce deaths from COVID-19. The report also highlights the longer-term challenges. Whilst recognising these additional difficulties, we argue that there is precedent and evidence from which we can learn. We propose ways to optimise the support to staff and prisoners.

Krueger, Jill, '[Legal Strategies for Promoting Mental Health and Wellbeing in the COVID-19 Pandemic](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 138-142
Jurisdiction: USA

Abstract: While mental health is often viewed as a matter of individual treatment of mental illness, mental health and well-being may be promoted throughout the population, including through law and policy. The inadequacy of our mental health care system, including limited public and private insurance coverage and provider shortages, has been apparent during the response to COVID-19, though expanded access to tele-mental health has closed the gap somewhat. Inability to meet basic needs contributes to stress, anxiety, and depression, so COVID-19 response measures to ensure access to employment or unemployment benefits, housing, food, childcare, and the like are critical to community mental health. Interventions aimed at mental health, such as Psychological First Aid, the Crisis Counseling Program, suicide prevention, and violence prevention programs can promote feelings of calm and safety, while supporting collaboration, nurturing problem-solving skills, and increasing hope. Longstanding inequities have contributed to higher infection and mortality rates, especially among African Americans, Latinos, and Native Americans, while Asian-Americans have been targeted with harassment and discrimination, making legal action to support mental health in communities of color essential. With schools abruptly shifting to remote learning in spring, school-based mental health services and opportunities for social emotional learning were disrupted. Intentional support for the mental health and wellbeing of students, teachers, school employees, and parents is needed this fall, regardless of educational setting. If the COVID-19 pandemic is viewed

as a mass trauma, strategies to support posttraumatic growth ought to be at the forefront of pandemic response, recovery, and restructuring.

Law, Richard WM and Kartina A Choong, '[Covid-19: Refracting Decision-Making through the Prism of Resource Allocation](#)' (2020) 88(2) *Medico-Legal Journal* 97–101

Jurisdiction: UK

Abstract: Medical decision-making has, across the history of the NHS, made a transitional journey from a model characterised by paternalism to one which places emphasis on partnership and patient autonomy. This article assesses the extent to which the circumstances generated by the Covid-19 pandemic affect the mode of critical care decision-making. It observes that clinical judgment influenced by protocols, algorithms and resource constraints do not lend themselves to full identification with either of the two frameworks familiar to the NHS. The unique mode of decision-making engendered can only be understood on its own terms.

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.

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

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

Lemmens, Trudo and Roxanne Mykitiuk, '[Disability Rights Concerns and Clinical Triage Protocol Development During the COVID-19 Pandemic](#)' (2020) 40(4) *Health Law in Canada* 103-112 (forthcoming)
Jurisdiction: Canada

Abstract: In the context of the COVID-19 pandemic a number of jurisdictions and authorities have drafted triage protocols to guide decision making in the face of severe shortage of ventilators and intensive care resources. Several of these have evoked debate about their compatibility with human rights standards, and in particular the rights of people with disabilities. In Canada, the Canadian Medical Association came out with a general Framework for Ethical Decision Making, while Ontario Health produced a draft Clinical Triage Protocol for Major

Surge in COVID Pandemic. In this commentary we critically review both documents to determine how their development process and their substantive provisions align with approaches to substantive equality and the promotion of human rights of persons with disabilities. We offer a number of recommendations to ensure that the human rights of persons with disabilities are promoted in COVID-19 triage policies.

Lersch, Kim M, '[COVID-19 and Mental Health: An Examination of 911 Calls for Service](#)' (2020) *Policing: A Journal of Policy and Practice*, Article paaa049 (advance online article, published 5 August 2020)
Jurisdiction: USA

Abstract: The purpose of this study was to explore the rate and geographic distribution of 911 calls for service related to mental health issues during the Coronavirus Disease 2019 (COVID-19) pandemic in the City of Detroit, MI, USA. The results suggest that the total number of calls for mental health issues was at the lowest level when compared with the same time period for the previous 3 years. Furthermore, as both the daily reported COVID-19 cases and related deaths increased over time, there was a significant decline in both suicide threats and suicides in progress. Significant hot spots were found for the total calls as well as for threats of suicide. These hot spots did not coincide with the spatial distribution of reported cases of COVID-19 by ZIP code. While higher and lower areas of reported cases were found, these differences by ZIP code were not found to be significant. When compared with the previous 3 years of data, the hot spot area was much smaller in 2020, implying that the mental health-related calls for service were more evenly spread throughout the city.

Levy, Neil and Julian Savulescu, '[Epistemic Responsibility in the Face of a Pandemic](#)' (2020) *Journal of Law and the Biosciences* Article Isaa033 (advance online article, published 28 May 2020)

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) whose decisions shape responses to the pandemic?

Li, Yan and Sandro Galea, 'Racism and the COVID-19 Epidemic: Recommendations for Health Care Workers' (2020) 110(7) *American Journal of Public Health* 956–957

Extract: In the midst of the COVID-19 pandemic, racism and racial discrimination against people of Asian descent may have the following adverse health consequences. First, racism causes mental health problems—such as depression and anxiety—among those targeted. As misinformation about the causes of the virus spread rapidly on social media, people of Chinese or other Asian descent have been increasingly discriminated against and isolated at work, at school, and in other public places. Several countries and many local businesses have decided to ban Chinese nationals from entry, which inevitably increases the stress level of those thus restricted and may have long-term mental health consequences for them.

Liddell, Kathleen et al, '[Who Gets the Ventilator? Important Legal Rights](#)' (2020) 46(7) *Journal of Medical Ethics* 421-426

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.

Lingis, Alphonso, '[The New Fear of One Another](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: The COVID-19 contagion makes us fear anyone and everyone. Fear those with whom we are quarantined. Fear those confined in institutions. Doctors and nurses, who nonetheless care for us, know the most intense fear.

Liu, Yangzi, Sanjana Salwi and Brian C Drolet, '[Multivalue Ethical Framework for Fair Global Allocation of a COVID-19 Vaccine](#)' (2020) 46(8) *Journal of Medical Ethics* 499–501

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.

Lynch, Holly Fernandez et al, '[Ethical Payment to Participants in Human Infection Challenge Studies, with a Focus on SARS-CoV-2: Report and Recommendations](#)' (SSRN Scholarly Paper ID 3674548, 14 August 2020)

Abstract: To prepare for potential human infection challenge studies (HICS) involving SARS-CoV-2, this report offers an expert analysis of ethical approaches to paying research participants in these studies, as well as HICS more broadly. The report first provides an overarching ethical framework for research payment that divides payment into reimbursement, compensation, and incentive, focusing on fairness and promoting adequate recruitment and retention as counterweights to ethical concerns about undue inducement. It then describes variables relevant to applying this framework to any type of study, including the prospect of direct medical benefit, early participant withdrawal, study setting and location, pandemic circumstances, study budget, and participant perspectives. We conclude that there is no need for a unique payment framework specific to HICS or SARS-CoV-2 HICS, but that there may be features of particular relevance to ethical payment for these studies. Participants have varied motivations for enrolling in HICS, including financial considerations, altruism, and other interests, but undue inducement does not seem to be a significant problem based on available evidence. Payment in these studies should reflect the nature of participant confinement, anticipated discomfort from induced infection, risks and uncertainty, participant motivations, and the need to recruit from certain populations, as relevant. Where HICS involve significant risks and highly contingent social value, special review confirming the ethical permissibility of these studies can help promote confidence in the ethical permissibility of offers of payment to participate in them. We do not propose specific payment amounts for potential SARS-CoV-2 HICS, as these will be highly variable based on the relevant factors described in the report. Instead, we note that it is reasonable to start from payments offered in other similar studies, while adopting a systematic approach based on the ethical framework herein, as reflected in a pragmatic payment worksheet describing goals, coverage, factors to consider, and potential benchmarks.

Lynch, Holly Fernandez et al, '[Regulatory Flexibility for COVID-19 Research](#)' (2020) *Journal of Law and the Biosciences*, Article Isaa057 (advance online article, published 7 July 2020)

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.¹ 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.

Maggiolo, Marcello, '[Coronavirus and Medical Liability: The Italian Perspective](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Malpractice cases or public bodies' liability cases, both originated by Coronavirus, are bound to be discussed in terms of liability for non – pecuniary losses and of medical liability. The essay outlines the Italian scenario and some possible future development of the relevant law.

Marks, Mason, '[Drug Regulation for the COVID-19 Mental Health Crisis](#)' (2020) 72 *Administrative Law Review* (forthcoming)

Jurisdiction: USA

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.

Martin-Howard, Simone and JD Kyle Farmbry, '[Framing a Needed Discourse on Health Disparities and Social Inequities: Drawing Lessons from a Pandemic](#)' (2020) *Public Administration Review* (accepted manuscript, published 22 June 2020)

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.

Marzi, Leopold-Michael, '[Suggestions for an Efficient European Fight Against a Pandemic: Legal Aspects in the Health Care Sector](#)' (ÖGfE Policy Brief 15a, 2020)

Abstract: Since the so-called “Spanish-flu”, the worst world-wide pandemic in history, which raged in the years 1918- 1920, Europe was untroubled by pandemics. Now, exactly hundred years later, nobody exists who can remember this situation. In fact the European health care systems were unprepared in February 2020 when the coronavirus crisis started in northern regions of Italy and rapidly endangered other countries in Europe. A pandemic ignores state borders. Because even in the European Single Market health care systems are in the responsibility of the member states, it was soon obvious that the lack of harmonised standards regarding a pandemic would be an enormous obstacle in the fight against it and this situation unveiled a huge gap in the European cooperation. There is an unconditional need for EU-wide standards in the future concerning the storage of always available protective masks, protective clothing, disinfectants etc. in relation to the population. Furthermore it is necessary that the member states coordinate cross-border cooperation in case of emergency in order to prevent the spreading of a pandemic from the very beginning. It will not be sufficient just developing new standards and action plans to combat a pandemic, the new standards also have to be executed effectively, even before the outbreak of a pandemic. Therefore a “European Agency for Health Care Safety” with a stable legal basis, which can only be achieved by adding a new article 168a in the Treaty on the Functioning of the European Union, is essential.

Maysarah, Maysarah, '[Hospital Responsibilities for the Use of Covid-19 Handling Funds Based on a State Administrative Law Perspective](#)' (2020) 1(2) *International Journal Reglement & Society (IIRS)* 44–52

Jurisdiction: Indonesia

Abstract: Hospitals as a device or component of health have responsibility for the funds for handling Corona Virus Disease (Covid-19) in Indonesia. During this pandemic, hospitals certainly play an important role for public health, especially those with Covid-19. The method used in this research is normative law research which combines the data obtained from library materials and then analyzed qualitatively. From the research results it is known that the Government is taking action quickly, precisely, and accurately in handling the Covid-19 pandemic. The government's steps in handling the Covid-19 pandemic were carried out by combining the use of statutory authority, policy regulations, actions of government agencies and officials, and bureaucratic support as a policy implementing organ. In handling the Covid-19 pandemic, the President took a policy by establishing a Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease (Covid-19) Pandemic and / or in the Context of Facing Dangerous Threats National Economy and / or Financial System Stability on March 31, 2020. That the responsibility of the hospital is to use the funds for handling Covid-19 to provide medical devices related to prevention or treatment of Covid-19 such as PPE, test kits, reagents, ventilators, hand sanitizers and others

McCuskey, Elizabeth Y, '[FDA in the Time of COVID-19](#)' (2020) 45(3) *ABA Administrative & Regulatory Law News* 7-9

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.

McGuire, Amy L et al, 'Ethical Challenges Arising in the COVID-19 Pandemic: An Overview from the Association of Bioethics Program Directors (ABPD) Task Force' (2020) *The American Journal of Bioethics* (advance online article, published 8 June 2020)

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.

McQuoid-Mason, DJ, '[COVID-19 and Its Impact on Informed Consent: What Should Health Professionals Tell Their Patients or Their Proxies?](#)' (2020) 13(1) *South African Journal of Bioethics and Law* 7-10

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.

McQuoid-Mason, DJ, 'COVID-19: [May Healthcare Practitioners Ethically and Legally Refuse to Work at Hospitals and Health Establishments Where Frontline Employees Are Not Provided with Personal Protective Equipment?](#)' (2020) 13(1) *South African Journal of Bioethics and Law* 11-14

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.

McQuoid-Mason, DJ, '[COVID-19: What Should Employers do if Employed Health Professionals Such as Doctors and Nurses Refuse to Treat COVID-19 Patients Despite Being Provided with The Required Personal Protective Equipment?](#)' (2020) 13(1) *South African Journal of Bioethics and Law* (online advance article)

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.

Medicine and Law (2020) 39(2) Special Issue: [The COVID-19 Pandemic: A Time Capsule of the First 6 Months – An International Perspective](#)

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.

Mendelson, Danuta et al, 'Legal Implications of Personal Protective Equipment Use When Treating Patients for COVID-19 (SARS-CoV-2)' (2020) 27(4) *Journal of Law and Medicine* 856
[\[pre-published version of article available on SSRN\]](#)

Abstract: Front-line health care personnel, including anaesthetists, otolaryngologists, and other health professionals 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 aerosol-generating procedures, such as intubation, sputum induction, open suctioning of airways, bronchoscopy, etc. of COVID-19 patients.

Although several international bodies have issued recommendations for a very high-level PPE to be used when these procedures are undertaken, the current PPE guidelines in Australia have tended to be more relaxed, and hospital authorities relying on them might not comply with legal obligations to their employee health care workers. Failure to provide high-level PPE in many hospitals is of concern for a large number of health care workers; this article examines the scientific literature on the topic and provides a legal perspective on hospital authorities' possible liability in negligence.

Merks, Piotr et al, '[The Legal Extension of the Role of Pharmacists in Light of the COVID-19 Global Pandemic](#)' (2020) *Research in Social and Administrative Pharmacy* (advance online article, published 12 June 2020)

Abstract:

Background: The COVID-19 epidemic has affected every area of life. The greatest challenge has been to adapt the functioning of the health service to prevent the spread of the epidemic and to help infected patients. This has required the involvement of not only doctors and nurses, but also pharmacists. In the face of this pandemic, governments in many countries have granted pharmacists greater authority.

Objectives: The purpose of this paper is to review the legal extension of the role of pharmacists in light of the COVID-19 pandemic. The review considers recent changes in European countries, Canada, and the United States.

Methods: A literature review was performed to summarise knowledge about the extension of the role of pharmacists during the pandemic period. Key articles were retrieved mainly from PubMed and Google Scholar, using the terms 'COVID-19', '2019-nCoV', 'coronavirus', and 'pandemic' in combination with 'pharmacist' as keywords for our search. We included scientific publications from February 1, 2019 to May 15, 2020.

Results: Pharmacists have been given numerous opportunities so that they can actively join in the fight against the virus. Some of the novel legal extensions aimed at aiding overloaded healthcare systems are as follows: authorisation to prepare hand and surface disinfectants, eligibility to renew chronic treatment prescriptions, as well as filling *pro auctore* and *pro familia* prescriptions by pharmacists, performing COVID-19, influenza, and Group A Streptococcus

screening tests, and vaccine administration. Moreover, many countries have facilitated Internet services, such as virtual medical consultations, e-prescriptions, and home drug delivery – to promote social distancing among patients. To mitigate drug shortages, the following strategies have been implemented: alternative sourcing, strength, generic, or therapeutic substitution, and preparing compounded formulations at the pharmacy.

Conclusions: Novel legal extensions have allowed exploitation of the full potential of pharmacists worldwide, aiding the limited resources of overloaded healthcare systems.

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)

Mills, Susanna, '[COVID-19, Public Health Measures, Legal Considerations: A Medical Perspective](#)' (2020) *Judicial Review* 1–9 (advance online article, published 2 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

Monrad, Joshua Teperowski, '[Ethical Considerations for Epidemic Vaccine Trials](#)' (2020) 46(7) *Journal of Medical Ethics* 465–469

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.

Morvillo, Marta, '[I Just Can't Get Enough \(of Experts\): The Numbers of COVID-19 and the Need for a European Approach to Testing](#)' (2020) 11(2) *European Journal of Risk Regulation*: Special Issue - 'Taming COVID-19 by Regulation' 249-255

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.

Mosley, Mark, '[Conquering COVID-19 with Technology and the Law](#)' (2020) 42(8A) *Emergency Medicine News* (13 August 2020)

Introduction: American history can serve as a map for how we survive COVID-19. How did past generations of Americans survive plagues and pandemics, most of which have been viral? What map have our fathers and mothers handed to us? Like a quest in which we need a magic ring for survival, I think there are three necessary steps we must take on this journey.

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.

Musinguzi, Geoffrey and Bennedict Oppong Asamoah, '[The COVID-19 Lockdown Trap, How Do We Get Out?](#)' (2020) 11 (4) *Journal of Clinical and Experimental Investigations* (forthcoming)

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.

Nickerson, Jason W and Matthew Herder, 'COVID-19 Vaccines as Global Public Goods' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 591

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.

Oguamanam, Chidi, 'COVID-19 and Africa: Does "One Size Fit All" in Public Health Intervention?' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 543

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.

Oh, Juhwan et al, '[Announcement of Launching of the JGHS Commission on COVID-19 Response](#)' (2020) 2(1) *Journal of Global Health Science*, Article e20

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.

Oh, Juhwan et al, '[National Response to COVID-19 in the Republic of Korea and Lessons Learned for Other Countries](#)' (2020) 6(1) *Health Systems & Reform*, Article e1753464

Abstract: In the first two months of the COVID-19 pandemic, the Republic of Korea (South Korea) had the second highest number of cases globally yet was able to dramatically lower the incidence of new cases and sustain a low mortality rate, making it a promising example of strong national response. We describe the main strategies undertaken and selected facilitators and challenges in order to identify transferable lessons for other countries working to control the spread and impact of COVID-19. Identified strategies included early recognition of the threat and rapid activation of national response protocols led by national leadership; rapid establishment of diagnostic capacity; scale-up of measures for preventing community transmission; and redesigning the triage and treatment systems, mobilizing the necessary resources for clinical care. Facilitators included existing hospital capacity, the epidemiology of the COVID-19 outbreak, and strong national leadership despite political changes and population sensitization due to the 2015 Middle East respiratory syndrome–related coronavirus (MERS-CoV) epidemic. Challenges included sustaining adequate human resources and supplies in high-caseload areas. Key recommendations include (1) recognize the problem, (2) establish diagnostic capacity, (3) implement aggressive measures to prevent community transmission, (4) redesign and reallocate clinical resources for the new environment, and (5) work to limit

economic impact through and while prioritizing controlling the spread and impact of COVID-19. South Korea's strategies to prevent, detect, and respond to the pandemic represent applicable knowledge that can be adopted by other countries and the global community facing the enormous COVID-19 challenges ahead.

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.

O'Shea, Bill et al, '[Flattening the Curve: Why the Law Should Allow for Compulsory Testing in a Pandemic](#)' (2020) 94(10) *Law Institute Journal* 18-21

Jurisdiction: Victoria, Australia

Abstract: In Victoria, the Public Health and Wellbeing Act 2008 (PHW Act) is the key legislation that aims to protect the community from public health emergencies. It does not, however, adequately address the unprecedented challenges presented by the COVID-19 pandemic. Responding effectively to COVID-19 requires testing and detaining large numbers of people in a short time frame. The PHW Act should be amended to strengthen the requirement for testing and allow longer compulsory detention.

Osuji, Onyeka, '[African Union and Public Health Crises in a Regional Legal Order](#)' 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) 41-50 (published 30 June 2020)

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.

Parsons, Jordan A and Harleen Kaur Johal, '[Best Interests Versus Resource Allocation: Could COVID-19 Cloud Decision-Making for the Cognitively Impaired?](#)' (2020) 46(7) *Journal of Medical Ethics* 447-450
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.

Parveen, Md Zafar Mahfooz Nomani | Rehana, '[Legal Dimensions of Public Health with Special Reference to COVID-19 Pandemic in India](#)' (2020) 11(7) *Systematic Reviews in Pharmacy* 131–134

Abstract: The public health laws are passing through a process churning in the COVID-19 pandemic in India. The effectiveness of quarantine law under 160 years old Indian Penal Code, 1860, and 123 years old Epidemic Diseases Act, 1897 proved short-lived euphoria in controlling horrendous COVID-19 pandemic. The nation-wide Lockdowns on the ground of Sections 6, 10, 38, and 72 of the Disaster Management Act, 2005, provided significant assistance in dealing with formidable challenges of COVID-19. The execution of these laws revealed the safety and security of public health professionals and the delivery system to high vulnerability. Therefore, the President of India promulgated the Epidemic Diseases (Amendment) Ordinance, 2020 declaring 'act of violence' cognizable and non-bailable with high deterrent value. The paper explores the range of normative choices in refurbishing the public health laws beyond the command and control approach evidenced in Epidemic Diseases (Amendment) Ordinance, 2020, to therapeutic perception public health and equity in India.

Paton, Alexis, '[Fairness, Ethnicity, and COVID-19 Ethics](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: Recent weeks have seen an increased focus on the ethical response to the COVID-19 pandemic. Ethics guidance has proliferated across Britain, with ethicists and those with a keen interest in ethics in their professions working to produce advice and support for the National Health Service. The guiding principles of the pandemic have emerged, in one form or another, to favour fairness, especially with regard to allocating resources and prioritizing care. However, fairness is not equivalent to equity when it comes to healthcare, and the focus on fairness means that existing guidance inadvertently discriminates against people from ethnic minority backgrounds. Drawing on early criticisms of existing clinical guidance (for example, the frailty decision tool) and ethical guidance in Britain, this essay will discuss the importance of including sociology, specifically the relationship between ethnicity and health, in any ethical and clinical guidance for care during the pandemic in the United Kingdom. To do otherwise, I will argue, would be actively choosing to allow a proportion of the British population to die for no other reason than their ethnic background. Finally, I will end by arguing why sociology must be a key

component in any guidance, outlining how sociology was incorporated into the cross-college guidance produced by the Royal College of Physicians.

Perrone, Giulio et al, '[Telemedicine during Covid-19 Pandemic: Advantage or Critical Issue?](#)' (2020) 88(2) *Medico-Legal Journal* 76–77

Jurisdiction: Italy

Abstract: Telemedicine offers a support to traditional medicine, delivering clinical services when distance is a critical factor. Although this tool does not replace a medical examination, during Covid-19 pandemic, it reduces the spread of infection and avoids the need for a patient's visit. It is useful in the management of chronic disorders or for patients undergoing palliative treatment. The University Hospital of Palermo has applied this in cases of chronic illness caring for patients who cannot stop their treatment, such as Department of Onco-Haematology, Internal Medicine, Dermatology, etc. The Department of Legal Medicine of Palermo, in particular, is also using telemedicine to manage medico-legal sudden natural death investigations and dealing with the Public Prosecutor's office of Palermo. Even after the Covid-19 emergency, telemedicine will be essential to streamline outpatient visits, while at the same time limiting costs, with significant benefits for the Italian National Public Health Service budget. In conclusion, telemedicine can offer a valuable support to the doctor's activity by streamlining and facilitating their work. In this sense, the Covid-19 pandemic represents a positive input for the acceleration and enhancement of these tools.

Persad, Govind, '[Allocating Medicine Fairly in an Unfair Pandemic](#)' (University of Denver Legal Studies Research Paper No 20-26, 2020)

Abstract: America's COVID-19 pandemic has both devastated and disparately harmed minority communities. In this Essay, I focus on the pressing question of how the allocation of scarce treatments for COVID-19 should respond to these racial disparities. Many policymakers and popular commentators have recognized that the inevitable initial scarcity of COVID-19 vaccines presents questions about racial disparity. Novel treatments like remdesivir, convalescent plasma, and monoclonal antibodies raise similar questions, as do emergency interventions such as ventilators and ICU beds. Some have proposed that members of racial groups who have been

especially hard-hit by the pandemic should receive priority for scarce treatments. Others have worried that such a prioritization misidentifies racial disparities as reflecting biological differences rather than structural racism, or that it will generate mistrust among groups who have previously been harmed by medical research. Still others complain that such prioritization would be fundamentally unjust.

In Part I, I provide a brief overview of current and proposed COVID-19 treatments and identify documented or likely scarcities and disparities in access. In Part II, I argue that randomly allocating COVID-19 treatments, as some propose, will not effectively address disparities: it both permits unnecessary deaths and concentrates those deaths among people who are more exposed to infection. In Part III, I explain why using individual-level racial classifications in allocation is precluded by current Supreme Court precedent. Addressing disparities will require policies that avoid such classifications, though they may consider race at an aggregate rather than individual level. I also argue that policies prioritizing members of Native American tribes can succeed legally even where policies based on race would not. In Part IV, I propose two complementary strategies to narrow racial disparities. One would prioritize individuals who live in disadvantaged geographic areas or work in occupations hard-hit by COVID-19, potentially alongside aggregate metrics like neighborhood segregation. These approaches, like the policies school districts adopted after the Supreme Court rejected individualized racial classifications in school assignment policies, would narrow disparities without classifying individuals by race. The other approach would address stark racial disparities in mortality among younger patients by avoiding policies that prioritize all patients over a certain age without regard to risk.

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

Abstract: This paper explains why the two core goals of policies proposed or adopted in response to the COVID-19 pandemic that allocate scarce medical resources by using medical evidence—saving more lives and saving more years of life—are compatible with disability law. Disability law, properly understood, permits considering medical evidence about patients' probability of surviving treatment and the quantity of scarce treatments they will likely use. It also permits prioritizing health workers, and considering patients' post-treatment life expectancy. All of these factors, when assessed based on medical evidence and not inaccurate

stereotypes, are legal to consider even if they disadvantage some patients with specific disabilities. It then discusses why triage policies that use medical evidence to save more lives and years of life, which I call ‘evidence-based triage,’ are ethically preferable for people with and without disabilities. In doing so, I explain why recent critiques err by treating people with disabilities as a monolith, overlooking the political disadvantages of less-visible victims, and treating the social origins of scarcity as a justification for sacrificing vulnerable lives. Evidence-based triage should be recognized as similar to other responses to COVID-19, like physical distancing and postponing some medical procedures, that may burden people with specific disabilities but are nevertheless justified because they save more patients with and without disabilities.

Phelan, Alexandra L et al, ‘[Legal Agreements: Barriers and Enablers to Global Equitable COVID-19 Vaccine Access](#)’ (2020) *The Lancet* (advance online article, published 7 September 2020)

Abstract: Law can serve as both an enabler and a barrier to global health, equity, and justice. The impact of legal determinants of health on the COVID-19 pandemic is evident where law is being used as a mechanism to enable or prevent global equitable access to COVID-19 vaccines. Barriers to equitable access are partly driven by vaccine nationalism with governments seeking to use law to secure priority access to future vaccines through Advance Purchase Agreements (APAs) with vaccine manufacturers. These bilateral legal agreements can be in a nation’s interest, but given the uncertain success of individual COVID-19 vaccine candidates and the global spread of SARS-CoV-2, APAs are a gamble and erode collaboration between countries.

Phelan, Alexandra L, ‘[COVID-19 Immunity Passports and Vaccination Certificates: Scientific, Equitable, and Legal Challenges](#)’ (2020) 395(10237) *The Lancet* 1595–1598

Abstract: Many governments are looking for paths out of restrictive physical distancing measures imposed to control the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). With a potential vaccine against coronavirus disease 2019 (COVID-19) many months away, one proposal that some governments have suggested, including Chile, Germany, Italy, the UK, and the USA, is the use of immunity passports—ie, digital or physical documents that certify an individual has been infected and is purportedly immune to SARS-CoV-2.

Phelan, Alexandra L, Rebecca Katz and Lawrence O Gostin, '[The Novel Coronavirus Originating in Wuhan, China: Challenges for Global Health Governance](#)' (2020) 328(8) *Journal of the American Medical Association (JAMA)* 709-710

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.

Powell, Tia and Elizabeth Chuang, 'COVID in NYC: What We Could Do Better' (2020) *The American Journal of Bioethics* (advance online article, published 28 May 2020)

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.

Puaschunder, Julia M and Dirk Beerbaum, '[Healthcare Inequality in the Digital 21st Century: The Case for a Mandate for Equal Access to Quality Medicine for All](#)' (Proceedings of the Unequal World Conference of the United Nations, United Nations, New York, 28-29 September 28-29 2020)

Abstract: The currently ongoing COVID-19 crisis challenges health around the world. Public and private sector healthcare provision differs between countries. On an interconnected globe with a highly mobile 21st century population and a most contagious virus, healthcare appears as internationally-interdependent as never before in the history of humankind. More than ever

before pandemic precaution requires globally-carried solutions and risks management based on internationally-harmonized action. The endeavor of a commonly healthy world is challenged in light of the nowadays unprecedentedly-blattant healthcare inequality around the world.

Based on macroeconomic modelling, our empirical research brought forward four indices shedding light on health inequality in the 21st digital century. International data on digitalization, economic prosperity, healthcare standards and innovation market financialization revealed that Europe and North America feature excellent starting positions on economic productivity and relatively low levels of corruption. Internet connectivity and high Gross Domestic Product are likely to lead on AI-driven big data insights for pandemic prevention, of which Europe, Asia and North America have optimal global healthcare leadership potential. Europe benefits from highest standards on public preventive medical care, while the United States has the most prosperous market financialization to advance medical innovations. Oceania performs well on general healthcare but has comparatively less international medical market power. Asia and the Gulf region are in the middle ranges of healthcare provision and market innovation financing but are critical on corruption, which also appears to hinder access to quality healthcare in South America. Africa ranks low on healthcare and raising funds for medical purposes in corruption-prone territories.

The currently ongoing COVID-19 crisis has created awareness for the global interconnectivity of healthcare but also heightened attention to the drastic medical standard differences around the world, which unprecedentedly leverages the sustainable development mandate to grant equal access to healthcare.

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.

Ranson, David, 'COVID-19 and Forensic Medical Practice' (2020) 27(4) *Journal of Law and Medicine* 807

Abstract: The COVID-19 pandemic has affected the community in multiple ways. These include direct health impacts on those infected and indirect health impacts on others who may, through fear of infection, not avail themselves of available “face-to-face” health care services. The impact of COVID-19 on the legal system and the related medico-legal services it relies upon has received less attention but the ongoing social restrictions put in place because of the pandemic have the capacity to disrupt a range of legal processes. The impact of the pandemic has the capacity to interfere with both forensic medical and legal processes both in the short term and the long term. It may take some time for the potential harms to be realised but as the pandemic gradually comes under control from a public health perspective the interference to criminal and civil justice will start to become more visible.

Raunig, Brooke L, Aaron S Kesselheim and Jonathan J Darrow, 'Drug Shortages and the Defense Production Act' (2020) 110(10) *American Journal of Public Health* 1504–1505

Abstract: Amid the COVID-19 pandemic, US hospitals have faced shortages of critical drugs, including sedatives and neuromuscular blocking agents needed to intubate patients and maintain ventilatory support, opioids for pain control and sedation, antibiotics to address secondary bacterial infections, and bronchodilators to open airways.¹ In response to limited supplies of ventilators and personal protective equipment, the Trump administration invoked the Defense Production Act (DPA), but shortages of personal protective equipment remain. Although the DPA—if applied more broadly—could be effective in helping to address remaining shortages of personal protective equipment, using the DPA to address drug shortages is more challenging, and additional government interventions to support the drug supply chain are needed.

Rebouché, Rachel, '[Assuring Access to Abortion](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 117-122

Jurisdiction: USA

Abstract: Over the spring of 2020, numerous states announced measures suspending abortions in response to COVID-19. Banning abortion during the pandemic is counterproductive. Impeding access to abortion will not help preserve healthcare resources. Moreover, prohibiting access to abortion care exacerbates the strain on the healthcare system. People who lack access to abortions will travel to neighboring states, induce their own abortions, or carry pregnancies to term, which will require prenatal care and assistance in childbirth. Perhaps more importantly, the people hit hardest by suspending abortion care are those for whom the pandemic already has had devastating effects. Lifting restrictions on medication abortion and expanding telehealth abortion services will conserve healthcare resources and improve public health. Recognizing the advantages of telemedicine, some states, as well as the federal government, have relaxed restrictions on remote diagnosis and treatment. However, many of those same states have carved out exceptions for abortion in their telemedicine policies. In addition, people seeking medication abortions still face unnecessary restrictions on access, none of which are applied to comparable office-based procedures. Policymakers can eliminate barriers to safe abortion services now and in the future. "No-touch" terminations, in which all medical supervision happens over the telephone or online, can better accomplish the goals that the present abortion suspensions cannot. Telehealth for medical abortion can ease the burdens on pregnant people, healthcare workers, and health systems in light of the unprecedented challenges presented by COVID-19.

Rebouché, Rachel, '[Abortion Opportunism](#)' (2020) *Journal of Law and the Biosciences* Article Isaa029 (advance article, published 18 May 2020)

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.

Reiss, Dorit Rubinstein, '[Institutionalizing the Centers for Disease Control and Prevention's Independence](#)' (SSRN Scholarly Paper ID 3682044, 27 August 2020)

Abstract: The United States response to the COVID-19 pandemic was sub-optimal. One problem in it was the politicization of the public health response. One aspect of that politicization was aggressive political intervention in CDC efforts to provide guidance and help pandemic response. The concern was strong enough that four previous CDC Director, in an unusual step, published an op-ed calling out political intervention in CDC. This article proposes two changes to strengthen the CDC's institutional independence: codifying the CDC's role in preventing diseases

and reducing harms in a statute, and restructuring the agency to be led by a multi-member Board appointed for long times and with removal protections (along the lines of the Board of the Federal Reserve System). These changes can send a strong message that expert advice in public health should be science-based and less, rather than more, political. It can also protect CDC's long-standing independence, while preserving some political control.

Reiss, Dorit Rubinstein, '[The COVID-19 Vaccine Dilemma](#)' (2020) *Administrative Law Review: ALR Accord* (forthcoming, November 2020)

Jurisdiction: USA

Abstract: COVID-19 has led to large numbers of deaths, harms, and financial costs. Without an effective vaccine, those will continue. The pressure to find a vaccine is high; and that pressure creates a risk that the safeguards in place to assure that vaccines are safe and effective will be ignored. The U.S. has an extensive apparatus to oversee vaccine safety before and after licensing, including multiple federal committees and several monitoring systems, and that apparatus gave us, in 2020, an extraordinarily safe vaccine supply. This article explains the different pressures that push for and against using the same apparatus for COVID-19 vaccines, including the extensive harms from the disease on one side and the need for a vaccine that is, in fact, safe and effective from the other. It examines the options for speeding up the process without sacrificing too much oversight. It examines which 'shortcuts' are reasonable, which may be challenging, and which are bad ideas. Finally, it addresses three messaging challenges - overselling, undersharing, and responding to misinformation - and suggests how to handle them.

Reiss, Dorit Rubinstein and Arthur L Caplan, '[Considerations in Mandating a New Covid-19 Vaccine in the USA for Children and Adults](#)' (2020) *Journal of Law and the Biosciences* Article Isaa025 (advance article, published 8 May 2020)

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.¹ 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.

Richards, Adair D, '[Ethical Guidelines for Deliberately Infecting Volunteers with COVID-19](#)' (2020) 46(8) *Journal of Medical Ethics* 502–504

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.

Rizzi, Marco, '[The Road to a Vaccine for COVID-19: Regulatory & Policy Infrastructure, Incentives and Obstacles](#)' (2020) 4(2) *European Pharmaceutical Law Review* (forthcoming)

Rizzi, Marco, '[Rethinking Vaccine Development as Integral Part of Preparedness in the European Health Union](#)' (2020) 11(4) *European Journal of Risk Regulation* (forthcoming)

Abstract: This opinion piece puts forward a critique of the policy and regulatory frameworks governing vaccines, understood as tools to confront pandemic and epidemic diseases (PEDs). Specifically, it discusses what appears to be a hiatus between the nature of transnational and European regulatory frameworks governing the complex process leading to the marketing authorisation of new vaccines, which are largely inspired by market-oriented logics, and the guidelines, decisions and policies adopted by Public Health institutions to face emergent health threats, including PEDs. Vaccines being the universally recognised prime method of prevention, immunization campaigns and vaccine R&D could reasonably be expected to feature prominently in any policy and/or strategic document addressing emerging health threats. Yet vaccination occupies a relatively subsidiary role, with a prevalent focus on risk management mechanisms. This piece outlines the main characteristics of preparedness frameworks, and looks at vaccine development in the course of recent PED outbreaks, to conclude that the COVID-19 pandemic calls for a paradigm shift in vaccine R&D, which should become integral to public health preparedness.

Rizzi, Marco, '[Health Professionals' Standard of Care and Breach of Duty in Western Australia: A Requiem for the "Peer Professional" Test at a Time of Uncertainty](#)' (2020) 26(2) *Torts Law Journal* (forthcoming)

Abstract: In late September 2019, the Court of Appeal of Western Australia, comprising Quinlan CJ, Murphy and Pritchard JJA, handed down a significant judgment that sheds a measure of light over some intricate aspects of medical liability in WA. The Civil Liability Act 2002 (WA) ('CLA') is unique in its provision of a special standard of care for health professionals under s 5PB. Other civil liability statutes include special provisions for the liability of 'professionals' in general, and these provisions normally take the form of the so-called 'peer professional opinion' defence. The decision in *Child and Adolescent Health Service v Mabior* ('Child') gave the WA Court of Appeal the opportunity to clarify the nature of s 5PB as a special standard of care (as opposed to a defence). The Court also made some important points regarding the method of identification of relevant experts for the purpose of establishing complex scientific facts, which is a different exercise from the identification of the health professional's peers for the purpose of establishing

standard of care and breach of duty. While this decision systematises a rather oddly worded portion of the CLA, it arguably does so at the expense of its intended scope of application. Indeed, the restrictive approach adopted by the court may well have deprived s 5PB of any practical relevance. This is not an insignificant development. Indeed, the COVID-19 pandemic is putting healthcare systems under increasing amounts of pressure, and patients are bound to be cared for in accordance to practices that, by the very nature of the rapidly evolving current circumstances, cannot be well-established.

Robert, René et al, '[Ethical Dilemmas Due to the Covid-19 Pandemic](#)' (2020) 10(1) *Annals of Intensive Care* 84

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.

Romanis, Elizabeth Chloe and Jordan A Parsons, 'Legal and Policy Responses to the Delivery of Abortion Care during COVID-19' (2020) *International Journal of Gynecology & Obstetrics* (pre-published article)

Abstract: Access to abortion care has long been a global challenge, even in jurisdictions where abortion is legal. The COVID-19 pandemic has exacerbated barriers to access, thereby preventing many women from terminating unwanted pregnancies for an extended period. In this paper, we outline existing and COVID-specific barriers to abortion care and consider potential solutions, including the use of telemedicine, to overcome barriers to access during the

pandemic and beyond. We explore the responses of governments throughout the world to the challenge of abortion access during the pandemic, which are an eclectic mix of progressive, neutral, and regressive policies. Finally, we call on all governments to recognize abortion as essential healthcare and act to ensure that the law does not continue to interfere with providers' ability to adapt to circumstances and to guarantee safe and appropriate care not only during the pandemic, but permanently.


Romanis, Elizabeth Chloe, Jordan Parsons and Nathan Hodson, '[COVID-19 and Reproductive Justice in Great Britain and the United States: Ensuring Access to Abortion Care during a Global Pandemic](#)' (2020) *Journal of Law and the Biosciences* (advance article, published 18 May 2020)

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.

Rothstein, Mark A, '[The Coronavirus Pandemic: Public Health and American Values](#)' (2020) 48(2) *Journal of Law, Medicine & Ethics* 354–359

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.

Ruck Keene, Alex, '[Capacity in the Time of Coronavirus](#)' (2020) 70 (May/June) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101560  advance article, published 11 April 2020)

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.

Ruslina, Elli and Rita Sekarsari, '[Legal Protection of Medical Staff in Hospitals during The Covid-19 Pandemic Era](#)' (2020) 1(1) *International Journal of Latin Notary* 29–35

Jurisdiction: Indonesia

Abstract: This research begins with the Covid-19 pandemic which requires serious control because it has had a dangerous impact on society, especially health workers in hospitals. The research focus is aimed at the legal protection of health workers in hospitals and the state's responsibility for health workers. The research method used is library research, which is a method used by studying literature such as books, legislation and articles, journals related to the subject matter. Primary data used in field research, through interviews with related parties, namely hospitals and health workers. The focus of the discussion is to emphasize more on laws and regulations related to Social Distancing / Physical Distancing policies as regulations for legal protection of health workers as the frontline and state responsibility for health workers. The results showed that various laws and regulations as a policy for handling Covid-19 cannot be realized concretely in the field because they are related to different bureaucracy and implementation. The role of the state in the responsibility for health workers is not The responsibility of the state in this case is that the Government and Administrators of Health Service Facilities are obliged to ensure the sustainability of the availability of standardized Personal Protective Equipment (PPE) for health workers who work in health service facilities.

Sanchez-Graells, Albert, '[Procurement and Commissioning during COVID-19: Reflections and \(Early\) Lessons](#)' (2020) *Northern Ireland Legal Quarterly* (forthcoming)

Abstract: This piece reflects on some common themes that are starting to emerge in the early analysis of the healthcare procurement and commissioning response to the COVID-19 pandemic. Although it largely results from the observation of the situation in the English NHS, the most salient issues are common to procurement in other EU healthcare systems, as well as more broadly across areas of the public sector that have strongly relied on the extremely urgent procurement exception in the aftermath of the first wave of the pandemic. Given the

disfunction and abuse of ‘unregulated procurement’ in the context of COVID-19, the piece reflects on the longer term need for suitable procurement rules to face impending challenges, such as Brexit and, more importantly, climate change.

Santos Rutschman, Ana et al, ‘[Comments on the Preliminary Framework for Equitable Allocation of COVID-19 Vaccine](#)’ (Saint Louis University Legal Studies Research Paper No 2020-25, 2020)

Abstract: On September 1, 2020 the National Academies released a draft framework for Equitable Allocation of a COVID-19 Vaccine. In this response, we analyze the proposed framework and highlight several areas. Among the proposed changes, we highlight the need for the following interventions. The final framework for distribution of COVID-19 vaccines should give a higher priority to populations made most vulnerable by the social determinants of health. It should incorporate more geography-based approaches in at least some of the four proposed phases of vaccine distribution. It should address the possibility of a vaccine being made available through an emergency use authorization (EUA), which we argue should not serve as a basis for widespread distribution of COVID-19 vaccines, and which may not be appropriate at all for the regulatory review of new vaccines. Moreover, it should address potential adjustments to the allocative framework once additional data pertaining to multiple vaccines becomes available, especially by discussing whether steps should be taken to prevent the administration of different vaccines to the same individual. Finally, it should provide guidance on allocation of vaccine in the case of a surplus, and specifically the Committee should specify whether unused doses of vaccine would automatically be allocated to next-level priority populations, and whether that would take place in the same geographical area.

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

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

Santos Rutschman, Ana, '[The Reemergence of Vaccine Nationalism](#)' (Saint Louis University Legal Studies Research Paper No 2020-16, 2020)

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.

Savulescu, Julian, James Cameron and Dominic Wilkinson, '[Equality or Utility? Ethics and Law of Rationing Ventilators](#)' (2020) 125(1) *BJA: British Journal of Anaesthesia* 10-15

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).

Schmit, Cason D et al, '[Telehealth in the COVID-19 Pandemic](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 123-132

Jurisdiction: USA

Abstract: The COVID-19 pandemic highlights the value of telehealth as a public health measure by permitting health care at a distance, keeping providers and patients safe while enabling health care in strained health systems. This Chapter explores how states have acted through legislative, regulatory, and executive actions to leverage telehealth in the COVID-19 response. Congress passed three new pieces of federal telehealth legislation in response to COVID-19: The Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Telehealth Services During Certain Emergency Periods Act, and the Families First Coronavirus Response Act. These new federal laws provide additional funding and regulatory flexibility for telehealth under the Medicare and TRICARE programs. Additionally, 27 states have new telehealth authorities in response to COVID-19. These new state authorities generally expand telehealth by removing regulatory barriers, authorizing more telehealth providers or telehealth modalities, and expanding telehealth coverage. This Chapter includes a number of recommendations for policymakers including addressing inequities, eliminating telehealth barriers (e.g., location requirements), authorizing additional providers and telehealth modalities, and expanding telehealth coverage.

Schuklenk, Udo, '[What Healthcare Professionals Owe Us: Why Their Duty to Treat during a Pandemic Is Contingent on Personal Protective Equipment \(PPE\)](#)' (2020) 46(7) *Journal of Medical Ethics* 432–435

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.

Seitz, Claudia, 'Genetic Material and Sequence Data to Protect Global Health in the Light of Pandemic Outbreaks: Mapping the Legal Landscape Under European And International law' (2020) 27(3) *European Journal of Health Law* 232-241

Abstract: Describes the EU and international legal landscape concerning global research activities associated with epidemic and pandemic threats to public health, including on the use of genetic material and new virus data. Discusses the aims of the European Commission's Decision 1082/2013 to improve international cooperation on vaccine-preventable diseases and the World Health Organization's influenza preparedness strategy.

Sheahan, Linda and Scott Lamont, '[Understanding Ethical and Legal Obligations in a Pandemic: A Taxonomy of "Duty" for Health Practitioners](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: From the ethics perspective, 'duty of care' is a difficult and contested term, fraught with misconceptions and apparent misappropriations. However, it is a term that clinicians use frequently as they navigate COVID-19, somehow core to their understanding of themselves and their obligations, but with uncertainty as to how to translate or operationalize this in the context

of a pandemic. This paper explores the 'duty of care' from a legal perspective, distinguishes it from broader notions of duty on professional and personal levels, and proposes a working taxonomy for practitioners to better understand the concept of 'duty' in their response to COVID-19.

Sheikh, Asim A, 'COVID-19: A Brave New Medico-Legal World?' (2020) 26(1) *Medico-Legal Journal of Ireland* 2

Abstract: Reflects on the medico-legal issues raised by the coronavirus pandemic. Notes provisions of the Irish Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 restricting individual freedoms and protecting the especially vulnerable.

Silva, Michael Da, '[COVID-19 and Health-Related Authority Allocation Puzzles](#)' (2020) *Cambridge Quarterly of Healthcare Ethics* (online advance article, published 8 June 2020)

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.

Simpson, Alexander IF et al, '[Management of COVID-19 Response in a Secure Forensic Mental Health Setting](#)' [2020] *The Canadian Journal of Psychiatry* (advance online article, published 23 June 2020)

Abstract:

Objectives:The coronavirus disease 2019 (COVID-19) pandemic presents major challenges to places of detention, including secure forensic hospitals. International guidance presents a range of approaches to assist in decreasing the risk of COVID-19 outbreaks as well as responses to manage outbreaks of infection should they occur.

Methods:We conducted a literature search on pandemic or outbreak management in forensic mental health settings, including gray literature sources, from 2000 to April 2020. We describe the evolution of a COVID-19 outbreak in our own facility, and the design, and staffing of a forensic isolation unit.

Results:We found a range of useful guidance but no published experience of implementing these approaches. We experienced outbreaks of COVID-19 on two secure forensic units with 13 patients and 10 staff becoming positive. One patient died. The outbreaks lasted for 41 days on each unit from declaration to resolution. We describe the approaches taken to reduction of infection risk, social distancing and changes to the care delivery model.

Conclusions:Forensic secure settings present major challenges as some proposals for pandemic management such as decarceration or early release are not possible, and facilities may present challenges to achieve sustained social distancing. Assertive testing, cohorting, and isolation units are appropriate responses to these challenges.

Sinha, Michael S, '[COVID-19: State and Local Responses to PPE Shortages](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 152-157

Jurisdiction: USA

Abstract: In mid-March, healthcare workers on social media and elsewhere sounded the alarm: #GetMePPE. This public plea was in response to shortages of personal protective equipment (PPE) at many hospitals, coinciding with surges in hospital emergency department and intensive care unit capacity due to COVID-19. Within days, the Strategic National Stockpile of PPE was depleted; states, localities, and hospitals had to act urgently to procure PPE and reuse or extend the use of existing PPE. A true cottage industry emerged, consisting of a network of designers,

makers, engineers, and healthcare workers focused on designing and producing high-quality PPE to address urgent needs. Devices such as face shields were designed to protect healthcare workers from mucous membrane exposure. As N95 respirator masks became scarce, techniques for sterilization were developed, as were methods for ensuring a qualitative fit after multiple rounds of sterilization. Alternatives to N95 masks, known as powered air purifying respirators (PAPRs), were developed from scratch. Finally, ventilators and ventilator parts were produced in an effort to maximize resources during peak waves of COVID-19. The FDA released a series of guidance documents, accompanied by permissive emergency use authorizations (EUAs), to address the manufacture and use of PPE in healthcare settings. This article reviews actions taken by the FDA in response to the PPE shortage, evaluates the impact of local manufacturing of PPE in one U.S. state (Massachusetts), and offers solutions for federal and state policymakers to ensure robust state and community-level responses to shortages in the future.

Sklar, Tara, '[Implementation and Enforcement of Quality and Safety in Long Term Care](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 143-147

Jurisdiction: USA

Abstract: Long before the new coronavirus struck, nursing homes and other long-term care facilities have had declining quality care that coincides with inadequate staffing and rampant infections. These prepandemic conditions increased the vulnerability of these facilities to an infectious disease outbreak. As the elderly death toll rises into the tens of thousands, an overdue national discussion on how to prioritize long-term care in the US has emerged, revealing an opportunity to better link quality care metrics with sufficient reimbursement and meaningful regulatory oversight. However, the opposite approach has also surfaced, which would allow the status quo to continue and may erode the minimum standards of care that currently exist. This concerning trend is on the rise with efforts to relax the Centers for Medicare and Medicaid Services (CMS) regulatory authority over nursing homes by waiving requirements and reducing enforcement penalties. In addition, states are passing measures to limit liability exposure for nursing homes during COVID-19 and similar protections are under consideration at the federal level, even as infection rates climb and there is no evidence of frivolous lawsuits. While political will is uncertain, public outcry is ready for legislative reform that will lead to better later-in-life care. The stakes have never been higher — act now and pass laws that

connect funding with regulation to support quality care in nursing homes during and after the COVID-19 pandemic — or continue to condone practices that allow infection to spread and take many lives before their time.

Smith, Maxwell J and Ross EG Upshur, '[Learning Lessons from COVID-19 Requires Recognizing Moral Failures](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: The most powerful lesson learned from the 2013-2016 outbreak of Ebola in West Africa was that we do not learn our lessons. A common sentiment at the time was that Ebola served as a 'wake-up call'—an alarm which signalled that an outbreak of that magnitude should never have occurred and that we are ill-prepared globally to prevent and respond to them when they do. Pledges were made that we must learn from the outbreak before we were faced with another. Nearly five years later the world is in the grips of a pandemic of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) that causes coronavirus disease 2019 (COVID-19). It is therefore of no surprise that we are now yet again hearing that the COVID-19 pandemic serves as the 'wake-up call' we need and that there are many lessons to be learned to better prepare us for future outbreaks. Will anything be different this time around? We argue that nothing will fundamentally change unless we truly understand and appreciate the nature of the lessons we should learn from these outbreaks. Our past failures must be understood as moral failures that offer moral lessons. Unless we appreciate that we have a defect in our collective moral attitude toward remediating the conditions that precipitate the emergence of outbreaks, we will never truly learn.

Solnica, Amy, Leonid Barski Alan Jotkowitz, '[The Healthcare Worker at Risk During the COVID-19 Pandemic: A Jewish Ethical Perspective](#)' (2020) 46(7) *Journal of Medical Ethics* 441-443

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 friends 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.

Solnica, Amy, Leonid Barski Alan Jotkowitz, '[Allocation of Scarce Resources During the COVID-19 Pandemic: A Jewish Ethical Perspective](#)' (2020) 46(7) *Journal of Medical Ethics* 444-446

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.

Solomon, Mildred Z, Matthew Wynia and Lawrence O Gostin, '[Scarcity and the Covid-19 Pandemic](#)' (2020) 50 (2) *The Hastings Center Report* 3

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.

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

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.'

Sommaggio, Paolo and Samuela Marchiori, '[Tragic Choices in the Time of Pandemics](#)' (2020) (1S) *BioLaw Journal / Revista di BioDiritto* 453-458

Jurisdiction: Italy

Note: this special issue contains many relevant articles, but almost all are in Italian only, and we have only included those in English in this bibliography. [Link to the entire journal issue.](#)

Extract from Introduction: At the time of writing, with the total number of positive cases well within the 5-digit territory, the CoViD-19 emergency has been putting the Italian health system to a severe test. Data recovered from the first two weeks of the CoViD19 outbreak show that about 1 in 10 of infected patients require intensive treatment in the form of ventilatory support, due to interstitial pneumonia characterised by severe hypoxemia, which is potentially reversible, but can result in a long, acute phase, and has led to abnormal exploitation of intensive care

units, whose maximum capacity has been severely challenged. It is in this context that the Italian Society of Anesthesia, Analgesia, Resuscitation, and Intensive Care (SIAARTI), noticing a massive imbalance between the availability of intensive resources and the actual clinical needs of the population, introduced the Recommendations of clinical ethics for admission to intensive care treatments and their suspension, in exceptional conditions of imbalance between needs and available resources (March 6), which have since been heavily criticised on multiple fronts.

Spece, Roy G, '[COVID-19 Control: Disrupting Doctor-Patient Relationships](#)' (Arizona Legal Studies Discussion Paper No 20-39, 2020)

Abstract: The full-armamentarium of public health countermeasures came into play when COVID-19 emerged; a few examples are quarantine, closures, and social distancing. These countermeasures are intended to protect population health, but trench on many important rights protected by ethical precepts and tort, constitutional, or other law. The measure studied here, orders to delay 'elective' medical procedures to preserve resources, have been virtually ignored. Yet, they are uniquely broad, risky, and disrupt information gathering and therapeutic trust engendered by doctor-patient relationships. Although medicine (speaking for the few) and public health (speaking for the few) traditionally have clashed, it is shown that medical and public health law and ethics combine to require strict (constitutional) or stringent (medical and public health ethics) scrutiny of delay actions. Delay also can be shoddily promulgated or implemented, thus creating tort liability. A 'new public health' and ethical models (medicine) and frameworks (public health) combine to require that countermeasure be shown necessary, effective, and the least intrusive way to further vital governmental goals. Delay trenches on several fundamental or special liberties, and these rights have been analyzed by scholars addressing other countermeasures. This article explores another seldom-discussed topic: the fundamental right to purchase care (or insurance for it) available in the open market. Although delay regimes can be beneficial if properly promulgated and implemented, it is unlikely that the current actions can meet ethical standards or withstand constitutional strict or even certain intermediate scrutiny because they cannot be shown to work or to be the least restrictive alternative.

Stavert, Jill and Colin McKay, '[Scottish Mental Health and Capacity Law: The Normal, Pandemic and "New Normal"](#)' (2020) 71 (July/August *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101593 (advance article, published 20 June 2020)

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.

Stein, C and A Dhai, '[Consent in Health Research with Incapacitated Adults in a Time of Pandemic : The National Health Research Ethics Council Needs to Urgently Reassess Its Guidelines](#)' (2020) 13(1) *South African Journal of Bioethics and Law* 29-33
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.

Stewart, Ashleigh, Reece Cossar and Mark Stoové, '[The Response to COVID-19 in Prisons Must Consider the Broader Mental Health Impacts for People in Prison](#)' (2020) *Australian & New Zealand Journal of Psychiatry* (advance online article, published 22 June 2020)

Introduction: Prisons are an integral part of the global public health response to coronavirus disease 2019 (COVID-19). In light of typically over-crowded physical environments, prisons operating beyond their capacity and restrictions on freedom of movement, the introduction of COVID-19 in prisons and other custodial settings could be devastating. Effective COVID-19 infection control strategies in custodial settings have seen an emergent emphasis on physical distancing and quarantining (World Health Organization [WHO], 2020). These strategies are crucial to slow COVID-19 transmission; however, they also pose significant risk for people with mental illness in these settings. Rates of severe mental illness and mental health morbidity and mortality are substantially higher among people in prison compared to general populations. Therefore, the response to COVID-19 requires consideration of associated mental health implications to minimise adverse consequences for people in prison.

Stewart, Cameron, Scott Brunero and Scott Lamont, '[COVID-19: Restrictive Practices and the Law during a Global Pandemic: an Australian Perspective](#)' (2020) *International Journal of Mental Health Nursing* (forthcoming - accepted manuscript)

Abstract: The COVID-19 pandemic has created a heightened state of anxiety and fear in many communities (Usher, Durkin, & Bhullar, 2020), particularly within vulnerable populations (such as the elderly, people with disability and people with mental illness; prisoners and asylum seekers). These vulnerable populations are already sensitive to the use of restrictive practices, namely, the use of interventions that restrict the rights or freedom of movement of patients via restraint (chemical, mechanical, social or physical) and seclusion. These concerns are exacerbated in a time of pandemic (World Health Organization, 2020). The laws in all Australian jurisdictions require consideration of the principle that the freedom of people in care is restricted as little as possible. It is therefore essential that restrictive practices are undertaken lawfully and with careful consideration. Two recent decisions of tribunals illustrate these concerns.

Stobbs, Nigel, Belinda Bennett and Ian Freckelton, 'Compassion, Law and COVID-19' (2020) 27(4) *Journal of Law and Medicine* 865-876

Abstract: Levels of personal anxiety are inevitably escalating in response to the COVID-19 pandemic, including individual fear of infection, grief at the loss of loved ones and reactive depression related to loss of employment and livelihood. This article considers the importance of compassion in a range of contemporary and emerging contexts during a time of pandemic. These include: exposure of medical and care professionals to the acute demands of overstretched institutions resulting in adverse mental health outcomes and compassion fatigue; attitudes towards the burgeoning cohort of welfare recipients; and particularly vulnerable groups such as the elderly, and those who are homeless. The article considers how we ought to conceive of compassion in these contexts and makes some suggestions for building future compassion interventions and training.

Teo, Wendy, Lawrence H Brenner and B Sonny Bal, 'Medicolegal Sidebar: Legal Immunity for Healthcare Workers During COVID-19' (2020) *Clinical Orthopaedics and Related Research* (advance online article, published 1 September 2020)

Introduction: As the United States confronts the spread of coronavirus disease 2019 (COVID-19), healthcare providers find themselves working in unfamiliar environments. Some providers have traveled to other states to serve in the front lines of hospitals stretched to capacity, while others are working within specialities outside their normal scope of practice.

Lawsuits arising from delivering care to patients with COVID-19 under difficult circumstances are a concern, and efforts are underway, both at the state and federal level, to shield healthcare providers from litigation over medical treatment during the COVID-19 health emergency. While protecting hard-working frontline healthcare professionals from the risk and distraction of lawsuits during COVID-19 seems logical, the subject of legislating immunity from civil and, in some cases, criminal lawsuits is not straightforward.

Terry, Nicolas, '[COVID-19 and Healthcare Lessons Already Learned](#)' (2020) *Journal of Law and the Biosciences* Article Isaa016 (advance article, published 4 May 2020)

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.

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

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

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

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

Tobun, Tomilola, '[Medical Malpractice in Public Health Emergencies: A Review of Medical Response to COVID-19 in Nigeria](#)' (SSRN Scholarly Paper ID 3608656, 23 May 2020)

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.

Tolchin, Benjamin et al, 'Developing a Triage Protocol for the COVID-19 Pandemic: Allocating Scarce Medical Resources in a Public Health Emergency' (2020) 31(4) *Journal of Clinical Ethics* 1

Abstract: The coronavirus disease-2019 (COVID-19) has caused shortages of life-sustaining medical resources, and future waves of the virus may cause further scarcity. The Yale New Haven Health System developed a triage protocol to allocate scarce medical resources during the COVID-19 pandemic, with the primary goal of saving the most lives possible, and a secondary goal of making triage assessments and decisions consistent, transparent, and fair. We outline the process of developing the triage protocol, summarize the protocol itself, and discuss the major ethical challenges encountered, along with our answers to these challenges. These challenges include (1) the role of age and chronic comorbidities; (2) evaluating children and pregnant patients; (3) racial, ethnic, and socioeconomic disparities in health; (4) prioritization of healthcare workers; and (5) balancing clinical judgment versus protocolized assessments. We conclude with a review of the limitations of our protocol and the lessons learned. We hope that a robust public discussion of such protocols and the ethical challenges that they raise will result in the fairest possible processes, less need for triage, and more lives saved during future waves of the COVID-19 pandemic and similar public health emergencies.

Tullio, Valeria et al, '[Psychological Support and Psychotherapy via Digital Devices in Covid-19 Emergency Time: Some Critical Issues](#)' (2020) 88(2) *Medico-Legal Journal* 73–76

Jurisdiction: Italy

Abstract: The Covid-19 pandemic and the resulting fear, quarantine and lockdown measures implemented in Italy and other countries to contain the risk of contagion have seriously impacted the mental health of a large number of people. The need to offer psychological and psychotherapeutic support to these people, while respecting the government's pressing calls to 'stay home', have led many psychologists and psychotherapists, both in the public and private sectors, to provide their professional services via teleconference, telephone, smartphone, etc. The aim of this work is to highlight some critical issues related to the sudden switch from the traditional method of providing psychological services to the digital one in Italy.

Venkatapuram, Sridhar, 'How Should We Allocate Health and Social Resources During a Pandemic?' in Flood, Colleen et al, '[Vulnerable: The Law, Policy and Ethics of COVID-19](#)' (University of Ottawa Press, 2020) 313

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).

Versveld, Bernadette and Jodi Hardy, 'COVID-19: Ensure Opportunistic Product Offerings Are Legally Compliant' (2020) 20(5) *Without Prejudice* 6

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.

Vicary, Sarah et al, ["It's about How Much We Can Do, and Not How Little We Can Get Away with": Coronavirus-Related Legislative Changes for Social Care in the United Kingdom](#) [2020] *International Journal of Law and Psychiatry*, Article 101601 (article pre-proof, published 22 June 2020)

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.

Vidua, Raghvendra Kumar et al, '[Dead Body Management amidst Global Pandemic of Covid-19](#)' (2020) 88(2) *Medico-Legal Journal* 80–83

Abstract: Covid-19 has reached almost all the nations in the world. More and more people are dying from it and in some countries, even the army has been called upon to help dispose of the dead as there is a shortage of coffins, and undertakers are overwhelmed. Therefore, it is essential to have measures in place to contain the spread of infection while handling dead bodies. In view of this, different guidelines and protocols have been proposed bearing in mind the limited information we have about the virus. This review article sets them out for better reference.

Vokinger, Kerstin Noelle et al, '[Digital Health and the COVID-19 Epidemic: An Assessment Framework for Apps from an Epidemiological and Legal Perspective](#)' (2020) 150 *Swiss Medical Weekly*, Article w20282

Abstract: Building on an existing trustworthiness checklist for digital health applications, the authors searched the literature and developed a framework to guide the assessment of smartphone and web-based applications that aim to contribute to controlling the current epidemic or mitigating its effects.

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.

Wasserman, David, Govind Persad and Joseph Millum, '[Setting Priorities Fairly in Response to Covid-19: Identifying Overlapping Consensus and Reasonable Disagreement](#)' (2020) *Journal of Law and the Biosciences* Article Isaa044 (advance online article, published 26 June 2020)

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.

Weinstock, Daniel and Vardit Ravitsky, 'Should Immunity Licences be an Ingredient in our Policy Response to COVID-19?' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 277

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.

Wiemken, Timothy L, Ana Santos Rutschman and Robert Gatter, '[The Case for Face Shields: Improving the COVID-19 Public Health Policy Toolkit](#)' (Saint Louis University Legal Studies Research Paper No 2020-26, 2020)

Abstract: As the United States battles the later stages of the first wave of COVID-19 and faces the prospect of future waves, it is time to consider the practical utility of face shields as an alternative or complement to face masks in the policy guidance. Without face shields specifically noted in national guidance, many areas may be reluctant to allow their use as an alternative to cloth face masks, even with sufficient modification. In this piece, we discuss the benefits of face shields as a substitute to face masks in the context of public health policy. We further discuss the implications and opportunity costs of creating policy guidance with only a small subset of scientific data, much of which is limited. We conclude by arguing that existing federal guidance should be expanded to include face shields as a policy option.

Wiley, Lindsay F, '[Public Health Law and Science in the Community Mitigation Strategy for Covid-19](#)' (2020) *Journal of Law and the Biosciences* Article Isaa019 (advance article, published 8 May 2020)

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.

Williams, Christina M, Rahul Chaturvedi and Rodney A Gabriel, '[Policy and Law Changes to Address Healthcare Inequities for Minority Populations During COVID-19](#)' (2020) 1(3) *Journal of Allergy and Infectious Diseases* 49-52

Introduction: While other countries have begun to see a flattening of the Severe Acute Respiratory Syndrome – Coronavirus-2 (SARS-CoV-2) curve, the United States continues to see a rise in cases, with approximately 7.4 million confirmed cases to date [1]. Even more worrisome, various news articles have begun to shed light on the healthcare inequities that have become increasingly more transparent during this crisis [2-4]. The current literature shows that during this coronavirus disease-2019 (COVID-19) pandemic, viral transmission has disproportionately affected Black, American Indian/ Alaska Native, Latinx, Asian-American, and the Pacific Islander communities [5]. More specifically, in states such as Chicago and Louisiana, African Americans experience at least a 50% higher total death count as compared to their White counterparts. In states such as New York, the deaths per 100,000 for African Americans has been around double that of Whites since the beginning of the crisis [6-8]. A recent study from the New England Journal of Medicine has shown that 76.9% of patients hospitalized with COVID-19 and 70.6% of

those who died were Black, despite the fact that only 31% of the Ochsner Health Population in the state is African American [9]. Healthcare in Alabama has highlighted similar glaring issues. An increasing number of White Americans are being infected with COVID-19, but African Americans continue to represent a higher percentage of total COVID-19-associated deaths [10]. Interestingly, fewer African Americans have been infected with COVID-19 in Alabama, but a higher mortality rate exists even for African Americans who were found to have no other underlying medical conditions [10]. Based on the COVID Racial Data Tracker, which measures data from the District of Columbia and 41 states, the Latinx community has been disproportionately testing positive as well. In 30 states, the rates have been around double that of non-minority populations, and over four times the rate in eight alternate states [11]. The American Indian community, specifically the Navajo Nation, has accounted for 60% of cases in New Mexico, while only comprising 9% of the total population [12]. The pandemic has brought healthcare inequities that have existed for decades to the forefront of policy conversations—there are steps that can be taken in both the short and long-term to address the needs of these vulnerable populations.

Wilson, Kay, '[The COVID-19 Pandemic and the Human Rights of Persons with Mental and Cognitive Impairments Subject to Coercive Powers in Australia](#)' (2020) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101605 (advance article, published 26 June 2020)

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.'

Wynne, Keona Jeane, Mila Petrova and Rachel Coghlan, '[Dying Individuals and Suffering Populations: Applying a Population-Level Bioethics Lens to Palliative Care in Humanitarian Contexts: Before, during and after the COVID-19 Pandemic](#)' (2020) 46(8) *Journal of Medical Ethics* 514–525

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 Whistleblower](#)' [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.

Zettler, Patricia J, Micah L Berman and Efthimios Parasidis, '[Drug and Vaccine Development and Access](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 163-169

Jurisdiction: USA

Abstract: This Chapter explains how drugs and vaccines for COVID-19 can reach the market in the United States. As is always true, drug and vaccine manufacturers may seek U.S. Food and Drug Administration (FDA) approval of their products via traditional approval mechanisms and drug manufacturers may offer pre-approval access under the expanded access or right to try pathways. In a public health emergency like COVID-19, an additional mechanism is also available: the Emergency Use Authorization (EUA) pathway. This Chapter (1) assesses how FDA has used its EUA authorities for COVID-19 drugs thus far, (2) considers how FDA has balanced the need for robust evidence of safety and effectiveness for COVID-19 pharmaceuticals against the urgent need to speed patients' access amid the clinical and political realities of the pandemic, and (3) highlights considerations specific to vaccines should FDA be faced with a request to issue an EUA for a COVID-19 vaccine. The Chapter concludes with recommendations for policymakers and regulators at the federal and state levels. The recommendations aim to improve public understanding of the regulatory process for COVID-19 drugs and vaccines, protect scientific decision making from undue political pressure, and ensure that manufacturers develop robust evidence of safety and effectiveness—and ultimately safe and effective COVID-19 countermeasures.

HUMAN RIGHTS / CIVIL LIBERTIES

This section includes literature on rights (including international human rights), equality and discrimination generally.

Abidin, Crystal and Jing Zeng, '[Feeling Asian Together: Coping With #COVIDRacism on Subtle Asian Traits](#)' (2020) 6(3) *Social Media + Society* (advance online article, published 30 July 2020)

Abstract: Since the onset of COVID-19, incidents of racism and xenophobia have been occurring globally, especially toward people of East Asian appearance and descent. In response, this article investigates how an online Asian community has utilized social media to engage in cathartic expressions, mutual care, and discursive activism amid the rise of anti-Asian racism and xenophobia during COVID-19. Specifically, we focus on the 1.7-million-strong Facebook group 'Subtle Asian Traits' (SAT). Throughout the COVID-19 pandemic, the 1,200 new posts it publishes daily have swiftly pivoted to the everyday lived experiences of (diaspora) East Asians around the world. In this article, we reflect on our experiences as East Asian diaspora members on SAT and share our observations of meaning-making, identity-making, and community-making as East Asians collectively coping with COVID-19 aggression between January and May 2020.

Albader, Fatemah, '[Coronavirus and the Resurgence of Sinophobia](#)' (2020) 12(2) *Tsinghua China Law Review* 289-312

Abstract: With the outbreak of the coronavirus, the world has witnessed an increase in anti-Chinese sentiment, resulting from racially discriminatory policies undertaken by state governments to combat the spread of disease. States must nonetheless recall that the right to non-discrimination is a non-derogable right, one that is protected even in times of heightened anxiety. States must not impose restrictions that would contribute to the ongoing xenophobia, which is in blatant violation of human rights. Accordingly, this paper will explore and analyze the various government responses that have been undertaken in response to the coronavirus infection and will conclude with recommendations on how best to ensure compliance with the human rights framework during this time.

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.

Amos, Merris, '[Lessons from the COVID-19 Pandemic for the UK Human Rights Law Framework](#)' (SSRN Scholarly Paper ID 3688013, 31 July 2020)

Abstract: The COVID-19 pandemic continues to lay bare the state's weaknesses and the gross inequalities in our society which have been allowed to flourish. It has also set in motion demands for a whole variety of 'rethinks' once the crisis is over. In that vein the purpose of this paper is to consider what lessons the pandemic might hold for the UK human rights law framework. The paper is in four parts. In the first part a short description of the UK's comparatively bad pandemic is set out, including the disproportionate negative impact for some groups. In the second part, the various acts and failures to act where human rights guarantees might have some influence are considered and in the third, the impact and potential impact of UK human rights law on these events. In the fourth and final part the lessons for human rights protection through law are set out.

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

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

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

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

Antova, Ivanka, '[Disability Rights During COVID-19: Emergency Law and Guidelines in England](#)' *Medical Law Review* Article fwaa026 (advance online article, published 6 September 2020)

Abstract: Disabled people may be disproportionately impacted by the response to the COVID-19 outbreak because of the kinds of countermeasures needed to tackle it, and serious disruptions to the services on which they rely. There are reports from the disability community in England and elsewhere that measures taken to contain the spread of COVID-19 impact negatively on their human rights and experiences. This commentary focuses on the healthcare and social care systems in England and describes how laws and practices have changed under the COVID-19 pandemic, and how these changes affect the rights of disabled people.

Arakpogun, Emmanuel et al, '[Digital Contact-Tracing in a Pandemic... We Need One with a Blended Approach](#)' (SSRN Scholarly Paper ID 3639056, 30 June 2020)

Abstract: Governments across the world are rolling/planning to roll-out digital contact tracing (DCT) to manage the COVID-19 pandemic. However, deploying digital contact-tracing to curtail COVID-19 without recourse to existing structural inequalities, including digital divides, will lead to unintended consequences. Therefore, we propose that while the use of technology is welcomed, governments should bear in mind that exiting structural inequalities, including digital divides, could result in the exclusion of vulnerable people with a myriad of unintended consequences. Accordingly, governments must account for structural inequalities in the design and deployment of DCT to prevent more vulnerable people from falling through the cracks.

Asudemade, Habeeb, '[Liberty and Pandemics: A Libertarian Approach to the Global COVID-19 Situation](#)' (SSRN Scholarly Paper ID 3630126, 18 June 2020)

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.

Bachmann, Sascha Dov and Joachim Sanden, 'COVID-19 and the Duty of a State to Protect the Public's Health and Security During a Pandemic: A European Convention on Human Rights Perspective' (2020) *Indonesian Journal of International & Comparative Law* 405-428

Abstract: This article discusses the consequences of the broader concept of health as a security concept under the applicable law of the European Convention on Human Rights (ECHR) in the case of serious threats of to public health. Based on judgments by the European Court of Human Rights, a positive obligation of the Member States to act proactively towards health protection can be extracted from Article 5 (1) ECHR (liberty and security). The authors explore the scope of this provision in times of a public health emergency like a pandemic, a prolonged natural hazard or bio-terrorism to protect a citizen's health and life. This article has particular relevance before the present global Coronavirus (COVID-19) pandemic. It argues in favour of a government's right and duty to keep its citizens safe from harm by providing an ECHR perspective on governmental duties to act in a proactive way when dealing with public health emergencies while at the same time balancing its human rights obligations.

Bailey, Zinzi D and J Robin Moon, 'Racism and the Political Economy of COVID-19: Will We Continue to Resurrect the Past?' *Journal of Health Politics, Policy and Law*, Article 8641481 (advance online article, published 28 May 2020)

Jurisdiction: USA

Abstract: COVID-19 is not spreading over a level playing field; structural racism is embedded within the fabric of American culture, infrastructure investments, and public policy, and fundamentally drives inequities. The same racism that has driven the systematic dismantling of the American social safety-net has also created the policy recipe for American structural vulnerability to the impacts of this and other pandemics. The Bronx provides an important case study for investigating the historical roots of structural inequities showcased by this pandemic; current lived experiences of Bronx residents are rooted in the racialized dismantling of New York City's public infrastructure and systematic disinvestment. The story of the Bronx is repeating itself, only this time with a novel virus. In order to address the root causes of inequities in cases and deaths due to COVID-19, we need to focus not just on restarting the economy, but on reimagining the economy, divesting of systems rooted in racism and the devaluation of Black and Brown lives.

Bald, Caroline and Sharon Walker, '[Covid-19 and Social Inequalities in Health in the UK](#)' 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) 159-166 (published 30 June 2020)

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.

Barnes, Ashleigh and Emilie McDonnell, [An Overview of Emerging International Human Rights Law Guidance: Promoting Human Rights Compatibility of Government COVID-19 Responses](#) (University of Oxford, Faculty of Law, Bonavero Institute of Human Rights, Bonavero Report No 5/2020, 17 August 2020)

Extract from Introduction: There are now a number of international and regional human rights, rule of law and democracy organisations that have developed general guidance on how Covid-19 measures should be evaluated for their compliance with international human rights law. This report aims to collate and briefly summarise the emerging content of such guidance. Due to the proliferation of such guidance, this report is limited to the most significant pieces.¹ It is organised thematically by reference to the following trends: accountability, emergencies and derogations, rights limitations (including privacy), socio-economic rights, discrimination, vulnerable persons, and enforcement powers and practice. This report thus provides a thematic overview of international human rights law guidance to legislatures, executives, courts and civil society in responding to the Covid-19 pandemic.

