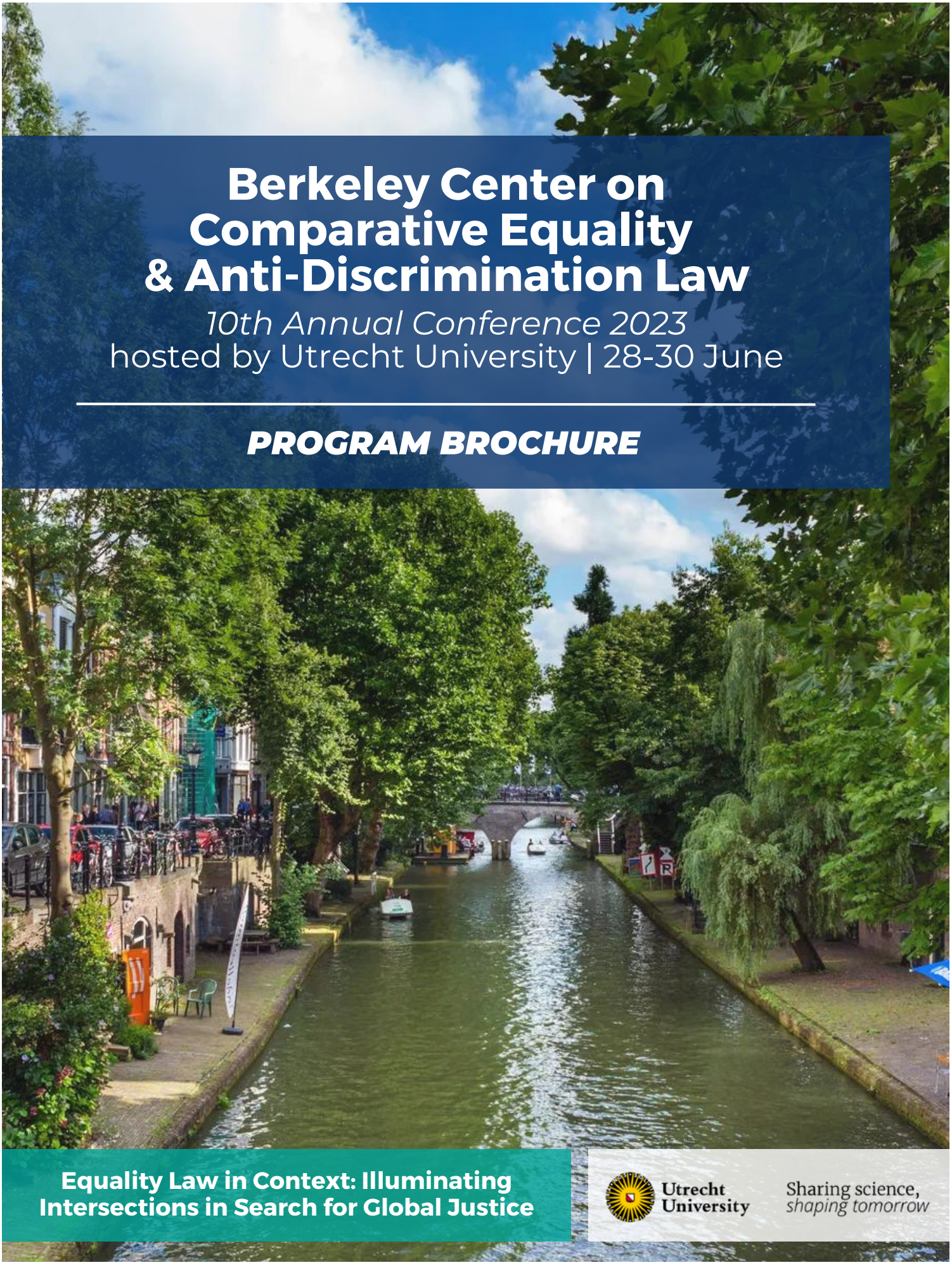


Berkeley Center on Comparative Equality & Anti-Discrimination Law

10th Annual Conference 2023

hosted by Utrecht University | 28-30 June

PROGRAM BROCHURE

Equality Law in Context: Illuminating Intersections in Search for Global Justice

Utrecht University

Sharing science, *shaping tomorrow*

CONTENTS

CONFERENCE THEME

Equality Law in Context: Illuminating Intersections in Search for Global Justice

Global Challenges to Equality

Equality law scholars and advocates encounter gaps between law in the books and law in action on a daily basis. In an effort at understanding what creates the gap and hopefully closing it, in recent years there have been numerous calls to tackle deep-seated structural and intersectional discrimination. Over the past two decades, significant milestones have been achieved in the struggle for substantive equality, reflecting a growing global commitment to combat discrimination and promote equality.

The adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD) has led to increasing awareness and expansion of the protection for persons with disabilities, as well as a deepening of the legal understanding of different forms of discrimination. At the same time, the integration of persons with disabilities in the community remains limited and exclusion persists.

We have witnessed a significant advancement in gender equality, including increased representation of women in leadership positions, the adoption of laws aimed at combating gender-based violence, and efforts to address the gender pay gap. That said, gender inequality in education, employment and political representation persist, and women continue to experience higher levels of poverty and gender-based violence. New technologies have also added a layer of complexity, reshaping and blurring the public/private divide and thus impacting women's chances of participation without risking their personal safety.

A similar situation exists concerning sexual orientation and gender identity. There has been a growing recognition of the right to family life, including the right to marry for same-sex couples, including landmark decisions by courts and national legislatures. These developments have helped to advance equality for the LGBTQ+ community and to challenge discriminatory laws and attitudes, yet they continue to face discrimination, harassment, and violence in many countries.

Racial discrimination also remains complex. There are ongoing efforts to promote equality for racial and ethnic minorities, including initiatives aimed at addressing systemic racism and promoting diversity and inclusion in various sectors, and attempts at understanding the ongoing impact of histories of slavery and colonialism. Yet unequal access to education, employment, and justice persists, and cases of institutional violence resulting in fatalities are frequent news.

Additionally, class and economic inequality are persistent concerns, though not always recognized as such in discrimination law frameworks.

