



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

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Dear friends and colleagues,

Welcome to the April issue of the electronic journal of the [Berkeley Center on Comparative Equality & Anti-Discrimination Law](#). In January 2020 we began distributing abstracts and links to newly published papers ourselves, instead of engaging the Social Science Research Network to distribute them for us. We believe this will allow us to substantially expand the scope of the scholarly material we publicize and provide a more interesting journal. You are welcome to share this journal to anyone you believe would find it interesting.

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 assistants, Berkeley students Talia Harris and Nicole Khoury.

**This issue was edited by Lucy-Ann Buckley and Shivangi Misra, with assistance from Berkeley students Talia Harris and Nicole Khoury. Thank you.**

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**Banerjje, Ajita:** [Beyond Decriminalisation: Understanding Queer Citizenship through Access to Public Spaces in India](#). NUJS Law Review Volume 12 Issue 3-4 (2019)

Public spaces are often constructed around particular notions of “appropriate” codes of conduct which exclude those who do not conform to heteronormative ideals. In India, queer persons, especially those belonging to socio-economically disadvantaged backgrounds, experience hostility in public spaces and often start avoiding those spaces altogether. Further, there are certain laws that interact with other forms of societal censure to produce a climate of oppression where safe areas, in contrast, are marked off by lack of detection and relative freedom from the law. By making queer identities invisible, it is understood that the sexual ‘others’ have no claims or lesser claims to citizenship alongside the ‘good’, law abiding, heterosexual subjects. In this sense, questions of gender and sexual identity can be seen to intertwine with those of citizenship in a number of profound ways for queer persons are often reduced to being ‘partial citizens’. This paper will look at how certain laws in India intersect with informal methods of social censure to produce a regime that has a disenfranchising impact on queer persons’ access to public spaces, and largely, their citizenship.

**Brandes, Tamar Hostovksy :** [Basic Law: Israel as the Nation State of the Jewish People: Implications for Equality, Self-determination and Social Solidarity](#). Minnesota Journal of International Law, Spring 2020, Vol.29(1), pp. 65-108

The enactment of Basic Law: Israel as the Nation State of the Jewish People (“the Law”) on July 19th, 2018, triggered an intense public debate in Israel. Opponents of the Law refer to it as racist, shameful and disgraceful, and demanded its immediate repeal. Eight petitions against the Law have been filed, as of October 1, 2018, to the High Court of Justice.

Proponents of the Law argue that it is a legitimate legal entrenchment of the right of the Jewish people to self-determination, which is, they argue, the justification for the establishment of the state of Israel. They argue that the Law does not violate the principle of equality, which is entrenched, albeit inexplicitly, in Basic Law: Human Dignity and Liberty. They further argue that it is necessary in order to balance the Supreme Court’s alleged preference of “universal values” over national ones.

The questions raised by the Law can be divided into three groups. The first group of questions regards the possible effects the Law may have on individual rights, and, in



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particular, on the right to equality. The second group of questions regards the implications of the Law for possible future recognition of collective rights for non-Jewish minorities, or for other forms of state recognition of minority groups. The third group of questions regard the manner in which the Law shapes the national identity of Israel, constructs the terms and content of membership in the political community in Israel, and affects social solidarity.

The paper will analyse the three groups of questions, examining them against the backdrop of current political discourse in Israel. The two most important issues, in this regard, are the public debate regarding the concept of “a state of all its citizens”, understood by many Israelis as incompatible with the definition of Israel as a Jewish state, and the ongoing political struggle between the Knesset and the Supreme Court regarding the limits of judicial review. The paper argues that the significance of the Law, and the intensity of the public debate it stirred, can only be understood within this context.

The paper argues that in addition to the serious equality concerns the Law raises, the Law undermines the ability to create inclusive, all-encompassing social solidarity in Israel. While violations of equality could potentially be mitigated by a willing Supreme Court, the negative effect the Law may have on social solidarity in Israel may be difficult to alleviate.

**Briddick, Catherine** : [Precarious workers and probationary wives: how immigration law discriminates against women](#). *Social & Legal Studies*, April 2020, Vol.29(2), pp. 201-224.