Barreneche, Sebastián Moreno, [‘Somebody to Blame: On the Construction of the Other in the Context of the Covid-19 Outbreak’](#) (2020) 4(2) *Society Register* 19-32

Abstract: Besides the impact that COVID-19 has had in the sanitary, political and economic domains, it has also triggered multiple discursive processes, what opens up the field for an analysis from sociosemiotics, the social science interested in the study of ‘meaning in action’. The aim of this article is to discuss from such a perspective how the current crisis linked to the COVID-19 virus has given place to the emergence of processes of narrative construction of an ‘Other’ to be blamed for the threat. While in some contexts the dominant narrative has been that COVID-19 is ‘the Chinese’ –and their unhealthy culinary habits– fault, in others the focus has been set on ‘the irresponsible’ that do not stay home when indicated to do so, as well as on ‘the posh’, given that they can afford travelling and hence can import the virus on their return. Departing from the premise which poses that cognition is articulated in narrative terms, the

article argues how, in cases such as the current COVID-19 crisis, a discursive construction of collective actors by means of mechanisms of actorialization, generalization and axiologization is necessary for the dynamics of blame-attribution.

Bartlett, Robert P et al, '[Algorithmic Discrimination and Input Accountability under the Civil Rights Acts](#)' (SSRN Scholarly Paper ID 3674665, 1 August 2020)

Jurisdiction: USA

Abstract: The disproportionate burden of COVID-19 among communities of color, together with a necessary renewed attention to racial inequalities, have lent new urgency to concerns that algorithmic decision-making can lead to unintentional discrimination against members of historically marginalized groups. These concerns are being expressed through Congressional subpoenas, regulatory investigations, and an increasing number of algorithmic accountability bills pending in both state legislatures and Congress. To date, however, prominent efforts to define algorithmic accountability have tended to focus on output-oriented policies that may facilitate illegitimate discrimination or involve fairness corrections unlikely to be legally valid. Worse still, other approaches focus merely on a model's predictive accuracy—an approach at odds with long-standing U.S. antidiscrimination law.

We provide a workable definition of algorithmic accountability that is rooted in the caselaw addressing statistical discrimination in the context of Title VII of the Civil Rights Act of 1964. Using instruction from the burden-shifting framework, codified to implement Title VII, we formulate a simple statistical test to apply to the design and review of the inputs used in any algorithmic decision-making processes. Application of the test, which we label the input accountability test, constitutes a legally viable, deployable tool that can prevent an algorithmic model from systematically penalizing members of protected groups who are otherwise qualified in a legitimate target characteristic of interest.

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

Abstract: Intergroup conflicts represent one of the most pressing problems facing human society. Sudden spikes in aggressive behavior, including pogroms, often take place during

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

Bates, Elizabeth Stubbins, '[Article 2 ECHR's Positive Obligations: How Can Human Rights Law Inform the Protection of Health Care Personnel and Vulnerable Patients in the COVID-19 Pandemic?](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Introduction: This post analyses the case law of the European Court of Human Rights (ECtHR) on states' positive operational obligations to protect life under Article 2 of the ECHR, and offers concrete arguments for the protection of health care personnel and vulnerable patients through this human rights lens.

Bellazzi, Francesca and Konrad v Boyneburgk, '[COVID-19 Calls for Virtue Ethics](#)' (2020) *Journal of Law and the Biosciences*, Article Isaa056 (advance online article, published 7 July 2020)

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.

Bolsover, Gillian, '[Balancing Freedoms, Rights and Responsibilities during COVID in Us: A Study of Anti- and Pro-Restriction Discourse](#)' (SSRN Scholarly Paper ID 3678626, 4 August 2020)

Abstract: Countries across the world have instituted unprecedented restrictions on freedom of movement, privacy and individual rights to control the spread of COVID-19. These measures tend to have been derived from communally orientated East Asian cultures. The way that culturally relevant concepts of rights and freedoms underpin COVID restrictions in democratic and individually orientated countries remains unknown. This data memo addresses this issue through analysis of pro- and anti-restriction discourse on social media in the US. It finds that anti-social and economic restriction discourse more frequently articulates rights and freedoms,

based on ideas of inviolable rights to freedom of movement or freedom of economic activity or a cost-benefit analysis that places economic activity over public health. Pro-social and economic restriction discourse less frequently mentions rights and freedoms, instead supporting restrictions as following state and medical advice and out of deference and respect to medical professionals. Discourse is highly polarised and divisive and articulated largely through established political identity positions. It is suggested that more attention is paid to discussions of balancing rights and freedoms in COVID control restrictions. To convince opposers of restrictions, supporters of restrictions should base arguments around communal rights and positive freedoms. It is also important to critically evaluate whether and how these perspectives need to be adapted to be appropriate and resonant in democratic and individualistic countries.

Bowleg, Lisa, '[We're Not All in This Together: On COVID-19, Intersectionality, and Structural Inequality](#)' (2020) 110(7) *American Journal of Public Health* 917

Extract: Newspaper headlines swiftly affirmed the disproportionate impact of COVID-19 in Black and Navajo communities and issued ominous warnings about the pandemic's future in poor White rural communities.

My irritation with the ubiquitous phrase "We're all in this together" quickly ensued. Although seemingly innocuous and often well intentioned, the phrase reflects an intersectional color and class blinding that functions to obscure the structural inequities that befall Black and other marginalized groups, who bear the harshest and most disproportionate brunt of anything negative or calamitous: HIV/AIDS, hypertension, poverty, diabetes, climate change disasters, unemployment, mass incarceration, and, now, COVID-19.

Bueno De Mesquita, Judith, '[Covid-19: An Inconvenient Truth? Re-Evaluating Progress and Confronting Challenges for the Right to Health](#)' 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) 85-92 (published 30 June 2020)

Cahn, Naomi and Linda C McClain, '[Gendered Complications of Covid-19: Towards a Feminist Recovery Plan](#)' (2020) *Georgetown Journal of Gender and the Law* (forthcoming)

Abstract: Gendered inequalities are on the frontlines of Covid-19. The catalogue of Covid-19's impact covers all aspects of women's lives: work, family, education, health, reproduction, mental and physical well-being, and leisure. The pandemic has exposed the limitations in the current economic system on public and private support for gender equity and the intersecting impact of gender, race, and class in that lack of support. Women of color, particularly Black, Latina, and Native American, are at the intersection of the inequities in the emerging stay-at-home economy. This Article argues that Covid-19 is likely to have complex implications for gender equality and gender equity as state and local governments, the federal government, and private actors focus on recovery plans. The negative impact includes hundreds of thousands of deaths, lingering health complications for many among the several million people who have already contracted the virus, massive economic disruption and loss for individuals, families, and communities and the exacerbation of structural inequalities. The creative policy responses prompted by the devastating impact of Covid-19 provide promise for building a more transformative and equitable future. Indeed, any roadmap to resilience is incomplete without addressing the gender inequities in our social infrastructure. Proposing a feminist recovery plan, this Article focuses on a set of issues relating to gender inequities concerning work and family, including the gender pay gap, the child care crisis, and the disproportionate role of women—particularly, women of color— in providing essential but undervalued care work.

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

Abstract: Restrictions on international and intra-EU traffic of persons have been at the heart of the political responses to the coronavirus pandemic. Border controls and suspensions of entry and exist have been presented as key policy priorities to prevent the spread of the virus in the EU. These measures pose however fundamental questions as to the *raison d'être* of the Union, and the foundations of the Single Market, the Schengen system and European citizenship. They are also profoundly intrusive regarding the fundamental rights of individuals and in many cases derogate domestic and EU rule of law checks and balances over executive decisions. This Paper

examines the legality of cross-border mobility restrictions introduced in the name of COVID-19. It provides an in-depth typology and comprehensive assessment of measures including the reintroduction of internal border controls, restrictions of specific international traffic modes and intra-EU and international 'travel bans'. Many of these have been adopted in combination with declarations of a 'state of emergency'.

Carter, Laura, '[Imperfect Models of the World: Gender Stereotypes and Assumptions in Covid-19 Responses](#)' 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) 187-196 (published 30 June 2020)

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.

Casla, Koldo, '[Rights and Responsibilities: Protecting and Fulfilling Economic and Social Rights in Times of Public Health Emergency](#)' 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) 11-17 (published 30 June 2020)

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.

Chai Yun Liew, Jamie, 'Preventing the Spread of Anti-Asian Racism: Including Critical Race Analysis in a Pandemic Plan' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 393

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.

Cheibub, Jose Antonio, Ji Yeon Jean Hong and Adam Przeworski, '[Rights and Deaths: Government Reactions to the Pandemic](#)' (SSRN Scholarly Paper ID 3645410, 7 July 2020)

Abstract: Democracies reacted slower than autocracies to the specter of the pandemic, and the most solidly democratic among them were particularly slow to react. We examine at which stages of the spread of the COVID governments introduced four measures that to varying

degree abrogate liberal rights: school closings, bans on public meetings, compulsory lockdowns, and shutting work. We conclude that where rights are entrenched, encroaching on them is difficult. Yet we are struck that when the threat of death became sufficiently severe, many democracies resorted to the same measures as autocracies. Still, the reactions of democracies were highly heterogeneous and we are unable to account for this heterogeneity.

Chen, Justin A, Emily Zhang and Cindy H Liu, 'Potential Impact of COVID-19–Related Racial Discrimination on the Health of Asian Americans' [2020] *American Journal of Public Health* e1–e4 (online advance article, published 17 September 2020)

Abstract: Anti-Asian discrimination and assaults have increased significantly during the Coronavirus disease 2019 (COVID-19) pandemic, contributing to a 'secondary contagion' of racism. The United States has a long and well-documented history of both interpersonal and structural anti-Asian discrimination, and the current pandemic reinforces longstanding negative stereotypes of this rapidly growing minority group as the 'Yellow Peril.'

We provide a general overview of the history of anti-Asian discrimination in the United States, review theoretical and empirical associations between discrimination and health, and describe the associated public health implications of the COVID-19 pandemic, citing relevant evidence from previous disasters in US history that became racialized.

Although the literature suggests that COVID-19 will likely have significant negative effects on the health of Asian Americans and other vulnerable groups, there are reasons for optimism as well. These include the emergence of mechanisms for reporting and tracking incidents of racial bias, increased awareness of racism's insidious harms and subsequent civic and political engagement by the Asian American community, and further research into resilience-promoting factors that can reduce the negative health effects of racism.

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.

Christiani, Leah et al, '[Masks and Racial Stereotypes in a Pandemic: The Case for Surgical Masks](#)' (SSRN Scholarly Paper ID 3636540, 29 June 2020)

Abstract: To contain the spread of COVID-19, experts emphasize the importance of wearing masks. Unfortunately, this practice may put blacks at elevated risk for being seen as potential threats by some Americans. In this study, we evaluate whether and how different types of masks affect perceptions of threat for a black male model and a white male model. We find that non-black respondents perceive a black model as more threatening when he is wearing a bandana or a homemade cloth mask relative to wearing no mask at all. However, they do not perceive him as more threatening when he is wearing a surgical mask. As expected, these effects are especially pronounced in non-black respondents who score high in racial resentment, a common social scientific measure of racial bias. Further, it is not that high racial resentment non-black respondents find bandana and cloth masks more threatening in general. Our results suggest that they do not view a white male model as more threatening when he is wearing these types of masks. Though mandated mask wearing is an ostensibly race-neutral policy, our findings demonstrate the potential implications are far from race-neutral.

Christou, Theodora A, Maria Pia Sacco and Anurag Bana, '[Digital Contact Tracing for the COVID-19 Epidemic: A Business and Human Rights Perspective](#)' (SSRN Scholarly Paper ID 3618958, 4 June 2020)

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.

Cohen, I Glenn, Lawrence O Gostin and Greg Weitzner, '[Digital Smartphone Tracking for COVID-19: Public Health and Civil Liberties in Tension](#)' (2020) 323(23) *Journal of the American Medical Association* 2371-2372

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.

Dzehtsiarou, Kanstantsin, 'Article 15 Derogations: Are They Really Necessary During the COVID-19 Pandemic?' [2020] (4) *European Human Rights Law Review* 359-371

Abstract: Reflects on whether derogations in times of emergency under ECHR art.15 during the COVID-19 pandemic are really necessary. Suggests why arguments referring to military emergencies are unjustified as health emergencies are substantively different, and considers, by means of case law, how derogation has a negligible legal impact on the right to liberty and security under ECHR art.5 and on qualified rights, highlighting proportionality's role.

El-Mohandes, Ayman et al, 'COVID-19: A Barometer for Social Justice in New York City' [2020] *American Journal of Public Health* e1–e3 (online advance article, published 10 September 2020)

Abstract: A recent study by researchers at Harvard University found that mortality ratios for Black and Latinx communities in the United States were 3.6 and 2.6 times higher, respectively, than the mortality ratio for non-Hispanic Whites, a stark gap also reported in New York City (NYC). During the COVID-19 pandemic, in NYC other similar patterns were found. Mortality rates for the Latinx and Black populations are 242 per 100 000 and 226 per 100 000, respectively, both more than twice those for White and Asian American residents. Surveys conducted by the City University of New York (CUNY) Graduate School of Public Health & Health Policy and others tell an even more alarming story. The gaps in mortality rates are just the tip of an iceberg of long-standing public health–related inequities among people of color in the United States. These discrepancies threaten all US citizens—wealthy and poor alike—and they have been exacerbated by the coronavirus.

Erdianti, Ratri Novita and Nur Putri Hidayah, '[Study at Home during the Covid-19 Pandemic as a Legal Protection for Children's Rights in Indonesia](#)' (2020) 28(2) *Legality: Jurnal Ilmiah Hukum* 245–258

Abstract: The application of the online learning system during the COVID-19 pandemic has caused problems related to learning methods that require adequate facilities that not all students have. In addition, the community also feels that this method is not optimal for

students, especially elementary school students who find it difficult to accept online learning which also due to heaps of works to replace the material students can use. The purpose of this paper is to see that the study at the home policy is the right government action to take in accordance with the legal protection mandated by Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection to continue on carrying out the learning process so that the world of education is not paralyzed due to the spread of COVID-19. The purpose of this study is to examine the study at the home policy as a guarantee of legal protection mandated by Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. The method used in this study is the normative method. The outcomes show that online learning policies are the best solution and are in line with the principles of legal protection for children's rights in Indonesia, especially regarding the right to be safe from harm, to be kept away from disease, and the right to live and develop.

Estrada, Ruiz and Mario Arturo, '[Is Poverty the Best Allied of COVID-19 in Developing Countries? The Case of Guatemala](#)' (SSRN Scholarly Paper ID 3645045, 7 July 2020)

Abstract: This paper tries to expose how poverty can be a crucial issue in the faster expansion of COVID-19 in developing countries like Guatemala. This research paper's primary objective is to prove that the rapid development of COVID-19 infected cases is directly involved in the massive poverty levels in developing countries. However, this paper also looks at the dramatic reduction of the middle class and the expansion of poverty. This research focuses on how developing, and least developed countries are extremely vulnerable to COVID-19. According to the World Health Organization (WHO), how developing countries such as Guatemala got exponential COVID-19 contagious cases growth rates of 300% daily. According to our preliminary results in the case of Guatemala, we can observe that poverty originated from enormous inflation, massive unemployment, deep-rooted discrimination-by race and economic-, income inequality-the largest in Latin America-, a large informal economy-urban and rural-, and a vast corruption-myopic governments with personal agendas-. Finally, this paper tries to present policies (Ruiz Estrada, 2011) and (Ruiz Estrada and Park, 2018) to the Guatemalan government, the private sector, and civil society from a holistic approach to Guatemala conditions and characteristics.

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.

Fagan, Andrew, '[The Politics of Identity in the UK: Before, During and After Covid-19](#)' 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) 149–157

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.

Fairchild, Amy, Lawrence Gostin and Ronald Bayer, 'Vexing, Veiled, and Inequitable: Social Distancing and the "Rights" Divide in the Age of COVID-19' (2020) *The American Journal of Bioethics* (advance online article, published 19 May, 2020)

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.

Fellows, Jamie and Mark David Chong, 'Australia's Modern Slavery Act: Challenges for a Post-COVID World?' (2020) 45(3) *Alternative Law Journal* 209–214

Abstract: When the coronavirus pandemic (COVID-19) struck in early 2020, the Commonwealth government eased reporting deadlines and extended the date for firms required to submit modern slavery statements under Australia's Modern Slavery Act 2018 (Cth). The economic recession caused by COVID-19 has produced the necessary conditions for further exploitation and enslavement of vulnerable individuals. This article asserts that, even without COVID-19, the Modern Slavery Act 2018 (Cth) in its current form will do little to address forms of modern slavery such as sexual exploitation, forced marriage, trafficking and domestic servitude. This is because the Modern Slavery Act 2018 (Cth) primarily targets labour exploitation and requires suppliers to voluntarily disclose their involvement with modern slavery.

Flood, Colleen M, Bryan Thomas, and Kumanan Wilson, 'Civil Liberties vs. Public Health' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 249

Jurisdiction: Canada

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.

Gatter, Robert A and Seema Mohapatra, '[COVID-19 and the Conundrum of Mask Requirements](#)' (2020) 77(1) *Washington and Lee Law Review Online*, Article 2

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.

Gaynor, Tia Sherée and Meghan E Wilson, '[Social Vulnerability and Equity: The Disproportionate Impact of COVID-19](#)' (2020) *Public Administration Review* (accepted manuscript, published 22 June 2020)

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.

Gee, Gilbert C, Marguerite J Ro and Anne W Rimoin, '[Seven Reasons to Care About Racism and COVID-19 and Seven Things to Do to Stop It](#)' (2020) 110(7) *American Journal of Public Health* 954–955

Introduction: The World Health Organization (WHO) has declared COVID-19 a pandemic. Much is still unknown, but as the virus causing this disease has spread, so has misinformation and xenophobia. Unfortunately, this has followed a predictable pattern of connecting people to diseases. The pandemic has reinvigorated old stereotypes of Chinese people and fears of Chinese food, including the notions that they consume pets. Recently, a US senator stated that the “Chinese virus” originated from a “culture where people eat bats and snakes and dogs”. His statement reflects an old belief system linking race and disease. For example, Prince A. Morrow noted in 1898, “China . . . has been the breeding-place and nursery of pestilential diseases, cholera, plague, as well as leprosy, from time immemorial.” According to this belief, races are biologically distinct and, therefore, prone to specific diseases or apt to manifest them in unique ways...Because we have never dismantled this belief, admonishing people to recognize race as a social construct is futile. Moreover, it is this belief that allows us to say that COVID-19 is a “Chinese disease” and find comfort in blaming them when little other comfort is available.

Giannouloupoulos, Dimitrios, 'The Eurosceptic Right and (Our) Human Rights: The Threat to the Human Rights Act and the European Convention on Human Rights is Alive and Well' [2020] 3 *European Human Rights Law Review* 225-242

Jurisdiction: UK

Abstract: Considers the extent to which a Eurosceptic and anti-human rights ideology exists within the Conservative Government, and its implications for the Human Rights Act 1998 and the ECHR. Reviews the earlier positions of David Cameron and Theresa May, the views of Dominic Cummings, Dominic Raab and Suella Braverman, and the Government's future plans for human rights legislation. Examines the human rights issues raised by the coronavirus pandemic.

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.

Goldmann, Matthias, '[Human Rights and Democracy in Economic Policy Reform: The European COVID-19 Response Under Scrutiny](#)' (2020) 24: Special Issue on Human Rights and Economic Reform, *International Journal of Human Rights* (forthcoming)

Abstract: This article argues that the impact of economic policy reforms on democratic institutions might compromise the enjoyment of human rights, especially economic, social, and cultural rights (ESC rights). The impact of economic reforms on democratic institutions is twofold: First, economic reform policies driven by international and supranational financial institutions compromise democratic self-determination. Second, economic reform policies driven by the need to reduce public expenditure might put marginalized groups at risk and hamper their democratic participation. Since the realization of ESC rights requires a framework for legitimate redistributive decisions, any such impairment of democratic institutions as a consequence of economic policy reforms will in the long run pose a risk to the realization of ESC rights. Courts are unlikely to fully replace the role of the legislature in this respect. The Guiding Principles on Human Rights Impact Assessments of Economic Reforms (the Guiding Principles) devise a way for jointly strengthening human rights and democracy. Crucially, they urge states to subject economic policy reforms to democratic control. Human rights impact assessments constitute a tool for the empowerment of the public sphere and for shifting internationally vetted economic policy reforms from the Arcanum of high-level negotiations back to democratic processes. Moreover, the Guiding Principles oblige states to take redistributive decisions comprehensively and with the full participation of those affected. The article shows the potential of the Guiding Principles by scrutinizing the measures adopted by the European Union (EU) in response to COVID-19 and analyzes how the EU could improve its procedures.

Gostin, Lawrence O and James G Hodge, '[US Emergency Legal Responses to Novel Coronavirus: Balancing Public Health and Civil Liberties](#)' (2020) 323(12) *Journal of the American Medical Association (JAMA)* 1131-1132

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.

Goutte, Stephane, Thomas Porcher and Thomas Péran, '[Social Inequalities and Vulnerability of Population Facing the COVID-19: The Case of Seine-Saint-Denis in Ile-De-France](#)' (SSRN Scholarly Paper ID 3605881, 20 May 2020)

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.

Greene, Alan, '[Derogating from the European Convention on Human Rights in Response to the Coronavirus Pandemic: If Not Now, When?](#)' [2020] 3 *European Human Rights Law Review* 262-276

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?

Griffin, Frank, '[COVID-19 and Public Accommodations Under the Americans with Disabilities Act: Getting Americans Safely Back to Restaurants, Theaters, Gyms, and "Normal"](#)' (2021) 65(2) *Saint Louis University Law Journal* (forthcoming)
Jurisdiction: USA

Abstract: COVID-19 permanently changed the way places of public accommodation like restaurants, theaters, medical facilities, arenas, gyms, and many other proprietors of mainstream American activities must operate in order to accommodate people with newly-defined, COVID-19-related disabilities under Title III of the Americans with Disabilities Act (ADA). The required modifications will affect all patrons and employees of these establishments. Under the ADA, places of public accommodation are barred from discriminating against people with disabilities in the full and equal enjoyment of goods, services, and facilities. Infectious diseases like tuberculosis and HIV have been categorized as disabilities under the ADA, and COVID-19 is defining new categories of individuals with disabilities (including individuals vulnerable to COVID-19 complications) as revealed in this paper. Places of public accommodation will be required to establish non-discriminatory methods to identify 'direct threats,' to modify policies and procedures for COVID-19-related disability groups identified here, and remove structural barriers that discriminate against those same groups. Controversial measures like fever checkpoints, mandatory face masking, and required social distancing are discussed in depth and analyzed in light of the ADA's requirements.

Grugorovych, Chystokletov Leontii et al, '[Administrative and Legal Principles of Human Rights Protection in the Conditions of Coronavirus COVID-19 in Ukraine](#)' (2020) 7(18) *Journal of Critical Reviews* 1316–1323

Abstract: On the basis of theoretical and practical views, the administrative and legal principles of human rights protection in the context of the coronavirus COVID-19 spread, which is relevant

in Ukraine and around the world, have been examined in the article. In this regard, the question of the effectiveness of activities in counteracting the epidemic created in accordance with the new tasks of public authorities and, above all, health authorities, without violating the basic rights of the individual and citizen, is of great importance. It has been proved that the legal analysis of the implementation of international and domestic regulations indicates the unusual views on the problems of human rights provision during the emergency situation that has developed in connection with the fight against the coronavirus COVID-19. Grounded on international and national practice, attention has been drawn to the administrative and legal principles of medical secrecy protection during the epidemic. It has been proven that the disclosure of medical secrets is allowed in cases of suspicion of the patient's intention to commit a crime, or on the basis of a court decision to disclose information about a dangerous infectious disease. Recommendations aimed at improving measures to protect human and civil rights in the context of counteracting the spread of coronavirus COVID-19 have been given in the article.

Harris, Angela and Aysha Pamukcu, '[Fostering the Civil Rights of Health](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 252-256

Jurisdiction: USA

Abstract: Pandemics, like climate disasters, thrive on inequality. COVID-19 is no exception, flourishing where inequality has weakened the social fabric. One of these weaknesses is long-standing racial discrimination, which has produced unjust, racialized disparities in COVID-19 transmission and mortality, and disproportionate economic harm to people of color. Efforts to address these racial disparities have been hindered by a series of governance and advocacy disconnects. Some of these disconnects are wellknown and widely discussed, such as fractures in federal, state, and local leadership that have politicized basic public health measures such as wearing masks. Less-well understood is the society-wide failure to adequately address racial discrimination in all its forms. This has perpetuated the disconnection of public health and civil rights advocacy from one another, and the disconnection of public health and civil rights professionals from anti-discrimination social movements. One promising tool to bridge these disconnects is research on the social determinants of health. Highlighting the ways in which discrimination is a public health problem allows legal advocates to use civil rights law as a health intervention and public health advocates to squarely challenge discrimination. In keeping with

the emergent health justice movement, civil rights and public health advocates can amplify their effectiveness by partnering with organizations that fight discrimination. We call this approach “the civil rights of health.” This agenda for action requires (1) integrating civil rights and public health initiatives and (2) fostering three-way partnerships among civil rights, public health, and justice movement leaders (Harris & Pamukcu, 2019).

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

Abstract: Whoever said pandemics were equalizers doesn’t know a thing about disability legal history. It does not take much of a pretext to rollback disability rights. This is because disability rights laws, despite enumerated principles of equal opportunity and civil rights, have always been viewed as ‘nice to do’ and not ‘must do.’ Simply put, society continues to misunderstand disability—what it means, who the category includes or excludes, its relationship to impairment, its valence and construction as an identity. Moral and religious-tinged frames have trumped the perception of disability as a protected class akin to race, gender, or national origin. This view explains Congress’s intent that the Americans with Disabilities Act (ADA) play, not only a remedial role for disability discrimination ex post, but a proactive, ex ante role in upending problematic social norms that treat disability and incapacity as synonymous. Similarly, the perception of disability as a different kind of civil right helps explain the Supreme Court’s interpretive missteps in the infancy and adolescence of the ADA and Congress’s direct reproach and redirection of the Court in the ADA Amendments Act eighteen years later. Inattention to underlying social judgments about disability and the associated discrimination has caught up with us. Progressive legislation in this pandemic without requisite interventions designed to address how people interpret the disability laws offers precarious protections for people with disabilities. The stakes could not be higher in some areas, namely, life or death denials of health care access based on certain disabilities or biased quality of life measures. Disability scholars in recent weeks have largely focused on addressing why COVID-19-related rationing on the categorical basis of disability offends federal (and state) disability antidiscrimination laws as a means to ensure people with disabilities have access to life-saving medical treatment in and out of hospitals. They persuasively apply disability laws and principles of legal and medical ethics to show why disability is an improper consideration in rationing care and resources. The underlying

problem with rationing is much larger and is slowly unfolding with respect to access and rights in other areas including education, housing, and employment. That is, it is not just about devaluation of the lives of individuals with disabilities; it is a symptom of something much deeper. The pervasive and negative impacts of this devaluation will endure long after the immediate healthcare issues are tackled. This Essay surfaces a broader, unresolved issue in disability law laid bare by the current pandemic—that disability rights have never had the public understanding and buy in necessary to exercise and interpret disability laws to generate largescale structural reform. As a result, when people with disabilities are seen (and treated) as unequal, deficient, and incapable, legal enforcement of antidiscrimination laws is, at best, seen as optional and aspirational, creating space for the current manifestations of disability discrimination during the coronavirus crisis. These problems are compounded when medical supplies, personnel, and time are limited. Part I describes real time rollbacks of disability rights in the healthcare access context that are currently unfolding, and the legal responses designed to push back on health care rationing. I then shift to a less studied area, access to education, an evolving landscape as students across the country face the realities of distance learning. Part II argues that the current forms of discrimination lay bare the fundamental information deficits about disability that negatively skew legal interpretation and undermine the protections of disability laws. Part III identifies key questions and areas of concern as we contend with the virus and its aftermath.

Hoag, Alexis, '[Derrick Bell's Interest Convergence and the Permanence of Racism: A Reflection on Resistance](#)' (Harvard Law Review Blog, 24 August 2020)

Abstract: Nothing about this moment — COVID-19's disproportionate impact on Black people, Trump's explicit anti-Black racism, or the mass demonstrations following lethal police use of force against Black people — would have surprised Professor Derrick Bell. These fault lines are not new; rather, these events merely expose longstanding structural damage to the nation's foundation. A central theme of Bell's scholarship is the permanence and cyclical predictability of racism. He urged us to accept 'the reality that we live in a society in which racism has been internalized and institutionalized,' a society that produced 'a culture from whose inception racial discrimination has been a regulating force for maintaining stability and growth.' Bell would have also foreseen Trump's presidency as the likely follow-up to eight years of the nation's first Black

President. Any amount of racial advancement, Bell argued, signified ‘temporary “peaks of progress,” short-lived victories that slide into irrelevance as racial patterns adapt in ways that maintain white dominance.’ In this reflection, I revisit Bell’s arguments, including his interest convergence theory, to provide clarity on the current moment and to reflect on the way his scholarship has impacted my work as a civil rights lawyer, scholar, and teacher.

Hodge, James G, Hanna Reinke and Claudia M Reeves, ‘[Balancing Religious Freedoms and Public Health Protections During the COVID-19 Pandemic](#)’ (SSRN Scholarly Paper ID 3619427, 4 June 2020)

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.

Hodgson, Tim Fish and Ian Seiderman, ‘COVID-19 Responses and State Obligations Concerning the Right to Health’ ([Part 1](#) and [Part 2](#)) in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Introduction: Part 1 addresses the general obligation of States to protect the right to health in the context of COVID-19. We then turn to that obligation as it relates to the private health sector and private health actors’ responsibilities to respect the right to health.

Part 2 discusses the obligation of States to use the maximum of their available resources to combat COVID-19 and realize the right to health. We also consider the permissibility of limitations and derogations of State obligations in this connection.

Hoffman, Allison K, '[How Medicalization of Civil Rights Could Disappoint](#)' (University of Pennsylvania Law School, Public Law Research Paper No 20-28, 20 August 2020)

Abstract: This essay reflects on Craig Konnoth's recent Article, Medicalization and the New Civil Rights, which is a carefully crafted and thought-provoking description of the refashioning of civil rights claims into medical rights frameworks. He compellingly threads together many intellectual traditions—from antidiscrimination law to disability law to health law—to illustrate the pervasiveness of the phenomenon that he describes and why it might be productive as a tool to advance civil rights. This response, however, offers several reasons why medicalization may not cure all that ails civil rights litigation's pains and elaborates on the potential risks of overinvesting in medical rights-seeking. It concludes by considering how the COVID-19 pandemic, which has produced a dramatic medical manifestation of social inequities growing out of decades of civil rights deprivation, can illuminate potential benefits and risks of medicalization.

Hong, Seung-Hun, Ha Hwang and Min-Hye Park, '[Effect of COVID-19 Non-Pharmaceutical Interventions and Threats to Human Rights](#)' (SSRN Scholarly Paper ID 3677019, 19 August 2020)

Abstract: In response to the COVID-19 pandemic, many governments have implemented non-pharmaceutical interventions (NPIs) to curb rapid virus transmission. A growing concern is that such interventions, aimed at ensuring public safety, may severely restrain fundamental human rights. This paper examines which NPIs are more effective than others in containing COVID-19 with the consideration of their threat to human rights. After classifying NPIs into three categories according to their threat to human rights: the right to freedom of movement, the right to freedom of assembly, and the right to privacy, this paper conducts linear regression analyses on the effectiveness of NPIs in containing COVID-19 over 108 countries. This paper finds that school closure is effective in containing COVID-19 only when it is implemented along with complete contact tracing. We confirm the results of the regression analysis by examining the changes in the cumulated number of confirmed cases and the changes of NPIs in ten selected countries. Our findings imply that to contain COVID-19 effectively and minimize the risk of human rights abuse, governments should consider implementing prudently designed full contact tracing and school closure policies, among others. Other interventions limiting freedom

of movement and assembly should be carefully adopted with minimal infringement of human rights.

Huang, Peter H, '[COVID-19, Anti-Asian Racism, and Anti-Asian American Racism](#)' (SSRN Scholarly Paper ID 3664356, 30 July 2020)

Abstract: This Essay analyzes how fear, anger, and hatred over COVID-19 fueled anti-Asian racism and anti-Asian American racism. This Essay also critiques respectability politics in response to racism. Finally, this Essay examines utilizing humor to reject anti-Asian American racism.

'Human Rights' [2020] (July) *Public Law* 561-563

Jurisdiction: UK

Abstract: Reviews developments relating to human rights, including: a statement of principles on the treatment of persons deprived of their liberty in the context of the coronavirus pandemic; the inaugural Bonavero Institute of Human Rights Lecture entitled 'The Democratic Virtues of Human Rights Law'; delegated legislation for the coronavirus 'lockdown'; the Marmont report, 'Health Equity in England'; and Equality and Human Rights Commission's reports.

Jackman, Martha, 'Fault Lines: COVID-19, the *Charter*, and Long-term Care' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 339

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.

Johnson, Eddie Bernice and Lawrence J Trautman, '[The Demographics of Death: An Early Look at COVID-19, Cultural and Racial Bias in America](#)' (SSRN Scholarly Paper ID 3677607, 20 August 2020)

Abstract: During late 2019, reports emerge that a mysterious coronavirus is resulting in high contagion and many deaths in Wuhan, China. In just a few weeks, cases are rising quickly in Seattle, have spread to California, and the first case is reported in New York (from Iran) on March 1, 2020. Apparent that necessary widespread testing efforts for the virus have been botched by the U.S. government, reports emerge that: well-known celebrities, Washington politicians, and even entire N.B.A. teams were somehow finding available coronavirus testing, while the very scarce testing is denied to first responders and millions of other Americans. As the months pass it is abundantly clear that less wealthy Americans have far fewer options amid the new normal of shelter-in-place orders, school closings, and shuttered businesses. The poor and other certain populations may be genetically pre-disposed to heart disease and diabetic issues. Poverty dictates cheaper diets that may be high in carbohydrates (macaroni and cheese, pasta, etc.) and thus more likely to result in poor nutrition. COVID-19 lays bare the fundamental racism in U.S. culture and public policy. The virus does not care about personal wealth, religion, or race. Enlightened self-interest dictates that we take care of the least fortunate among us. From a global perspective, corona virus is an issue that impacts and threatens us all. Census data reveals that sixty (60) percent of Black Americans (42.5 million) live in just 10 U.S. States. Can the super concentration of Black Americans in cities be a culprit in the disease ratios? What about hyper-exposure to fast-food and sugary drinks which is genuinely attributable to obesity and diabetes in old-age? Within a very few months, words such as apocalyptic are used to describe the 2020 American pandemic experience. By August 2020, it is obvious that the U.S. caseload leads the world with over 5 million infected.

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

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

Jovičić, Sanja, '[COVID-19 Restrictions on Human Rights in the Light of the Case-Law of the European Court of Human Rights](#)' (2020) *ERA Forum* (advance article, published 6 October 2020)

Abstract: The aim of this article is to examine the restrictions imposed by European States on individual human rights during the COVID-19 pandemic in the light of the European Convention of Human Rights and Fundamental Freedoms. After an overview of the development of the case-law of the European Court of Human Rights on public emergencies and Article 15 of the Convention, the article will examine how the Court's case-law could be applied to the current sanitary situation.

Kamiloglu, Ozan, '[Rethinking Minimum Guarantees after the Pandemic: The Invisible Violence of Neoliberal Rationality](#)' 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) 19-26 (published 30 June 2020)

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.

Kansra, Deepa, '[Rights and Obligations during COVID-19: A Look at Selected UN Statements](#)' (SSRN Scholarly Paper ID 3637217, 15 May 2020)

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.

Kharytonov, Evgen et al, '[The Covid-19 Pandemic and the Rights of the Individual in Terms of Private and Public Law](#)' (2020) 9(2) *Ius Humani Law Journal* 225-250

Abstract: The principles of adjusting the regulation of civil relations in the context of the Covid-19 pandemic are analyzed. The admissibility of restricting human rights in the context of the conflict of private and public interests are researched. Besides, the authors tried to determine the optimal algorithm of government actions aimed at preventing the spread of the epidemic. The main approach to the understanding of human rights in the article is based on Dworkin's concept of "rights as trumps". A system of such categories as "a man", "a private person", "natural private rights", "private law" and "national civil law" is analyzed. The conclusion is that the importance of the category of "natural" human rights is underestimated, which exacerbates the problem of ensuring human rights in a pandemic, when the state actively uses public law to cope with the crisis. As a result, there is a conflict of basic principles of private and public law: "everything is allowed except what is prohibited by law" vs. "only what is allowed by law is

possible". It is proposed to assume that the usual way of the legal existence of a person is that he/she acts as a participant in civil relations of a private type, even in a pandemic. Private relations, which arise during the quarantine period, are proposed to be regulated mainly by private law methods, limiting the influence of the state. This will allow us to reach a compromise of private and public interests, without restricting the rights of individuals voluntarily.

Kirby, Tony, '[Evidence Mounts on the Disproportionate Effect of COVID-19 on Ethnic Minorities](#)' (2020)

8(6) *The Lancet Respiratory Medicine* 547–548

Jurisdictions: UK, USA, Australia

Abstract: As the cases of coronavirus disease 2019 (COVID-19) continue to increase across the world, evidence is continuing to emerge that the pandemic could be disproportionately affecting people from black, Asian, and minority ethnic (BAME) communities.

Kitchin, Rob, '[Civil Liberties or Public Health, or Civil Liberties and Public Health? Using Surveillance Technologies to Tackle the Spread of COVID-19](#)' (2020) *Space and Polity* 1–20 (advance online article, published 3 June 2020)

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.

Kivalov, Serhii, '[Ensuring the Human Rights and Freedoms in the Context of the Pandemic Covid-19](#)' (2020) 9(2) *Ius Humani Law Journal* 1-23

Jurisdiction: Ukraine

Abstract: The study is devoted to the establishment of the current state of ensuring of human rights and freedoms in Ukraine while counteracting the spread of the Covid-19 pandemic taking into account the institutional and legal basis of the quarantine regime, transformations of ensuring of human rights and freedoms and the rights of participants in administrative procedures. Close attention is drawn to the impossibility of restricting human rights and freedoms that go beyond the goals of Covid-19 dissemination. In carrying out this study, general philosophical and special methods of scientific knowledge were used, namely the methods of: system analysis, dialectical, formal-logical and structural-functional, as well as some empirical methods. The practical significance of the study is that its results are relevant for domestic legislators and entities that carry out public administration in the field of health care against the background of updating trends in the response to the Covid-19 pandemic. A number of measures have been proposed to develop a strategy to counter the spread of the Covid-19 pandemic; creation of subjects of public administration, the competence of which will include ensuring the state policy in the field of ensuring the proper condition and maintaining the mental health of the population; implementation of the concept of electronic justice (e-court) as the only possible mechanism to ensure effective protection of the rights, freedoms, and interests of man and citizen in the face of the Covid-19 pandemic.

Kohek, Jessica et al, '[Mandatory Mask Bylaws: Considerations Beyond Exemption for Persons with Disabilities](#)' (University of Calgary, School of Public Policy Publications No 13:20, 2020)

Jurisdiction: Canada

Abstract: The city of Calgary, like many other cities, has made wearing a mask mandatory in most public spaces in order to slow the spread of COVID-19, but adhering to the rule will not always be possible for people with disabilities. The city is clearly aware of the mask-wearing challenges faced by some people with disabilities and their caregivers, and has created exemptions to the rule for them. However, that awareness needs to be publicly promoted, otherwise people with disabilities could face social stigma, criticism or be refused service when they try to reenter the economy without a mask. This could add to the already greater risks and

burdens that people with disabilities have faced throughout the pandemic. Even those people with disabilities who are able to wear masks may be unable to get ahold of masks. The province has been distributing free masks through fast-food drive-thrus. However, those may be inaccessible to people with disabilities. The city of Calgary has also distributed masks on public transit, but some people with disabilities may not be using transit given that so many places have been closed during the pandemic or because of the higher risk of illness while travelling outside their homes. Calgary needs to provide more than mask exemptions for people with disabilities to ensure that the reopening of the economy is truly inclusive. It should find new ways to distribute masks that are more accessible and it should promote public awareness of the exemptions and their rationale to encourage greater empathy and understanding in society towards unmasked people with disabilities. It should also research alternatives to masks that can be accepted under the bylaw, since standard face shields are currently not considered a substitute. People with disabilities are already at higher risk of serious illness because of COVID-19, and have already faced disproportionate isolation and stigma during the pandemic. The city of Calgary's mandatory mask policies should be designed to account for the challenges of people with disabilities so that these people are not excluded from the reopening of the economy and made to bear a greater burden than they already have.

Konnoth, Craig J, '[Supporting LGBT Communities in the COVID-19 Pandemic](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 234-239

Jurisdiction: USA

Abstract: LGBT individuals suffer disproportionately in the COVID-19 pandemic. They are likely to be exposed to COVID-19 in greater numbers and suffer to a greater degree if they contract the disease. They are more likely to lose access to essential medical services, including gender confirmation and HIV medications. They are likely to suffer economic harms to a greater degree, since they are more likely to work in industries with exposure to, and likely to close because of COVID-19. They also are more likely to experience mental and emotional harms arising from the isolation, or sheltering-in-place COVID-19 necessitates. Such isolation often occurs with hostile or violent family members, while LGBT safe-spaces, organizations, institutions, and events, such as LGBT pride and LGBT centers are shut down or go virtual. This can take a toll on physical, emotional, and mental health, especially for youth and elderly LGBT individuals. Finally, when

LGBT individuals seek assistance from elsewhere, including through social services, homeless shelters, and welfare, they often suffer discrimination. All these harms fall even more disproportionately on LGBT people of color and transgender individuals. To combat these harms, policymakers must implement stringent antidiscrimination protections and policies that cover the needs of LGBT individuals such as access to certain medical services. But more importantly, they should ensure that the LGBT organizations providing these services in a safe space remain funded and open. They should also collect data on the LGBT community.

Laster Pirtle, Whitney N, '[Racial Capitalism: A Fundamental Cause of Novel Coronavirus \(COVID-19\) Pandemic Inequities in the United States](#)' (2020) 47(4) *Health Education & Behavior* 504–508

Abstract: Racial capitalism is a fundamental cause of the racial and socioeconomic inequities within the novel coronavirus pandemic (COVID-19) in the United States. The overrepresentation of Black death reported in Detroit, Michigan is a case study for this argument. Racism and capitalism mutually construct harmful social conditions that fundamentally shape COVID-19 disease inequities because they (a) shape multiple diseases that interact with COVID-19 to influence poor health outcomes; (b) affect disease outcomes through increasing multiple risk factors for poor, people of color, including racial residential segregation, homelessness, and medical bias; (c) shape access to flexible resources, such as medical knowledge and freedom, which can be used to minimize both risks and the consequences of disease; and (d) replicate historical patterns of inequities within pandemics, despite newer intervening mechanisms thought to ameliorate health consequences. Interventions should address social inequality to achieve health equity across pandemics.

Lawton, Betsy, '[COVID-19 Illustrates Need to Close the Digital Divide](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 222-227

Jurisdiction: USA

Abstract: The COVID-19 pandemic has heightened the need for internet connectedness – school and work closures and social distancing measures to slow the spread of COVID-19 require individuals to rely even more heavily on internet access to participate in telehealth programs, distance learning, and job opportunities. Yet, there remains a large digital divide in the United

States, with many households lacking access to reliable broadband services. This digital divide has long been a factor limiting the achievement of public health goals for individuals that lack essential broadband infrastructure and COVID-19 response efforts have further limited internet access for those that rely on public internet access points such as public libraries. This Chapter will explore law and policy opportunities to reduce the digital divide and the resulting public health consequences flowing from the digital divide.

Lazarus, Liora et al, '[A Preliminary Human Rights Assessment of Legislative and Regulatory Responses to the COVID-19 Pandemic across 11 Jurisdictions](#)' (University of Oxford, Faculty of Law, Bonavero Institute of Human Rights, Bonavero Report No 3/2020, 6 May 2020)

Extract from Introduction: Our evaluation of Covid 19 measures also takes into account the positive obligations that States bear to protect life, access to health and health security, and the extent to which these obligations should be shaped by countervailing negative rights. A stereoscopic view of the human rights engaged in public health emergencies is thus crucial in assessing the rights conformity of particular measures. What is essential in this evaluation, are robust, transparent and expert mechanisms of accountability which are able to evaluate the scientific justifications of both rights limitations and the requirements of positive duties. This is not only a matter of proper constitutional practice, but also a requirement flowing from the effective protection of these rights....

The following report includes analyses of a cross section of jurisdictions from the global South and North. A crucial material divide between these jurisdictions lies in medical care capacity, the material impact of containment measures, and the capacity of States to mitigate the economic impact of containment measures on citizens. Each section of the report provides detailed examination of the lockdown measures and evaluates their constitutional and human rights implications. Despite these evident differences, there are clear trends and similarities across jurisdictions which this introduction will briefly highlight.

Le Bouthillier, Yves and Delphine Nakache, 'The Right of Citizens Abroad to Return During a Pandemic' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 299

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.

Lebret, Audrey, '[COVID-19 Pandemic and Derogation to Human Rights](#)' *Journal of Law and the Biosciences* Article Isaa015 (advance article, published 4 May 2020)

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.

Leigh, Andrew, 'We Can't Let Coronavirus Worsen Inequality' [2020] (85) *Journal of Australian Political Economy* 57-61

Extrac from Introduction: there's a risk that the crisis will exacerbate inequality. When unemployment is high, employers tend to shun workers with disabilities, those with less education and people who don't fit their stereotypes. The best defence against discrimination is a low jobless rate. This means that, if the unemployment rate spikes upwards and then takes some time to recover, it will be marginalised workers who pay the price.

Leung, Hannah and Jemimah Steinfeld, '[Virus Masks a Different Threat: China Is Using Covid-19 Responses and Hong Kong's New Security Law to Reduce Freedoms in the City State](#)' (2020) 49(2) *Index on Censorship* 8–10

Levashenko, Antonina and Olga Magomedova, '[Risks of Digital Discrimination in the Wake of COVID-19](#)' (2020) 13(115) *Monitoring of Russia's Economic Outlook: Trends and Challenges of Socio-economic Development* 3-6

Jurisdiction: Global discussion, with focus on Russia

Abstract: The escalation of discrimination in the context of the COVID-19 pandemic affects participants in the digital economy and other Internet users.

Lewis, Oliver, 'Supranational Human Rights Bodies and Protecting the Rights of People With Disabilities in the COVID-19 Pandemic' [2020] (4) *European Human Rights Law Review* 372-393

Abstract: Examines the measures used by supranational human rights organisations to protect the rights of disabled persons during the coronavirus pandemic. Reviews the range of applicable human rights instruments, and key features of the guidance in nine areas, including access to information, physical distancing, health, social protection and independent living. Considers whether the organisations have adhered to a human rights based approach.

da Luz Scherf, Erick, Marcos Vinicius Viana da Silva and Janaína SF, '[The Management \(or Lack Thereof\) of COVID-19 in Brazil: Implications for Human Rights and Public Health](#)' (SSRN Scholarly Paper ID 3609303, 24 May 2020)

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.

Maguire, Amy and Donna McNamara, 'Human Rights and the Post-Pandemic Return to Classroom Education in Australia' (2020) 45(3) *Alternative Law Journal* 202–208

Abstract: This article identifies tensions between the human rights central to a return to classroom-based education during the COVID-19 pandemic. It notes the complexity of balancing rights to health, education and work for students, teachers and school staff, including for the most vulnerable in those groups. The authors argue that Australia would be well served by a comprehensive human rights framework to support difficult processes of balancing rights in tension.

Manrique De Lara, Amaranta and María De Jesús Medina Arellano, '[The COVID-19 Pandemic and Ethics in Mexico Through a Gender Lens](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: In Mexico, significant ethical and social issues have been raised by the COVID-19 pandemic. Some of the most pressing issues are the extent of restrictive measures, the reciprocal duties to healthcare workers, the allocation of scarce resources, and the need for research. While policy and ethical frameworks are being developed to face these problems, the gender perspective has been largely overlooked in most of the issues at stake. Domestic violence is the most prevalent form of violence against women, which can be exacerbated during a pandemic: stress and economic uncertainty are triggers for abuse, and confinement limits access to support networks. Confinement also exacerbates the unfair distribution of unpaid labor, which is disproportionately assigned to women and girls, and highlights inequality in the overall labor market. Lack of security measures has resulted in attacks towards health

workers, particularly female nurses, due to fear of contamination. Finally, resource results in lack of access to other health necessities, including sexual and reproductive health services. Research across all disciplines to face—and to learn from—this crisis should be done through a gender lens, because understanding the realities of women is essential to understand the pandemic's true effects in Mexico and the world.

Marsons, Lee and Sarah Nason, 'Human Rights' [2020] (October) *Public Law* 773-778

Jurisdiction: UK

Abstract: Reviews human rights developments, including the rules permitting the 1 June 2020 reopening of schools, colleges and nurseries in specific circumstances, the May 2020 launch of the NHS Track and Trace Scheme, the impact of a rise in community transmission of COVID-19 on lockdown restrictions, and an inquiry by the Equality and Human Rights Commission into how the coronavirus pandemic has affected ethnic minorities. Notes case law relating to litigants in person, eligibility for the Coronavirus Job Retention Scheme and tenancies for housing benefit claimants.

Matthew, Dayna Bowen, '[Structural Inequality: The Real COVID-19 Threat to America's Health and How Strengthening the Affordable Care Act Can Help](#)' (2020) 108(6) *Georgetown Law Journal* 1679-1716

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.

May, James R and Erin Daly, '[Dignity Rights for a Pandemic](#)' (SSRN Scholarly Paper ID 3661019, 4 July 2020)

Abstract: Dignity under law can help in times of strife, including pandemic. Attempts to contain the infection has led to quarantine, global lockdowns, closed borders, dislocated families, shuttered businesses, emptied airlines, airports and other constituents of travel, and vast social distancing across all sectors of society. As of this writing, there is no vaccine or cure and

treatments of dubious efficacy. Hospitals and healthcare systems and workers are overwhelmed if not overwrought. Plans for schools, restaurants, bars and businesses changes daily. Health workers are putting their lives on the line. Many of those infected are sitting ducks, cordoned in elderly care facilities, prisons and hospitals. Foreigners are blamed. Each and every pandemic-induced tremor and aftershock tests the bounds of human dignity as a value and as a right. The concept of human dignity means, quite simply, that every person has inherent equal worth. This incontrovertible but profound concept is derived from the body of dignity law that has developed since the end of World War II at the international, regional, national, and subnational levels, where dignity has become the central axis around which law rotates. Dignity recognizes that every member of the human family has worth that is equal, inherent and universal. Dignity is also law. Both the UN Charter and the Universal Declaration of Human Rights (UDHR) confirm the foundational place of the recognition of human dignity in the building of the new post-war world order. Advancing human dignity also is a central premise of the binding International Covenant on Civil and Political Rights and International Covenant on Social, Economic and Cultural Rights, and virtually all subsequent instruments addressing human well-being. It is recognized in the constitutions of more than 160 countries, including all 49 constitutions adopted since 2003, as a fundamental value and/or as an actionable right. And, the 400,000 member strong American Bar Association recently recognized dignity as foundational to the rule of law. Courts around the globe have applied the right to dignity in thousands of cases involving abortion, assembly, death penalty, due process, education, the environment and climate change, equal protection and affirmative action, family law, gender and sexual identity, health care, immigration, incarceration, patents, professional ethics, religion, speech, torture, work, voting, and more. This chapter highlights the normative and legal dimensions of dignity, and how taking account of dignity under law can improve outcomes during a pandemic.

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.

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

Abstract: In this paper, the writers wish to prose [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.

Morang'a, Emmaquilate K, '[COVID-19 And The State Of Socio-Economic Rights In Kenya: Why We Must Take these Rights Seriously](#)' (Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020), Symposium IV: Governance, Rights, and Institutions)

Extract: Due to lack of specific permanent measures to promote socio-economic rights, the capacity of the Government to cushion Kenyans against the economic harshness of COVID-19 is being put into test. Despite the government having formulated some measures especially in form of tax reliefs, basic needs of most vulnerable families are being met through donations from the corporate Kenya as philanthropy. For human dignity, in the bare minimum, a country's people should be able to meet their basic human needs, which include shelter and food. Also noting the Government's efforts through the Big 4 Agenda, the biggest question remains the executive's accountability in its implementation. As long as the hands of the judiciary on enforcement of socio-economic rights remain tied, socio-economic rights remain a dream for many Kenyans especially in times of disasters. If we are to take anything home from COVID-19, is that socio-economic rights are basic human needs and we must take them seriously.

Mykhalovskiy, Eric et al, '[Human Rights, Public Health and COVID-19 in Canada](#)' (2020) *Canadian Journal of Public Health* (advance online article, published 24 September 2020)

Abstract: Faced with the extraordinary global public health crisis of COVID-19, governments across Canada must decide, often with limited and imperfect evidence, how to implement measures to reduce its spread. Drawing on a health and human rights framework, this commentary explores several features of the Canadian response to date that raise human rights concerns. Our discussion focuses on criminal law, fines, data collection, and so-called snitch lines. We argue that the approach of governmental and public health authorities must be grounded in the best available scientific evidence and align with human rights standards. Our aim is to encourage dialogue within the public health community in Canada about the importance of human rights-based responses to COVID-19.

Nadkarni, Abhijit, Arjun Kapoor and Soumitra Pathare, '[COVID-19 and Forced Alcohol Abstinence in India: The Dilemmas around Ethics and Rights](#)' (2020) 71 (July/August) *International Journal of Law and Psychiatry*: Special Issue on Mental health, Mental Capacity, Ethics and the Law in the Context of Covid-19 (Coronavirus), Article 101579 (advance article, published 230 May 2020)

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.

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

Jurisdiction: Kenya

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

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

Jurisdiction: Nigeria

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

Nyamutata, Conrad, '[Do Civil Liberties Really Matter During Pandemics?: Approaches to Coronavirus Disease \(Covid-19\)](#)' (2020) 9(1) *International Human Rights Law Review* 62–98

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.

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

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

Oboirien, Katumi, '[The Act of Torture and Inhumane Treatment as Human Rights Violations during COVID-19 in Nigeria](#)' (SSRN Scholarly Paper ID 3688363, 7 September 2020)

Abstract: In December 2017, Nigeria signed into law the Anti-Torture Act 2017. This was done in acknowledgement of her obligations under the United Nations Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment and its optional Protocol. Bearing in mind that there were existing laws which provided for torture, the Act was enacted to fill the gaps in the existing laws such as defining the term- torture and prescribing adequate punishment for the offenders. This article highlights some key provisions under the Act, laying particular emphasis on the duties of the State to protect its citizens from all forms of violations of their human rights. In this instance, we assert that the right to freedom from torture, cruel, inhuman and degrading treatment is a non-derogable right and law enforcement officers are duty-bound to respect this right in whatever situation, even in the face of the COVID-19 Pandemic. Also portrayed in this article are some situational analysis of torture victims as well as court decisions on the matter. We conclude by restating some of the acts performed by law enforcement officers which constitute torture and proffer some recommendations.

O'Grady, Selina, 'Black Death, HIV/AIDS and Coronavirus: Can We Do Better Than Scapegoat or Tolerate?' [2020] 3 *European Human Rights Law Review* 211-214

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.

Omelchuk, Oleksandr, Olena Cherniak and Nataliia Tyshchuk, '[Protection of the Rights of Children and Minors in their Transactions in the Information Society](#)' (2020) 9(2) *Ius Humani Law Journal* 25-46

Jurisdiction: Ukraine

Abstract: The article is devoted to the analysis of features that arise when committing transactions by children and minors in the development of information society, identifying problems that arise when committing such transactions out of their legal capacity, as well as to the issue of the protection of violated rights and legitimate interests of children and minors due to the pandemic. The dialectical method of cognition, the method of system-structural analysis, the formal-logical method, the comparative-legal method, the method of logical analysis and dogmatic interpretation of legal norms were used preparing the article. The structure of the body of the text is comprised of such sections as introduction, methodology, analysis of recent research, results and discussion, conclusions. The main conclusion of the study is the establishing the need to clarify the amount of legal capacity of children and minors in different age groups.

Oreffice, Sonia and Climent Quintana-Domeque, '[Gender Inequality in Covid-19 Times: Evidence from UK Prolific Participants](#)' (IZA Discussion Paper No 13463, 14 July 2020)

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.

O'Sullivan, Charles, '[Against Ideology? Examining Social Rights in Ireland During Times of Crisis](#)' (2020) (1S) *BioLaw Journal / Revista di BioDiritto* 715-721

Note: this special issue contains many relevant articles, but almost all are in Italian only, and we have only included those in English in this bibliography. [Link to the entire journal issue.](#)

Introduction: The onset of the CoViD-19 pandemic has raised significant questions from not only a public health dimension in attempting to stem the spread of the virus, but also from a social rights perspective, and attempting to deal with the social and economic realities of the fallout from the same. With this in mind, this brief contribution seeks to examine the specific response by the executive in the Republic of Ireland from March 2020 onwards and tease out how it has sought to ameliorate a crisis such as this through redistributive social policies, and the reinforcement and development of social rights. In particular, it underlines how certain social rights-based policies during this time differ from the ideological policies and institutional attitudes prior to this time. In doing so, it aims to underline the degree to which the Irish executive has, on the one hand, signalled a clear break from previous longstanding policies, and on the other, how it might fail to address other long-standing issues. It will be structured as follows. Following this brief introduction, Section Two will examine the general response to the CoViD-19 pandemic through the creation of one new targeted payment and the opening up of others. A third section will then highlight the specific issues related to asylum seekers, the

material reception conditions within which they are housed and access to the so-called CoViD-19 emergency payment. It will end with some brief concluding remarks.

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.

Pendo, Elizabeth, '[Protecting the Rights of People with Disabilities](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 248-251

Jurisdiction: USA

Abstract: One in four Americans — a diverse group of 61 million people — experience some form of disability (Okoro, 2018). On average, people with disabilities experience significant disparities in education, employment, poverty, access to health care, food security, housing, transportation, and exposure to crime and domestic violence (Pendo & Iezzoni, 2019).

Intersections with demographic characteristics such as race, ethnicity, gender, and LGBT status, may intensify certain inequities. For example, women with disability experience greater disparities in income, education, and employment (Nosek, 2016), and members of underserved racial and ethnic groups with disabilities experience greater disparities in health status and access to health care (Yee, et. al, 2016). These longstanding inequities are compounded by the COVID-19 pandemic and by governmental and private responses that discriminate on the basis of disability. Legal protections of people with disabilities are governed by two key federal laws: the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act (“Section 504” or “Rehabilitation Act”). Together, these laws ensure that people with disabilities have equal opportunities in employment, in state and local services and programs, and to goods and services. The broad reach of these laws impact a host of issues raised by the COVID-19 pandemic. Enforcing agencies have provided COVID-19-specific guidance on the application of the laws in health care and in employment. However, gaps in protections as well as widespread lack of knowledge of and noncompliance with the ADA and the Rehabilitation Act limit their impact. Recommendations include: continued enforcement of the laws; clear and current agency guidance on how to comply with the laws; education about the requirements of the laws, especially in health care settings; and improved data collection and reporting.

Pendo, Elizabeth, Robert Gatter and Seema Mohapatra, ‘[Resolving Tensions Between Disability Rights Law and COVID-19 Mask Policies](#)’ (Saint Louis University Legal Studies Research Paper No. 2020-10, 2020)

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.

Pollack, Harold A, 'Disaster Preparedness and Social Justice in a Public Health Emergency' (2020) *Journal of Health Politics, Policy and Law*, Article 8641457 (advance online article, published 28 May 2020)

Abstract: The United States is now experiencing public health catastrophe on a scale we have not seen for more than a century. COVID-19 puts into stark relief our mutual obligations that reflect our interdependence as participants in a common society. Drawing on the work of Amartya Sen concerning famine and related challenges, I discuss the accompanying implications for social justice. Social justice in catastrophe requires strong social insurance structures and legal protections for the most vulnerable people, who would otherwise lack economic resources and political influence to protect their essential interests. Social justice also requires greater and more-sustained attention to disaster preparedness and public health infrastructure—both of which are characteristically neglected, in part because the public health enterprise is identified with politically weak and often stigmatized populations.

Pugh, Jonathan, '[The United Kingdom's Coronavirus Act, Deprivations of Liberty, and The Right to Liberty and Security of the Person](#)' *Journal of Law and the Biosciences* Article Isaa011 (advance article, published 29 April 2020)

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 health 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.

Pūras, Dainius et al, '[The Right to Health Must Guide Responses to COVID-19](#)' (2020) *The Lancet* (forthcoming)

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.

Rau, Sabrina, '[With Great Reliance Comes Great Responsibility: The Role of Technology Companies during Covid-19](#)' 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) 277-286 (published 30 June 2020)

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.

Reid, Blake E, Christian Vogler and Zainab Alkebsi, '[Telehealth and Telework Accessibility in a Pandemic-Induced Virtual World](#)' (University of Colorado Legal Studies Research Paper No 20-44, 14 July 2020)

Abstract: This short essay explores one dimension of disability law's COVID-related 'frailty': how the pandemic has undermined equal access to employment and healthcare for Americans who are deaf or hard of hearing as healthcare and employment migrate toward telehealth and telework activities. This essay's authors—a clinical law professor; a computer scientist whose research focuses on accessible technology; and a deaf policy attorney for the nation's premier civil rights organization of, by, and for deaf and hard of hearing individuals in the United States—have collaborated over the past months on detailed advocacy documents aimed at helping deaf and hard of hearing patients and employers navigate the complex new circumstances of telehealth and telework. The essay presents a brief survey of some of the difficult issues the authors have encountered in trying to navigate the legal and technical

dimensions of healthcare and workplace accessibility for deaf and hard of hearing Americans in a pandemic-induced virtual world.

Reny, Tyler T and Matt A Barreto, '[Xenophobia in the Time of Pandemic: Othering, Anti-Asian Attitudes, and COVID-19](#)' (2020) *Politics, Groups, and Identities* (advance article, published 28 May 2020)

Jurisdiction: USA

Abstract: As the number of COVID-19 cases rose in the US and around the world in early 2020, conservative elites in the US racialized the pandemic, referring to the coronavirus as the 'Chinese flu' or the 'Wuhan virus.' Existing research suggests that this linking of the viral pandemic to a social group will 'activate' anti-Asian attitudes in the mass public, helping bring those attitudes to bear on behaviors and attitudes related to COVID-19. Despite anecdotal evidence of a spike in discriminatory behavior targeted at Asians across western countries, little empirical evidence for this 'othering' hypothesis exists. Using a large survey (n = 4311) benchmarked to national demographics, we analyze the relationship between attitudes toward Asian Americans, xenophobia, concern about contracting the coronavirus, and a variety of behavioral outcomes and policy attitudes. We find evidence that anti-Asian attitudes are associated with concern about the virus but also with xenophobic behaviors and policy preferences. These relationships are unique to Asian American attitudes, are not related to attitudes toward other outgroups, and do not hold for a variety of placebo outcomes. Together our findings suggest that anti-Asian attitudes were activated and were associated with a variety of COVID-19 attitudes and behaviors in the early stages of the pandemic.

Rethmann, Petra (ed) '[COVID-19: Urgent Reflections](#)' (Institute on Globalization and the Human Condition, Globalization Working Paper 20/1, 2020)

This edited paper contains the following contributions:

- Cal Biruk, 'Our bodies, our containers: Cultural concepts of the body and health in Covid-19 times' 4-8
- Kelsey Leonard, 'Indigenous water (in)justice and the COVID-19 pandemic' 9-12
- Elene Lam, Vincent Wong, and Macdonald Scott, 'Covid-19, policing, and the exacerbation of pre-existing inequalities' 13-16

- Alpha Abebe, 'COVID-19 and the Black and African diaspora' 17-20
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- Tina Moffat, 'COVID-19 and reflections on pandemics in the recent past' 25-26
- Kee Yong, 'If the others could speak: Uncharted territory 27-28
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Richardson, Eric and Colleen Devine, '[Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the COVID-19 Pandemic Under the International Covenant on Civil and Political Rights](#)' (2020) 42 *Michigan Journal of International Law* (forthcoming)

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.

Roberto, Katherine J, Andrew F Johnson and Beth M Rauhaus, '[Stigmatization and Prejudice during the COVID-19 Pandemic](#)' (2020) *Administrative Theory & Praxis* 1–15 (advance online article, published 25 June 2020)

Abstract: In the months since the coronavirus (COVID-19) pandemic has overwhelmed the world, numerous popular press articles have recounted cases of mistreatment toward others rooted in traits associated with the illness. These accounts are the latest repercussion of a long running 'otherness' that Western society has attributed to Asian peoples. This article draws on existing theory to better understand how social stigmas and subsequently prejudice may present additional challenges as nations grapple with restrictions on individuals' movement and move to more normal social interaction. A discussion of COVID-19 in the context of stigmatization, social identity, and social cognition theories offer a means to better understand how those impacted and stereotyped by the virus may also experience negative treatment by others.

Savage, Audra, '[COVID-1619: A Brief History of Racism](#)' (SSRN Scholarly Paper ID 3671093, 10 August 2020)

Jurisdiction: USA

Abstract: Racism is the use of Black people to achieve the goals of white people without regard to the personhood, humanity, and agency of Blacks. This essay explores this definition of racism by tracing the influence of the twin institutions of law and religion in creating and maintaining the slave system in early colonial America. The essay then demonstrates the pernicious and persistent nature of racism by mapping this definition onto the current COVID-19 pandemic and its disproportionate impact on Black Americans.

Scheinin, Martin, '[To Derogate or Not to Derogate?](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Extract from Introduction: in addition to permissible restrictions (or limitations) upon human rights, applicable in perfectly normal situations, some human rights treaties also allow for the more far-reaching option of a State to derogate from some of its obligations during a situation of grave crisis. This applies to the subset of other than so-called non-derogable rights under the

UN-level International Covenant on Civil and Political Rights (ICCPR, see article 4) and two of the regional human rights treaties, the American Convention on Human Rights (ACHR, see article 27) and the European Convention on Human Rights (ECHR, see article 15).

Sheldon, Tess and Ravi Malhotra, 'Not All in This Together: Disability Rights and COVID-19' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 419
Jurisdiction: Canada

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.

Shrestha, Rijen, Kewal Krishan and Tanuj Kanchan, '[Dignity and Rights of the Dead and Their Families: A Compromise in the Time of Coronavirus Disease 2019](#)' [2020] *Medicine, Science and the Law* (advance online article, published 29 July 2020)

Abstract: The biological aspects and economic impact of coronavirus disease 2019 have been extensively discussed in the literature. However the social, cultural and legal aspects of the pandemic, especially regarding the dignity and rights of the deceased and their families – have so far received little attention. This communication discusses restrictions and violations of the

rights of the deceased and their families and their privileges to carry out funerary practices and rituals during the pandemic caused by the novel severe acute respiratory syndrome coronavirus

Sirleaf, Matiangai, 'COVID-19 and the Racialization of Diseases ([Part 1](#) and [Part 2](#))' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Extract from Introduction: This post connects the racialization of COVID-19 to the historical narratives and interventions premised on the suspicion of diseased and uncontrolled racialized bodies coming to infect those in the West. I explore the significance of this legacy for global health in more detail in Part II.

Spadaro, Alessandra, '[COVID-19: Testing the Limits of Human Rights](#)' *European Journal of Risk Regulation* (2020) 11(2) Special Issue - 'Taming COVID-19 by Regulation' 317-325

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.

Stevenson-McCabe, Seonaid, 'Protecting Those Small Places' (2020) 65(6) *Journal of the Law Society of Scotland* 18-19

Abstract: Discusses the importance of ensuring human rights compliance and transparency when considering the emergency legislative response to the COVID-19 crisis, and during the decision-making process generally, in Scotland and the UK. Highlights the effect of concerns that were raised on proposals by the Scottish Government concerning jury trials in Scotland that led to a more collaborative approach by stakeholders.

Stobbs, Nigel, 'Compassion, the Vulnerable and COVID-19' (2020) 45(2) *Alternative Law Journal* 81
Jurisdiction: Australia

Introduction: There is a popular myth that pathogens such as COVID-19 do not discriminate. Of course they do. Epidemiologists, caregivers and those working with vulnerable cohorts know from experience that the effects of severe illness are never homogenous across demographics. Those among us who are poor, indigent, elderly, incarcerated, Indigenous or disabled are disproportionately affected in terms of health, financial and social outcomes. When it comes to the criminal justice system, these vulnerabilities are of far greater intersectional concern, especially where people are totally reliant on the state for care and support, as is the case with our prison population.

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?

Thome, Johannes et al, '[The Impact of the COVID-19 Outbreak on the Medico-Legal and Human Rights of Psychiatric Patients](#)' (2020) 63(1) *European Psychiatry* e50 1-2

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.

Tidball, Marie et al, '[An Affront to Dignity, Inclusion and Equality: Coronavirus and the Impact of Law, Policy, Practice and Access to Services on People with Disabilities in the United Kingdom](#)' (University of Oxford, Faculty of Law, Bonavero Institute of Human Rights, Bonavero Report No 4/2020, 2 July 2020)

Extract: The Oxford University Disability Law & Policy Project and the Bonavero Institute of Human Rights, with the support of a group of leading academics working on disability law, have produced a policy report which describes the impact of coronavirus related law, policy and practice on people with disabilities in the United Kingdom. This Report is based on material the authors submitted to the House of Commons Women and Equality Committee inquiries on the unequal impact of Covid-19 and the Coronavirus Act 2020 on People with protected characteristics and papers given at a University webinar on Disability in the Context of the Coronavirus Crisis. The unequal impact of the coronavirus crisis, charted in the essays, in this report is startling. In June, the Office for National Statistics Data revealed that almost 60% of deaths from coronavirus in the UK have been people with disabilities. Disabled women are 2.4 times more likely to die from Covid-19 and men with disabilities 1.9 times more likely to die. These risk levels rise to 11.3 times for disabled women aged under 65 and 6.5 times for men. The Report makes twenty-two recommendations, including on the need for a national inquiry to understand the scale of Covid-19 related deaths and to examine why this groups have carried such a heavy burden for the pandemic.

Timotijevic, Jelena, ['Society's "New Normal"? The Role of Discourse in Surveillance and Silencing of Dissent During and Post Covid-19'](#) (SSRN Scholarly Paper ID 3608576, 27 May 2020)

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.

Toussaint, Etienne, 'Of American Fragility: Public Rituals, Human Rights, and the End of Invisible Man' (2020) *Columbia Human Rights Law Review* (forthcoming)

Jurisdiction: USA

Abstract: The COVID-19 pandemic has exposed the fragility of American democracy in at least two important ways. First, the coronavirus has ravaged Black communities across the United States, unmasking decades of inequitable laws and public policies that have rendered Black lives socially and economically isolated from adequate health care services, educational resources, housing stability, environmental security, stable and living wage jobs, generational wealth, and other institutional structures necessary for resilience. Second, government-mandated social distancing in response to the coronavirus has failed to dampen America's racially biased, violent, and supervisory policing culture, reigniting demands from the Movement for Black Lives for police abolition and, more generally, the dismantling of white supremacy in sociopolitical life. In response, scholars have called for a radical (re)imagination of American democracy. This Article argues that resolving the fragility of American democracy amidst the terrors of COVID-19 warrants a renewed commitment to the emancipatory language of human rights.

In recent years, scholars have sharply critiqued human rights law as a tool for social transformation. Accordingly, this Article grounds its assertion on three claims, using the issue of housing insecurity as a guiding explanatory thread. First, the geography of health inequity in Black communities across America embodies not merely discrete instantiations of historical

governmental neglect, but more poignantly, the collective rituals of white supremacy that create and reconstitute the racial social order.

As a result, beyond coordinated public health measures and short-term economic stimulus plans, the future of American democracy demands new tools to confront the embeddedness of racial ritualization in everyday life. Second, human rights discourse challenges the normative underpinnings of contemporary public policy, too often tinged with liberal assumptions about the human condition that enshrine structural inequality and contain economic power. Third, human rights discourse expands the social imaginary, fostering innovation in lawmaking by deconstructing antiquated valuations of equality and reconstructing contextual notions of liberty. Taken together, these insights reveal human rights discourse as a project of reimagining legal subjectivity and state responsibility.

To further elucidate the benefits of human rights discourse in view of compelling arguments to move beyond rights-based framings of equality and discrimination, this Article places Martha Fineman's theory of vulnerability in conversation with Ralph Ellison's articulation of the Black American experience during Jim Crow segregation in his novel, *Invisible Man*. This dialogue reveals the erasure of 'sacrifice' from ongoing discussions of social and economic inequality, a critical dimension of democratic citizenship that has been rendered invisible in contemporary rights-based discourse and emergent strategies for poverty alleviation. Even more, drawing insights from the Movement for Black Lives and contemporary theorists of political philosophy, this dialogue clarifies the central role of 'dignity' in establishing the preconditions for an engaged citizenry in the context of American racial capitalism.

Townsend, Dina Lupin, '[COVID-19 and the Human Right to Water and Sanitation](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Van Ho, Tara, 'A Time to Kill 'Business as Usual'—Centering Human Rights in a Frustrated Economy' ([Part 1](#) and [Part 2](#)) in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Introduction: Part 1 considers how dominant approaches to business activities impact on our preparedness to fight pandemics, shifting the burden of pandemics onto society's most

vulnerable. Part 2 examines how existing expectations in the field of ‘business and human rights,’ alongside other structural reforms to international law, can offer a different path forward.

Venizelos, Evangelos, [‘Pandemic, Fundamental Rights and Democracy: The Greek Example’](#) (SSRN Scholarly Paper ID 3626248, 28 April 2020)

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.

Wiratraman, Herlambang Perdana, [‘Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?’](#) (2020) 4(1) *Journal of Southeast Asian Human Rights* 306–334

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.

Wright, James E and Cullen C Merritt, '[Social Equity and COVID-19: The Case of African Americans](#)' (2020) *Public Administration Review* (accepted manuscript, published 30 May 2020)

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.

Wyllie, Aaron, '[The Human Rights of Older People during Covid-19: Social Wellbeing and Access to Care and Support for Older People in the United Kingdom](#)' 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) 197-203 (published 30 June 2020)

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.

Yearby, Ruqaiijah and Seema Mohapatra, '[Law, Structural Racism, and the COVID-19 Pandemic](#)' (2020) *Journal of Law and the Biosciences* Article Isaa036 (advance online article, published 30 May 2020)
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.

Young, Katharine, '[The Idea of a Human Rights-Based Economic Recovery after Covid-19](#)' (Boston College Law School Legal Studies Research Paper No 538, 24 August 2020)

Abstract: The COVID-19 pandemic has produced a health and economic crisis of unprecedented scope. As economists and policymakers turn to the task of recovery, protecting human rights remains intrinsically important, both morally and legally. It is also instrumental to the ends of public health and economic resilience. This Article argues that the human rights to life, health, education, social security, housing, food, water and sanitation – the so-called economic and social rights – are as essential as civil and political protections. Moreover, rather than simply

ameliorate the inevitable indignities and material deprivations caused by the COVID-19 pandemic, the implementation of duties to respect economic and social rights can help ensure their protection in the post-COVID-19 economy. For this to occur, however, the Article suggests that the application of human rights to the economic recovery should be informed by a longer history of economic crises, assisted by both international and comparative economic and social rights frameworks, and open to the institutional reimagination that the idea of human rights helps to generate.

