



**BERKELEY CENTER ON  
COMPARATIVE EQUALITY  
& ANTI-DISCRIMINATION  
LAW**

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The journal is intended to inform our members about interesting new papers in our field, by distributing abstracts and links to the papers. We will produce the journal here at Berkeley Law, with co-editors rotating each month, assisted by our editorial assistant, Berkeley student Talia Harris. If you'd like to serve as a co-editor, please let me know. (I have on my list Alice Margaria, Lynda Crowley-Cyr, Alysia Blackham, Mark Bell, Sara Benedi and Anton Kok. I apologize to those who have also volunteered, and to whom and I haven't replied; it's been a little chaotic here. Please remind me of your willingness to help.)

Warm regards,

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**Abbas, Muna; Elaf Al-Wohaibi; Jonathan Donovan; Emma Hale; Tatyana Marugg; JonB Sykes; Molly K. Land; Richard Ashby Wilson:** [Invisible Threats: Online Hate Speech Against Human Rights Defenders in Guatemala](#). American Bar Association Center for Human Rights, 2019

Invisible Threats documents a coordinated campaign on social media to defame, harass, intimidate, and incite violence against human rights defenders in Guatemala. Social media users with formal and informal connections to the government, military and the business community, routinely characterize human rights defenders as criminals, terrorists, and communists. Using rhetoric from the thirty-six-year Guatemalan civil war and genocide, the coded speech of state-aligned actors often evades scrutiny under the content moderation policies of social media companies (SMCs). These campaigns create the conditions in which physical attacks on defenders are not prevented, investigated, or punished by the state. The report makes two primary recommendations. First, SMCs must take measures to prevent their platforms from being used to target, harass, and intimidate human rights defenders, or they risk being complicit in any resulting harms and injuries. Drawing on international law that prohibits states from targeting individuals for serious harm based on their political opinion, the report recommends that SMCs designate defenders as temporarily protected groups in contexts like Guatemala characterized by coordinated state persecution. Second, we recommend that social media platforms engage in context-specific content moderation, which implies dedicating more resources to distinguishing the coded meaning of speech and understanding the differential impact of the same words in distinct political settings. Companies might create interdisciplinary teams that draw upon the expertise of academics, linguists, and lawyers. Such efforts should focus first on hate speech in countries with weak rule of law and a history of violent aggression against protected groups. SMCs should provide heightened scrutiny of content in “critical countries,” engage localized personnel and guidance, and consider the greater impact of the speaker in monitoring and possibly de-platforming high profile accounts. SMCs can also improve flagging processes to facilitate the gathering of context-specific information by utilizing verified users as endorsed content moderators, creating and implementing online and social media literacy training programs, and creating appeals processes. These recommendations, when taken together, will increase protection for human rights defenders on the platform — both online and offline.

**Ball, Carlos A.:** [Gender-Stereotyping Theory, Free Expression, and Identity](#). William & Mary Bill of Rights Journal, Vol. 28, 2019



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This Article argues that the expressive components of gender-stereotyping theory serve to delink the equality protections afforded by that theory from fixed and predetermined identity categories in helpful and positive ways. Many have viewed American antidiscrimination law as being normatively grounded in the notion that there are certain identities that, because of their stable and immutable characteristics, deserve equality-based protections. Gender-stereotyping theory can help make the normative case for a more pluralistic understanding of equality, one that is grounded in the need to protect the fluid and multiple ways in which gender is performed or expressed rather than focusing, as American antidiscrimination law has traditionally done, on protecting limited categories of essentialized, fixed, and finite identity categories. In short, gender-stereotyping theory, properly understood, offers a practical way of articulating and implementing a theory of equality that does not depend on the existence of a limited number of privileged identities. A proper understanding of gender-stereotyping theory — one that focuses on how expressive performances of gender and sexuality identities may trigger responses by defendants that are motivated by sex stereotypes — can help antidiscrimination law move away from the notion that plaintiffs must identify according to certain fixed, stable, and predetermined categories in order to succeed in their equality claims.