Immigration law prescribes a range of statuses into one of which individuals must try to fit to be allowed entry. This range establishes a hierarchy from highly advantageous forms of permission to enter or remain in the United Kingdom to ones to which few rights accrue, which create dependency or are precarious. Against the backdrop of this hierarchy, I make two claims: that women are disadvantaged by immigration law's distribution of migration statuses; and, that this disadvantage is the result of rules which indirectly discriminate against women, discrimination which may be unlawful under Article 14 ECHR. As it is well-established that indirect discrimination may be revealed by statistical information, I rely on data from over 10 years to demonstrate that certain migration opportunities are distributed differently to women and men. This distribution is then subjected to scrutiny, potential 'justifications' for it, including those premised on sexed/gendered stereotypes, being analysed and refuted. Finally, an understanding of women's disadvantageous and discriminatory treatment in relation to the family and labour migration routes considered, is combined with a broader consideration of gendered



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patterns of migration and the statuses that such patterns produce, to found the normative claim that immigration law as a whole disadvantages women.

**Bunbury, Stephen** : [An analysis of the service provider's legal duty to make reasonable adjustments: the Little Mix saga](#). Entertainment and Sports Law Journal, February 2020, Vol.18(1).

The recent dispute between a mother and organisers of a Little Mix concert is a controversial issue for the entertainment industry. Although the Supreme Court decision in 'Paulley v FirstGroup plc 2017 UKSC 4' has attempted to clarify this duty placed on service providers, the law still remains unclear whether this service involves access to an experience enjoyed by non-disabled individuals. It is argued that this is partly due to the legal uncertainty of the reasonable adjustment duty contained in the Equality Act 2010. This intervention will discuss the dispute in detail as it leaves service providers unclear as to what is, and is not, a reasonable adjustment for the purposes of discharging their legal duty to make reasonable adjustments under the Equality Act 2010. Any ruling in this case might clarify the nature of the duty and the extent to which an organiser is required to make reasonable adjustments for disabled individuals where the core service is an 'experience'. How far this duty extends remains uncertain. The author will consider how the failure to make reasonable adjustments may in some cases exclude disabled service users from mainstream activities enjoyed by non-disabled individuals. Theoretical models used to explain disability will also be explored to assist in understanding the duty owed by a service provider.

**Carballo Piñeiro, Laura; Momoko Kitada**: [Sexual harassment and women seafarers: the role of laws and policies to ensure occupational safety & health](#). Marine Policy, July 2020, Vol.117.

The #MeToo campaign has put under the spotlight an old issue and exposed how little societies have advanced since the first sexual harassment law was enacted. The maritime sectors are not free from this criticism with a number of aggravating factors. First, there has not been a separate discussion from the general one on sexual harassment on board. Second, this discussion is necessary in light of the work environment in which it takes place, on board a ship, and the fact that maritime professions are male-dominated. Third, enforcement of laws and policies in these matters is weak in view of the (potentially) different laws to which social aspects on board might be submitted. This paper analyses



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the already existing mechanisms to combat sexual harassment from a socio-legal perspective and argues that a tailor-made approach to this damaging problem is necessary. The traditional reluctance of maritime professionals to report any issues on board is aggravated in the case of sexual harassment, thereby a zero-tolerance policy has to be strongly asserted in order to realize a work environment free from discrimination, and enhance the effective recruitment and retention of women seafarers.

**Chen, Bo; Sarah Hofmayer:** [Denial of Legal Capacity as a Barrier to Inclusive Employment](#). *Ars Vivendi Journal*, March 2020, Vol.12.

This article explores the commonly overlooked interlinkage between two often discussed topics of disability law and policy worldwide: legal capacity and inclusive employment. The article undertakes case studies in three countries, which represent three regions of the world, highlighting how a denial of legal capacity amounts to a barrier in employment. In this context, the article employs examples of obtaining, maintaining and terminating employment and suggests that enhanced collaboration between the services of supported decision-making and supported employment would help in the search for a solution. The research intends to initiate further discussion of this overlooked issue by providing an initial oversight and by listening to the voices of persons with disabilities affected by this problem.