Zarifi, Sam and Kate Powers, '[Human Rights in the Time of COVID-19: Front and Centre](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

INDIGENOUS LAW & GOVERNANCE

Craft, Aimée, Deborah McGregor, and Jeffery Hewitt, 'COVID-19 and First Nations' Responses' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 49
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.

Crepelle, Adam and Ilia Murtazashvili, '[COVID-19, Indian Reservations, and Self-Determination](#)' (Mercatus COVID-19 Response Policy Brief, Mercatus Center Research Paper Series, George Mason University, 21 July 2020)

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.

Dale, Amy, 'Protecting the Most Vulnerable from COVID-19' (2020) (66) *LSJ: Law Society of NSW Journal* 21

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.

Fletcher, Matthew LM, '[Indian Lives Matter: Pandemics and Inherent Tribal Powers](#)' (2020) 73 (June) *Stanford Law Review Online* 38-47

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.

Florey, Katherine, '[Toward Tribal Regulatory Sovereignty in the Wake of the COVID-19 Pandemic](#)' (2021) 63(2) *Arizona Law Review* (forthcoming)

Abstract: The media has often highlighted the devastating toll COVID-19 has taken in many parts of Indian country – and that, to be sure, is part of the story. But there are other aspects of the picture as well. On the one hand, tribes have taken resourceful and creative measures to combat COVID-19. On the other, a troublesome doctrinal landscape has complicated their efforts to do so. The judicially crafted Montana framework severely restricts tribal civil regulatory power over nonmembers – a particular problem during the COVID-19 pandemic, when nonmembers have defied tribal curfews, camped in prohibited areas, and opened

businesses on reservations despite closure orders. While Montana nominally contains a ‘health and welfare’ exception allowing tribes to exercise power over nonmembers in emergencies, its contours are too ambiguous and fact-specific to allow tribes to act with the certainty and speed they require. The pandemic thus provides a vivid illustration of the way in which Montana hinders effective tribal governance. Further, the pandemic has occurred at a moment when the Court may be more receptive than it has been in the past to arguments favoring tribal sovereignty – and at a time when many of the concerns about tribal regulation that motivated the Court four decades ago in Montana seem increasingly distant both from current doctrine and contemporary tribal realities. As a result, it is time, at a minimum, for the Court to expand Montana’s ‘health and welfare’ exception to resemble something closer to the powers states possess to safeguard public health.

Hoss, Aila and Heather Tanana, ‘[Upholding Tribal Sovereignty and Promoting Tribal Public Health Capacity During the COVID-19 Pandemic](#)’ in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 77-82

Jurisdiction: USA

Abstract: Tribes are sovereign nations with authorities and responsibilities over their land and people. This inherent sovereign authority includes the right to promote and protect the health and welfare of their communities. The COVID-19 pandemic has brought national attention to the health inequities experienced by American Indian and Alaska Native communities. The sovereign legal authority for Tribes to respond to this pandemic has received less attention. This Chapter describes some, but not all, of the urgent legal issues impacting Tribal response to the COVID-19 pandemic. It describes and identifies gaps in federal Indian health policies and highlights how Tribes have exercised their sovereignty to respond and promote resilience in the wake of COVID-19. It also provides examples of intergovernmental challenges. It highlights how ignorance of or animosity to federal Indian law has led non-Tribal governments to infringe on Tribal sovereign rights during the COVID-19 pandemic. It ends by providing a list of recommendations on how law can be better used to support Tribal responses as the pandemic unfolds.

Leonard, Kelsey, 'Indigenous Water (in)justice and the COVID-19 Pandemic' in Petra Rethmann (ed), ['COVID-19: Urgent Reflections'](#) (Institute on Globalization and the Human Condition, Globalization Working Paper 20/1, 2020) 9-12

Introduction: The water crises facing many Indigenous Peoples, nations, and communities across Turtle Island (North America) and globally are well documented (Lam et al. 2017; Robison et al. 2018; Marshall 2017). In Canada there are more than 60 long-term drinking water advisories impacting First Nations reserves (Indigenous Services Canada 2020). In the United States a 2019 national water security study by Dig Deep and the U.S. Water Alliance found that “race is the strongest predictor of water and sanitation access”. The study further found that “Native American households are 19 times more likely than white households to lack indoor plumbing” (Dig Deep 2019, p. 12). Indigenous water insecurity – inadequate access to sufficient quantity and quality of water to meet daily individual and collective needs of Indigenous Peoples – is a product of systemic water colonialism and a grave water injustice (Robison et al. 2018).

Levesque, Anne and Sophie Thériault, 'Systemic Discrimination in Government Services and Programs and Its Impact on First Nations Peoples During the COVID-19 Pandemic' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 381

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.

Markham, Francis, Diane Smith and Frances Morphy '[Indigenous Australians and the COVID-19 Crisis: Perspectives on Public Policy](#)' (ANU Centre for Aboriginal Economic Policy Research, CAEPR Topical Issue 1/2020, 2020)

Abstract: First Nations people are being, and will continue to be, affected by this crisis in ways that differ from the effects on other Australians. The pandemic risks exacerbating deep-seated health, social and economic inequities in Australian society, especially the long-standing inequalities between First Nations people and other Australians. The pandemic has also made plain the shortcomings of the relationships between Indigenous people and Australian governments, revealing a governance gap that is difficult to ignore. But despite these inimical conditions, the disruption of the COVID-19 crisis is opening up new opportunities for public policy change. And many First Nation organisations and communities are leading the way. Unprecedented new government expenditure creates space for policy innovation, as the boundaries of what is possible become blurred. The pandemic is a time of stark risks, but it is also a time when informed policy bravery could create new foundations for a better future.

Contributions to this Topical Issue focus on employment impacts, social security reforms, Indigenous governance, violence against women, the Indigenous health workforce, school closures, energy security in remote communities, and a proposal for an Indigenous reconstruction agency.

Morales Antoniazzi, Mariela and Gabriela Cristina Braga Navarro, '[Tackling Inequality in Times of Pandemics: Right to Water in the Inter-American Court of Human Rights](#)' (Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No 2020-30, 2020)

Abstract: This paper presents the decision of the Inter-American Court of Human Rights in the *Lhaka Honhat v. Argentina* case, focusing on the Court's recognition of water as an autonomous right. The main argument is that the case is a milestone in the jurisprudence of the Court since for the first time it recognizes the direct justiciability of the right to water, offering a holistic approach to tackle inequalities and to provide means for overcoming marginalization. In the

current context of COVID-19 pandemic, the decision becomes a paramount reference for judicial protection of vulnerable groups, proposing legal arguments for the guarantee of access to safe water. It is argued that the ruling has the potential to transcend the individual case and to enhance the transformative mandate of the IACtHR. The method used is bibliographic review, mostly based upon primary sources (judicial decisions). It relates to two theoretical backgrounds, the theory on intersectional discrimination and the *ius constitutionale commune* framework. The Court's decision and its victim-centred approach is discussed in light of the situation of poverty and multiplied vulnerability that indigenous peoples in Latin America face. Besides, it is contextualized with precedents of indirect recognition of social rights to indigenous peoples through the affirmation of the right to a dignified life. A comparative perspective gives insights into the decision's potential to transcend the individual case and, more specifically, to enforce the protection of indigenous rights during the COVID-19 pandemic. Finally, within the framework of a *ius constitutionale commune*, the Court is attributed a transformative mandate through which it can combat discrimination and promote structural change. The paper concludes stressing the importance of the recognition of intersectional discrimination in order to ensure access to safe water to indigenous peoples and other vulnerable groups. It also highlights the significance of the recognition of direct justiciability of social rights in order to tackle inequalities in times of pandemic.

Morrissey, Philip, '[COVID-19 Pandemic: The Circus Is Over, for the Moment](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)
Jurisdiction: Australia

Abstract: This critical essay responds to the COVID-19 pandemic and subsequent lockdown in Victoria from the perspective of a retired Aboriginal academic and reflects on personal responsibility, Indigenous history, and resilience.

Saint-Girons, Marie et al, '[Equity Concerns in the Context of COVID-19: A Focus on First Nations, Inuit, and Métis Communities in Canada](#)' (Canadian Child Welfare Research Portal, Research Brief, July 2020)

Introduction: COVID-19 and the quarantine measures put in place to stop its spread have had a devastating and far-reaching impact around the world. Since it was first detected, the virus has

infected and killed people from all backgrounds, prompting some to refer to it as “the great equalizer” (Evelyn, 2020). Yet, similar to previous pandemics, the effects of this disease and related containment strategies magnify inequities, exerting a disproportionate impact on disadvantaged groups such as Indigenous peoples¹, visible minorities, and people of lower socioeconomic status (DeBruin et al., 2012; La Ruche et al., 2009; UscherPines et al., 2007). Inequity predisposes people to the pre-existing conditions that are co-morbid with the worst cases of COVID-19 and prevents the timeliness and quality of pandemic response. While this research brief addresses the broad inequities exacerbated by COVID-19, it focuses more specifically on their potential impact on First Nations, Métis and Inuit peoples and communities in Canada², recognizing that current realities are shaped by racial discrimination and the ongoing legacy of colonialism. In this sheet we explore health inequities underlying COVID-19’s spread, the uneven socioeconomic burden it places on communities, and the need to adequately prepare and respond using a social justice lens.

Sulkowski, Adam J, ‘[Indigenous Shared Governance, International Law, and Preserving Rainforest in a Pandemic](#)’ (SSRN Scholarly Paper ID 3684021, 31 August 2020)

Jurisdiction: Guyana

Abstract: In a rarely visited corner of the Amazon biome is an entity whose predicament is both unique and relatable, and whose fate is tied to that of local Indigenous peoples, as well as the climate of the world: the Iwokrama International Centre for Rainforest Conservation and Development in Guyana. This case answers calls for more transdisciplinary efforts in scholarship and teaching, and is intended to both serve as a basis for conversations with students as well as a springboard for further research.

Tanana, Heather, ‘[Learning from the Past and the Pandemic to Address Mental Health in Tribal Communities](#)’ (University of Utah College of Law Research Paper No 381, 2 September 2020)

Jurisdiction: USA

Abstract: When COVID-19 hit, it devastated Tribal communities. Based on past federal policies, American Indians and Alaska Natives suffer various health and socioeconomic disparities that make them not only more vulnerable to contracting COVID-19, but also more susceptible to

negative outcomes once infected. Much attention has focused on COVID-19 infection rates and related deaths in Indian country. However, the pandemic's reach has gone beyond physical impacts on the body. COVID-19 has also affected the mental health of Tribal members and their access to mental health services. This Article dives into the effects of the coronavirus pandemic on the mental health and general well-being of Tribal communities. A brief history of federal and Tribal relations is provided, followed by a summary of the current state of mental health in Indian country. The impacts of COVID-19 on Tribal communities is discussed as well as the rise of telehealth to provide much needed mental health services during the pandemic. The article concludes by providing recommendations to continue the progress made to fill the historic gap in mental health services in Indian country post-pandemic.

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

Arnold, Kim, 'Holding DOCAs in the Context of COVID-19' (2020) 32(2) *Australian Restructuring Insolvency & Turnaround Association Journal* 13

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.

Atkins, Scott and Kai Luck, 'Legal Update: Corporate and Business Rescue in a COVID-19 World' (2020) 32(2) *Australian Restructuring Insolvency & Turnaround Association Journal* 16-21

Abstract: Executive power, court intervention and the opportunity for meaningful law reform to the voluntary administration regime.

Baister, Stephen and John Tribe, 'The Suspension of Debt Obligations and Bankruptcy Laws During World War I and World War II: Lessons from Private Law During the Corona Pandemic from Previous National Crises' (2020) 33(3) *Insolvency Intelligence* 67-77

Abstract: On 28 March 2020, the Insolvency Service announced that the Government was placing before Parliament temporary reforms to the insolvency law to help companies through the economic crisis caused by the coronavirus pandemic. The reforms initially highlighted were a moratorium on the ability to present or pursue winding-up petitions and the suspension of the law on wrongful trading. What emerged in the form of the Corporate Insolvency and Governance Act 2020, which came into force on 26 June 2020, was in fact a mixture of temporary emergency measures to deal with the consequences of the pandemic (largely to do with the compulsory winding up of companies and a temporary relaxation of wrongful trading liability) and permanent measures: a new free-standing moratorium, a new restructuring procedure and the disapplication of insolvency based supplier termination provisions in certain contracts. Emergency moves dealing with insolvency are not without precedent. This article examines a range of measures that were introduced during the First and Second World Wars that were designed to respond to the unusual circumstances caused by a global crisis. They were more radical and far reaching than anything contemplated by the 2020 Act. In particular they provided relief for individual as well as corporate debtors. This article demonstrates that the measures adopted in the two world wars went some way towards meeting their objective of saving small businesses from bankruptcy.

Bangha-Szabo, Attila and Anthony Morton, 'Germany: Restructuring Update' (2020) 35(7) *Butterworths Journal of International Banking & Financial Law* 511-512

Abstract: Reviews changes to German business restructuring procedures under IDW S6 during the coronavirus pandemic and the temporary relaxation of specific insolvency laws. Outlines the

role and scope of IDW S6, its uses in risk mitigation, its acceptance as proof as to the merits in restructuring proceedings by the tax authorities, and the issues which an IDW S6 restructuring report must cover.

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

Abstract: In late 2019, Congress enacted the Small Business Reorganizations Act. The Act’s timing is fortuitous: Weeks after it went into force in February, 2020, the Covid-19 pandemic damaged countless small businesses—enterprises that the Act may provide an opportunity to save. The Act provides businesses with powerful options to reorganize under a new ‘subchapter V’ of Chapter 11 of the Bankruptcy Code. Subchapter V eases the requirements for confirmation of plans that creditors don’t approve by simply requiring debtors to project their ‘disposable income’ and pay it to creditors for three to five years; provides incentives for the parties to reach agreement on reorganization plans; lowers the debtor’s disclosure obligations; eliminates the regular appointment of an official committee of creditors; requires the appointment of a trustee to aid in plan negotiations; and permits modification of loans secured by a mortgage on a debtor’s primary residence. Creditors will have to develop a new playbook for subchapter V cases. Most scholarship has emphasized debtors’ new options, but this Article presents an analysis from the perspective of creditors. Of course, creditors are not created equal; strategies will only be useful to creditors with claims substantial enough to justify the investment of time and money. Well-positioned creditors will extract whatever strategic gains they can at the expense of the debtor and of less privileged creditors. The game is multilateral, not simply creditor vs. debtor. The Article suggests strategies for variously positioned creditors to protect their interests. The Article suggests seven major strategies: 1) Creditors should seek influence or control a debtor’s entry into subchapter V by making agreements with debtors concerning the election, using financial maneuvers to work around subchapter V’s debt limits, or challenging the debtor’s eligibility for entry. 2) Creditors should monitor and make use of trustees as circumstances warrant, whether by cultivating and working closely with them, by seeking to minimize their role and save expenses, or, at the extreme, by opposing them and seeking their removal. 3) To combat debtors’ tendency to delay, creditors should apply pressure on the debtor by emphasizing the statutory emphasis on speed, scrutinizing the debtor’s required

disclosures, and enlisting the trustee and court where possible.4) Creditors should avoid holding general unsecured claims, and, if eligible, should take the election offered by §1111(b) of the Code. 5) Subchapter V places a premium on plans being approved by creditors, so those whose votes are needed for confirmation should extract concessions in exchange for their vote. For those privileged creditors, this should be a major point of leverage.6) Creditors should look to obtain information at every opportunity, including at the required meeting of creditors and status conference early in the case, in the disclosures and filings made by the debtor, and through formal discovery. 7) Creditors extending credit secured by a residence should designing lending practices to ensure that they cannot be ‘modified’ by debtors in bankruptcy. Many of the strategies above will be of keen interest to secured and other privileged classes of creditors. The Article predicts that with these and other strategies in hand, such creditors will not lose much ground under subchapter V. But the law lowers protections for general unsecured creditors, particularly those who remain passive. A number of the strategic tools presented in this Article can aid disfavored general unsecured creditors as well—but frequently, they will have too little at stake to make it worth putting their energy into the new small business bankruptcy game.

Collins, Daniel M, ‘Insolvency Act 1986 section 214: A Suspension’ (2020) 31(8) *International Company and Commercial Law Review* 441-446

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.

Coneyworth, Amanda, ‘Safe Harbour Advisory in Unchartered Waters Is It Still Relevant?: An Insolvency Practitioner’s Perspective’ (2020) 20(7) *Insolvency Law Bulletin* 132-134

Jurisdiction: Australia

Abstract: Prior to COVID-19, we saw safe harbour protection under s 588GA of the Corporations Act 2001 (Cth) as a mechanism for directors to proactively work with their company while it was under “stress”. This stress generally comes from financial and/or operational challenges that, with careful and robust planning, may be worked through with the aim of achieving a better outcome for the company and its creditors than a formal administration.

Eszenyi, Thea, ‘ASIC: Impact of COVID-19 - a Regulatory Perspective’ (2020) 32(2) *Australian Restructuring Insolvency & Turnaround Association Journal* 48

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.

Gore, Kiran Nasir and Charles H Camp, ‘[The Interplay Between Insolvency Proceedings and Parallel International Arbitration Proceedings in the Post-Pandemic World](#)’ (2020) *The World Financial Review* (published online 16 July 2020)

Abstract: As businesses emerge into the post-pandemic world, insolvency proceedings offer practical solutions to businesses aiming to recover from the recent global economic fallout. These businesses hope to repay their debts, restructure and reorganize their assets, and generally manage their operations. While effective, insolvency-based solutions are often designed only to further domestic legal and policy goals and they do not perfectly interact with cross-border business relationships. This article draws upon the authors’ expertise in international dispute resolution to discuss the legal and practical challenges found at the intersection of insolvency proceedings and parallel international arbitration proceedings. These insights provide businesses and their insolvency advisers with a blueprint for managing competing concerns at a sensitive and unpredictable time in a business’s lifecycle.

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

Abstract: The international spread of the coronavirus is not only generating dramatic consequences from a social perspective but it is also heavily affecting the global economy. For

this reason, governments, financial regulators and international organizations are responding to the coronavirus with a package of legal, economic and financial measures. Among the legal measures included in these packages, many countries, including Australia, Germany, Spain, India, Singapore, Colombia, Portugal, Czech Republic, Russia, New Zealand, the United Kingdom, and the United States, have proposed or implemented temporary changes to their insolvency frameworks. This paper starts by discussing whether using the insolvency system should be the optimal solution to deal with companies affected by the coronavirus. For that purpose, it will analyze the role and limits of insolvency law. It then discusses the most relevant insolvency reforms taking place around the world as a response to the global pandemic, as well as other insolvency and insolvency-related reforms that could be implemented to minimize the harmful economic effects of COVID-19. The paper will conclude by arguing that, even though these responses can provide companies and corporate directors with a valuable breathing space, these reforms need to be accompanied by a more comprehensive package of legal, financial, tax and economic measures to support businesses, employees and the well-functioning of the judicial system.

‘INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms’ (2020) 20(7) *Insolvency Law Bulletin* 122-123

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.

Kamalnath, Akshaya and Hitoishi Sarkar, ‘[Airline Insolvencies](#)’ (SSRN Scholarly Paper ID 3707823, 8 October 2020)

Jurisdiction: India

Abstract: An important aspect of business is the possibility of insolvency. India’s new insolvency law, the Insolvency and Bankruptcy Code, 2016 (IBC) has attempted to streamline insolvencies and facilitate restructuring; although there are particular issues for airline insolvencies. The issue of cross-border insolvencies further remains unaddressed in the IBC and is particularly relevant to airlines. This chapter aims to outline international best practices in corporate

insolvency and also India's approach; with a specific focus on the civil aviation sector. This chapter is divided into five parts. The first part is the introduction. The second part gives an overview of the goals of corporate insolvency and the legislative framework in India. Part III explores specific solutions for insolvencies of companies in the civil aviation sector internationally. Part IV details airline insolvencies in India and Part V concludes with some thoughts about the future legislative reform and development in India.

Keeper, Trish, 'New Zealand's New Temporary Safe Harbour and Business Debt Rehabilitation Scheme: Measures Introduced in Response to COVID-19' (2020) 20(7) *Insolvency Law Bulletin* 126-128

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.

Lewis, Paul B, 'The "Small Business Reorganization Act" and the Coronavirus' (2020) 20(7) *Insolvency Law Bulletin* 129-131

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.

Linklater, Lisa and Jodie Wildridge, 'Changing Times: Aspects of Creditor Enforcement in Administration and in the New Moratorium' (2020) 33(3) *Insolvency Intelligence* 96-98

Jurisdiction: UK

Abstract: Considers the possible impact on creditors of the temporary ban on insolvency proceedings imposed during the coronavirus pandemic. Reviews key aspects of the moratorium, the issues arising when administrators and courts are deciding whether to consent to enforcement of creditors' rights, the relevant creditor considerations, and how the moratorium's rules compare to those of the Corporate Insolvency and Governance Bill 2019-21.

Note: link to the [Corporate Insolvency and Governance Bill](#) on the UK Parliament website. Link to [Bill Documents](#) which explain the purpose of the Bill.

Lubben, Stephen J, '[Puerto Rico: Act III](#)' (2020) *Capital Markets Law Journal* (forthcoming)

Abstract: The Commonwealth of Puerto Rico and certain of its affiliated entities have filed 'bankruptcy' petitions under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act ('PROMESA'). This short paper provides a brief update on the current status of the restructuring process. As is well known, Puerto Rico's economy was already deeply distressed, and then came hurricanes, earthquakes, and COVID-19. Given the poor state of the local economy, the island arguably needs extensive debt relief. Before COVID-19, the oversight board had proposed modest debt relief, and even that was deemed unacceptable by bondholders, who argued for cuts to local pensions equal to those being faced by bondholders. As a result, the restructuring process is apt to continue to be quite lengthy and contentious. Puerto Rico's indeterminate legal status – as neither U.S. state nor independent nation – further complicates matters.

McCormick, Hamish, 'AFSA: Personal Insolvency and the Response to the COVID-19 Crisis' (2020) 32(2)
Australian Restructuring Insolvency & Turnaround Association Journal 45

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.

McHattan, Natasha, "'COVID-19' Update: Government Response to COVID-19 Pandemic' (2020) 32(2)
Australian Restructuring Insolvency & Turnaround Association Journal 6-12

Abstract: A summary of the key Government measures introduced in response to the economic and related impacts of coronavirus.

Mithal, Arnav, '[Amendments to Insolvency and Bankruptcy Code 2016 in Light of COVID-19](#)' (SSRN Scholarly Paper ID 3621341, 6 June 2020)

Jurisdiction: India

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.

Shearman & Sterling, 'Corporate Insolvency and Governance Act 2020 Gains Royal Assent' (2020) 35(10)

Journal of International Banking Law and Regulation N127-N128

Jurisdiction: UK

Abstract: Notes key measures introduced by the Corporate Insolvency and Governance Act 2020, their application to limited liability partnerships, and *Re Lehman Brothers Europe Ltd* (In Administration) (Ch D) on whether former administrators whose discharge from liability was not dealt with by the creditors' committee before it was disbanded had standing to apply to the court for discharge under the Insolvency Act 1986 Sch.B1 para.98(2)(c).

Shearman & Sterling, 'COVID-19: Changes to Be Made to UK Insolvency Regime' (2020) 35(7) *Journal of International Banking Law and Regulation* N88

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.

Shearman & Sterling, 'United Kingdom: COVID-19 – Insolvency Framework' (2020) 35(8) *Journal of International Banking Law and Regulation* N98

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.

Stuber, Walter, 'Brazil: COVID-19 - Insolvency Lawsuits' (2020) 35(8) *Journal of International Banking Law and Regulation* N89-N90

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.

Vaccari, Eugenio, '[Changes to UK Insolvency Rules in the Wake of Covid-19: A Much-Needed Help for Businesses or an Unjustified Harm to the Rule of Law?](#)' 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) 127-136 (published 30 June 2020)

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.

van Zwieten, Kristin, Horst Eidenmueller and Oren Sussman, '[Bail-Outs and Bail-Ins Are Better than Bankruptcy: A Comparative Assessment of Public Policy Responses to COVID-19 Distress](#)' (European Corporate Governance Institute, Law Working Paper No 535/2020, 8 August 2020)

Abstract: COVID-19 has severely disrupted the conduct of business around the globe. In jurisdictions that impose one or more 'lockdowns', multiple sectors of the real economy must endure prolonged periods of reduced trading or even total shutdowns. The associated revenue losses will push many businesses into bankruptcy. No public policy response can recover these losses. States can, however, act to reduce the amplification of the shock by the way in which they treat the cohort of newly bankrupt businesses. In jurisdictions where a well-functioning reorganisation procedure is capable of producing value-maximising outcomes in normal conditions, the temptation may be to subject this cohort to treatment by such procedures. This temptation should be resisted, not only because of the (significant) costs of these procedures, or because of concerns about institutional capacity to treat a high volume of cases, but also because such procedures are likely to be a poor 'fit' for the treatment of COVID-19 distress. In our view, the more attractive routes to relief are bail-ins (one-time orders to creditors or counterparties, or some class thereof, to forgive), bail-outs (offers to assume the debtor's liabilities, or a class thereof), or some combination of the two. In this paper, we explain why a public policy response is necessary to mitigate the amplification of the shock caused by trading shutdowns, and compare treatment by the prevailing bankruptcy law with treatment by bail-ins or bail-outs along a range of dimensions. We conclude by tentatively suggesting some principles to help guide the choice between bail-ins and bail-outs, and the design of either form of intervention.

INSURANCE LAW

Note: This section includes literature on business, life and health insurance.

Blight, Christine and Michael Chaaya, 'The Impact of PYS, PMIF and COVID-19 on Insurance in Superannuation' (2020) 31(9-10) *Australian Superannuation Law Bulletin* 170-172

Abstract: With the COVID-19 early release of superannuation measures, there has been significant commentary on the impact of making an early withdrawal from superannuation funds. But there is also the "sleeper" issue of how mass withdrawals will broaden the issue of

underinsurance while funds and their members are still coming to terms with the impact of the Protecting Your Super (PYS) and Putting Members' Interests First (PMIF) legislation.

Cotter, Daniel A, 'A Pandemic Walks into a Bar: The Covid-19 Pandemic and Business Interruption Insurance' (2020) 34(3) *CBA Record* 30–32

Introduction: Unlike most catastrophes and major events, which are geographically contained, the Covid-19 crisis has affected everyone across the United States, with the vast majority of Americans subject to shelter in place orders to "flatten the curve." With such orders came major business disruptions and closures. When people face the potential for major financial disruption to their households and businesses, they seek sources of money to help assuage the losses, as "desperate times call for desperate measures." One source of potential funds that many businesses have turned to is insurance and, more specifically, business interruption coverages. This article addresses those coverages and the coverage disputes storm that is brewing.

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.

Eyerly, Tred, '[Is the Presence of Coronavirus “Direct Physical Loss or Damage” Under a Property Policy?](#)' (2020) 24(7) *Hawaii Bar Journal* (forthcoming)

Fiodoroff, Natasha and Kim Waygood, 'Life Insurance and the Coronavirus Disease (COVID-19)' (2020) 36(1) *Australian Insurance Law Bulletin* 2–5

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.

Freeman, Iain, 'Business Interruption Insurance and COVID-19' (2020) 36(1) *Australian Insurance Law Bulletin* 6

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.

French, Christopher C, '[Forum Shopping COVID-19 Business Interruption Insurance Claims](#)' (2020) *University of Illinois Law Review Online* 187-202
Jurisdiction: USA

Abstract: Insurance disputes are typically governed by state law, and state insurance laws vary considerably, with some states being favorable to policyholders and others being unfavorable. With forum shopping, a plaintiff often has many choices regarding where it can bring a lawsuit, including multiple states in which to bring the case and whether to bring the case in federal or

state court. Of the over 900 COVID-19 business interruption insurance lawsuits filed thus far, more than 600 of them have been filed in federal court, with more than 100 filed as class actions. Many of them were also filed in states with insurance laws that are not favorable to policyholders.

Conventional wisdom provides that a plaintiff's chances of winning are generally much higher in state court than in federal court and that historically federal class actions against insurers have been successful only approximately twenty-five percent of the time. So, why were so many of the COVID-19 business interruption insurance cases filed in federal court in unfavorable states and as class actions when the historical chances of winning are so low in such forums, particularly as class actions?

This Essay provides some possible answers to that question. In doing so, it explores forum shopping considerations in general, the conventional wisdom regarding litigating in federal versus state court, and the empirical data regarding the odds of winning in state versus federal court.

French, Christopher C, '[COVID-19 Business Interruption Insurance Losses: The Cases for and Against Coverage](#)' (2020) 27 *Connecticut Insurance Law Journal* (advance online article, 1 July 2020)

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.

Giblett, Ray, Benjamin Kende and Timothy Chan, 'Travel Insurance in the Time of COVID-19' (2020) 36(1) *Australian Insurance Law Bulletin* 7–10

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.

Huberfeld, Nicole and Sidney Watson, '[Medicaid's Vital Role in Addressing Health and Economic Emergencies](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 103-109

Jurisdiction: USA

Abstract: Medicaid plays an essential role in helping states respond to crises. Medicaid guarantees federal matching funds to states, which helps with unanticipated costs associated with public health emergencies, like COVID-19, and increases in enrollment that inevitably occur during times of economic downturn. Medicaid's joint federal/state structure, called cooperative federalism, gives states significant flexibility within federal rules that allows states to streamline eligibility and expand benefits, which is especially important during emergencies. Federal emergency declarations give the secretary of Health and Human Services temporary authority to

exercise regulatory flexibility to ensure that sufficient health care is available to meet the needs of those impacted. Under federal guidance, states have implemented a variety of options to respond to the COVID-19 pandemic. In addition, Congress enacted short-term legislative responses that increase federal funding for Medicaid and open new pathways for eligibility and payment for some COVID-19 testing. These responses have softened the double blow of the pandemic and its attendant recession, but more federal and state action is necessary. Congress should enact an increase in federal funding that lasts beyond the public health emergency to help states ride out the economic impact of the pandemic; provide extra funding to encourage states to adopt Medicaid expansion; offer states more funding for enrollment efforts to reach newly uninsured populations; and require state and local demographic data collection as a condition of federal funding to inform evidence-based public health efforts. State governments should use all available emergency flexibility options to streamline application and enrollment processes and take advantage of increased federal funding possibilities.

Muobuikwu, Chibueze, '[An Appraisal of the Business Interruption Insurance Coverage in Nigeria in the Face of the Recent COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3677248, 22 April 2020)

Abstract: The outbreak of corona virus (COVID-19) pandemic has no doubt, occasioned an unprecedented global human and economic crisis. The resultant lockdown and abrupt shutdown of major economic activities in the world have apparently given rise to several business disruptions and economic losses across the world including Nigeria. According to Kristalina Georgieva, Managing Director of International Monetary Fund (IMF), the economic effect of the pandemic would result in 'a recession at least as bad as during the Global Financial Crisis or worse', and this is because the world is currently experiencing the most difficult economic situation since World War-II.

The consequence of the foregoing crisis is that many organizations would be seeking for ways to ameliorate the effect of the pandemic on their businesses. One of the options open to some businesses is to have recourse to their insurance policies, and the most significant insurance coverage which business owners would resort to, is the business interruption insurance coverage. This write up examines the concept of business interruption coverage; the extent which such insurance claims may be potent for the insured business owners in the face of the

recent pandemic, and the extent of its viability in the light of the Nigerian insurance legal framework.

Puławska, Karolina, '[Impact of the COVID-19 Pandemic on Insurance Companies in Europe: First Signals](#)' (SSRN Scholarly Paper ID 3708992, 10 October 2020)

Abstract: Action to prevent the spread of the Coronavirus Disease 2019 has been taken internationally. Service companies have been restricted, and a number of sports and cultural events have been postponed or canceled. As a result, the current pandemic has led to global socio-economic disruption. The current economic situation, caused by the pandemic, might significantly affect the functioning of insurance companies in Europe, as the insurance companies are in the delicate position of balancing a claims load with their capital and solvency stability. In this study, we evaluate the effects of the CoronaCrisis on the insurance companies. We use financial statements of insurance companies comprising European insurance companies during 2010-2020. The results unambiguously demonstrate that CoronaCrisis negatively affects the insurance sector's stability. However, we do not see the effect of CoronaCrisis on the Z-Score ratio. Moreover, our estimation results demonstrate that the CoronaCrisis increase the value of receivables owed to the insurance companies. Therefore, in light of the above, European legislators should discuss how to manage probable financial problems of insurance companies. A lack of proper management would certainly endanger the customers' safety and stability of the sector. Therefore, we confirm that government interventions in European countries needed to prevent the insurance sector from collapse.

Rosenbaum, Sara and Morgan Handley, '[Caring for the Uninsured in a Pandemic Era](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 110-116

Jurisdiction: USA

Abstract: On the eve of the COVID-19 pandemic, millions of Americans were uninsured despite a booming economy and a decade of health reform. The pandemic and its associated job losses have significantly increased the number of uninsured Americans – predominantly low-income, working-age adults and their families. Underlying drivers are the pandemic-triggered economic crisis, the inherent limits of the Affordable Care Act (ACA), the 2012 United States Supreme

Court's ruling on the constitutionality of its nationwide Medicaid expansion, and policies pursued by the Trump administration and certain states that further restrict the ACA's reach. Especially serious during a public health emergency, the uninsured are significantly less likely to receive necessary care and are more likely to forgo care because of cost. Health care safety net providers established and operated under federal, state, and local law offer vital care for the uninsured and medically underserved rural and urban populations and communities. Federal COVID-19 legislation enacted to date appropriates funding to directly support health care providers, but the administration's implementation approach may be limiting the effectiveness of this funding for the highest-need populations and communities. Beyond reforms aimed at improving how federally appropriated emergency health care funding is spent, states should use Medicaid to foster greater safety net provider stability and should pursue policies that promote accountability by tax-exempt hospitals with charity care obligations.

Scott, Rob and Zara Sher, 'South Africa: COVID-19 Related Insurance Claims and Coverage' (2020) 20(6) *Without Prejudice* 21–23

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.

Terracall, Lucy and Claire Gomo, 'Test Cases to Consider COVID-19-Related Business Interruption Insurance Coverage' (2020) 24(3) *Inhouse Counsel* 35-36
Jurisdictions: Australia and UK

Abstract: Test cases in both the United Kingdom and Australia will provide clarity as to whether there is coverage for business interruption consequent upon COVID-19. However, given that such guidance may be some time away, this article outlines some of the key steps in-house counsel should take now to preserve a potential insurance entitlement.

Weeks, Elizabeth, '[Private Insurance Limits and Responses](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 95-102

Jurisdiction: USA

Abstract: The COVID-19 pandemic exposed a number of existing flaws in the United States' patchwork approach to paying for and providing access to medical care. Shelter-in-place orders, social distancing, and other public health strategies employed to address the pandemic spawned a global recession, causing rapid and high unemployment rates in many countries. The U.S. unemployment rate peaked in April 2020 at 14.7%, higher than in any previous period since World War II. The United States has long hewed an anachronistic policy of relying heavily on private employers to provide health insurance to a substantial portion of the population. Those who are not eligible for employer-sponsored insurance (ESI) must fend for themselves in the non-group market, unless they qualify for government-sponsored insurance or safety net programs. Companion Chapters in this volume describe the COVID-related challenges for Medicaid and the uninsured, while this Chapter focuses on the private insurance market. The Patient Protection and Affordable Care Act of 2010 (ACA) dramatically overhauled health insurance in the United States. But those reforms have been under continuous threat of dilution or wholesale repeal, including a case currently pending before the U.S. Supreme Court that could strike down the entire Act. Thus, any evaluation of the benefits or demerits of the private insurance market must be read against the possibility that existing consumer protections could be eliminated with the stroke of a pen.

INTELLECTUAL PROPERTY

Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020),
Symposium II: Intellectual Property, Technology and Agriculture

- Caroline Ncube, '[The Musings of a Copyright Scholar working in South Africa: is Copyright Law Supportive of Emergency Remote Teaching?](#)'

Introduction: As we were reminded on twitter recently, The Statute of Anne, the world's first copyright law, came into effect on April 10, 1710, three centuries and a decade ago. Its title reads in part, "An Act for the Encouragement of Learning...". The veritable links

between copyright and the right to education have been established by several scholars ...The Statute of Anne is a forebear of South African copyright law which has its roots in English copyright law ... Against this background, this post asks 'is copyright still true to its original intent and is it supportive of emergency remote teaching in alignment with the right to education?'

- David Enrique Betancourt Cruz, '[An Exceptional International Intellectual Property Law Solution for COVID-19: Spurring Innovation to Facilitate Access to Affordable Medicines](#)'

Introduction: There is no doubt about the role international law can play in order to face the current COVID-19 pandemic. The answer is crystal clear: reform the current International Intellectual Property Law regime in order to accelerate innovation and facilitate access to affordable medicines worldwide. This could include examining how to better use the current flexibilities of the patent system so as to allow for more innovation, and effective co-operation/coordination in the scientific world. This unprecedented crisis of international scope offers us a rare opportunity to galvanize support for stronger international co-operation among the World Health Organization (WHO), World Intellectual Property Organization (WIPO), World Trade Organization (WTO), United Nations (UN), G20, and the European Union (EU) – as the top net exporter of pharmaceuticals. Reforming the international patent system and the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) is the type of real and pragmatic solidarity that we need to protect the most vulnerable individuals around the world.

- Jacqueline Mwangi, '[COVID-19 and the 'Unlocking' of Innovation: Reflections on Law and Innovation in sub-Saharan Africa](#)'

Extract from Introduction: I will reflect on the logics that have obscured innovation namely, international intellectual property law and formal organization of innovation through 'national innovation systems'. These two combine under the banner of legal modernization and economic growth, and have collectively undermined innovation that does not fit into their premises.

Akl, Jean, '[Patent Exceptions in the Time of a Pandemic](#)' (2020) 55(3) *les Nouvelles: Journal of the Licensing Executives Society* 204-205

Abstract: The blistering race and competition to find a COVID-19 vaccine is ongoing at a very fast pace. Pharmaceutical companies are scurrying to secure a legal monopoly for the treatment, to control the largest market share, and to ensure a considerable return on their investment, since the demand thereon would be immediate, global, and possibly extending for years and decades to come. Whether it is Gilead's Remdesivir or any other treatment or vaccine that is ultimately found to have a proven curative or preventive outcome, researchers are ramping up their efforts, all while anticipating that a second wave of coronavirus is expected to swipe the globe again, as the Spanish flu did a century ago.

Akpan, Emaediong and Chinonyerem Ememobong, '[COVID-19 and the Rebirth of Compulsory Licensing: An Examination of the Right to Health Care](#)' (SSRN Scholarly Paper ID 3606917, 21 May 2020)

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.

de Beer, Jeremy and E Richard Gold, 'International Trade, Intellectual Property, and Innovation Policy: Lessons from a Pandemic' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 579

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.

Bois, Mikhalien Du, '[State Use Provisions for Patent Law, and Expropriations: Some Comparative Law Guidelines for South Africa during the Covid-19 Crisis and Beyond](#)' (2020) 23 *Potchefstroom Electronic Law Journal* 1–35

Abstract: This article views section 4 of the Patents Act 57 of 1978 against section 25 of the Constitution of the Republic of South Africa, 1996 and Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994 (hereafter TRIPS). The purpose is to find a suitable framework for the state/government use/utilisation of patented products or processes for public purposes. A comparison is done with the Crown use provisions in United Kingdom, Australian and Canadian law to find a suitable approach to questions relating to remuneration for state use, the prior negotiations requirement set by Article 31 of TRIPS, and the public purposes and exclusive patent rights that would be included under state use. The COVID-19 international pandemic has caused a state of national disaster in South Africa, which is exactly the kind of situation of extreme urgency envisioned by the exception in Article 31 of TRIPS, which permits the state use of patents without requiring prior negotiations with the patent owner. In the battle against COVID-19 and its concomitant fallout, the South African government (and authorised private parties) would be permitted to utilise patent rights without explicit authorisation from the patent owner and without prior negotiations, but subject to the payment of reasonable remuneration by the government and other terms and conditions as agreed upon or as determined by a court. This may include making (manufacturing), using, exercising, and importing patented products (for example, personal protective equipment,

pharmaceuticals, ventilators and diagnostic tests) deemed necessary in the fight against COVID-19. Foreign jurisdictions considered in this article indicate that section 4 of the Patents Act 57 of 1978 may certainly benefit from an update to provide detailed guidance on the state use of patented products or processes for public purposes. In the interest of a timeous offensive against the COVID-19 virus, the patent provisions need a speedy update to allow state use compliant with TRIPS and the Constitution of the Republic of South Africa, 1996.

Bonadio, Enrico and Andrea Baldini, '[COVID-19, Patents and the Never-Ending Tension between Proprietary Rights and the Protection of Public Health](#)' (2020) 11(2) *European Journal of Risk Regulation* Special Issue - 'Taming COVID-19 by Regulation' 390-395

Contreras, Jorge L, '[Expanding Access to Patents for COVID-19](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 158-162

Jurisdiction: USA

Abstract: Two competing and linked sets of goals must be addressed when considering patent policy in response to a public health emergency. First is the allocation of existing resources among potential users (hospitals, patients, etc.); second is the creation of new technologies over time (innovation). Patents provide financial incentives to develop new technologies. Yet shortages of patented products often plague crisis response. In the case of COVID-19, allocative goals, particularly satisfying demand for patented medical products (e.g., vaccines, ventilators, PPE, and test kits), may be achieved through governmental interventions such as march-in and governmental use rights (compulsory licensing). But in cases involving the development of new technologies such as vaccines and therapies, incentive structures must be preserved to ensure that the private sector is appropriately motivated to act. In addition to patents, which reward inventors for financially successful innovations, a range of other incentives such as prizes, grants, and subsidies also exist to motivate technological innovation. Incentives like these, coupled with a requirement that resulting discoveries be made available on a broad and open basis, can achieve a balance between allocation and innovation goals. Governments can encourage such measures using both the incipient threat of compulsory licensing and the reward of procurement preferences and other up-front rewards.

Contreras, Jorge L, '[Research and Repair: Expanding Exceptions to Patent Infringement in Response to A Pandemic](#)' (2020) *Journal of Law and the Biosciences* Article Isaa014 (advance article, published 4 May 2020)

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.

Deb, Chaarushena, Osman Moneer and W Nicholson Price, '[Covid-19, Single-Sourced Diagnostic Tests, and Innovation Policy](#)' (2020) *Journal of Law and the Biosciences*, Article Isaa053 (advance online article, published 7 July 2020)

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.

Dhenne, Matthieu, '[COVID-19, Patents and Access to Healthcare: A French Perspective](#)' (SSRN Scholarly Paper ID 3614409, 1 May 2020)

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.

Fedorov, Valentyn et al, '[Theoretical Problems of Legal Regulation of Innovations in the Medical Field: Experience in Counteracting Covid-19](#)' (2020) 9(2) *Ius Humani Law Journal* 251-289

Abstract: The work is devoted to identifying the main problems of legal regulation of innovations in the medical field and developing the best options for solving them in the context of the Covid-19 pandemic. Thus, the research methodology is based on general and special scientific methods, in particular: formal legal, historical and legal, comparative analysis, and modeling. So, the procedure and issues to be considered are as follows. In the introduction, we will briefly highlight the origins of intellectual property rights issues in the medical field and the overall state of the pharmaceutical industry. In the first subsection of the third section, we will consider the positions of the main players in the pharmaceutical industry and the contradictions between them. In the second subsection, we will highlight the international obligations under TRIPS. In the third subsection, we will consider the consequences of their direct violation. In the fourth subsection, the impact of Covid-19 and the methods of legal regulation of medical innovations and patents under the TRIPS agreement will be discussed. In the fifth subsection, we will propose a way out and a compromise according to the Indian scenario. As a result of the study, contradictions were identified in the aspect of maintaining the balance of private and public interests between states and international pharmaceutical companies in the context of a

pandemic and proposed ways to resolve them within the existing legal methods under the TRIPS agreement to achieve an acceptable compromise.

Flynn, Sean et al, 'Implementing User Rights for Research in the Field of Artificial Intelligence: A Call for International Action' (2020) 42(7) *European Intellectual Property Review* 393-398

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.

Frye, Brian L, '[Literary Landlords in Plaguetime](#)' (SSRN Scholarly Paper ID 3701236, 28 September 2020)

Abstract: Copyright scholars disagree about whether we should conceptualize copyright as a form of property. This essay accepts the property metaphor and asks what it entails. It observes that if copyright is property, then copyright owners are landlords. It reflects on why copyright owners love the property metaphor, but hate the landlord metaphor. And it asks how conceptualizing copyright owners as landlords might affect our assessment of their moral claims.

Heled, Yaniv, Ana Santos Rutschman and Liza Vertinsky, '[The Need for the Tort Law Privileges of Self-Defense and Necessity in Intellectual Property Law](#)' (SSRN Scholarly Paper ID 3642833, 3 July 2020)

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’ (2020) *European Intellectual Property Review* (forthcoming)

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.

Jepson, Daniel, 'In Case of Emergency Exploit Rights?: A Summary of the Crown's Power to Exercise Intellectual Property Rights in an Emergency' (2020) 33(2) *Australian Intellectual Property Law Bulletin* 22–24

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.

Kovac, Mitja and Lana Rakovec, '[COVID-19 Pandemic, Long-Term Incentives for Developing Vaccines and Infectious Disease Market: IP Law under Stress](#)' (SSRN Scholarly Paper ID 3710888, 13 October 2020)

Abstract: Continents are facing an apocalyptic pandemic that pose a mortal danger to millions of its citizens. This paper seeks to address the role of intellectual property law in addressing the

problem of COVID-19 pandemic. We suggest that current international IP law regime and TRIPS Agreement do not pose an insurmountable impediment to access to the successful COVID-19 vaccine. Publicly advocated fundamental reform or even the abolishment of the current IP law regime under severe information asymmetries might be counterproductive and distortive. Governments can via existing compulsory licensing, advance purchase agreements and employment of patent-pools, research subsidies, reward mechanisms and reputational sanctions take necessary steps to effectively overcome any IP barriers in ensuring access to crucial medicines/vaccines especially during a COVID-19 pandemic. Moreover, the current rate of medical research on COVID-19 suggests that previous vaccine R&D ‘failures’ were driven by rather limited demand for such vaccines and where not the problem of inadequate IP-incentive stream. Furthermore, paper suggest that the current EU competition law rules on the horizontal exchange of information might be perceived as an impediment to innovate and might be temporary suspended. In addition, paper offers several substantive insights on an improved IP related public policy respond in the war against COVID-19.

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.

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

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

Masnun, Muh Ali, Eny Sulistyowati and Hananto Widodo, ‘[Patent Vs Trade Secret: Considering the Legal Protection of Covid-19 Vaccine in Indonesia Related to the State Intervention](#)’ (2020) 473 *Advances in Social Science, Education and Humanities Research* 352–356

Abstract: The purpose of this study is to analyze how the legal protection of Covid-19 vaccine through an intellectual property rights protection approach. The protection is to weigh between patents and trade secrets by linking state intervention with the basis that the Covid-19 pandemic has become a global problem so there must be state interference in this matter. Research used normative juridical supported by both primary and secondary legal materials. The results of the study that the legal protection of Covid-19 can use patents or trade secrets. Patents and trade secrets as an IPR regime the inherent exclusive rights granted by the state, however, are unlimited. One form of limitation of exclusive patent rights is the rules regarding compulsory licenses, while limiting exclusive rights to trade secrets by allowing the disclosure of trade secrets on the grounds of public health and safety. State intervention in protecting the public of patent or trade secret exclusivity is by applying compulsory licenses to patents or disclosing information on trade secrets.

Morten, Christopher and Charles Duan, '[Who's Afraid of Section 1498? A Case for Government Patent Use in Pandemics and Other National Crises](#)' (2020) 22 *Yale Journal of Law and Technology*

(forthcoming)

Jurisdiction: USA

Abstract: COVID-19 has created pressing and widespread needs for technologies such as vaccines and medical treatments, needs that may conflict—indeed, have already begun to conflict—with the exclusive rights conferred by United States patents. The U.S. government has a legal mechanism to overcome this conflict: government use of patented technologies at the cost of government-paid compensation under 28 U.S.C. § 1498. But while many have recognized the theoretical possibility of government patent use under that statute, there is today a conventional wisdom that § 1498 is too exceptional, unpredictable, and dramatic for practical use, to the point that it ought to be invoked sparingly or not at all, even in extraordinary circumstances such as a pandemic.

Yet that conventional wisdom is a recent one, and it conflicts with both history and theory. This article considers the role of § 1498 specifically in the context of national crises and emergencies like COVID-19, a context so far not addressed substantially in the literature on the statute. We find that government patent use is not nearly as exceptional as it is commonly made out to be, and indeed has been not only used but expanded (through statutory amendment) over the last century. Review of the development and use of the statute during both world wars and the post–September 11 period reveals widespread acceptance of government patent use as a tool for addressing imminent national-scale problems, and it illuminates particular features of government patent use that become especially pertinent in times of crisis. In the United States, government patent use and national emergencies have a close and special relationship; each has shaped the other.

Drawing from the lessons of history and analysis of the statute, we develop a novel framework for comparing § 1498 to other policy tools, including prizes, research grants, and patent buyouts. Under this framework, four features of § 1498 stand out: speed of invocation, flexibility in the scope of its use, post-crisis determination of compensation, and use of an impartial adjudicator. Whenever these four features are advantageous—which will be true in most national emergency situations, as we show—the U.S. government should strongly consider government patent use over patent buyouts and other policy tools. We show the advantages of

these four features in a case study: government patent use to expand supply and access to the COVID-19 treatment remdesivir. Accordingly, and contrary to the conventional view of § 1498, we conclude that government patent should be an ordinary and important tool of government policy.

Munoz Tellez, Viviana, '[The COVID-19 Pandemic: R&D and Intellectual Property Management for Access to Diagnostics, Medicines and Vaccines](#)' (SSRN Scholarly Paper ID 3640229, 10 April 2020)

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.

Ola, Kunle, '[The Role of Traditional Knowledge in the COVID-19 Battle](#)' (SSRN Scholarly Paper ID 3649053, 26 June 2020)

Abstract: This article addresses the role of traditional medicine in the race to find a cure for the corona virus (COVID-19). It situates traditional medicine within the traditional knowledge and Intellectual Property discussion. The paper discusses the increased gravitation towards using traditional medicine but also identifies the existence of scepticism towards its use. The paper calls on the African and indigenous communities who make up a large portion of the traditional medicine community to play their role in the fight against COVID-19. The battle is real, the

coronavirus ground is an intersecting one and the solution is out there, but we do not know for sure where the solution would come from and what quarters it will come from. It could be traditional medicine, medical science, or a curious combination of both. This paper advocates for collaboration, it advocates that we join hands to fight the virus. It advocates inclusion rather than exclusion.

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

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

Pila, Justine, '[Reflections on a Post-Pandemic European Patent System](#)' (2020) *European Intellectual Property Review* (forthcoming)

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.

Santos Rutschman, Ana, '[The Intellectual Property of COVID-19](#)' (Saint Louis University Legal Studies Research Paper No 2020-28, 2020)

Abstract: The response to COVID-19 is indissolubly tied to intellectual property. In an increasingly globalized world in which infectious disease pathogens travel faster and wider than before, the development of vaccines, treatments and other forms of medical technology has become an integral part of public health preparedness and response frameworks. The development of these technologies, and to a certain extent the allocation and distribution of resulting outputs, is informed by intellectual property regimes. These regimes influence the commitment of R&D resources, shape scientific collaborations and, in some cases, may condition the widespread availability of emerging technologies. As seen throughout this chapter, COVID-19 has exposed the shortcomings of ingrained reliance on intellectual property as a channel for the production and dissemination of medical technologies needed to address the problems posed by pandemics and epidemics. At the same time, COVID-19 has brought new life to countervailing efforts to explore legal and policy mechanisms to potentially offset some of the problems posed by the pervasiveness of, and shortcomings associated with, intellectual property dynamics. In tracing the dual ways in which intellectual property has affected preparedness for, and the response to, COVID-19, this chapter highlights three features of contemporary intellectual property regimes and examines their impact on innovation(s) needed to address public health crises. First, it explores the incentives function of patent law and policy, which places considerable emphasis on market-driven investment in R&D on medical technologies. In so doing, intellectual property becomes one of the driving forces of the commodification of goods—vaccines, drugs or ventilator parts, for example—which are best understood as public health goods. Second, the chapter illustrates how intellectual property has

reinforced an ethos of siloed R&D, as illustrated by the COVID-19 vaccine race, which at the time of writing includes hundreds of separate vaccine development projects. These siloes further extend into the allocative domain: with the development of medical technologies now largely steeped in proprietary frameworks, several countries have resumed the practice of reserving significant amounts of emerging technologies for their domestic populations, thus curtailing the possibility of equitable transnational approaches to a global public health crisis. This approach is commonly known in the field of vaccines as ‘vaccine nationalism.’ Nationalism skews the distribution of medical technologies developed during a pandemic, reducing opportunities for transnational coordination and potentially limiting access to these technologies by populations in economically disadvantaged parts of the world. The chapter ends nonetheless on a positive note, as COVID-19 has also made it abundantly clear that the legal infrastructure needed to address many of these problems is already in place. Early in the pandemic, several countries signaled that they would rely on intellectual property mechanisms to ensure broad and equitable access to medical technologies developed during (and possibly after) the pandemic, such as vaccines and treatments for COVID-19. These mechanisms embody different types of commitments to share intellectual property, data and knowledge. At the allocative level, a significant number of countries joined an ad hoc vaccine distribution facility (COVAX) coordinated by Geneva-based international organizations. These efforts, albeit nascent and, in many cases, likely transient nature, constitute meaningful steps towards a better innovation ecosystem for medical technologies needed to prevent and respond to future pandemic.

Santos Rutschman, Ana, [‘The COVID-19 Vaccine Race: Intellectual Property, Collaboration\(s\), Nationalism and Misinformation’](#) (2020) 64 *Washington University Journal of Law and Policy* (forthcoming)

Abstract: Vaccines have long played a crucial role in the prevention, mitigation and eradication of infectious diseases. More than any other recent outbreak, the COVID-19 pandemic has brought the phenomenon of the vaccine race to the forefront of personal, national and global preoccupations. This symposium contribution examines the early features and takeaways of the COVID-19 vaccine race in four parts. The essay begins by situating the ongoing vaccine race into contemporary frameworks for biopharmaceutical research and development (R&D). Part II examines the role of proprietary and nationalistic modes of vaccine production and distribution,

with an emphasis on the effects of patents and pre-production agreements on distributive outcomes of the COVID-19 vaccine race. Part III then turns to emerging efforts to counter overly patent-dependent and nationalistic approaches to vaccine R&D. It describes and assesses the role(s) played by the World Health Organization, as well as public-private partnerships like CEPI (the Coalition for Epidemic Preparedness Innovations) and Gavi, a Geneva-based vaccine procurement organization. Moreover, it offers a case study on COVAX, a quasi-global push and pull mechanism designed during the early stages of the COVID-19 pandemic to promote vaccine affordability and equity. Part IV concludes the essay by looking ahead to the end of the race and pondering the increasingly salient role of vaccine misinformation and disinformation in the uptake of emerging COVID-19 vaccines.

Santos Rutschman, Ana, '[Intellectual Property as a Determinant of Health](#)' (2021) *Vanderbilt Journal of Transnational Law* (forthcoming)

Abstract: Public health literature has long recognized the existence of determinants of health, a set of socio-economic conditions that affect health risks and health outcomes across the world. The World Health Organization defines these determinants as 'forces and systems' consisting of 'factors combin[ing] together to affect the health of individuals and communities.' Frameworks relying on determinants of health have been widely adopted by countries in the global South and North alike, as well as international institutional players, several of which are direct or indirect players in transnational intellectual property (IP) policymaking. Issues raised by the implementation of IP policies, however, are seldom treated as an integral part of analyses using these frameworks, even though IP bears direct effects on the dynamics of several determinants of health, such as access to health goods and health services. This article conceptualizes post-TRIPs IP as a contributing element to the literature on the socio-economic determinants of health. IP norms and policies have long been understood as playing a role in outcomes that closely align with determinants frameworks, but interventions inspired by institutions relying on determinants frameworks routinely fail to consider the role of international IP regimes. The article explores two consequences of this dissociation: first, it argues that TRIPs-implemented IP materially affects several determinants of health, both at the social and economic levels; and second, it argues that IP should be regarded on equal footing with other canonically recognized determinants of health. While taking steps towards the development of an IP framework that

can be articulated with, and incorporated by, literature on the determinants of health, the article presents three short case studies on pharmaceutical and agricultural technologies—HIV prophylactic drugs (Truvada); drugs and vaccines needed for epidemic and pandemic preparedness (Ebola vaccines and COVID-19 treatments like remdesivir); and genetically modified rice crops.

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

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

the form of a liability regime for critical components of vaccine technology—can remove some of the most salient transactional obstacles to the development and commercialization of new vaccines targeting infectious disease pathogens like Ebola, Zika and COVID-19.

Sarnoff, Joshua D, '[The Right to Repair in a Pandemic](#)' [2020] *Northwest University Law Review*, *NULR of Note* 1-3

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.

Sarnoff, Joshua D, '[COVID-19 Highlights Need for Rights to Repair and Produce in Emergencies](#)' (SSRN Scholarly Paper ID 3636551, 19 May 2020)

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.

Schneider, Marius and Nora Ho Tu Nam, '[Africa and Counterfeit Pharmaceuticals in the Times of COVID-19](#)' (2020) 15(6) *Journal of Intellectual Property Law & Practice* 417–418

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)

Shoebridge, Grant and Jennifer Enmon, 'COVID-19 Patent Rights in the Time of a Pandemic' (2020) 33(2) *Australian Intellectual Property Law Bulletin* 35–38

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.

Stothers, Christopher and Alexandra Morgan, '[IP and the Supply of COVID-19-Related Drugs](#)' (2020) 15(8) *Journal of Intellectual Property Law & Practice* 590-593
Jurisdictions: UK, USA, Austria, Germany and the Netherlands

Abstract: Considers the implications for intellectual property law of the widespread collaboration between pharmaceutical companies in developing treatments for COVID-19. Examines the mechanisms developed in the UK, the US, Austria, Germany and the Netherlands for bypassing trading rights and patent rights.

Tham, Benjamin and Mark Findlay, '[COVID-19 Vaccine Research, Development, Regulation and Access](#)' (SMU Centre for AI & Data Governance, Research Paper (forthcoming), 30 June 2020)

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.

Wachowicz, Marcos, '[Open Access to Scientific Innovation as a Means to Combat COVID-19](#)' (2020) *GRUR International*, Article ikaa093 (online advance article, published 21 July 2020)

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 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/>

International human rights law literature is listed above in the *Human Rights* section.

Ajiboye, Oluseyi, '[COVID-19: Assessing China's Culpability through International Law](#)' (SSRN Scholarly Paper ID 3638678, 13 July 2020)

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.

d'Aspremont, Jean, '[International Law as a Crisis Discourse: The Peril of Wordlessness](#)' in Makane Mbengue and Jean d'Aspremont (eds), *Crisis Narratives in International Law* (Brill, forthcoming 2021)

Abstract: International law lives off crises, lives its crises, and lives in crisis. International law is a discourse for crisis, about crisis, and in crisis. In short, international law is a crisis discourse. In that sense, engaging with international law from the vantage point of crisis hardly adds anything, let alone proves novel. International lawyers are the masters of a discourse that is all about containing, making, and surviving crises in an interventionist, and managerial spirit.

Against this backdrop, the very extensive literature that burgeoned following the outbreak of the COVID-19 pandemic is nothing but business as usual for a crisis discourse like international law. And yet, as this paper tries to demonstrate, should international law let the looming climate catastrophe – as well as the calamitous consequences of the measures necessary to avert it entail – be absorbed in its crisis narratives and in what is called here its ‘normally abnormal normality’, international law would be condemned to wordlessness.

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

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

Benvenisti, Eyal, [‘The WHO – Destined to Fail?: Political Cooperation and the COVID-19 Pandemic’](#) (University of Cambridge Faculty of Law Research Paper No 24/2020, 30 June 2020)

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.

Bergkamp, Lucas, '[State Liability for Failure to Control the COVID-19 Epidemic: International and Dutch Law](#)' (2020) 11(2) *European Journal of Risk Regulation*: Special Issue – 'Taming CID-19 by Regulation' 343-349

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.

Bernadini, Diego, 'The Need for a New Governance in Health: The Role of the World Health Organization' in Gian Luca Gardini (ed), *The World Before and After COVID-19: Intellectual Reflections on Politics, Diplomacy and International Relations* (European Institute of International Relations, 2020) 48-51
[Link to full text book on open access](#)

Bradlow, Daniel D and Stephen Kim Park, '[A Global Leviathan Emerges: The Federal Reserve, COVID-19, and International Law](#)' (2020) 114(4) *American Journal of International Law* 657–665

Abstract: The COVID-19 pandemic highlights the importance of the Federal Reserve as a leading actor in global economic governance. As a creature of U.S. domestic law with an international presence and operational independence, the Fed wields authority without a well-defined international legal status, international legal standards to guide its conduct, or accountability to

those around the world affected by its decisions. This Essay explores three conceptual approaches that could be used to develop norms, standards, and principles to address this gap.

Broberg, Morten, '[A Critical Appraisal of the World Health Organization's International Health Regulations \(2005\) in Times of Pandemic: It Is Time for Revision](#)' (2020) 11(2) *European Journal of Risk Regulation*: Special Issue - 'Taming COVID-19 by Regulation' 202–209

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.

Bueno De Mesquita, Judith and Benjamin Mason Meier, '[Moving Towards Global Solidarity for Global Health through Multilateral Governance in the Covid-19 Response](#)' 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) 31-39 (published 30 June 2020)

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.¹ 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.

Burci, Gian Luca, 'The Legal Response to Pandemics: The Strengths and Weaknesses of the International Health Regulations' (2020) *Journal of International Humanitarian Legal Studies* (advance online article, published 27 June 2020)

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.

Busby, Joshua W, 'Understanding the Anemic Global Response to COVID-19' *Journal of Health Politics, Policy and Law*, Article 8641542 (advance online article, published 28 May 2020)

Abstract: The COVID-19 outbreak is the most serious test of the international system since the 2008 global financial crisis. Rather than cooperate to contain and respond to a common threat, the world's leading powers, the United States and China, increasingly blamed each other through wildly speculative theories about the origins of the virus. The World Health

Organization (WHO) sought to coordinate a global response but it has been hamstrung and come under attack. Given past cooperation between major powers to mobilize and eradicate smallpox and previous U.S. leadership to fight HIV/AIDS and the 2014 West African Ebola crisis, the limited cooperation and lack of leadership are puzzling. What explains the anemic global response to date? This paper draws from structural international relations theory to suggest a partial but somewhat dissatisfying answer. International organizations are inherently weak faced with opposition by major powers. The international system simultaneously incentivizes states to cooperate and address common threats but at the same time encourages countries to take care of themselves, potentially at the expense of others. Which of these motives dominates cannot be explained by structural theory, requiring us to look to other factors such as the attributes of states or of leaders themselves.

Chaturvedi, Ipshita, '[China's State Responsibility for the Global Spread of COVID-19: An International Law Perspective](#)' (ORF Issue Brief No 373, Observer Research Foundation, 2020)

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.

Coco, Antonio and Talita de Souza Dias, '[Cyber Due Diligence in Public Health Crises](#)' 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) 297–307 (published 30 June 2020)

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.

Coco, Antonio and Talita de Souza Dias, '[Prevent, Respond, Cooperate: States' Due Diligence Duties Vis-à-Vis the COVID-19 Pandemic](#)' (2020) *Journal of International Humanitarian Legal Studies* (advance online article, published 2 June 2020)

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.

Danchin, Peter et al, '[The Pandemic Paradox in International Law](#)' (ANU College of Law, Legal Studies Research Paper No 20.18, 17 August 2020)

Abstract: This article examines a series of paradoxes that have rendered the international legal order's mechanisms for collective action powerless precisely when they are most needed to fight COVID-19. The 'patriotism paradox' is that disengagement from the international legal order weakens rather than strengthens state sovereignty. The 'border paradox' is that securing

domestic populations by excluding non-citizens, in the absence of accompanying regulatory mechanisms to secure adherence to internal health measures, accelerates viral spread among citizens. The 'equality paradox' is that while pandemics pose an equal threat to all people, their impacts compound existing inequalities.

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.

Eissa, Heidi, '[The Role of International Health Regulations in Combating COVID-19](#)' (SSRN Scholarly Paper ID 3616686, 2 June 2020)

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-democracies, deliberations are clearly influenced by international and public opinion. In the contemporary process, it is also clear that culture and identity play greater roles in shaping negotiation positions and moves, as manifested in the application of new techniques such as culture-based mediation and track-two facilitation.

Gostin, Lawrence O and Eric Friedman, '[Imagining Global Health with Justice: Transformative Ideas for Health and Wellbeing While Leaving No One Behind](#)' (2020) 108(6) *Georgetown Law Journal* 1535-1606

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 transformative impact on global health, greatly reducing health inequities – leaving no one behind in health in both ordinary and extraordinary times.

Gostin, Lawrence O, '[COVID-19 Reveals Urgent Need to Strengthen the World Health Organization](#)' (2020) 323(23) *Journal of the American Medical Association (JAMA)* Forum 2361-2362

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, contact 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.

Gostin, Lawrence O and Sarah Wetter, '[Using COVID-19 to Strengthen the WHO: Promoting Health and Science Above Politics](#)' *Milbank Quarterly Opinion* (6 May 2020)

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.

Gostin, Lawrence O et al, '[U.S. Withdrawal from WHO Is Unlawful and Threatens Global and U.S. Health and Security](#)', *The Lancet* (Comment Online First, 9 July, 2020)

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.

Gostin, Lawrence O, Roojin Habibi and Benjamin Mason Meier, '[Has Global Health Law Risen to Meet the COVID-19 Challenge? Revisiting the International Health Regulations to Prepare for Future Threats](#)' (2020) 48(2) *Journal of Law, Medicine & Ethics* 376-381

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.

Guidi, Sebastian and Nahuel Maisley, '[A Trillion Dollar Question: Who Should Pay for COVID-19?](#)' (2020) *New York University Law Review* (forthcoming)

Abstract: Who should bear the costs of the COVID-19 pandemic? While multilateral institutions are beginning to consider how to distribute them, President Trump and others have suggested suing China for damages. This 'lawsuit-approach' draws on a deep-seated conception of international law: states have a sovereign 'right to be left alone;' the only limit to this right is a correlative duty to avoid harming others. Those harmed can, then, sue for damages. In this view, who should pay for the costs of the pandemic (and how much) is not a normative question about justice, but rather one about factual causes and actuarial calculations.

In this Article, we explore this lawsuit-approach; not for its legal viability, but for its conceptual implications. We exhaustively and critically assess the doctrinal discussion on China's international liability for the pandemic, while also pointing at deep theoretical implications that this novel crisis has for international law more broadly.

Specifically, we make three novel claims. The first is that the arguments of the lawsuit-approach (based on the International Health Regulations and on the no-harm principle), when meticulously analyzed under existing international norms, run into unexpected obstacles. On

top of the jurisdictional and evidentiary hurdles noted by many, we argue that the lawsuit-approach faces difficulties stemming from the lack of deep normative agreement, in international law, on how to deal with unprecedented challenges such as COVID-19.

Our second claim draws on the first. Given the need to fill these normative voids, the lawsuit-approach is led back to the global conversation about the allocation of losses it carefully tries to avoid. This normative dependence cannot be spared by analogy with domestic law. Domestic law builds upon thick cultural understandings that fill empty legal concepts (such as ‘harm’ or ‘causation’) making them readily operative. International law, however, lacks an equivalent thick culture to fill these voids, and therefore requires complex reconstructions of what states owe to one another.

Our third claim further extends the foregoing reasoning. The lawsuit-approach relies on international law as a means to achieve ‘corrective justice,’ while denying its implications for ‘distributive justice.’ We argue that this is conceptually impossible: The general understandings we need to allocate responsibility for the pandemic are inherently distributive: To decide, an adjudicator would need to rely on a pretorian rule detailing how much effort and resources countries should dedicate to avoiding harm to other countries. That rule is conceptually distributive, independently of its content. The misfortunes derived from the pandemic are not conceptually different from the misfortunes of poverty, financial breakdowns, or climate change. Those going down the road of the lawsuit-approach might be unpleasantly surprised of where that road may lead them.

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

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

Halabi, Sam F, '[The Origins and Future of Global Health Law: Regulation, Security, and Pluralism](#)' (2020) 108(6) *Georgetown Law Journal* 1607-1654

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 promote individual and public health, as well as a successful campaign commencing in 1967 to address first smallpox and then additional vaccine-prevent-able 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.

Halpern, Michaela S, '[State Obligations Under Public International Law During Pandemics](#)' (2020) 35 *Emory International Law Review* 1-15

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.

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

Abstract: This chapter presents a critical analysis of the international law and institutions responsible for ensuring global health security. In 2005, the members of the World Health Organization adopted a thoroughly revised set of International Health Regulations, establishing an innovative and binding legal framework for declaring and responding to global health emergencies. At the heart of the Regulations was a particular conception of global health 'security,' which emphasized the early identification of health threats, and a coordinated global response that avoided undue interference with trade, travel, or human rights. In practice, the WHO has struggled to live up to these ideals, as it is unable to ensure that governments provide

accurate information about disease outbreaks or to prevent unduly harsh responses when disease outbreaks are publicized. At the same time, the WHO has struggled to resolve the tension between expert advice and political discretion that lies at the heart of the Regulations. And it has faced competition from other institutions involved in pandemic response and from alternative normative visions of global health security. This chapter excavates these key tensions and identifies directions for further research and reflection. The aftermath of the COVID-19 pandemic will provide an unprecedented opportunity to rethink the foundations of the international regime for global health security. This rethinking requires a clear understanding of the existing legal and institutional framework, and of the the lessons already learned from previous crises.

Ibrahim, Essam El-Din Mohamed, “[‘The Extent of the Link between the Hegemony of the Major Powers Scientifically and Economically and Novel Coronavirus Spread’: Study within the Framework of the Public International Law](#)” (2020) 7(8) *Open Access Library Journal* 1–17

Abstract: The international community is now less concerned with military forces as much as science, especially biological sciences, which increase the chance of possessing a large scientific force whose effects, if exploited by the bad exploitation, is stronger and fiercer than many military wars. This is what we are currently dealing with on the international scene in light of coronavirus (COVID-19) spread. The researcher believes in this paper that the reason for this is the competition of the five major countries to acquire all the power sources that would help to dominate the world and the global economy. This threatens certainly the international security and peace. In this context, the researcher believes that a great benefit to the United States of America destroying China and its significantly growing economy.

Ide, Tobias, ‘[COVID-19 and Armed Conflict](#)’ (SSRN Scholarly Paper ID 3603248, 20 May 2020)

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.

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

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

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

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

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

Klabbers, Jan, ‘[The Second Most Difficult Job in the World: Reflections on Covid-19](#)’ (2020) *Journal of International Humanitarian Legal Studies* 1–12 (advance online article, published 13 May 2020)

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.

Klein, Natalie, ‘[International Law Perspectives on Cruise Ships and COVID-19](#)’ (2020) *Journal of International Humanitarian Legal Studies* (advance online article, published 14 May 2020)

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.

Kotzamani, Panagiota ['Failure to Act in Times of Pandemic: Is There a Role for the International Criminal Law Doctrine of Superior Responsibility?'](#) 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) 311-320 (published 30 June 2020)

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.

Kum, Ekia Gilbert, ['What Can the World Health Organization \(WHO\), and the 1979 Geneva Convention \(CLRTAP\) Do, under the Rules of Public International Law \(PIL\), to Curb Air Pollution Which Has Amplified the Death Toll Rate of the Coronavirus-19 in the World?'](#) (SSRN Scholarly Paper ID 3635016, 24 June 2020)

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).

Lin, Ching-Fu, '[COVID-19 and the Institutional Resilience of the IHR \(2005\): Time for a Dispute Settlement Redesign?](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 269-290

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.

Liu, Hin-Yan, Kristian Lauta and Matthijs Maas, 'Apocalypse Now?: Initial Lessons from the Covid-19 Pandemic for the Governance of Existential and Global Catastrophic Risks' (2020) *Journal of International Humanitarian Legal Studies* (advance article, published 13 August 2020)

Abstract: This paper explores the ongoing Covid-19 pandemic through the framework of existential risks – a class of extreme risks that threaten the entire future of humanity. In doing so, we tease out three lessons: (1) possible reasons underlying the limits and shortfalls of international law, international institutions and other actors which Covid-19 has revealed, and what they reveal about the resilience or fragility of institutional frameworks in the face of existential risks; (2) using Covid-19 to test and refine our prior 'Boring Apocalypses' model for understanding the interplay of hazards, vulnerabilities and exposures in facilitating a particular disaster, or magnifying its effects; and (3) to extrapolate some possible futures for existential risk scholarship and governance

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

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

Mazzuoli, Valerio de Oliveira, '[International Responsibility of States for Transnational Epidemics and Pandemics: The Case of COVID-19 from the People's Republic of China](#)' (2020) 23 *Revista de Direito Civil Contemporâneo* 1-36

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.

Menezes, Wagner and Henrique Marcos, '[International Law Post-Pandemic](#)' in Gonzalo Levi Obregón Salinas, *Lo Multidisciplinario del Antes y Después del Covid-19* (Thomson Reuters, 2020)

Abstract: This paper reflects on International Law in the face of the COVID-19 (coronavirus disease 2019) viral pandemic. First, the article examines the role of International Law against the pandemic, focusing mainly on the regulatory framework available to the World Health Organization (WHO). Then, based on the examination of the stance of some States before the pandemic and the action of the WHO, the text points out evidence that the current geopolitical conjuncture still holds national sovereignty as a maxim. Further, the document explains how maintaining the primacy of sovereignty is not an adequate strategy to deal with contemporary times' global challenges. Finally, the article highlights the relevance of assuming a systemic perspective in the practice of contemporary International Law, which, despite its flaws, should still be used as an instrument for peace and international cooperation.