**Bell, Mark:** [People with Intellectual Disabilities and Employment Discrimination Law: A US Case Study](#). *International Journal of Labour Law and Industrial Relations* Volume 35 (2019).

This article explores how anti-discrimination law has been applied in relation to employment discrimination faced by people with intellectual disabilities. Although disability discrimination laws are now found in many states, there has been relatively little litigation by those with intellectual disabilities as regards employment discrimination. This article examines experience in the USA in order to identify the potential of anti-discrimination law, as well as its limitations in practice. It considers litigation brought by individual plaintiffs, as well as enforcement actions by public bodies. This concerns employment in the open labour market, but also sheltered employment schemes. The article concludes by reflecting on what lessons may be derived from US experience.

**Boni-Saenz, Alexander A.:** [Age, Equality, and Vulnerability](#). 21 *Theoretical Inquiries in Law* 161 (2020)

This Article uses age as an entry point for examining how temporal and methodological issues in egalitarianism make substantive equality an unattractive goal for vulnerability



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theory. Instead, vulnerability theory should adopt a continuous doctrine of sufficiency, which is a better fit with vulnerability theory's underlying aims and rhetoric. Instead of evaluating what individuals have in relation to others, sufficiency refocuses the inquiry on whether we have enough throughout the lifecycle. In the context of vulnerability theory, enough should be defined as the capability to be resilient as guaranteed by the responsive state.

**Byrnes, Andrew C; Israel Issi Doron; Nena Georgantzi; Bill Mitchell; Bridget Sleap:** [The Right of Older Persons to Work and to Access the Labour Market](#). (2019) Submission to the eleventh session of the United Nations General Assembly Open-ended Working Group of Ageing (6 to 9 April 2020)

This paper was prepared as a submission to the United Nations General Assembly Open-Ended Working Group on Ageing, which is considering the desirability of the development of a new international treaty on the human rights of older persons. The paper explores issues relating to the participation of older persons in the labour market, in particular the barriers to their entry to and continued participation in paid work. It notes that the 'work' performed by older persons includes not only paid work in the formal or informal economies, but work that is unremunerated and often goes unrecognised including in national accounts (such as caring and volunteer work). The paper notes the role that ageism plays in shaping and restricting the participation of older persons in work, and describes the particular challenges and discrimination that older women face in the context of work and obtaining access to the labour market. It also addresses the issue of mandatory retirement ages and whether these are in principle or in practice consistent with the right to equality and non-discrimination and the right to work of older persons. The paper concludes with recommendations as to the normative elements that should be included in any new treaty on the human rights of older persons.

**Carbado, Devon W.:** [Footnote 43: Recovering Justice Powell's Anti-Preference Framing of Affirmative Action](#). 53 UC Davis Law Review 1117 (2019)

For more than four decades, scholars have been debating the constitutional parameters of affirmative action. Central to this debate is Justice Powell's opinion in *Regents of the University of California v. Bakke*. For good or bad, that opinion has set not only the doctrinal terms on which lawyers litigate and judges adjudicate the constitutionality of affirmative action, but the normative terms on which many in the public arena discuss the policy as well. However, in all the controversy and contestation over affirmative action, little attention has been paid to footnote forty-three of Justice Powell's *Bakke* opinion.



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There, Justice Powell suggested that “[r]acial classifications in admissions conceivably could serve a fifth purpose . . . fair appraisal of each individual’s academic promise in the light of some cultural bias in grading or testing procedures.” While elsewhere in *Bakke* Justice Powell consistently described affirmative action as a “preference,” in footnote forty-three he maintained that if “race and ethnic background were considered only to the extent of curing established inaccuracies in predicting academic performance, it might be argued that [affirmative action is] no ‘preference’ at all.” For the most part, scholars have ignored this footnote. Moreover, no Supreme Court justice has ever referenced footnote forty-three, and only one judge has cited it.