**Chhikara, Ravi:** [The Conflicting Jurisprudence Behind the Laws on Abortion](#).

The abortion involves the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy. Protecting access to abortion effectuates vital constitutional values, including dignity, autonomy, equality, and bodily integrity. This is something central to a woman's life, to her dignity. It's a decision she must make for herself. And when the government controls that decision for her, she's being treated as less than a fully adult human responsible for her own choices. Without the right of reproductive choice, women cannot participate equally in the nation's social, political and economic life. Their freedom to decide whether and when to have children opens doors that would otherwise be closed. Through this paper, we have tried to address how various arguments of pro-life supporters are wrong and how the arguments of pro-choice supporters are in accordance with the human conscience.





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**Chieregato, Elisa:** [Gender Equality and the New Economic Governance in Europe: The Strategic Use of Women's Employment within Labor Market Reforms in Italy.](#) Social Politics, Volume 27, Issue 2 (2020)

This article aims to evaluate the political implication of post-crisis governance in the EU on national gender equality strategies and policies. It presents a study of recent reforms of the labor market in Italy, where the response to the Eurozone crisis has increased concerns over the low rate of female employment. Through an analysis of policy documents and legislative reforms informed by discursive politics, the article argues that the Italian case provides evidence of the trend towards the further instrumentalization of gender equality, which has been strategically used in order to provide additional legitimation to labor market deregulation.

**Coleman, Doriane Lambelet ; Michael J Joyner ; Donna Lopiano :** [Re-Affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule.](#) Duke Journal of Gender Law & Policy, February 2020, Vol.27(1), pp. 69-134

Title IX expresses society's commitment to sex equality in educational settings. The structure of the statute's regulatory scheme makes clear that the goal is sex equality, not sex neutrality. Notwithstanding the general preference for sex neutral measures, the sports exception to Title IX's general nondiscrimination rule has long been one of the statute's most popular features. The challenge in the beginning of the Title IX era was to get educational institutions to conceive of and equally to support females as athletes. We continue to fight for equal support, but as Title IX concludes its first semi-centennial, we no longer struggle as we did in the beginning with the basic concept of females as athletes, or of female sport as a high value social good.

The challenge as we move into Title IX's second semi-centennial is to get institutions to address the remaining disparities in their treatment of female athletes and female sport at the same time as we enter a new era in which we are being asked to imagine that "female" includes individuals of both sexes so long as they identify as women and girls. This ask reflects the intellectual choice to conceive of sex as a social construct rather than as a fact of biology tied to reproduction, and also the strategic choice of trans rights advocates to work toward law reform that would disallow any distinctions on the basis of sex. The problem is that female sport is by design and for good reasons a reproductive sex classification. These reasons have nothing to do with transphobia and everything to do with the performance gap that emerges from the onset of male puberty. Whether one is



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trans or not, if one is in sport and cares about sex equality, this physical phenomenon is undeniably relevant. Changing how we define “female” so that it includes individuals of both sexes, and then disallowing any distinctions among them on the basis of sex, is by definition and in effect a rejection of Title IX’s equality goals. Those who push for these changes are committed to sex neutrality, not sex equality.

The goals of this paper are to provide the legal, factual, and normative background necessary to evaluate the merits of this challenge to the sports exception to Title IX’s general nondiscrimination rule, and then to present the case for re-affirming the exception in a form that is appropriate for this next period of its history. It proceeds in three parts: Part I describes the legal history of Title IX’s sports exception, its goals, and the current state of the legal doctrine. Part II explains its scientific basis and rationale. Part III sets out the best case for and against affirming the commitment to sex equality in education-based sport, and then presents our argument for resolving the collision of interests at issue. The paper concludes that the original Title IX commitment to sex equality continues to do important work and should not to be abandoned, including in the sports space where equality requires not only recognizing but also celebrating physical sex differences. Including trans people within this design is difficult by definition, but policymakers should accept the challenge.

**Collins, Laura J:** [Sex before the law: transgender arguments under Title VII and shifting stases of sex](#). *Law, Culture and the Humanities*, February 2020, Vol.16(1), pp.151-169.

Until recently, transgender plaintiffs claiming sex discrimination were successful only when the discrimination was argued to be based on the plaintiff’s birth sex. *Schroer v. Billington* is often mistakenly understood to have been decided based on a more expansive understanding of sexed identity. Here, I call upon stasis theory to highlight how *Schroer* shifts the focus on sex away from sexed identities to structure, calling attention to how sex as system gives rise to discrimination. In so doing, *Schroer* ultimately refuses law’s responsibility for the maintenance of sex as system and locates the problem of sex with society.