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

Abstract: The COVID-19 pandemic has been accompanied by reprehensible cyber operations directed against medical facilities and capabilities, as well as by a flood of misinformation. Our goal in this article is to map out the various obligations of states under general international law and under human rights law with regard to malicious cyber and misinformation operations conducted by state and non-state actors during the pandemic. First, we consider cyber operations against health care facilities and capabilities, including public health activities operated by the government, and how such operations, when attributable to a state, can violate the sovereignty of other states, the prohibitions of intervention and the use of force, and the human rights of the affected individuals. Second, we perform a similar analysis with regard to state misinformation operations during the pandemic, especially those that directly or indirectly affect human life and health, whether such misinformation is targeting the state's own population or those of third states. Finally, we turn to the positive obligations that states have to protect their populations from hostile cyber and misinformation operations, to the limits that human rights law imposes on efforts to combat misinformation, and to protective obligations towards third states and their populations. We argue that international law can play a robust role in addressing the COVID-19 pandemic. For the most part, the parameters of the relevant

legal rules are reasonably clear. But significant areas of uncertainty remain. For instance, at least one state, wrongly in our view, rejects the existence of the general international law rule most likely to be breached by COVID-19-related cyber operations, sovereignty. Another major issue is the extraterritorial application of the human rights obligations to respect and protect the rights to life and health in the cyber context, which we examine in detail. It is difficult to find anything positive about this horrific global pandemic. However, perhaps it can help draw attention to the criticality of moving forward the international cyber law discourse among states much more quickly than has been the case to date. Many states have been cautious about proffering their interpretation of the applicable law, and to some extent rightfully so, but caution has consequences and can leave us normatively ill-prepared for the next crisis. Some states have condemned the COVID-19-related cyber operations, although seldom on the basis of international law as distinct from political norms of responsible state behavior. Hopefully, they will add legal granularity to future statements. But all states, human rights courts, human rights monitoring bodies, the academy, the private sector and NGOs must take up the challenge presented by this tragic pandemic to move the law governing cyberspace in the right direction.

Milej, Tomasz, '[Pandemic, Solidarity and the Foundations of International Law](#)' (Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020), Symposium IV: Governance, Rights, and Institutions)

Extract from Introduction: One school of thought, it may be referred to as voluntarist orthodoxy, denounces any attempts by scholars to translate their moral insights into rules of law binding on others. Common interest is not what international law is about, as it is not even clear if it goes beyond restricting recourse to war. The international law is what the States want it to be; it is based on the voluntary acts of States that fix certain policy choices in legal norms....

International law constructed along the voluntarist orthodoxy doesn't help in the time of pandemic. It leaves the poorer at the good will of the mighty, for it largely ignores the actual power relations between states. The inter-state deals struck "voluntarily" and the policy choices thus fixed reflect the bargaining power of the States. This being the case, the international law is likely to reinforce and perpetuate inequalities, rather than being a check against the use of political power. As the post-corona crisis is likely to strike the poorest nations hardest, the bright future for some may mean dim prospects for others.

Mullen, Lucia et al, '[An Analysis of International Health Regulations Emergency Committees and Public Health Emergency of International Concern Designations](#)' (2020) 5(6) *BMJ Global Health*, Article e002502, 1-10

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.

Nesi, Giuseppe, [‘The United Nations Principal Political Organs and the Universal Pandemic: How to Meet, Negotiate and Deliberate under “New, Extraordinary and Exceptional Circumstances”?’](#) (2020) 70 *Questions of International Law, Zoom-out* 5-20

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.

Nguyen, Trang (Mae), [‘International Law as Hedging: Perspectives from Secondary Authoritarian States’](#) (Temple University Legal Studies Research Paper, forthcoming, 2020)

Abstract: This essay is part of a symposium on Tom Ginsburg’s article, *Authoritarian International Law?* Tom Ginsburg’s important article comes at a critical time. The COVID-19 crisis has spurred heated debates about political regimes vis-à-vis countries’ bureaucratic capacity. Political regime type is the core independent variable in Ginsburg’s conceptualization of authoritarian international law—a global projection of authoritarian states’ domestic politics. This essay echoes Ginsburg’s insightful observation but complicates it by shifting the focus to the less-known perspectives of secondary authoritarian countries. I use a matrix case study of two smaller states, Vietnam and Cambodia, on two prominent issues, the South China Sea (SCS) and the Belt and Road Initiative (BRI), to demonstrate small states’ effort to use international law to ‘hedge’ big powers. As the case studies show, small authoritarian states, not unlike other small states, prefer a pluralist vision of international law, even if they may at times embrace the alternative model offered by big authoritarian powers. These states thus have an important, perhaps unexpected, role to play in preserving the pluralist international legal order and mitigating the hegemonic tendencies of authoritarian international law.

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.

Omodele, Adeyemi, '[The Dichotomy between International Relations and International Law in the Face of the Global COVID-19 Pandemic](#)' (2020) 11(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 61–72

Abstract: In addressing global issues, international relations and international law have always worked together since time immemorial. The nexus between both fields has however not flowed seamlessly or naturally. The nexus seems to be changing and needs a re-conceptualization within the global system especially with the nature of the threat posed by new pandemics such as the Corona Virus otherwise called the COVID - 19. With the emergence of COVID - 19 pandemic, strains are gradually increasing between international relations and international law such that despite consistent scholarly attention on the fields, their points of connection, both seems not to have engaged in a coherent international intercourse and coordination especially as regards to the efforts aimed at effective identification, control and prevention of the disease. This is surprising, given the marginal place of international relations and international law in global epidemiology. This paper is based on qualitative research. The theory adopted was collective security theory in international relations (liberalism). Collective security is a system by which states have attempted to prevent or stop wars through international treaties and conventions. International relations, international law and COVID - 19 were discussed on separate headings given details to each. It provides an outline of the convergence and dichotomy between both fields in the control of the COVID - 19 pandemic and explicated the ways we can build on the strengths of both fields and overcome inherent

contextual dissimilarities with a view to having a global peaceful medical environment. The concluding part of the paper dealt with how to jointly curtail the pandemic globally.

Paddeu, Federica and Michael Waibel, '[The Final Act: Exploring the End of Pandemics](#)' (University of Cambridge Faculty of Law Research Paper No 27/2020, 2020)

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.

Paparinskis, Martins '[COVID-19 Claims and the Law of International Responsibility](#)' (2020) *Journal of International Humanitarian Legal Studies* (accepted manuscript)

Abstract: This paper considers the role that the law of international responsibility, both State responsibility and responsibility of international organizations, plays in claims and disputes about COVID-19. It proceeds by examining in turn the rubrics of the internationally wrongful act, content of responsibility, and implementation of responsibility. On most points, blackletter law is perfectly capable of answering the questions raised by claims related to COVID-19. But evolutionary potential inherent in the normal international legal process should also be noted, whether it manifests itself by further strengthening current rules, elaborating vague rules by application, filling gaps in current law by generating new practice or even, exceptionally, revisiting rules currently in force.

Perry, Ronen, '[Who Should Be Liable for the COVID-19 Pandemic?](#)' (2020) *Harvard Journal on Legislation* (forthcoming)

Abstract: The Article systematically and critically evaluates the potential liability of various 'suspects' for the physical, emotional, and economic losses arising from the COVID-19

pandemic: the country-of-origin (the People's Republic of China), international organizations (particularly the World Health Organization), federal, state, and local governments and officers, businesses, and healthcare providers. It concludes that existing legal frameworks fail to provide an appropriate solution for victims, primarily because each of the potential defendants can easily evade liability. The Article then proposes a new hybrid (international-domestic) regime, inspired by the international framework for the compensation of victims of nuclear incidents and by the September 11th Victim Compensation Fund.

Phillips, Roger Lu and Layla Abi-Falah, '[Criminal Responsibility for the COVID-19 Pandemic in Syria](#)' (SSRN Scholarly Paper ID 3664268, 30 July 2020)

Abstract: Since the beginning of the Syrian conflict in 2011, the Syrian government has bombed healthcare facilities, attacked healthcare workers, and diverted humanitarian medical aid. These attacks not only decimated hospitals and led to numerous fatalities, but also crippled Syrian healthcare capacity leaving it entirely unprepared to address the COVID-19 pandemic. Initially denying that COVID-19 had affected the country, the Syrian government has since acknowledged its existence and accepted international humanitarian aid. However, it has renewed its approach to punish and suppress opponents by diverting medical aid away from parts of the country at highest risk of infection, namely current and former opposition-held areas such as Idlib, impeding healthcare's ability to respond to COVID-19 in such areas. Health experts now estimate that an unmitigated outbreak in Idlib, the last redoubt of the opposition, could result in the deaths of up to 100,000 persons due to this illness – a situation that would not have arisen but for the Syrian government's campaign of violence against healthcare.

It is one of the foundational principles of international humanitarian law that the intentional targeting of health facilities constitutes a war crime. The Syrian Government's attacks on such facilities have been well-documented and condemned in a series of reports issued by UN entities, journalists and non-governmental organizations. But the death and suffering caused by these attacks is not fully encompassed by reference to direct casualties alone. Thousands of Syrians have been deprived of routine medical treatment for acute illnesses as well as communicable diseases as a result of a deliberate strategy of eradicating access to healthcare. This article examines whether individual criminal responsibility may obtain for the Syrian government's campaign of violence against healthcare which has led to the deaths and suffering

through injuries and illness including due to COVID-19. By examining the concept of *dolus eventualis*, it concludes that the Syrian government's acts and omissions in furtherance of a policy to attack healthcare as an institution constitutes murder and extermination as crimes against humanity and war crimes. It also concludes that by focusing the ire of the military on specific groups of civilians and intentionally causing their suffering, government and military officials may be guilty of the crimes against humanity of persecution, other inhumane acts, and torture.

Poole, Danielle N et al, '[Responding to the COVID-19 Pandemic in Complex Humanitarian Crises](#)' (2020) 19 *International Journal for Equity in Health*, Article 41 31 March, 2020

Abstract: Over 168 million people across 50 countries are estimated to need humanitarian assistance in 2020. 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.

Qin, Qian and Tianyu Luo, '[Pandemic Response and International Law: The Case of COVID-19](#)' (2020) 3(1) *Traditional Medicine and Modern Medicine* 1–6

Abstract: The coronavirus pandemic is currently raging throughout the world. The ensuing crisis has acquired a multidimensional nature, affecting all levels of society, including international health legal order. For international health law, the World Health Organization (WHO) 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 contagious diseases. Against this backdrop, this paper evaluates

the issues and disputes under the current regimes of international health law. The paper then offers some thoughts by way of answers to the research questions.

Quintana, Francisco-José and Justina Uriburu, '[Modest International Law: COVID-19, International Legal Responses, and Depoliticization](#)' (2020) 114(3) *American Journal of International Law* (forthcoming)

Abstract: In this essay, we analyze two sets of international legal responses to the COVID-19 pandemic: the academic discussion on state responsibility and the deployment of international law as a tool for resistance. We argue that both approaches made significant contributions but concealed the role of the discipline in the production of the conditions that led to the pandemic and its unequal impact. These interventions reflect a 'modest international law'; an understanding of the discipline that hinders change and is ethically weak. We contend that repoliticization can help reclaim international law's ambition and responsibility.

Rashkow, Bruce, '[U.N. Peacekeeping in a Time of Pandemic: Reconciling Armed Conflict Management While Helping to Fight COVID-19](#)' (2020) *Journal of National Security Law and Policy* (forthcoming)

Abstract: In addition to the initiative of the UN Secretary General to pause hostilities around the world --- and the dangers that such hostilities inherently raise for U.N. peacekeeping operations --- COVID-19 is having a significant impact on how those operations are being conducted. The pandemic has presented new challenges for U.N. peacekeeping forces to keep themselves safe from the coronavirus, while also seeking to facilitate peace in troubled areas. Working with the WHO and others, the United Nations has developed extensive guidelines for dealing with the pandemic not only in its headquarters in New York, Geneva, Vienna, and Nairobi, but throughout the world, including its 13 current peacekeeping missions. These missions currently involve 95,000 military and police personnel from some 34 countries wearing Blue Helmets, mostly in Africa.

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.

Sander, Barrie and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Summary: Each contribution in this symposium appraises the impact of COVID-19 from different perspectives of international law. There are over 30 contributions, some of which feature as part of complementary clusters of analysis around a given topic area. Many of the authors in this symposium question whether international law, or its failure, is complicit in the COVID-19 crisis. Others ask how international law can or should respond to the pandemic.

Some of the contributions are listed here. Others are listed under other topic headings in this bibliography. [Link to PDF of entire Symposium](#)

- Philippe Sands: [COVID-19 and International Law](#)
- Leslie-Anne Duvic-Paoli: [The COVID-19 Pandemic and the Limits of International Environmental Law](#)
- Pedro Villarreal: "Can They Really Do That?" States' Obligations under the International Health Regulations in Light of COVID-19 ([Part 1](#) and [Part 2](#))
- Mark Eccleston-Turner: [The Declaration of a Public Health Emergency of International Concern in International Law](#)
- Dina Lupin Townsend: [COVID-19 and the Human Right to Water and Sanitation](#)
- Martins Paparinskis: [COVID-19 and the Foundations of International Law](#)
- Ntina Tzouvala: [The Combined and Uneven Geography of COVID-19, or On Law, Capitalism and Disease](#)
- Marcos D. Kotlik and Ezequiel Heffes: [COVID-19 in Conflict-Affected Areas—Armed Groups as Part of a Global Solution](#)

- Solon Solomon: [Israel and its International Law COVID-19 Obligations Towards Gaza](#)
- Craig D. Gaver and Nishadee Parera: [Will the UN Security Council Act on COVID-19?](#)
- Fabricio Guariglia: [COVID-19 and International Criminal Law](#)
- Margherita Melillo: [The Right to Enjoy the Benefits of Scientific Progress at the Time of the COVID-19 Pandemic](#)
- Alonso Gurmendi: [COVID-19 and the 'Western Gaze'](#)
- Marina Aksenova: [Quantum Leaps of International Law](#)
- Gina Heathcote and Michelle Staggs Kelsall: [Law in the Time of Corona \(or: Dear Dr...\)](#)

Sander, Barrie and Nicholas Tsagourias, 'The Covid-19 Infodemic and Online Platforms as Intermediary Fiduciaries under International Law' (2020) *Journal of International Humanitarian Legal Studies* (advance online advance article, published 13 June 2020)

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.

Sasil, Pascal and Samruthi Karthikeyan, '[International Legal Action Against The People's Republic of China Over COVID-19 Woes: Prospects, Probabilities and Possibilities](#)' (SSRN Scholarly Paper ID 3707983, 15 March 2020)

Abstract: COVID-19, the virus that incubated in Wuhan is now all over the face of the Earth, threatening the existence of mankind as a whole. It is on a rampage, ravishing so-called global superpowers too. Ever since the day the virus was discovered, there has been an air of uncertainty surrounding the same. Various controversial claims and assumptions have been made regarding the source of the virus and the possibility of it being a potential bioweapon. With most of these claims pointing towards the Wuhan Institute of Virology and thereby shifting the blame on China, these will remain as mere claims until proven otherwise! However, one concrete criticism made by the global community is regarding China's breach of responsibility to

the world nations, mandated by various international obligations under the World Health Organization and the United Nations.

As the famous saying goes, 'information is wealth'. Timely information during a pandemic is nothing but gold dust. This information sharing is precisely what China has failed to do in accordance with various legislations such as The International Health Regulations, 2005. Through its acts of disinformation and misinformation, China seems to have made a mockery of the COVID-19 outbreak. Since Day One, not only has it made a gross violation of various existent International Legislations and Regulations but has gone past the basic humanitarian concerns expected out of a civilized international community. The repercussions of the same are unprecedented both in terms of the death toll and monetary losses. The international arena is seeing a never before outrage from all quarters with the tagline, Beware! The lawyers are coming becoming a worldwide trend. With many nations expressing their displeasure and hinting at the possibility of legal action against China, the legal aspect of the debate comes in. The authors will put forward the timeline of the COVID-19 pandemic and highlight the misdemeanors of China by quoting various incidents that stand in violation of various International legislations such as the International Health Regulations of 2005 and Responsibility of States for Internationally Wrongful Acts of 2001.

Moving forward, the authors would analyze the various different courses of legal options available, from Dispute Resolution Mechanisms to the International Court of Justice. Furthermore, the authors aim to put forward the complications in enforcing legal action against China by citing various international precedents. The defense on part of the Chinese Republic and the chances of the international community forcing China into reparations through non-judicial means will also be examined. At length, the authors, to the best of their abilities, would conclude on the three P's, the possibility, probability, and the prospects of successful legal action against The People's Republic of China for its COVID-19 misdemeanors and subsequent international woes.

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

the respect the sovereignty of other states, the prohibitions on intervention and the use of force, and international human rights law obligations and prohibitions.

Sharma, Arya and Pratibha Malik, '[International Humanitarian Law, Migration and Internal Displacement: In Light of COVID -19 and Otherwise](#)' (2020) 7(2) *International Journal of Research and Analytical Reviews* 100-109

Abstract: The world is confronting a worldwide general wellbeing crisis. Indeed, even in the most evolved nations, the safety of livelihood is in danger. As the pandemic develops, coronavirus asymmetrically influences the world's most weak populations, including migrants, refugees and internally displaced person (IDPs). The size and speed of the spread of pandemic have brought the focus on the fact that how interconnected and interdependent the countries are.

A large number of groups depend upon the International Humanitarian Law especially during this challenging crisis of covid-19. The legalised structure which is applicable at the moment of the armed dispute is IHL i.e. International Humanitarian. IHL is the part of public international law. IHL is important here because it do acknowledge the obligation of both the state & non state arm group which acted as the party to armed dispute, having law provisions that give parties to the conflict, third States and international humanitarian organizations important ground rules to guide the humanitarian activities including when a pandemic erupts. There are numerous international organisations actively participating in providing safeguards to the needy.

The most vulnerable are the ones who are migrants, refugees or are currently displaced due to one reason or the other. This has been explained with regard to few different countries in the paper.

The need of the hour is to make strict rules to prevent the spread of the virus and growth of social strategies and projects to limit the monetary effect of Covid-19 on families.

The current situation needs the productive measures. But this situation can not justify the claim that the right are to be put aside only for the reason of inconvenience caused because of this disease. Therefore, the IHL, specifically in this time, perform its job better, which also reminds us of the primary rules of the mankind which each one of us is working hard to preserve.

Silke, Andrew, 'COVID-19 and Terrorism' (2020) 30(6) *Intersec: The Journal of International Security* 8-10

Abstract: As the international community continues to grapple with the COVID-19 pandemic it is clear that its economic and social impact will be deep and long lasting. Evidence suggests it is already having an impact on terrorism trends across the globe and it is worth considering in more detail its potential impact threats in the medium and long-term.

Spedaletti, Adriano, 'The Subjects of International Law and Covid-19' in Gian Luca Gardini (ed), *The World Before and After COVID-19: Intellectual Reflections on Politics, Diplomacy and International Relations* (European Institute of International Relations, 2020) 44-47

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

Stephan, Paul B, '[Sovereignty and the World Economy](#)' (Virginia Public Law and Legal Theory Research Paper No 2020-57, 20 July 2020)

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.

Taylor, Allyn L et al, '[Solidarity in the Wake of COVID-19: Reimagining the International Health Regulations](#)' (2020) 396(10244) *The Lancet* 82-83

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.

Udowoima, Memabasi and Inemesit Udongwo, '[The Impact of the Use of Biological Weapons in Warfare: COVID-19 as a Glimpse](#)' (SSRN Scholarly Paper ID 3696669, 21 September 2020)

Abstract: The Coronavirus has brought about a disruption in nearly every facet of life. The ease of the spread of the virus has made it even deadlier. The virus has been compared to the Black Plague, a disease that was said to have killed about a third of the world's population. The Black Plague was spread by the Mongol Forces as a biological weapon into Ukraine causing a spread throughout Europe. The Coronavirus similarly has caused the death of millions throughout continents causing some to suspect that it is a biological weapon. This article explores the possibility that the Coronavirus is a biological weapon and the legal regime governing the use of biological weapons. The article ends by giving recommendations to prevent the use of biological weapons and punish the perpetrators of the use of biological weapons.

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

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

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

Abstract: The coronavirus (SARS-CoV-2) pandemic is currently raging throughout the world. The ensuing crisis has acquired a multidimensional nature, affecting all levels of society. Measures adopted by domestic authorities have included a broad spectrum of restrictions: from general alerts to mandatory quarantines and isolations of individuals, to blanket travel bans and cordoning-off of cities and, in some cases, countries. Many governments have declared states of emergency, thereby assuming exceptional powers. This dire crisis leads to our core questions: What are the relevant obligations, powers and procedures under public international law? Have they been complied with? What role, if any, has international law, via its institutions, played so far? The World Health Organization, a specialized agency of the United Nations, is the international institution with a core mandate in issues of global health. Moreover, the International Health Regulations (IHR) is the main legally binding instrument laying down rules for the cross-border spread of disease. Against this backdrop, in order to address the core questions, this paper provides an overview of the IHR in light of current issues and disputes. The paper then evaluates those issues and disputes under other regimes of international law, such as human rights, trade law, peace and security law, and the law of development finance. Lastly, the paper offers conclusions by way of answers to the research questions.

von Tigerstrom, Barbara and Kumanan Wilson, '[COVID-19 Travel Restrictions and the International Health Regulations \(2005\)](#)' [2020] 5 *BMJ Global Health*, Article e002629

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.

Weerth, Carsten, 'International Response to COVID-19: Initiatives and Declarations by the UN, Who, Wco, WTO and Other Stakeholders on World Trade, Customs Law and Solidarity in a Human Emergency' (2020) 1(3) *Lex Humanitariae* 9-21

Abstract: The worldwide spread of the SARS-CoV-2 virus from Wuhan, Hubei province, China, in 188 countries (according to WHO figures: 216 countries, territories and economic areas) represents an unprecedented threat to Global Health and Global Trade in the times of Globalization. The virus triggers COVID-19 (Coronavirus disease 2019), which can range from a symptom-free course to severe respiratory syndrome (pneumonia) and affect other organ systems as well. More than 10 million persons were infected worldwide in the end of June 2020, more than 500,000 persons die from COVID-19 (as of 30 June 2020) – a truly global pandemic spread. The United Nations (UN), World Health Organization (WHO), The Food and Agricultural Organization of the UN (FAO), World Trade Organization (WTO), World Customs Organization (WCO) and its stakeholders and partners have in the light of the global COVID-19 pandemic joined forces and developed joined trade policies and legal approaches and declarations in order to combat the social and economic impact COVID-19. This paper gives an overview of the initiatives and different approaches and sorts them in different categories: (Joint) Declarations, Lists / Databases, Reports, Guidance, Warnings and Press Releases.

Wong, Meagan, '[The Law of State Responsibility and the Covid-19 Pandemic](#)' 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) 321-330 (published 30 June 2020)

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.

Abbott, Frederick M, '[The TRIPS Agreement Article 73 Security Exceptions and the COVID-19 Pandemic](#)' (Research Paper 116, South Centre, Geneva, 1 August 2020)

Abstract: The COVID-19 pandemic has caused Governments to contemplate measures to override patents and other intellectual property rights (IPRs) in order to facilitate production and distribution of vaccines, treatments, diagnostics and medical devices. This paper discusses whether the COVID-19 pandemic may be considered an 'emergency in international relations' and how WTO Member States may invoke Article 73 ('Security Exceptions') of the TRIPS Agreement as the legal basis for overriding IPRs otherwise required to be made available or enforced. It concludes that the pandemic constitutes an emergency in international relations within the meaning of Article 73(b)(iii) and that this provision allows Governments to take actions necessary to protect their essential security interests.

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

Abstract: International Investment Law exists to guide the business relationship between States globally. Even though there is no one single document that says International Investment Law, Bilateral treaties between States exist to guide this relationship and place it within the bounds of Law. The expression of treaties and conventions relating to international investment have revealed the objectives of the Law to be to protect foreign investors, grant protection to attract foreign investment, and foster economic development. It therefore becomes imperative to explain in simple terms to private investors what international investment law entails.

Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South

Note: The 37 essays contributed to this four week long symposium in May 2020 are from Africa, Asia, Europe, the Middle East, the Caribbean, North America and Latin America. See the introduction to the Symposium: Gathii, James T et al, '[International Economic Law in the Global South and COVID-19](#)'. See also a [video introducing the Symposium](#).

The four major themes covered in the Symposium are:

- 'COVID-19 Symposium I: International Trade & International Investment Law & Policy' – the essays from this theme are listed below.
- 'COVID-19 Symposium II: Intellectual Property, Technology and Agriculture' – selected essays from this theme are listed above in the *Intellectual Property, Food and Agriculture* and other sections of this bibliography.
- 'COVID-19 Symposium III: Sovereign Debt, Finance and Competition Law' – some of the essays from this theme are listed in this bibliography here in this section on *International Economic Law*. Others are listed above in the *Competition and Consumer Law* section.
- 'COVID-19 Symposium IV: Governance, Rights, and Institutions' - the essays from this theme are listed in this bibliography in various sections: including *Administrative Law & Governance; Human Rights; International Law*.

'COVID-19 Symposium I: International Trade & International Investment Law & Policy'

- Ben Oramah, '[On COVID-19, AfCFTA and the Role of the Afrexim Bank as Pan-African Multilateral Trade Finance Institution](#)'
- Daniel Omoro Achach and Patrick Wasonga Anam, '[Of the Global Rush for Personal Protective Equipment, Regional Value Chains and Lessons for Africa](#)'

- Chibole Wakoli, [‘COVID-19 in Africa: A time for Despair or an Opportunity to Change the Direction of Travel?’](#)
- David A Gantz and Bashar H Malkawi, [‘Short and Fast or Long and Slow? The Economic Impact of the Coronavirus’](#)
- Nojeem Amodu, [‘Free Zones, COVID-19 Lockdown, and ‘the Morning After’](#)
- Sendra Chihaka, [‘COVID-19: Africa’s Chance to take Advantage of Regional Production’](#)
- Marie Valerie Uppiah, [‘The COVID-19 Pandemic: An Opportunity for African States to Review their Shipping Industry Strategy’](#)
- Francis Kofi Korankye-Sakyi, [‘Fighting the COVID-19 Today: A Reflection on Positioning the AfCFTA for the Future’](#)
- Timothy Masiko, [‘Globalisation and COVID-19: What can African International Economic Law Learn?’](#)
- Franziska Sucker, [‘COVID-19 pushes digital solutions and deepens digital divides: What role for African digital trade law?’](#)
- Tinyiko Ngobeni, [‘State Responsibility for COVID-19 Regulatory Measures under International Economic Law’](#)
- Nanjira Annabel, [‘Justifying COVID-19 Exportation-Related Quantitative Restrictions within the framework of the World Trade Organization Law’](#)
- Jason Cotton, Jan Yves Remy and Alicia Nicholls: [‘COVID-19 Makes the Case for Our Trade Vulnerability Index’](#)
- Clair Gammage and Olabisi D Akinkugbe, [‘COVID-19 and South-South Trade & Investment Cooperation: Three Emerging Narratives’](#)
- Ocholla Akoth, [‘International Economic Law in the Shadow of COVID-19: Perspectives from Least Developed Countries’](#)
- Matiangai Sirleaf, [‘Africa, COVID-19 and Responsibility’](#)

‘COVID-19 Symposium III: Sovereign Debt, Finance and Competition Law’

- Vellah Kigwiru Kedogo, [‘COVID-19, Trade and Competition Law in Africa’](#)
- Maria Adele Carrai, [‘African Sovereign Debt at a time of Pandemic: Legal Justifications for Suspension or Cancellation’](#)
- Maria Elisa Vera Madrigal, [‘On Pandemics and Other Demons: Coronavirus-related Corruption and How to Prevent it’](#)

- Samuel Mwangi Muchori, '[Global South International Financial Institutions and COVID-19 Response: Utilising Innovative Financing Solutions now and after the Pandemic](#)'
- Rushmi Matete, '[An African Perspective of Fiscal Policies and Debt management in the wake of the COVID-19 Pandemic](#)'
- Danny Bradlow, '[Doves, Vultures and African Debt in the Time of COVID-19](#)'
- Jason Rosario Braganza, '[PanDEBTmic – Potential Impact of the COVID-19 Pandemic in Kenya](#)'
- Tafadzwa H C Kwaramba, '[Sovereign Debt and the COVID-19 Pandemic](#)'

'COVID-19 Symposium IV: Governance, Rights, and Institutions'

- Pedi Obani, '[Human Rights Compatibility of Trade in WASH Services in the African Continental Free Trade Area](#)'
- Dunia Prince Zongwe, '[COVID-19 – The Great \(Un\)Equalizer](#)'

Agarwal, Prachi and Mulenga Chonzi, '[Impact of COVID-19 on International Trade: Lessons for African LDCs](#)' (SSRN Scholarly Paper ID 3693901, 26 July 2020)

Abstract: The COVID-19 pandemic has highlighted the lack of provisions in existing trade agreements to tackle such a crisis. Advanced and emerging countries, fearing issues of food and national security, have responded with knee-jerk policy measures to promote national production, reshoring of manufacturing, and to reduce dependence on trade. This will adversely affect the least-developed countries (LDCs) in Africa due to their high dependence on trade and low levels of diversification. Proposals have been made by various countries to the WTO to ensure the free flow of trade in essential goods and maintain supply chain connectivity. Hence, there is scope for African LDCs to sign future plurilateral agreements with existing, economically- advanced trade partners, to ensure that no new protectionist measures will be erected against the LDCs during crisis periods, while also promoting production at home. Further trade cooperation between LDCs in Africa within the AfCFTA framework can provide an opportunity to promote resilient regional trade relations through construction of disaster-proof supply chains of essential, and non-essential goods and services. Maintaining food security in these African LDCs is of utmost importance and can be an effective bargain in future trade agreements.

Alvarez-Jimenez, Alberto, 'The International Law Gaze: COVID-19 and Foreign Investors' (2020) *New Zealand Law Journal* 300–304 [[link to pre-published version of article](#)]

Abstract: This article shows that New Zealand is largely complying with its obligations to foreign investors who are nationals of the parties to the FTAs. The piece also indicates that security exceptions in the FTAs or the customary rule of necessity in international law even allow the country, within limits, to deviate from these obligations during the crises prompted by COVID19, if needed in the near future. Obviously, this is an assessment limited to the status quo created after the first four months of the pandemic.

Arato, Julian, Kathleen Claussen and J Benton Heath, '[The Perils of Pandemic Exceptionalism](#)' (2020) 114(3) *American Journal of International Law* (forthcoming)

Abstract: In response to the pandemic, most states have enacted special measures to protect national economies and public health. Many of these measures would likely violate trade and investment disciplines unless they qualify for one of several exceptions. This Essay examines the structural implications of widespread anticipated defenses premised on the idea of 'exceptionalism.' It argues that the pandemic reveals the structural weakness of the exceptions-oriented paradigm of justification in international economic law.

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

Abstract: Countries with large debts stocks are vulnerable to the vagaries of the markets. Confidence crises can arise out of nowhere, constricting access to the markets. Hence, the question arises as to whether these countries should put in place mechanisms that will help them better prepare for the possibility of crisis. In effect, the choice is whether to buy insurance. The cost of buying such insurance is that the possibility that markets will see the sovereign's proactive steps to protect against a crisis not as an indication of prudent governance but rather as an indicator that a crisis is imminent. In this article, we use the case of a Euro area country (Italy) with a large debt stock and that has been hit particularly hard by Covid-19 to set forth its

options, as of 2020, to anticipate a possible future debt restructuring. It can: do nothing, do a little; or do something substantial.

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.

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

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

Bolton, Patrick, G Mitu Gulati and Ugo Panizza, '[Legal Air Cover](#)' (Duke Law School Public Law & Legal Theory Series No 2020-63, 2020)

Abstract: The economic harm being caused by the novel coronavirus may soon result in multiple sovereign debtors moving into default territory. But the existing playbook for dealing with multi-sovereign emerging market debt crises is blank. The only debt crisis scenario we know is protracted country-by-country and contract-by-contract negotiated workouts. As of this writing, expert groups are working on the design of a mechanism to run multiple sovereign debt

workouts simultaneously. Those designs, however, will take time to configure and get international buy-in. This paper sets forth some options to provide temporary legal protection to the debtor countries in the meantime; while they are in need of diverting resources toward COVID amelioration. This is the notion of 'legal air cover'. The options we propose involve ex post state intervention in debt contracts. They are extreme and may come with risks. But we show that in the case of Greece, when intervention such as we envision was necessary, there were no negative spillovers on periphery Eurozone debt markets associated with the Greek ex post modification of contract terms.

Carreño, Ignacio et al, '[The Implications of The Covid-19 Pandemic on Trade](#)' *European Journal of Risk Regulation* (2020) 11(2) Special Issue - 'Taming COVID-19 by Regulation' 402-410

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.

Chaisse, Julien, '[Both Possible and Improbable: Could COVID-19 Measures Give Rise to Investor-State Disputes?](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 99-184

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.

Daza Aramayo, Lourdes Gabriela and Marek Vokum, 'Covid-19 and International Trade' in Gian Luca Gardini (ed), *The World Before and After COVID-19: Intellectual Reflections on Politics, Diplomacy and International Relations* (European Institute of International Relations, 2020) 61-64

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

Gantz, David A, '[The USMCA's Future in Context](#)' (Arizona Legal Studies Discussion Paper No. 20-31, 16 June 2020)

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.'

García, JP Moyano, 'Customary Law Defenses Against COVID-19 Investment Claims' [2020] *Transnational Dispute Management (TDM)* (advance article, published 4 June 2020)

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.

Gruszczynski, Lukasz, '[The COVID-19 Pandemic and International Trade: Temporary Turbulence or Paradigm Shift?](#)' (2020) 11(2) *European Journal of Risk Regulation: Special Issue - 'Taming COVID-19 by Regulation'* 337–342

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.

Gulati, Mitu, '[The Value of Voluntary COVID-19 Securities Disclosure: Zero?](#)' (2020) *Capital Markets Law Journal*, Article kmaa014 (advance online article, published 13 July 2020)

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 be 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.

Kassa, Woubet, '[COVID-19 and Trade in Africa: Impacts and Policy Response](#)' (SSRN Scholarly Paper ID 3619230, 1 June 2020)

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.

Kurpad, Meenakshi, '[Basel IV: The Challenges](#)' (SSRN Scholarly Paper ID 3614051, 19 April 2020)

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.

Lawrence, Jessica, '[Covid-19, Export Restrictions, and the WTO: Magnifying Global Divisions in a Time of 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) 107-115 (published 30 June 2020)

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.

Lee, Janice, '[Note on COVID-19 and the Police Powers Doctrine: Assessing the Allowable Scope of Regulatory Measures During a Pandemic](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 229-248

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.

Lo, Mao-Wei, '[Legitimate Expectations in a Time of Pandemic: The Host State's COVID-19 Measures, Its Obligations and Possible Defenses Under International Investment Agreements](#)' (2020) 13(1)

Contemporary Asia Arbitration Journal 249-268

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.

Meyer, Timothy, '[Trade Law and Supply Chain Regulation in a Post-COVID World](#)' (Vanderbilt Law Research Paper No 20-38, 22 July 2020)

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.

Pelc, Krzysztof, '[Can Export Restrictions Be Deterred?](#)' (2020) *Canadian Journal of Political Science* (forthcoming)

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.

Petri, Peter A and Michael G Plummer, '[East Asia Decouples from the United States: Trade War, COVID-19, and East Asia's New Trade Blocs](#)' (Working Paper 20-9, Peterson Institute for International Economics, 2020)

Abstract: The deepening US-China trade war and nationalist reactions to the COVID-19 pandemic are reshaping global economic relationships. Alongside these developments, two new megaregional trade agreements, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP), will refocus East Asia's economic ties in the region itself. The new accords are moving forward without the United States and India, once seen as critical partners in the CPTPP and RCEP, respectively. Using a computable general equilibrium model, we show that the agreements will raise global national incomes in 2030 by an annual \$147 billion and \$186 billion, respectively. They will yield especially large benefits for China, Japan, and South Korea and losses for the United States and India. These effects are simulated both in a business-as-before-Trump environment and in the context of a sustained US-China trade war. The effects were simulated before the COVID-19 shock but seem increasingly likely in the wake of the pandemic. Compared with business as before, the trade war generates large global losses rising to \$301 billion annually by 2030. The new agreements offset the effects of the trade war globally, but not for the United States and China. The trade war makes RCEP especially valuable because it strengthens East Asian interdependence, raising trade among members by \$428 billion and reducing trade among nonmembers by \$48 billion. These shifts bring regional ties closer to

institutional arrangements proposed in the 1990s and incentivize greater cooperation among China, Japan, and South Korea.

Pinchis-Paulsen, Mona, '[Thinking Creatively and Learning from COVID-19: How the WTO can Maintain Open Trade on Critical Supplies](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Extract from Introduction: Over a matter of days, governments became reflexively nationalist in responding to COVID-19. Several emergency powers and orders were ignited. Global Trade Alert found that, as of 21 March 2020, 54 governments had introduced export restrictions on medical supplies... These developments present a fresh threat to the world trading system. Was any of this legal?

Ranald, Patricia, 'COVID-19 Pandemic Slows Global Trade and Exposes Flaws in Neoliberal Trade Policy' (2020) (85) *Journal of Australian Political Economy* 108-114

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.

Ranjan, Prabhash, '[COVID-19, India and Indirect Expropriation: Is the Police Powers Doctrine a Reliable Defence?](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 205-228

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.

Sykes, Alan, '[Short Supply Conditions and the Law of International Trade: Economic Lessons from the Pandemic](#)' (SSRN Scholarly Paper ID 3666477, 3 August 2020)

Abstract: The COVID-19 pandemic has been accompanied by shortages and potential shortages of products critical to the public health response. Many nations have responded with export restrictions on these products, restrictions that are permitted under international trade law as a temporary response to short supply conditions generally and to public health emergencies in particular. This essay argues that such export restrictions are economically counterproductive from a global efficiency perspective, and that governments acting unilaterally will nevertheless employ them due to international externalities that propagate through the 'terms of trade.' This observation raises a puzzle as to why international law should facilitate rather than curtail them. The most plausible answer is that legal authority for such measures is a politically necessary 'escape clause' in trade agreements, akin to safeguard measures.

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

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

international community received some guidance as to the limited use of this exception under GATT Article XXI and the need for good faith by nations invoking it, but larger questions remained as to its applicability in the context of economic insecurity and in the context of broader global challenges such as cybersecurity and climate change. Furthermore, with the current dysfunction of the Appellate Body of the WTO, there is no central adjudicatory body to address these issues in a systematic fashion, leaving it up to the nations or ad hoc adjudicatory processes to decide, rendering the multilateral trade framework an even more fragmented system. New ways of imagining the role of trade in the context of global and economic crises are needed, as well as more resilient institutional frameworks that can adapt to future forms of insecurity and allow for varied, constructive forms of dialogue among nations.

Weerth, Carsten, '[Initiatives and Declarations by the UN, WHO, WCO, WTO and Other Stakeholders on World Trade, Customs Law and Solidarity in a Human Emergency](#)' (2020) 1(3) *Lex Humanitariae: Journal for a Change* 9-21

Extract from Abstract: The United Nations (UN), World Health Organization (WHO), The Food and Agricultural Organization of the UN (FAO), World Trade Organization (WTO), World Customs Organization (WCO) and its stakeholders and partners have in the light of the global COVID-19 pandemic joined forces and developed joint trade policies and legal approaches and declarations in order to combat the social and economic impact COVID-19. This paper gives an overview of the initiatives and different approaches and sorts them in different categories: (Joint) Declarations, Lists / Databases, Reports, Guidance, Warnings and Press Releases.

Weidemaier, Mark C and G Mitu Gulati, '[Necessity and the COVID-19 Pandemic](#)' (2020) *Capital Markets Law Journal* Article kmaa013 (advance online article, published 12 June 2020)

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.

Wu, Hsien, '[WTO Dispute Settlement in the Wake of Coronavirus Disease 2019 \(COVID-19\): Exploring the Possible Benefits and Limits of Contemporary Mechanisms](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 291-312

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.

Zelinger, Tyler, '[A Silver Lining: An Italian Debt Restructuring in the Wake of COVID-19](#)' (SSRN Scholarly Paper ID 3626373, 13 June 2020)

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

Eidenmueller, Horst and Faidon Varesis, '[What Is an Arbitration? Artificial Intelligence and the Vanishing Human Arbitrator](#)' (SSRN Scholarly Paper ID 3629145, 17 June 2020)

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.

Lee, Jaemin, '[The Coronavirus Pandemic and International Investment Arbitration: Application of "Security Exceptions" Clauses in Investment Agreements](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 185-204

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.

Lo, Alex, '[Virtual Hearings and Alternative Arbitral Procedures in the COVID-19 Era: Efficiency, Due Process, and Other Considerations](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 85-98

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.

Rogers, Catherine A and Fahira Brodlija, '[Arbitrator Appointments in the Age of COVID-19](#)' *Kluwer Journal of International Arbitration* (forthcoming, 2020)

Abstract: The pandemic has disrupted the free movement of goods, shipping and transportation, construction and manufacturing projects. The result has been the breach, cancellation, or significant delay in contract performance. Around the world, regular judiciaries have suspended their activities during the global shut-down. Already some parties are turning to arbitration as an alternative, even if they did not have a pre-dispute agreement in place. In response, leading international arbitration organizations have adopted an extensive range of special rules and guidelines for the parties and their counsel, which should help them adapt to the online hearings and other relevant procedural issues related to the arbitration. The one thing all these guidelines have in common is that they must be implemented by arbitrators who, in most instances, will have to be able to adapt their case management skills to address and incorporate these various sources. This book chapter examines these trends and their implications for arbitrator selection and the market for arbitrator services. One key trend will be the need for more data analytics about international arbitrators, such as now available through the legal tech innovation Arbitrator Intelligence.

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

Abstract: Remote hearings are nothing new, but the COVID-19 crisis has forced international arbitration out of its comfort zone. Parties, counsel and arbitrators must adapt to the new reality of conducting arbitrations in the face of travel restrictions and social distancing measures. One particularly thorny question is whether and to what extent physical hearings that cannot be held due to the above-mentioned restrictions should be postponed, or be held remotely, using modern communication technologies. The present article takes a step back from the immediate crisis and proposes an analytical framework for remote hearings in international arbitration. In the context of the current pandemic and beyond, it provides parties, counsel and arbitrators with the relevant guidance on assessing whether to hold a hearing remotely, and if so, how to best plan for and organize it. The article also tests the risk of potential challenges to awards based on remote hearings, looking in particular at alleged breaches of the parties' right to be heard and treated equally.

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.

Wilske, Stephan, '[The Impact of COVID-19 on International Arbitration: Hiccup or Turning Point?](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 7-44

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.

Yu, Hong-Lin, '[“Business as Usual” During an Unprecedented Time: The Issues of Data Protection and Cybersecurity in International Arbitration](#)' (2020) 13(1) *Contemporary Asia Arbitration Journal* 45-66

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 Protocol on Cybersecurity in International Arbitration 2020, and the consultation draft of the

ICCA/IBA Joint Task Force's Roadmap on Data Protection in International Arbitration highlights the concerns of cybersecurity and data protection in light of COVID-19 and beyond.

LABOUR LAW / EMPLOYMENT

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

Abstract: It has been now no wonder that labours are the propeller of the physical development of the earth in the form of blue collar and white collar labour. It includes all formal, semi-formal and informal sectors. Accordingly, labour law manages and regulates the status of labour in relation with employer, employee and the society. It establishes industrial relation i.e. rights and obligations of workers and employers, working hours, wages, leaves, labour security etc. ILO sets the standard and benchmark through series of conventions, protocols and recommendations on labour matter applicable for the member country across the globe. Along with the impact of COVID -19, many labours across the globe can be dislocated and forced for layoff. In fact, layoff is not the ultimate answer if we want to revitalize the world economy. The outbreak of pandemic has forced to stop labour movement. It has quite a lot contracted world's economic activities. Even partial and nonpayment of remuneration to labour may further shrink effective demand in market which can be adverse to the whole economic transactions.

Al-Fatih, Sholahuddin, Fachry Ahsany and Ahmad Faiz Alamsyah, '[Legal Protection of Labor Rights During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#)' (2020) 7(2) *Jurnal Pembaharuan Hukum* 100–115
Jurisdiction: Indonesia

Abstract: Since the Coronavirus Disease 2019 (Covid-19) pandemic in Indonesia, which continues to grow and has an impact, not a few companies have gone bankrupt. Whether it's a small company, a medium-sized company or even a large corporation are affected by the Coronavirus Disease 2019 (Covid-19). This paper aims to find legal issues on labor right during Covid-19 pandemic in Indonesia. Using the normative legal research, this paper analyzess some of regulation and legal government act to protect labor right who terminated (Pemutusan Hubungan Kerja/PHK) during Covid-19 pandemic. In the end, this paper finds that the

government issued two program to solve PHK and protect labor rights, namely Pre-Works Card and Cash Incentive Program (Bantuan Langsung Tunai/BLT). It actively helps employee to create a new job and continue their daily life.

Albiston, Catherine and Catherine Fisk, '[Precarious Work and Precarious Welfare: How the Pandemic Reveals Fundamental Flaws of the U.S. Social Safety Net](#)' (2021) 42(2) *Berkeley Journal of Employment and Labor Law* (forthcoming)

Abstract: Almost all forms of social insurance in the United States are tied to employment, or to family ties to an employee. The employment link to social insurance has proved to be a catastrophe during the COVID-19 pandemic and the resulting economic downturn. Yet, however untenable it is in the modern economy and however much it exacerbates inequality, the employment link to social insurance is an institutional design choice that stems from a series of political compromises that were made when the Social Security Act was created in 1934-35, and from the ways that firms and state governments have responded to its requirements in the years since. The systemic weaknesses exist because the interests and voices of workers were largely absent from the program design and legislative debates.

The social insurance system built without the voices of workers has huge gaps even in good economic times. Only about half of unemployed workers receive unemployment insurance benefits ('UI') when they lose their jobs, and only 12 percent of part-time workers received UI. In 2018, 8.5 percent of people lacked health insurance, often because they lived in states that did not expand Medicaid and earned slightly too much to qualify for subsidized insurance, or were immigrants. In July 2020, the percentage of uninsured adults nearly doubled, to 16 percent, on account of job losses and states' failures to expand eligibility for Medicaid.

In this essay, we explain how the pandemic brought into sharp focus the institutional design flaws in tying the American social welfare system to employment. In contrast to experiences in other industrialized countries both before and during the pandemic, these design flaws have magnified hardship for the least privileged members of American society and amplified inequalities of race, class, immigration status, and gender. The pandemic-induced crisis of inadequate protections prompted Congress to pass legislation to address some of these problems of policy design, but most of these reforms are both temporary and inadequate. Much

legislative work remains to be done, and we explore some possibilities that Congress and the White House should consider.

Anderson, Bridget, Friedrich Poeschel and Martin Ruhs, '[Covid-19 and Systemic Resilience: Rethinking the Impacts of Migrant Workers and Labour Migration Policies](#)' (Robert Schuman Centre for Advanced Studies Research Paper No RSCAS 2020/57, 2020)

Abstract: This paper argues that concerns about the resilience of essential services require a reassessment of the impacts of migrant workers and the design of labour migration and related public policies. The Covid-19 pandemic highlighted the high share of migrants among 'key workers' who deliver essential services, notably in agriculture and food production, health services and social care. We review existing insights on the role of migrant workers in essential services, which emphasise employers' incentives as well as different national policies and institutional settings. We introduce the notion of systemic resilience to this context and outline key determinants of systemic resilience that have been identified in several disciplines but not yet applied in the field of labour migration. Given the importance of essential services, the paper argues that bolstering resilience should be a key objective for policy makers, and systemic resilience should be a criterion in impact assessments of migrant workers and in the design of labour migration and related policies. We find that this requires broader approaches to consider entire systems for the provision of essential goods and services, more attention to the medium and long run, and thinking beyond the protection of domestic workers. As an agenda for new migration research, we discuss three types of comparative analysis needed to examine the various ways in which migrant workers might affect systemic resilience.

'Automation, the March of the "Digital Giants" and the Future of Work Examined in Covid-19 Rapid Review' (2020) (August) *Computers and Law* 10-11

Abstract: Examines a rapid review by the Future of Work Commission and the Institute for the Future of Work on how working conditions might change after COVID-19, which: makes recommendations including on good work strategy, providing security to protect people's futures, and creating, protecting and measuring good work; and details five trends shaping the future of work including the accelerated adoption of technology and automation and the increased power of tech giants.

Note: this Rapid Review is '[A Better Future for Work: The World After Covid-19](#)'

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.

Bassiouny, Omar and Ahmad Farghal, 'Managing COVID-19' [2020] (Summer) *International Financial Law Review* 49-51

Abstract: Answers questions about employers' ability to reduce pay, stop annual increases and put employees on furlough under Egyptian law in the coronavirus pandemic.

Battista, Leonardo, '[Covid-19 and Self-Employment: Emergency Measures and Unsolved Challenges](#)' (2020) 13(1) *Italian Labour Law e-Journal* 85–101

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.

Berger Richardson, Sarah, 'Worked to the Bone: COVID-19, the Agrifood Labour Force, and the Need for More Compassionate Post-Pandemic Food Systems' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 501

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.

Bernstein, Adam, 'Claiming Back Statutory Sick Pay under Coronavirus' (2020) 44(3) *Company Secretary's Review* 37-38

Jurisdiction: UK

Abstract: Advises on the eligibility requirements of the Coronavirus Statutory Sick Pay (SSP) Rebate Scheme, which opened up to claims on 26 May 2020. Notes recommendations by the Trades Union Congress in its report "Testing and Tracing for Covid-19: How to Ensure Fair Access and Manage Monitoring in the Workplace", which suggests that the SSP is inadequate and should be increased to the equivalent of a real living wage.

Bernstein, Adam, 'Coronavirus Impacts Holiday Entitlements' (2020) 44(3) *Company Secretary's Review* 39-40

Jurisdiction: UK

Abstract: Highlights employers' obligations under government guidance and the Working Time (Coronavirus) (Amendment) Regulations 2020 concerning holiday entitlement and pay for furloughed employees during the coronavirus emergency under the Job Retention Scheme.

Bick, Alexander, Adam Blandin and Karel Mertens, '[Work from Home after the Covid-19 Outbreak](#)' (FRB of Dallas Working Paper No. 2017, 2020)

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.

Bodie, Matthew T and Michael McMahon, '[Employee Testing, Tracing, and Disclosure as a Response to the Coronavirus Pandemic](#)' (2020) *Washington University Journal of Law and Policy* (forthcoming)

Abstract: As the COVID-19 pandemic continues to devastate the United States, the federal government has largely failed to implement a national program to prevent and contain the virus. As a result, many employers have undertaken their own workplace coronavirus mitigation efforts. This essay examines, in three parts, the legal framework surrounding employer systems of workplace testing, tracing, and disclosure. It first examines the legal issues surrounding employer-mandated COVID-19 testing and temperature checks, especially issues arising under the Americans with Disabilities Act (ADA) and Health Information Portability and Accountability Act (HIPAA). Regarding employer contact tracing efforts, the essay next reviews the multitude of

new digital tools and applications designed to aid in contact tracing and how these may implicate various state and federal privacy laws. Finally, the essay looks into employer disclosure of employee infections, including legal ramifications under the ADA, HIPAA, and other privacy laws. Our conclusion: employer testing, tracing, and disclosure programs are legally feasible but require careful planning and execution to protect employee privacy interests.

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

Jurisdiction: Italy

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

Brill, Lora and Beth Ambrose, 'Opportunities Abound in the New Normal' (2020) 2039 *Estates Gazette* 62

Jurisdiction: UK

Abstract: Explains how the post-Covid world presents opportunities for adapting offices to support employees' health, wellbeing and productivity.

Brown, Elizabeth, '[Supercharged Sexism: The Triple Threat of Workplace Monitoring for Women](#)' (SSRN Scholarly Paper ID 3680861, 1 August 2020)

Abstract: As biometric monitoring becomes increasingly common in workplace wellness programs, there are three reasons to believe that women will suffer disproportionately from the

data collection associated with it. First, many forms of biometric monitoring are subject to gender bias, among other potential biases, because of assumptions inherent in the design and algorithms interpreting the collected data. Second, the expansion of femtech in particular creates a gender-imbalanced data source that may feed into existing workplace biases against women unless more effective safeguards emerge. Finally, many femtech platforms encourage the kind of information sharing that may reduce women's reasonable expectations of privacy, especially with regard to fertility data, thus increasing the risk of health data privacy invasion. This triple threat to female workers may be offset somewhat by the benefits of health data collection at work and may be remedied at least in part by both legislative and non-legislative means. The current trend toward greater health data collection in the wake of COVID-19 should provoke a reexamination of how employers collect and analyze women's health data in order to reduce the impact of these new gender bias drivers.

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

Abstract: The history of the support by society of the aged is discussed in cross cultural and historical context. Various cultural traditions are compared with the forms developed in complex societies from ancient Egypt and Greece and Rome, to China, the Aztec, Inca and Maya, to those of religious organizations, or those developed under different modern ideological systems like capitalism and communism as well as social democratic nations. It is found that the way a society values the aged and views their contribution to society determines largely their willingness to provide for their support. An increasing number of companies have gone bankrupt in recent years following the 2007 credit crisis and stock market collapse. More have raided their pension funds to stay afloat or have closed them and transferred liability to the federal Pension Benefit Guaranty Corporation. Major changes to federal law concerning pensions and the responsibility of corporations to fund them has made under the Pension Protection Act of 2006. World wide workers' retirement payments are under assault as are investments by pension funds due to laws governing priority of payment in different countries concerning stock holders vs bondholders and liability for pension funds. The need for retirement of some kind in the post-Covid-19 world will require new forms as well as recovery of

pre-Covid-19 savings and investments. Changes in the law are proposed to increase the stability of pensions and reliability to workers of pension payments.

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

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

Chatterton, Joanna and Ed Livingstone, 'Back to the Office: The Key Legal Risks and How to Avoid Them' (2020) 213(September) *Employment Law Journal* 25-30
Jurisdiction: UK

Abstract: Explains how employers can manage the risks of transitioning homeworking employees back to the workplace. Considers: the choice between adopting a mandatory or voluntary return for employees who might be reluctant resume office working; Covid-secure health and safety measures; employee consultation; flexible working requests; and data protection in relation to symptoms tests and health data.

Clibborn, Stephen and Chris F Wright, 'COVID-19 and the Policy-Induced Vulnerabilities of Temporary Migrant Workers in Australia' (2020) (85) *Journal of Australian Political Economy* 62-70

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.

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

Jurisdiction: South Africa

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

Crichton, Adam, 'Employment Law and COVID-19' (2020) 42(6) *Bulletin (Law Society of South Australia)*

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Abstract: It has long been said that Australia has a complex system of industrial relations. While there has been considerable work done to reduce and simplify industrial awards, the process of enterprise bargaining remains complex. As such, industrial relations reform has been hovering in the background for many years. The impact of the coronavirus (COVID-19) pandemic has seemingly heightened the awareness of the complexities in the system, and potentially triggered action on reform.

Daripa, Arupo, 'India's Lockdown and the Great Exodus: Some Observations' in Monica Billio and Simone Varotto (eds), [*A New World Post COVID-19: Lessons for Business, the Finance Industry and Policy Makers*](#) (Ca' Foscari University Press, 2020) [open access book] 291-299

Abstract: The pandemic-induced lockdown in India caused a great exodus of millions of seasonal workers from cities, an impact for which the government was completely unprepared. This essay considers the socio-economic setting of the exodus, the potential economic and epidemiological impact, policy suggestions, and evaluation of the policy (non)response of the Indian government. We consider the underlying political economy of policy distortion and suggest ways that might enable incentive compatible corrections.

Abstract: In the era of COVID-19, the term 'essential labor' has become part of our daily lexicon. Between March and May, 2020, essential labor was not simply the only kind of paid labor occurring across most of the United States, it was also, many argued, the only thing preventing utter economic and humanitarian collapse. As a result of this sudden significance, legal scholars, workers' advocates, and politicians have scrambled to articulate exactly what makes essential labor 'essential.' Some commentators have also argued that the rise of essential labor as a conceptual category disrupts—or should disrupt—longstanding patterns in the way the nation regulates work.

Contrary to this emerging narrative, this Article argues that essentiality is not at all new to the way we conceptualize and regulate labor in the United States. If anything, essential labor replicates and exacerbates an attitude that has always been central to American work law: the idea that work should be measured, classified, regulated, and remunerated according to how much it benefits someone other than the worker. The only thing that has changed as a result of the coronavirus pandemic is the referent in this analysis: essential to whom? Before the pandemic, the United States considered work to be essential when it was essential to the employer; during the pandemic, essential labor has come to mean tasks that are essential to society as a whole. In neither scenario is the relationship between the worker and their work at the center of legislation, adjudication, or business operations.

This Article therefore offers a novel proposal: a worker-centric analysis demonstrates that, in the United States, labor is always essential to the worker. This is both legally true, in the sense that this country ties physical and financial well-being to employment status more than any other highly developed nation, and it is morally true, in that social science scholarship and human rights discourse have established the critical relationship between work and human flourishing. In light of this, the Article contends that the longstanding and idiosyncratically American concept of 'at-will' employment, whereby work relationships can be terminated upon no notice and for any reason, fails because it neglects to account for the extent to which labor is essential to workers. Relinquishing the concept of at-will employment will not by itself solve all the problems bedeviling American work law, but it is an important and necessary first step

toward fixing those problems, and toward implementing the true labor and employment law lesson of COVID-19.

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.

Dhuru, Neha, '[Impact of COVID-19 on the Labour Force: An Overview of the Labour Laws in India and, What Lies Ahead](#)' (SSRN Scholarly Paper ID 3655554, 18 May 2020)

Abstract: The brief of this paper is to analyse the impact of COVID-19 on the workforce of the Indian economy. It, therefore, conceptualizes the notion of labour and probes into labour's substantive and significant role in the functioning of an economy. After reviewing the labour-centric legislations in India (pre- and post-Independence) the paper searches for the common thread that should run through the chronological varied legislations. The paper engages with the anticipated crises that COVID-19 is expected to unleash on the labour force. The paper winds up with the writer's inferences and suggestions.

Duff, Michael C, [‘New Labor Viscerality? Work Stoppages in the “New Work,” Non-Union Economy’](#)
(2020) *St Louis University Public Law Review* (forthcoming)

Jurisdiction: USA

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*.

Duman, Anil, '[Wage Losses and Inequality in Developing Countries: Labor Market and Distributional Consequences of COVID-19 Lockdowns in Turkey](#)' (SSRN Scholarly Paper ID 3645468, 7 July 2020)

Abstract: We develop a possibility to work index (PWI) taking the ability to work from home and workplace closures into account. By using the data from the HLFS in Turkey, we examine the individual level determinants of PWI. Our findings reveal that PWI and ability to work from home are significantly different, and essential or closed jobs are not necessarily concentrated at the bottom of the wage distribution. Therefore, from a policy perspective, PWI can be a more encompassing measure of risk and can assist the public authorities to design better targeted social policies. Our results also point out that wage inequality is likely to deteriorate as a result of the supply shocks from confinement policies. However, the overall negative distributional effects of lockdown and disparity between employees in different economic activities become more substantial with duration. These suggest that in order to avoid major increases in earning inequalities and related social problems, governments would be better off with shorter and stricter lockdowns.

Eichhorst, Werner, Anton Hemerijck and Gemma Scalise, '[Welfare States, Labor Markets, Social Investment and the Digital Transformation](#)' (IZA Discussion Paper No 13391, 2020)

Jurisdictions: Germany, Italy and the Netherlands

Abstract: Barely having had the time to digest the economic and social aftershocks of the Great Recession, European welfare states are confronted with the even more disruptive coronavirus pandemic as probably, threatening the life of the more vulnerable, while incurring job losses for many as the consequence of the temporal 'freezing of the economy' by lockdown measures. Before the Covid-19 virus struck, the new face of the digital transformation and the rise of the 'platform' economy already raised existential questions for future welfare provision. The Great Lockdown - if anything - is bound to accelerate these trends. Greater automation will reinforce working from home to reduce Covid-19 virus transmission risks. At the same time, the Great

Lockdown will reinforce inequality, as the poor find it more difficult to work from home, while low-paid workers in essential service in health care, supermarket retail, postal services, security and waste disposal, continue to face contagion risks. And although popular conjectures of 'jobless growth' and 'routine-biased' job polarization, driven by digitization and artificial intelligence, may still be overblown, intrusive change in the nature of work and employment relations require fundamental rethinking of extant labour market regulation and social protection. Inspired more by adverse family demography than technological change, social investment reform has been the *fil rouge* of welfare recalibration since the turn of the century. Is social investment reform still valid in the new era of 'disruptive' technological transformation in aftermath of Coronavirus pandemic that is likely to turn into the worst recession since the second world war? Empirically, this chapter explores how Germany, Italy and the Netherlands, in terms of the strengths and vulnerabilities of their labour market to digitization, together with their respective social investment aptitude, are currently preparing their welfare states for the intensification of technological change in the decade ahead.

Estupinan, Xavier and Mohit Sharma, '[Job and Wage Losses in Informal Sector Due to the COVID-19 Lockdown Measures in India](#)' (SSRN Scholarly Paper ID 3680379, 25 August 2020)

Abstract: This paper estimates the job and wage losses of workers, using the lens of informality, due to lockdown measures undertaken by the Government of India to tackle the spread of COVID-19. It focuses on the first two lockdowns when containment measures in India were most stringent in the world. We estimate that 104 million and 69.4 million informally employed workers were at risk of job loss in Lockdown 1.0 and Lockdown 2.0 respectively. Informal workers lost more wages, 22.6 percent, than formal workers, 3.6 percent. Workers informally employed in unorganised sector suffered a wage loss, amounting to Rs. 635.53 billion, which is almost equivalent to annual union budget allotted for employment guarantee scheme MGNREGA in 2020-2021. The prevalence of informal labour markets calls for a larger change in the social protection framework to deal with the uncertain economic situation like the one we are facing today.

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

Farre, Lidia et al, '[How the Covid-19 Lockdown Affected Gender Inequality in Paid and Unpaid Work in Spain](#)' (IZA Discussion Paper No 13434, 7 July 2020)

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.

Fay, Daniel L and Adela Ghadimi, '[Collective Bargaining during Times of Crisis: Recommendations from the COVID-19 Pandemic](#)' (2020) *Public Administration Review* (advance online article, published 19 May 2020)

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.

de Flamingh, Jack and Heidi Fairhall, 'Employment Law and WHS: Containing Coronavirus: Workplace Considerations' (2020) (65) *LSJ: Law Society of NSW Journal* 71-73

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

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

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.

de Flamingh, Jack and James Connolly, 'Employment Law: COVID-19: The Fair Work Commission Responds' (2020) 67 *LSJ: Law Society of NSW Journal* 71-73 [part two of two]

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.

Franklin, Paula, '[Our Failure to Prevent Known Risks: Occupational Safety and Health in the Healthcare Sector During the COVID-19 Pandemic](#)' (ETUI Research Paper, Policy Brief 11/2020, 2020)

Jurisdiction: EU

Abstract: Hazards from SARS-CoV-2, the virus that causes COVID-19, should be addressed in line with the EU Biological Agents Directive and by means of a strengthened centralised capacity of the European Union for the monitoring of and response to health emergencies. Mitigating and preventing the impact of the illness, COVID-19, should be done by classifying it as an occupational disease, ensuring the availability of personal protective equipment (PPE) and testing for health workers, and engaging workers in all aspects of 'work organisation'. The coronavirus crisis, which is the result of the impact of the nexus of austerity/virus/illness on society at large, should trigger a transformative change in the care economy, leading to the valuing of care work, pay transparency, full acknowledgement of psychosocial risks such as violence and harassment in the world of work, measures to promote occupational health equity, sustainable health workforce planning and the inclusion of the currently absent gender aspect in EU legislation on occupational safety and health.

Gelman, Jon L, '[Lessons from Asbestos Litigation Apply to COVID Claims](#)' (SSRN Scholarly Paper ID 3659568, 23 July 2020)

Jurisdiction: USA

Abstract: The rapid emergence of COVID-19 creates new challenges for the nation's patchwork of state run workplace benefit delivery systems. This paper draws a comparison between COVID claims and asbestos claims, the 'Largest and Longest' wave of occupational disease claims in the United States. The comparison offers insight into avoiding past economic, administrative and benefit delivery pitfalls. The lessons from asbestos claims provide an insight into maintaining a sustainable workers' compensation system to meet the surge of COVID claims.

Gezici, Armagan and Ozge Ozay, '[How Race and Gender Shape COVID-19 Unemployment Probability](#)' (SSRN Scholarly Paper ID 3675022, 16 July 2020)

Jurisdiction: USA

Abstract: Using the April 2020 Current Population Survey (CPS) micro dataset, we explore the racialized and gendered effects of the COVID-19 pandemic on the probability of being unemployed. The distribution of job losses from COVID-19 for women and men or for different racial/ethnic categories has been studied in the recent literature. We contribute to this literature by providing the first intersectional analysis of unemployment under COVID-19, where we examine the differences in the likelihood of unemployment across groups of White men, White women, Black men, Black women, Hispanic men, and Hispanic women. Controlling for individual characteristics such as education and age, as well as industry and occupation effects, we show that women of all three racial/ethnic categories are more likely to be unemployed compared to men, yet there are substantial differences across these groups based on different unemployment measures. Hispanic women have the highest likelihood of being unemployed, followed by Black women, who are still more likely to be unemployed than White women. We also examine if the ability to work from home has benefited any particular group in terms of lowering their likelihood of unemployment during the pandemic. We find that in industries with a high degree of teleworkable jobs, White women, Black men, and Hispanic men are no longer more likely to be unemployed relative to White men. However, Black women and Hispanic Women still experience a significantly higher probability of losing their jobs compared to White men even if they are employed in industries with highly teleworkable jobs. As we control for both individual and aggregate factors, our results suggest that these differences are not simply the result of the overrepresentation of women of color in certain industries and occupations; rather, unobservable factors such as discrimination could be at work.

Ghilarducci, Teresa and Aida Farmand, '[Older Workers on the COVID-19-Frontlines without Paid Sick Leave](#)' (2020) *Journal of Aging and Social Policy* (online advance article, published 21 May 2020)

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.

Glacken, Caroline et al, 'Working While Furloughed: Manage the Risk of Furlough Fraud Allegations' (2020) 213 (September) *Employment Law Journal* 6-12

Jurisdiction: UK

Abstract: Considers the steps which employers can take to protect themselves against being penalised for fraud in the event that an employee has performed work while furloughed under the Coronavirus Job Retention Scheme (CJRS). Looks at the protection available to employees who make protected disclosures about employers' breaches of the CJRS. Discusses furlough fraud, including the offences it comprises and what might be seen to be inadvertent errors.

Goldberg, Jonathan and Grant Wilkinson, 'Post COVID-19 Labour Law Considerations' (2020) 20(5) *Without Prejudice* 26–27

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.

Goldberg, Jonathan and Grant Wilkinson, 'Retrenchments in the Time of COVID-19' (2020) 20(6) *Without Prejudice* 58–59

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.

Goodwin, Emma, 'No Quarantine for Workplace Rights Part 3-1 of the "Fair Work Act 2009" Cth and COVID-19' (2020) 25(7) *Employment Law Bulletin* 66-70

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, how-ever, 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.

Hagemeister, DT, RM Mpele and BE Shabangu, “[“Please Confirm Your HIV-Positive Status by Email to the Following Government Address”: Protection of “Vulnerable Employees” under COVID-19](#)” (2020) 13(2) *South African Journal of Bioethics and Law* (advance online article)

Abstract: COVID-19 has significantly changed the lives of people worldwide. After one of the most stringent lockdowns in the world, South Africa (SA) prepared to allow increasing numbers of workers to return to their workplaces. Employees received several requests to disclose health conditions to their employers that might put them at higher risk for COVID-19, as some of the regulations issued under the state of disaster by the SA government oblige employers to make special provisions for ‘vulnerable employees’. Despite their benevolent intention, such requests constitute a massive infringement of employees’ rights, and some of the medical, legal and ethical considerations relevant in this context are discussed. Given the relative scarcity of medical evidence, the constitutional protection of employees’ rights and the ethical concerns, a cautious and well-administrated approach within the legally permissible space is necessary.

Harrop, Sarah, ‘Racial and Ethnic Diversity in the Workplace: A Work in Progress’ (2020) 2040 *Estates Gazette* 49-50

Jurisdiction: UK

Abstract: Examines the equality and diversity provisions under the Equality Act 2010 which aim to prevent discrimination in the workplace, focusing on those enabling employers to take positive action. Looks at gender pay gap reporting requirements and the risks to BAME individuals posed by Covid-19.

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

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

Heymann, Jody, '[Protecting Health During COVID-19 and Beyond: A Global Examination of Paid Sick Leave Design in 193 Countries](#)' (2020) 15(7) *Global Public Health* 925-934

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.

Horváth, István and Zoltán Petrovics, 'COVID '19 – Hungary: Measures Concerning Employment, Collective Labour Law and Social Security' (2020) *Noticias CIELO*

- [Part 1](#) (2020) *Noticias CIELO* (online advance article, 4 April 2020)
- [Part 2](#) (2020) 4 *Noticias CIELO* (16 April 2020)

Hu, LuoJia and Bo E Honoré, '[The Covid-19 Pandemic and Asian American Employment](#)' (FRB of Chicago Working Paper No 2020-19, 21 September 2020)

Abstract: This paper documents that the employment of Asian Americans with no college education has been especially hard hit by the economic crisis associated with the Covid-19 pandemic. This cannot be explained by differences in demographics or in job characteristics. Asian American employment is also harder hit unconditional on education. This suggests that different selection into education levels across ethnic groups alone cannot explain the main results. This pattern does not apply to the 2008 economic crisis. Our findings suggest that this period might be fundamentally different from the previous recession.

Huckle, Theo, Nick Brown and Frederick Powell, 'At the Front Line of COVID-19: Forgotten Victims?' (2020) 170(7888) *New Law Journal* 10-12

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.

Ihnatowicz, Nicola and Anna Scott, 'Government Suspends Gender Pay Gap Reporting' (2020) 209(Apr) *Employment Law Journal* 15-17

Jurisdiction: UK

Abstract: Notes the suspension of the annual gender pay gap reports due to the coronavirus pandemic. Discusses guidance issued by the Government Equalities Office in 2019 to help employers address the issue of the gender pay gap and to develop a gender pay gap action plan. Notes legislation on positive action.

Inayah, I and S Surisman, '[Work Termination During The Covid-19 Pandemic in The Perspective of Positive Law in Indonesia](#)' (2020) 4(1) *Legal Standing / Jurnal Ilmu Hukum* 247-254

Abstract: The case of work termination which involves businessowners and labor happens widely in various companies due to the Covid-19 pandemic in Indonesia. This research uses the normative legal research method. During this Covid-19 pandemic, this work termination is carried out to save the company and to prevent more victims. Problems which happen regarding work termination include the reasons for this termination and the post-termination compensation. Work relations is a reciprocal relationship which is based on a two-party agreement. The legal protection for work termination may be carried out during this Covid-19 pandemic. If the rights stated above are not obtained by the workers, then they may initiate a deliberation. They may also go through conflict resolution procedures on industrial relations outside of court, based on the Republic of Indonesia's Constitution No. 2 of 2004.

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

Jurisdiction: South Africa

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

Italian Labour Law e-Journal (2020) 13(1S) [Special Issue: Covid-19 and Labour Law. A Global Review](#)

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

whether, on the contrary, new special regulations are being introduced. The national reports may be subject to updating in case of major changes.

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Jha, Shilpi, '[Exodus of Migrant Workers' in India: Law, Accountability and Blind Spots](#)' (SSRN Scholarly Paper ID 3688375, 7 September 2020)

Extract from Abstract: Government's Lockdown suggests people stay indoors so that pandemic can be curbed but the mass exodus of migrant workers is an absolute violation of the order. The author is analyzing the International and domestic commitment by the Government vis-à-vis criminal liability of migrant worker under Indian Penal Code, 1860. This article is dealing with the international and national commitment of Government towards Migrant worker's Rights and criminality of actions of migrant workers in breaking the Governmental orders to restrict the spread of deadly disease like COVID-19. The purpose of the article is to find out whether exodus or reverse migration is because of the failure of the government machinery in securing migrant workers' rights or failure of migrant workers in observance of Governmental orders. To achieve this purpose, the author has analyzed three factors - firstly, India's commitment towards fundamental International principles on migrant worker's rights; secondly, interpretation of principles protecting rights of worker guaranteed under the Constitution of India and statute on migrant worker's rights in India and thirdly violation of lockdown rules by the migrant workers with reference to Sections 269, 270, 271 of Indian Penal Code 1860. The research methodology used is descriptive, doctrinal and based on secondary resources like United Nation's instruments entrusting responsibility on Governments of State Parties, Constitution of India, 1950, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Newspaper reports, WHO reports and the Indian Penal Code, 1860.

Kaine, Sarah, 'Australian Industrial Relations and COVID-19' (2020) (85) *Journal of Australian Political Economy* 130-137

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.

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

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

Kaplan, Charles H, Adam W Perry and Glen P Doherty, 'Avoiding Labor and Employment Law Claims in the Wake of the COVID-19 Shutdown' (2020) 90 7/8) *The CPA Journal* 6-9

Abstract: As workplaces reopen, accountants and their clients and employers must be aware of the potential labor and employment law claims they may face related to the COVID-19 shutdown and the current gradual return to work in New York State and around the nation. Management needs to take action now to reduce the likelihood of such workplace law claims and increase the chances that management will prevail in responding to such claims if they do arise. The authors have identified several key legal areas where accountants, clients, and employers should take notice.

Katsabian, Tammy, '[The Telework Virus: How the COVID-19 Pandemic Has Affected Telework and Exposed Its Implications for Privacy and Equality](#)' (SSRN Scholarly Paper ID 3684702, 1 September 2020)
Jurisdiction: USA

Abstract: The COVID-19 pandemic has expedited numerous technological changes in the labor market. As part of this phenomenon, it has shifted millions of people from working at their workplace to teleworking from home, generating a hybrid space of work—the home-office. The home-office is an intermediate category between the office and the home. As such, it combines the logic and structure of the traditional workplace with those of the private sphere of the employee. Because of its hybrid nature, the home-office and the technology at its base empower the employer to supervise the employee and her family members, also in their private sphere, intensifying the current trend of violating privacy in the digital reality. Mirroring that reality is that the home-office reproduces inequalities from the private domain of the employee

to the workplace context. It reproduces in the labor market the gendered traditional roles within the family domain along with socioeconomic disparities among households with respect to access to technology and technological skills. All in all, it prevents workers from equally enjoying the ability to telework. Against this background, this Article suggests ways to begin solving the home-office difficulty. It elaborates on the importance of employees having a voice to balance the private–public power dynamics between employees and employers and to ensure employees’ right to privacy. Additionally, it offers systemic solutions at the federal and state levels to limit the negative effects the private domain has on the ability of underprivileged socioeconomic groups and women to equally integrate into the technological labor market, including in the specific case of telework.

Kennedy, Richard, ‘[Legal Discourse on Manpower During COVID-19 Outbreak](#)’ (2020) 16(1) *Law Reform* 70–86

Jurisdiction: Indonesia

Abstract: Covid-19 has become a global epidemic all around the world. All countries around the world have been completely struggled by this outbreak, including Indonesia. Economy crisis is something that could not be avoided. Naturally, workers, and entrepreneurs will be either directly or indirectly affected. Massive amount of companies has applied the regulation ‘Termination of Employment’, laid off the workers, and even deduction on wages payment. Workers have become vulnerable parties in this case because they do not have enough assurance. Article 164 (1) Act No. 3 of 2003 concerning Manpower indeed regulates the Termination of Employment regulation because of force majeure, however this law seems to be slightly unsuitably applied for this outbreak Covid-19 situation. Therefore, this study is aimed to do legal discoursing in which can both assure those workers and maintain the operation of business in this tight condition. Finally, Indonesia needs to return back to kinship culture and unity in diversity philosophy as stated in Pancasila to equalize the interests both for workers and employers. According to Article 33 (1) and (4) of 1945 Constitution of Republic Indonesia, it has been firmly stated that Indonesian economy should be organized as a common endeavor based upon the principles of the family system and conducted on basis of Pancasila democracy. Hence, government is expected to play the intermediary role in order to unify and even out interest of all parties. Law of Manpower need to be adjusted with some regulations about rights and

responsibilities accommodate to workers, employers, and government in deal with epidemic outbreak.