This neglect is unjustified. Footnote forty-three could be to affirmative action case law what *United States v. Carolene Products Co.*’s footnote four has been to debates over the remedial scope of equal protection jurisprudence more generally — an analytical, normative, and doctrinal anchor. More precisely, footnote forty-three could fundamentally shift the debate about affirmative action in important ways. For one thing, footnote forty-three provides doctrinal support for the reframing of affirmative action away from the misleading conceptualization of the policy as a preference to a more appropriate understanding of affirmative action as a countermeasure. Such a countermeasure conceptualization would make the application of strict scrutiny to affirmative action normatively and doctrinally suspect and would give proponents of affirmative action offensive, rather than merely defensive, arguments in support of the policy. Finally, taking the implications of footnote forty-three seriously could, and should, shape the next wave of affirmative action litigation, including the trajectory of the lawsuits against Harvard University and the University of North Carolina.

Drawing on footnote forty-three, this Essay urges progressive scholars, lawyers, and judges to do what, for the past forty years, they have largely not done: force conservatives — on and off the courts — to affirmatively defend, rather than merely take for granted, their claim that affirmative action is a racial preference. That defensive posture would require conservatives to rebut an alternative claim — a claim with ever-growing empirical backing — that affirmative action should be understood as a countermeasure that mitigates the inequality problems Justice Powell articulated in footnote forty-three by improving the degree to which admissions regimes effectuate a “fair appraisal of each individual’s academic promise.”

**Carbado, Devon W.; Cheryl I. Harris:** [Intersectionality at 30: Mapping the Margins of Anti-Essentialism, Intersectionality, and Dominance Theory](#). 132 *Harvard Law Review* 2193 (2019)



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2019 marks thirty years since the publication of Kimberlé Crenshaw's groundbreaking article, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. While scholars across the disciplines have engaged intersectionality from a range of theoretical and normative vantage points, there has been little effort to analyze intersectionality in relation to two other enormously influential theoretical frameworks: Angela Harris's critique of gender essentialism and Catharine MacKinnon's dominance theory. This Essay endeavors to fill that gap. Broadly articulated, our project is to map how anti-essentialism, dominance theory, and intersectionality converge and to articulate the places where they do not. In the context of doing so, we advance three core claims. First, scholars erroneously conflate intersectionality with anti-essentialism and thus erroneously perceive a strong opposition between intersectionality and dominance theory on the view that dominance theory is essentialist and that intersectionality is not. In the context of disaggregating intersectionality from anti-essentialism, we contest the view that feminism and critical theory must always avoid essentialism to achieve normative commitments to social transformation. Second, we argue that scholars have largely overlooked the fact that dominance theory and intersectionality share a critique of conceptions of equality structured around sameness and difference. Third, we contend that while there is an affiliation between dominance theory and intersectionality, there is also at least some tension between their respective framings of race and gender. We explore this tension by examining how intersectionality potentially stages a "soft" critique of MacKinnon's defense of dominance theory against charges of essentialism in her provocatively titled essay, *From Practice to Theory, or What Is a White Woman, Anyway?*

Our hope is that the Essay will both challenge the prevailing ways in which many scholars, including some feminists and critical race theorists, frame anti-essentialism, intersectionality, and dominance theory, and underscore the critical importance of attending to how racial power is gendered and gender subordination is racialized. Much is at stake with respect to the theoretical terrain we mean to cover. In addition to taking women's theorizing seriously and facilitating the production of knowledge in historically marginalized areas of legal scholarship, we believe that engagements with anti-essentialism, intersectionality, and dominance theory have profound implications for the substantive form and content of political organizing, civil rights advocacy, and legal reform initiatives. Indeed, underwriting our effort in this Essay is the view that how we theorize social problems, including the subordination of women, necessarily shapes the scope and content of our social justice imaginary — which is to say, our freedom dreams.