Despite multiple commitments to reducing poverty, including adopting the Sustainable Development Goals (SDGs) in 2015, economic inequality remains a major challenge, with wealth and income disparities increasing. Moreover, the economic, social, and political disparities between the global North and the global South seem to be worsening, with climate change and environmental degradation increasingly becoming defining features of the North-South divide and feeding into migration patterns.

Furthermore, there are multiple political challenges to the realization of equality. Historically, the idea of substantive equality has often been seen as a threat to tradition or contrary to cultural values and has been resisted because of political and economic interests. However, in recent times, there have been multiple reactions against progress or advancements made towards gender equality in particular. Such opposition is manifested in resistance to laws and policies aimed at promoting and supporting gender equality and increased opposition to feminist activism and movements. These are clear attempts to dismantle hard-won, progressive legal and policy change and stall such efforts in places where reform is much needed.

Proposed approach: concerted, contextual and interdisciplinary

These global challenges are interconnected and reinforce one another. Addressing them in their full complexity requires an interdisciplinary approach with attention to context, enacted through sustained and collective efforts from governments and civil society, including academics.

Context is critical to understanding and addressing the global challenges of inequality and discrimination since their nature and extent can vary significantly depending on multiple factors such as geography, culture, history, politics, and economics. Inequalities and forms of discrimination can differ considerably depending on the region or country in which they occur. Cultural norms, values, and beliefs can significantly shape experiences of inequality and discrimination. The legacy of past events, such as colonialism, slavery, and apartheid, can continue to shape experiences of inequality and discrimination in the present. Economic systems and policies can have a significant impact on the distribution of resources and opportunities and can either perpetuate or challenge inequality and discrimination. By considering the context of inequality and discrimination, we can better understand the complex and interconnected factors contributing to these global challenges. Context-aware research can inform more effective and sustainable solutions that address the root causes of inequality and discrimination and promote lasting progress towards equality.

A necessary actor in any concerted approach to addressing inequality is civil society, which plays a critical role by advocating for change, raising awareness, and holding governments and other actors accountable. Civil society organizations, such as non-governmental organizations (NGOs), community-based organizations, and advocacy groups, play a vital role in promoting equality and combating discrimination.