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**Dowd, Nancy E** : [Children's Equality: The Centrality of Race, Gender, and Class.](#) Fordham Urban Law Journal, February 2020, Vol.47(2), pp. 231-252

Hierarchies among children dramatically impact their development. Beginning before birth, and continuing during their progression to adulthood from birth to age 18, structural and cultural barriers separate and subordinate some children, while they privilege others. The hierarchies replicate patterns of inequality along familiar lines, particularly those of race, gender, and class, and the intersections of those identities. These barriers, and co-occurring support of privilege for other children, emanate from policies, practices, and structures of the state, including education, health, policing, and juvenile justice.

Reimagining Equality: A New Deal for Children of Color takes on the task of confronting and addressing these hierarchies, as well as articulating a comprehensive strategy for change to achieve equality, equity, and dignity for all children. In this Essay, I outline the core components of the book as a backdrop and focal point for dialogue and discussion on children and poverty in this issue of the Fordham Urban Law Journal. I also present questions that remain in order to achieve children's equality.

**Duncan, Jill; Renée Punch; Mark Gauntlett; Ruth Talbot-Stokes:** [Missing the mark or scoring a goal? Achieving non-discrimination for students with disability in primary and secondary education in Australia: a scoping review.](#) Australian Journal of Education, April 2020, Vol.64(1), pp.54-72.

Australia has legislation in the form of the Disability Discrimination Act 1992 (Cth) and the Disability Standards for Education 2005 (Cth) that has the objective of eliminating disability discrimination. The purpose of this scoping review was to determine the extent to which this legislation is achieving the elimination of discrimination against students with disability in primary and secondary schooling. The review reports on the findings of a systematic search of law and education databases that identified 18 peer-reviewed articles discussing the legislation, relevant literature and related case law in the context of the education of students with disability in Australia. Content analysis of the articles indicated the existence of problems in several areas of the intersection between the law, policy and practice. These are outlined under five key themes: inclusion/exclusion, jurisdictions and definitions, the complaints-driven system, legislation clarity and reasonable adjustments. The review concludes with recommendations and suggestions for action.





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**Eckes, Suzanne E ; Julie F Mead :** [Under the law: discriminatory practices in voucher programs](#). Phi Delta Kappan, March 2020, Vol.101(6), pp. 65-67.

A recent case in Maryland raises the question of how state policies related to school funding apply to religious schools with discriminatory practices. A private Maryland school was denied voucher funds when the state learned that the school's handbook required that dress codes, pronoun use, and restroom choice align with a student's sex assigned at birth. The school sued, claiming that the policy was not discriminatory because it does not apply to student admission. Suzanne Eckes and Julie Mead consider this case in light of past cases involving school discrimination.

**Fines, Francette:** [The temporal applicability of anti-discrimination standards](#): E.B.. Common Market Law Review, 01 January 2020, Vol.57(1), pp.243-256.

Comments on *EB v Versicherungsanstalt öffentlich Bediensteter BVA (C-258/17)* (ECJ) on the temporal effect of employees' rights to non-discrimination under Directive 2000/78. Examines a claim of sexual orientation discrimination by a police officer who committed offences against two children and was compelled to retire early and draw a reduced pension, more than 20 years before the Directive was adopted.

**Grzanka, Patrick R; Elliot S. Spengler; Joseph R. Miles; Keri A. Frantell; Elliott N. DeVore:** ['Sincerely held principles' or prejudice? The Tennessee counseling discrimination law](#)'. The Counseling Psychologist, February 2020, Vol.48(2), pp.223-248.

In 2016, Tennessee became the first state to allow counselors and therapists in private practice to deny services to any client based on the therapist's sincerely held principles. The law's proponents framed mental health care ethics as infringing on counselors' religious liberties; its critics denounced the bill because it apparently targeted LGBT+ individuals. This exploratory study is the first statewide assessment of LGBT+ Tennesseans' (N = 346) perceptions of the law and how it may affect their help-seeking attitudes and behaviors. Evidence suggests widespread awareness of the law among our respondents and deep skepticism toward mental health care. Further, most respondents view the law as cover for discrimination. We stress the need for broader research on conscience clauses and call for advocacy against these laws, which have the potential to engender widespread harm to multiple minority groups.