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**Garimella, Sai Ramani; Parthiban B:** [Interrogating International Law and Scholarship for the Missing Narratives on Religious Misogyny in South Asia](#). *Jindal Global Law Review* Vol.10 Issue 2 Pages 223-245, 2019

International Human Rights Law, with its linear approach, addresses discrimination through the prohibition of its practice based on certain identified and mutually exclusive criteria. Such an approach results in masking the intersectional discrimination occurring from subjecting rights under one identified criteria to another, either within the same instrument or in related instruments. It also allows member States to adopt reservations or use limitation clauses in a manner that often leaves the rights of little value to a section of the population. Given the preoccupation with looking at an emancipatory role for international law and democratising spaces, international law scholarship has made a minimal effort to address to this intersectional aspect of discrimination in the context of gender. This research explores the absence of specific guidance from international law and its scholarship streams of TWAIL and FtAIL to understand the ways in which the intersectional discrimination flowing from religion works in the space of women's rights and the possible methodology to address it.

**Gerber, Paula; Claerwen O'Hara:** [Teaching Law Students About Sexual Orientation, Gender Identity and Intersex Status Within Human Rights Law: Seven Principles for Curriculum Design and Pedagogy](#). *Journal of Legal Education*, Volume 68, Number 2, 2019

Over the past two decades, sexual orientation, gender identity, and intersex status (SOGII) have become important aspects of human rights law. However, this reality is not widely reflected in the curriculum of human rights law programs. The reasons for this are varied but may include wariness about causing offense by using the wrong terminology or language and concern about the complexities and sensitivities surrounding different issues. This article aims to assist law school educators to overcome these concerns by providing curricular and pedagogical guidance relating to the effective and comprehensive incorporation of SOGII into a human rights law program. In particular, it provides recommendations for educators who wish to establish a stand-alone course on SOGII and human rights, as well as for those who would like to incorporate SOGII-related issues into a more general human rights law course.

**Ghadery, Farnush:** ['Sticking to Their Guns': The United Nations' Failure to See the Potential of Islamic Feminism for the Promotion of Women's Rights in Afghanistan](#). *TLI Think!* Paper 18/2019



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In recent years, peace and justice processes in post-conflict countries have turned into an industry of their own. With a variety of actors, norms and processes involved, the fields have not only expanded as areas of practice but also attracted considerable attention amongst scholars. Whilst the role of the international community in post-conflict states, particularly as part of peace and justice processes, has been subject of much scholarly debate, this paper focuses on international actors' attempts at advancing women's rights in predominantly Muslim post-conflict countries. It discusses the reluctance of the most significant international actor in a variety of post-conflict processes, namely the United Nations, to engage more closely with contextualised bottom-up approaches to women's rights advocacy under its Women, Peace and Security agenda. The paper focuses specifically on the United Nations' failure to see the potential of Islamic feminism in post-conflict Afghanistan as an alternative to its hitherto strategy of grounding women's rights in Western liberal conceptions of 'universal' human rights. It argues for a more contextual approach to women's rights advocacy by the United Nations that allows for the possibility of including non-hegemonic rights discourses as well as grants more attention to local bottom-up approaches.

**Harris, Samantha; KC Johnson:** [Campus Courts In Court: The Rise In Judicial Involvement In Campus Sexual Misconduct Adjudications](#). N.Y.U. Journal of Legislation & Public Policy Volume 22, Issue 1

This Article analyzes the recent wave of litigation involving students accused of sexual misconduct and tried in campus judiciaries. Historically, federal courts have concluded that universities themselves, rather than judges, are best suited to determine appropriate disciplinary procedures for adjudicating student conduct violations, but that has begun to change. The U.S. Department of Education's 2011 reinterpretation of Title IX, combined with the efforts of activist students, faculty, and administrators, pressured universities to adopt procedures that all but ensured schools would find more accused students responsible in campus sexual misconduct cases. Tentatively at first, and more aggressively in the past several years, courts have ruled against universities in lawsuits filed by accused students. Judges have expressed concerns about colleges failing to respect the due process or procedural fairness rights of their students, discriminating against accused students in violation of Title IX, and failing to adhere to their own contractual obligations. Since the 2011 policy change, more than 500 accused students have filed lawsuits against their college or university, a wave of litigation that has continued even after the Department of Education rescinded the 2011 guidance in 2017. More than 340 of those lawsuits have been brought in federal court; colleges have been