Kenyon, Richard and Edmund Chambers, 'Unprecedented Measures for Unprecedented Times' (2020)
210 *Employment Law Journal* 1-6

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.

Kuriakose, Francis and Deepa Kylasam Iyer, '[Labor Migration in the Post-COVID World: Imagining "Just Transition" Using Decent Work Agenda](#)' (SSRN Scholarly Paper ID 3666064, 3 August 2020)

Abstract: This article examines how COVID-19 impacts migrant workers and what can be done for their equitable transition after the pandemic is subdued. The immediate policy response to the pandemic was closing of national borders that resulted in a state of emergency on a global scale. The need for continuous and safe passage of goods, services, and workers was acknowledged by laws and policies that were an 'exception' to the rule, and deemed 'essential'. This approach resulted in five distinct types of impact on the migrant worker in the spheres of

employment, health, movement, social protection, and opportunities. This study uses the framework of 'just' transition from sustainability discourse to imagine a labor-centered long-term policy for the migrant worker.

Lambropoulos, Victoria, 'Coronavirus, Jobkeeper and Stand Down under the Fair Work Act 2009 (CTH): A Review of the Law' (2020) 48(2) *Australian Business Law Review* 104-115

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.

Lippel, Katherine, 'Occupational Health and Safety and COVID-19: Whose Rights Come First in a Pandemic?' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 473

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.

Lord, Phil, '[COVID-19 and the Future of Work](#)' (2020) 7 *Journal of Psycho-Economics* (forthcoming)

Abstract: This paper draws upon law and behavioral economics to analyse the transition to remote work brought about by the COVID-19 pandemic. While widely celebrated, this transition which indeed has many promising aspects is far more complex than public discourse would suggest. This paper is articulated around two overarching, structural issues which both arise from and are exemplified by the increasing adoption of remote work policies. Its first section depicts the move to remote work as an example and catalyst of the more broadly increasing precarity of work. It proposes solutions which could alleviate this increasing precarity. Its second section focusses on the intrinsically heterogeneous impact of the COVID-19 pandemic and these remote work policies, and proposes solutions which could alleviate the disproportionate impact of these policies on certain groups.

Lord, Phil, '[The Social Perils and Promise of Remote Work](#)' (2020) 4 (COVID-19 Special Issue) *Journal of Behavioral Economics for Policy* 63-67

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](#)' (2020) *The Theory and Practice of Legislation* (advance online article, published 13 July 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.

Mamaysky, Isaac, '[Coronavirus Paid Leave: The Intersection of New State and Federal Laws](#)'

(Westchester County Bar Association COVID-19 (Coronavirus) Publications 2020)

Jurisdiction: USA

Abstract: At the same time the federal government passed the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA), states passed their own paid leave laws, often with wider applicability than the federal law.

Mamaysky, Isaac and Wendy Fischman, '[Rehiring Furloughed and Laid-Off Workers Post-Pandemic](#)'

(Law360, Expert Analysis, 1 October 2020)

Jurisdiction: USA

Abstract: Since the start of the COVID pandemic, countless employees lost their jobs following furloughs and layoffs. As unemployment rates continue to decrease, many employers are rehiring their workforces. This article explores best practices to do so properly and considers potential pitfalls when making rehiring decisions.

Mamaysky, Isaac and Mark Papadopoulos, '[Role For COVID-19 Liability Waivers in Employment Is Limited](#)' (Law360, Expert Analysis, 19 May 2020)

Jurisdiction: USA

Abstract: Waivers of liability have taken on renewed significance as businesses reopen during COVID. Courts have traditionally disfavored these instruments between employers and employees due to the unequal bargaining power of the parties. This article explores the role and utility of liability waivers in the employment context and beyond.

Mangan, David, Elena Gramano and Miriam Kullmann, '[An Unprecedented Social Solidarity Stress Test](#)' (2020) 11(3) *European Labour Law Journal* 247–275

Abstract: While much of the emphasis has been on when and how economies may safely reopen due to the coronavirus pandemic, this article studies the undervalued workplace considerations therein. The initial responses of Member States to the pandemic are outlined for the purpose of setting out similarities and distinctions, but also and mostly to foreground an analysis to date of unresolved problems related to work. Important points for continued monitoring are also identified and an overview of some of the employment law considerations in re-opening workplaces are critically assessed. Consequently, teleworking garners particular attention due to its prominent role during the lockdown and its possible growing place in labour law in the near future.

Markey, Ray, 'The Impact of the COVID-19 Virus on Industrial Relations' (2020) (85) *Journal of Australian Political Economy* 147-154

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).

Marsons, Lee and Sarah Nason, 'Equality and the Coronavirus Job Retention Scheme' [2020] (October)
Public Law 776-778

Jurisdiction: UK

Abstract: Notes R. (on the application of Adiatu) v HM Treasury (DC) on whether the exclusion from eligibility for the Coronavirus Job Retention Scheme and statutory sick pay of those without employment contracts but who fell to be treated as workers within the Employment Rights Act 1996 s.230(3)(b) was unlawfully discriminatory in breach of ECHR art.14 and Protocol 1 art.1 or the public sector equality duty under the Equality Act 2010 s.149.

McGarity, Thomas, Michael C Duff and Sidney A Shapiro, '[Protecting Workers In A Pandemic: What The Federal Government Should Be Doing](#)' (Center for Progressive Reform Report, June 2020)

Jurisdiction: USA

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.

McGaughey, Ewan, 'COVID-19 Exposes UK Labour Law's Incapacity to Stop Mass Unemployment' (2020)
157 Employment Law Bulletin 5-7

Jurisdiction: UK

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.

McKee, Claire, 'Employment' (2020) 65(5) *Journal of the Law Society of Scotland* 29-30

Jurisdiction: Scotland

Abstract: Advises employers on the Coronavirus Job Retention Scheme (CJRS), including: which companies are eligible; which employees are covered; whether employees can take annual leave whilst on furlough leave; whether administrators are able to furlough employees under the CJRS with reference to *Re Carluccio's Ltd (In Administration)* (Ch D); whether employers can claim for obligatory "regular payments"; and the steps businesses should take when the scheme ends.

Millins, Jennifer and Martha Averley, 'The Impact of Covid-19 on the Gender Pay Gap' (2020)

213(September) *Employment Law Journal* 19-24

Jurisdiction: UK

Abstract: Speculates on the potential impact of the Government's suspension of the requirement to publish gender pay gap statistics for 2019-2020, due to the coronavirus pandemic, on the overall statistics and the aims of the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. Considers evidence that the pandemic has disproportionately affected women and reflects on whether this might result in a widening of the gender pay gap.

Mitchell, Graham, 'Furlough' [2020] 157 *Employment Law Bulletin* 1-3

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.

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

Jurisdiction: South Africa

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

Murcia, Joaquín García, Iván Rodríguez Cardo and Diego Álvarez Alonso, '[Covid-19 and Labour Law Measures in Spain: Emergency Rules to Deal with a Health, Economic and Employment Crisis](#)' (2020)

13(1) *Italian Labour Law e-Journal* 141–160

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.

Nath, Rahul, '[Epidemics: A Tale of Two Workers](#)' (Covid Economics Issue 32, CEPR Discussion Papers, 24 June 2020)

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.

Neef, Andreas, '[Legal and Social Protection for Migrant Farm Workers: Lessons from COVID-19](#)' [2020] *Agriculture and Human Values* (advance online article, published 19 May 2020)

Introduction: In most countries, the COVID-19 pandemic has led to a reassessment about whose work is deemed essential. Citizens and their governments have come to realize the importance of maintaining reliable food supplies during a global health crisis, and there is broad agreement that farmers and farm workers at the very beginning of the food chain are undeniably essential. Yet, what is now more apparent than ever before is to what extent national food systems in the Global North have become dependent on migrant farm workers. Until recently, hundreds of thousands of these temporary, precarious, and oftentimes unregistered workers have secured the supply of fresh fruits and vegetables for consumers, but border closures and suspension of visa services have thrown many of them into legal limbo, social uncertainty, and economic distress.

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.

O'Connor, Niall, '[The Right to Work and Rights in Work during the Coronavirus Pandemic: The Response of the United Kingdom](#)' 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) 137-145 (published 30 June 2020)

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

Jurisdiction: South Africa

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

Phillips, Edward R and Brandon L Morrow, 'Employment Law: Navigating the New Paid-Leave Mandates' (2020) 56(5) *Tennessee Bar Journal* 16–19

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.

Philpott, Jane, 'A View from the Front Lines of a COVID-19 Outbreak' in Flood, Colleen et al, [Vulnerable: The Law, Policy and Ethics of COVID-19](#) (University of Ottawa Press, 2020) 463

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.

Potapova, Aleksandra, ‘[The Risk of Limitation of Attraction of Foreign Migrants to the Russian Agriculture Amid the Pandemic](#)’ (2020) 10 (112) *Monitoring of Russia's Economic Outlook* 3-9

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.

Powell, Catherine, '[Color of Covid and Gender of Covid: Essential Workers, Not Disposable People](#)'
(2021) 32(2) *Yale Journal of Law and Feminism* (forthcoming)

Jurisdiction: USA

Abstract: We live in a moment of interconnected pandemics. The COVID-19 crisis provides a window into the underlying pandemics of inequality, economic insecurity, and injustice. The viruses of sexism, racism, and economic instability are the pre-existing conditions of an unjust legal system — baked into our nation at the Founding in the shadow of chattel slavery, female disenfranchisement, property requirements for voting rights, and dispossession of Native Americans. COVID-19 has not recreated these conditions, but instead has amplified the persisting inequalities upon which the nation was built. At the same time, the current viral moment reveals that we all share common vulnerabilities, making a vulnerability analysis particularly timely in gaining support for solutions. As commentators have observed, 'COVID-19 doesn't discriminate[, but] America does.' Even while unmasking deeply embedded structural inequalities, this moment of interlinked pandemics of disease, economic insecurity, and violence affects us all and has torn at the very fabric of the social contract we owe to each other and, in fact, depend on. I propose a new concept, 'viral convergence,' to both analyze this moment of interlinked crises and to utilize this moment, in which our share vulnerabilities are so clear, to theorize a way forward. The road ahead calls for legal paradigms that recognize both the need for universal and more targeted solutions. As Arundhati Roy suggests, we must both acknowledge the tragedy while also utilizing this crisis for transformational change by viewing the COVID-19 pandemic as a 'portal' to a more just and equal world.

Puaschunder, Julia M, Martin Gelter and Siegfried Sharma, 'Alleviating An Unequal COVID-19 World: Globally Digital and Productively Healthy' (Fordham Law Legal Studies Research Paper No 3679351, 2020)

Abstract: The novel Coronavirus-crisis raises attention to digitalization and healthcare prevention that opens opportunities to alleviate growing online and healthcare inequalities. In the wake of an already burgeoning digitalization revolution, the COVID-19 pandemic perpetuated digitalization. As affinity to information and communication technologies nowadays determines economic potential, technology-based inequality increases. Taxing digital analytics-driven economic growth could raise funds to offset technology disruption fallouts on a

national level. On a global scale, equal access to internet connectivity around the world would help spread the benefits of digitalization equally and aid countries in catching up in international development endeavors. More than ever before in the history of modern workforce do employers and employees alike nowadays care about the overall well-being and physical interaction in a hygienic environment. The COVID-19 pandemic steered individuals to adopt technology to self-monitor healthy lifestyles, but also governments and employers to electronically track individuals for health safety purposes. With the overall immune system resiliency determining the severity of a COVID-19 infection, preventive healthcare implementation can be leveraged into a competitive advantage. Corporate Social Responsibility and corporate governance should incentivize preventive self-care as an innovative precautionary mean for lowering pandemic outbreak risks and boosting performance. Like in the Austrian Sozialpartnerschafts-model, stakeholder integration into corporate decision making could aid in reaching collective goals of a healthy workforce in an overall precautionary environment. Online healthcare technology offers most novel corporate governance and employer-employee interaction opportunities. Endogenous growth theory should include the workforce health status as a productive labor capital driver. Precaution should be factored in as a positive collective learning-by-preventing process, which includes group dynamics around hygiene but also monitoring of one's own and other's health status and care via health apps that also allow tracking human contact touchpoints for preventing COVID.

Quinn, Oisin and April Duff, 'Contract Complications' (2020) 25(3) *Bar Review* 79-82

Jurisdiction: UK

Abstract: Examines whether employers can alter the terms and conditions of their employees' employment contracts to cope with the post-coronavirus economic downturn, particularly terms relating to pay and working hours. Considers whether such terms can be altered: with the employee's consent; without the employee's consent but relying on variation provisions; and without employee consent or a variation clause. Emphasises the protection available to employees faced with pay cuts of reduced working hours.

Rajaretnam, Thilla and Angus Young, 'Social Media, Its Use at Work and More: An Australian Perspective' (2020) 26(6) *Computer and Telecommunications Law Review* 145-150

Note: See in particular the section entitled 'The Future of Work, Covid-19 and Social Media'.

Abstract: The internet and social media are powerful instruments for mobilisation of people across the world and there is little doubt that the digital technology and social media have a significant impact on many aspects of social life and beyond. What started as a new tool for person-to-person communication has become something more, including a marketing tool for businesses. Corporations are catching up with the use of social media. They have begun to embrace the social media revolution by harnessing the benefits of social media as a communication, engagement and marketing tool. On the other end of the scale, many organisations are sceptical about the benefits of social media and perceive it as an inefficient use of time. The use of social media is either strongly discouraged at work or banned entirely. Besides, social media is increasingly more important for businesses that could post unknown risks as well as opportunities with the advent of the fourth industrial revolution. Consequently, the use of social media platforms at the workplace deserves more attention.

Rapuleng, Thabang, 'Days of Our Lives in the "New Normal": Retrenchments in Southern Africa Post COVID-19' (2020) 20(6) *Without Prejudice* 56–57

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.

Rajaretnam, Thilla and Angus Young, 'Social Media, Its Use at Work and More: An Australian Perspective' (2020) 26(6) *Computer and Telecommunications Law Review* 145-150

Note: See in particular the section entitled 'The Future of Work, Covid-19 and Social Media'.

Rapuleng, Thabang, 'Days of Our Lives in the "New Normal": Retrenchments in Southern Africa Post COVID-19' (2020) 20(6) *Without Prejudice* 56–57

Jurisdictions: Botswana, Lesotho, Mozambique and Namibia

Rasnaca, Zane, ['Essential but Unprotected: Highly Mobile Workers in the EU during the COVID-19 Pandemic'](#) (ETUI Research Paper, Policy Brief 9/2020, 2020)

Abstract: The Covid-19 pandemic has shown that highly mobile workers who frequently move either within or in and out of the European Union (EU) are irreplaceable during a public health crisis. Nevertheless, they often remain the least protected and most vulnerable.

Measures introduced to protect workers in standard employment relationships during a public health crisis might not reach certain groups of highly mobile workers. As a result, they may become even more marginalised during a crisis.

This is further exacerbated by such workers often being foreigners in their host countries. Both host and home countries fail to protect them adequately, and this can be even more pronounced for workers from third countries, outside of the EU. During the COVID-19 pandemic, pre-existing EU law has failed to protect highly mobile workers and, so far, the guidance and policy actions taken by the European Commission have failed them too.

To enhance protection for highly mobile workers in the long term, a significant (upwards) convergence of social and labour law standards between countries and for different groups of workers is needed. In the medium term, a pan-European social safety net for crisis situations should be created, with the needs of highly mobile workers in mind. And in the short term, targeted emergency measures including both support and protective standards for this group of workers should be adopted, ideally at the EU level or, if not possible, at the national level.

This policy brief's focus is on 'highly mobile workers', namely those workers whose place of employment is not a single Member State: they either regularly cross borders due to the nature of their work, work in multiple Member States, or cross a border every day in order to work in a Member State other than the one where they permanently reside (De Wispelaere and Rocca 2020).

The following groups of workers are of interest here: international transport workers (drivers, seafarers and air crew members); seasonal workers; frontier workers, who travel to a country other than their own for work on a regular basis; and other types of highly mobile workers.

Rothstein, Mark A and Julia Irzyk, '[Lawsuits of Last Resort: Employees Fight for Safe Workplaces during COVID-19](#)' (The Hastings Center Bioethics Forum, 29 July 2020)

Jurisdiction: USA

Abstract: A worker whose employer is failing to provide adequate protections against SARS-CoV-2 generally has little legal recourse. The Occupational Safety and Health Administration (OSHA), which is charged with ensuring safe and healthful workplaces, has refused to enact an emergency temporary standard for COVID-19. Furthermore, OSHA has issued only two minor citations against employers for violating existing regulations, despite thousands of illnesses and deaths among essential workers in high-risk positions. A possible 'last resort' legal strategy is to sue under public nuisance law, but these actions are usually reserved for governmental entities and often precluded by the existence of a statute that addresses the general issue.

Saenz, Rogelio and Corey Sparks, '[The Inequities of Job Loss and Recovery Amid the COVID-19 Pandemic](#)' (University of New Hampshire, Carsey School of Public Policy, National Issue Brief No 150, 10 August 2020)

Jurisdiction: USA

Extract from Introduction: This research is one of the first efforts to provide a broad and comprehensive overview of the inequities in job loss and recovery over the last several months of the pandemic. Our analysis highlights the wide variations in unemployment and the level of job loss over the last several months that have taken place to date across the nation's demographic groups that have historically suffered disparities in the workforce, including persons of color, women, and immigrants. It is particularly unfortunate that the calamity of the pandemic comes on the heels of major improvements in job prospects that these groups made over the last decade, as the workforce emerged from the Great Recession.

Sanders, Amanda and Aida Geragusian, 'New Law to ensure Furloughed Employees Receive Full Redundancy Payments' (2020) 213(September) *Employment Law Journal* 13-18

Jurisdiction: UK

Abstract: Analyses the rules on redundancy and notice pay for employees made redundant on expiry of the Coronavirus Job Retention Scheme, under the Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020, and on the bonus scheme introduced to encourage employees to retain employees after the CJRS.

Scott, Claire and Chris Evans, 'Employment Update' (2020) 213 (September) *Employment Law Journal* 1-5

Jurisdictions: UK & EU

Abstract: Summarises UK and EU case law relating to: employees opting for advantageous changes to terms during a TUPE transfer; the splitting of a full-time contract to part-time contracts for multiple employees under a TUPE transfer; whether attending court was "work" under the Coronavirus Job Retention Scheme; the temporary worker requirement under the Agency Workers Regulations 2010 reg.3(1)(a); and enhanced financial packages for disabled employees.

Selberg, Niklas, '[The ILO Response to Covid-19: ILO and International Labour Standards in Times of a Pandemic](#)' (2020) 13(1) *Italian Labour Law e-Journal* 161–185

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.

Sen, Shuvro et al, '[The Unprecedented Pandemic "COVID-19" Effect on the Bangladesh Apparel Workers by Shivering the Apparel Supply Chain](#)' (2020) 11(3) *Journal of Textile and Apparel, Technology and Management* 1-20

Abstract: COVID-19, known as a pandemic, affects the global economy. ILO declared this virus as a labor market and economic crisis. This study has been conducted for understanding the effect of COVID-19 on the apparel industry and the apparel manufacturing workers. This is a descriptive study, following the inductive procedure. The relevant information has been collected from the current academic literature, newspapers, reports publications, and relevant web pages. An online interview with the manufacturers, policymakers, trade unions, researchers, and academicians has been conducted for primary information collection. This study has found that the apparel industry is one of the most affected industries among the other industries by COVID-19. The retailers' shops are being closed with having zero turnovers which leads to ordering cancelation to the manufacturing factories. Bangladesh's apparel manufacturing industry is also drastically affected due to COVID-19. The factories can't pay the workers' salaries in this critical situation. Therefore, millions of workers have been sent home without their wages. Sometimes, it has predicted that the workers would lose jobs due to factory closure. The Government took lots of initiatives i.e. tax rebates, reduce VAT, financial support to the owners to pay the workers' wages, loan installment rescheduling, etc. Albeit, these initiatives were taken for the welfare of the factory owners and the workers remain oppressed. So, a proper policy strategy is indeed an emergency to support the destitute workforce during the COVID-19 as well as in future financial crises that can happen due to this kind of epidemic or any reason. This study will be supportive to the stakeholders of this sector to learn the impact of COVID-19 on the workers and make the necessary adjustment for the future betterment.

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

Abstract: Highlights comments made by two UK employment law specialists on the "unprecedented" economic supports announced by the UK Chancellor of the Exchequer Rishi Sunak in response to the coronavirus outbreak. Argues that the UK's Job Retention Scheme

exposes the inadequacy of the existing UK labour law framework concerning urgent measures that such a nationwide emergency requires.

Singh, Swarnima, '[Dilution of Labour Laws: Hidden Exploitation of Migrant Labourers Before Lockdown, Increase after Lockdown](#)' (SSRN Scholarly Paper ID 3662079, 28 July 2020)

Jurisdiction: India

Abstract: Migrant workers are beneficial and important factors for the economy where as their life is full of scarce, vulnerable and exploitation. In Globalization, profit motive capitalism emerged through which overuse of resources and worker exploitation occurs. For maintaining dignity and reducing the exploitation over labours government intervention took place by introducing labour laws. But due to the upcoming scenario Covid-19 pandemic affects the economy. Production becomes stagnant. So to maintain the pace of the economy the government has removed various labour laws which may affect the life of migrant labourers. Definitely it has seen the economy is somehow dependent on labourers. But now the economy is going to be stable at the cost of migrant workers. This study is an attempt to analyse the extent of labour laws followed in the grassroot level before lockdown and in which way it has increased after lockdown and unlock condition.

Singh Kang, Jagvinder, 'Workplace Testing for Coronavirus: Data Protection Considerations Can't be Factored in Overnight!' (2020) (August) *Computers and Law* 90-92

Jurisdiction: UK

Abstract: Highlights the importance for employers to start planning if they seek to introduce COVID-19 workplace testing as part of their risk assessment and mitigation measures. Outlines data protection considerations for employers, including the importance of undertaking a data protection impact assessment on the various aspects of the data processing arrangements that will be required and to be transparent about their data processing arrangements.

Singleton, Susan, 'Coronavirus: Home Working: Some Legal Issues' [2020] (September) *IT Law Today* 4-9

Jurisdiction: UK

Abstract: Considers the legal implications if employers require employees to work at home during

the coronavirus pandemic. Looks at health and safety at work obligations when display screen equipment is used, data protection cybersecurity, video conferencing, non-domestic rates, and capital gains tax.

Skandalis, Ioannis, '[Labour Law Measures Adopted in Response to Covid-19 in Greece](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Several urgent labour law measures have been adopted in Greece as a response to COVID-19 through consecutive Legislative Acts, which were further clarified through numerous Ministerial Decisions. For this purpose, the Greek government resorted to an extraordinary fast-track legislative procedure provided by Greek constitution, which enables the executive power to legislate in cases of emergency. Said measures are subsequently ratified by law. The adopted labour law-related measures aimed to inject some flexibility in the labour market and to guarantee a basic level of income by the state for those employees, whose employment contracts were suspended, by also safeguarding the maintenance of as many working positions as possible. The purpose of this contribution is to present these measures by emphasising on the interpretative issues that they set.

Slinn, Sara J, '[Protected Concerted Activity and Non-Unionized Employee Strikes: Worker Rights in Canada in the Time of COVID-19](#)' (2020) 57 *Osgoode Hall Law Journal* (forthcoming)

Abstract: During the pandemic employees in the US have engaged in a wave of strikes, protests and other collective action over concerns about unsafe working conditions, and many of these involved non-unionized workers in the private sector. Similar employee protests were notably absent in Canada. This article examines the differences in labour legislation between the US and Canada which may help to explain these diverging experiences, primarily: the National Labor Relations Act (NLRA) section 7 protection for concerted activity, and the NLRA section 502 ability for a good faith strike due to abnormally dangerous conditions for work. This article outlines and compares the situation of, and consequences for, three categories of workers engaging in a strike over fears of workplace safety: unionized employees, non-unionized employees, and non-employees, such as independent contractors under the NLRA compared to under the Ontario Labour Relations Act (OLRA), as generally representative of Canadian labour legislation. In the final section, this article considers how a statutory provision similar to the NLRA protected

concerted activity provision might be incorporated into Canadian labour legislation such as the OLRA. It also considers some more fundamental questions that such changes might prompt policymakers to reconsider, including: the focus of our statutory system on 'organizing' collective action to the exclusion of 'mobilizing' collective action, and questions about the potential role of minority unionism in our labour legislation system.

Spies-Butcher, Ben, 'The Temporary Welfare State: The Political Economy of Job Keeper, Job Seeker and "Snap Back"' (2020) (85) *Journal of Australian Political Economy* 155-163

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.

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

Jurisdiction: India

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

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

Terman, Sharon, '[Protecting Workers' Jobs and Income During COVID-19](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 205-210

Jurisdiction: USA

Abstract: The COVID-19 pandemic has exposed and exacerbated the harmful impacts of disparities in access to workplace supports like paid leave and unemployment benefits, and has led to worsening economic conditions for people already living on the margins. Workers in the United States have long experienced a crisis around care – too often having to risk their jobs and income when they or their loved ones become ill. The United States is one of the only countries in the world without universal, guaranteed, job-protected paid leave. A complex patchwork of laws allows some workers to take time off work to care for themselves and their families, but low-wage workers are often excluded from coverage or otherwise face barriers to accessing these protections. The unemployment insurance system provides temporary, partial wage replacement to those who lose their jobs through no fault of their own. But some workers, including undocumented immigrants, are excluded, and cumbersome rules and administrative obstacles prevent many others from accessing benefits. In March 2020, Congress enacted temporary emergency paid sick and family leave for the first time, as well as expanded unemployment benefits, but both programs have serious gaps that disproportionately impact

women, people of color, low-income workers, and immigrants. This Chapter examines the income and job protection policy responses to COVID-19 and recommends additional solutions that center the needs of low-wage workers and families, and prioritize racial and gender equity and access for immigrants.

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.

Weatherhead, Alison, 'Just Back to Work?' (2020) 65(7) *Journal of the Law Society of Scotland* 12-14

Jurisdiction: UK

Abstract: Examines issues being faced by employers, including law firms, in ensuring a safe return to work following the COVID-19 lockdown, including on: the provision of personal protective equipment; what to do if an employee develops COVID-19 symptoms; what employers should reveal if an employee is diagnosed with COVID-19; whether employers are allowed to make temperature checks; and recognising the concerns and special protections of employees.

Weaver, Brigitte, 'Employment Procedures in the Time of a Pandemic' (2020) 213(September) *Employment Law Journal* 38-41

Jurisdiction: UK

Abstract: Responds to frequently-asked questions on how employers and their legal advisers can hold disciplinary and grievance hearings remotely during the coronavirus pandemic, including: whether hearings should proceed or be delayed; whether face-to-face meetings are necessary; how to avoid the risk of covert recordings; how the right to be accompanied can be accommodated; and whether furloughed employees can participate in the procedures.

Werker, Madeleine, 'Employment Law in the Time of COVID-19' (2020) 29(3) *The Employment Bulletin*
Jurisdiction: Canada

Wiley, Lindsay F and Samuel R Bagenstos, '[The Personal Responsibility Pandemic: Centering Solidarity in Public Health and Employment Law](#)' (2020) *Arizona State Law Journal* (forthcoming)

Jurisdiction: USA

Abstract: The personal responsibility ethos that has driven the US response to the coronavirus pandemic has been ineffective, atomizing, and unjust. Restrictions on public services and private activities have disproportionately burdened people living in low-income households, people with disabilities, people of color, and women. At the same time, the severe illnesses and deaths that have continued to occur in spite of public health responses have been disproportionately concentrated among people of color, disabled people, and low-wage workers.

This paper argues that fundamentally individualistic employment and antidiscrimination laws have undermined—rather than supported—disempowered workers' ability to protect themselves and others. The law has failed to protect people who live and work in congregate institutions (including nursing homes, prisons, jails, detention facilities, factories, and warehouses . . . and, perhaps soon, schools) and thus has failed to protect the broader communities with which these institutions are interconnected. Together, public health and employment laws have put the onus on individuals to adopt protective behaviors without providing them with the supports, accommodations, and protections they need to do so.

We identify three key areas for reform to ensure more effective and just pandemic response—for this pandemic and the next one—built on a core commitment to social solidarity in public health law and employment and antidiscrimination law. First, public health law should prioritize supports that create the conditions required mitigate the spread of infection over punitive measures targeting individuals. Second, employment law should protect workers from infection, including through workplace safety, privacy, and antidiscrimination protections that enable them to adopt protective health behaviors. Third, for individuals for whom returning to work would be especially unsafe—whether because their employers maintain particularly dangerous conditions or because of their own, or their family members', underlying health conditions—employment law should remove any obligation to return to work while the special dangers associated with the pandemic persist.

In addition to making concrete proposals for reform, our argument contributes to the academic literature in both public health and employment law. First, we show that a broad vision of public health law that encompasses action on the social determinants of health in 'non-health' sectors

such as employment and antidiscrimination law is not only tenable, but essential. The US experience with the coronavirus pandemic puts the final nail in the coffin of the 'old' public health, which its cramped focus on microbial and behavioral interventions. Second, we bring to the foreground an additional justification for employment and antidiscrimination law—to promote solidarity by ensuring that the burdens and benefits of measures that serve the public as a whole are shared equitably. Social solidarity may offer a useful way of understanding the application of these bodies of law in other health-related contexts as well, such as genetic discrimination and workplace injuries. Third, we show that the attribution of fault and responsibility is a persistent obsession of employment and antidiscrimination law. These points should be of broad interest to employment and public health law scholars alike.

Williams, J Corey et al, 'Reopening the United States: Black and Hispanic Workers Are Essential and Expendable Again' (2020) 110(10) *American Journal of Public Health* 1506–1508

Introduction: By May 15, 2020, all 50 states had announced plans to reopen their economies. These plans emerged on the heels of an increasing awareness that COVID-19 had hit minority communities particularly hard, especially Black communities. Despite constituting only 13% of the US population, Blacks have made up 24% of the deaths from COVID-19 nationally, rendering them at least twice as likely to die from COVID-19 than are other groups. A recent survey from Johns Hopkins University and the American Community Survey indicated that the death rate for predominantly Black counties is sixfold higher than the rate in predominantly White counties.

The disproportionate impact of COVID-19 on minority communities has been partly attributed to the racial composition of the workers in economic sectors deemed essential, including home health care, nursing homes, and community food and housing services. In these sectors, where employees are likely to come into contact with COVID-19 (i.e., high-contact jobs), Blacks and Hispanics are more likely to be employed than are Whites. Data from a recent McKinsey Report² show examples from critical economic sectors where the laborers are predominantly people of color. For example, in jobs such as psychiatric aid, nursing assistant, and orderly, Blacks make up more than twice their relative proportion of the broader US population (i.e., 13%). Because it is difficult for these jobs to be performed remotely, racial minorities have shouldered more than their share of essential labor during the COVID-19 pandemic, and their communities have been disparately endangered as a result.

Wilson, Claire, 'Manage the Risks of a Fire and Rehire Strategy' (2020) 213 (September) *Employment Law Journal* 31-37

Jurisdiction: UK

Abstract: Highlights the risks for employers who elect to “fire and rehire” employees on new employment terms and conditions, instead of making them redundant following the expiry of the Coronavirus Job Retention Scheme. Offers advice on how employers can make changes to terms and conditions safely, and persuade employees to agree to the changes. Notes other ways in which employers might seek to reduce costs without relying on dismissal and re-engagement.

Yadid, David, 'The Shape of Work after the Coronavirus' (2020) 9(4) *Compliance & Risk* 6-9

Abstract: Speculates on the workplace adaptations likely to be adopted in response to COVID-19 concerns and offers risk management advice for employers, focusing on four key areas: remote working; alteration of office space; health and safety in the workplace, including cleaning; and operational challenges and policy.

Yearby, Ruqaiijah, '[Protecting Workers that Provide Essential Services](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 193-198

Jurisdiction: USA

Abstract: States and localities, which retain the right to protect the health and safety of their citizens, have designated more than 55 million Americans as “essential workers” during the COVID-19 pandemic. Most essential workers are employed in health care (30%) and in food and agricultural (21%) (McNicholas & Poydock, 2020). A majority (76%) of all essential health care workers are women, while half of all essential food and agricultural workers are racial and ethnic minorities. Consequently, many women and racial and ethnic minorities are unable to shelter at home or socially distance themselves because they are deemed “essential workers” (Yearby & Mohapatra, 2020). Even though these workers are deemed “essential workers,” they have not been provided with the employment and safety protections (e.g., paid sick leave,

health insurance, and workers' compensation) that are essential to keeping them and their families healthy and safe. To address the lack of economic protections, which is discussed in more detail in Chapter 28, essential workers should be provided with a guaranteed basic income, paid sick leave, health insurance coverage, and survivorship benefits regardless of their worker and/or immigration status (Yearby & Mohapatra, 2020). To keep workers from being killed or otherwise harmed at work, the government (federal and state) must issue mandatory health and safety laws and regulations that are aggressively enforced to prevent workplace COVID-19 infections and deaths. Finally, to ensure that essential workers and their families do not suffer financially if they contract COVID-19, the government (federal and state) and businesses should be financially responsible for the harm caused as a result of a worker's COVID-19 infection or death.

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.

Ashford, Chris, 'Law Teaching and the Coronavirus Pandemic' (2020) 54(2) *Law Teacher* 167-168

Abstract: Outlines how law teaching has been affected by the coronavirus pandemic, highlighting key legal social media hubs and online resources.

Aucejo, Esteban et al, '[The Impact of Covid-19 on Student Experiences and Expectations: Evidence from a Survey](#)' (NBER Working Paper No w27392, 2020)

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.

Becker, Ted, '[What Will \(Or Might?\) Law School Look Like This Fall?: Teaching in the Midst of a Pandemic](#)' (2020) 99(8) *Michigan Bar Journal* 44-45

Abstract: January 2020 marked the start of a new semester for Michigan law schools. There was little reason to suspect it wouldn't be a semester like any other: for 3Ls, the start of the stretch run to graduation; for 1Ls, a chance to begin anew after the stress of their first set of law school final exams; for law school faculty, administrators, and staff, a return to the excitement and activity of crowded hallways and classrooms after the brief interlude of winter break. Classes began and proceeded as normal.

Booth, Ross, 'Academics and Pandemics: A Student's Perspective during the Lockdown: Opinion - Covid-19' (2020) 20(5) *Without Prejudice* 11–12

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.

Corbera, Esteve et al, '[Academia in the Time of COVID-19: Towards an Ethics of Care](#)' (2020) 21(2) *Planning Theory & Practice* 191–199

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.

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

Jurisdiction: USA

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

Duane, Tim, '[Teaching Law in the Time of COVID-19](#)' (SSRN Scholarly Paper ID 3642820, 5 July 2020)

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.

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

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

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

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

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

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

Franks, Mary Anne, '[Protecting Privacy and Security in Online Instruction: A Guide for Students and Faculty](#)' (SSRN Scholarly Paper ID 3668553, 6 April 2020)

Abstract: COVID-19 forced educational institutions all over the globe to shift abruptly to online instruction. Online instruction presents many challenges to both faculty and students accustomed to in-person learning. Among those challenges are serious equity concerns, including wide variation among students and faculty in terms of technological literacy, access to reliable Internet service and related 'digital divide' issues, time zones, caretaking responsibilities, and personal situations that may make remote learning difficult or impossible (e.g. unsafe home conditions). Another serious category of concern are privacy and security issues, which are the subject of this memo. The privacy and security issues raised by this memo are not exhaustive. This memo is only a preliminary and necessarily incomplete set of concerns and recommendations.

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.

Greely, Henry T, '[Pandemic Fairness and Academia](#)' (2020) *Journal of Law and the Biosciences* Article Isaa030 (advance article, published 20 May 2020)

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 than 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.

Griggs, Marsha, '[An Epic Fail](#)' (2020) 64(1) *Howard Law Journal* (forthcoming)
Jurisdiction: USA

Abstract: All at once, the U.S. found itself embattled with the threat of COVID-19, the new normal of social distancing, and the perennial scourge of racial injustice. While simultaneously battling those ills, the class of 2020 law graduates found themselves also contending with inflexible bar licensing policies that placed at risk their health, safety, and careers. During a global health pandemic, bar licensing authorities made the bar exam a moving target riddled with uncertainty and last-minute cancellations. This costly and unsettling uncertainty surrounding the bar exam administration was unnecessary because multiple alternatives were available to safely license new attorneys. A ball was dropped, and bar examiners at the state and national levels failed epically at an opportunity to be adaptive, decisive, and transparent, to the detriment of a class new lawyers and the public they will serve. The dogged insistence on

status quo that led to the bar exam chaos of 2020, has placed the method and purpose of bar examination under national scrutiny. This Article offers a critical analysis of the systemic failure of bar licensure authorities to respond adaptively to crisis; explores alternative processes to measure minimal competency; and offers insight about the institutional mindset that has dominated our perception of the bar exam. An entire class of bar takers was held captive to conventional thinking at a time that called for compassion and innovation. Any failures on this bar exam are ours, not theirs.

Guilfoyle, Douglas, '[Teaching Public International Law in the Time of Coronavirus: Migrating Online](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

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.

Hubble, Sue and Paul Bolton, '[Coronavirus: Implications for the Higher and Further Education Sectors in England](#)' (Briefing Paper No 8893, House of Commons Library, 17 April 2020)

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.

Hudson, Emily, '[Copyright Guidance for Using Films in Online Teaching During the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3667025, 4 August 2020)

Jurisdiction: UK

Abstract: This Guidance discusses copyright options for using feature films and other audiovisual content in online teaching. It responds to concerns amongst UK higher education institutions (HEIs) that moving education online as a result of the COVID-19 pandemic raises new copyright risks. At many HEIs, in-person lectures may not be possible in the coming academic year due to COVID-related social distancing requirements. Even if some face-to-face teaching is possible, many students will undertake some or all of their studies remotely. One particular concern has been ensuring that Film Studies departments can screen feature films to students online, this being an essential part of those programmes. But lecturers in other disciplines also use a variety of films in their teaching, making these copyright questions of broader relevance. HEIs are keen to know whether they may use audiovisual content in online teaching without a licence. The key take-home message from this Guidance is that there are a number of exceptions in the Copyright, Designs and Patents Act 1988 (CDPA) on which HEIs may be able to rely. It focuses in

particular on the fair dealing exception for illustration for instruction in s. 32 of the CDPA, and quotation in s. 30(1ZA).

Jones, Mark L et al, '[It's Alright, Ma, It's Life and Life Only: Are Colleges and Universities Legally Obligated during the Coronavirus Pandemic to Exempt High-Risk Faculty from In-Person Teaching Requirements?](#)' (SSRN Scholarly Paper ID 3684190, 1 September 2020)

Abstract: After hurriedly transitioning to online learning when the coronavirus pandemic burst onto the scene during spring semester 2020, colleges and universities across the U.S. spent much of the spring and summer deciding how to proceed in the fall. Should all courses continue to be taught entirely online? Should all return to in person? Is the best answer instead some sort of hybrid curriculum? Because the pandemic has defied prediction at every turn, colleges and universities not going entirely online can't help but know that at any point during the semester they may suddenly be forced to revisit and revise their decision. Furthermore, after a summer in which the virus continued to infect U.S. residents at an alarming rate, colleges and universities are surely on notice that the pandemic should figure front and center in their planning as they think about in-person vs. online instruction for spring semester 2021.

We believe that, for the duration of this pandemic, a college or university planning to offer any in-person classes has a moral obligation not to require any faculty members to teach in person who, out of concern for their own physical or emotional well-being or for that of another member of their household, ask to teach online instead. For now, however, we leave it to others to discuss more fully colleges' and universities' moral obligations. Our topic is colleges' and universities' legal obligations to allow faculty to opt for online, rather than in-person, teaching during this pandemic, and within that topic, we limit our focus to the group of faculty whom we believe colleges and universities have the clearest legal obligation to protect – those who, according to the criteria identified by the Centers for Disease Control and Prevention, appear to be most vulnerable to getting seriously ill or even dying if they contract the coronavirus. In the language of the CDC, our focus is faculty members 'at increased risk of severe illness from COVID-19' – a group that we call 'CDC high-risk faculty.' According to the CDC, anyone is high risk who has reached age 65 or who has one of various specific medical conditions, including cancer, chronic kidney disease, pregnancy, hypertension, and more.

We outline various arguments that colleges and universities are legally obligated during this pandemic to exempt CDC high-risk faculty from any in-person teaching requirement. Two of the four legal sources upon which we rely are federal statutes that qualify as major statements of national policy – the Americans with Disabilities Act and the Age Discrimination in Employment Act. The other two sources are important state-law doctrines with strong support in the American Law Institute’s most recent restatement of the law of torts – protection from intentional infliction of physical harm, and protection from intentional infliction of emotional distress.

Our hope is that our arguments will provide college and university leaders with a perspective that will prompt them to recognize the great importance of adopting an exemption policy that at a minimum frees all CDC high-risk faculty from any requirement to teach in person. Perhaps they would adopt such a policy simply to avoid possible legal liability. Ideally, however, they would do so at least in part out of a recognition that a college or university policy at odds with legal sources as weighty as the four under discussion is a policy that speaks very poorly for the institutions they are charged with leading. The fact that it’s difficult to place a dollar value on a college’s or university’s reputation for fairness and humaneness doesn’t mean that a policy that tarnishes that reputation is not very costly to the institution. We have no doubt that it is.

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.

Khaydarova, Umida, ‘[Importance of the New Decree on Support and Promotion of Legal Education Signed During the Pandemic](#)’ (2020) *Review of Law Sciences* 266-269

Jurisdiction: Uzbekistan

Abstract: In subsequent integration processes, any area in the society should remain and continue to function even after the pandemic. This is also relevant in the higher education

system. The announcement of the pandemic led to the introduction of remote organization of the educational process and the creation of online classes. At the same time, the adoption by the President of a decree on the fundamental improvement of legal education and science in the Republic of Uzbekistan increased attention to education in these processes. The article discusses the significance of the decree and answers to the questions arisen in this area.

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.

McPeak, Agnieszka, '[Adaptable Design: Building Multi-Modal Content for Flexible Law School Teaching](#)' (2021) 65 *St. Louis University Law Journal* (forthcoming)

Abstract: This essay discusses ways to build course content that can easily toggle between face-to-face and online modes of instruction. It is meant as a quick, practical guide for law professors faced with challenging teaching circumstances due to Covid-19 and campus closures. This idea for 'adaptable design' is based largely on my own experience moving face-to-face courses online. I try to avoid delving too much into technical definitions and pedagogical theory, instead focusing on personal experience and examples. Although Covid-19 has created an immediate need for adaptable design, I hope this essay proves to be a resource beyond our immediate reactions to a global pandemic and can be useful for anyone seeking to innovate in their law school courses. (This essay will appear in *St. Louis Law Journal's Teaching Series* in Spring 2021. In keeping with the style of the series, footnotes are kept to a minimum.)

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

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

Myronets, Oksana M et al 'Current Issues and Prospects of Modern Higher Legal Education in Conditions of the Fight against COVID-19' (2020) 37(65) *Cuestiones Políticas* 438-456

Abstract: The purpose of the document is to determine the current problems and the possible directions for the development and improvement of higher legal education in the modern challenges and conditions of the pandemic and post-pandemic of COVID-2019, under the hypothesis that the upcoming emergency is affirmed again. General-scientific and special-legal methods of cognition have been used. Through the use of the dialectical method, the current problems of modern legal education have also been identified, their foundations have been investigated and instructions have been sought to improve legal education and the quality of young lawyers in the educational environment of the pandemic. In conclusion, it is highlighted that the findings found in the research can be useful for higher education teachers who are

constantly adapting to the new conditions of professional activity in the field of legal education, in the scene of pandemic and the ordering after the pandemic, with particular emphasis on specialists focused on developing suggestions and improving the quality of legal education in the context of the global challenges imposed by COVID-2019.

Neacsu, Dana and James M Donovan, '[Academic Law Libraries and Scholarship: Communication, Publishing, and Ranking](#)' (2020) 49(4) *Journal of Law and Education* (forthcoming)

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.

Obaid, Tareq, Rabah Abdaljawad and Mohanad Abumandil, '[Higher Education Under Quarantine: What Insights Palestinian Institutes Can Share?](#)' (SSRN Scholarly Paper ID 3665685, 2 August 2020)

Abstract: The spread of the coronavirus disease known as COVID-19 is a public health emergency with economic and social ramifications in Palestine and across the world. While the impacts on business are well documented, education is also facing the largest disruption in recent memory. The COVID-19 is significantly disrupting all aspects of higher education, fundamentally changing how universities operate by sparking the boom of online learning. The impact of this disruption is necessarily transformative, requiring us to rethink how we learn has been an issue of growing importance for many years. The coronavirus and ensuing lockdown currently in effect means that rethinking education is no longer something for a fun offsite in a nice hotel at the end of the semester, but an existential challenge to every dean and president and headmaster and principal around the world. Right now Universities are shuttered. Exams are canceled. Layoffs of professors and teachers will inevitably follow. Brand-name schools will, in time, bounce back. Many other less prestigious places will never reopen their doors. At this moment of extreme peril, and in the spirit of turning crisis into opportunity, educators and

administrators at every scholastic level – and those responsible for training employees in the wider workforce – must urgently reassess their existing practices and protocols. They need to reimagine how to operate in a world of remote presence, social distancing and considerable economic stress.

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.

Parker, Beth, '[Law School Exams during a Pandemic: One Law School's Experience](#)' (SSRN Scholarly Paper ID 3679653, 20 August 2020)

Abstract: In 2020, toward the end of the Winter semester, the COVID-19 pandemic disrupted life across the globe. Institutions, including law schools, felt the widespread effects of this public health crisis. Law schools were forced to move entire curriculums online in record time and consider how they were going to administer final exams. There is no precedent or manual for how to do this successfully. The pressure of the high stakes law school final exam that the law student's entire grade and ranking rest upon is stressful, to say the least. Law students are on edge during final exams during normal times, but as the United States became overwhelmed by the COVID-19 pandemic, universities sent students, faculty, and staff home to finish the semester online and were left with a myriad of issues to address. One issue that arose was how to deliver final exams in a completely online format while maintaining the integrity of the law school exam. This article discusses the pivot to flexibility that one law school had to make, under emergency conditions, and with limited resources. Part I describes the law school final exam pre-COVID 19, Part II describes the pre-planning process, Part III discusses the building process, Part IV discusses the administering process, and Part V explores some of the lessons learned from the experience with exams and suggests how to move forward in an uncertain world.

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, '[Giving an Online Exam](#)' (SSRN Scholarly Paper ID 3684958, 2 September 2020)

Abstract: Invaluable guidance has emerged on online teaching during the time of coronavirus, but less so on online final exams. This Article fills this void by offering various methods to maintain the integrity of final exams administered online.

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.

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

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

Extract (page 3): It is important to note that this Online Trusts & Estates course is fully asynchronous and was built over time. In an asynchronous course, teaching and learning is done through an online learning management system (in this case, Canvas), with lessons organized by modules containing prerecorded lectures by the professor, readings, supplemental videos, and student assessment activities that often receive faculty feedback. This differs from synchronous courses done live but online through video conferencing, such as Zoom, which most faculty adopted during the COVID-19 pandemic because they were confronted with an emergency and lacked the time to build a course in advance. Nonetheless, many of the lessons for asynchronous courses presented in this Article hold true for synchronous courses as well.

Sandoval, Catherine JK et al, '[Legal Education in the Era of COVID-19: Putting Health, Safety and Equity First](#)' (SSRN Scholarly Paper ID 3660221, 24 July 2020)

Jurisdiction: USA

Abstract: The COVID-19 pandemic has transformed the traditional academic model of gathering people into physical classes into a high-risk activity. Legal education is a Critical Infrastructure sector that supports democratic access to the legal system and trains students to become ethical members of the legal profession and society. Debates about whether legal education should be delivered in person, online, or through a hybrid model highlight the safety culture gap in American legal education. This Article proposes an ethical framework that values safety, recognizes the inherent worth and dignity of every human being, and centers diversity and inclusion as the foundation for effective educational dialogue, to recommend online legal education during the COVID-19 pandemic. This Article's interdisciplinary team analyzes scientific studies on COVID-19 available to date, the virus's mutation which promotes infection, and the limits of mitigation measures in indoor classrooms where people gather for more than an hour at a time to discuss educational material and develop legal skills. It examines the disproportionate effects of COVID-19 on African-Americans, Native Americans, Latinx Americans, older Americans, and those with certain underlying health conditions that would foreseeably lead members of those groups to participate in class online. Those participating in person in a hybrid educational model are likely to be younger and less diverse. The hybrid classroom model cleaves students and faculty by race, ethnicity, tribe, age, and health, undermining commitments to diversity and inclusion that support educational dialogue and first amendment values. In person classes may drive viral mutation and endanger health and safety as people under 45, the largest age cohort for American law students, lead the surge in COVID-19 infection. The Internet's development creates the opportunity to deliver effective, synchronous, inclusive, ethical legal education. This Article concludes that legal education should be conducted online during the COVID-19 pandemic.

Saputri, Ade Ayu and Selly Septiandini, '[Online Learning Process According to Law Number 12 of 2012 Article 31 Concerning Distance Education During the Pandemic Period of COVID-19](#)' (2020) 2(2) *Kader Bangsa Law Review* 247–263
Jurisdiction: Indonesia

Abstract: 2020 is a year that worries all countries, including Indonesia. This is due to the emergence of the Coron virus outbreak which has spread throughout the world. Initially the government did not follow the methods used by several other countries regarding the information provided about the corona COVID-19 virus, namely by taking a quick reaction to preventive socialization. The reason is that the Indonesian people are not worried about worrying issues, in addition to minimizing hoax news from a handful of irresponsible people. Finally, the Covid-19 outbreak is also a matter of concern for the community, because many Indonesians have been affected by this virus transmission. Therefore, the government took the initiative to adopt a large-scale social restriction policy where there were restrictions such as restrictions on transportation, doing work from home, carrying out teaching and learning activities at home online. So that it also has a direct impact on students as well as students in Indonesia. This study uses a qualitative research method with a literature approach (normative). The data obtained comes from several regulations, such as Governor Regulations and several other regulations and policies. The results of the study state that Indonesia has experienced a condition where the public's concern about Covid-19 is quite large so that government policy is needed to carry out large-scale social restrictions in an effort to break the chain of spreading the Covid-19 coronavirus.

Srichaiyarat, Panarairat and Ploykwan Lao-Amata, '[Legal Education During COVID-19 Pandemic: An Experience of a Thai Law School](#)' (2020) 7(2) *Asian Journal of Legal Education* 228–230

Extract: If Covid-19 pandemic is like a Tsunami to education at all levels, online teaching and learning are like a lifebuoy to teachers and students. To survive the crisis, teachers and students are forced to rely on technology much more than they used to be. They have to overcome all impediments occurred in online education. However, to become a survivor is not an equal opportunity. For some students, access to online education is severely constrained by their financial status. The pandemic may stay with us for one or two years, then some people believe that online learning will be a new normal in education. On the contrary, many teachers and

students still hope that all current abnormalities will vanish and they can be back to their traditional classrooms.

Sutton, Victoria, '[Law Student Attitudes about Their Experience in the COVID-19 Transition to Online Learning](#)' (SSRN Scholarly Paper ID 3665712, 31 July 2020)

Abstract: Law students from Texas Tech University were surveyed about their attitudes concerning online learning due to the COVID-19 transition, at the end of the spring semester 2020. Questions concerned obstacles to learning, experiences and perceptions. Among the most frequently cited obstacles for students were that students had to move (49%) from their physical location, they were impacted financially (60%) and they lacked reliable internet (40%). The impact of the disease itself was relatively small with only 10% reporting they were affected by someone having COVID-19. Concerns that the lack of time to design courses for online learning, may have soured students to the online experience were evident from the responses that 36% of students indicated they were less likely to take online classes in the future. Perhaps more surprisingly, 17% reported they were more likely to take online classes in the future. There was a difference between students who self-selected online courses in the spring semester compared with those experiencing the compulsory transition to all online classes. When students were asked whether they got as much from online learning as face to face courses, 55% of those self-selecting for online courses agreed; whereas 25% all law students disagreed with that statement. More than half of those who self-selected for online courses (55%) reported that their spring semester online course experience helped in the COVID-19 transition.

Tobias, Carl, '[The Federal Law Clerk Hiring Pilot and the Coronavirus Pandemic](#)' (2020) 54(1) *UC Davis Law Review Online* 1-20
Jurisdiction: USA

Abstract: Just when law students attained a comfort level with the arcane intricacies of the federal law clerk employment process, as increasingly exacerbated by the second year of an experimental hiring pilot plan, the coronavirus attacked the country and has been ravaging it ever since. To date, the virus has inflicted the most profound harm on the jurisdictions that comprise all of the “coastal elite circuits” that span the District of Columbia north to Maine, as

well as the United States Courts of Appeals for the Seventh and Ninth Circuits, which apply the pilot. This piece examines impacts that the coronavirus' rampant spread putatively has on law clerk employment and how students, courts, and judges can address these problematic circumstances.

Walsh, Katie, 'Education: Heads in the Cloud: The Future of Law School Learning' [2020] (68) *LSJ: Law Society of NSW Journal* 40-43

Abstract: The COVID-19 pandemic has posed huge challenges for the university sector, with many law schools struggling to stay afloat as international student numbers drop off a cliff. Students were left learning from their bedrooms, dining rooms and verandahs, and attending lectures via the cloud, with all its stilted communication issues. Will law degrees be taught this way for good?

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

Rose-Redwood, Reuben et al, '[Geographies of the COVID-19 Pandemic](#)' (2020) 10(2) *Dialogues in Human Geography* 97–106

Abstract: The spread of the novel coronavirus (SARS-CoV-2) has resulted in the most devastating global public health crisis in over a century. At present, over 10 million people from around the world have contracted the Coronavirus Disease 2019 (COVID-19), leading to more than 500,000 deaths globally. The global health crisis unleashed by the COVID-19 pandemic has been compounded by political, economic, and social crises that have exacerbated existing inequalities and disproportionately affected the most vulnerable segments of society. The global pandemic has had profoundly geographical consequences, and as the current crisis continues to unfold, there is a pressing need for geographers and other scholars to critically examine its fallout. This introductory article provides an overview of the current special issue on the geographies of the COVID-19 pandemic, which includes 42 commentaries written by contributors from across the globe. Collectively, the contributions in this special issue highlight the diverse theoretical perspectives, methodological approaches, and thematic foci that geographical scholarship can offer to better understand the uneven geographies of the Coronavirus/COVID-19.

Tedeschi, Miriam, '[The Body and the Law Across Borders During the COVID-19 Pandemic](#)' (2020) *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 / LEGAL SERVICES

Allman, Kate, 'Technology: NSW Allows Witnessing Documents via Video Call - but Are There Privacy Risks?' (2020) (67) *LSJ: Law Society of NSW Journal* 14

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.

Anderson, Beth, 'In-house, From Home' (2020) 65(5) *Journal of the Law Society of Scotland* 36-37

Abstract: Presents the experiences of new ways of working in response to the COVID-19 lockdown described by in-house lawyers in a series of virtual round tables, which highlighted themes of collaboration, positivity and finding a way forward.

Andrews, Mark 'The Times Are A-Changin' with COVID-19: and Law Firms Show They Can Adapt' (2020) (May) *Australasian Law Management Journal* 1-5

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.

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

Jurisdiction: USA

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

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

Angelos, Claudia et al, '[The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action](#)'

(Ohio State Public Law Working Paper No 537, 2020)

Jurisdiction: USA

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

In this brief policy paper, we outline six licensing options for jurisdictions to consider for the Class of 2020. Circumstances will vary from jurisdiction to jurisdiction, but we hope that these options will help courts and regulators make this complex decision. These are unprecedented times: We must work together to ensure we do not leave the talented members of Class of 2020

on the sidelines when we need every qualified professional on the field to keep our justice system moving.

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

Jurisdiction: USA

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

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

Bhreathnach, Aine, 'Rolling Back on Rights?' (2020) 114(6) *Gazette of the Law Society Ireland* 46-47

Abstract: Reports on the findings of a survey conducted by Shalom Binchy Solicitors on defence solicitors' experience of providing legal advice to suspects detained in garda stations during the early states of the COVID-19 pandemic, March-May 2020. Raises concerns that solicitors are not able to comply with government public health guidelines and still provide legal advice. Looks at how solicitors in other jurisdictions have managed to facilitate remote access to suspects and maintain social distancing.

Brescia, Raymond H, '[Ethics in Pandemics: The Lawyer for the \(Crisis\) Situation](#)' (2020) *Georgetown Journal of Legal Ethics* (forthcoming)

Abstract: Lawyers often respond to client crises. But a client crisis is not necessarily a crisis for the lawyer when the lawyer is competent, prepared, and trained to handle that crisis. More and

more, though, lawyers are asked to face novel crises that are so pervasive that they impact the ability of the lawyer to provide competent, effective, and zealous advocacy for her client. Today, lawyers are sheltering-in-place while their clients suffer immense hardship, either in prison or detention where the Coronavirus is spreading like wildfire, or homebound, forced to remain with an abuser. The Model Rules of Professional Conduct provide some limited guidance to lawyers dealing with emergency situations, and there has been some tinkering along the margins of the rules in response to recent crises, particularly as the rules address the unauthorized practice of law in jurisdictions where emergencies arise. Some scholarship addresses how lawyers have dealt with crises in discrete areas, with a great deal of attention being directed toward the national security context in particular. More and more though, lawyers are asked to assist clients in novel and widespread crises that affect many areas of practice, and the Model Rules do not address the ways in which such crises can impact the practice of law more generally. The main approach this Article takes is to assess the extent to which scholarship and the current rules governing the practice of law and their underlying principles account for some of the unique aspects of practice in novel, pervasive crises. To date, legal scholarship has not considered the ways in which what I call crisis lawyering may be a mode of practice many, if not all lawyers, will face throughout the course of their careers. Moreover, one of the purposes of the Model Rules includes providing guidance to lawyers but they also serve as a means by which we can measure lawyer conduct to ensure there is some degree of lawyer accountability to clients, adversaries, the legal system, and the general public. By using the Model Rules as a starting point for the analysis, this Article explores the somewhat disjointed ways in which the rules that govern the practice of law offer guidance to the lawyer facing novel, pervasive crises. It also addresses the needs of lawyers operating in fields where they may confront crisis situations and seeks to recognize that crisis lawyering may be a form of practice that is, itself, trans-substantive, demonstrating distinct similarities across different areas of practice. This Article attempts to address the absence of scholarship addressing crisis lawyering and analyzes the extent to which the current rules governing the practice of law are or are not adequate to the task of providing guidance—and accountability—to lawyers dealing with such situations. It also offers recommendations for how we may consider amendments to those rules to better reflect the needs, interests, and obligations of lawyers dealing with crisis situations so that lawyers may serve their clients better and more effectively when faced with such crises.

Carroll, Trish, 'Is Covid-19 the Mother of All Disruptors for the Legal Profession?' (2020) (April)
Australasian Law Management Journal 1–6

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.

Chandra, Geetanjali, Ruchika Gupta and Nidhi Agarwal, '[Role of Artificial Intelligence in Transforming the Justice Delivery System in COVID-19 Pandemic](#)' (2020) 11(3) *International Journal on Emerging Technologies* 344–350

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.

'COVID Funding Boost for Legal Assistance Services' (2020) 42(6) *Bulletin (Law Society of South Australia)* 13

Abstract: South Australia's legal assistance sector will receive an \$4.8 million in Commonwealth funding to help services respond to increased demand for legal assistance in the midst of the COVID-19 pandemic

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.

Eadie, Alan and Jamie Robb, 'When Home is Not Your Castle' (2020) 65(6) *Journal of the Law Society of Scotland* 46-47

Abstract: Considers some of the risk management issues that can arise for the legal profession due to home working during the COVID-19 pandemic, relating to: client verification; handling client funds; maintaining cybersecurity during video conference calls; and protecting and preserving cash flow.

Frere, Kelly G and Matthew B Frere, 'Why Seniors as Clients Are Different During a State of Emergency' (2020) 56(6) *Tennessee Bar Journal* 30–31

Goodman, Joanna, 'Riding the Swell' (2020) 117(31) *Law Society's Gazette* 26-27

Jurisdiction: UK

Abstract: Considers how the coronavirus pandemic has accelerated the use of digital technology in the legal profession. Reports on the advantages and disadvantages of virtual conferences and events, discussing the success of the International Legal Technology Association's online conference ILTA>ON.

Griffiths, Catrin, 'The First COVID Collapse of a Law Firm, and Not the Last' [2020] *Lawyer (Online Edition,* 22 May 2020) 1

Jurisdiction: UK

Hansen, Lee, '[Effective Mobilisation of Social Welfare Law Advice in Response to the Covid-19 Pandemic](#)' 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) 217–227 (published 30 June 2020)

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.

Hyde, John, 'Running on Empty' (2020) 117(31) *Law Society's Gazette* 12-13

Jurisdiction: UK

Abstract: Looks at the effect on local businesses, particularly cafes and restaurants, of continued home working by staff at law firms in Leeds, Manchester and London.

Jacobowitz, Jan L, '[Chaos or Continuity? The Evolution of the Role of the Lawyer and the Impact of Technology on the Legal Profession From Its Nascent Use to the Digital Age, in Response to the COVID-19 Pandemic, and Beyond](#)' (2020) 23 *Vanderbilt Journal of Entertainment & Technology Law* (forthcoming)

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

Jones, Ian, 'Keeping Calm and Carrying On' (2020) 65(6) *Journal of the Law Society of Scotland* 36-37

Abstract: Reflects on the lessons that can be learnt for legal risk management conducted in-house from the experience of the COVID-19 pandemic and other natural disasters.

Jowers, Evan and Alexis Lamb, 'Tech Expansion Continues in Singapore Big Law' [2020] (Summer) *International Financial Law Review* 115-117

Abstract: Reports on prospects for the digital technology sector and legal advice sector in Singapore. Considers the economic and social effects of the coronavirus pandemic.

Kunc, Francois, 'Law in the Time of Coronavirus' (2020) 94(5) *Australian Law Journal* 315–319

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.

Kushwaha, Anurag, '[Effects of Economic Distress on Legal Aid Services Amid Covid-19 Pandemic in India](#)' (2020) 1(6) *LexForti Legal Journal*

Abstract: The paper aims to analyse the adverse effects of poor economic condition amid COVID-19 pandemic on the legal aid services in India. The concept of access to justice and the disparity within social classes is a highlighting feature. The paper contends that the legal aid provided in India is not in a promising condition while the people who seek justice have to compromise due to the limited resources and generalised approach of the government and courts. The author recommends that there is a need to conjoin the efforts by the legal services institutions with educational institutions, government and non profit organisations to prioritise the vulnerable sections of our society and work on remodelling of legal aid facilities in accordance with the available resources.

Mawdsley, Gillian, 'World War 2: Why Should the Legal Profession Remember?' (2020) 65(5) *Journal of the Law Society of Scotland* 40

Abstract: Comments on the importance of learning lessons from the actions of the legal profession in Germany that authorised the atrocities of the Nazi regime during World War II, discussing how lawyers should seek to fulfil their statutory responsibilities to work in the public interest and promote the rule of law, particularly in light of the justification for the imposition of "emergency" COVID-19 restrictions.

Meers, Jed, 'Additional Funding for Law Centres' (2020) 27(2) *Journal of Social Security Law* 46
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.

Moore, Olivia, 'Listening to Trainee Voices: COVID-19 Concerns' (2020) 65(6) *Journal of the Law Society of Scotland* 42-43

Abstract: Considers three common concerns that were raised during several roundtable events with present and future trainees about the COVID-19 pandemic, concerning unemployment, career prospects and supervision, and what employers could do to help.

Moppett, Samantha A, '[Channel Your Inner Kindergartner: Fostering a Culture Conducive to Creativity in Legal Practice](#)' (SSRN Scholarly Paper ID 3689164, 11 September 2020)

Jurisdiction: USA

Abstract: The COVID-19 pandemic requires lawyers to address a myriad of unique problems—and highlights the need for lawyers to engage as creative problem solvers. Lawyers are faced with determining how best to deliver legal services while contending with travel restrictions, social distancing, stay-in-place measures, and business and court closures. Furthermore, questions arise as to how to tackle the access to justice gap in the midst of the largest global recession since the Great Depression. Although lawyers need to work collaboratively to come up with creative solutions to these unprecedented problems, a challenge administered to groups of business students, lawyers, CEOs, engineers, and kindergartners revealed that lawyers do not

work efficiently and effectively to creatively solve problems. In dozens of challenges, kindergartners outperformed all of the other groups. Instead of collaborating and focusing on completing the task, the lawyers were engaged in status management—trying to determine how they fit into the group and who was in charge. While not smarter than the lawyers, the kindergartners solved the problem best because they were smarter in the way that they worked with each other. The rigid hierarchy that tends to exist in the practice of law lends itself to increased status management. Moreover, the legal profession in the United States frequently discourages collaboration and suppresses creativity. To combat the barriers to collaboration and creativity in practice, lawyers need to ‘work together in a smarter way’ to generate creative solutions to problems. They need to learn to behave like kindergartners. This article argues that in light of the COVID-19 pandemic, the unprecedented rate of change, and the growing access to justice gap, lawyers need to develop high performing groups where creativity and innovation flourish. To that end, the article introduces three skill sets of highly performing groups that lawyers can use to create a group that can perform far beyond the sum of the team members where they are working collaboratively to creatively solve problems.

Negi, Chitranjali, '[COVID-19 Epidemic: Indian Lawyers in Financial Crisis, Ignored, Depressed: In Pursuit of Financial and Moral Support](#)' (SSRN Scholarly Paper ID 3646300, 8 July 2020)

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 2019 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:

1 - Implementation of Advocates welfare fund act, 2001 in COVID-19 pandemic is crisis:2 - Amendment of Advocates Act 1961, Bar Council of India Rules 1975 [Rules 47 to 52 of Section VII of the Rules deals with restrictions on other employments]:3 - Monthly Financial support, not Loan.

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.

Nicholson, Peter, ‘Challenge of a Lifetime’ (2020) 65(5) *Journal of the Law Society of Scotland* 12-13

Abstract: Interviews Amanda Millar, the President of the Law Society of Scotland from May 2020, on topics including: the Society’s response to challenges facing the legal profession due to the COVID-19 pandemic; what professional life might look like once COVID-19-related restrictions are lifted; her role as the first president from the LGBT community; and whether there is a need for an independent regulator of the profession.

Nicolson, Donald and Elizabeth Fisher-Frank, '[Legal Advice in the Covid-19 Lockdown: Making Do or Brave New World?](#)' 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) 229-236 (published 30 June 2020)

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 shut-downs, many local businesses are pivoting their business models to serve community needs. Despite being one of the hardest-hit industries by the pandemic, they are demonstrating servant leadership by prioritizing service to others and being good stewards of resources. Lawyers can learn from the leadership modeled by this business community by engaging their clients on issues that go beyond the law. Lawyers continue to limit their advising to just the legal issues their clients face, and this approach to the lawyer-client relationship deprives the client of the full value the lawyer can provide. By adopting the servant leadership model, attorneys can focus

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

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.

Russell, Clare, 'That Remote Feeling' (2020) 65(6) *Journal of the Law Society of Scotland* 20-21

Abstract: Examines the difficulties being faced by practitioners due to the changes that have been introduced under the Coronavirus (Scotland) Act 2020 to allow court business to resume in Scotland during the COVID-19 pandemic, focusing particularly on the use of videolink technology and the way in which summary criminal business is to be conducted. Raises concerns that the crisis may be used to introduce changes that are primarily cost driven.

Samandar, Lema, 'Economy: Pay Cuts and Reduced Hours: Lawyers to Share Economic Burden of COVID-19' (2020) (66) *LSJ: Law Society of NSW Journal* 20

Abstract: Law firms are taking a major financial hit and cutting employee salaries as the economic crisis caused by COVID-19 deepens.

Schroth, Michael, 'Life and the Law during COVID-19: One Solo Practitioner's Experience' (2020) 34 *Ohio Lawyer* 20

Jurisdiction: USA

Schwarz, Kirrily, 'COVID-19: Riding the Wave of Change' (2020) (66) *LSJ: Law Society of NSW Journal* 36–39

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.

Stevenson, Rob, 'COVID-19: Creating Your New Normal: Employment during the COVID-19 Crisis - the "New Normal" for Law Firms' (2020) 40(4) *Proctor* 20–25

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.

Swift, Leigh, Peter Gardiakos and Tessa Cartledge, 'Access to Justice: Closing or Widening the Gap?: The Impact of COVID-19 on Access to Legal Services' (2020) 42(7) *Bulletin (Law Society of South Australia)* 18-20

Abstract: Leigh Swift, Peter Gardiakos and Tessa Cartledge, who have been providing free legal advice to the community at the Magistrates Court Legal Advice Service, explore the impacts of the COVID-19 pandemic on the wider community legal sector, and the particular challenges on access to justice for those in need within the community.

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

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

Taddia, Marialuisa, 'Home Improvements?' (2020) 117(31) *Law Society's Gazette* 21-24

Jurisdiction: UK

Abstract: Examines the impact of the coronavirus pandemic on residential conveyancing firms and their workload, discussing the temporary boom created by the stamp duty land tax holiday, decisions to move house prompted by lockdown, the use of digital technology, and adoption of electronic signatures.

Trevelyan, Lucy, 'Covid-19: How Should In-House Lawyers Respond?' [2020] (June) *In-House Perspective* 1-8

Weston, Maureen A, '[Lawyering and Representing Organizational Clients in a Public Health Crisis](#)' (Pepperdine University Legal Studies Research Paper No 2020/22, 22 July 2020)

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 / INFORMATION

Abazi, Vigjilenca, '[Truth Distancing? Whistleblowing as Remedy to Censorship during COVID-19](#)' (2020)

11(2) *European Journal of Risk Regulation*: Special Issue - 'Taming COVID-19 by Regulation' 375-381

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.

Abrusci, Elena, Sam Dubberley and Lorna McGregor, '[An "Infodemic" in the Pandemic: Human Rights and Covid-19 Misinformation](#)' 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) 287-296 (published 30 June 2020)

Agustiwi, Asri, Raka Widya Nugraha, Dania Rama Pratiwi, '[Implementation of Law Number 11 of 2008 on Electronic Information and Transactions Against the Rise Of Hoax Culture During Covid-19 Pandemic in Indonesia](#)' (2020) 3(1) *Surakarta Law And Society Journal* 55-66

Abstract: This article aims to find out the implementation of Law No. 11 of 2008 on Electronic Information and Transactions against the spread of hoaxes during the COVID-19 pandemic in Indonesia as well as how to prevent the growing culture of hoax information spreading in Indonesia. The research method used is a normative method with the study of the Law, while the secondary data material used is the study library as well as the approach of laws and concepts. The result obtained is Law No. 11/2008 jo No. 19/2016 Article 28 paragraphs 1 and 2 has been effective because it can limit the wiggle room of the perpetrators of news and hate speech. More specifically, the perpetrator can be ensnared with other relevant Articles namely Article 311 and 378 of the Consumer Order, Article 27 paragraph 3 of Law No. 19 of 2016 on Electronic Information and Transactions. The role of society, journalists and parents is indispensable also in preventing the dissemination of such fake news. Many steps can be taken, especially as the reader should not immediately believe there needs to be a study by comparing an information with other information.

Al-Zaman, Md Sayeed, '[COVID-19-Related Social Media Fake News in India](#)' (SSRN Scholarly Paper ID 3644107, 30 June 2020)

Abstract: This study analyzes N=125 Indian social media fake news related to the COVID-19 pandemic. It produces five major findings based on five research questions. First, the seven themes of fake news are health, religiopolitical, political, crime, entertainment, religious, and miscellaneous. Health-related fake news (67.2%) dominates the others. Second, the seven types of fake news contents are text, photo, audio and video, text & photo, text & video, and text & photo & video. More fake news takes the forms of text & video (47.2%). Third, online media produces more fake news (94.4%) than mainstream media (5.6%). Interestingly, four social media platforms: Twitter, Facebook, WhatsApp, and Youtube, produce most of the social media fake news. Fourth, relatively more fake news has international connections (54.4%) as the COVID-19 pandemic is a global phenomenon. Fifth, most of the COVID-19-related fake news is negative (63.2%). The paper concludes stating some limitations and implications of the findings.

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.

Ash, Elliott et al, '[The Effect of Fox News on Health Behavior During COVID-19](#)' (SSRN Scholarly Paper ID 3636762, 27 June 2020)

Abstract: In the early weeks of the 2020 coronavirus (COVID-19) pandemic, Fox News Channel advanced a skeptical narrative that downplayed the risks posed by the virus. We find that this narrative had significant consequences: in localities with higher Fox News viewership — exogenous due to random variation in channel positioning — people were less likely to adopt behaviors geared toward social distancing (e.g., staying at home) and consumed less goods in preparation (e.g., cleaning products, hand sanitizers, masks). Using original survey data, we find that the effect of Fox News came not merely from its long-standing distrustful stance toward science, but also due to program-specific content that minimized the COVID-19 threat.

Bechtold, Eliza, 'Has the United States' Response to the COVID-19 Pandemic Exposed the Marketplace of Ideas as a Failed Experiment?' (2020) 25(3) *Communications Law* 150-160

Abstract: Considers whether the Trump Administration's handling of the coronavirus pandemic, as well as the public opinions voiced by certain high-profile individuals, corporations and political action committees, has revealed the marketplace of ideas, on which the principle of freedom of speech under the First Amendment to the US Constitution is founded, to be a failed experiment.

Bolsover, Gillian and Janet Tokitsu Tizon, '[Social Media and Health Misinformation During the US COVID Crisis](#)' (SSRN Scholarly Paper ID 3666955, 4 August 2020)

Abstract: Health misinformation has been found to be prevalent on social media, particularly in new public health crises in which there is limited scientific information. However, social media can also play a role in limiting and refuting health misinformation. Using as a case study US President Donald Trump's controversial comments about the promise and power of UV light- and disinfectant-based treatments, this data memo examines how these comments were discussed and responded to on Twitter. We find that these comments fell into established politically partisan narratives and dominated discussion of both politics and COVID in the days following. Contestation of the comments was much more prevalent than support. Supporters attacked media coverage in line with existing Trump narratives. Contesters responded with humour and shared mainstream media coverage condemning the comments. These practices would have strengthened the original misinformation through repetition and done little to construct a successful refutation for those who might have believed them. This research adds much-needed knowledge to our understanding of the information environment surrounding COVID and demonstrates that, despite calls for the depoliticization of health information in this public health crisis, this is largely being approached as a political issue along divisive, polarised, partisan lines.

Bursztyn, Leonardo et al, '[Misinformation During a Pandemic](#)' (NBER Working Paper No. w27417, 2020)

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.