The 10th annual conference of the BCCE seeks to foster a sense of community among equality law scholars and advocates around the world. We hope to learn from each other as we compare legal problems and borrow insights from other disciplines as we seek to advance innovative ways of redressing inequalities.

Day 1

SCHEDULE-AT-A-GLANCE

28 June 2023

Time	Programme	Venue
09:00	**Registration** *Walk in with coffee and tea*	*Academy Building*
10:00	**Conference Welcome** *David Oppenheimer, Linda Senden, Lorena Sosa, Alexandra Timmer*	*Academy Building*
10:15	**Opening Remarks** *Janneke Plantenga*	*Academy Building*
10:30 - 12:00	**Plenary Panel 1** *Climate-related Inequalities*	*Academy Building*
12:00	**Lunch Break**	*Academy Building*
13:30	**Parallel Sessions 1**	*Janskerkhof 2-3*
15:00	**Coffee Break**	*Janskerkhof 2-3*
15:30	**Parallel Sessions 2**	*Janskerkhof 2-3*
17:30	**Report from the Strategic Planning Committee**	*Academy Building*
18:15 - 20:00	**Welcome Reception**	*Academy Building*

Day 2

SCHEDULE-AT-A-GLANCE

29 June 2023

Time	Programme	Venue
09:00	**Walk in with coffee & tea**	*Janskerkhof 2-3*
09:30	**Parallel Sessions 3**	*Janskerkhof 2-3*
11:00	**Walk in with coffee & tea**	*Academy Building*
12:00	**Plenary Panel 2** *Economic Inequalities and Redistribution*	*Academy Building*
13:30	**Lunch Break**	*Academy Building*
14:30	**Parallel Sessions 4**	*Janskerkhof 2-3*
16:00	**Coffee Break**	*Janskerkhof 2-3*
17:00	**Social Activities** *Traces of Slavery Guided Walk or M/F/X Documentary and Debate*	*Multiple Locations*
19:00 - 22:00	**Conference Dinner**	*Winkel van Sinkel*

Day 3

SCHEDULE-AT-A-GLANCE

30 June 2023

Time	Programme	Venue
08:30	**Walk in with coffee & tea**	*Janskerkhof 2-3*
09:00	**Parallel Sessions 5**	*Janskerkhof 2-3*
10:30	**Walk in with coffee & tea**	*Academy Building*
11:00 - 11:15	**Shefali Razdan Duggal, Ambassador of the United States to the Netherlands**	*Academy Building*
11:15	**Plenary Panel 3** *Judging Inequalities*	*Academy Building*
12:45	**Closing Reflections** *Organising Committee*	*Academy Building*
13:15	**Farewell Lunch**	*Academy Building*

CITY OF UTRECHT

The city of Utrecht is home of a historical canal-system, the impressive medieval Dom tower, the UNESCO world heritage listed Rietveld Schröder House, and a beautiful medieval city centre, where, in 1713, the Treaty of Utrecht was signed which ended a century of devastating European wars.

Utrecht University (founded in 1636) is the largest university in the Netherlands and the intellectual icon of the historical yet fastest growing region in the Netherlands.

PUBLIC TRANSPORT

Plan your journey on https://9292.nl/

WARNING: between Sat. 1st - Sun 2nd of July trains between Amsterdam Central Station and Utrecht Central Station will be affected by construction. Plan your departure with sufficient time.

More information on public transport:

For **train**, see https://www.ns.nl/

For bus and tram, see https://www.u-ov.info/

TOURIST INFORMATION

For tourist information, gifts, and typical local souvenirs, you can go to the Tourist Information Center (or Winkel van Utrecht/VVV-office). If you need any help planning a day out, a bike, or walking routes, you can stop by here for advice. The Tourist Information Center's details are:

Domplein 9, 3512 JC, Utrecht
Phone: +31 (0)30 – 236 0004
Email: infovvv@utrechtmarketing.nl
Open daily from 10:00 am – 5:00 pm