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on the losing end of more than 90 federal decisions, with more than 70 additional lawsuits settled by the school prior to any decision. While change is on the horizon in the form of proposed new Title IX regulations issued by the Department of Education, this rapidly evolving body of law is transforming the relationship between higher education and the judiciary in ways that have implications far beyond the particular issue of campus sexual misconduct

**Ip, Eric C.:** [The Problems of the Reasonable Person in Sexual Harassment Law](#). Hong Kong Journal of Legal Studies, v. 3, p. 49-63, 2009

The author examines and analyses the widely used "reasonable person" doctrine in the context of Hong Kong sexual harassment law from a comparative perspective. He argues that an individualized reasonableness standard (be it reasonable man, woman, or victim) is not the best approach to realizing the ends of eliminating sexual harassment due to its lack of substantive and consistent doctrinal meaning. He also argues that the root of the problem is a neglect of the unequal power positions between the aggressor and the victim in particular, in light of the subjective mindset of judges in applying the standard. The author is of the view that an overly simplistic view by relying on the reasonable person standard for sex discrimination cases, which involve moral, political, and gender-related judgments, are likely to result in substantive inequality rather than eliminating discrimination.

**Isailovic, Ivana:** [Gender Equality as Investment: EU Work-Life Balance Measures and the Neoliberal Shift](#)

The EU is often seen as one of the most progressive political organizations regarding gender equality, particularly in terms of work-life balance measures. These measures enable parents—especially women, who are predominantly primary caregivers—to reconcile their working and caregiving responsibilities. Since the 1970s, the EU has adopted a wide array of legislative measures and policies to tackle these conflicts, inspired to a large extent by feminist activists' and authors' concerns.

Over the past twenty years, however, these measures—which were originally influenced by gender justice imperatives—have become part of the neoliberal shift that is currently underway in Europe, and have promoted it. In this context, the article argues, they risk having a classist effect, privileging highly skilled, high-paid workers to the detriment of more economically vulnerable women.



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Drawing on political economy and EU and gender studies scholarship, the article traces these evolutions. The first part describes how these measures originated in the EU social agenda of the 1970s, and how they subsequently became part of a flourishing gender equality agenda in the 1990s. The second part examines how, starting in the 2000s, these measures became framed as 'social investments in human capital,' labor supply instruments, whose goal was to retain highly skilled female workers in the workforce. In parallel to that change, the economic model of the EU became more explicitly neoliberal. After the financial and sovereign debt crisis in 2008/09, the EU embraced labor flexibilization and austerity measures, while it acquired more powers to effectively monitor member states' fiscal and social policies. The final part describes why these measures will likely have a classist effect and will not deliver gender equality for all women, while also evaluating feminist ideas' relationship with the transnational triumph of neoliberalism, which the situation in the EU illustrates.

**Nieminen, Kati:** [Eroding the protection against discrimination: The procedural and de-contextualized approach to S.A.S. V France](#). *International Journal of Discrimination and the Law* (2019)

Can human rights law adequately address implicit modes of racism and gender discrimination? This question is discussed in this article through the analysis of the European Court of Human Rights case *S.A.S. v. France* (2014) concerning the ban on the Islamic full-face veil. The so-called 'headscarf cases' have been thoroughly discussed by many scholars, yet they seem to offer an endless source of different points of view. Departing from the previous discussion on the headscarf and full-face veil cases, which have largely concentrated on the questions of personal autonomy, identity and subjectivity, this article approaches *S.A.S. v. France* from the point of view of discrimination. It is suggested that the Court's procedural and de-contextualized approach to rights results in eroding the protection against discrimination. Procedural approach refers to the Court's tendency to emphasize procedural aspects of the Convention rights and not to engage sufficiently with substantive analysis. The de-contextual approach to rights on the other hand refers to lack of sensitivity to empirical information concerning the facts of the case at hand. Together the procedural and de-contextual approaches inadvertently erode the protection against discrimination of vulnerable groups, such as Muslim immigrant women.