Caulfield, Timothy, 'Does Debunking Work? Correcting COVID-19 Misinformation on Social Media' in Flood, Colleen et al, '[Vulnerable: The Law, Policy and Ethics of COVID-19](#)' (University of Ottawa Press, 2020) 183

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.

Check Global, '[2020 Misinfodemic Report: COVID-19 in Emerging Economies](#)

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](#)

Coe, Peter, 'The Good, the Bad and the Ugly of Social Media during the Coronavirus Pandemic' (2020) 25(3) *Communications Law* 119-122

Abstract: Comments on the use of social media in a positive way to bring people closer together and to disseminate vital information during the COVID-19 pandemic, but also observes its harmful use as a platform for spreading fake news, false information, and misleading and unethical reporting.

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.

'DCMS House of Commons Committee Calls for New Online Harms Regulator Now' (2020) (August)
Computers and Law 39-40

Jurisdiction: UK

Abstract: Considers the findings of the House of Commons Digital, Culture, Media and Sport (DCMS) Committee's report on "[Misinformation on the COVID-19 Infodemic](#)", and how the Government's online harms proposals might work in practice. Highlights its recommendations on the role of the Government's proposed new online harms regulator.

Ding, Chunyan, 'Fatal Lack of Information Transparency in Public Health Emergency: Lessons from the COVID-19 Outbreak in China' (2020) 50(2) *Hong Kong Law Journal* 781

[unpublished version available on SSRN as [City University of Hong Kong School of Law Legal Studies Research Paper No 2020-015](#), 2020]

Abstract: This article examines the lack of information transparency on the part of the Chinese government as revealed in the COVID-19 outbreak. Based on the evidence of the lack of information transparency in the initial stage of this public health emergency, the article reviews how the Chinese public health emergency information system, which had been established in response to the 2003 SARS crisis, was implemented. It further analyses the fundamental reasons for the lack of information transparency despite the reporting, disseminating and early warning mechanisms that existed in the country. It finds that powerless centres for disease control and prevention, prioritisation of the political concern of social stability and harmonisation over public health, extremely tight governance of public opinions and inadequacies of the public health emergency information system with respect to new and emerging infectious diseases are the four major factors that combined to result in the lack of information transparency in the COVID-19 outbreak in China. The article identifies big lessons to be learned to promote information transparency in public health emergencies.

Douek, Evelyn, '[Governing Online Speech: From "Posts-As-Trumps" to Proportionality and Probability](#)' (2021) 121(1) *Columbia Law Review* (forthcoming)

Abstract: Online speech governance stands at an inflexion point. Platforms are emerging from the state of emergency invoked during the pandemic and lawmakers are poised to transform the regulatory landscape. The importance of what emerges from this moment can hardly be

overstated: how platforms write and enforce the rules for what speech they allow on their services shapes the most important channels for communication in the modern era, and has profound consequences for individuals, societies, and democratic governance. Understanding how online speech governance arrived at this moment illuminates the tasks that the institutions created during this transformation must be designed to do. This history shows that where online speech governance was once dominated by the First Amendment tradition's categorical and individualistic approach to adjudicating speech issues, that approach became strained and online speech governance now revolves around the principles of proportionality and probability. Proportionality requires governance to no longer focus on the speech interest in an individual post alone, but to also take into account other societal interests and place proportionate limitations on content where necessary. But the unfathomable scale of online speech governance makes the enforcement of rules only ever a matter of probability: content moderation will always involve error, and so the pertinent question is what error rates are reasonable and which kinds of errors should be preferred. Platforms' actions during the pandemic have thrown into stark relief the centrality of these principles to online speech governance, but also how undertheorized they remain. This article reviews the nature and causes of this shift of online speech governance from a 'posts-as-trumps' approach to one of systemic balancing, and what this new era of content moderation requires of platforms and their regulators.

'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.

Gabore, Samuel Mochona, '[Western and Chinese Media Representation of Africa in COVID-19 News Coverage](#)' (2020) *Asian Journal of Communication* (advance online article, published 5 August 2020)

Abstract: In news production and dissemination, media represent communities, countries, and continents by constructing concepts, images, and identities as viewed by selected information sources. It is often assumed that foreign countries are labelled 'Others' by global media and misrepresented. This study aims to explore how differently Western and Chinese media source and frame events in Africa. Comparative content analysis of news coverage of COVID-19 prevention in Africa revealed that Western media used African official, African non-official, and Western non-official channels as information sources whereas Chinese media mainly used African and Chinese official sources. The result demonstrated that Western media covered events in Africa in Conflict, Negativity, Human interest, Impact, Eminence, and Novelty frames in positive, neutral, and negative tones whereas Chinese media covered mainly in Impact, Eminence and Novelty frames mostly in positive tone. Overall, the results suggest that Western media coverage of the events is not predominantly negative; and Chinese media coverage is uncommonly affirmative. The findings also suggest that sourcing shapes frames, tones, and representation of 'Others' by news media.

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.

Gollust, Sarah E, Rebekah H Nagler and Erika Franklin Fowler, 'The Emergence of COVID-19 in the U.S.: A Public Health and Political Communication Crisis' *Journal of Health Politics, Policy and Law*, Article 8641506 (advance online article, published 28 May 2020)

Abstract: The coronavirus public health crisis is also a political-communication and health-communication crisis. In this commentary, we describe the key communication-related phenomena and evidence of concerning effects manifested in the U.S. during the initial response to the pandemic. We outline the conditions of communication about coronavirus that contribute toward deleterious outcomes, including partisan cueing, conflicting science, downplayed threats, emotional arousal, fragmented media, and Trump's messaging. We suggest these have contributed toward divergent responses by media sources, partisan leaders, and the public alike, leading to different attitudes and beliefs as well as varying protective actions taken by members of the public to reduce their risk. In turn, these divergent communication phenomena will likely amplify geographic variation in and inequities in COVID-19 disease outcomes. We conclude with some suggestions for future research, particularly surrounding communication about health inequity and strategies for reducing partisan divergence in views of public health issues in the future.

Hamilton, Rebecca J, '[Governing the Global Public Square](#)' (2021) *Harvard International Law Journal* (forthcoming)

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.

Jovanović, Srđan Mladenov, '[Discursive Governmental and Media Response to Covid-19: The Case of Serbia](#)' (2020) 4(2) *Society Register* 95-108

Abstract: Serbia's government, led by Aleksandar Vučić, has in scholarship been classified as semi-authoritarian, using Marina Ottaway's classification. Its media have also been described as being in heavy, biased support of the government. Scholarship has further revealed that the Vučić-led, post-2012 government, has thrown the country backwards in time, with corruption and affairs being the primary instance by which the regime can be described. Expectedly, the response of the government and the government-supporting media to the COVID-19 pandemic has been less than professional. The initial response included official government press conferences in which the novel coronavirus was deemed to be 'funny' and that, in the middle of the pandemic explosion and increased deathrate in Italy, Serbia's population was advised to go to Italy for 'shopping'. The media furthermore tried to pin the pandemic to Serbia's opposition alleged attempts to topple the government via 'coronavirus propaganda'. This article proposes to tackle the government's and their supporting media's responses to COVID-19 in February/March 2020 from a Discourse Analytical perspective.

Kreps, Sarah E and Doug Kriner, '[Medical Misinformation in the COVID-19 Pandemic](#)' (SSRN Scholarly Paper ID 3624510, 10 June 2020)

Abstract: The World Health Organization has labeled the omnipresence of misinformation about COVID-19 an 'infodemic' that threatens efforts to battle the public health emergency. However, we know surprisingly little about the level of public uptake of medical misinformation and whether and how it affects public preferences and assessments. We conduct a pair of studies that examine the pervasiveness and persuasiveness of misinformation about the novel coronavirus' origins, effective treatments, and the efficacy of government response. Across categories, we find relatively low levels of true recall of even the prominent fake claims. However, many Americans struggle to distinguish fact from fiction, with many believing false claims and even more failing to believe factual information. An experiment offers some evidence that corrections may succeed in reducing misperceptions, at least in some contexts. Finally, we find little evidence that exposure to misinformation significantly affected a range of policy beliefs and political judgments.

Krupenkin, Masha et al, '[If a Tree Falls in the Forest: COVID-19, Media Choices, and Presidential Agenda Setting](#)' (SSRN Scholarly Paper ID 3697069, 22 September 2020)

Jurisdiction: USA

Abstract: During a time of crisis Americans turn their attention to the news media for critical information about what to expect, who is affected, and how to behave. Throughout the COVID-19 crisis, public safety experts warned that the consequences of a misinformed population would be particularly dire due to the serious nature of the threat and necessity of severe individual collective action to keep the population safe. Thus, those elites who possess the power to set the agenda of the conversation bear a huge responsibility for the general welfare. Among the various agenda-setting mechanisms available to the president is daily press conferences which provide a unique opportunity to leverage public exposure, accelerated by the state of crisis. Yet, mainstream media's daily viewership is many times larger than the president's press conference and we explore their narratives surrounding the COVID-19 pandemic through automated text analysis of complete transcripts of national cable, network, and local news. Of particular importance, we characterize the differences in which topics were covered and how they were covered by various cable media sources. Our analysis reveals

polarized narratives around blame, racial and economic disparities, and scientific conclusions about COVID-19. The media is influenced by the president's agenda, even for cable news channels that are consumed by audiences that typically do not support him, but we found strong evidence that the media's choices mediate, and ultimately dominate, the agenda-setting abilities of the president's daily press conferences.

Mantl, Josef, Julia M Puaschunder and Bernd Plank, '[Communication in the Digital Century](#)' (Conference Paper, Unequal World Conference: On Human Development, United Nations, New York, 28-29 September 2020)

Abstract: As never before in the history of humankind, communication is digital and international today. Global digital communication skills determine access to information, economic potential and social wellbeing. The ongoing COVID-19 pandemic having exacerbated digitalization trends demands for growing an inclusive and favorable digital culture for all users. Since COVID-19 imposed workplace shutdowns around the globe, the workforce has shifted online. Digital marketing and networking online nowadays should follow novel codes of conduct to share quality data. Good communication ethos is required for upholding e-ethics in anonymous virtual space that is also intruded by anonymous agents and noised by fake news and alternative facts. While network effects were gained through physical interaction and dense urban areas prior to COVID-19, nowadays we primarily meet in virtual online space of social media platforms. Socially distanced we have become virtually closer than ever before as we connect to re-inspire and thrive together on the web. Digital space is today's business card that forms a virtual corporate identity. The design of the personal online homepage or digital media account grant social digital illusions in a virtual reality that can live eternally. Individuals must also be encouraged to use a right to delete information in anonymous virtual space to uphold e-ethics. The strict COVID-19 lockdowns, that were at a time enacted in all major economies, brought along online communities suddenly standing up for long-held dreams of equality. Corporations are now under pressure of boycott threats and online censorship that has shifting from a historically governmental means to an online global collective soul's judgment. Being scrutinized in a truly international digital arena drives corporations to integrate the wider stakeholder community. In an anonymous virtual space, freedom of speech should be ennobled by a culture of mutual respect and constructive critique codes of ethics.

Marsons, Lee and Sarah Nason, 'Freedom of Expression' [2020] (October) *Public Law* 772-773

Abstract: Notes the OFCOM sanction imposed on Loveworld Limited for a news programme and sermon containing potentially harmful claims relating to the coronavirus pandemic, including unsubstantiated claims linking it to 5G technology, which risked undermining viewers' trust in official health advice. Details the £100,000 fine imposed by OFCOM on Lord Production Inc Ltd for failure to comply with broadcasting rules in a programme on homosexuality and Islam.

Parmet, Wendy E and Jeremy Paul, '[COVID-19: The First Posttruth Pandemic](#)' (2020) 110(7) *American Journal of Public Health* 945–946

Introduction: A successful public health response to outbreaks such as COVID-19 depends on broad dissemination and widespread acceptance of accurate information. Yet, in recent weeks, inaccurate information and deceptive information have been plentiful. Even national leaders have offered misleading and sometimes false accounts of the risks facing the United States and the speed of vaccine development.

The barrage of false information has helped to erode trust in public health leaders and hinder efforts to contain the pandemic. Unless the public trusts that public health measures are grounded in the best available science, even if that science is incomplete and changing, individuals cannot be expected to follow public health recommendations, such as to shelter in place.

Political leaders have not been alone in generating this climate of doubt. Many celebrities, pundits, and even some local health officials have downplayed the dangers for months. Rumors about the virus's origins, impending national lockdowns, and imminent cures have also circulated widely. This cacophony helps explain why spring breakers partied on Florida beaches while cities elsewhere shut down.

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 hughest 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.

Pijpers, Peter BMJ and PaL Ducheine, '[Influence Operations in Cyberspace: How They Really Work](#)' (Amsterdam Law School Research Paper No. 2020-61, 2020)

Abstract: Covid-19 is the latest, but will not be the last pretext for spreading fabricated information. Topics like Covid-19 can and will be used for influencing foreign States in a deliberate way. So, is this new? No, influencing has been on-going for ages. But what is new, is the domain of cyberspace enabling fabricated news to spread fast and effectively. Much is

written about influencing people via social media. But how do influence operations via cyberspace work? And what is the added value of cyberspace in that context?

Pullicino, Lourdes, '[COVID-19: The Impact on News Media](#)' (SSRN Scholarly Paper ID 3640199, 8 June 2020)

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?

Radcliffe, Damian, '[COVID-19 Has Ravaged American Newsrooms: Here's Why That Matters](#)' (SSRN Scholarly Paper ID 3693903, 20 July 2020)

Abstract: COVID-19 has ripped through the industry. In the United States alone, over 36,000 journalists have lost their jobs, been furloughed or had their pay cut. The trendlines for this, however, pre-date the pandemic. This article examines the causes of the long-term decline seen by local newspapers, the impact of this on communities and democratic engagement, and looks ahead at some potential solutions and policy discussions aimed at resolving this crisis.

Radu, Roxana, '[Fighting the "Infodemic": Legal Responses to COVID-19 Disinformation](#)' (2020) 6(3) *Social Media + Society* (advance online article, published 30 July 2020)

Abstract: Online disinformation has been on the rise in recent years. A digital outbreak of disinformation has spread around the COVID-19 pandemic, often referred to as an 'infodemic.' Since January 2020, digital media have been both the culprits of and antidotes to misinformation. The first months of the pandemic have shown that countering disinformation online has become as important as ensuring much needed medical equipment and supplies for health workers. For many governments around the world, priority COVID-19 actions included

measures such as (a) providing guidance to social media companies on taking down contentious pandemic content (e.g., India); (b) establishing special units to combat disinformation (e.g., EU, UK); and (c) criminalizing malicious coronavirus falsehood, including in relation to public health measures. This article explores the short and potential long-term effects of newly passed legislation in various countries directly targeting COVID-19 disinformation on the media, whether traditional or digital. The early actions enacted under the state-of-emergency carve new directions in negotiating the delicate balance between freedom of expression and online censorship, in particular by imposing limitations on access to information and inducing self-restraint in reporting. Based on comparative legal analysis, this article provides a timely discussion of intended and unintended consequences of such legal responses to the ‘infodemic,’ reflecting on a basic set of safeguards needed to preserve trust in online information.

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)

Romano, Alessandro et al, [‘The Scale of COVID-19 Graphs Affects Understanding, Attitudes, and Policy Preferences’](#) (SSRN Scholarly Paper ID 3588511, 29 April 2020)

Abstract: Mass media routinely present data on COVID-19 diffusion with graphs that use either a logarithmic scale or a linear scale. We show that the choice of the scale adopted on these graphs has important consequences on how people understand and react to the information conveyed. In particular, we find that when we show the number of COVID-19 related deaths on a logarithmic scale, people have a less accurate understanding of how the pandemic has developed, make less accurate predictions on its evolution, and have different policy preferences than when they are exposed to a linear scale. Consequently, merely changing the scale the data is presented on can alter public policy preferences and the level of worry about the pandemic, despite the fact that people are routinely exposed to COVID-19 related information. Providing the public with information in ways they understand better can help improving the response to COVID-19, thus, mass media and policymakers communicating to the general public should always describe the evolution of the pandemic using a graph on a linear scale, at least as a default option. Our results suggest that framing matters when communicating to the public.

Roudik, Peter et al, '[Freedom of Expression during COVID-19](#)' (Law Library of Congress Report, September 2020)

20 jurisdictions covered: Armenia, Azerbaijan, Bangladesh, Belarus, El Salvador, India, Kazakhstan, Kenya, Kyrgyzstan, Mauritius, Moldova, Nepal, Nicaragua, Pakistan, Russia, South Africa, Sri Lanka, Tajikistan, Ukraine, and Uzbekistan.

Extract from comparative summary: This report, prepared by the research staff of the Law Library of Congress, surveys legal acts regulating mass media and their ability to distribute information freely during the Covid-19 pandemic. The report focuses on recently introduced amendments to national legislation aimed at establishing different control measures over the media outlets, internet resources, and journalists in 20 selected countries around the world where adoption of such laws has been identified.

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.

Sherwin, Brie D, '[Anatomy of a Conspiracy Theory: Law, Science, and Politics in the COVID-19 Era](#)' (2021) *Texas A&M Law Review* (forthcoming)

Jurisdiction: USA

Abstract: With COVID-19, we are facing the most serious public health threat of our lifetime. Now, more than ever, we need experts and sound scientific advice to guide critical decision-making during the pandemic. With conspiracy theories and other similar rhetorical weapons being used to discredit our scientific experts, we face a myriad of misinformation, mistruths, and

all-out attacks on our experts, breeding distrust among the public and the policymakers leading the fight against the pandemic. Since President Trump took office, scientists have been routinely denigrated and isolated, while science denialism has permeated its way up to the highest levels of government, resulting in disastrous public policy decisions that have been detrimental to environmental and public health. Funding has been cut for much needed research on zoonotic-borne diseases, the U.S. government has pulled its support from the Paris Climate Agreement, and well-respected scientists have been removed from various advisory roles in agencies. Until the COVID-19 pandemic, many of these decisions have gone unnoticed by the general public. But, in courtrooms over the past 30 years, judges have recognized the danger of fake experts and acted as gatekeepers in ensuring that experts are credible and that science is reliable. The use of Daubert in the courtroom has provided judges with a tool for allowing expert testimony that has met certain indicia of reliability, so jurors can focus on making factual determinations instead of judging whether the sources of the expertise should be trusted. Without a similar gatekeeping function in society, citizens are charged with making those determinations on their own. Scientists and advocates of science should employ rhetorical methods of their own to restore the credibility and importance of science in protecting our environment and now, our health. Change can only truly come from the ground up. Citizens must actually believe that the climate is changing; they must believe that the health advice they are receiving from public health experts is accurate and trustworthy enough to follow. It's time to put science first; we can only do that if we stop science denialism in its tracks and restore resources and trust in our scientific community.

Simpson, Jeffrey, 'The Media Paradox and the COVID-19 Pandemic' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 201

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.

Sommer, Udi and Or Rappel-Kroyzer, '[Reconceptualizing the Watchdog: Comparing Media Coverage of COVID-19 Response in Democracy](#)' (SSRN Scholarly Paper ID 3698310, 23 September 2020)

Jurisdictions: USA, Canada and New Zealand compared

Abstract: What is the role of the watchdog of democracy in the Information Age? We augment a theory that focuses on accountability as the key element of watchdog journalism and propose an innovative framework concentrating on structure, content and timing of media coverage. Methodologically, we introduce artificial intelligence analyses and data mining to a comparative field largely dominated by econometrics and case studies. We investigate the variance between media coverage in Anglo-American democracies during the first months of the COVID-19 crisis, by comparing the USA, Canada and New Zealand. All 27,089 articles published in the New Zealand Herald, The Globe and Mail and the New York Times from February-May 2020 were harvested. AI analyses suggest meaningful differences in structure (networks of COVID-19 articles), content (politicized coverage) and timing. Compared with their US counterpart, the watchdogs of democracy in Canada and NZ barked louder, clearer and 2 weeks earlier.

Wardanie, Ismaya Hera, '[Hoax Law Enforcement During Covid 19 Pandemic in Indonesia](#)' (2020) 1(1)

Jurnal Liga Hukum 128-136

Abstract: The spread of hoax information is currently circulating more and more. The public receives hoax information more than once a day. Social media is the most important channel in the spread of hoaxes. The community becomes doubtful and doubtful about the effects of the hoax phenomenon in Indonesia. This situation is used by a group of people who are not responsible for inciting and inciting hatred. Therefore, the purpose of this study is to obtain a description of the interaction of communication hoaxes on social media and efforts to anticipate it. The research method used is a qualitative approach through hoax cases that are in an uproar in the community regarding issues arising from the pandemic Corona Virus Disease 2019 (Covid-19). Public opinion emerged that the information was valid because a lot of news hoax was

spread and repeated through existing social media. There is a meaningful approach to anticipating the spread of hoaxes in the community, namely the institutional, technological and literacy approaches.

Widmann, Tobias, '[Fear, Hope, and COVID-19: Strategic Emotional Rhetoric in Political Communication and Its Impact on the Mass Public](#)' (SSRN Scholarly Paper ID 3679484, 23 August 2020)

Abstract: Emotions play a vital role in the behaviour of individuals during pandemics. Fear, for instance, increases the likelihood that citizens follow public health advice while hope can induce false optimism which can lead to lower levels of protective behavior. However, do political parties make strategic use of emotional appeals during pandemics? Furthermore, do these strategies succeed in actually influencing public opinion and thereby potentially citizens' behaviour? To answer these questions, I use word embeddings and neural network classifiers to analyze social media output of political parties and different samples of the public in Germany during the first wave of the pandemic. Vector autoregression analyses (VAR) of time series show that the number of new COVID19 cases per day predicts specific emotional rhetoric. While government parties increase fear and decrease hope, populist parties show the opposite behavior indicating a strategy of down playing the crisis. Furthermore, comparing retweet volumes of political messages to emotional expressions in almost 200,000 public tweets suggests that populist radical right parties, rather than government parties, succeed in influencing public opinion, even beyond partisan lines. This finding can carry important implications for the level of protective behavior among the population.

MILITARY LAW

Douvas, Alexander et al, 'Breaking Quarantine: Using Article 84 to Combat COVID-19' (2020) 2020(2) *Army Lawyer* 44–55

Introduction: Coronavirus Disease 2019 (COVID-19) is caused by the virus Severe Acute Respiratory Syndrome-Coronavirus-2 (SARSCoV-2). This virus is highly contagious, with an estimated average incubation period of five days prior to symptoms,⁴ during which time it can still be transmitted.⁵ Within three months of its discovery in late 2019, the rapidly spreading SARS-CoV-2 reached global pandemic status. The current national strategy to combat COVID-

19—“social distancing”—is designed to slow the spread of the virus and enable the medical community to treat the most severe cases without exceeding hospital capacity. The military is neither immune to this pandemic nor exempt from the efforts to combat its spread. Instead, it is currently working to strike a balance between operational readiness and restrictive personnel policies.⁸ While the ultimate impact of COVID-19 on military operations and service policies remains uncertain, one thing is clear: with an estimated 1.3 million active duty service members subject to some form of COVID-19 restrictions, the newly re-designated Article 84, Uniform Code of Military Justice (UCMJ) (Breach of Medical Quarantine), is about to be field tested.

Fidell, Eugene R, '[COVID-19 and Military Law](#)' (2020) 11(1) *Journal of National Security Law and Policy* (forthcoming)

Jurisdiction: USA

Abstract: As a “specialized society separate from civilian society,” the military experiences not only many of the same challenges as the larger society as a result of COVID-19, but also other challenges arising in the contexts of their normal missions and times of crisis.

In light of the developments during the first half of 2020, Eugene Fidell’s article on COVID-19 and Military Law highlights some of the legal challenges that have arisen in the military world due to COVID-19. In doing so, he focuses on various perspectives, including the intersection between commanders’ responsibility for the health and safety of their personnel; systemic effects and adjustments to the internal administration of justice; and challenges presented to domestic law, legal institutions, and human rights following a shift to a domestic law enforcement mission. These perspectives have direct and indirect effects on unit cohesion, mission-readiness, mission-accomplishment, and public trust.

Nevitt, Mark, '[Domestic Military Operations and the Coronavirus Pandemic](#)' (2020) 11 *Journal of National Security Law and Policy* (forthcoming)

Abstract: The U.S. military has played a critical role in the nation’s coronavirus response. More than 50,000 military service members are responding to the crisis, representing one of the largest domestic military operations in American history. This Article describes and analyzes the laws, regulations, and policies governing the military’s coronavirus response, proceeding in

three Parts. First, I analyze the different states of emergency declared by the executive branch in response to the coronavirus crisis, contextualizing their significance to the military. Second, I analyze the many legal restrictions on the military when used as a law enforcer, focusing on longstanding constitutional, statutory, and legal constraints. These restrictions are rooted in concerns about the role of the military in civil society that date from the nation's founding. In doing so, I analyze the 'law of martial law,' in which the military supplants civil authority—an example of the dangers of oppressive military use. Third, I describe and analyze the important role that both the state-based National Guards and federal military forces can play as a relief aid provider. Regardless of how the military is used in the coronavirus response and beyond, the President, Congress, and the courts must be cognizant of longstanding constitutional norms and broader conceptions of civilian control of the military.

OBLIGATIONS

Douglas, Michael and John Eldridge, '[Coronavirus and the Law of Obligations](#)' [2020] 3 *UNSW Law Journal Forum* 1-11
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

This section includes literature on the United Nations Convention on Contracts for the International Sale of Goods (CISG)

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

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

Jurisdiction: Nigeria

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

Alpa, Guido, '[Remarks on the Effects of the Pandemic on Long-Term Contracts](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Jurisdiction: Italy

Abstract: The Coronavirus epidemic shapes a situation that can be considered an event of force majeure, characterised by unpredictability, exceptionality and uncertainty in its duration and then impossibility of performing and termination of contract. It is necessary to take into account also the provisions adopted by national legislators concerning limitation of economic activities, working, traveling, moving etc. These limitations result in orders and prohibitions, modifying the performance of contracts, sometimes causing impossibility. In Italian law these events are considered “factum principis”, whose legal effects are similar to force majeure. Factum principis and force majeure affect long-term contracts, and may cause temporary supervening impossibility or supervening excessively onerous nature of the performances. In the first case, the performance may be postponed, in the second the contract shall be terminated. Italian Civil Code's provisions suggest how the risk may be allocated between the parties in different situations submitted to the judge.

Beale, Hugh and Christian Twigg-Flesner, '[COVID-19 and English Contract Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The narrow doctrine of frustration in English Contract law (under which the parties' outstanding obligations are discharged automatically) applies only when performance of a contract is impossible because of a change in circumstances. Although much-discussed, “frustration of purpose” applies only when the change has defeated the purpose for both parties and has very seldom been applied. Pre-COVID-19 law contains a few exceptions, but mostly for consumer contracts. The measures taken to relieve parties affected by COVID-19 do not involve any significant changes to contract law. Changes relevant to contracts involve delaying enforcement procedures or changes to the Financial Conduct Authority's regulatory requirements to provide for “payment holidays” for consumer credit or other financial services. Limited changes to contract law may emerge, but no significant permanent changes.

Beale, Hugh and Christian Twigg-Flesner, '[COVID-19 and Frustration in English Law](#)' in Sergio Garcia Long (ed), *Derecho de los Desastres: Covid-19* (Pontificia Universidad Católica del Perú, 2020)

Abstract: In this chapter, we explore the ways in which the impact of COVID-19 on the performance of contracts would be dealt with under the doctrine of frustration in English law. Starting with the strict obligation to perform a contract, we outline the elements of the doctrine of frustration, including the operation of the Law Reform (Frustrated Contracts) Act 1943 and the possibility of contracting out of the Act. We then examine permanent, temporary and partial impossibility more closely. We also consider the relevance of force majeure and MAC clauses. We then identify elements of the doctrine of frustration which might be open to further development in the wake of the COVID-19 pandemic, although we do not anticipate significant changes to the law.

Berger, Klaus Peter and Daniel Behn, '[Force Majeure and Hardship in the Age of Corona: A Historical and Comparative Study](#)' (2019-2020) 6(4) *McGill Journal of Dispute Resolution* 76-130

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.

Booley, Asharaf, 'COVID-19 versus Contractual Obligations: Case in Point South Africa?' (2020) 20(6) *Without Prejudice* 42–43

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?

Borghetti, Jean-Sébastien, '[Non-performance and Change of Circumstances under French Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: A major issue raised by the COVID-19 crisis is whether it constitutes a lawful ground for non-performance or the modification of contracts. French law traditionally took a very strict view on the binding force of contracts and only acknowledged force majeure as a cause of discharge of contract. However, the reform of contract law passed in 2016 has brought some changes and there are now several provisions in the code civil which may justify a discharge or an adaptation of contract in the case of a major change of circumstances. The COVID-19 crisis is now putting these provisions to test.

Carrasco, Angel, '[Parameters for Applying the Rules on Force Majeure to COVID-19 in Spain](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The aim of the article is to analyse how the spread of COVID-19 affects contractual relationships under Spanish law. A case-by-case approach is adopted – the key difficulties and paradoxes associated with the application of the current legal framework are determined by analysing the most typical difficulties encountered by the contractors due to the pandemics. The legal context is comprehensively presented: the core practical issues related to the functioning of the institution of force majeure are examined. The common problematic scenarios caused by the COVID-19 are addressed, i.a.: the practical impact of the all risk clauses on the risk distribution, the disappearance of causa of the contract, the tension between labour law mechanisms and force majeure. Finally, the possibility of classifying COVID-19 contingency as a

force majeure contingency is examined (both the undisputed and the debatable force majeure contingencies are discussed).

Cheng, Tai-Heng and Daniel R Perez, '[COVID-19: Force Majeure and Common-Law Contract Defenses Under New York Law](#)' (2020) 13(2) *New York Dispute Resolution Lawyer* 44-46

Abstract: The COVID-19 outbreak and government measures to combat the virus are causing widespread disruptions throughout the economy. Parties unable to perform contractual obligations due to COVID-19-related disruptions should consider whether contractual force majeure provisions or New York common-law defenses of impossibility and frustration of purpose may provide a means of limiting liability for non-performance. Parties struggling to perform contractual obligations due to pandemic related circumstances should carefully analyze any relevant force majeure clauses, the potential applicability of any common-law defenses to performance, and the available dispute resolution mechanisms. A careful analysis of the available defenses and dispute resolution provisions may better enable parties to renegotiate their obligations and defend themselves against claims for non-performance.

Cordero-Moss, Giuditta, '[COVID-19 and Force Majeure Under the Vienna Convention on Sales and in Civil Law](#)' (2020) 13(2) *New York Dispute Resolution Lawyer* 50-52

Introduction: If COVID-19-related lockdown measures affected performance of a commercial contract, the party who could not perform its obligations will seek to avoid being held liable for breach of contract. Many commercial contracts contain a force majeure clause—a clause excusing a party's non-performance if certain requirements are met. Contract clauses may vary from each other, but force majeure clauses often are quite standardised and inserted into contracts without adjustment to the particular circumstances. Therefore, with the proviso that each clause has to be individually read, it is possible to make some general considerations on force majeure clauses in the COVID-19 emergency.

Failing a force majeure clause, the applicable law will determine whether the affected party is excused or whether it is in breach of contract. Contracts are subject to the law chosen by the parties. Failing choice by the parties, the applicable law is determined by the court's conflict rules. In case of arbitration, the applicable arbitration rules and arbitration law will determine

how the arbitral tribunal is to select the governing law. Statutory rules may contain various nuances from country to country. However, within the same legal family, there is a common basis.

Below follow some general considerations on the applicability, in the COVID-19 emergency, of force majeure clauses, as well as of corresponding principles contained in the civil law (exemplified here by the laws of France, Germany, Italy and Norway), and in the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG)—which applies (unless the parties agreed otherwise) to sales contracts between parties belonging to 93 states, including the US and the four countries discussed here.

Costa Moura, Ines, Valeria Wong and Joao Nuno Riquito, 'Macao: Impact of the Coronavirus in Ongoing Public Contracts' [2020] (Summer) *International Financial Law Review* 121-123

Abstract: Discusses negotiations under the law of Macao to modify public procurement contracts which can no longer be performed as originally agreed because of the coronavirus pandemic.

Dacoria, Eugenia, '[Coronavirus and its Impact on Contracts in Greece](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: To face COVID-19, this current, exceptional, and unforeseeable pandemic, the extraordinary procedure of enacting Acts of Legislative Content was followed in Greece, a procedure provided by the Greek Constitution in exceptional circumstances. Accordingly, as of the 25th of February 2020 till the 1st of May 2020, nine Acts of Legislative Content have been issued. They have been ratified by law and have been followed by a considerable number of ministerial decisions, necessary for their implementation. Said acts contain provisions imposing measures for the prevention and limitation of the spread of COVID-19, including the lockdown of enterprises for a certain period as well as provisions for the regulation of such lockdowns to specific contracts. The purpose of the present contribution is to shortly present these provisions as well as the provisions of the Greek Civil Code which apply when events of force majeure, such as the pandemic of the COVID-19, occur.

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.

Delfino, Rossella, 'European Union Legislation and Actions' (2020) 16(2) *European Review of Contract Law* 317-322

Abstract: Reviews contract-related EU law developments from January to March 2020, concerning: general contract law; consumer law; access to justice; data protection; financial services; public procurement; intellectual and industrial property; the European Parliament's contract law initiative; and guidelines issued by the European Commission for the interpretation of EU law on passengers' rights in relation to travel disrupted by the COVID-19 pandemic.

Erikson, Merle and Irene Kull, '[Implications of Alteration of Balance of Contractual Obligations Due to COVID-19 on Employment and Civil Law Contract under Estonian Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Following the spread of COVID-19 to Estonia in the beginning of March 2020, the Government declared an emergency situation from 12th March 2020. For officially and voluntarily closed businesses, staff reductions, reduction of remuneration or working load, the amendment or termination of the employment and other contracts for work or services became one of the legal measures in preventing larger damages. The aim of the paper is to answer the

question under what conditions the affected party may demand amendment of an employment contract and civil law contract – on the example of a contract of mandate – in order to restore the original balance of the obligations, and terminate the contract, in order to assess the level of protection of parties interests. The comparison of an employment contract and a contract of mandate is based on legal provisions of Estonian law regulating the legal consequences of change or circumstances, which leads to the alteration of balance of contractual obligations in an emergency situation, like it was caused by COVID-19.

Fairgrieve, Duncan and Nicole Langlois, 'Frustration and Hardship in Commercial Contracts: A Comparative Law Perspective' (2020) 24(2) *Jersey and Guernsey Law Review* 142-166

Jurisdiction: comparison of English and French law

Abstract: The common law doctrine of frustration and the civil law doctrine of force majeure are both doctrines of respectable antiquity that can trace their origins back to Roman law. The recent Coronavirus pandemic (and its unprecedented impact on business) has focused attention on the way in which these doctrines have been developed by courts in different jurisdictions and prompted debate as to whether such developments now strike the right balance between legal certainty on the one hand, and fairness to the contracting parties on the other. Given Jersey's unique status as a 'mixed' civil and common law jurisdiction, a comparison of English law and French law in this area offers some interesting insights into the likely scope of a modern Jersey customary law doctrine of force majeure.

Furrer, Andreas, Angelika Layr and Jeremias Wartmann, '[COVID-19: Impossibility and Force Majeure under Swiss and Austrian Contract Laws](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The COVID-19 pandemic and the enactment of legislation to slow the spread of the virus are affecting large parts of the economy, including contractual relationships. This paper examines the legal situation and possible remedies, according to Swiss and Austrian general contract law. Both jurisdictions allow for contractual force majeure clauses to allocate risks in connection with unforeseeable or changing circumstances. As there is no statutory definition of force majeure, the individual contracts need to be examined, and COVID-19-specific clauses for

newly concluded contracts should be introduced. In the absence of a contractual agreement, the concepts of delay of performance or impossibility might be applicable for adaptation or termination of the contract. If the contractual equilibrium is severely disrupted by the changing circumstances, the doctrine of *clausula rebus sic stantibus* could apply.

Ganuza, Juan José and Fernando Gómez Pomar, '[Government Emergency Intervention in Private Contracts in Times of COVID-19: A User's Guide](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The paper provides a preliminary analysis of the legal instruments that governments use to provide emergency regulation of contracts in the wake of the turmoil resulting from the COVID-19 pandemic. We identify the acute liquidity concern afflicting virtually all agents along the contractual chain as the most pressing problem. We then introduce some of the main criteria to understand and design response measures in the area of private contracts in times of emergency: (i) the systemic and urgent character of response measures; (ii) keeping things simple, minimizing ex ante controls and transaction costs; (iii) the urgency of preventing a chain reaction of defaults along contractual networks and the economy at large; (iv) the relational value of existing contracts and the ways to preserve it; (v) how tailor-made agreements in M&A and finance have means to cope with the impact of emergencies.

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.

Giaretta, Ben, '[COVID-19 Force Majeure Notices Under English Law: What Comes Next?](#)' (2020) 13(2) *New York Dispute Resolution Lawyer* 47-49

Abstract: As well as terrible health impacts, the COVID-19 pandemic has caused extraordinary economic convulsion. A major part of that has been the disruption of the performance of contractual obligations, and this has led many contract parties to trigger, where they can, clauses that provide force majeure relief.

The pandemic has created unusual dynamics in the operation of force majeure clauses. Where many previous disputes over such clauses concerned the threshold question of whether the relevant circumstances fell within the force majeure clause,² there appears to have been near universal acceptance that the operation of such a clause is justified if the pandemic has affected a contract. On the other hand, the extended duration of the pandemic and the uncertainty over how the world will move to a postCOVID state has meant that other parts of force majeure clauses are being tested as never before. Yet the drafting of such clauses insofar as they relate to the period after the force majeure notice typically leaves much to be desired.

Godwin, Andrew, 'The Contractual Impact of COVID-19 on Corporate and Financial Transactions' (2020) 48(2) *Australian Business Law Review* 116-125

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.

Gunnyeon, Malcolm and Fiona Caldwell, 'COVID-19: The Quest for Contractual Equity' (2020) 65(6) *Journal of the Law Society of Scotland* 16-17

Abstract: Examines the evolving response to the disruption to commercial contractual relations

caused by COVID-19, including: the use of remote hearings to resolve disputes; the UK Cabinet Office's Guidance on responsible contractual behaviour during the COVID-19 emergency; the effect of the UK's Government's Corporate Insolvency and Governance Bill 2019-21; emerging calls for the judiciary to adopt an innovative approach to contract law; and the benefits of remote mediation.

Hamzah, Hamzah, '[Civil Law Agreement and Its Implication on Regulation for Prevention of Corruption within Covid-19 Pandemic](#)' (2020) *Journal of Social Studies Education Research* (pre-published article)
Jurisdiction: Indonesia

Abstract: The purpose of this study is to determine the social impact of the learning process of agreements and regulations in the Civil Law regarding the procurement of goods and services during the Covid-19 pandemic, its implications for preventing corruption in Indonesia. The research method used is normative using a theory-in-use approach. The results of the study found three crucial points. First, the law of goods and services agreements gives freedom to people who do not have restrictions in the code for that. The contract for the procurement of products and services during the Covid-19 pandemic was categorized as a relatively temporary force majeure so that it could renegotiate to rearrange the implementation schedule. Second, good faith is the key to success in resolving frustrating agreement problems to save the agreement to provide benefits and benefits to both parties. Third, in the end , civil law provides an essential lesson that in transactions based on good faith where there are values of decency , honesty , and fair wisdom is the prevention of con-uption in the procurement of goods. Good faith is the key to success in resolving frustrating agreement problems to save the agreement to provide benefits and benefits to both parties. And service in difficult times like today .

Hoekstra, Johanna, '[Regulating International Contracts in a Pandemic: Application of the Lex Mercatoria and Transnational Commercial Law](#)' 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) 117-125 (published 30 June 2020)

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,² 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.

Hoffman, David A and Cathy Hwang, '[The Social Cost of Contract](#)' (Virginia Public Law and Legal Theory Research Paper No 2020-65, 2020)

Abstract: When private parties perform contracts, the public bears some of the costs. But what happens when society confronts unexpected contractual risks? During the COVID-19 pandemic, completing particular contracts — such as following through with weddings, conferences, and other large gatherings — will greatly increase the risk of rapidly spreading disease. A close reading of past cases illustrates that when social hazards sharply increase after formation, courts have sometimes rejected, reformed, and reinterpreted contracts so that parties who breach to reduce external harms are not left holding the bag.

This Essay builds on that observation in making two contributions. Theoretically, it characterizes contracts as bargains that always involve the public. Law has three tools at hand to govern contract's social cost: delineating subject matter about which parties can bargain, interacting with parties as a regulator, and, finally, interpreting and reforming in court. Post-hoc consideration of social costs is the least well-known, and most unsettled, mode of governing contract externalities. We ground that technique in its history as a specialized application of the law of contract public policy. Practically, this Essay advises parties negotiating whether and how to perform to consider the public's health, since history teaches that, at least some of the time, courts will too.

Hondius, Ewoud, '[Corona, Millennium and the Financial Crisis](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Jurisdiction: Netherlands

Abstract: Corona may be a new issue, but epidemics are not. Legal issues related to epidemics are of all times. Two disasters which struck in recent times were the millennium bug and the financial crisis. This paper deals with the question how Dutch law has coped with the corona crisis. More in particular it addresses how the 1992 Civil Code's new provision on unforeseen circumstances has been (non) applied in practice. The paper then turns to two international developments: the work of the International Chamber of Commerce – see also the paper by Denis Philippe in this volume – and the work of the Common core of European private law (Trento) project.

Irvine, Matthew, 'Force Majeure Clauses and the Coronavirus' (2020) 31(5) *Entertainment Law Review* 155-157

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.

Jentsch, Valentin, '[The Law of Contracts in the Age of the Coronavirus Pandemic: Is the Statutory Risk Allocation Pursuant to the Swiss Code of Obligations Still Adequate?](#)' (EUI Department of Law Research Paper No 2020/09, 2020)

Abstract: Pacta sunt servanda – agreements must be kept. This general principle of civil law requires that both or all parties to commercial contracts are expected to meet their contractual obligations, at least as long as performance is still possible and circumstances do not change fundamentally, thereby ensuring the efficacy and the efficiency of our system of private ordering. In March 2020, however, the rapidly spreading coronavirus outbreak, which was eventually declared a pandemic by the World Health Organization, all of a sudden changed everyday life all over Europe from one day to another. Airlines were cancelling flights,

companies were closed down, and consumers were rapidly changing their buying behavior. In addition, many European countries, including Switzerland, enacted emergency decrees, according to which national borders were closed, cities were sealed off, major events with more than a certain number of people were banned, and teaching in schools and universities was suspended, at least for some time. There is no need to say that this situation caused considerable difficulties for all participants in the economy, business enterprises and consumers alike. Against this backdrop, I elaborate on both the remedies for a breach of contract provided by the legislator as well as the adaption and the termination of contracts by a competent judge in order to address the question, whether the statutory risk allocation pursuant to the Swiss Code of Obligations is still adequate or not. A functional and doctrinal approach is used to unfold and analyze this timeless question from a contemporary perspective.

Jevremovic, Nevena, '[CISG & Proactive Contracting: Suspending Performance under Art. 71 CISG in Time of a Global Pandemic](#)' (2020) *Balkan Yearbook on European and International Law* (Springer, forthcoming)

Abstract: The profound economic and social impact of the global COVID-19 pandemic put to the test the resilience of commercial relationships, pushing legal academia and practice to consider questions beyond the mere impact of certain institutes of civil or common law tradition: the role of the contract law in supporting the survival of affected trading relationships. The discussion under CISG has focused mostly on the interpretation and application of its provisions – notably Art. 79 – but did not go significantly further than that. This paper aims to contribute to the existing discussion in two ways. First, is to bring to the table a discussion around a remedy embedded in Art. 71 (1) & (3) CISG: the right of suspending performance. Second, to put such remedy in the context of proactive contracting, demonstrating the potential for its use in structuring and managing the pandemic (or any other event) going forward. The discussion will, therefore, focus on the current interpretation and application of Art. 71 (1) & (3) CISG, and will then move to clarify the ideas behind proactive contracting, and ways in which participants in international sales contracts can use Art. 71 (1) & (3) CISG to address performance and adaptability risks within their relationship.

Jerez, Carmen, María Kubica, and Albert Ruda, '[Force Majeure and Hardship in the Corona Crisis: Some Contract Law Reflections on ELI Principle No 13](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The Principles for the Covid-19 Crisis, drafted by the European Law Institute in May 2020, provide a set of criteria that deserve an analysis within the framework of contract law. In particular, its Principle no. 13 lays down a rule on force majeure and hardship in light of which national contract laws may be re-examined. Consequently, an event considered to amount to force majeure will usually entail in the contract that the debtor at stake will be relieved of the duty to compensate for non-performance. Therefore, force majeure does not necessarily lead to the termination of the contract. The present paper, thus, analyses the new Principle no. 13 from the perspective of (mostly) Spanish contract law, the CISG and several soft law instruments.

Levy, Zohar and Nicholas Carmichael, Covid-19 as a Force Majeure, and Other Contractual Considerations [2020] 2 *Business Law Reports* (6th) (Articles) 32

Abstract: Over the past few months, as the world has become familiar with new phrases like "social distancing", the legal community has revisited old concepts like *force majeure* and frustration of contract. While there is no doubt that Covid-19 has had a significant impact on the world, the question of whether Covid-19 actually constitutes a *force majeure* or is sufficient to frustrate a contract remains a fact-driven, open ended one.

To aid in the determination of contractual obligations during and in the aftermath of the pandemic, this article summarizes the current state of the law on *force majeure* and frustration.

Lewis, Russell et al, 'COVID-19: Force Majeure to the Rescue?' (2020) 56(5) *Tennessee Bar Journal* 20–22

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.

Lim, Nicole, 'COVID-19 Implications for Contracts under Singapore and English Law' (2020) *Singapore Comparative Law Review* 119-127 [link to full issue](#)

Introduction: COVID-19 has been regarded as the "black swan" event of 2020, causing massive upheaval to businesses and impacting economic ecosystems on an unprecedented scale. Since the onset of the pandemic, governments across the globe have responded with measures in the form of border restrictions and orders requiring employees to stay at home, which have severely disrupted business operations and supply chains. Many businesses which encountered difficulties in fulfilling their contractual obligations faced the threat of damages claims or risked having their deposits forfeited or leases terminated. This article will explore two primary avenues of contractual relief—force majeure clauses and the doctrine of frustration—under English and Singapore law. While Singapore's position in these two areas of law accords with the English position, local jurisprudence further elucidates the legal position for parties. Also, new legislation fast-tracked through the Singapore Parliament now offers affected businesses and individuals interim relief in relation to certain contracts.

Lipson, Jonathan C, '[Contracting COVID: Private Order and Public Good](#)' (SSRN Scholarly Paper ID 3676701, 7 August 2020)

Abstract: The novel Coronavirus (2019) (COVID) has created a dilemma: Open the economy and spread disease; quarantine and choke the economy. Thus far, the response has looked to government for health-safety standards and financial subsidies. Although these are necessary steps, they have become politicized, thereby exacerbating severe uncertainties created by the pandemic. While we will surely halt it, we do not know how, when, or what comes next.

Many writers are exploring litigation that will flow from COVID. This Article considers the flip side: the important but under-appreciated role that ex ante contracting plays in addressing the COVID dilemma. Liability waivers, for example, will be ubiquitous, but might be misused to shelter poor risk management. This essay argues that these waivers should be enforceable only when coupled with reasonable health-safety precautions, which may appear in contracts such as workplace rules or supply chain agreements. Without such balance—or worse, when imposed by fiat, as President Trump did in the meat processing industry—they can inflame the public health crisis.

At the same time, the COVID-induced shutdown has caused most contracts to be in or near breach. This has resulted in responses such as litigation, bankruptcy, and bailouts. While these may be inevitable, second-order contracts such as standstill agreements provide certainty that enables parties to adjust commercial relationships in ways that may preserve more value at lower cost than public interventions.

Contract in this context is thus doing more than creating private order; it is also producing public good. This hearkens to Depression-era scholarship which argued that contract had public ramifications. Although modern writers have largely abandoned that view, it reflected a change in mindset that cleared the way for sweeping New Deal reforms. While we do not yet know whether COVID will be as disruptive as the Depression, the uses of contract described here may signal a comparably dramatic realignment of private and public.

Liu, Qiao, '[COVID-19 in Civil or Commercial Disputes: First Responses from Chinese Courts](#)' (2020) 8(2) *Chinese Journal of Comparative Law* (forthcoming)

Abstract: This comment highlights major civil or commercial (mostly contract) law provisions in 23 judicial documents newly released by the Supreme People's Court or High People's Courts in China in response to the outbreak of the COVID-19, and assesses the significance of key changes that they make to the pre-pandemic law. It concludes by noting the increased role of the doctrine of the change of circumstances and the 'contract purpose' test, the emphasis placed on consensual solutions (by way of mediation and contract re-negotiation), and the flexibility and relatively clearer guidance afforded to lower courts in their adjudication of contract disputes arising in connection with the COVID-19.

MacQueen, Hector L, '["Coronavirus Contract Law" in Scotland](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: This chapter describes the Scottish legislative response to the coronavirus pandemic, noting that the chief impact on contracts is most likely to arise from issues of the supervening illegality of particular kinds of activity normally carried out under contracts. Scottish law largely follows English law in its doctrine of frustration and its approach to force majeure clauses. The paper accordingly suggests that the temporary interruptions to performance which the

coronavirus legislation brings about may not be sufficient to discharge affected contracts. The Scottish courts law may need rather to develop their very limited powers of equitable adjustment in response to changed but not necessarily frustrating circumstances. Some ways in which this might be done are suggested.

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

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

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

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

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

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

Menyhárd, Attila, '[Impacts of COVID-19 in Hungarian Contract Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The legal and social consequences of the COVID-19 epidemic raise challenges in legal systems. Incompleteness of contracts requires statutory or judicial intervention in order to reach the most efficient risk allocation in contractual relationships. In Hungarian contract law implied terms, impossibility and judicial amendment of contracts on the grounds of *clausula rebus sic stantibus* provide the doctrinal framework for such an assessment. These doctrines provide the legal framework for balancing the conflicting interests of the binding force of contracts and the demand for adjusting social and legal relationships to changing circumstances. Contracts are to be assessed on a case-by-case basis, but it is argued here that commercial and non-commercial transactions require different approaches as well as direct legal and indirect social consequences should be considered differently.

Nicolussi, Andrea, '[The Pandemic and Change of Circumstances in Italy](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The contribution is divided into two parts. The first describes the essential lines of the discipline of contingencies (change of circumstances in a broad sense) in Italian law with some comparisons with English common law. In particular, two subdivisions of the subject are presented. The former is the distinction between contingencies that disrupt the exchange covered by the contract in a qualitative sense and contingencies that disrupt the exchange covered by the contract in a quantitative sense. The latter is the distinction between typical contingencies, that is, legally foreseen and disciplined, and atypical contingencies, that is, not governed by the contract or by the law and which can make the equity criterion intervene. After this premise, the author analyses two hypotheses of lease contracts, those for commercial use and those for the residence of university off-site students, which can be considered examples of typical contingencies and atypical contingencies respectively. The Author concludes with a reference to quantitative contingencies with regard to which he takes into consideration the remedies of termination, equitable adjustment and renegotiation.

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

Abstract: The outbreak of the COVID-19 virus has led to most South Africans working from home or other remote areas. A direct result of this is the lack of access to office equipment such as printers and scanners, which means that some commercial contracts will now have to be signed electronically. This article will discuss the use of electronic signatures and advanced electronic signatures in commercial contracts in South Africa, focusing on the Electronic Communications and Transactions Act (25 of 2002) (ECTA). The ECTA is the primary legislation that regulates electronic signatures and advanced electronic signatures.

Nousia, K, 'The Covid-19 Pandemic: Contract and Insurance Law Implications' (2020) 35(7) *Journal of International Banking Law and Regulation* 274-283
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.

Ogwu, Ogochukwu Joshua, '[Imminent Contractual Issues in the COVID-19 Era “The Legal Implications”](#)' (SSRN Scholarly Paper ID 3615734, 30 May 2020)

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.

Onyango, Kevin Otieno, '[Non-Performance: The Impact of COVID-19 on Contractual Obligations in Kenya](#)' (SSRN Scholarly Paper ID 3707988, 9 October 2020)

Abstract: The measures taken to counter and contain COVID-19 in Kenya in terms of curfews, restrictions of movement, closure of businesses and schools and even ban on international travel. Many parties entered into contracts without foreseeing the drastic effects of COVID-19 on the performance of their contractual obligations. This paper analyses the impact of COVID-19 on the performance and enforcement of contractual obligations in Kenya.

Opinio Juris in Comparatione: Studies in Comparative and National Law (2020) Special Issue: 'Impact of Coronavirus Emergency on Contract Law' (pre-print articles)

- Brand, Isué Natalia Vargas, '[An Overview of the Colombian Contract Law, in Times of the Covid-19 Pandemic](#)'
- 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](#)'
- Deshayes, Oliver, '[The impact of Covid-19 crisis on the French law of contract](#)'
- Härmand, Karin Sein-Kai, '[Impact of Covid-19 Pandemic on Contractual Relationships: The Case of Estonia](#)'

- Moradinejad, Reza, '[Relevance of Contract Law Solutions Under a Pandemic](#)'
Jurisdiction: Quebec
- Muñoz, Edgardo and Romina Guarneros, '[The Impact of Covid-19 in Mexican Contract Law](#)'
- Uribe, Rodrigo Momberg and Alberto Pino Emhart, '[The Impact of Covid-19 in Chilean Contract Law](#)'
- Vv, Aa, '[Law of Contracts in Times of Covid-19 Pandemic: Polish Report](#)'

Philippe, Denis, '[Coronavirus: Force Majeure? Hardship? Deferral of Obligations? Some Practical Elements Advice for the Analysis and Drafting of Clauses](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: This article analyses whether the coronavirus crisis can lead to the application of the doctrine of force majeure; the different conditions of application of force majeure are discussed (non-accountability, unforeseeability and impossibility) as its effects which are not defined clearly by the literature and the case law. This article gives some hints for the drafting of force majeure clauses. Of course pandemics must be mentioned in the circumstances constituting force majeure. Then, the possibility to find alternatives in case of non-performance must be considered; finally, a renegotiation of the contract can be organised in the force majeure clause. The article also analyses the doctrine of unforeseen circumstances and the drafting of hardship clauses. Finally this article mentions the corona principles of the European Law Institute which recommends a renegotiation of the contract following the corona crisis.

Schmidt-Kessel, Martin and Christina Möllnitz, '[Particular Corona Contract Law in Germany : Why Does General Contract Law Not Suffice?](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: In order to handle the economic consequences of the COVID-19-pandemic, the German legislator has issued a number of specific rules for certain contracts for a limited period of time. The fact that legislation saw the need for such measures raises the question whether established German contract law is not sufficient to deal with the consequences of a large-scale crisis. This essay therefore outlines in a first step how the rules of general contract law in Germany apply to contracts affected by the COVID-19-crisis. The second step is dedicated to an

analysis of the interaction between the particular rules within the emergency regulation and the general contract and will conclude with some first tentative answers to the general question concerning the reasons to amend German law by the Corona Contract Law legislation.

Schwartz, Andrew A, '[Contracts and COVID-19](#)' (2020) 73 (July) *Stanford Law Review Online* 48-60

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.

Scognamiglio, Claudio, '[Relevance of the Contractual Solidarity at the Times of Pandemics](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The essay aims to outline, in a general perspective, the different possible strategies to respond from the normative point of view to the consequences, direct or indirect, on the contractual relations of the pandemic COVID-19: a solution entrusted to the jurisprudential law seems appreciable for its elasticity, but the requirements of certainty and predictability appear preeminent to be assured only by the legislative intervention.

Shebaita, Maged, '[The Impact of COVID-19 on the Performance of Administrative Contracts in Egypt Comparative Study](#)' (SSRN Scholarly Paper ID 3638076, 29 June 2020)

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 Social Responsibility Initiative, Harvard Kennedy School, April 2020, Working Paper No 73, 2020)

Abstract: This paper examines the efforts of the American Bar Association to draft proposed Model Contract Clauses for businesses that prohibit modern slavery and child labor in supply chain contracts. This involves a careful balancing of a buyer’s desire to avoid consuming goods manufactured with human rights abuse and its desire to protect itself legally, in order to ensure that the company is acting in alignment with its responsibility to respect universally recognized human rights under the UN Guiding Principles on Business and Human Rights. This subject is quite timely in light of the current efforts of many companies, in response to the COVID-19 pandemic, to exercise force majeure clauses in their contracts to dump suppliers without regard to the impacts of vulnerable workers in their supply chains.

Shetty, Smaran and Pranav Budihal, [‘Force Majeure, Frustration and Impossibility: A Qualitative Empirical Analysis’](#) (SSRN Scholarly Paper ID 3665213, 1 August 2020)

Jurisdiction: India

Abstract: A concluded contract may be rendered incapable of performance for a variety of reasons. The incapability of performance raises a variety of important legal questions: Is the claim of incapability acceptable to the counterparty? If not, does the claim meet the standards of force majeure and/or frustration? Does the contract between the parties address the grounds of incapability? Whether performance may be excused without the levy of damages? Towards that end, this report attempts to draw attention to the core issues in making and resisting a force majeure claim, key decisions of the Supreme Court that have settled the parameters of force majeure, frustration and impossibility and important advancements made by the High Courts. We also offer insights into allied issues in making a force majeure claim that have bearing on the timing, forum and terms on which a force majeure claim may be made. This report thereafter proceeds to offer empirical insights of the Supreme Court as well as 6 high courts – Delhi, Bombay, Madras, Karnataka, Allahabad and Calcutta. In presenting this information, we assemble a qualitative set of cases that have decided and applied the law on force majeure, frustration, and impossibility. We offer insights into the number of successful force majeure claims and common force majeure events.

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.

Sirena, Pietro and Francesco Paolo Patti, '[Hardship and Renegotiation of Contracts in the Prospective Recodification of Italian Civil Law](#)' (Bocconi Legal Studies Research Paper No 3706159, 2020)

Abstract: The aim of the present essay is to analyse the new normative proposal on change of circumstances and to shed light on its scope of application, its potentialities and its shortcomings. The first part will indicate the reasons why a modification of the existing law is needed, also in consideration of the COVID-19 crisis and the difficulties in finding a fair solution capable of balancing the parties' interests in ongoing contracts (B.). The contribution will then devote attention to the comparative background, as the problem of supervening events gave rise to several legislative interventions, not only in the European context (C.). A detailed scrutiny of the proposed Italian provision on change of circumstances will follow, with respect to the systematic relationship to other remedies and the requirements for its application (D.). Finally, the paper offers some conclusions (E.).

Slavens, Setphen and Jessica R Lumière, 'Redefining Your Contracting Practices for Successful Post-Pandemic Commercial Relationships' (22 July 2020) 9 *Emerging Areas of Practice Series - COVID-19 (Coronavirus)* Westlaw Canada

Jurisdiction: Canada

Abstract: This article offers a framework to help organizations apply the learnings from their response to the crisis, discussing recent areas of focus in commercial contracts and identifying longer-term strategic considerations for businesses as they look to evolve their commercial contracting practices and set themselves up for future success.

Sousa Antunes, Henrique, '[Portugal's COVID-19 Legislation and the Challenges Raised for the Change of Circumstances Regime](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: During the recent period of Portugal's financial bailout, following the severe effects of the global financial crisis of 2008, the courts demonstrated a clear reluctance to accept claims for contract termination or modification due to change of circumstances. Within this framework, the Portuguese legislator's responses to the pandemic raises challenges for the change of circumstances regime. The legislative activity to which COVID-19 has given rise tests the traditional understanding regarding the foundations of the institute, certainly with regard to cases related to the pandemic, but also regarding situations of unenforceability with different grounds.

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

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

Torsello, Marco and Matteo M Winkler, '[Coronavirus-Infected International Business Transactions: A Preliminary Diagnosis](#)' (2020) 11(2) *European Journal of Risk Regulation: Special Issue - 'Taming COVID-19 by Regulation'* 375-381

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.

Twigg-Flesner, Christian, '[The Potential of the COVID-19 Crisis to Cause Legal Disruption to Contracts and Contract Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: This paper explores whether the COVID-19 crisis has the potential to cause legal disruption to the legal regime for contracts. It first sketches features of the COVID-19 crisis and its effect on the economic and social context of contracts, before setting out a four-step methodology to categorise legal responses to the crisis. It then develops a specific conception of legal disruption, based on Christensen's theory of disruptive technology, which posits that legal disruption occurs once the pre-crisis legal regime for contracts (whether entirely or partially) is displaced by new provisions first targeted at the effects of the crisis. It concludes that the crisis has the potential to cause legal disruption but that this outcome is not inevitable.

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

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

Twigg-Flesner, Christian, '[The Covid-19 Pandemic: a Stress Test for Contract Law?](#)' (2020) 9(3) *Journal of European Consumer and Market Law* 89-92

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.

Vaquer, Antoni, '[Prescription and Lapse of Rights under the Spanish State of Emergency](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: This paper discusses the regulation contained in the Royal Decree establishing the state of emergency in Spain on suspension of the running of the periods of prescription in a private law system that does not have a general rule on suspension. Since the Spanish legislator has suspended the running of the periods for all citizens and claims as long as the emergency state has been in force, it is questionable whether this solution is efficient in terms of protection of people that, because of illness caused by COVID, are unable to pursue a claim once the emergency state has come to an end. Moreover, the Spanish Civil Code still distinguishes

usucapio inter presentes and *usucapio inter absentes*, the latter requiring a longer period, but the Royal Decree does not contain any rule on acquisitive prescription.

Wiewiórowska-Domagalska, Aneta, '[When Pandemic Meets Politics: Corona Contract Law in Poland](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: This article presents and critically evaluates the impact of the COVID-19 pandemic on Polish contract law. Since the government refrained from introducing the state of emergency to manage the pandemic in Poland in violation of the Constitution, the constitutional dimension of the COVID-19 measures is of crucial importance also for the contract law examination, as it substantially changes the position of the parties of private law relations. The article therefore gives an overview of the measures introduced as a response to the COVID-19 emergency in the constitutional context, presents the classic Polish private law instruments potentially applicable to contracts in extraordinary circumstances like pandemic as well as the extraordinary legislation introduced by the government in the area of contract law, with a view to addressing the pandemic. It ends by presenting the first cases initiated by private parties against the State Treasury.

Torts

Albanese, 'Antonio, '[Mobility at the Time of the Coronavirus and Damage Caused by Vehicles Equipped with Electronic Safety Systems](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The introduction of technologies that make vehicles safer is important to address the foreseeable criticalities of road traffic due to the lower capacity of public transport as a result of social distancing measures. In this unique situation, the objective of limiting the spread of the epidemic cannot overshadow the prevention of accidents and human health must be guaranteed with respect to all possible risks. However, new safety systems are not completely failsafe. With these cases in mind, the article proposes to verify the extent to which current rules on civil liability in Italian law may offer solutions to damages caused by highly automated vehicles in terms of preventing harmful events and allocating their costs according to criteria of

justice and economic efficiency. Within this logic, the analysis also looks at the rules on the distribution of compensation costs among the various parties that may be jointly and severally liable (driver, owner, custodian or manufacturer).

Billauer, Barbara Pfeffer, '[COVID, Courts, and Other Controversies](#)' (SSRN Scholarly Paper ID 3710090, 12 October 2020)

Abstract: Personal Injury cases seeking recovery for contracting coronavirus are proliferating. These fall into four categories: direct exposure, such as on cruise ships, allegedly claiming negligent property management and decision-making, shareholder liability suits for failure to disclose potential loss from lawsuits, workers compensation cases alleging workplace exposure occurring in the course of employment, and bystander exposure from spouses exposed to their husbands' who contracted the disease on the job. Proving causation, will, however, be difficult. Proving negligence on the ground of flawed sterilization will also be difficult. Claims against cruise ship operators for failing to notify passengers before embarkation of potential exposure, however, I suggest may have some traction, although at present that route is not being.

Doménech-Pascual, Gabriel, '[State Liability for the Management of the COVID-19 Crisis](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: This paper analyses whether and under which conditions the State ought to compensate for the losses caused when managing the COVID-19 crisis. It focuses, firstly, on instances where public authorities have accidentally caused the damage at issue either through actions or omissions. Secondly, it considers cases of State liability for lawful conduct, where public authorities deliberately have inflicted some damage on a person or a group of people for the sake of the public interest. The paper takes Spanish law as a reference, which does not prevent our analysis from being extended to other legal systems based on similar principles.

Fairgrieve, Duncan et al, '[Products in a Pandemic: Liability for Medical Products and the Fight against COVID-19](#)' (2020) *European Journal of Risk Regulation* (advance online article, published 20 May 2020)

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.

González, Sonia Ramos, '[State Liability for Personal Injuries Caused by the COVID-19 Disease under Spanish Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The fundamental question about causation that arises in relation to COVID-19 infections is whether the appearance of the virus (together with its high transmission capacity among the population and its lethality) amounts in effect to force majeure that breaks the causal relationship between the personal damages caused by COVID-19 and the Government's action in managing the health crisis. This paper also addresses the issue whether, in a situation of extreme urgency, and given limited healthcare resources, a lower standard of care is expected of public health professionals than the one that would prevail under normal conditions. In addition, public administrations are likely to face claims based on tort law on the grounds that some patients were not properly attended to by medical services due to the limited health resources available, as well as the fact that some health professionals were bound to provide essential services, without being provided with the mandatory protective equipment to carry out such activity safely in accordance with the legislation.

Hall, Helen M and Darcy Merkur 'Please Release Me: COVID-19 Waivers of Liability' (22 July 2020) 11
Emerging Areas of Practice Series - COVID-19 (Coronavirus) Westlaw Canada

Jurisdiction: Canada

Introduction: Waivers have been widely used in the recreational, sports and adventure fields for many years but their use to specifically address liability relating to diseases generally, and COVID-19 specifically is new and raises some issues, the resolution of which will not be known until the waivers are challenged and reviewed by the courts. Because the contracting of COVID-19 by a patron is a novel area for liability, there is some uncertainty as to how the courts will treat a waiver of liability for disease transmission. Also, it is unknown, but unlikely, that pre-existing or standard liability waivers will be sufficient to address COVID-19-related injuries. In theory, a COVID-19 waiver should be enforceable if it meets the general requirements for enforceable waivers, but waivers are not foolproof measures against lawsuits.

This article covers: A review of liability waivers generally, including what is needed to make a waiver valid and enforceable; COVID-19 liability waivers; and the status of legal immunity legislation which may provide certain entities with some protection from civil lawsuits for COVID-19 related damages.

Hodges, Christopher, '[COVID-19 Vaccines: Injury Compensation Issues](#)' (University of Oxford, Legal Research Paper Series, 2020, 9 July 2020)

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.

Ruda, Albert, '[Tort Law and the Coronavirus: Liability for Harm Caused by the Covid-19 Outbreak](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Although much attention has been paid to the impact of the Covid-19 outbreak on the existing contracts and businesses, the current crisis also poses plenty of questions from a tort law perspective. Even though the Coronavirus as such may be deemed an instance of force majeure or impossibility for which no one should be held liable, it comes without saying that such a defence does not exclude liability of those persons who actually cause damage to others, in particular as regards public authorities which adopt measures to fight the crisis as such, or any person who infects another in a negligent manner, among other examples. The paper explores some of the scenarios in which tort liability may arise as a result of the Covid-19 outbreak and subsequent measures. In particular, it focuses "Principles for the Covid-19 Crisis", drafted by the European Law Institute, and compares them with the approach adopted in several national jurisdictions within the EU, and especially Spanish law.

Terry, Nicolas, P, '[Liability and Liability Shields](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 199-204

Jurisdiction: USA

Abstract: This Chapter first examines the liability of businesses and medical professionals for acts and omissions involving COVID-19 mitigation, treatment, and reopening. Second, it provides an analysis of the federal and state liability shields, those that were in existence before COVID-19, those introduced more recently, and calls for more and broader shields. Claims will be brought by consumers (predominantly nursing home residents) alleging that businesses failed to protect them, patients treated at the height of the pandemic when emergency departments were overrun, and consumers who contract the virus during reopening. There are few federal liability shields applying to private actors, the most important being the PREP Act of 2005. A substantial number of states have adopted some type of liability waiver specifically related to the COVID-19 pandemic, initially providing immunity protections for health care providers and more recently protecting businesses as they reopen. Many of the health care providers shields present difficult questions of interpretation, particularly with regard to whether they are limited to emergency triage decisions, mitigation, or treatment efforts in contrast to broader acts or omissions that may have contributed to the infection outbreak, such as poor hygiene control.

There is no evidence that a broad federal shield is necessary. State policymakers also should resist calls for broader shields and should provide transparent, data-driven guidance on reopening which can inform the existing and appropriate reasonable care standard. Court should carefully scrutinize the constitutionality of shields and not show the same deference as given to prior tort reform legislation.

Zoll, Fryderyk, Katarzyna Poludniak-Gierz and Wojciech Banczyk, '[The Right to Damages Caused by COVID-19-Related Restrictions under Polish Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The COVID-19 crisis has marked nearly all spheres of our lives. To combat the spread of the virus, the Republic of Poland decided to impose severe restrictions as to the rights and freedoms of citizens and entities without applying the formal extraordinary measures as provided by the Constitution. Businesses have been significantly affected, but it is highly disputable whether they will be compensated by the state. Two compensation regimes are potentially applicable: the one provided for in the Polish Civil Code and the other regulated in the Extraordinary Measures Compensation Law. In both cases, the conditions for the compensation are ambiguous. Therefore, the aim of the paper is to determine the main factual and regulatory issues which might inhibit compensation of COVID-19-related damages.

PRIVACY / SURVEILLANCE / DATA PROTECTION

Ada Lovelace Institute, '[No Green Lights, No Red Lines Public Perspectives on COVID-19 Technologies](#)' (July 2020)

Abstract: How to contain the COVID-19 virus swiftly and effectively, with minimum impact on health, economies, societies and individuals, is the defining question of 2020. As lockdown eases after the first wave, we are at a moment when Government and policymakers can consider how to balance risk and shape freedoms at a local, or even individual, level. Novel and intrusive technologies are likely to play a part in that, but – as we have seen with contact tracing – it will be a challenge to navigate the risks and trade-offs. In this report, we articulate lessons from public engagement to assist Government and policymakers navigating difficult dilemmas when

deploying data-driven technologies to manage the pandemic, and when judging what risks are acceptable to incur for the sake of greater public health.

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.

Aragão, Alexandra, '[Mobile Apps for the Epidemiological Surveillance of COVID-19: a European Perspective on Reliable Digital Technology](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The COVID-19 pandemic in 2020 posed unprecedented challenges to healthcare systems, to economic stability, to the normal way of life and social values. A challenge of such magnitude requires a proportionate response. Mobile applications that produce anonymous and aggregated mobility data to assist health authorities and other competent public authorities in their efforts to contain the spread of the virus, seem to be the answer that we were looking for. The benefits of using new communication technologies of geolocation to reach one of the most important social purposes, such as health protection, are indisputable. What is still to be discussed is the security of the production, access and use of the information produced, processed, stored, and transmitted. The Recommendation (EU) 2020/518 of the European Commission is fundamental to develop trustworthy digital technology.

de Azevedo, Leonardo Neri Candido, 'Zoom: Data Protection in Light of COVID-19' (2020) 26(6) *Computer and Telecommunications Law Review* 151-152

Abstract: Considers how the coronavirus pandemic has expanded the use of Zoom communications software by individuals and businesses, and the cybersecurity implications. Reviews the data protection shortcomings associated with its use, including hacking and the unauthorised sending of information to Facebook, and discusses the company's data protection obligations, the need for consent to data sharing, and the implications of Zoom being based in Brazil.

Baker, Alison et al, 'Online Privacy: What's at Risk?' (2020) *Internet Law Bulletin* 30-31

Abstract: The necessity for remote working during the COVID-19 pandemic has meant that understanding privacy law obligations is more important than ever. There has been increased activity from cybercriminals looking to take advantage of and exploit privacy gaps in business identified during the crisis. With the foreseeable future likely focusing on a hybrid model of office work and work from home, businesses need to put in place appropriate cyber risk mitigation strategies to protect the personal information they hold.

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

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

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

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

Berman, Emily, Leah Fowler and Jessica L Roberts, '[COVID-19 Surveillance](#)' (SSRN Scholarly Paper ID 3666300, 3 August 2020)

Abstract: Any successful pandemic response involves tracking the spread of disease. In this regard, contact tracing is nothing new. What differentiates COVID-19 surveillance is its unprecedented use of technology. The potential for continuous and near-universal digital contact tracing has raised concerns about privacy and civil liberties more readily associated with national security surveillance, chilling the uptake of disease-tracking technologies in the United States. Yet public health surveillance and national security surveillance are two distinct paradigms with different values and governing norms. Ideally, public health surveillance is cooperative, minimizes data collection, and limits subsequent use. National security surveillance, by contrast, operates coercively, maximizes data collection, and imposes relatively few limits on the use of lawfully collected data. At first blush, digital contact tracing resembles national security surveillance because both depend heavily on technology. Yet despite these superficial similarities, COVID-19 surveillance is a public health initiative. This Article asks the important and novel question: Can we use technological tools similar to those found in national security surveillance while cultivating the trust necessary for successful public health surveillance? We respond with a cautiously optimistic yes and offer our recommendations.

Bigg, Carolyn et al, Facial Recognition Technology: Supporting a Sustainable Lockdown Exit Strategy?' [2020] (June) *Computers and Law* 23-32

Jurisdictions: Ireland, Denmark and China

Abstract: Considers the key aspects of data protection law concerning the adoption of facial recognition technology (FRT) as part of measures to help businesses restart following the COVID-19 pandemic lockdown, focusing in particular on examples in Ireland, Denmark and China. Discusses the more established use cases for FRT and the key considerations on whether its use is lawful.

Booher, Kimberly Dempsey and Martin Robins, '[American Privacy Law at the Dawn of a New Decade \(and the CCPA and COVID-19\): Overview and Practitioner Critique](#)' (SSRN Scholarly Paper ID 3658495, 22 July 2020)

Abstract: This article has been prepared by experienced practitioners in the privacy area, who are interested in not only the 'how' of privacy law, but also the 'why', namely whether existing authority serves a valid social purpose and whether it does so efficiently relative to the cost that it imposes. The article was prompted by the effectiveness of the *California Consumer Privacy Act*. It also includes substantial discussion of the major privacy considerations associated with actual and potential responses to the COVID-19 situation, and how such considerations must be weighed against the public health considerations. The discussion encompasses all aspects of US privacy law from breach notice obligations to limitations on tracking internet use of children and the CCPA and similar law and informal guidance. It touches upon the EU's GDPR. Two of the unique attributes of the piece are the presentation of various informal sources of authority such as Federal Trade Commission consent orders and handbooks and the extensive granular author critique from both a theoretical and practical point of view of the various authorities, as well as a separate discussion of the optimal manner for policy-makers to give effect to privacy considerations in connection with mandated COVID-19 responses.

Botero Arcila, Beatriz, '[A Human Centric Framework to Evaluate the Risks Raised by Contact-Tracing Applications](#)' (ICT4Peace, 2020)

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 PrivacyPreserving 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.