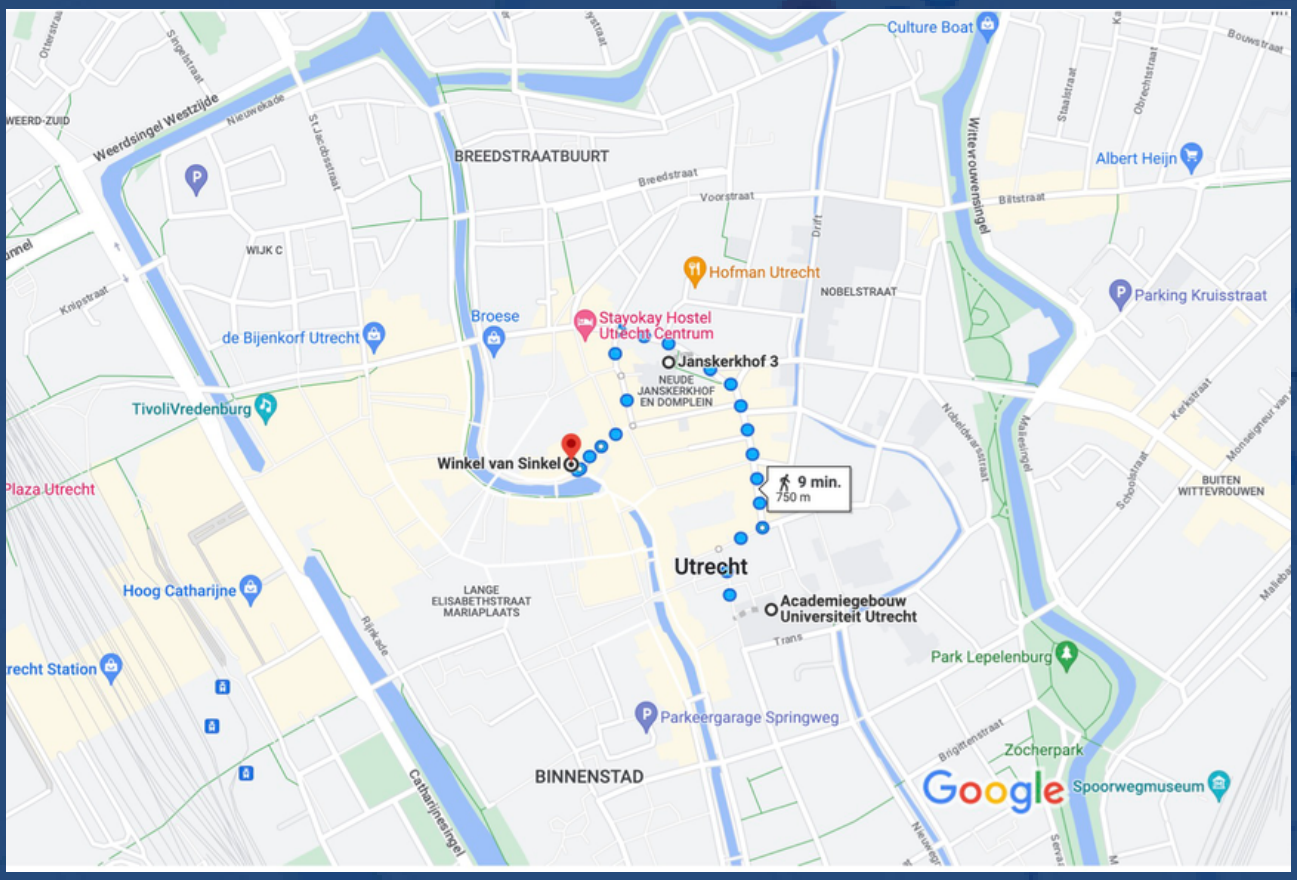
See https://www.discover-utrecht.com/ for more information.

CONFERENCE LOCATIONS

Academy building: Domplein 29, 3512 JE Utrecht

LEG Faculty: Janskerkhof 3, 3512 BK Utrecht

Winkel van Sinkel (dinner): Oudegracht 158, 3511 AZ Utrecht



More maps and accessibility information HERE

SPONSORS

Institutions for Open Societies

Institutions for Open Societies (IOS) is one of the four strategic themes within Utrecht University. Within IOS, scholars from a wide field of expertise work together with societal partners on these issues because only through joint efforts and constructive dialogue can we develop knowledge and solutions for the challenges of our time.