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**Howard, Erica:** [Headscarves return to the CJEU: unfinished business](#). Maastricht Journal of European and Comparative Law, February 2020, Vol.27(1), pp.10-28.

In 2017, the CJEU brought out its judgments in two cases concerning bans on the wearing of Islamic headscarves at work as possible discrimination on the grounds of religion or belief under Directive 2000/78/EC. These judgments led to heavy criticism, mainly because the CJEU did not do a rigorous proportionality test and left a number of questions open. Two recent preliminary references from courts in Germany present the CJEU with an opportunity to expand on the earlier judgments and to answer the questions they left open. It is submitted that the CJEU should deal with this unfinished business in a way which respects Europe's religious diversity and ensures that the ground of religion and belief does not become the poor relation of EU anti-discrimination law.

**Imseis, Ardi:** [Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-2020](#). European Journal of International Law

This article critically examines the UN's commitment to the international rule of law through an examination of its position on occupied Palestine post-1967. Occupation of enemy territory is meant to be temporary and the occupying power may not rightfully claim sovereignty over such territory. Since 1967, Israel has systematically and forcibly altered the status of occupied Palestine, with the aim of annexing, de jure or de facto, most or all of it. While the UN has focused on the legality of Israel's discrete violations of humanitarian and human rights law, scant attention has been paid by the Organization to the legality of its occupation regime as a whole. By what rationale can it be said that Israel's prolonged occupation of Palestine remains legal? This paper argues that the occupation has become illegal for its systematic violation of at least three jus cogens norms. Although an increasing number of commentators have subscribed to this view, little attention has been paid to its relevant international legal consequences which dictate a paradigm shift away from negotiations as the condition precedent for ending the occupation, as unanimously affirmed by the international community through the UN.



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**Jain, Dipika; Payal K. Shah:** [Reimagining Reproductive Rights Jurisprudence in India: Reflections on the Recent Decisions on Privacy and Gender Equality from the Supreme Court of India](#). Columbia Journal of Gender and Law Vol 39 No 2 (2020)

In this article, Payal K. Shah and Dipika Jain argue for the importance of equality arguments for abortion rights in India. Globally, equality remains underutilized in jurisprudence on abortion, with many courts and bodies relying on privacy or other arguments instead. Yet in the context of India and globally, it is crucial to understand the implications of this approach. Why do equality arguments matter? What do they mean practically for people with the potential to become pregnant?

The article analyzes the potential of three groundbreaking decisions in India - one establishing the right to privacy as a fundamental right and the other two applying equality rights in the context of sex- on reproductive rights. While all three cases provide important precedents that could support stronger recognition of abortion rights in India, the latter two cases call into question the discriminatory stereotypes and norms about women's and girls' sexuality that underlie many abortion restrictions.

Relying on feminist theory and international and comparative law, we unpack why equality arguments matter for abortion rights. We then reimagine a reproductive rights framework in India that is gender transformative and inclusive.

**La Lopa, Joseph "Mick"; Zilong Gong:** [Sexual Harassment of Hospitality Interns](#). Journal of Hospitality & Tourism Education, 02 April 2020, Vol.32(2), pp.88-101.

It is widely known that the hospitality industry is rife with sexual harassment of especially female employees, yet every year hospitality programs send out thousands of students to complete internships making them vulnerable to sexual harassment, which is a violation of their Title IX rights. The purpose of this descriptive study was to be the first to survey US hospitality students to see if they experienced sexual harassment during a recently completed internship. The majority of the 297 respondents did not experience sexual harassment but a sufficient number experienced sexist and sexual hostility mostly from male managers, coworkers, and customers. The majority of respondents were not informed as to the inappropriate sexual behaviors they may encounter during their internship; over half were given no training by the internship coordinator or employer on what to do if harassed. It is clear that more needs to be done by internship coordinators and employers to protect student interns Title IX rights.