**O'Cinneide, Colm:** [Grenfell and the Limited Reach of Equality within the UK Constitutional Order](#); *QMHR Special Issue Vol 5(2): The Grenfell Tower Fire and the Violation of Human Rights*



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Grenfell demonstrated the existence of deep inequalities in British society. Across the UK, inequality shapes lives – and, as Grenfell shows, also often selects for death. And yet equality – or, to be more precise, the principle of equality of status – is widely acknowledged to be a fundamental value of the UK constitutional order, receiving extensive legal protection via instruments such as the Equality Act 2010 and Article 14 of the European Convention on Human Rights. This paper analyses the disjuncture between these legal and constitutional commitments and the raw inequality exposed by Grenfell. It argues that this disjuncture is generated by the obscuring of the socioeconomic dimension of inequality within UK political and legal discourse. It concludes by exploring ways of challenging the limits of the principle of equal status, as currently understood within the UK constitutional order.

**Perlingeiro, Ricardo; Amanda Oliveira:** ['Laicidade' in Brazil as a Booster to Religious Freedom](#)

This text is a starting point for the construction of a research project on religious freedom comparing legal systems of countries with an official religion, such as the United Kingdom, Costa Rica and Israel, and countries without one, such as Brazil, the USA and France. Considering the premise that a country should strive for effective human rights, the study begins an analysis of the scope of the duty of a country with no official religion to ensure religious freedom (positive and negative liberties). For this purpose, the authors make use of the Brazilian experience, with its “laicity”. There is a difficulty in translating the expression “laicidade”, due to language barriers and special connotations in Brazilian constitutional law. Therefore, the authors describe its three main characteristics (autonomy, cooperation and religious freedom) drawn from a recent Brazilian Supreme Court precedent. What is unique about the concept of “laicidade” is that it allows a secular state to cooperate with religious faiths, regardless of the prohibition of having an official one. This insight paves the way for future dialogues with other countries, including nations that, despite having their own official religion, are capable of working together in harmony with other religious faiths to guarantee the effectiveness of their human right.

**Redding, Jeffrey A.:** [A Secular Failure: Sectarianism and Communalism in Shayara Bano v. Union of India](#)

Proponents of secularism have often described their support for this form of governance in terms of the protections it provides against the excesses and dangers of religious nationalism and bigotry. In reality, however, the differences between secular and religious



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systems of governance are often overstated, with secularism's promises being in conversation with secularism's failures. This (draft) article explores one recent and important instance of such secular failure, namely that represented by the high-profile Indian case of *Shayara Bano v. Union of India*. This Supreme Court case concerning the legal legitimacy of a common Indian Muslim divorce practice — often referred to as 'triple talaq' — animated sectarian and communitarian tensions in India and thereby failed to achieve the social peace promised by secularism. Indeed, during the course of arguing its defense in *Shayara Bano*, a prominent Indian Muslim organization ended up engaging in sectarian modes of argumentation, whereby aspersions were cast on the Muslim bona fides of certain persons and communities. Further, in the course of deciding *Shayara Bano*, a religiously diverse set of Indian Supreme Court Justices found themselves disagreeing along communal lines about either the necessity or ability of the secular state to 'reform' Muslim family law.

**Siegel, Reva:** [The Nineteenth Amendment and the Democratization of the Family](#). Yale Law Journal, Forthcoming

This Essay recovers debates over the family connecting the Reconstruction Amendments and the Nineteenth Amendment, and considers how this lost history can guide the Constitution's interpretation, in courts and in politics.

A woman's claim to vote contested a man's prerogative to represent his wife and daughters, and so was a claim for democratization of the family. Suffragists argued that women needed the vote to change the ways that law structuring the family governed their lives. They argued that law should recognize women's right to voluntary motherhood and to be remunerated equally with men for work performed inside and outside the household. Suffragists sought to create a world in which adult members of the household could be recognized and participate in democratic life as equals. And they debated how to realize these goals when women faced different and intersectional forms of discrimination. Claims for democratic reconstruction of the family that began in the quest for the vote continued in the immediate aftermath of the Nineteenth Amendment's ratification and in 1970 during its half-century anniversary, and continue today in the era of its centennial.