RENFORCE

The Utrecht Centre for Regulation and Enforcement in Europe (RENFORCE) focuses on the relationship between regulation and enforcement at the interplay of national, European and other levels of government as well as private spheres of regulatory enforcement. RENFORCE is also a platform for the exchange of ideas between academics and practitioners.

In/Equality Platform

Researchers from different backgrounds focus on the way inequality is affected by different institutions: capital & property relations, divisions of wealth, families, division of care, educational & training traditions, cultural institutions, welfare state arrangements, tax regimes, borders and other international legal structures. The Platform is part of the research expertise area Institutions for Open Societies.

Gender, Diversity and Global Justice Platform

Within this Platform, researchers from different disciplinary backgrounds investigate what organisations can do to enhance the diversity, including the position of women and other under-represented groups, in their organization and how discrimination and devaluation of minority groups can be effectively tackled. Researchers join forces with societal partners to solve complex gender and diversity issues, as well as to develop strategies for societal inclusion and change. The Gender, Diversity and Global Justice is part of the research expertise area Institutions for Open Societies.

Utrecht Center for Global Challenges

UGlobe is a center for research, education, and impact addressing major global issues. It encourages a global perspective and close collaboration with societal partners from around the world.

ACKNOWLEDGMENTS & CONTACT

Thank you to all of the BCCE Utrecht 2023 organizing committee members, student helpers, presenters, panel moderators, and participants for making this a successful and insightful event!

Organising Commitee

Prof. Linda Senden (Utrecht University)

Dr. Lorena Sosa (Utrecht University)

Dr. Alexandra Timmer (Utrecht University)

Mrs. Franka van Hoof (Utrecht University)

Dr. Tetyana (Tanya) Krupiy (Newcastle University)

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Megan E. Cistulli (University of California, Berkeley)

BCCE Utrecht Conference Contacts

If you have any questions about the BCCE Conference Utrecht, please contact: BCCEUtrecht@uu.nl.

In case of questions when in Utrecht, please turn to the registration desk in the Academy Building.

PRESENTERS AND ABSTRACTS

DAY 1

Wednesday 28th June, 10:30

PLENARY PANEL 1
Climate-related Inequalities

Professor Fatima Denton

Professor Beth Goldblatt

Dr. Julie Fraser

Speakers

Professor Fatima Denton
Professor Beth Goldblatt

Moderator

Dr. Julie Fraser

Parallel Session 1

Equality Law ~ Janskerkhof 2-3, Room 110

Colm O'Cinneide

The End(s) of Inequality

This paper draws upon the conclusions of a three year, UK Arts and Humanities Research Council interdisciplinary research project into the 50 year history of the evolution of UK sex equality law, conducted by historians from the University of Edinburgh, legal academics from UCL, and industrial relations experts from the University of the West of England. It analyses what the activists, parliamentarians and lawyers responsible for the initial legislation were trying to achieve, and their views about the purpose and function of discrimination law more generally. It then explores how these views changed over time, in part due to the influence of EU law, and moves to assess what contemporary political and legal actors assume is the purpose of equality law today.

In mapping these shifting concepts of the 'end' of equality law, the paper will engage with current controversies as to the appropriate scope of equality law – and in particular with the emerging debate as to how far existing discrimination law structures can be extended to deal with intersectional and socio-economic forms of inequality. The argument will be made that the 'end' of equality law has always been conceptualised in two distinct ways: (i) as a transformative tool of far-reaching progressive social change, and (ii) a regulatory vehicle designed to eliminate certain specific forms of bad practice. A tension exists between these two views of the purpose of discrimination law, which has been a perennial feature of its evolution over the last half century – which threatens to blunt its effectiveness in contemporary conditions, and hamper its extension into new terrain.