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**Lurie, Guy** : [Proportionality and the right to equality](#). German Law Journal, February 2020, Vol.21(2), pp. 174-196

This Article focuses on the overlap and interaction between the doctrine of proportionality and the doctrines used to assess the constitutionality of state violations of the right to equality. The Article has three main contributions to comparative constitutional literature. First, the Article pinpoints the difficulty that arises when courts try to apply the doctrine of proportionality on claimed violations of the right to equality. Analytically, as shown in this Article, the overlap and interaction between these two doctrines is problematic because they are both relational measures between means and ends. Second, this Article categorizes two models adopted by courts in the application of proportionality in the context of the violation of the right to equality. Third, this Article points out that the choice of the model used by each court is relevant to the ongoing discourse on the advantages and disadvantages of proportionality.

**Lurie, Lilach**: [Should age discrimination be an integral part of employment discrimination law?](#) De Gruyter, Theoretical Inquiries in Law, 2020, Vol.21(1), pp.103-138.

This Article argues that a universal approach to age discrimination promotes justice (including intergenerational justice) and efficiency. As explained herein, legal regimes regulate age discrimination in employment in various ways. While some regimes create specific anti-age discrimination legislation, others ban most kinds of employment discrimination, including age discrimination, in a general way. These latter promote a universal approach to age discrimination. The current Article explores the theoretical justifications for either a particularistic or a universal approach to age discrimination. Additionally, it enriches its theoretical discussion by taking and presenting a snapshot of current litigation in Israel – a country that has adopted a universal approach to age discrimination.



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**Mackay, Fergus** : [The ILO Convention No. 111: an alternative means of protecting indigenous people' rights.](#) The International Journal of Human Rights, February 2020, Vol.24 (2-3), pp. 144-155.

Adopted in 1958, and in force for 175 states, Convention No. 111 Discrimination (Employment and Occupation) ('C111') is one of the ILO's eight 'fundamental' conventions. Containing only five substantive articles, on its face, it does not appear to provide much scope for protecting indigenous peoples' rights. Yet, via the lens of eliminating discrimination against indigenous peoples' traditional occupations, it may provide viable means for indigenous peoples to seek protection for land, resource and other rights normally associated with Convention No. 169 ('C169'). This nexus between traditional occupations and indigenous land rights has been recognised by the International Labour Office and by the ILO Committee of Experts on the Application of Conventions and Recommendations ('CEACR'). While the ILO Governing Body has yet to receive a Representation pursuant to Article 24 of the ILO Constitution and alleging violations of indigenous peoples' rights in relation to C111, this is likely to change soon as a Representation is presently being prepared by an indigenous community in Sumatra, Indonesia. The prior observations of the CEACR provide a strong foundation for submitting such a Representation.

**Mishra, Suman**: [From #MeToo to #MeTooIndia: News Domestication in Indian English Language Newspapers.](#) Journalism Studies, 03 April 2020, Vol.21(5), pp.659-677.

This study examines news domestication in an Indian context by analyzing the press coverage of the global #MeToo movement in India. The findings were based on the textual analysis of 641 news articles from five prominent English language newspapers published between October 2017 and October 2018. Accordingly, this study reveals that the press domesticated the global #MeToo movement by highlighting similar concerns in the Indian entertainment industry. It also filtered the stories through a local media logic, which included market/commercial and cultural logic. The news which passed through this media logic resulted in the selection of certain types of celebrity stories over others. While this helped to raise the issue of sexual harassment among educated middle-class Indians, it also trivialized it by focusing on celebrity scandals and ignoring problems faced by ordinary and less organized women in marginalized communities.





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**Powell, Anastasia; Adrian J Scott; Nicola Henry:** [Digital harassment and abuse: experiences of sexuality and gender minority adults](#). *European Journal of Criminology*, March 2020, Vol.17(2), pp.199-223.

Digital harassment and abuse refers to a range of harmful, interpersonal behaviours experienced via the internet, as well as via mobile phone and other electronic communication devices. Whereas much existing research has focused on the experiences of children and young people (including foremost 'cyberbullying'), there have been few international studies on adult experiences of digital harassment and abuse. As such, little is currently known about the extent, nature and impacts of digital harassment and abuse on adult victims. In particular, there exists a significant gap in current research into sexual, sexuality and gender based digital harassment and abuse. This article draws on findings from a larger research project in which we surveyed 2956 Australian adults and 2842 British adults (aged 18 to 54) about their experiences of technology-facilitated sexual violence (TFSV). The data presented here focus on the experiences of sexuality diverse adults (n = 282) who identified as lesbian, gay, bisexual or heterosexual, as well as gender diverse adults (n = 90), including women, men and transgender individuals. Results suggest that transgender individuals experience higher rates of digital harassment and abuse overall, and higher rates of sexual, sexuality and gender based harassment and abuse, as compared with heterosexual cisgender individuals. Implications of the findings are discussed with respect to policy, prevention, and future research.