Courts can draw on this history and interpret the Amendments synthetically. For example, judges can integrate the history of suffrage struggle into the equal-protection framework of *United States v. Virginia*. The Essay shows how an historical and intersectional understanding of suffrage struggle could change the way courts approach cases concerning the regulation of pregnancy, contraception, sexual violence, and federalism.



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The Essay closes by looking beyond the courts to continuing claims for the democratization the family in politics, which it connects to suffrage struggle. How would we understand these claims if we recognized that liberty and equality claims about the family began in the decades before the Civil War, and if we recognized the disenfranchised Americans who voiced them among our Constitution's esteemed Framers?

**Smith, Belinda; Melanie Schleiger; Liam Elphick:** [Preventing Sexual Harassment in Work: Exploring the Promise of Work Health and Safety Laws](#). (2019) 32(2) Australian Journal of Labour Law 219

Despite a growing consensus that sexual harassment is wrong, it continues to be remarkably prevalent in Australian workplaces. Sex discrimination laws which were expressly designed to prohibit this behaviour have operated for several decades, yet the problem still persists. Anti-discrimination laws (ADL) have been effective to a point, but are limited by their individual and complaints-based regulatory framework. The question therefore arises: might other laws play a role in addressing this problem more effectively?

In this article we explore the promise of work health and safety (WHS) laws in addressing sexual harassment in work. WHS laws impose obligations to prevent harm to workplace participants, including psychological harm. Our thesis is that this harm-prevention approach can complement the existing ADL individual redress scheme and prove an effective tool at preventing sexual harassment by tackling its antecedents in workplace cultures. However the promise of WHS laws in preventing sexual harassment can only be realised if WHS agencies acknowledge this remit and are equipped to deal with it.

**Topidi, Kyriaki:** [Words that Hurt \(2\): National and International Perspectives on Hate Speech Regulation](#). ECMI Working Paper Series n. 119

Faced with a piecemeal approach to hate speech in Europe, leading to the reduced visibility of the phenomenon with often serious consequences, a variety of regional and international organisations have contributed legal documents and interpretative recommendations that attempt to guide states in their practice of combating hate speech.

The present paper, following up on a previous one, will engage first with the international legal and regulatory framework of hate speech, placing emphasis on the European elements of the system in place. At a second stage, the paper will briefly survey twenty



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European national systems exposing the variety of regulatory patterns on the issue. Finally, the study will conclude with a list of common observations pertaining to the regulation of hate speech in the European continent, as they have emerged from the comparative analysis of the case-studies.

**Widiss, Deborah A.**: [The Hidden Gender of Gender-Neutral Paid Parental Leave: Examining Recently-Enacted Laws in the United States and Australia](#). Comparative Labor Law & Policy Journal, Forthcoming

Virtually every country in the world provides maternity leaves that are far longer than paternity leaves, even if they also provide supplemental parental leave available to either parent. Recently-enacted laws in the United States and Australia, by contrast, eschew sex-specific classifications entirely, providing only gender-neutral parental leave. American laws provide each parent equal and non-transferable benefits; Australian law provides an extended period of benefits to a “primary” caregiver, and a much shorter period of benefits to a “secondary” caregiver. This Article shows how the modern paid leave laws relate to the countries’ pre-existing laws addressing unpaid leave rights and to doctrinal and theoretical debates regarding what equality means in the context of pregnancy and childbirth. American law generally requires formal equality between men and women, while Australian law permits special accommodations for mothers. This Article also reports early data suggesting men are more likely to claim benefits under the American approach. As in other countries, this is likely because fathers forfeit any unused leave; it may also reflect the short duration of leave available to mothers. The Article suggests additional potential explanatory factors for future empirical study, including the possible gendered effects of gender-neutral leave policies that require a single person be designated as the primary caregiver.



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