Calvo, Rafael A, Sebastian Deterding and Richard M Ryan, '[Health Surveillance during Covid-19 Pandemic](#)' (2020) 369 *BMJ* m1373 (advance online article, published 6 April 2020)

Abstract: US government and state agencies are talking to companies such as Google, Facebook, and controversial startup Clearview AI about using location data mining or facial recognition to trace infected people and to monitor and enforce isolation. Around the globe, governments are rapidly following in implementing digital contact tracing of people with covid-19.

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.

Castets-Renard, Céline and Eleonore Fournier-Tombs, 'COVID-19 and Accountable Artificial Intelligence in a Global Context' in Flood, Colleen et al, '[Vulnerable: The Law, Policy and Ethics of COVID-19](#)' (University of Ottawa Press, 2020) 571

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.

Chaplin, David, 'Covid-19: Stress Testing Data and Justice' [2020] (June) *Computers and Law* 3

Abstract: Discusses the debate surrounding the data protection risks arising from the use of centralised COVID-19 contact tracing applications software, particularly where these may start to include facial recognition.

Chawla, Ajay, '[Coronavirus \(COVID-19\): "Zoom" Application Boon or Bane](#)' (SSRN Scholarly Paper ID 3606716, 20 May 2020)

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.

Churches, Genna and Monika Zalnieriute, [“Contracting Out” Human Rights in International Law: Schrems II and the Fundamental Flaws of U.S. Surveillance Law](#)’ (UNSW Law Research Paper No 20-44, 2020)

Abstract: In the midst of the COVID-19 pandemic, on July 16, 2020, the Court of Justice of the European Union (‘CJEU’) in Luxembourg handed down a long-awaited judgement on international data transfers in the Schrems II case. The Court found U.S. law does not provide the ‘essentially equivalent’ protection for personal data to that guaranteed by EU law, and invalidated the key mechanism for EU-United States data transfers, Privacy Shield, for the second time in a decade. The CJEU generally upheld the validity of another legal basis for international data transfers—Standard Contractual Clauses (‘SCCs’) but implied these clauses are not an avenue for continued transfers of personal data from the EU to the United States. Schrems II is a win for human rights in the EU and beyond, yet, the long-term political impact of this judgement in securing human rights in the digital economy is less certain in light of the \$7.1 trillion transatlantic economic relationship at stake. The U.S. government maintains that the protection under its national security laws ‘meets’ and ‘exceeds’ the safeguards ‘in foreign jurisdictions, including Europe,’ suggesting that structural changes in the U.S. legal system are unlikely. Instead, the European Commission (‘EC’) and U.S. Department of Commerce may soon carve out another solution for EU companies to ‘contract out’ the protection for human rights where public authorities are unwilling to ensure it.

Churches, Genna and Monika Zalnieriute, [‘The Instrumentality of Metadata Access Regime for Suppressing Political Protests In Australia’](#) (UNSW Law Research Paper No 20-50, 2020)

Abstract: Australians, just like many other people around the world, are taking to the streets to oppose racial and environmental injustice, despite the COVID-19 risk of mass gatherings. Australian politicians have expressed strong disdain, and even threats, at protesters. Government’s desire to silence critics is not new, however today’s tracking technologies and Australia’s lax federal metadata laws give the government unprecedented tools to take action against protesters. Accessing metadata requires no warrant or reporting and enables government to draw links and amass schemes of connections between people who were organising, attending, intending or speaking at the protests. These tools, coupled with new COVID-19 powers to surveil citizens, have seriously impaired the right to protest anonymously in

Australia. In this post we are not disputing the need for restrictions on mass gatherings or social distancing — to the opposite, we think they are crucial to stop the spread of virus. Instead, we are exposing the instrumentality of metadata, including location data, for the government to clamp down on peaceful protests. We propose one small step towards securing the right to protest anonymously during a time when Australians need it most: reforming the laws so that our metadata can only be accessed with a judicial warrant and further protected with detailed public reporting requirements.

Comandé, Giovanni, Denise Amram and Gianclaudio Malgieri, '[The Democracy of Emergency at the Time of the Coronavirus: The Virtues of Privacy](#)' (2020) *Opinio Juris in Comparatione* (pre-print)

Abstract: The emergency of the Coronavirus imposes a cultural debate on the balancing of rights, freedoms and social responsibilities, finalized to the protection of individual and collective health. So much and rightly has been written in these days about strategic errors of the past, and authoritarian and social control risks exploiting the fear of contagion to further compress individual freedoms. A lot has been said about the futility of privacy as well. But is there a democratic way that respects fundamental rights in an emergency? Is there a model that can turn respect for democratic freedoms into a tool for effective common struggle in an emergency?

'EDPB: "Even in These Exceptional Times, the Protection of Personal Data Must be Upheld in All Emergency Measures"' (2020) (August) *Computers and Law* 7-8

Jurisdictions: EU; Hungary

Abstract: Highlights a statement by the European Data Protection Board (EDPB) clarifying the interpretation of data subjects' rights under Regulation 2016/679 art.23 in relation to the emergency situation surrounding COVID-19 in response to concerns raised following the Hungarian Government's Decree 179/2020 of 4 May 2020, which suspended Regulation 2016/679 (GDPR) in relation to dealing with the pandemic.

'EDPB Adopts Statements on Schrems, PSD2 and Responds to MEP on Contact Tracing' (2020) (August) *Computers and Law* 37-38

Abstract: Summarises the outcomes of the European Data Protection Board (EDPB)'s 34th plenary session during which it adopted: a statement on Schrems v Facebook Ireland Ltd (C-498/16) (ECJ); guidelines on the relationship between Directive 2007/64 (PSD2) and Regulation 2016/679 (GDPR); and a letter in response to MEP Duris Nicholsonova's questions on contact tracing, interoperability of applications software and data protection impact assessments.

Eliot, Lance, 'Contact Tracing Apps: The Latest Efforts in the US' [2020] (June) *Computers and Law* 53-57

Abstract: Examines the approach of US state and federal governments to addressing problems associated with COVID-19-related digital contact tracing applications software. Outlines the precepts underlying the Exposure Notification Privacy Act released by the US Congress. Discusses the unanswered concerns that remain regarding the governance of such applications and the risks associated with the use of contact tracers.

Fazlioglu, Müge, '[Privacy in the Wake of COVID-19: Remote Work, Employee Health Monitoring and Data Sharing](#)' (iapp Report, International Association of Privacy Professionals, May 2020) 1-38

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.

Fazlioglu, Müge, '[Privacy Risks to Individuals in the Wake of COVID-19](#)' (iapp White Paper, International Association of Privacy Professionals, June 2020) 1-8

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.

Findlay, Mark et al, '[Ethics, AI, Mass Data and Pandemic Challenges: Responsible Data Use and Infrastructure Application for Surveillance and Pre-Emptive Tracing Post-Crisis](#)' (SMU School of Law Research Collection No 3175, Singapore Management University, May 2020)

Abstract: As the COVID-19 health pandemic rages governments and private companies across the globe are utilising AI-assisted surveillance, reporting, mapping and tracing technologies with the intention of slowing the spread of the virus. These technologies have the capacity to amass personal data and share for community control and citizen safety motivations that empower state agencies and inveigle citizen co-operation which could only be imagined outside such times of real and present danger. While not cavilling with the short-term necessity for these technologies and the data they control, process and share in the health regulation mission, this paper argues that this infrastructure application for surveillance has serious ethical and regulatory implications in the medium and long term in relation to individual dignity, civil liberties, transparency, data aggregation, explainability and other governance challenges. To conduct this analysis, the paper presents the Singapore and China case studies, and offers a comparative description based on the many more initiatives implemented worldwide in order to understand the purpose, goal and risk of these infrastructures. The analysis looks at data protection and citizen integrity and reflects on other surveillance methods outside the health

context, such as initiatives implemented in the financial sector, where similar challenges have arisen.

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.

Fulford, Nicola and Hannah Jackson, 'Returning to work: COVID-19 and the data protection perspective' (2020) 109(May) *Privacy Laws & Business United Kingdom Newsletter* 1,3-5

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.

Galloway, Kate, 'The COVID Cyborg: Protecting Data Status' (2020) 45(3) *Alternative Law Journal* 162-167

Abstract: This article examines the increasing tendency towards governance of people through their representation via data. In its most contemporary iteration, the COVID-19 pandemic has seen the release of contact tracing apps – in Australia, COVIDSafe. While public discourse about the apps has focused principally on the important issue of data privacy, there are other possible effects whereby participation in such schemes might become a prerequisite to accessing services or basic rights – either from government or from corporations. The pathway to acceptability of applying our data in this way is already paved, through fitness monitors and other technologies by which we represent ourselves. This article sets out the foundation of such

technologies and their application, before outlining their effect on the recognised boundaries of governance and the conception of the holder of rights and the substance of those rights.

Gesley, Jenny, '[Regulating Electronic Means to Fight the Spread of COVID-19](#)' (Law Library of Congress Legal Report, June 2020)

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).

Ghose, Anindya et al, '[Trading Privacy for the Greater Social Good: How Did America React During COVID-19?](#)' (SSRN Scholarly Paper ID 3624069, 10 June 2020)

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.

Goodyear, Michael, '[The Dark Side of Videoconferencing: The Privacy Tribulations of Zoom and the Fragmented State of U.S. Data Privacy Law](#)' (2020) 10(3) *Houston Law Review* 76-89

Abstract: COVID-19 has forced the world to increasingly rely on online services to continue daily life. Chief among these, for school, business, and fun, are videoconferencing services. Zoom has led the way, being used by millions, yet it has come to light that Zoom's data privacy practices are far from ideal. The tracking of users and the sale of personal data has enormous consequences for users' data privacy. Yet U.S. law provides poor protections for such risky behavior. U.S. data privacy law is fragmented on both the federal and state level, with federal law focusing on industry-specific protections and states each going their own ways. While this splintered framework does provide some protection for Americans against poor data privacy practices by Zoom and others, it is an unequal framework that provides different protections to different groups of Americans. Instead, Zoom's privacy tribulations should be a call for Congress to follow the precedent of Europe and enact comprehensive data privacy legislation to equally protect Americans at the federal level from the improper use and sale of consumers' data privacy.

Greenleaf, Graham and Katharine Kemp, '[Australia's 'COVIDSafe App': An Experiment in Surveillance, Trust and Law](#)' (University of New South Wales Law Research Series 999, 2020)

Abstract: The joint Australian governments' coronavirus contact tracing app, marketed as 'COVIDSafe', was released on 26 April 2020 for public download by the federal government, together with an emergency Determination under the Biosecurity Act to govern its operation, a Privacy Impact Assessment (PIA) with the Health Department's response to that PIA, and (not least) the App itself and its privacy policy.

It is a package intended to create sufficient public confidence to result in downloads of the app by a sufficient percentage of the Australian mobile-phone-owning population, for it to have a significant effect on the tracing of persons infected with the COVID19 virus. In the first few days since its launch nearly 3 million Australian's have downloaded the app.

When Parliament resumes, probably on May 12, it is expected that the government will introduce legislation to replace the non-disallowable Determination. This article analyses the steps that Australian governments need to take if public trust is to be justified, and aims to make a constructive contribution to the development of better legislation and greater

transparency.

We conclude that the conditions necessary to justify sufficient public trust in government for the Australian public to opt in voluntarily to the installation and use of the COVIDSafe app, and to not opt out, are lacking. Many of the main deficiencies we identify in this article are remediable: five deficiencies in transparency; and nine categories of improvements to the current Determination by the proposed COVIDSafe Act. However, the question of whether an individual Australian would be well advised to install and run the app remains a decision which depends on individual circumstances.

Note: The Act referred to in this article, the [Privacy Amendment \(Public Health Contact Information\) Act 2020](#) (Cth) ('the COVIDSafe Act') was assented to on 15 May 2020.

Greenleaf, Graham and Katharine Kemp, ['Australia's COVIDSafe Experiment, Phase III: Legislation for Trust in Contact Tracing'](#) (University of New South Wales Law Research Series, 2020)

Abstract: The joint Australian governments' coronavirus contact tracing app, marketed as 'COVIDSafe', was released on 26 April 2020 for public download by the federal government, together with an emergency Determination under the Biosecurity Act to govern its operation. In a brief federal Parliamentary sitting from 12-14 May, the Parliament enacted the Privacy Amendment (Public Health Contact Information) Act 2020 (Cth) ('the COVIDSafe Act') on 14 May 2020.

The COVIDSafe app is more toward the centralised than decentralised end of the spectrum in the design of such apps, but its use is voluntary, and the government claims that will continue to be the case.

The Act aims to create sufficient public confidence in the privacy protections surrounding the COVIDSafe app to result in downloads and use by a sufficient percentage of the Australian mobile-phone-owning population, for it to have a significant effect on the tracing of persons infected with the COVID19 virus. In the first two and a half weeks since its launch over 5.5 million Australian's have downloaded the app, about 25% of those possible, and 20% of the population. Public trust must become more widespread, before success in uptake is likely to follow.

Now that the Bill has been enacted, the purpose of this article is to provide a reasonably comprehensive explanation of the provisions of the COVIDSafe Act and important aspects of

their Australian context. Significant deficiencies in both the extent of transparency around the introduction of the COVIDSafe app, and the privacy-protective provisions of the Act, are identified and improvements suggested. These extensive suggestions are made because debate over the app and the Act is not over, and opportunities to obtain improvements may arise, particularly through the operation of the two Parliamentary committees examining Australia's COVID-19 response, and the human rights implications of the Act.

Many other countries are developing contact tracing apps. Australia's experiment is further advanced than most that are attempting to build a system based on voluntary uptake, protected by legislation. The results of its experiment will be of interest to many.

Guimarães, Maria Raquel and Maria Regina Redinha, '[Through the Keyhole: Privacy in COVID-19 Times – A Portuguese Approach](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: Time has shown that in periods of crisis the pressure on privacy and on personality rights in general has always increased. The coronavirus pandemic has not been an exception and several problems have emerged during this crisis. Compulsory confinement at home has led to the need for a new division of home 'territories' and devices, such as computers and televisions, with the ensuing compression of space, not only physical but also emotional and mental. The impact of these unique events on people's privacy has not yet been the object of a thorough study. In this paper, the authors intend to discuss some of the issues that confinement has given rise to from a privacy perspective, among family members and housemates, co-workers and employers.

Guinchard, Audrey, '[Our Digital Footprint under Covid-19: Should We Fear the UK Digital Contact Tracing App?](#)' 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) 269-276 (published 30 June 2020)

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.

Hardy, Jodi, ‘COVID-19 Tracing and Personal Privacy’ (2020) 20(4) *Without Prejudice* 52-53

Jurisdiction: South Africa

Abstract: The National Department of Health has instituted a COVID-19 tracing database to help trace people who might have come into contact with a Person of Interest – one who has (or might have) contracted COVID-19. The move will affect all providers of electronic communication services.

Hassan, Md Tasnimul, ‘[Decoding Aarogya Setu: Data Protection and the Right to Privacy](#)’ (SSRN Scholarly Paper ID 3671189, 29 July 2020)

Jurisdiction: India

Abstract: After the efficacy of tactics deployed by several countries to enable ‘contact tracing’ of individuals infected with the contagious corona virus (COVID-19), India came up with a mobile application called Aarogya Setu, which literally means ‘bridge to health’ in Sanskrit. The App was launched on April 2 this year, and was downloaded by more than five crore users within 13 days, albeit there are several similar applications developed and deployed by local authorities. Once you install the app, it uses the phone’s Bluetooth or Wi-Fi and location data, to inform the users if they have been near a COVID-19 host, by scanning a server database owned by the government. However, without rapid testing and treatment facilities, such application, becomes a nuisance providing the threat of data breach or systematic surveillance. Thus, the app’s method for tracking the infected has been under lens for being invasive and violating data privacy norms.

Hendl, Tereza, Ryoa Chung and Verina Wild, '[Pandemic Surveillance and Racialized Subpopulations: Mitigating Vulnerabilities in COVID-19 Apps](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: Debates about effective responses to the COVID-19 pandemic have emphasized the paramount importance of digital tracing technology in suppressing the disease. So far, discussions about the ethics of this technology have focused on privacy concerns, efficacy, and uptake. However, important issues regarding power imbalances and vulnerability also warrant attention. As demonstrated in other forms of digital surveillance, vulnerable subpopulations pay a higher price for surveillance measures. There is reason to worry that some types of COVID-19 technology might lead to the employment of disproportionate profiling, policing, and criminalization of marginalized groups. It is, thus, of crucial importance to interrogate vulnerability in COVID-19 apps and ensure that the development, implementation, and data use of this surveillance technology avoids exacerbating vulnerability and the risk of harm to surveilled subpopulations, while maintaining the benefits of data collection across the whole population. This paper outlines the major challenges and a set of values that should be taken into account when implementing disease surveillance technology in the pandemic response.

Huang, Jie (Jeanne), 'Preventing COVID-19 and Protecting Personal Information in China' (2020) 17(3) *Privacy Law Bulletin* 34-36

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 interoperability among states with similar values on personal data protection.

'ICO Guidance for Employers on COVID-19 Workplace Testing' [2020] (June) *Computers and Law* 17-18
Jurisdiction: UK

Abstract: Outlines Information Commissioner's Office (ICO) guidance for employers wanting to test their employees for COVID-19 or ask them for their test results, on how to ensure they are complying with Regulation 2016/679 (GDPR) and the Data Protection Act 2018.

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.

Jalali, Mohammad, Adam Landman and William Gordon, '[Telemedicine, Privacy, and Information Security in the Age of COVID-19](#)' (SSRN Scholarly Paper ID 3646320, 8 July 2020)

Jurisdiction: USA

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.

Kang, Jagvinder Singh, 'NHSX Covid-19 Tracing App: "Nothing to Fear but Fear Itself!"' [2020] (June) *Computers and Law* 40-44

Jurisdiction: UK

Abstract: Discusses issues that have been raised regarding the proposed national roll-out of the NHSX COVID-19 contact tracing applications software, including: whether it is really necessary; whether it is going to be privacy intrusive; how much personal data it aims to collect; whether it will adopt a centralised or decentralised approach; and the pre-conditions that have been set by the Government's Joint Committee on Human Rights prior to its roll-out.

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.

Lawson-Tancred, Hugh, Henry CW Price and Alessandro Provetti, '[COVID-19 Contact Tracing: Eight Privacy Questions Explored - A Reply to de Montjoye et al](#)' (SSRN Scholarly Paper ID 3607089, 20 May 2020)

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.

Leonard, Peter, ‘Novel Coronavirus Spawns Novel Law-Making in Australia’ [2020] (June) *Computers and Law* 46-48

Abstract: Discusses the lessons that can be learnt from Australia’s approach to drafting the Privacy Amendment (Public Health Contact Information) Bill 2020 to regulate its COVID-19 tracing applications software and aims to nurture its citizens’ digital trust.

Linkomies, Laura, ‘Information Commissioner replies to Covid-19 Privacy Concerns’ (2020) 11 *Privacy Laws and Business United Kingdom Newsletter* 18

Abstract: Reproduces the response of the Information Commissioner, Elizabeth Denham, to MPs who raised concerns about privacy and data protection concerns in connection with the Government’s response to the coronavirus pandemic, particularly the test and trace programme.

Lodders, Adam and Jeannie Marie Paterson, ‘Scrutinising COVIDSafe: Frameworks for Evaluating Digital Contact Tracing Technologies’ (2020) 45(3) *Alternative Law Journal* 153–161

Abstract: Digital technologies are being used to combat the coronavirus disease 2019 (COVID-19) pandemic through a variety of methods, including monitoring compliance with quarantine and contact tracing. These uses of technology are said to promote public health outcomes but risk undermining rights to privacy. In this article we focus on the use of digital technologies for contact tracing, such as the COVIDSafe app used in Australia. We explore the kind of framework that might be used for evaluating the design, deployment and governance of such technologies

to ensure they operate in a manner that is proportionate to the ends to be achieved. We conclude that, in addition to issues of privacy, any use of contact tracing technology should address important considerations of efficacy, equity and accountability.

Lucivero, Federica et al, '[COVID-19 and Contact Tracing Apps: Ethical Challenges for a Social Experiment on a Global Scale](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: Mobile applications are increasingly regarded as important tools for an integrated strategy of infection containment in post-lockdown societies around the globe. This paper discusses a number of questions that should be addressed when assessing the ethical challenges of mobile applications for digital contact-tracing of COVID-19: Which safeguards should be designed in the technology? Who should access data? What is a legitimate role for 'Big Tech' companies in the development and implementation of these systems? How should cultural and behavioural issues be accounted for in the design of these apps? Should use of these apps be compulsory? What does transparency and ethical oversight mean in this context? We demonstrate that responses to these questions are complex and contingent and argue that if digital contact-tracing is used, then it should be clear that this is on a trial basis and its use should be subject to independent monitoring and evaluation.

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.

Marcus, David, 'Digital Resilience in the Age of a Global Pandemic: How Can Privacy Assist in Risk Mitigation?' (2020) 17(1/2) *Privacy Law Bulletin* 2–5

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.

Mello, Michelle M and C Jason Wang, [‘Ethics and Governance for Digital Disease Surveillance’](#) (2020) 368(6494) *Science* 951–954

Abstract: Digital epidemiology—the use of data generated outside the public health system for disease surveillance—has been in use for more than a quarter century [see supplementary materials (SM)]. But several countries have taken digital epidemiology to the next level in responding to COVID-19. Focusing on core public health functions of case detection, contact tracing, and isolation and quarantine, we explore ethical concerns raised by digital technologies and new data sources in public health surveillance during epidemics. For example, some have voiced concern that trust and participation in such approaches may be unevenly distributed across society; others have raised privacy concerns. Yet counterbalancing such concerns is the argument that “sometimes it is unethical *not* to use available data” (1); some trade-offs may be not only ethically justifiable but ethically obligatory. The question is not whether to use new data sources—such as cellphones, wearables, video surveillance, social media, internet searches and news, and crowd-sourced symptom self-reports—but how.

Miller, Nigel and Ben Nolan, 'The NHSX App: What are the Privacy Concerns?' [2020] (June) *Computers and Law* 34-38

Jurisdiction: UK

Abstract: Reviews how the contact tracing application software that is being developed by NHSX works and explores the steps that should be taken to address the privacy and data protection concerns that have been raised concerning its use. Questions whether there needs to be a specific NHSX regulator or legislation to ensure its necessary safeguards.

Mühlhoff, Rainer, '[We Need to Think Data Protection Beyond Privacy: Turbo-Digitalization after COVID-19 and the Biopolitical Shift of Digital Capitalism](#)' (SSRN Scholarly Paper ID 3596506, 30 March 2020)

Abstract: Turbo-Digitization after Covid-19 will advance algorithmic social selection and the biopolitical shift of digital capitalism. In order to mitigate these risks, we must address the social implications of anonymous mass data.

Nabben, Kelsie, '[Trustless Approaches to Digital Infrastructure in the Crisis of COVID-19 Australia's Newest COVID App. Home-Grown Surveillance Technologies and What to Do About It](#)' (SSRN Scholarly Paper ID 3579220, 14 April 2020)

Abstract: This week, the Australian Government proposed a mobile phone-based tracking application to address the spread of coronavirus. The COVID-19 pandemic has demonstrated an acceleration of government-led surveillance technology around with the world. At present, the significant uptick in digital tools as a policy response to address the public health crisis are not being matched by suitable policy clauses or technology design to serve the interests of Australian citizens. This article presents the global contact-tracing phone app responses to COVID-19, outlines the key privacy concerns and presents alternative policy pathways and technical approaches towards privacy preservation and trustless (trust minimising) digital infrastructure to improve Australia's digital-political response to COVID-19.

Nature - [COVID-19 and Digital Privacy Collection](#)

This regularly updated open access collection includes the following articles published in various journals in the *Nature* stable:

Nature

- Morley, Jessica et al, '[Ethical Guidelines for COVID-19 Tracing Apps](#)' (2020) 582(7810) *Nature* 29–31

Nature Machine Intelligence

- Sweeney, Yann, '[Tracking the Debate on COVID-19 Surveillance Tools](#)' (2020) 2(6) *Nature Machine Intelligence* 301–304

Nature Medicine

- Ting, Daniel Shu Wei et al, '[Digital Technology and COVID-19](#)' (2020) 26(4) *Nature Medicine* 459–461
- Ienca, Marcello and Effy Vayena, '[On the Responsible Use of Digital Data to Tackle the COVID-19 Pandemic](#)' (2020) 26(4) *Nature Medicine* 463–464
- Jia, Peng and Shujuan Yang, '[China Needs a National Intelligent Syndromic Surveillance System](#)' (2020) 26(7) *Nature Medicine* 990
- Banner, Natalie F, '[The Human Side of Health Data](#)' (2020) *Nature Medicine* 26(7) 995
- Segal, Eran et al, '[Building an International Consortium for Tracking Coronavirus Health Status](#)' (2020) 26(8) *Nature Medicine* 1161–1165
- Sharma, Tanusree and Masooda Bashir, '[Use of Apps in the COVID-19 Response and the Loss of Privacy Protection](#)' (2020) 26(8) *Nature Medicine* 1165–1167
- Amit, Moran et al, '[Mass-Surveillance Technologies to Fight Coronavirus Spread: The Case of Israel](#)' (2020) 26(8) *Nature Medicine* 1167–1169
- Gerke, Sara et al, '[Regulatory, Safety, and Privacy Concerns of Home Monitoring Technologies during COVID-19](#)' (2020) 26(8) *Nature Medicine* 1176–1182
- Budd, Jobie et al, '[Digital Technologies in the Public-Health Response to COVID-19](#)' (2020) *Nature Medicine* 26(8) 1183–1192
- Firth, Josh A et al, '[Using a Real-World Network to Model Localized COVID-19 Control Strategies](#)' [2020] *Nature Medicine* (online advance article, published 7 August 2020)

Nature Human Behaviour

- Aleta, Alberto et al, '[Modelling the Impact of Testing, Contact Tracing and Household Quarantine on Second Waves of COVID-19](#)' (2020) 4(9) *Nature Human Behaviour* 964–971

Naudé, Wim, '[Artificial Intelligence Against Covid-19: An Early Review](#)' (SSRN Scholarly Paper ID 3568314, 6 April 2020)

Abstract: Artificial Intelligence (AI) is a potentially powerful tool in the fight against the COVID-19 pandemic. Since the outbreak of the pandemic, there has been a scramble to use AI. This article provides an early, and necessarily selective review, discussing the contribution of AI to the fight against COVID-19, as well as the current constraints on these contributions. Six areas where AI can contribute to the fight against COVID-19 are discussed, namely i) early warnings and alerts, ii) tracking and prediction, iii) data dashboards, iv) diagnosis and prognosis, v) treatments and cures, and vi) social control. It is concluded that AI has not yet been impactful against COVID-19. Its use is hampered by a lack of data, and by too much data. Overcoming these constraints will require a careful balance between data privacy and public health, and rigorous human-AI interaction. It is unlikely that these will be addressed in time to be of much help during the present pandemic. In the meantime, extensive gathering of diagnostic data on who is infectious will be essential to save lives, train AI, and limit economic damages.

Nicol, Dianne et al, 'Australian Perspectives on the Ethical and Regulatory Considerations for Responsible Data Sharing in Response to the COVID-19 Pandemic' (2020) 27(4) *Journal of Law and Medicine* 829

Abstract: As the rush to understand and find solutions to the coronavirus disease 2019 pandemic continues, it is timely to re-examine the legal, social and ethical drivers for sharing health-related data from individuals around the globe. International collaboration and data sharing will be essential to the research effort. This raises the question of whether the urgent imperative to find therapies and vaccines may justify some temporary rebalancing of existing ethical and regulatory standards. The Global Alliance for Genomic Health is playing a leading role in collecting information about national approaches to these challenging questions. In this section, we examine some of the initiatives being taken in Australia against this global backdrop.

Nijssingh, Niels, Anne van Bergen and Verina Wild, '[Applying a Precautionary Approach to Mobile Contact Tracing for COVID-19: The Value of Reversibility](#)' [2020] *Journal of Bioethical Inquiry* - Symposium: COVID-19 (advance online article, published 25 August 2020)

Abstract: The COVID-19 pandemic presents unprecedented challenges to public health decision-making. Specifically, the lack of evidence and the urgency with which a response is called for, raise the ethical challenge of assessing how much (and what kind of) evidence is required for the justification of interventions in response to the various threats we face. Here we discuss the intervention of introducing technology that aims to trace and alert contacts of infected persons—contact tracing (CT) technology. Determining whether such an intervention is proportional is complicated by complex trade-offs and feedback loops. We suggest that the resulting uncertainties necessitate a precautionary approach. On the one hand, precautionary reasons support CT technology as a means to contribute to the prevention of harms caused by alternative interventions, or COVID-19 itself. On the other hand, however, both the extent to which such technology itself present risks of serious harm, as well as its effectiveness, remain unclear. We therefore argue that a precautionary approach should put reversibility of CT technology at the forefront. We outline several practical implications.

Oliver, Jennifer D, '[Surveillance, Privacy, and App Tracking](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 40-46

Jurisdiction: USA

Abstract: Over the last several months, global innovators have developed a heterogeneous array of “smart” technology protocols and applications aimed at tracking, tracing, and containing the spread of the novel coronavirus, SARS-CoV-2, which causes the disease COVID-19. The United States, which has left it to the states to acquire or build their own automated track and trace platforms, currently lags behind other countries. However, technology companies Apple and Google have announced co-production of a digital tracing platform for their phones. As this Chapter details, the United States lacks a comprehensive federal health data privacy law that protects the privacy of sensitive information collected and stored by digital contact tracking applications. The Chapter also explains how digital COVID-19 surveillance applications work, assesses their effectiveness from a public health perspective, and enumerates the legal and ethical issues they implicate. It concludes with proposals aimed at maximizing the public health

benefits of COVID-19 surveillance technology while minimizing its inherent and conceivable threats to privacy, civil liberties, and vulnerable populations.

Park, Sangchul, Gina Jeehyun Choi and Haksoo Ko, '[Information Technology-Based Tracing Strategy in Response to COVID-19 in South Korea: Privacy Controversies](#)' (2020) 323 (21) *Journal of the American Medical Association* 2129-2130

Abstract: In respond to the COVID-19 pandemic, South Korea mounted a trace, test, and treat strategy. The experience in Korea demonstrates the usefulness of an IT system in aggregating a wide range of both medical and nonmedical data in the process of containing the spread of a highly infectious disease. In doing so, the legal and technical infrastructure served as a crucial enabling factor. At the same time, certain adverse effects were observed from the measures employed.

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.

Ponce, Aida, '[COVID-19 Contact-Tracing Apps: How to Prevent Privacy from Becoming the Next Victim](#)' (ETUI Research Paper - Policy Brief 5/2020, 2020)

Abstract: Contact-tracing apps to combat the COVID-19 pandemic have increasingly been mentioned as useful tools to accompany and contribute to a return to normality despite the many ethical and legal questions they raise. The pressure exerted by business circles and lobbies to restart and 'save the economy' has been intense. What started as a public health crisis morphed into an economic crisis and we are now faced with a 'trick-or-treat' choice: accept to 'pay the price' and use invasive tracing apps, and by so doing facilitate a gradual reopening of business, or fight for privacy and delay the return to normality.

'Privacy and Coronavirus: The View from the Information Commissioner' [2020] (June) *Computers and Law* 7-8

Jurisdiction: UK

Abstract: Highlights a series of questions raised by the Information Commissioner's Office that those using new contact tracing technologies should address to ensure that privacy implications are being properly considered and that public trust and social licence are not being put at risk.

'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.

Abstract: In the age of Big Data Analytics and COVID-19 Apps, the conventional conception of privacy that focuses excessively on the identification of the individual is inadequate to safeguard the identity and autonomy of the individual. An individual's autonomy can be impaired and her control over her social identity diminished, even without infringing the anonymity surrounding her personal identity. A century old individualistic conception of privacy that was designed to safeguard a person from unwarranted social interference is incapable of protecting her autonomy and identity when she is being targeted on the basis her interdependent social and algorithmic group affiliations. In order to overcome these limitations, in this paper, I develop a theoretical framework in form of a triumvirate model of group right to privacy (GRP), which is based on privacy as a social value (Pv). An individual has an interest in protecting her social identity arising out of her participation in social groups. The panoptic sorting of individuals by Big Data Analytics for behavioral targeting purposes gives rise to epistemic bubbles and echo chambers that impede the formation of an individual's social identity. I construct the formulation of GRP1 to protect an individual's interest in her social identity and her socially embedded autonomous self. Thereafter, I emphasize an individual's right to informational self-determination and against algorithmic grouping in GRP2. Lastly, I highlight instances where an organized group may be entitled to privacy in its own right as GRP3. I develop a Razian formulation to state that the constant surveillance and monetization of human existence by Big Data Analytics is an infringement of individual autonomy. I highlight that the violation of GRP subjects an individual to behavioral targeting including hyper-targeted political advertising and distorts her weltanschauung. As regards the COVID-19 Apps, I assert that the extraordinary circumstances surrounding the pandemic do not provide an everlasting justification for reducing the identity of an individual to a potential disease carrier. I argue that the ambivalence regarding existence of surveillance surrounding an individual's social identity can leave her in a perpetual state of simulated surveillance (simveillance). I further assert that it is in the long-term best interests of the BigTech corporations to respect privacy. In conclusion, I highlight that our privacy is not only interdependent in nature, it is existentially cumulatively interlinked. It increases in force with each successive protection. The privacy challenge posed by COVID-19 Apps has helped us realize that while limited exceptions to privacy maybe carved out in grave emergencies, there is no justification for round the clock surveillance of an individual's existence by Big Data Analytics. Similarly, the threat to privacy posed by Big Data Analytics has helped us

realize that privacy has been wrongly focusing on the distinguishing aspects of the individual. It is our similarities that are truly worth protecting. In order to protect these similarities, I formulate the concept of mutual or companion privacy, which counter-intuitively states that in the age of Big Data Analytics we have more privacy together rather than individually.

Ram, Natalie and David Gray, '[Mass Surveillance in the Age of COVID-19](#)' (2020) *Journal of Law and the Biosciences* Article Isaa023 (advance article, published 8 May 2020)

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 technovelty. 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.

Rothstein, Mark A, '[Public Health and Privacy in the Pandemic](#)' (2020) 110(9) *American Journal of Public Health* 1374-1375

Abstract: In deciding whether to use certain health information technology in a pandemic, policymakers should analyze and apply the following criteria, which have been derived from principles commonly cited in the public health ethics literature related to public health powers generally and applied to privacy: (1) necessity and effectiveness; (2) proportionality and minimal infringement; (3) purpose limitations; and (4) justice.

Sander, Barrie and Luca Belli, '[COVID-19, Cyber Surveillance Normalisation and Human Rights Law](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Extract from Introduction: In this post, we focus on one set of practices in particular – cyber surveillance – and critically reflect on human rights law as a framework and a terrain of contestation for shaping the future of surveillance practices both during and in the aftermath of the COVID-19 crisis.

Savona, Maria, '[The Saga of the Covid-19 Contact Tracing Apps: Lessons for Data Governance](#)' (SPRU Working Paper Series (SWPS) 2020-10, Science Policy Research Unit, University of Sussex, 8 July 2020)

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.

Scassa, Teresa, Jason Millar, and Kelly Bronson, 'Privacy, Ethics, and Contact-Tracing Apps' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 265

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.

Sheehan, Brian, '[GDPR Rules "Do Not Hinder" Measures Taken in Covid-19 Fight](#)' (2020) 14 *Industrial Relations News* 23-24

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](#)'.

Singhh, Arunender, '[Protection of 'Digital Rights' Amid Fight Against COVID-19: The Missing Responsibility of ICTs Platforms](#)' (Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020), Symposium II: Intellectual Property, Technology and Agriculture)
Jurisdiction: India

Introduction: It is often stated that the new technology is changing what it means to be human. The digital world is rapidly transforming society. On the one hand, it allows unprecedented advances in the human conditions and at the same time gives rise to profound new challenges. Social media is a dominating force in modern social life as internet technology has taken hold of our cyber-driven society. The oft-use of information and communication technology (ICT) to fight the battle against Covid-19 crisis has opened up new challenges for the governments, especially, for populous countries like India. There are genuine concerns that fake news has assumed a pernicious character that is harmful to citizens and society at large. The use of big data in the global world has come to stay with ICT corporations commonly using data analytics to forecast customer preferences, boost their productivity and improve decision-making. It appears that big data may have a huge positive effect in defeating Covid-19, by promoting efficiency, monitoring health security and enhanced services, but that it might also result in discrimination, privacy violations, and other chilling effects.... In this trying times these

developments have squarely brought under the scanner the role and legal responsibility assumed by the ICTs platforms.

Slinn, Ben, 'What's in Store for Contact Tracing Apps in the UK?' (2020) 110(July) *Privacy Laws and Business United Kingdom Newsletter* 10-12

Abstract: Examines data protection considerations relevant to the use of contact tracing apps, focusing on the position of the Information Commissioner's Office, which favours a decentralised approach with processing focused on users' devices, and the European Data Protection Board. Notes the steps taken by the European Commission in relation to contact tracing apps and the status of the UK app.

Stefoudi, Dimitra, 'Space Data in the Fight against Pandemics: Privacy Concerns and Sharing of Benefits from the Use of Space Technology for Decision-Making' (2020) 45 (Special Issue) *Air and Space Law* 108-121

Abstract: The fast and continuous collection and distribution of information are essential for decisionmaking in the first-response phase, as well as in the constant monitoring during and after the peaks of the Coronavirus Disease-2019 (COVID-19) outbreak. Particularly in times of emergency that require immediate reaction on behalf of local and global authorities, it is important that their reaction is based on reliable information. The unique features of satellite technology, which enable the steady flow of accurate near real-time data, have granted it a vital role in the fight against the COVID-19 pandemic. This article will address the uses of space data for public health and their legal implications, particularly in terms of privacy and access to data.

Stevens, Hallam and Monamie Bhadra Haines, '[TraceTogether: Pandemic Response, Democracy, and Technology](#)' *East Asian Science, Technology and Society*, Article 8698301 (advance online article, published 21 July 2020)

Jurisdiction: Singapore

Abstract: On 20 March 2020, in the midst of the COVID-19 pandemic, the Singapore government released a new app called TraceTogether. Developed by the Ministry of Health, SG United, and

GovTech Singapore, the app uses the Bluetooth capability of smartphones to store information about other smartphones that have come into close proximity with your own. These data facilitate the government's process of "contact tracing" through which they track those who have potentially come into contact with the virus and place them in quarantine. This essay attempts to understand what kinds of citizens and civic behavior might be brought into being by this technology. By examining the workings and affordances of the TraceTogether app in detail, the authors argue that its peer-to-peer and open-source technology features mobilize the rhetorics and ideals of citizens science and democratic participation. However, by deploying these within a context that centralizes data, the app turns ideals born of dissent and protest on their head, using them to build trust not within a community but rather in government power and control. Rather than building social trust, TraceTogether becomes a technological substitute for it. The significant public support for TraceTogether shows both the possibilities and limitations of citizen science in less liberal political contexts and circumstances.

Stock, Melissa, 'Facial Recognition and Detection Technology: Developments and Challenges' (2020) 25(3) *Communications Law* 161-166
Jurisdictions: UK, Sweden, France, Belgium, USA

Abstract: Highlights the privacy risks posed by facial recognition and detection technology, including the potential for fraud and other criminal misuse, and errors in detection, particularly among Asian or African ethnic groups and women. Explores legal challenges relating to the use of face recognition brought in the UK, Sweden, France, Belgium, and the US. Considers the role digital surveillance has played in tackling the coronavirus pandemic.

Stoeger, Karl and Martina Schmidhuber, '[The Use of Data from Electronic Health Records in Times of a Pandemic: Legal and Ethical Assessment](#)' (2020) *Journal of Law and the Biosciences* Article Isaa041 (advance article, published 16 June 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 data³ 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.

‘UK Regulator Addresses Perplexing Privacy Questions for Hospitality Sector’ (2020) 20(7) *Privacy & Data Protection* 17-18

Abstract: Reports on the publication of guidance by the Information Commissioner’s Office on the collection and retention of customer and visitor information by organisations and small businesses in the hospitality sector for the purposes of the COVID-19 Test and Trace scheme.

van Kolfshoeten, Hannah and A de Ruijter, ‘[Covid-19 and Privacy in the European Union: A Legal Perspective on Contact Tracing](#)’ (2020) 41(3) *Contemporary Security Policy* 478-491

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.

Van Natta, Meredith et al, '[The Rise and Regulation of Thermal Facial Recognition Technology during the COVID-19 Pandemic](#)' (2020) *Journal of Law and the Biosciences* Article Isaa038 (advance article, published 18 June 2020)

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 South Africa](#)' (2020) 13(1) *South African Journal of Bioethics and Law* 15-20

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.

Wendehorst, Christiane, '[COVID-19 Apps and Data Protection](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: In the fight against the pandemic the use of so-called COVID-19 apps has triggered a lively debate. This paper analyses different types of COVID-19 apps and their legal implications, focusing in particular on aspects of data protection law. It demonstrates why—at least with regard to proximity tracing and the most successful design so far, the DP-3T design—the public uproar is completely unfounded and irrational, rejecting a measure that is so privacy-friendly that it may not even get into the scope of the GDPR, at the price of forcing public and private

parties to use much more intrusive methods of contact tracing. The paper closes by explaining why, paradoxically, it may precisely be the privacy-friendliness of the app and the voluntariness of its use that makes it rather ineffective as a means to fight the pandemic, which in turn has implications for its assessment, as remaining dangers of ‘function creep’ suddenly seem to prevail.

Winlo, Camilla, ‘Additional Security Risks Arising from Home Working’ (2020) 110(July) *Privacy Laws and Business United Kingdom Newsletter* 8-9
Jurisdiction: UK

Abstract: Highlights additional measures which employers might wish to adopt, in light of the coronavirus pandemic, to guarantee data security and privacy as employees work from home more regularly. Sets out steps which organisations can take to mitigate the risks posed by remote working. Notes the changing regulatory approach of Information Commissioner’s Office.

Yuen, Albert and Jasmine Yung, ‘Covid-19 and Data Privacy Issues in APAC and the UK: Key Guidance from Privacy Regulators’ (2020) 17(1/2) *Privacy Law Bulletin* 26–30

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.

Zingales, Nicolo, '[A Stronger Claim to Data Protection During Pandemics? Leveraging the American Convention on Human Rights Against Governmental Inaction: A Brazilian Case-Study](#)' (2020) *Revista de Direitos Fundamentais & Justiça* (forthcoming)

Abstract: This article presents a case-study to illustrate the crucial importance of an effective data protection law in the fight against pandemics, and critically assess the extent to which the absence of such framework may amount to a violation of the American Convention of Human Rights. The analysis focuses on Brazil as an emblematic example, as the country has been facing the pandemic without being able to rely on a comprehensive and properly supervised data protection law, while also failing to adopt data-driven responses which could have helped to raise awareness and prevent the spread of the virus. Although the relationship between the adopted policies and the unwavering rise of contagions and deaths is one of correlation, and not necessarily causation, it is argued that an examination of the facts through the lenses of the Convention and its case-law could give sufficient grounding to a claim of responsibility for failure to ensure sufficient protection to the right to privacy, life and integrity. To substantiate such claim, the article begins by describing the Brazilian government's approach towards the health risks raised by the pandemic (Section 2), and highlighting the privacy and data protection questions raised by technological solutions that are dependent on the collection and use of personal data (Section 3). It follows with an overview of the troubled process of entry into force of a general data protection law in the country, and of a Supreme Court ruling that invalidated the government's attempt to make use of personal data in order to gather evidence for the adoption of economic measures (Section 4). Finally, having explained the nature of the positive obligations assumed by States that are parties to the Convention, the article examines whether the Brazilian data protection framework has proven fit for purpose during the pandemic (Section 5), and concludes with lessons learned from this case-study (Section 6).

PROPERTY LAW / HOUSING

Note: this section includes literature on the right to housing and housing security.

Anderson, Courtney Lauren, '[A Pandemic Meets a Housing Crisis](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 187-192

Jurisdiction: USA

Abstract: Housing instability in the United States has been exacerbating health disparities and causing worse health outcomes for low-income individuals and people of color well before the COVID-19 pandemic. Individuals with low- or no-income experience intermittent utility connection, are more likely to be evicted, and spend a higher percentage of their income on housing costs. There is an insufficient supply of safe, affordable housing. As a result, people are homeless, live in substandard conditions, and experience economic insecurity. COVID-19 increased the number of families afflicted with housing instability and prompted an unprecedented government response to this issue. Certain legal constraints that perpetuated a system of discrimination were rapidly suspended or amended when middle- and upper-class people found themselves struggling with housing and utility payments, income insecurity, and other stressors of the pandemic. Historically, these burdens were concentrated in the low-income population, with an emphasis on people of color. Therefore, it follows that the grace and concern extended during the pandemic still reflects bias against socioeconomically disadvantaged groups and empathy towards higher-income people. In many instances, laws that are equally applied to all individuals widened the gap between people at different places on the socioeconomic continuum. People facing additional hardships need extended grace periods for rent and utility payments. The short-term solutions instituted during COVID-19 did not address the digital gap, the needs of formerly incarcerated people, or the reality that low-income groups will inevitably experience the same unstable situations they were in prior to the pandemic. Individuals who are more likely to be affected by housing instability belong to socioeconomic groups that are being disproportionately and adversely affected by COVID-19. These compounding demographic factors complicate the legal response to housing problems. Recommendations for mitigating the negative effects of policies and regulations focus on addressing issues omitted from the COVID-19 housing laws, expanding the laws that were

put into place, and targeting the underlying causes of housing instability in order to proactively prevent such instability.

Australian Property Law Bulletin (2020) 35

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
- Graham, Tim, Leila Idris and Ava Argiropoulos, 'South Australia: "Covid-19 Emergency Response Act" 2020 (SA)' 63-65
- Alberghini, Julia and Peter Beekink, 'Western Australia' 66-71

35(5)

- Campbell, Edward and Anja Giddings, 'ACT Response to COVID-19: "Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020"' 80-81
- 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
- Blue, Christopher and Edward Watson, ‘Queensland’s Implementation of the Mandatory Code of Conduct for SME Commercial Leasing Principles during the COVID-19 Pandemic’ 95-98

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.

Beard, Virginia, ‘[COVID-19: Poverty, Housing, Homelessness – A Broad View and a Picture from West Michigan](#)’ (SSRN Scholarly Paper ID 3613030, 28 May 2020)

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.

Benfer, Emily A, Solomon J Greene and Margaret Hagan, '[Approaches to Eviction Prevention](#)' (SSRN Scholarly Paper ID 3662736, 28 July 2020)

Jurisdiction: USA

Abstract: This Article provides a general overview of eviction prevention approaches and strategies that are currently being employed, or could be adapted, to prevent eviction and homelessness during the COVID-19 pandemic. This document provides an overview of strategies that could prevent or mitigate eviction for nonpayment of rent, including 1) eviction and foreclosure moratoria, 2) housing stabilization, 3) landlord relief programs, 4) equitable approaches to the eviction process, and 5) post-eviction mitigation measures. Many of these policies and interventions predate the COVID-19 pandemic, and were employed during the Great Recession of 2008, and could be adapted to the pandemic environment.

'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.

da Costa Afonso, Ana Isabel, '[The Juridical Impact of COVID-19 in Portuguese Tenancy Contract Law](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: In response to the public health emergency derived from the COVID-19 disease, Portugal opted for a relatively strict lockdown. Most business activities were suspended and citizens were put under an obligation of confinement. This has created serious disruptions in people's life and professional activities. In this paper we will address the specific measures the

Portuguese legislator put into force to solve the problems aroused in tenancy contracts, namely, the adjournment of the obligation to pay rent and the suspension of eviction's effects. Since the legislative measures do not have a general scope that could comprehend all of the tenancy contracts and provide only for a limited and very specific set of solutions, we believe that it is necessary to turn to other legal provisions of a more general approach in order to give an adequate response to the problems encountered in tenancy contracts as a consequence of the pandemic.

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.

Dovar, Daniel and Piers Harrison, 'Coronavirus: Code of Practice for Commercial Property' (2020) 24(4)

Landlord & Tenant Review D26

Jurisdiction: UK

Abstract: Notes a Government Code of Practice for commercial property relationships during the coronavirus pandemic the has now issued.

Note: Link to the [Code of Practice for Commercial Property](#)

Ekhatior, Ekhorutomwen Gabriel, Andrew Ogiribo 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.

'Eviction of Travellers and the Significance of the Pandemic' [2020] (September) *Housing Law Monitor* 8-12

Jurisdiction: UK

Abstract: Considers *Chichester DC v Sullivan* (HC) on whether evicting a large group of travellers from a site in an Area of Outstanding Natural Beauty, where there were no other authorised sites available, was a proportionate and necessary interference with the travellers' rights under ECHR art.8 and Protocol 1 art.1. Notes the court's consideration of the impact of the coronavirus pandemic on the analysis of proportionality.

Farha, Leilani and Kaitlin Schwan, 'The Front line Defence: Housing and Human Rights in the Time of COVID-19' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 355

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.

Furth, Salim, '[When the Moratorium Expires: Three Quick Steps to Reduce Eviction](#)' (Mercatus COVID-19 Response Policy Brief, Mercatus Center Research Paper Series, George Mason University, 19 June 2020)

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.

Gallacher, John, 'Lease, but Not as We Know It' (2020) 65(6) *Journal of the Law Society of Scotland* 34-35

Abstract: Discusses the evolving nature of the landlord and tenant relationship in Scotland and England and Wales concerning lease structure following the COVID-19 pandemic, in light of the International Council of Shopping Centers 2016 research report, which looked at different leasing models in the US, the UK and across Europe.

Gattegno, Julie, 'Tenant Rescue and the Cross-Class Cram-Down' (2020) 2039 *Estates Gazette* 54-57

Jurisdiction: UK

Abstract: Compares the potential impacts on landlords of tenants entering company voluntary arrangements (CVAs) and adopting restructuring plans under the Corporate Insolvency and Governance Act 2020. Considers problems posed by CVAs and outlines grounds on which landlords might challenge them. Looks class composition under restructuring plans and explains the cross-class cram-down, a mechanism similar to that used for US Ch.11 insolvencies.

Gomez-Ligüerre, Carlos and Rosa Mila-Rafel, '[Residential and Commercial Leases Amidst the Corona Crisis: The Spanish Case in Context](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: The Spanish emergency lawmaker has been prompted to take protective measures for tenants during the COVID-19 crisis. Such measures distinguish between residential and commercial leases. All of them are presented in the present contribution from a critical perspective. Commercial leases deserve special attention due to their economic relevance, and because of the intense debate among Spanish scholars on the applicability of the *rebus sic stantibus* doctrine, or any of its equivalents, to adapt the contract if commercial tenants are affected by the exceptional measures imposed by the Government to deal with the COVID-19 health crisis.

Heath, Annabel, 'Lifting the Stay on Proceedings: More Questions than Answers' (2020) 381 *Property Law Journal* 6-11
Jurisdiction: UK

Abstract: Discusses the stay on residential possession proceedings, introduced by CPR PD 51Z (Stay of Possession Proceedings, Coronavirus), which is due to end on 20 September 2020. Reviews the steps that landlords will have to take to reactivate claims after this date, referring to CPR PD 55C (Coronavirus: Temporary Provision in Relation to Possession Proceedings) and the regime governing claims issued on or after 3 August 2020. Anticipates the defences tenants facing eviction may raise.

Hindle, Andrew, 'Coronavirus and the Private Rented Sector: An Update' (2020) 24(4) *Landlord & Tenant Review* 135-138
Jurisdiction: UK

Abstract: Reviews developments in the private rented sector since the introduction of reforms made by the Coronavirus Act 2020, including a ban on forfeiture for non-payment of rent. Examines the position regarding stays of possession proceedings, commercial rent arrears recovery, moratoriums suspending creditors' rights, prohibitions on winding-up petitions and suspension of liability for wrongful trading.

Jebeile, Maged, 'National Response to COVID-19: Business Loan Relief Packages and Code of Conduct for Commercial Leases' (2020) 35(3) *Australian Property Law Bulletin* 42-45

Abstract: On 30 March 2020 the Australian Competition & Consumer Commission (ACCC) granted interim approval for the Australian Banking Association and banks to co-operate to offer COVID-19 affected Business Loan Relief Packages (including Landlords). On 7 April 2020, the National Cabinet approved a mandatory Code of Conduct (

Jebeile, Maged, 'Legislative Response to COVID-19 Applying to Property Transactions in New South Wales' (2020) 35(1/2) *Australian Property Law Bulletin* 19–22

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.

Jones, Gareth Lynton, 'How Can Landlords Boost Cash Flow?' (2020) 2036 *Estates Gazette* 43

Jurisdiction: UK

Abstract: Offers advice for commercial landlords on how to adjust operating models and improve cash flow in light of the COVID-19 pandemic. Warns of the potential pitfalls of turnover rents. Considers how the type of economic recovery might affect a landlord's cash flow, the lender-landlord relationship, possible repercussions of evicting non-paying tenants, and operating model outsourcing.

Langowski, Jamie et al, '[Qualified Renters Need Not Apply: Race and Housing Voucher Discrimination in the Metro Boston Rental Housing Market](#)' (2020) *Georgetown Journal on Poverty Law Policy* (forthcoming)

Abstract: Black, Indigenous, and People of Color have long had to navigate the barriers of racist laws, policies, and actions in housing. Housing discrimination perpetuates segregation and contributes to maintaining the status quo of disparities with respect to health inequities as well as income, wealth, and opportunity gaps. The COVID-19 pandemic has put these inequities in stark relief. Data on the current status of such discrimination is valuable for policy makers who should develop anti-racist policies that dismantle structural racism and its attendant harms. Using matched-pair testing, we measure the level of discrimination based on race and income level in the Greater Boston rental housing market, where both race- and income-based housing discrimination is illegal. Data from the study show high levels of discrimination against both black people and individuals using housing vouchers throughout the pre-rental application

Layser, Michelle D et al, '[Mitigating Housing Instability During a Pandemic](#)' (University of Illinois College of Law Legal Studies Research Paper No 20-15, 15 June 2020)

Jurisdiction: USA

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

cases and targeted place-based interventions to promote affordable housing development where it is needed most.

Lehavi, Amnon, '[Temporary Eminent Domain](#)' (2021) *Buffalo Law Review* (forthcoming)

Abstract: Times of emergency call for drastic measures. These steps may include the physical takeover of privately-owned assets by the government for a certain period of time and for various purposes, aimed at addressing the state of emergency. When will such acts amount to a taking, and what compensation should be paid to the property owner? How do temporary physical appropriations during times of emergency diverge, if at all, from temporary takeovers in more ordinary times?

The doctrinal and theoretical analysis of potential temporary takings has been done mostly in the context of non-physical government intervention with private property, such as when a local government imposes a temporary moratorium on land development until a certain condition is met. This Article focuses, however, on less investigated scenarios of temporary physical takeovers or other forms of government invasions. It seeks to identify the differences between a temporary invasion and a permanent occupation of property considered per se taking under the Loretto rule. In so doing, this Article argues that while the alleged distinction between prevention of public harm and promotion of public benefit often proves untenable in evaluating whether a permanent government measure constitutes a taking, it might make more sense in exploring temporary acts.

Temporary eminent domain - referring here to various types of acts amounting to time-limited physical takings, even if not initially recognized as such by the government - may diverge from permanent eminent domain in yet another key element: identifying the basis for just compensation. Under long established (although often criticized) rules, compensation for a permanent taking is based on identifying the 'fair market value' of the rights taken, while ignoring the effects that the public use for which the underlying asset is taken might have on the property's long-term value.

The allegedly parallel metric used in the case of temporary takings, one of 'fair rental value,' may often prove inadequate, both practically and normatively. This Article argues that because of unique aspects of temporary physical takings, legal rules on compensation should often seek

to identify lost profits or actual damage. Moreover, in some cases, in which there is a direct relation between the pre-appropriation use of the asset and its post-appropriation use by the government, just compensation might also be based on a certain portion of the value of the public use. This is especially so when the time-sensitive value of the asset during such public use is particularly high. On this point, the Article offers an analogy to rules pertaining to compulsory licenses for patents.

Martin, Chris, 'A Brief History of Australian Residential Tenancies Law Reform: From the Nineteenth Century to Covid-19' (2020) 33(5) *Parity* 4-6

Abstract: Australia is currently going through a period of unusual activity in residential tenancies law reform. New South Wales, Victoria and the Australian Capital Territory (ACT) have recently concluded reviews and amended their legislation, and Queensland, Western Australia and the Northern Territory are currently in the midst of reviews. South Australia and Tasmania reviewed and amended their respective Acts a little before the current wave of reform, both in 2013. The federal government has also indicated its interest, nominating 'tenancy reform that encourages security of tenure in the private rental market' as a 'national housing priority area' under the current 'National Housing and Homelessness Agreement' (Schedule A2). And breaking over the current wave of law reform are the Covid-19 emergency amendments, implementing eviction moratoriums and temporary regulations around rents.

Mashishi, Thato, 'To Pay or Not to Pay in the Context of COVID-19' (2020) 20(5) *Without Prejudice* 55–56
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.

Mysiak, Piotr, Volodymyr Zubar and Dmytro Pestruiev, '[Conducting Other People's Affairs Without a Power of Attorney in a Pandemic: Poland and Ukraine](#)' (2020) 9(2) *Ius Humani Law Journal* 87-110

Abstract: The Covid-19 coronavirus pandemic has caused changes in all areas of human life. The field of law is no exception to this list. In particular, the issues of conducting other people's affairs without a power of attorney have become especially relevant, as social distancing and restrictions on social activity have led to a significant increase in the practical need for the application of this legal institution. The significance of this study is also important in connection with the comparative analysis of the normative aspect and the practical measurement of the application of the institute of conducting other people's affairs without a power of attorney in Ukraine and Poland. These two countries are comparable in territory, number of citizens, legal tradition, but Poland has become member of the European Union, while Ukraine has remained on the sidelines of European civilization. The dialectical method, the method of comparative analysis and system analysis were chosen as the methodological basis of the research. The authors of the article concluded that institute of conducting other people's affairs without a power of attorney is characterized by an increased level of social utility. In such cases, the one who protects the interests of others without a power of attorney, as a rule, acts not only in the interests of the individual but also in the interests of the society. Thus, it helps to protect single people, the elderly ones, disabled individuals and other groups which are socially unprotected and thus prevent the pandemic spread.

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.

Schindler, Sarah and Kellen Zale, '[How the Law Fails Tenants \(And Not Just During a Pandemic\)](#)' (2020)
68 *UCLA Law Review Discourse* 146

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.

Scott, Gary, 'Introduction of Mandatory Electrical Safety Checks for Residential Tenancies' (2020) 24(5)
Landlord and Tenant Review 191-192
Jurisdiction: UK

Abstract: Highlights the implementation of the Electrical Safety Standards in the Private Rented

Sector (England) Regulations 2020, and examines their key requirements. Reviews the compliance deadline for existing tenancies, the procedure in the event of breach or non-compliance, the potential penalties available, and whether the Regulations' operation has been affected by the coronavirus pandemic.

Skolnik, Terry, 'The Punitive Impact of Physical Distancing Laws on Homeless People' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 287

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.

Stevenson, Douglas, 'Shutdown, Frustration & Property Contracts' (2020) 233(Spring) *Writ* 25-26
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.

Tay, Eu-Yen, '[Frustration, Not Fortitude: The Case for Applying the Doctrine of Frustration to Leases Affected by COVID-19](#)' (SSRN Scholarly Paper ID 3621875, 8 June 2020)

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 restaurateurs, 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 restaurateurs.

Taylor, Dean, 'Housing Law and Airbnb Amidst Covid-19' (2020) 23(4) *Journal of Housing Law* 62-67

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.

van Erp, Sjef, '[Who "Owns" the Data in a Coronavirus Tracing \(and/or Tracking\) App?](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: To combat the spread of the COVID-19 virus, e-health has taken a sudden leap forward. Already use cases were studied to see if by means of advanced IT tools, particularly e-health applications (apps), patients could be monitored from their homes so they did not need to visit a hospital for frequent checks. The corona pandemic gave rise to the rapid development of tracing (and/or tracking) e-health apps, which allow quickly finding the source of an infection as well as others who might have been infected because they were in the close vicinity of someone who became ill. The development and widespread use of these apps makes it even more urgent than it already was to answer questions regarding to whom the data gathered through such apps belong and what belonging means. Can the owner of the mobile device be

considered the “owner” of the data, what does “ownership” then mean, do other stakeholders (such as health care providers, public health authorities) also have a claim to “ownership”?

Wagner, Jennifer K, '[Health, Housing, and “Direct Threats” during a Pandemic](#)' (2020) *Journal of Law and the Biosciences* Article Isaa022 (advance article, published 8 May 2020)

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.

Wolf, Michael Allan, '[COVID-19 Pandemic and Real Property Law: An Early Assessment of Relief Measures for Tenants and Residential Mortgagors](#)' (SSRN Scholarly Paper ID 3623281, 9 June 2020)

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

Note: literature on labour migration and migrant workers is listed above in the *Labour Law* section.

Arbel, Efrat and Molly Joeck, '[Immigration Detention in the Age of COVID-19](#)' in Catherine Dauvergne (ed), *Research Handbook on the Law and Politics of Migration* (Edward Elgar, forthcoming, 2021)

Jurisdiction: Canada

Abstract: In this chapter, we analyze Canada's response to the outbreak of COVID-19 as it relates to immigration detention. We focus on decisions released by the Immigration Division (ID) of the Immigration and Refugee Board, the quasi-judicial administrative tribunal tasked with detention-related decision-making in Canada. Writing in the four months after pandemic measures were first introduced in Canada, our analysis is by necessity provisional, and focuses on seventeen ID decisions released between mid-March and mid-May 2020, at the height of the pandemic in Canada. Our analysis of this dataset reveals an identifiable shift in ID practice: prior

to the outbreak of COVID-19, ID members generally refused to hear arguments related to conditions of detention, and rarely ordered release on that basis. With the onset of the pandemic, however, ID members have not only entertained arguments identifying COVID-19 as a condition of detention, but more significantly, have explicitly relied on this condition as a basis for release. We argue that this shift in ID practice is significant. Legally, it allows detainees to argue the conditions of their own confinement before the administrative body tasked with overseeing their detention. This renders those conditions actionable, and therefore legally meaningful. Materially, this shift empowers detainees, allowing them to more effectively advocate for their own release, while lessening the violence inherent to the detention review process. Conceptually, the decisions suggest a shift in the paradigm within which legal decisions governing detention are made. Before COVID-19, the release assessment was firmly entrenched in the familiar ‘us/them’ paradigm that characterizes the disciplinarity of immigration detention. The post COVID-19 decisions suggest that this paradigm may have shifted temporarily: the line distinguishing us from them has blurred in the shadow of a common threat, and the location of risk has shifted in relation to that line. Rather unexpectedly, the previous conception of the inherent riskiness of migrants has been displaced by the disruptive, risky, pandemic – a change that was surely buttressed by the closure of the Canadian border, in particular to asylum seekers. Reflecting on the broader implications of this shift in ID conduct, we suggest that the onset of COVID-19 has revealed the ways in which the containment and confinement of noncitizens can be reconfigured in Canadian law. Mindful of the potentially limited nature of this shift, we identify the progressive possibilities hidden in that reconfiguration, and urge for it to continue even as the worse of the pandemic begins to pass.

Bellissimo, Mario D, ‘COVID-19: Practicing Immigration Law in the Face of Closing Borders’ (2020) 16(3) *ImmQuest* 1-5
Jurisdiction: Canada

Berg, Laurie and Bassina Farbenblum, ‘[As If We Weren’t Humans: The Abandonment of Temporary Migrants in Australia during COVID-19](#)’ (SSRN Scholarly Paper ID 3709527, 11 October 2020)

Abstract: In March 2020, nationwide lockdowns to contain the spread of COVID-19 in Australia caused widespread job loss among temporary visa holders. This had a devastating financial

impact on these workers, including international students, backpackers, graduates, sponsored workers and refugees, leaving many unable to meet their basic living needs such as food and rent. However, unlike some other similar Western countries, the Australian government excluded temporary migrants from wage subsidies and almost all other forms of financial support.

This report assesses the humanitarian impact of government policies related to COVID-19 on the hundreds of thousands of temporary migrants who remained in Australia. It presents findings from a survey conducted in July 2020 of over 6,100 temporary visa holders on their experiences of financial insecurity, precarious housing and homelessness, humanitarian need, racism and social exclusion, as well as their attitudes on their time in Australia. In doing so, it seeks to establish a platform for temporary migrants to voice their experiences and establish current large-scale first-hand empirical data to inform government decision-making.

Bolton, Syd and Catriona Jarvis, 'Left to Grieve Alone: Migration, Dignity and Dying in the Time of Covid-19: Some Early Reflections' (2020) 34(3) *Journal of Immigration Asylum and Nationality Law* 198-215

Abstract: Asks how human rights, humanitarian law and international rights instruments can be upheld during the coronavirus pandemic. Explains how the Mytilini Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys, developed by the Last Rights Project in 2018, offers human rights and best practice standards which can protect vulnerable migrants during the time of Covid-19.

Buley, Tim et al, '[Challenging Immigration Detention in the COVID-19 Pandemic](#)', Landmark Chambers (Blog post, 15 April 2020)

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.

Caraballo, Krystlelynn, 'Immigration, Law, and (In)Justice: Coronavirus and Its Impact on Immigration' (2020) *International Criminal Justice Review* (online advance article, published 26 August 2020)

Jurisdiction: USA

Abstract: This introduction to the International Criminal Justice Review provides ... an overview of the key immigration policy changes and legal challenges that have occurred in the midst of the coronavirus (COVID-19) pandemic between March and July 2020. This health crisis exacerbated the struggles faced by the immigrant community and exemplify the systemic barriers that impede integration.

Castellanos-Jankiewicz, León, ' [US Border Closure Breaches International Refugee Law](#) ' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Extract from Introduction: As nearly half the world goes under lockdown to contain the spread of COVID-19, migrants have been especially helpless in the face of governmental measures restricting the movement of persons. Recent reports have documented the plight of seasonal workers stranded in India, as well as the precariousness of migrant camps in Greece, Italy and Bangladesh. The border between Mexico and the United States constitutes another flashpoint where conditions are rapidly deteriorating... However, the pandemic is also being invoked by the Trump administration to roll out unprecedented measures aimed at deporting migrants and asylum seekers.

Chen, YY Brandon, 'Migrant Health in a Time of Pandemic: Fallacies of Us-Versus-Them' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 407

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.

Cox, Darren, 'Immigration' (2020) 65(7) *Journal of the Law Society of Scotland* 32-33

Abstract: Analyses R. (on the application of W (A Child)) v Secretary of State for the Home Department (Admin), a challenge brought by the child of a single mother who was unable to work due to COVID-19, on whether the Home Office's "no recourse to public funds" policy, imposed on non-EEA migrants who obtain temporary residence in the UK, was in breach of ECHR art.3 where an individual is destitute or is facing destitution.

Coyne, Christopher J and Yuliya Yatsyshina, '[Immigration Reform Is Key in the Recovery from the COVID-19 Crisis](#)' (Mercatus Centre, COVID-19 Response Policy Brief Series, 2020)

Jurisdiction: USA

Abstract: Recent immigration policies regarding F-1 student visas and H-1B work visas, aligned with the protectionist executive order known as 'Buy American and Hire American,' introduced by the Trump administration in 2017, have been reducing the application rates of foreigners wishing to enter universities and the workforce in the United States. This reduces America's

access to a significant number of talented and creative people and the associated benefits. If current visa policy stands, it is likely that COVID-19 will further limit foreign student admissions to US universities in the coming year and perhaps beyond. This will have long-lasting effects on innovation and economic growth. Therefore, policymakers should treat the COVID-19 pandemic as a unique opportunity to relax or reverse current restrictive policies regarding student visas and H-1B visas. Effective reforms will attract bright young people who will enrich American society in many ways, not least of which being their contribution to innovation and the entrepreneurial spirit that makes the United States an economic powerhouse.

Doebbler, Curtis, Geoffrey A Hoffman and Javier Maldonado, '[The Habeas Petition, And Other Options for Immigrants, in the Federal Courts](#)' in *Federal Immigration in Litigation* (2020, forthcoming) Ch 7

Jurisdiction: USA

Abstract: The petition for a writ of habeas corpus is an important tool in the arsenal of immigration attorneys who seek to fully represent their clients. Going to federal court in an attempt to obtain habeas relief may be the only remaining remedy after all other administrative options have been exhausted. Traditionally, habeas has been used to challenge prolonged detention post-final order of removal, prolonged detention pre-final order, and to challenge unlawful detention, but increasingly it is used to challenge such related issues as unlawful deportations in violation of the statute or regulatory provisions, and/or violations by CBP, USCIS or other agency actions during the expedited removal process under 8 U.S.C. § 1225(b). In response to the Covid-19 pandemic, the federal courts have changed operations to limit the spread of the disease. Also, there have been other significant changes to the operations of USCIS and EOIR, in recent days. The article addresses some of the issues to be considered by the habeas petitioner when going forward in federal court proceedings given the Covid-19 pandemic.

Dye, Alaina, '[The Right to Health in Immigration Detention during the COVID-19 Pandemic: An Examination of Federal and International Law](#)' (University of San Diego, Centre for Health Law and Bioethics, CHLB Research Scholarship No 74, 2020)

Jurisdiction: USA

Abstract: This article examines the United States' response to the severe impact of the coronavirus (COVID-19) in immigration detention centers and considers the United States' obligations to the vulnerable population of immigrant detainees. This article argues that the COVID-19 pandemic further demonstrates the United States' lack of guaranteed health care for immigrant detainees and deportees despite international recognition of the human rights to health and life. The United States violates international law when immigrant detainees' human rights are disregarded by lack of appropriate access to health care during a global pandemic. This article recognizes that discrimination against immigrants under the Trump Administration and inconsistent treatment of detained populations further the vulnerability of immigrant detainees during the COVID-19 pandemic. Lastly, this article urges for reform in the United States immigration detention system, in regard to health care, to protect immigrant detainees and deportees during the harsh times of the COVID-19 pandemic.

Gerson, Pedro, '[Embracing Crimmigration to Curtail Immigration Detention](#)' (SSRN Scholarly Paper ID 3678812, 21 August 2020)

Abstract: Immigration advocates have long objected to both the constitutionality and the conditions of immigration detention. However, legal challenges to the practice have been largely unsuccessful due to immigration law's 'exceptionality.' Placing recent litigation carried out against immigration detention in the midst of the COVID-19 pandemic within the context of the judiciary's approach to immigration, I argue that litigation is an extremely limited strategic avenue to curtail the use of immigration detention. I then argue that anti-immigration detention advocates should attempt to incorporate their agenda into criminal legal reform and decarceration efforts. This is important for both movements. Normatively, immigration detention raises comparable concerns: Namely, that jailing people is, on the one hand an extreme and cost-ineffective form of social control, and on the other, a tool to marginalize or 'otherize' entire communities. Furthermore, there is evidence that ongoing efforts to decarcerate states and localities may be foiled by immigration detention. To the extent,

therefore, that decarceration is based on commitments to freedom or condemnation of the extensive use of carceral institutions, they are incomplete and even dangerous without including measures to address immigration detention. Immigration advocates, on the other hand, are more likely to succeed by placing the anti-immigration detention agenda within the scope of larger criminal legal reform than by pursuing either immigration detention reform or anti-detention litigation.

Ghezelbash, Daniel and Nikolas Feith Tan, '[The End of the Right to Seek Asylum? COVID-19 and the Future of Refugee Protection](#)' (Robert Schuman Centre for Advanced Studies Research Paper No RSCAS 2020/55, 2020)

Jurisdictions: Australia, Canada, Europe and USA

Abstract: The COVID-19 pandemic has had a devastating impact on the institution of asylum, exacerbating longer term trends limiting the ability of asylum seekers to cross-borders to seek protection. As a result, the early months of 2020 saw an effective extinguishment of the right to seek asylum. This working paper examines how this played out in Australia, Canada, Europe and the United States. National and regional responses varied, with Australia and the United States effectively ending asylum seeking. In Europe, some states upheld the right to seek asylum by exempting asylum seekers from general border closures, while other countries used the crisis to suspend the right to seek asylum. Finally, this working paper explores strategies for restoring and protecting the right to seek asylum beyond the pandemic.

Gilbert, Geoff, '[Forced Displacement in a Time of a Global Pandemic](#)' 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) 167-175 (published 30 June 2020)

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.

Hoffman, Geoffrey A, '[What Should Immigration Law Become?](#)' (SSRN Scholarly Paper ID 3680813, 25 August 2020)

Jurisdiction: USA

Abstract: This Essay explores the future of immigration law and asks what it should become after the 2020 election. It begins with a discussion of some of the changes brought about by the Trump administration and exacerbated by the COVID-19 pandemic. In thinking about a starting place for immigration law, one can and should begin with human rights, ensuring international norms are met, providing the most vulnerable urgent protections, as well as responding to humanitarian crises. Simultaneously, immigration law can be viewed as a facet or subset of national security law, administrative law, or constitutional law, and at times all of these sources acting at once upon a particular immigrant or set of immigrants. This confluence of concerns drives the cacophony of voices, and hence the confusion and obfuscation which has frustrated comprehensive immigration reform and remedies for immigrants for decades. Other areas also of course impact the field. Another way of asking the same question is: How do we begin to explore imaginative possibilities at fixing the broken immigration system? In determining what immigration law should become this essay examines the possibilities inspired by three distinct 'buckets' or categories: (1) Supreme Court decisions; (2) proposed and, thus far, unsuccessful legislation, including the immigration plan of candidate and former Vice President Joe Biden; and (3) remedies and approaches inspired by other fields of law. The Essay concludes with a discussion of legal analysis and a proposal for change.

Hoffman, Steven J and Patrick Fafard, 'Border Closures: A Pandemic of Symbolic Acts in the Time of COVID-19' in Flood, Colleen et al, [*Vulnerable: The Law, Policy and Ethics of COVID-19*](#) (University of Ottawa Press, 2020) 555

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.

Hunt, Joanna 'Complying with Business Immigration Law During the COVID-19 Pandemic' (2020) 210(May) *Employment Law Journal* 16-18

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.

Kessels, Ron, 'COVID-19 Impacts on Immigration Law and Policy' [2020] (68) *LSJ: Law Society of NSW Journal* 72-73

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?

Lanzarone, A et al, '[When a Virus \(Covid-19\) Attacks Human Rights: The Situation of Asylum Seekers in the Medico-Legal Setting](#)' [2020] *Medico-Legal Journal* (advance online article, published 23 July 2020)

Abstract: The Covid-19 pandemic is a global health emergency that requires immediate, effective action by governments to protect the health and basic human rights of everyone's life. Refugees and migrants are potentially at increased risk because they typically live in overcrowded conditions often without access to basic sanitation. Since the beginning of the official lockdown for Covid-19, the medico-legal assessment of physical violence related to obtaining status or other forms of human protection has been frozen.

Lopez, Miriam Magaña and Seth M Holmes, '[Raids on Immigrant Communities During the Pandemic Threaten the Country's Public Health](#)' (2020) 110(7) *American Journal of Public Health* 958–959

Extract: On the first day of California's stay-at-home order, US Immigration and Customs Enforcement (ICE) agents—each with N95 medical protective masks at the ready—raided immigrant communities in Los Angeles, California. That same day, an asylum seeker in a detention center in Colorado was alerted that ICE planned to deport him to Nicaragua shortly thereafter. As the pandemic spread quickly and the death toll rose, ICE raids continued in multiple parts of the United States. On March 18 (the same day as three raids in New York City—the area with the highest COVID-19 prevalence), ICE issued a public statement indicating that “[the agency’s] highest priorities are to promote life-saving and public safety activities.” Far from promoting public health and safety, these raids, detentions, and deportations contravene public health recommendations and threaten to worsen the pandemic in the United States and beyond on several important levels—leading to avoidable exposures, infections, and deaths.