**Reed, Alex:** [NAFTA 2.0 and LGBTQ Employment Discrimination](#). *American Business Law Journal*, Spring 2020, Vol.57(1), pp. 5-44.

Because federal law does not expressly prohibit employment discrimination on the basis of sexual orientation or gender identity, LGBTQ Americans were thrilled to learn that a preliminary draft of the United States–Mexico–Canada Agreement (USMCA) included a provision (the Provision) requiring each nation to enact LGBTQ-inclusive nondiscrimination laws. That excitement promptly turned to despair, however, after the Trump administration insisted on the addition of a footnote (the Footnote) designed to exempt the United States from the Provision. To date, the Footnote has been derided by scholars and trade experts alike as a transparent attempt to evade the Provision's LGBTQ-inclusive mandate. Yet, by focusing only on what the USMCA does not do, these analyses overlook what the agreement does do, even if unintended, to benefit LGBTQ Americans. This article provides the first comprehensive analysis of the USMCA's implications for federal antidiscrimination law and demonstrates that—regardless of how



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the Supreme Court rules in a trio of LGBTQ employment cases—the Footnote actually stands to help, not hinder, the cause of LGBTQ equality.

**Russell, Roseanne; Annick Masselot:** [Why Do We Care? The Shifting Concept of Care in New Zealand and in the United Kingdom](#). *International Journal of Comparative Labour Law*, 36(1), 81–106.

In recent years, there has been increased activity on the part of legislators and policy-makers as they attempt to reconcile paid work and unpaid care. This article explores the different approaches adopted by two common law jurisdictions: New Zealand and the United Kingdom. These case studies attempt to take a more expansive approach to the concept of care by purportedly disentangling the act of caring from traditional conceptions of motherhood. In the UK, this has been done by permitting mothers to transfer entitlement to caring leave to fathers but is underpinned by implicit assumptions that the primary responsibility for care will remain with the mother. In New Zealand, there has been a departure from historic reliance on gender identities to take a more gender-neutral approach by providing caring leave to whoever is a primary carer for a child regardless of biological connection. One unintended consequence of this has been that biological mothers have been left with the barest post-natal health and safety protection. These case studies reveal how difficult it is for legislators and policy-makers to devise care-giving protections that are not in some way tainted by the legacy of traditional care/home/women and work/market/men dichotomies and demonstrate the need for new models based on ungendered assumptions of universal care.

**Shi, Elizabeth ; Freeman Zhong :** [Addressing Sexual Harassment Law's Inadequacies in Altering Behaviour and Preventing Harm: A Structural Approach](#). *University of New South Wales Law Journal*, March 2020, Vol.43(1), pp. 155-190.

Section 3(c) of the Sex Discrimination Act 1984 (Cth) provides that one object of the Act is 'to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace, in educational organisations and in other areas of public activity'. This article argues that the Act, in its current form, is not adequate for achieving that object for two reasons: first, its operative provisions reflect a normative principle that has, as its aim, the compensation of harm but not the prevention of future harm; and second, it fails to recognise some systemic harms caused by sexual harassment. The article proposes a structural approach to workplace sexual harassment regulation, which involves a positive duty for organisations to take reasonable steps to prevent sexual harassment and a



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regulatory framework aimed at putting in place the necessary motivations and incentives to ensure compliance with that duty. The article draws on insights from regulatory theory to explain how this regulatory approach can better serve the object of eliminating sexual harassment so far as is possible.

**Todd-Gher, Jaime; Payal K Shah:** [Abortion in the context of COVID-19: a human rights imperative](#). Sexual and Reproductive Health Matters Volume 28 2020

Amidst states' evolving emergency responses, the authors make the case that abortion care must be included and ensured from the outset and access must be provided in bold, novel and evidence-based ways. The authors discuss states' human rights obligations which include a duty to ensure that individuals do not have to undertake unsafe abortions when faced with a pregnancy that is unwanted and/or threatens their life or health. These obligations are not waived in times of crisis; in fact, they become more pressing.