Konrad Turnbull

Single, but Ready to (Collectively) Mingle? Structural Struggles in an Individual-Oriented Complaint System

Traditionally, international human rights systems have generally revolved around individual complaints, where only claims brought by (groups of) individuals were admissible. On one hand, in the initial decades following the establishment of the European Court of Human Rights (ECtHR), Inter-American Court of Human Rights (IACtHR), UN Human Rights Committee (HRC), & other institutions, this had remained the status quo. On the other hand, more contemporary institutions, such as the African Court of Human and Peoples' Rights (ACtHRP), had baked collective complaints into their founding treaty. However, in an era where awareness of structural discrimination is growing, and such massive harms are becoming more easily identifiable, do these historically individual-oriented complaint systems provide sufficient recourse for victims of structural discrimination?

This paper seeks to address this question by discussing the past, present & future of collective complaints within the international human rights framework. Whilst the answer is not simple, there has been a clear trend in international institutions where they have sought to address collective complaints in one way, shape or (sometimes quite imperfect) form. However, such transitions are far from uniform. Through an analysis of the case law of these institutions, through highlighting these collective trends, this paper hopes to offer an overview of how "friendly" international human rights institutions currently are to collective complaints.

To illustrate this trend, in the case of the ECtHR, a court which has been adamant about the inapplicability of actio popularis (Klass & ors v Germany [33]), has also performed some legal acrobatics to admit some actio popularis-esque complaints, such as from NGOs (Campeanu v Romania [96]). Specifically in regard to combatting structural discrimination, the ECtHR's pilot judgment system offers a potential new arrow in its proverbial legal quiver, however it ironically also runs the risk of denying access to equitable justice, such as for intersectional victims of discrimination who may have suffered further harms. Such examples are but drops in the collective bucket in demonstrating the trending of international human rights institutions towards accommodating structural complaints, but at least illustrate the need to address these de facto trends in a cohesive manner.

Ekaterina Yahyaoui

From equality to difference: a philosophical proposal for new directions in equality law and practice

The presentation will argue that if equality continues to be defined and understood on traditional liberal terms dominant in Western societies, it is bound to reproduce privilege and inequality; therefore, a new approach to questions of equality is required which will place at the center difference beyond comparisons and beyond identity. The presentation therefore develops such an alternative and demonstrates its utility with reference to the decisions of the Committee on the Elimination of Discrimination Against Women (CEDAW).

First, it will be demonstrated that a comparative element widely present in decisions on equality and non-discrimination is construed in such a way as to always produce privilege of some over others. This tendency is best evidenced in the current discussions on transgender issues where some feminists attempt to preserve the category of women from being appropriated by transgender individuals.

Such an opposition against some uses of the 'women' category signals many things and has multiple justifications but can also be viewed as a sign of anxiety over the possible loss of a privilege women acquired over time to be able to claim a particularly obvious form of a gendered harm. Without going into the transgender debates, the presentation will ask and attempt to answer the question of whether it is possible to approach questions of power disbalance and disadvantage without comparison and without creation and reproduction of a privilege.

In order to investigate this issue, the presentation will draw on philosophical reflections on the concept of difference. In particular, it will operationalize critical reflections on difference as they emerge from the work of three philosophers: Jacques Derrida, Gilles Deleuze, and Nishida Kitaro. Each of the philosophers offers distinct but related insights into the ontological and foundational nature of difference which need not be based on comparison and contrast. In this way their combined insight leads to the concept of difference as difference without the need for identity. The challenge then is to imagine how this ontological concept of difference as difference can become a foundation for rethinking current juridico-political discourse on equality.

The final portion of the presentation will be dedicated to this idea of renewal of equality from the ontological concept of difference as difference without comparison or contrast. To do so the presentation introduces feminist readings of Derrida and Deleuze, especially by Gross, Scott, and Stark and then reads selected decisions of the Committee on the Elimination of Discrimination Against Women in their light. Thus, theoretical insights are supplemented with practical examples demonstrating how reasoning on issues traditionally framed as questions of equality can be transformed into emphasis on difference beyond identity thus avoiding reproduction of privilege.