Makhlouf, Medha D and Jasmine Sandhu, '[Immigrants and Interdependence: How the COVID-19 Pandemic Exposes the Folly of the New Public Charge Rule](#)' (SSRN Scholarly Paper ID 3597791, 2 May 2020)

Abstract: On February 24, 2020, just as the Trump administration began taking significant action to prepare for an outbreak of COVID-19 in the United States, it also began implementing its new public charge rule. Public charge is an immigration law that restricts the admission of certain noncitizens based on the likelihood that they will become dependent on the government for support. The major effect of the new rule is to chill noncitizens from enrolling in public benefits, including Medicaid, out of fear of negative immigration consequences. These chilling effects have persisted during the pandemic. When noncitizens are afraid to (1) seek treatment or testing for COVID-19 or (2) access public benefits in order to comply with stay-at-home guidance, it impedes efforts to slow the spread of COVID-19, contributing to the strain on the health care system. This Essay describes how the pandemic has exposed the folly of the public charge rule: Discouraging noncitizens from accessing public benefits to support their health and well-being is and always has been unwise from a public health perspective. The pandemic merely magnifies the negative consequences of this policy. This Essay contributes to scholarly conversations about how immigration law and policy have framed the United States' response

to the COVID-19 pandemic. Specifically, it provides an in-depth analysis of the negative public health consequences of the new public charge rule during the pandemic.

Mégret, Frédéric, '[Returning "Home": Nationalist International Law in the Time of the Coronavirus](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Extract from Introduction: What has been striking about the coronavirus epidemic is the rapidity with which many émigrés, particularly those with the privilege of mobility, have sought refuge in their country of origin. In turn, what has been remarkable in those states is the combination of further closing borders to foreigners whilst going out of their way to repatriate nationals.

Miller, Holly Ventura et al, '[Immigration Policy and Justice in the Era of COVID-19](#)' (2020) *American Journal of Criminal Justice* 1-17 (advance article, published 11 June 2020)

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.

Ní Ghráinne, Bríd, '[Covid-19, Border Closures, and International Law](#)' (SSRN Scholarly Paper ID 3662218, 28 July 2020)

Abstract: Covid-19 pays no heed to borders. Globalisation has carried the virus from a market in Wuhan, China, to almost every country in the world. In response to the virus, some governments have closed their borders to refugees and/or have pushed back refugees from

their territories, even though they are well-aware of the dire circumstances that have caused these people to flee their homes. This reflection sets out the compatibility of such practices with international refugee and human rights law. It argues that while states may put in place measures to restrict the spread of the virus (such as health screening, testing, and/or quarantine) vis a vis refugees, such measures may not result in refoulement or in denying them an effective opportunity to seek asylum.

Parmet, Wendy E, '[Immigration Law's Adverse Impact on COVID-19](#)' in Scott Burris et al (eds), [Assessing Legal Responses to COVID-19](#) (Public Health Law Watch, 2020) 240-245

Jurisdiction: USA

Abstract: Immigration law has played a large and deleterious role during the pandemic. In early 2020, the Trump administration relied on the Immigration and Naturalization Act to bar entry of non-nationals from affected areas. Once the pandemic spread widely in the United States, the administration imposed broad restrictions on immigration, including blocking entry at land borders, effectively overriding asylum laws. While furthering the administration's pre-pandemic, anti-immigration agenda, these measures did little to keep the virus out of the country, or reduce its impact. Immigrants have also suffered disproportionately from COVID-19 due to numerous factors, including high rates of employment as essential workers, substandard housing, and immigration-based restrictions on non-citizens' access to public benefits, including Medicaid. The recently promulgated public charge rule, plus ongoing immigration enforcement activities and antiimmigrant rhetoric, have compounded these vulnerabilities, leaving many immigrants afraid to access health care or interact with public health workers. SARS-COV-2 (the virus responsible for COVID-19) has also spread widely in immigration facilities, where detainees are unable to practice social distancing and lack access to adequate hygiene and health care.

Pillai, Priya, '[COVID-19 and Migrants: Gaps in the International Legal Architecture?](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Extract from Introduction: This post raises a few basic questions concerning the legal protection of migrants during a pandemic, for further analysis. What is the impact of this global pandemic on legal obligations of states, and how does this relate specifically to migrants? There are

multiple overlapping legal regimes, including international human rights law, refugee law, and international health law. It is hoped that these legal regimes will be able to reinforce rights of the most vulnerable, but are there gaps in protection?

Rehaag, Sean, Janet Song and Alexander Toope, '[Never Letting a Good Crisis Go to Waste: Canadian Interdiction of Asylum Seekers](#)' (2020) *Frontiers in Human Dynamics: Migration in the Time of COVID-19: Comparative Law and Policy Responses* (advance article, published 14 October 2020)

Abstract: This article examines two moments of crisis at Canada's border with the United States: the aftermath of September 11th, 2001 ("9/11") and the COVID-19 pandemic. The Canadian government leveraged both crises to offshore responsibilities for asylum seekers onto the United States. In the first case, Canada took advantage of U.S. preoccupations with border security shortly after 9/11 to persuade the United States to sign the *Canada-U.S. Safe Third Country Agreement* ("STCA")—an agreement that allows Canada to direct back asylum seekers who present themselves at land ports of entry on the Canada-U.S. border. In the second case, Canada used heightened anxieties about international travel during the COVID-19 pandemic to persuade the United States to block irregular border crossings that asylum seekers were increasingly using to circumvent the STCA. After reviewing Canada's successful use of these moments of crisis to persuade the United States to take on additional responsibilities for asylum seekers for whom Canada would have otherwise been responsible, the article discusses a recent Canadian Federal Court decision that may make all this political maneuvering moot. This decision found that Canada cannot send asylum seekers back to the United States without violating constitutional rights to life, liberty, and security of the person. Given past practice, however, we can expect the Canadian government to continue to pursue avenues to persuade the United States to take on additional responsibility for asylum seekers—and moments of crisis will be important drivers for those efforts.

Sadler-Venis, Jennifer, '[COVID-19: Emergency Travel Bans Raise Immigration Concerns](#)' [2020] (Apr/May)
IBA Global Insight 9

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.

Sakharina, Iin Karita, '[Situation and Conditions of International Refugees in the Pandemic of COVID-19 \(Law Review of International Refugees\)](#)' 2020 2(2) *Awang Long Law Review* 56-63

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.

Schotland, Sara, '[A Plea to Apply Principles of Quarantine Ethics to Prisoners and Immigration Detainees During the COVID-19 Crisis](#)' (SSRN Scholarly Paper ID 3679221, 20 August 2020)

Abstract: An important topic has been neglected in the discussion of ethical issues related to the current Pandemic: unsafe conditions experienced by those who are incarcerated in state or federal prisons or confined in immigration facilities. I argue that principles of Quarantine Ethics addressing the health and safety of those subject to involuntary quarantine should be applied to mitigate the risk that COVID-19 poses to inmates and detainees. These individuals are presumed to have been lawfully detained, thereby excluding the question of the necessity and validity of an order requiring the compulsory quarantine as would apply to an ordinary citizen. However, human rights law remains applicable notwithstanding their status as inmates or undocumented immigrants. Accordingly, these individuals are entitled to safe conditions of confinement to reduce the high risk of their exposure to infectious disease. Judicial caselaw addressing these

facilities' obligations to provide medical care is insufficient. I offer recommendations for improving conditions of confinement based on recognition that neither penal nor immigration policies are furthered by unreasonable risk of exposure to the virus. The disproportionate incarceration of people of color makes the topic yet more urgent.

Shen, Lucas, '[International Trafficking in Persons and the Global Spread of Diseases: Cross-Country Evidence from Two Modern Pandemics](#)' (SSRN Scholarly Paper ID 3603201, 20 May 2020)

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.

Smith, Patriann and S Joel Warrican, '[Race\(Ing\) towards Legal Literacy for \(Im\)Migration amidst COVID-19](#)' (2020) 5(1) *International Journal of Multidisciplinary Perspectives in Higher Education* 141–149

Abstract: Historically and contemporarily, immigration laws have disproportionately affected immigrant faculty and students of color because they often inadvertently function as racial policy. (Critical) legal literacy enacted via a bottom-up approach can help to address such laws. Higher education institutions, organizations, labor unions and associations are uniquely positioned to use critical legal literacy as a tool of advocacy for immigrant faculty and students of color amidst the adverse effects of COVID-19.

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.

'Trump Administration Further Restricts Asylum Seekers at the Southern Border Through the Migrant Protection Protocols, Asylum Cooperative Agreements, and COVID-19 Procedures' (2020) 114(3) *American Journal of International Law* 504–511

Abstract: During the spring of 2020, the Trump administration continued efforts to reduce the ability of individuals to seek asylum in the United States, particularly at its southern border. The administration received temporary authorization from the U.S. Supreme Court to put into effect the Migrant Protection Protocols (MPP)—an arrangement that requires non-Mexican asylum seekers to wait in Mexico for the duration of their immigration proceedings—while the administration petitions the Court to reverse a lower court decision enjoining the MPP's implementation. The administration has also sought to implement its asylum cooperative agreement with Guatemala, whereby the United States sends certain non-Guatemalan migrants to Guatemala to apply for asylum there. The legality of this agreement is presently being challenged, and, in March of 2020, the COVID-19 pandemic caused Guatemala to stop accepting flights of migrants sent by the U.S. government. Citing COVID-19, the Trump administration itself issued various suspensions of entry into the United States of noncitizens during the spring of 2020, including with respect to asylum seekers at the U.S.-Mexico border.

RELIGION & LAW

This section includes literature on religious freedom.

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.

Berg, Thomas C, '[Religious Freedom Amid the Tumult](#)' (University of St. Thomas (Minnesota) Legal Studies Research Paper No 20-13, 17 August 2020)

Jurisdiction: USA

Abstract: The Supreme Court Term ending in summer 2020 was action-packed for religious freedom. The Court decided six cases pertaining to the issue—double, even triple the usual number—in contexts from school choice to public-health closures of churches to clashes between religious liberty and nondiscrimination laws. The decisions also came at a time of extraordinary stress and turbulence in society, and they relate in striking ways to those forces of turbulence. This Article discusses religious freedom in relation to three Ps of turbulence: Pandemic, Polarization of culture and politics, and Protests over racial injustice. In each of these areas, the Article aims to explain the Court's approach and defend religious freedom today as a vital aspect of human dignity. Among many lessons from today's crises is that religion, freely chosen and exercised, is a vital aspect of human identity. Religious exercise provides individuals with strength and comfort in the stresses of a pandemic. Religious belief motivates service to others in schools and social-service agencies; credible legal threats to those organizations aggravate our already dangerous polarization. Now as much as ever, it is vital to defend religious freedom for all. Despite some mixed signals, the current Supreme Court seems willing to shoulder that task. But to defend religious freedom credibly means recognizing rights for others too. Christian conservatives must support religious liberty and equality for Muslims as well. A credible defense of religious freedom also calls for confronting rather than denying the problems of racial inequality. And it calls for drawing careful lines so that LGBT people can

participate in economic life and traditionalist religious organizations can follow their religious identity.

Burke, Ciarán, '[Abusus Non Tollit Usum? Korea's Legal Response to Coronavirus and the Shincheonji Church of Jesus](#)' (2020) 4(5) *The Journal of CESNUR* 64—85

Abstract: The legislative framework crafted by the Korean government in response to the MERS outbreak in 2015 informed its approach when COVID-19 appeared on its territory. This framework conferred broad powers upon the authorities to react promptly and effectively to the pandemic as it developed. However, the relevant legislation suffered for a lack of human rights safeguards, and was ultimately rather opportunistically employed by the government to target an unpopular religious community, raising questions about Korea's commitment to the rule of law and human rights standards.

Conklin, Michael, '["The Most Demanding Test Known to Constitutional Law": Do Coronavirus Bans on Church Services Satisfy Religious Freedom Restoration Act Requirements?](#)' (2020) *Washburn Law Journal* (forthcoming)

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).

Cranmer, Frank, 'Government and Parliamentary Report: February-May 2020' (2020) 22(3) *Ecclesiastical Law Journal* 361-367

Jurisdiction: UK

Abstract: Reviews parliamentary and regulatory developments of relevance to ecclesiastical lawyers, including: how coronavirus-related legislation has affected the conduct of religious services, the progress of the Brexit negotiations, and the Church of England (Miscellaneous Provisions) Measure 2020.

Levine, Samuel J, '[Hands-Off Religion in the Early Months of COVID-19](#)' (SSRN Scholarly Paper ID 3708424, 1 October 2020)

Jurisdiction: USA

Abstract: For decades, scholars have documented the United States Supreme Court's 'hands-off approach' to questions of religious practice and belief, pursuant to which the Court has repeatedly declared that judges are precluded from making decisions that require evaluating and determining the substance of religious doctrine. At the same time, many scholars have criticized this approach, for a variety of reasons. The early months of the COVID-19 outbreak brought these issues to the forefront, both directly, in disputes over limitations on religious gatherings due to the virus, and indirectly, as the Supreme Court decided important cases turning on religious doctrine. Taken together, judicial rulings and rhetoric in these cases illustrate ways in which the hand-off approach remains, at once, both vibrant and vulnerable to critique. This paper was presented as part of the Blog Webinar: Law, Religion, and Coronavirus in the United States: A Six-Month Assessment, Co-organized by: International Center for Law and Religion Studies, Brigham Young University; Law School Center for the Study of Law and Religion, Emory University Law School; Notre Dame Program on Church, State & Society, Notre Dame Law School Center for Law and Religion; St. Johns University School of Law; and Eleanor H. McCullen Center for Law, Religion and Public Policy, Villanova University Charles Widger School of Law.

Manchin, Gayle and James Carr, '[Don't Let Religious Freedom Become a Casualty of Coronavirus](#)' in Barrie Sander and Jason Rudall (eds), [Opinio Juris Symposium on COVID-19 and International Law](#) (March-April 2020)

Introduction: How far can a government limit religious freedom in the name of fighting the coronavirus (COVID-19) under international law? As the global pandemic continues, many national and local governments are grappling with this question. Religious gatherings are

important opportunities for people to practice and share their beliefs, but they are also sites for transmission of COVID-19, endangering not only participants in these gatherings but everyone with whom they interact. Crises require decisive government action, but governments often use times of crisis to encroach on individual freedoms or target minority groups long after the crisis has passed.

Phuong, Nguyen Thi, '[Religion, Law, State, and Covid-19 in Vietnam](#)' (2020) *Journal of Law, Religion and State* (advance article, published 26 September 2020)

Abstract: The Vietnamese state has issued numerous measures to prevent the spread of covid-19 in the country. This paper shows how the state used the law to manage religious activities for the purpose of public health during the epidemic. We argued that because of legal, institutional, and religious factors, the Vietnamese state was successful in establishing cooperation with religious organizations to implement measures restricting religious activities to limit the spread of the epidemic in the country.

Redding, Jeffrey A, '[Queer/Religious Friendship in the Trump Era](#)' (SSRN Scholarly Paper ID 3681093, 26 August 2020)

Abstract: Shortly after Black Lives Matter protests broke out around the United States this past spring, a curious protest took place in the state of Texas. Organized in response to the Texas governor's coronavirus-related order to close businesses devoted primarily to the serving of alcohol, an alliance of Texas bar owners staged a 'Bar Lives Matter' protest outside of the Texas State Capitol building in the city of Austin, while also coordinating a lawsuit challenging the governor's order in U.S. federal court. This lawsuit instigated by the Texas Bar and Nightclub Alliance followed in the footsteps of other lawsuits brought by Christian churches around the nation challenging pandemic-related limitations on in-person religious services. In July, responding in apparent disgust to the activities of devoted drinkers in Texas and elsewhere, the well-known economist and liberal columnist Paul Krugman lamented the potentially deadly reopening situation facing U.S. schools and students in the fall, opining in The New York Times that 'the reason we are in this position is that states, cheered on by the Trump administration, rushed to allow large parties and reopen bars. In a real sense America drank away its children's

future.’ In this (draft) essay, I aim to explore the pandemic pitting of bars against babies, and then too churches against children. Moreover, I will demonstrate that the constellation of competing interests present in the coronavirus pandemic—the defining moment of the Trump presidency—cannot be broken down along neat political affiliations or dispersed across predictable camps on either the left or right. Rather, what we are seeing again is the crisscrossing of political, religious, and sexual interests defying easy categorization. These days, indeed, it seems almost as if Gayle Rubin’s ‘80s-era ‘bar dykes’ have managed to commandeer the contemporary Texas Bar and Nightclub Alliance, and that Paul Krugman could have been writing for Phyllis Schlafly’s Eagle Forum rather than for The New York Times.

Reiss, Dorit Rubinstein and Madeline Thomas, ‘[More Than a Mask: Stay-At-Home Orders and Religious Freedom](#)’ (2020) 57(4) *San Diego Law Review* 1-26 (pre-print – not peer reviewed)

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.

Rothschild, Zalman, 'Free Exercise's Lingering Ambiguity' (2020) 11 *California Law Review Online* (forthcoming)

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.

Sandberg, Russell, 'Is the National Health Service a Religion?' (2020) 22(3) *Ecclesiastical Law Journal* 343-354

Jurisdiction: UK

Abstract: Considers, with reference to the coronavirus lockdown, whether individuals may be legally entitled to refuse to return to the workplace on the ground that they feel that such a return will breach their belief in protecting the NHS. Discusses whether the NHS constitutes a "religion" under ECHR art.9.

Stern, Shai, '[The Dark Side of Communities: Illiberal Religious Communities' Compliance with COVID-19 Public Health Regulations](#)' (SSRN Scholarly Paper ID 3637335, 28 June 2020)

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.

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.

Gutierrez-Romero, Roxana, '[Conflict in Africa during COVID-19: Social Distancing, Food Vulnerability and Welfare Response](#)' (SSRN Scholarly Paper ID 3616421, 28 May 2020)

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.

Haber, Michael, '[Legal Issues in Mutual Aid Operations: A Preliminary Guide](#)' (Hofstra University Legal Studies Research Paper No. 2020-06, 2020) 1-40

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.

Hallaert, Jean-Jacques, '[Inequality, Poverty, and Social Protection in Bulgaria](#)' (IMF Working Paper No 20/147 2020)

Abstract: Absolute poverty has dropped markedly in Bulgaria but income inequality has increased substantially in the aftermath of the GFC. This increase is due to a rise in market income inequality that was compounded by a reduction in fiscal redistribution. The redistributive role of direct taxation has declined with the introduction of a flat tax and social spending is relatively low and decreasing (as a share of GDP), is concentrated on a few social risks, and experienced a decline in its redistributive efficiency. The COVID-19 crisis is likely to deepen income inequality, increasing the room for redistributive policies.

Hammond, Andrew, Ariel Jurow Kleiman and Gabriel Scheffler, '[How the COVID-19 Pandemic Has and Should Reshape the American Safety Net](#)' (San Diego Legal Studies Paper No 20-455, 2020) 1-21

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.

Lind, Yvette, '[Allocating COVID-19 State Aid Equitably: The Case of Denmark](#)' (2020) *Europarättslig tidskrift* (forthcoming)

Abstract: Recently, individual states have decided to restrict COVID-19 financial aid measures to those who have paid taxes to said state thus generally excluding those who are working cash-in-hand/unreported employment, unemployed, students, or retired. This contribution assesses COVID-19 financial support packages with an emphasis on common state aid features targeting individuals with the intention to critically evaluate if, when, and how these measures discriminate against the socio-economic status of the recipient. The impact that COVID-19 has had on income-generating activities is especially harsh for unprotected workers and the most vulnerable groups in the informal economy. The preliminary results of this study indicate that

impoverished and vulnerable groups such as immigrants, cash-in hand workers/unreported workers, unemployed, students, and pensioners are not only at risk of losing their sources of income due to the pandemic's economic effects, but they are also excluded from receiving crucial financial aid. This illustrates that there is great need for a revision of national COVID-19 policies and budget allocations to ensure a more equitable protection of individuals.

Lu, Lynn, '[Restorative Relationships and "Radical Help": Reimagining Welfare-to-Work Beyond the Market-Family Divide](#)' (2020) *University of Baltimore Law Review* (forthcoming)

Abstract: The unprecedented global lockdown in response to the COVID-19 pandemic exposed the extreme vulnerability of 'essential' yet underpaid workers, the vast inequality between the wealthy and the less fortunate, and the bottomless pit facing those without a social safety net. While the crisis has laid bare the near-universality of human susceptibility to disease and unemployment in a world in which few can safely work, it has also highlighted the disproportionate precarity experienced by low-wage and contingent workers, people of color, and non-citizens. Well before the pandemic, rampant socioeconomic and racial inequality, high underemployment and concentration of wealth, and technological advances threatened to render many human workers obsolete, powerless, and in need of social support and care. At the same time, in the United States, the Trump administration targeted an already shrunken social safety net for elimination through the extension of punitive workfare ideology originally reserved for poor, single mothers to all forms of government-funded support, including health care, nutrition, and housing assistance available those just above the poverty line regardless of parental status. Such ideology effectively conditions public support to needy individuals (some already employed at low wages) on their willingness and ability to engage in (more) work, regardless of pay, employment conditions, or caregiving obligations. Left to our own devices, whether in times of crisis or calm, advocates have sought to strengthen interpersonal relationships and community bonds for the provision of basic social support for the poor, as a way for ordinary people to help those whom the government will not.

This Article examines two experimental models—restorative justice and 'radical help'—that seek to reform welfare administration explicitly to weave people back into the fabric of the social safety net. These social welfare innovations foreground human relationships as an underutilized resource to highlight the power of meaningful social connections to help those experiencing

everything from disability and discrimination to bad luck not just avoid disaster, but thrive and flourish in strong communities. Each model emphasizes human relationships to help poor people benefit voluntarily from social supports and community engagement instead of punishing them for noncompliance with paternalistic and exploitative government program work mandates. Such relationships can center poor people's lived experiences and combine collaborative, localized, and responsive community support with technology to facilitate social networking and, ideally, increased economic security and empowerment.

At the same time, without appropriate safeguards or oversight, overreliance on private relationships for social welfare provision risks replicating existing forms of disempowerment. In practice, both models risk reinscribing a private, marginalized sphere, neither restorative nor radical, in which those who perform the work of nurturing relationships remain subject to the will of those with power to offer or withhold assistance. Cautious optimism must be combined with meaningful protections in order to preserve the most promising aspects of new models while preventing the worst harms of what could be in effect a return to private, discretionary provision—or deprivation—of social support. Informed by feminist and antiracist theories critical of both market relations mediated by the state and private family relations entirely insulated from oversight, this Article concludes that we must continue to explore and adapt new models of welfare provision that truly protect and promote all human potential.

Lynch, Julia, 'Health Equity, Social Policy, and Promoting Recovery from COVID-19' *Journal of Health Politics, Policy and Law*, Article 8641518 (advance online article, published 28 May 2020)

Jurisdiction: USA

Abstract: The COVID-19 pandemic has revealed starkly and publicly the close interconnections between social and economic inequality, health equity, and population health. To better understand what social policies would best promote population health, economic recovery, and preparedness for future pandemics, we must look both upstream and abroad for inspiration. In this essay, I argue for a suite of near-term and longer-term interventions, including universal health insurance and paid sick leave, upgraded wage insurance policies, tax reform, investments in parental leave, child care, and education, and upgraded government record systems. Policies that equalize the distribution of the social determinants of health and promote social solidarity

will also improve population health and economic performance and allow us to confront future pandemics more successfully.

Meers, Jed, 'Social Security Response to the Covid-19 Crisis' (2020) 27(2) *Journal of Social Security Law* 42-44

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.

Misic, Luka and Grega Strban, '[Functional and Systemic Impacts of COVID-19 on European Social Law and Social Policy](#)' in Ewoud Hondius et al (eds), [Coronavirus and the Law in Europe](#) (Intersentia, September 2020)

Abstract: In the contribution, the authors address functional or short-term and systemic or long-term effects of the COVID-19 epidemic on European social law and social policy. They focus on the legal and factual status of mobile workers and self-employed persons, the coordination of sickness benefits in kind and cross-border provision of healthcare services in times of a health crisis, and, most notably, on the potential resurrection of the national welfare state that is going up against the further development of the European social model and European Union's deeper social integration. Since the epidemic appears to still be in full swing and since Member States' anti-corona measures seem to be complemented on a day-to-day basis, the authors' deliberations are based on general assumptions regarding free movement of workers and self-employed persons, social security coordination, and the nature of the European social model, coupled with what they perceive to be key challenges posed by the COVID-19 epidemic in the field of European social law and social policy, also affecting, at least indirectly, national rules and policies.

Wilson, Shaun, 'Rising Pressures, New Scaffolding, Uncertain Futures: Australia's Social Policy Response to the COVID-19 Pandemic' (2020) (85) *Journal of Australian Political Economy* 183-192

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

Baker, Thomas, Marc Edelman and John T Holden, '[College Football in the Time of COVID-19](#)' (SSRN Scholarly Paper ID 3631528, 19 June 2020)

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.

Bezen, Serdar et al, 'Football: Extension of Players' Contracts in Turkey Due To The COVID-19 Pandemic' (2020) 11(2) *Sports Law and Taxation* 46-48

Abstract: Discusses whether footballers in the Turkish league will be released from their contracts before the end of the season, and how the transfer window will be affected, now that the season has been extended because of the coronavirus pandemic.

Conrad, Mark A, '[Reimagining U.S. Olympic Sports: How the Covid-19 Pandemic Serves as the Catalyst for Public Funding, Greater Transparency, and Increased Athlete Rights](#)' (SSRN Scholarly Paper ID 3671087, 10 August 2020)

Abstract: The Amateur Sports Act was enacted over four decades ago when Olympic sports were still an 'amateur' pursuit. That law created a self-funding system for the United States Olympic and Paralympic Committee and the national governing bodies for the respective Olympic sports.

Its self-governance model resulted in a system of limited transparency and ineffective governance that culminated with the sex abuse scandals involving young athletes. With the growth and change in the now U.S. Olympic and Paralympic movement over the last four decades, this article advocates significant changes to the law to permit direct or indirect government funding for the United States Olympic and Paralympic Committee (USOPC) and the sport governing bodies in return for more stringent transparency and ethical rules. The new law should 'federalize' a new governing body that will oversee the USOPC and the governing bodies and create additional rights for athletes and required disclosure and ethics rules for the Olympic bodies. Because of the Covid pandemic and the funding shortfalls faced by the USOPC and the governing bodies, the article concludes that now is the time for such a major change.

Cornelius, Steve, 'Sport in a Time of COVID-19' (2020) 11(2) *Sports Law and Taxation* 9-13

Abstract: Discusses the effects of the coronavirus pandemic on sporting events, the contractual implications of postponement or cancellation and application of frustration and force majeure. Considers the meaning of act of God and dread disease.

Costa, Ricardo Filipe and Teresa Neves, 'Portugal: Antitrust – Football' (2020) 41(9) *European Competition Law Review* N79-N80

Abstract: Notes the Portuguese Competition Authority decision in Re Portuguese Professional Football League, imposing interim measures requiring suspension of an anti-poaching agreement between football clubs which precluded the hiring of players who had terminated their employment contracts for reasons connected with the coronavirus pandemic.

Dilger, Alexander and Lars Vischer, '[No Home Bias in Ghost Games](#)' (Discussion Paper of the Institute for Organisational Economics No 7/2020, 1 July 2020)

Jurisdiction: Germany

Abstract: Because of the COVID-19-pandemic the men's first German football league (Bundesliga) had to finish the season 2019/20 with ghost games as spectators were not allowed

in the stadiums. Comparing these games with the regular ones between the same teams before, we find that the normal advantage for the home team disappears. One reason for this is the disappearances of the home bias of the referees whereas changes in the sportive performance of the teams seem to be irrelevant in this regard.

Edelman, Marc et al, '[Exploring College Sports in the Time of COVID-19: A Legal, Medical, and Ethical Analysis](#)' [2021] (2) *Michigan State Law Review* (forthcoming)

Jurisdiction: USA

Abstract: The emergence of the COVID-19 pandemic threatens the safety of people attending large social gatherings including organized sporting events. As the number of deaths and hospitalizations from COVID-19 skyrocketed in March 2020, the National Collegiate Athletic Association ('NCAA') suspended all member colleges' spring sports seasons. The NCAA has since implemented new guidelines that allow for individual member colleges to make independent decisions about if, and when, to resume their intercollegiate sports programs. This Article explores the implications of resuming intercollegiate sports in the midst of a pandemic from a legal, medical and ethical perspective. The team of scholars who authored this Article include professors at four major public universities, with terminal degrees in the fields of law, medicine, education, and sports management. Adopting a true interdisciplinary approach to the question of how and when to return to sport, the authors collectively express their concerns regarding how NCAA member colleges are approaching the legal and ethical issues surrounding the offering of intercollegiate sports during a pandemic, and propose ten best practices for colleges to determine when and how to resume offering intercollegiate sports.

Engelberg, Terry and Stephen Moston, '[Crime and Misconduct in Sport](#)' (2020) 23(6) *Sport in Society* 975–980

Introduction: The global pandemic of 2020 brought about the suspension of almost all sporting activity. From grassroots sport through to elite competitions, the sporting world effectively ended. At the time of writing (early May 2020), there are tentative plans to restart some elite competitions, with the German Bundesliga and the Australian National Rugby League both announcing that competitions will recommence shortly. In both cases, the plan is to play games

for a television audience only, in near-empty stadiums. In the months and years to come, it is likely that Sport in Society will see considerable debate as to the logistical problems in restarting sporting competition during and after a pandemic. For example, as spectators will not be able to attend matches and so there will be no game-day revenues. The purpose of competing is almost entirely to fulfil contractual obligations to television companies and sponsors, not because of any consideration for fans. It is also likely that the journal will see considerable debate as to the social and ethical problems of recommencing sporting competitions. For example, whilst players will need to be tested for COVID-19 on a regular basis, tests for first responders (medical staff, police, etc.) are currently in short supply.

Hardiman, Ann-Marie, 'This Sporting Life' (2020) 25(3) *Bar Review* 67-70

Abstract: Talks to Matthieu Reeb, Secretary General of the Court of Arbitration for Sport (CAS), about the standards CAS arbitrators must meet, innovative initiatives at the CAS, the difficulty of getting all international sporting bodies to recognise its jurisdiction and the challenges of preparing for the Tokyo Olympics which were postponed as a result of the coronavirus pandemic.

Lindholm, Johan, 'Editorial: When Sports Is the Most Important Utterly Non-Important Thing in the World' (2020) 20(1) *The International Sports Law Journal* 1–2

Abstract: It will take considerable time before it is possible to fully gauge the impact of Covid-19 on sports, but it is possible to see some possible and significant consequences and related legal issues that will follow in the wake of the virus. As often, most of these are related to the commercial aspects of sports and there are both short- and more long-term issues.

McCarthy, Claudine, '[Campus Partnerships Play Valuable Role in Managing Legal Ramifications of Tough Decisions Tied to Pandemic](#)' (2020) 17(6) *College Athletics and the Law* 12

Abstract: College athletics administrators have long known the importance of considering the legal implications of the decisions they make as part of their daily work. But now those legal

considerations have increased in scope and complexity due to a completely changed environment.

Reade, J James and Carl Singleton, 'European Football After COVID-19' in Monica Billio and Simone Varotto (eds), [*A New World Post COVID-19: Lessons for Business, the Finance Industry and Policy Makers*](#) (Ca' Foscari University Press, 2020) [open access book] 349-358

Abstract: The European football industry has suffered an unprecedented shock from COVID-19. In this chapter, we reflect on how the sport's administrators responded to the initial outbreaks and what lessons can be learned. We also look ahead to what football in the post-COVID-19 era could look like. We conclude that this largely depends on the decisions now facing the sport's administrators and the powerful owners of the biggest football clubs: will they prioritise football as the inclusive and diverse game, at the heart of local communities? Or will their intrinsic financial interests dominate?

Rubí-Puig, '[Coronavirus' Impact on Broadcasting Rights for the Spanish Professional Football League](#)' in Ewoud Hondius et al (eds), [*Coronavirus and the Law in Europe*](#) (Intersentia, September 2020)

Abstract: The spread of SARS-CoV-2 and the measures adopted by public authorities to prevent health risks posed by COVID-19 led organizers of sport events worldwide to cancel all ongoing competitions. The Spanish Professional Football League or "La Liga" was suspended for almost three months, and pending matches for the 2019-2020 season have now resumed with a new and tight calendar. Such unexpected changes in the championship have undoubtedly diminished the value of La Liga broadcasting rights and have generated losses to their national and international holders. This contribution discusses the application of Spanish contract law to identify any possible claims that broadcasters could have to seek some relief. On close inspection, it is unlikely that broadcasters could enjoy any remedies to claim damages, to terminate their payment obligations or to adjust their contracts with La Liga's organizer. However, due to the particularities of the football broadcasting market, voluntary renegotiation of contracts is expected to occur.

Weston, Maureen A, '[COVID-19's Lasting Impact on the Sports Industry: Financial, Legal, and Innovation](#)'
(Pepperdine University Legal Studies Research Paper No 2020/21, 14 July 2020)

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

Adams, Helen and Richard Morley 'Taxing Excess COVID-19 Support Payments' (2020) 1499 *Tax Journal* 12-15

Jurisdiction: UK

Abstract: Discusses HMRC's powers to recover payments under the coronavirus job retention scheme and self-employment income support scheme to taxpayers who were not entitled. Considers HMRC assessments, penalties, and what taxpayers should do if they find there has been

a mistake.

Ainsworth, Richard Thompson and Xiuyuan (Tony) Hu, '[A Proposal for Taxing Cryptocurrency in the Midst of the COVID-19 Pandemic](#)' (2020) (25 May) *Tax Notes International* 921-929

Abstract: In this article, the authors present the case for a globally effective remedial tax on cryptocurrency transactions that could help fund multinational relief efforts, such as providing aid to jurisdictions affected by the COVID-19 virus and countries fighting the opioid crisis.

Alm, James et al, '[Tax Policy Measures to Combat the SARS-CoV-2 Pandemic and Considerations to Improve Tax Compliance: A Behavioral Perspective](#)' (WU International Taxation Research Paper Series No 2020-10, 2020)

Abstract: Governments have taken remarkable measures during the SARS-CoV-2 pandemic in their efforts to safeguard citizens' health and the economy. As a consequence, public debts have reached unprecedented levels, which will require at some point higher taxes. Ensuring that citizens pay these taxes requires consideration of the many factors that will likely affect their tax compliance decisions. In this paper, we reflect from a behavioral economic perspective the impact of tax policy measures on the perception, evaluation, and behavior of citizens and derive considerations to devise appropriate tax policies to ensure compliance in the future. We start with speculations about citizens' views of governmental restrictions and economic stimulus measures in response to the crisis, we apply these speculations to the acceptance and perceived effectiveness of policy measures on citizens' tax compliance behaviors, and we finish with their likely impact on determinants of tax compliance. Building on the derived insights, we deduce a set of considerations to improve tax compliance – and to generate the necessary tax revenues to deal with the after-effects of SARS-CoV-2 when the pandemic is under control: communication, transparency and justification of measures, access to support, service provision, audits and penalties in case of free-riding, targeted audits, building social norms of cooperation, consideration of framing effects, development of plans and strategies for the future, and anticipation of hindsight biases.

Almand, Ken and Paul Daly, 'Transfer Pricing Implications of COVID-19' (2020) 1494 *Tax Journal* 15-18
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.

Arnold, Nciko Wa Nciko, '[Evacuated from Africa but Present in Africa's Economy through Telework: Who gets to Tax them?](#)' (Afronomicslaw COVID-19 Symposium on International Economic Law in the Global South (May 2020), Symposium II: Intellectual Property, Technology and Agriculture)

Extract from Introduction: I begin by analysing the conditions that the UN and the OECD Model Conventions require of a country for it to have taxation rights over a cross-border worker. This analysis shows that such conditions are unfair for African countries amid the COVID-19 pandemic. Then, I provide recommendations for the way forward. I conclude by providing some theoretical grounding for these recommendations.

Borden, Bradley T, 'Universal Deadline Extensions Draw Attention to Section 1031 Periods' (2020) 167 *Tax Notes Federal* 601
Jurisdiction: USA

Abstract: The IRS published Notice 2020-23 extending section 1031 periods, but that guidance lacks clarity related to several key issues. The IRS has indicated that it will issue additional guidance in the form of FAQs, which should add clarity. Until then, exchangers, qualified intermediaries, and tax advisors must make decisions based upon the existing guidance. We hope the IRS will soon address issues that are central to those decisions. In the meantime, this article does the following: Provides three criteria that apply to the analysis and application of Notice 2020-23 and inform future guidance the IRS may publish for exchanges affected by COVID-19: (i) extend generous relief to exchangers, (ii) be simple to apply and explain, and (iii) vivify real estate markets. Explains the technical aspects of IRS extension guidance, assisting parties making decisions prior to the IRS additional guidance or will make decisions regarding issues that the IRS guidance may not cover. Demonstrates that the 120-day extension in Rev.

Proc. 2018-58 should apply to exchanges covered by Notice 2020-23. Warns that qualified intermediaries should err on the side of caution by interpreting Notice 2020-23 as applying the 120-day extension to avoid distributing proceeds prior to the expiration of the (g)(6) restrictions. Suggests that IRS guidance should apply the Notice 2020-23 extensions to all exchanges entered into on or before any date from January 20, 2020, until July 15, 2020. The detailed analysis in the article will serve as a reference for parties dealing with pending or planned exchanges and for parties who must carefully analyze the application of extension guidance in the future.

Brown, Harriet, 'Justice Delayed' (2020) 185(4742) *Taxation* 8-9

Jurisdiction: UK

Abstract: Discusses whether the stay of proceedings in the First-tier Tribunal Tax Chamber, in response to the coronavirus outbreak, has affected taxpayers' rights so adversely that the administration of justice is at risk, and proceedings should start again as soon as possible.

Camp, Bryan T, '[Taxation of Electronic Gaming](#)' (2020) 77(2) *Washington & Lee Law Review* 661–750

Abstract: At a doctrinal level, the subject of this Article is timely. During this time of the coronavirus pandemic, casinos have been closed and large populations have been subject to stay-home orders from local and state authorities. One can reasonably expect a large increase in electronic gaming and thus an increased need for proper consideration of its taxation. This Article argues for a cash-out rule of taxation.

At a deeper level, the subject of this Article is timeless. Tax law is wickedly complex for a reason. This Article explores that complexity using the example of electronic gaming. It grapples with the source of that complexity: an inherent and unresolvable tension between economic theories of income and the practical needs of administering a system of taxation to a large population in a democracy. That tension led some scholars to argue for a standards-based approach to taxation. This Article considers and rejects that argument. Legal rules are necessary to mediate between theory and practice. Hence, this Article demonstrates the continued relevance and importance of doctrinal analysis in legal scholarship.

Cheng, Vivian, 'Tax Update' [2020] (June) *New Zealand Law Journal* 161-162

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.

Collins, Jason, 'COVID-19, Tax Policy and Climate Change' (2020) 1491 *Tax Journal* 8

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.

Crawford, Bridget J, '[Taxation as a Site of Memory: Exemptions, Universities, and the Legacy of Slavery](#)' [2020] *SMU Law Review Forum* (forthcoming)

Abstract: Many universities around the United States are attempting to grapple with their direct and indirect involvement with the institution of slavery. Lolita Buckner Inniss's book *The Princeton Fugitive Slave: the Trials of James Collins Johnson* (2019) enters directly into the conversation taking place on university campuses and nation-wide about what responsibilities institutions have to acknowledge their past and to create racially inclusive campuses in the twenty-first century. Because most universities are tax-exempt, it is important to understand that their activities are indirectly subsidized by local, state and federal governments. The lens of tax law facilitates better understanding of universities' unique historic role in American economic activity as well as contemporary arguments about their obligations to workers and community constituents during the COVID-19 crisis.

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.

Davis, Noel, 'Superannuation Coronavirus Legislation' (2020) 31(8) *Australian Superannuation Law Bulletin* 148–149

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.

Doran, Nigel, 'Negative Earnings: How Wide is their Scope?' [2020] 1497 *Tax Journal* 13-15

Jurisdiction: UK

Abstract: Discusses whether employees who have to forfeit remuneration, or voluntarily pay part back to prevent the employer's insolvency, in the context of the coronavirus pandemic, could qualify for tax relief. Examines the possibility that taxable earnings could be negative.

Edet Jr, Bassey, '[Review of the Nigerian Tax Policy's Impact on the Finance Act 2019](#)' (SSRN Scholarly Paper ID 3614532, 30 May 2020)

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.

Feuer, Albert, '[Proposed Technical Corrections for Cash-Flow Relief Provisions of the Cares Act for Individuals with Savings or Retirement Benefits](#)' (2020) 48 *Tax Management Compensation Planning Journal* 135

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.

Feuer, Albert, '[How the CARES Act Takes Care of an Individual's Savings and Retirement Benefits](#)' (2020)

48 *Tax Management Compensation Planning Journal* 110

Jurisdiction: USA

Abstract: The CARES Act forgives federal student loan payments with due dates between March 27, 2020 and September 30, 2020 and suspends the minimum required distribution rules for distributions otherwise due during the 2020 calendar year. The CARES Act also provides cash flow relief for qualified individuals with savings and retirement benefits by enhancing provisions for direct loans and indirect loans (repayable distributions) of such benefits. Guidance is needed to address at least six major issues. Who are qualified individuals, and how may they be determined? What notices are required pertaining to the enhanced loan provisions, and to the enhanced distribution provisions? What is the DOL position with respect to fiduciary responsibility requirements pertaining to the enhanced direct and to the indirect loan provisions? Must plans defer loan payment due dates by qualified individuals for due dates between March 27 and December 31, 2020 in the same manner as IRS Notice 2020-23 requires

plans to do so for all participants and beneficiaries for due dates between April 1 and July 14, 2020? How do plans determine the new amortization schedule for those deferring such payments? Must plan administrators give qualified individuals the right to avoid withholding on the enhanced distributions that the Act calls coronavirus-related distributions in the same manner that plan administrators must do so for all participants and beneficiaries on the distributions that would be 2020 required minimum distributions, absent the CARES Act? May qualified individuals repay all or only some coronavirus-related distributions within three years to an eligible retirement plan? The longer this guidance is delayed, particularly with respect to the definition and the determination of a qualified individual, the longer will the relief to individuals needing such relief be delayed and the longer will those individuals be unaware of the available relief.

Feuer, Albert, ['What Savings and Retirement Plans May and Must Do to Facilitate COVID-19 Loan Relief'](#)
(2020) 61 *Tax Management Memorandum* 171-174

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 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.

Gallemlere, John, Stephan Hollander and Martin Jacob, '[Who CARES? Evidence on the Corporate Tax Provisions of the Coronavirus Aid, Relief, and Economic Security Act from SEC Filings](#)' (Becker Friedman Institute for Economics Working Paper No 2020-81, University of Chicago, June 2020)

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.

Haines, Anjana, 'MNEs to Shift Burden of COVID-19 Litigation to Law Firms' (28 May 2020) *International Tax Review* 1-4

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.

Hall, Kevin and Punnit Vyas, 'Wedding Bells' (2020) 186(4761) *Taxation* 18-19

Jurisdiction: UK

Abstract: Considers the VAT issues arising from the different elements in a wedding package, looking at whether the package comprises single or multiple supplies, room hire, and the scope and application of the temporary VAT change introduced as part of the response to the economic impact of the coronavirus pandemic.

Holderness, Hayes, '[Changing Lanes: Tax Relief for Commuters](#)' (SSRN Scholarly Paper ID 3705646, 5 October 2020)

Jurisdiction: USA

Abstract: Tax law reaches all parts of life, and societal views about life activities often affect how the law is applied. As those societal views change, then, application of the law should be expected to change in turn. This Essay highlights changing societal views about commuting, particularly as a result of the COVID-19 pandemic, to demonstrate how even long-standing positions under the tax law can be quickly uprooted. Specifically, as working from home becomes standard, taxpayers should be afforded tax relief when required to commute into the workplace, despite the fact that the tax law traditionally has rejected such relief.

Ismail, Abdiqani, '[Tax Collections in Times of Ongoing Pandemic in Kenya: Challenges and Policy Options](#)' (SSRN Scholarly Paper ID 3639018, 30 June 2020)

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.

Kan, Samuel, '[Divorce and the Collapse of the Three-Legged Stool: Setting Servicemembers Up for Success in the Age of BRS and COVID-19](#)' (2021) 66(2) *Wayne Law Review* (forthcoming)

Jurisdiction: USA

Abstract: Over the past few years, many monumental tax and benefit law changes have created a need to re-evaluate the problem of divorce and retirement in the military community. This need has become especially vital, because the military has transitioned from the legacy

retirement system to the Blended Retirement System (BRS). To a certain degree, this retirement model shifts a portion of the financial risk to servicemembers and their family members as they will need to make their own investment decisions in an uncertain economic market to protect assets in their defined contribution plans. In addition, significant threats to the overall economy posed by disasters such as the exponential spread of the Novel Coronavirus Disease 2019 (COVID-19) pandemic have created increasing unemployment and the need to rely more heavily on health care and Social Security support structures. This article argues that military marriage partners need to learn to function efficiently within this new and more fragile economic paradigm to ensure that their families are financially self-sufficient even if the partners divorce. In addition, as some servicemembers may fail to take action to provide for their intended surviving beneficiaries in the event of their divorce and subsequent death, the federal government should take action to effectuate the likely intent of these servicemembers at the time of their death. Furthermore, the federal government should take action to increase the economic sustainability of Social Security, which military marriage partners may need to rely upon after divorce as many may struggle financially to support separate households.

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.

Klug, Heinz, '[Time for a Social Solidarity Tax?](#)' (University of Wisconsin Legal Studies Research Paper No 1604, 17 August 2020)

Abstract: Covid-19 is transforming the world, but we do not yet know how much. Across the globe the pandemic has exposed and exacerbated social and economic problems. From medical systems to livelihoods, Covid-19 is revealing how inequality impacts death rates, job losses,

education, and housing. In many societies, including the United States, it has also exposed how these gross inequalities fall along racial and ethnic lines, with devastating impacts on marginal individuals, poor and minority communities. This article looks back at the comparative historical experience of wealth taxes and capital levies in Europe and Asia to put the present calls for wealth taxes in perspective and to suggest that a Social Solidarity Tax designed with this history as a guide may be necessary to address the coming economic catastrophe.

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.

Lipman, Francine J, Nicholas A Mirkay and Palma Joy Strand, '[U.S. Tax Systems Need Anti-Racist Restructuring](#)' (2020) 168(5) *Tax Notes Fed/State* 855-862

Abstract: #BlackTaxpayersMatter

The world has witnessed the brutal suffocation of George Floyd on a concrete sidewalk in Minneapolis. While this is but one more example of centuries of relentless violence against Black people, many are hoping that this tragic death might be a catalyst for meaningful change. Around the world, rallies, marches, and vigils have filled public spaces to call out institutional racism and demand systemic change. The rage, despair, exhaustion, and frustration with targeted discrimination has not only permeated cities and streets, but racism is being condemned at kitchen tables, by businesses, in social media, and from groups as sweeping as Sesame Street, KPop fans, and NASCAR. People across the globe are raising their voices and insisting that something be done to stop the routine ruin of Black lives.

Many are looking to Black leaders in every discipline, including finance, economics, and tax, and asking what they can do to help. And Black leaders — once again, after centuries of explaining, exposing, discussing, writing, speaking, preaching, demanding, and demonstrating that American institutions are implicitly and explicitly discriminatory and must fundamentally change — are providing thoughtful, cogent answers. They rise to the challenge again and again, hoping that this horrific racist episode will be different from countless previous episodes. They call for a transcendent time of tangible change. However, they are rightfully saying that this is not their burden to bear, and that those with the privileged status of race, income, wealth, and platforms must step up, move forward, and finally do something. We have heard from many of our Black and brown colleagues that they are 'sick and tired of being sick and tired.'

As writers, we understand the power of words. But it is also true that actions speak louder than words. As Maya Angelou said so poetically, 'When someone shows you who they are, believe them the first time.' (Emphasis added.) What can we as tax professionals, scholars, and advocates do to show our commitment to racial justice?

First, we must recognize that tax injustice is economic injustice, which leads directly to income and wealth inequality; pervasive poverty; and the compromised health, welfare, and safety of communities of color. The immorally high and persistent 32 percent rate of poverty for Black children and the 380 percent higher death rate of Black individuals from COVID-19 as compared with their white counterparts are real-world problems that can be remedied. However, real remedies will require all hands on deck, because these issues are long-standing systemic harms created and perpetuated by federal, state, and local institutions over the last 400 years.

This article will help you think more critically about these issues. It discusses the racist history of U.S. tax systems, prescribes anti-racist action items, and provides a wealth of referenced readable resources.

Marr, Emma, 'Tax in the Time of COVID-19' [2020] (May) *New Zealand Law Journal* 122, 127

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.

Miller, David S and Sean Webb, '[The Tax Provisions of the HEALS Act](#)' (SSRN Scholarly Paper ID 3664120, 30 July 2020)

Jurisdiction: USA

Abstract: This paper summarizes the tax proposals in the Health, Economic Assistance, Liability Protection and Schools Act (HEALS Act) introduced on July 27, 2020.

Morton, Elizabeth and Sarah Hinchliffe, 'The Potential for the Unintentional Loss of Tax Losses in the COVID-19 Environment' (2020) 23(5) *Tax Specialist* 210-223

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.

Newman, Joel S, '[Is Self-Quarantining a Deductible Medical Expense?](#)' (2020) *University of Illinois Law Review Online* 117-124

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.

O'Hare, Robert and Jefferson VanderWolk, 'Digitalisation: Where Are we Headed?' (2020) 1498 *Tax Journal* 22-24

Jurisdiction: UK

Abstract: Examines the implications of the coronavirus pandemic, Brexit and the quest for trade agreements for the UK digital services tax. Considers progress made so far by the OECD towards digital services taxation, and the US call for a pause.

Ooi, Vincent, '[Revisiting the Automation Tax Debate in Light of Covid-19 and Resulting Structural Unemployment](#)' (SMU School of Law Research Collection No 3169, Singapore Management University, July 2020)

Abstract: As lockdowns ease around the globe and businesses reopen, the threat of jobs being automated by machines and workers being displaced as a result has significantly increased. Businesses must keep the number of workers on site to a minimum to comply with safe distancing measures. Under these constraints while social distancing remains the norm, automation might be the way forward for companies that still want to continue production while minimising human contact. The threat of a workforce being replaced by robots and automation, a threat that has already alarmed the labour movement, is heightened with Covid-19. There will be considerable layoffs.

Pirlot, Alice, Richard Collier and John Vella, '[Tax Policy and the COVID-19 Crisis](#)' (University of Oxford Centre for Business Taxation, Working Paper No 20/01, June 2020)

Abstract: This article provides some preliminary thoughts on tax policy and the COVID-19 crisis. In the first part, it discusses fiscal measures available to policymakers in response to the COVID-19 crisis. The role of taxation will evolve over the different phases of the pandemic: measures have already been adopted to respond to the crisis in the short-term, but questions remain as to the types of measures that should be adopted in the medium and longer-term. In the second part, this article discusses the current and possible future effects of the pandemic on international tax policy.

Ryznar, Margaret, '[Evaluating Proposed Deductions for the COVID-19 Pandemic](#)' (2020) 96(12) *Tax Notes State* 1469-1471

Jurisdiction: USA

Abstract: This article examines two tax proposals recently made by U.S. government leaders in response to the coronavirus pandemic: that state and local tax deduction caps should be lifted and that entertainment expenses should again be deductible.

Ryznar, Margaret, '[Emergency Funds in the Wake of the Coronavirus](#)' (2020) 96(1) *Tax Notes State* 65–66

Abstract: The CARES Act targeting the economic effects of the COVID-19 pandemic allows taxpayers to withdraw up to \$100,000 from their retirement savings, such as section 401(k) plans, without the typical 10% penalty for early withdrawal. However, retirement accounts do not make for ideal emergency funds. This Article therefore advocates that future legislation should incentivize separate savings funds.

Ryznar, Margaret, '[Extending the Charitable Deduction Beyond the Covid-19 Pandemic](#)' (2020) 167(3) *Tax Notes Federal* 463–464

Abstract: While the importance of the charitable deduction decreased in the 2017 tax reform, it has returned during the COVID-19 pandemic with the CARES Act. This Article lays out the reasons that the limited above-the-line charitable deduction authorized by Congress during the coronavirus pandemic should remain a permanent feature of U.S. tax law.

Shanske, Darien, '[How the States Can Tax Shifted Corporate Profits: An Application of Strategic Conformity](#)' (2020) *Southern California Law Review* (forthcoming)

Abstract: The combination of pandemic, recession and federal dysfunction has put severe fiscal strain on the states. Given the scale of the crisis and the essential nature of the services now being cut, it would be reasonable for states to contemplate inefficient – and even regressive – revenue-raising measures. Yet surely they should not start with such measures. They should start with making the efficient and progressive improvements to their revenue systems that they should have made anyway. Improving the taxation of the profits of multinational corporations - the topic of this Article - represents a reform that would be efficient, progressive and relatively straightforward to administer. Not only would such a reform thus represent good tax policy, but it would raise significant revenue. And, if substantial revenue, efficiency, progressivity and administrability are not sufficiently motivating, then I will also add that it would be particularly appropriate to make these changes during the pandemic so as to raise revenue from those best able to pay during the current crisis. To be sure, the argument that

states can and should tax multinational corporations more has the whiff of paradox. After all, there is general consensus that no nation-state is currently taxing multinational corporations very effectively and, further, that subnational governments are in an even worse position to do so. This is because MNCs can exploit the mobility of capital even more easily between parts of the same country. Nevertheless, I will argue that the American states find themselves in a particularly strong position to do better at taxing MNCs and this is in part precisely because of the missteps made at the federal level. The Tax Cuts and Jobs Act ('TCJA'), passed in December 2017, contained several provisions, including rules concerning Global Intangible Low-Taxed Income (or 'GILTI'), that were meant to combat income stripping. The GILTI provision identifies foreign income likely to have been shifted out of the US and subjects it to US tax. In this Article, I argue that the states should and can tax GILTI income. The basic policy argument is simple: states should not miss a chance to protect their corporate tax bases. The amount of revenue at stake is not trivial; it could be as high as \$15 billion/year for the states as a whole or the equivalent of a 30% boost in corporate tax collections. The basic legal argument is also simple: it cannot be the case – and it is not the case – that states need to take corporations at their word as to where their income is earned. If the states can make a reasonable argument that nominally foreign income has in fact been shifted out of the US, then their choices as to their tax system should be respected. This Article makes several other core arguments. First, the Article argues that returning to mandatory worldwide combination as a complete alternative to GILTI conformity would be preferable to GILTI conformity alone. Second, the Article argues that offering taxpayers a choice between GILTI conformity and worldwide combination is also preferable to GILTI conformity alone. Finally, this Article places all these issues in a larger framework of strategic conformity. As with GILTI, the states should look for other opportunities where they can take advantage of federal miscues while also advancing sound tax policy.

Taxation and the Social Contract in a Post-Pandemic Era: Domestic and International Dimensions

(Symposium, jointly hosted by Afronomicslaw, the United Nations Development Programme (Africa) and the Centre for the Study of Economies of Africa, July 2020)

Abstract: This symposium addresses issues such as the low tax to GDP ratio in developing states, the broken social contract in these countries and the reforms needed to repair the social contract. The convener, Dr. Alexander Ezenaguin, accepting the invitation of Afronomicslaw to

host the tax symposium, called upon tax practitioners, academics, policy experts, philosophers, administrators, to offer insights on the relationship between taxation and the social contract.

- Alexander Ezenagu, '[Symposium Introduction: Taxation and the Social Contract in a Post-Pandemic Era: Domestic and International Dimensions](#)'
- Douglas Bamford, '[The Social Contract, Tacit Consent, and International Taxation](#)'
- Edem Andah, '[Taxation and the Social Contract in a Post-Pandemic Era: Domestic and International Dimensions](#)'
- Allison Christians, '[Three principles for a New Global Contract on Tax](#)'
- Sol Picciotto, '[Taxation of Transnational Corporations and the Social Contract](#)'
- Osarugue C Obayuwana, '[The Fiscal Social Contract – Looking Beyond the Theory](#)'
- Monica Victor, '[Taxing for Vulnerabilities](#)'
- Fernando C Saldivar, '[Integral Ecology and Taxation: Catholic Social Teaching Pushing the Frontiers of Social Contract Theory in the Post-Pandemic Era](#)'
- Ivan Ozai, '[The Shift Toward a Distribution-Based Tax Framework in a Post-Pandemic World](#)'
- Mustapha Ndajiwo, '[Why African Countries Need to Rethink Tax Incentives in the Post-Pandemic Era](#)'
- Chidiebere Eze-Ajoku, '[Tax Expenditures: A post-Pandemic Bond in Social Contracts](#)'
- Tarcisio Diniz Magalhaes, '[A Global Excess Profits Tax for a Post-Pandemic World](#)'
- Abdul Muheet Chowdhary, '[Significant Economic Presence Laws Key to Fulfilling the Post-Pandemic Social Contract](#)'
- Kenneth Njuguna and Jade Makory, '[An Analysis of Unilateral Digital Tax Measures vis-à-vis Redefined Fiscal Social Contracts and Inertia towards Global Consensus: A focus on the Post-COVID-19 Era](#)'
- Nana Ama Sarfo, '[Sustainable Finance and Investment in the Age of COVID-19](#)'
- Oluwabusayo Aderoju, '[Departing from the OECD's Conversation: Post-Pandemic Tax Policy Options for African Countries](#)'
- Emmanuel Eze, '[Fiscal Social Contract and Taxation in a Post COVID-19 Pandemic Africa](#)'
- Olumide K Obayemi, '[Digitalization of Nigerian Businesses: Tax Challenges Post COVID-19](#)'
- Osasenaro Ese Omo-Osagie, '[Post-pandemic Opportunities for Strengthening The Fiscal Social Contract In Nigeria](#)'
- Chike Jude Emedosi, '[Global Digital Taxation in the Era of Covid-19: An African Perspective](#)'

- Alexander Ezenagu and Eytan Tepper, '[Adopting a Universal Tax Regime for Outer Space Exploration](#)'

Weeks, Claire and Emma-Jane Weider, 'The Statutory Residence Test and Covid-19' [2020] (5) *Private Client Business* 279-284

Jurisdiction: UK

Abstract: Discusses, with reference to the travel restrictions imposed in response to the coronavirus pandemic, the range of “exceptional circumstances” in which time spent in the UK may be disregarded for the purposes of taxation and the statutory residence test under the Finance Act 2013 Sch.45. Reviews the status of HMRC guidance related to COVID-19, and gives practical examples of the limitations of the rules and guidance.

Willis, Mark, 'Tax Credits and Coronavirus' (2020) 276 *Welfare Rights Bulletin* 8-9

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.

Wong, Andrew and David Mattingly 'Managing Remotely Raises Unique Tax Issues for Businesses' (22 July 2020) 4 *Emerging Areas of Practice Series - COVID-19 (Coronavirus)* Westlaw Canada

Jurisdiction: Canada and USA

Introduction: In this article, we discuss recent Canadian and U.S. tax authority guidance that organizations should consider as they adjust their business management strategies to accommodate for the “new normal” work environment.

Zelinsky, Edward A, '[New York's Ill-Advised Taxation of Nonresidents During COVID-19](#)' (Cardozo Legal Studies Research Paper No 614, 7 July 2020)

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, aviation law, space law and land transport.

Air and Space Law (2020) 45 (Special issue)

This special issue includes the following articles:

- Cassar, Roberto, 'Evolution or Devolution: Aviation Law and Practice After COVID-19' 3-16
- De Leon, Pablo Mendes, 'National Reflexes Following the COVID-19 Outbreak: Is Sovereignty Back in the Air?' 17-38
- Masson-Zwaan, Tanja, 'Combating COVID-19: The Role of Space Law and Technology' 39-59
- Truxal, Steven, 'State Aid and Air Transport in the Shadow of COVID-19' 61-82
- Ratajczyk, Mikolaj and Rita Sousa Uva, 'COVID-19 Pandemic and the Measures Taken by the European Union Aviation Safety Agency' 95-106

- Grigorieff, Cyril-Igor and Chrystel Erotokritou, 'EU Regulation No 261/2004 on Air Passenger Rights: The Impact of the COVID-19 on Flight Cancellation and the Concept of Extraordinary Circumstances' 123-141
- Trimarchi, Andrea, Robert Lawson and Andrew Harakas, 'The Potential for Exposure of Air Carriers to Passenger Liability in Respect of COVID-19' 143-153
- Hanley, Donal, 'COVID-19 and International Aircraft Financing Law' 155-171
- Jung, Lukas C and Lesley Jane Smith, 'COVID-19 and Its Impact on Space Activities: Force Majeure and Further Legal Implications' 173-193
- Benjamyn I Scott et al, 'National Aviation Law Responses to COVID-19 ' 195-272

Banerjee, Somen, '[Will the Security Architecture of the Western Pacific Change Post-COVID 19?](#)' (2020) *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.

Braakman, August J, 'Climate and COVID-19: Will the Shipping Industry Succeed in Charting the Right Course Between Scylla and Charybdis?' (2020) 26(2) *Journal of International Maritime Law* 102-108

Abstract: Discusses the EU institutions' need to balance Member States' measures towards zero climate change emissions and their aid measures to address the coronavirus pandemic. Examines

the potential conflicts arising from the shipping industry's plight.

Carr, Chris and Cyrus A Ramezani, '[COVID-19, Force Majeure, and the Legal and Financial Implications of Utilizing Reefer Shipping Containers](#)' (2020) 87(1) *Journal of Transportation Law, Logistics and Policy* (forthcoming)

Abstract: This article begins by discussing the rise of the refrigerated ('reefer') container industry and business model. It is important for readers to understand the growing importance of reefers to U.S. export, and how they contribute to supply chain complexity and port congestion. Next, we address how the Corona Virus (COVID-19) impacted reefer container transport. We then discuss how ocean carriers are utilizing the Force Majeure doctrine to their advantage in their transport of reefer containers, and the related legal implications of them doing so. We also analyze whether insurance covers cargo owner loss in this situation and what happens when the cargo owner decides to just walk away and abandon reefer containers when the ocean carrier exercises its right to discharge the cargo at an alternative port of convenience. The article concludes with recommendations regarding how cargo owners can move forward to analyze and mitigate risk.

Dale, Amy, 'COVID-19: All out To' (2020) (66) *LSJ: Law Society of NSW Journal* 40–43

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?

Kaye, Stuart, 'Port Access and Assistance to Cruise Ships during the COVID-19 Pandemic' (2020) 94(6) *Australian Law Journal* 420-426

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.

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

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

Tarr, J, A Tarr and K Paynter, 'Transport, Drones and Regulatory Challenges: Risk Accountability Meets COVID Fast Tracking of a Critical Industry' (2020) 48(2) *Australian Business Law Review* 202-211

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

Browne, Darryl, 'Elder Law and Succession' [2020] (66) *LSJ: Law Society of NSW Journal* 99–100

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.

Duffy, Lori M and Cecile Ko Brock, 'The Impact of COVID-19 on Estate Planning and Administration' (18 June 2020) 1 *Emerging Areas of Practice Series: COVID-19 (Coronavirus)*, Westlaw Canada
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.

Horton, David and Reid K Weisbord, '[COVID-19 and Formal Wills](#)' (2020) 73 (May) *Stanford Law Review Online* 18-27

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.

Jacobs, Johann, 'A COVID-19 Health Check for the Wills Act' (2020) 20(6) *Without Prejudice* 38–40
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.

Jackson, Kym, 'Law in the Time of COVID-19: Changes in Succession and Probate Practice' (2020) 42(6) *Bulletin (Law Society of South Australia)* 16-17

Jurisdiction: Australia

Abstract: Before the earliest most tentative warnings had sounded in relation to the COVID-19 pandemic, I had taken the pre-emptive precaution of moving to a regional area with my family. This proved to be sound and - at a personal level at least - the worst consequences of the virus were avoided. But complete avoidance was to remain elusive: legal services have been affected (though certainly not as much as some other businesses), as well as the way we deliver those services.

Popovic-Montag, Suzana and Nick Esterbauer, '[Maintaining a Wills and Estates Practice During COVID-19](#)' [2020] (April) *Toronto Law Journal* 1-4

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.

Smyth, Christine, 'What's New in Succession Law: COVID Conundrums: Consideration Needed on the Question of "Presence"' (2020) 40(4) *Proctor* 44–45

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.

['COVID-19: Governments Must Promote and Protect Access to and Free Flow of Information During Pandemic'](#) - Joint Statement issued by the United Nations, the Inter-American Commission for Human Rights, and the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (19 March 2020)

This joint statement urges governments to provide truthful, reliable and accessible information, refrain from blocking internet access, protect the work of journalists, address disinformation, and limit the use surveillance technology to track the spread of the coronavirus in order to rigorously protect patient privacy, individual rights to privacy, journalistic sources and other freedoms, and to ensure non-discrimination

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 Law Institute, [ELI Principles for the COVID-19 Crisis](#)

These principles are:

- (1) fundamental values, principles and freedoms;
- (2) non-discrimination;
- (3) democracy;
- (4) lawmaking;
- (5) justice system;
- (6) privacy and data protection;
- (7) borders and freedom of movement;
- (8) free movement of goods and services;
- (9) employment and the economy;
- (10) continuity of relationships at a distance;
- (11) education;
- (12) moratorium on regular payments;
- (13) force majeure and hardship;
- (14) exemption from liability for simple negligence; and
- (15) return to normality.

European Union: European Agency for Fundamental Rights, [Fundamental Rights of Refugees, Asylum Applicants and Migrants at the European Borders](#) (27 March 2020)

Council of Europe (CoE) and European Union (EU) Member States have an undeniable sovereign right to control the entry of non-nationals into their territory. While exercising border control, states have a duty to protect the fundamental rights of all people under their jurisdiction, regardless of their nationality and/or legal status. Under EU law, this includes providing access to asylum procedures. In recent weeks, states in Europe have taken measures to protect their borders to address public order, public health, or national security challenges. This note summarises some key safeguards of European law as they apply at the EU's external borders, bearing in mind that relevant CoE instruments apply to all borders.

European Union: European Commission, [Communication from the Commission COVID-19: Guidance on the Implementation of Relevant EU Provisions in the Area of Asylum and Return Procedures and on Resettlement](#) (C(2020) 2516 Final, 16 April 2020)

Abstract: The Guidance illustrates how to ensure continuity of procedures as much as possible while fully ensuring the protection of people's health and fundamental rights in line with the EU Charter of Fundamental Rights. At the same time, it recalls the fundamental principles that must continue to apply, so that access to the asylum procedure continues to the greatest extent possible during the COVID-19 pandemic. In particular, all applications for international protection must be registered and processed, even if with certain delays. Emergency and essential treatment of illness, including for COVID-19, must be ensured.

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.

European Union: European Group on Ethics in Science and New Technologies, [European Solidarity and the Protection of Fundamental Rights in the COVID-19 Pandemic](#) (2 April 2020)

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 disproportionately impact internally displaced trafficked persons and people at risk of trafficking. It should be read in conjunction with the Global Protection Cluster COVID-19 guidance and anti-trafficking response guidance.

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:

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

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](#).

- [Coronavirus and Contracts](#) - this document provides an overview of the law in relation to the discharge of contracts in Victoria with brief commentary on how the principles might be applied to circumstances arising from the COVID-19 pandemic. Topics covered include:
 - Force majeure clauses;
 - The common law doctrine of frustration;
 - Discharge by exercise of right;
 - Right to terminate for breach of contract;
 - Repudiation (anticipatory breach of contract); and
 - Restitution.

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 Commons Justice Committee

- [Coronavirus \(COVID-19\): The Impact on the Legal Professions in England and Wales](#) (3 August 2020)
- [Coronavirus \(COVID-19\): The Impact on Courts](#) (30 July 2020)

House of Commons Digital, Culture, Media and Sport Committee

- [Impact of COVID-19 on DCMS sectors: First Report](#) (23 July 2020)
- [Misinformation in the COVID-19 Infodemic](#) (21 July 2020)
- [The Covid-19 crisis and charities](#) (4 May 2020)

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:

- [‘Covid-19 and the Rights of Persons With Disabilities: Guidance’](#)
- [‘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)
- [The Covid-19 Crisis: Key Protection Messages](#) (UNHCR, 31 March 2020)
- [Risk Communication and Community Engagement \(RCCE\) – COVID-19](#), (UNHCR, 21 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, DATABASES, 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)
- Andrew Geddis, '[The New Zealand Lockdown and the Law](#)' (11 May 2020)
- Lee Marsons, '[Covid-19 and the UK Administrative State](#)' (31 March 2020)
- Jonathan Liberman, '[COVID-19 and Administrative Powers in Australia](#)' (30 March 2020)

American Association of Law Libraries, FCIL-SIS Asian Law Interest Group - Asian Legal Responses to COVID-19 Newsletter

This newsletter highlights legal responses to COVID-19 in Asian countries.

- [First Monthly Newsletter](#) (June 2020) - covers Armenia, China, India, Indonesia, Japan, Philippines, Singapore, South Korea, Taiwan and Thailand
- [Second Monthly Newsletter](#) (July 2020) – covers Afghanistan, Azerbaijan, Bangladesh, Brunei, China, Cyprus, Indonesia and Vietnam
- [Third Monthly Newsletter](#) (August 2020) - covers Malaysia, Mongolia, Myanmar, Nepal and Pakistan

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 original articles to video recordings. Contributions can be browsed by topic, region and jurisdiction.

[Topics](#) include: Celebrating Asian Australians; Civil Society; Courts, Lawyers and the Administration of Justice; Daily Life; Finance and Business; Government / Governance; Health Care; and Labour.

Examples of recent [articles](#) include:

- Matthew Harding and Hui Jing, '[COVID-19 and Charity Law in China](#)' (30 July 2020)
- Ploykaew Porananond and Wendy Ng, '[Competition Law and COVID-19 in Asia: Thailand](#)' (28 July 2020)
- [Citizenship, Constitutionalism and Civil Liberties: A Briefing Note on Recent Developments in India](#) (17 July 2020)

- Iain Payne, '[Transition in Crisis: COVID-19 and Federalisation in Nepal](#)' (16 July 2020)

[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.

CATO Institute [Pandemics and Policy](#)

This US institution publishes papers, blogs, podcasts and research briefs on topics such as COVID-19 and Foreign Policy, COVID-19 and Labor Regulation, Easing Regulatory Burden on Health Care, Economic Impact of COVID-19, Homeschooling & Education during COVID-19, and the Proper Role of Government in a Pandemic.

[CoronaNet Research Project: Tracking Government Responses Towards Covid-19](#)

This largescale database compiles government responses to the pandemic. It contains over 15,000 policy announcements from governments around the world visible since December 31st 2019. Data can be viewed and downloaded by eg: country, type of policy/measure. There are visualisations and useful country compare features.

The data yields detailed information on:

- The level of government responding to the corona virus crisis (e.g. national, regional/state, local/municipal)
- Specific actions taken (e.g. travel bans, investments in the public health sector, etc.)
- Geographical areas targeted by these measures
- Who or what they are targeting (e.g. foreigners, ventilators)
- Compliance mechanisms (e.g. mandatory or voluntary)
- Timing of policy responses.

In addition to the government response datasets, the database also includes datasets on

- Tests from the CoronaNet testing database
- Cases/deaths/recovered from the JHU data repository
- Country-level covariates including GDP, V-DEM democracy scores, human rights indices, power-sharing indices, and press freedom indices.

For those not familiar with using statistical programmes, there is a learning platform.

COVID-19 Law Lab

The COVID-19 Law Lab initiative gathers and shares legal documents from over 190 countries across the world. It can be searched by topic, country and region. The Lab is a joint project of the World Health Organization (WHO), United Nations Development Programme (UNDP), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the O'Neill Institute for National and Global Health Law and Georgetown University.

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).

HEIN ONLINE - COVID-19 in America: Response, Issues, and Law (subscriber access only – University of Melbourne access via [this link](#))

This database compiles federal government reports and publications on the various ways COVID-19 has impacted every aspect of life. It is organised into the following areas of impact: Economics, Global, Health, and Society. It also includes scholarly articles. There is a useful [Libguide](#) to help use and navigate this database.

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 [COVID-19 Articles](#)

This contains many articles on different topics, such as property law, contract law, labour law, legal practice, court, human rights and consumer law. For example:

- [Force majeure and breach of contracts in Argentina](#) (1 October 2020)
- [Covid-19: use of face masks raises health and environmental questions](#) (28 September 2020)
- [Covid-19: regulators confronted with scourge of ‘fake cures’](#) (28 September 2020)
- [Amendments to India’s Companies Act in light of the Covid-19 pandemic](#) (23 September 2020)
- [Ugandan LGBTI community left vulnerable in pandemic lockdown](#) (10 September 2020)
- [Delivery of justice in the time of Covid-19](#) (21 August 2020)
- [Covid-19: pandemic highlights holes in workers’ rights](#) (7 May 2020)

International Commission of Jurists, [Human Rights in the time of COVID-19: Front and Centre – ICJ news, Articles, Op-Eds, Legal Blogs, Videos](#)

Includes the following articles, opinion pieces and briefing papers:

- [COVID-19 pandemic exposes India’s housing crisis – ICJ Briefing Paper](#)

- [Judiciaries during COVID-19: South American experience](#)

International Law Blog [COVID-19 page](#)

This page includes posts such as:

- Ziad Al Atiyah, '[A Crisis of Compliance Regime in the World Health Organisation?](#)' (21 May 2020)
- 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](#)'
- Rafiqha Qurrata A'yun and Abdil Mughis Mudhoffir, '[Indonesia is Exploiting the COVID-19 Crisis for Illiberal Purposes](#)'
- Delia Lin, '[Lost in Translation: COVID-19 and China's "Wet Markets"](#)'

OpenGlobalRights

The [COVID-19](#) part of this organisation's website contains articles on the human rights challenges of the pandemic. See for example:

- Citlalli Ochoa and Lisa Reinsberg 'Cancelled, Postponed, Virtual: COVID-19's Impact on Human Rights Oversight' (17 July 2020)
- 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](#)

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](#), and then select *Law* from the subject list in the left-hand menu.

The Regulatory Review - [Comparing Nations' Responses to COVID-19](#)

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:

- Richard Parker, [Lessons from New Zealand's COVID-19 Success](#) (9 June 2020)
- Mariana Urban and Eduardo Saad-Diniz, [Why Brazil's COVID-19 Response is Failing](#) (22 June 2020)
- Josefina Court and José Tomás Correa, [Chile's Political and Institutional Response to COVID-19](#) (24 June 2020)
- Ana Santos Rutschman, [Portugal's Response to COVID-19](#) (1 July 2020)
- Neysun A Mahboubi, [Comparative Administrative Law Matters in the Fight Against COVID-19](#) (2 July 2020)
- Cary Coglianese, [Law, Leadership, and Legitimacy in a Time of Disease](#) (6 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'.