The article calls for enabling self-managed abortion by guaranteeing access to medications and telemedicine counseling and ensuring women are not criminalized for inducing their own abortions as a critical step towards fulfilling states' binding human rights obligations and avoiding preventable abortion complications, including during the COVID-19 crisis. While not a solution in all cases and contexts, it could be an important step forward. Countries like Ireland, England, and France have already taken this step.

**Walsh, Tamara; Bridget Burton:** [Queensland's new right to education: what does it mean for children with disabilities?](#) Alternative Law Journal, March 2020, Vol.45(1), pp.18-24.

Queensland's Human Rights Act 2019 includes a right to education. Schools will be required to consider the human rights of children when making decisions about enrolments and educational adjustments. This article investigates how the right to education might operate in Queensland state schools, and discusses the potential of this new provision to bring positive change for children with disabilities.



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**Wirtz, Andrea L; Tonia C Poteat; Mannat Malik; Nancy Glass:** [Gender-based violence against transgender people in the United States: a call for research and programming.](#) Trauma, Violence, & Abuse, April 2020, Vol.21(2), pp.227-241.

Gender-based violence (GBV) is an umbrella term for any harm that is perpetrated against a person's will and that results from power inequalities based on gender roles. Most global estimates of GBV implicitly refer only to the experiences of cisgender, heterosexually identified women, which often comes at the exclusion of transgender and gender nonconforming (trans) populations. Those who perpetrate violence against trans populations often target gender nonconformity, gender expression or identity, and perceived sexual orientation and thus these forms of violence should be considered within broader discussions of GBV. Nascent epidemiologic research suggests a high burden of GBV among trans populations, with an estimated prevalence that ranges from 7% to 89% among trans populations and subpopulations. Further, 165 trans persons have been reported murdered in the United States between 2008 and 2016. GBV is associated with multiple poor health outcomes and has been broadly posited as a component of syndemics, a term used to describe an interaction of diseases with underlying social forces, concomitant with limited prevention and response programs. The interaction of social stigma, inadequate laws, and punitive policies as well as a lack of effective GBV programs limits access to and use of GBV prevention and response programs among trans populations. This commentary summarizes the current body of research on GBV among trans populations and highlights areas for future research, intervention, and policy.

**Woodhouse, Barbara Bennett :** [Reimagining equality through the lens of human rights: lessons from the United Nations Convention on the Rights of the Child.](#) Fordham Urban Law Journal, February 2020, Vol.47(2), pp. 353-378.

In *Reimagining Equality: A New Deal for Children of Color*, Professor Nancy Dowd makes a powerful case for attacking inequalities and hierarchies among children at their roots. She reimagines equality against the backdrop of the United States. As the book's title emphasizes, it is framed within a context of U.S. domestic history and culture, U.S. movements for social reform, U.S. political structures, and U.S. constitutional doctrine. This is as it should be, because context is essential. In using the case of black boys in the United States as her example, she shows how hierarchies of race, gender, and class are established even before birth and how entrenched subordination and discrimination operate to block the development of black boys, depriving them of a fair start. She argues that these burdens and barriers to maximizing the development of all children must be



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removed if we are to achieve true equality. Moreover, she calls for a comprehensive approach of intersecting programs to provide the support that children need to enjoy true developmental equality. In her introduction to this issue of the Fordham Urban Law Journal, “Children’s Equality: the Centrality of Race, Gender and Class,” Professor Dowd highlights several questions that remain to be “explored, discussed and debated” in moving forward on the goal of achieving genuine equality among children. In this Essay, I will explore some of these questions in a different context, drawing upon a different framework: the United Nations Convention on the Rights of the Child (CRC).

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If you have a new paper in the field of comparative equality and anti-discrimination law, please contact David Oppenheimer to include the link and abstract in our journal.

Also, the Berkeley Center on Comparative Equality & Anti-Discrimination Law website includes a [Recent Books](#) section that showcases books by our members and others in our field. If you have a new book in the field, please contact David Oppenheimer and we will list it on the website.

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