Gender Equality ~ Janskerkhof 2-3, Room 109

Femke de Kievit & Wendy Schrama

Elderly care: an urgent case for gender equality

In many societies women take responsibility for care within the family to a much larger extent than men do, despite current gender equality policies. This concerns care for children, household care and care for elderly parents. The importance of care for elderly parents will only increase in the near future, because in ageing societies, more time will need to be spent caring for elderly parents. Where in the second half of the 20th century several western welfare states took the responsibility of care for relatives from families (defamiliarization), nowadays, due to the increasing pressure on the welfare state as a result of the ageing of society, refamiliarization has a prominent role on states' agendas. That is simply because states' budgets do not allow any longer for full state care for all ageing people. These developments raise profound issues. An important issue, yet often overlooked, is gender inequality, which we will address in this paper. Even though care policies and laws are often formulated in a gender-neutral way, in everyday life women suffer substantially more economic disadvantages by taking care of their families than men do. This unequal distribution of unpaid care work can lead to an unequal distribution of both opportunities and risks. More unpaid care implies often fewer career opportunities, and providing unpaid care also involves risks such as loss of earning power, reduced pension benefits, less social benefits and reduced savings. States have various options to redress this imbalance between men and women. Innovative of this paper is that we will put these options in a broad perspective of several areas of law: family law, social security law and employment law (paid and unpaid care leave). Using the Netherlands as case study, we will show that compensation mechanisms existing in the Netherlands do not at all redress inequality.

Intriguingly, it appears that mechanisms formerly in place in Dutch family law to compensate for the unequal division of paid and unpaid work, are less effective than before, while in social security law, families are expected to provide more care to their relatives which potentially only increases the disparity between men and women. This presentation provides food for debate about these developments in other countries.

Katarzyna Sękowska-Kozłowska & Katarzyna Ważyńska-Finck

At the Intersection of Gender and Age: Girls in the Practice of the CEDAW Committee and the Committee on the Rights of the Child

Girls are a particular category of rights-holders, single-out by two important characteristics: gender and age. Yet, the intersectional approach has not been applied extensively to understand the discriminatory treatment they encounter. In our research, we aim to fill this gap by analysing patterns of recognizing girls as specific rights-holders in the practice of two UN treaty bodies specialised in women's and children's human rights.

When explicitly mentioned in the pronouncements of the international human rights bodies, girls are often defined as 'vulnerable' and 'in need of special protection.' Indeed, they are at risk of discrimination, marginalisation, and ill-treatment due to both their gender and young age. Nevertheless, girls also increasingly claim their role as active participants of social and political life, as evidenced by the movement against climate change or the recent protests in Iran.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) refers directly to girls only in the context of education, but the CEDAW Committee increasingly addresses girls while defining the scope of the Convention rights. However, in most cases, they are acknowledged only on a semantic level, by rephrasing the subject of CEDAW as 'women and girls'. Thus, a more specific reflection on their situation or needs is lacking.

The Convention on the Rights of the Child (CRC) strictly prohibits discrimination on the ground of sex in the exercise of the children's rights. At the same time, the CRC allows for the difference in treatment based on age and mental capacity. This is because the right to participation and the possibility for autonomous exercise of the CRC rights depend on mental capacity, maturity, and age. The Committee on the Rights of the Child has acknowledged that discrimination is a 'significant factor contributing to vulnerability'. It is also aware that children who are particularly vulnerable to discrimination (e.g., girls) are often less able to exercise autonomous decision-making. Nevertheless, the CRC Committee has never explored the relationship between gender discrimination, vulnerability, and autonomy, nor its implications for the realisation of children's rights.

In our paper, we will draw on both gender equality law and children's rights scholarship to analyse how girls' rights, needs, and interests (and the corresponding state obligations) are defined by the CEDAW and the CRC Committees. We will focus on selected thematic areas such as sexual and reproductive health and rights; gender-based violence; education and anti-stereotyping measures. Our aim is to reflect critically on the implications of defining girls as vulnerable and explore if the current practice of the two Committees enhances girls' equality, participation and autonomous decision-making. We will also consider whether a more emancipatory reading of the two Conventions is possible and desirable.

Ewoud Abspoel, Babette Pouwels, Chantal Remery & Joop Schippers

Representation of women in boards of Dutch companies: compliance with and impact of Dutch legislation

All over the world, the share of women in boards of private companies is lower than that of men. Following the example of other countries, the Netherlands recently introduced quota legislation to increase the number of women in boards. During the period 2013-2021 soft law applied: the statutory gender diversity target came into force on 1 January 2013 and determined that 'large' companies should strive for a balanced distribution of seats between women and men on their boards (at least 30% for each gender). Since then, a committee has been monitoring progress towards this target by means of the Companies Monitor Women at the Top. Using data of this monitor, our paper addresses the following questions:

1. How did the representation of women in boards of Dutch firms develop between 2013 and 2021?
2. Which companies complied with the gender diversity target and which did not?
3. How can differences between companies be explained?

Drawing upon different theoretical backgrounds, we will test a series of hypotheses. Token theory predicts that female board members act as tokens; as a result the chance of hiring an additional female board member is lower in companies that already have a woman in their boards compared to companies without women in their boards. Critical mass hypothesis suggests that the pace at which women are hired for board positions decreases after a critical point. Discrimination theory points to discriminatory mechanisms based on gender stereotyping. Companies that are female led, may be less subject to such mechanisms and it may be hypothesized that companies with a female chair of the board are more likely to have other female directors.

The Companies Monitor Women at the Top includes longitudinal data on a large and representative sample of Dutch companies that had to comply with the gender diversity target legislation. We will use 8 waves of the monitor, covering the period 2012-2021 and perform panel-analyses. In the analyses relevant variables will be included such as size of the board and being listed at the stock exchange. We will discuss the results in relation to the current quota legislation.

LGBTQI Rights ~ Janskerkhof 2-3, Room 111

Lucas Ramon Mendos

Beyond "Sexual Orientation": Towards Comprehensive Legal Protections for the entire LGBTI Community

While comparative analysis of legal protections for the LGBTI community has primarily focused on protections granted on the basis of sexual orientation, the extent to which legal protections are offered on the basis of gender identity, gender expression, and sex characteristics remains largely unexplored.

This paper aims to assess the extent to which trans, non-binary, gender diverse, and intersex people are explicitly protected in equality and anti-discrimination law across the globe by means of express references to gender identity, gender expression and sex characteristics in the black letter law.

The geographical spread as well as the pace at which these progressive legal developments were effectively adopted will also be assessed to provide a clearer picture of the coverage achieved worldwide until December 2022.

Pieter Cannoot

Combating structural discrimination of trans and non-binary people: alternatives to indirect discrimination

Our understanding of gender diversity has hugely increased. On the basis of multidisciplinary research, a multifaceted approach to improve the living conditions of trans and non-binary persons has been steadily developing. This is accompanied by international legal attention for the often far-reaching (medical) requirements for legal gender recognition. A small, but rapidly growing number of states have spearheaded legal reform, by allowing trans and non-binary persons to change their official sex registration on the basis of the emerging right to gender self-determination.

However, empirical research shows that trans and non-binary persons remain vulnerable to transphobic stigma, discrimination and violence. At the root of this discrimination lies binary cisnormativity, i.e. the stereotypical belief that there are only two sexes, males and females, on which two gender identities map, i.e. men and women. This construct was spread by the West via colonial administrations. While direct discrimination of trans persons is starting to disappear, societal structures have arguably not sufficiently changed to achieve substantive equality. From a legal perspective, the prohibition of indirect discrimination might present a useful correction for a sole focus on direct discrimination or formal equality. Indeed, by prohibiting indirect discrimination, disparities experienced by minority groups due to the way society is structured can be challenged in court.

However, scholarship has already indicated the potential challenges or barriers connected to indirect discrimination, such as the strong need for evidence, potential judicial overreach and the role of incrementalism in emancipation of minorities. This paper therefore explores other routes to address structural discrimination of trans and non-binary persons, such as universal substantive human rights, the emerging right to gender self-determination and the analytical framework of substantive equality developed by Sandra Fredman.

Liam Elphick & Aidan Ricciardo

Under My Umbrella: Allyship and Advocacy From Within the LGBTIQ+ Community

Equality law differs significantly across national, regional and international jurisdictions. However, as a system of law seeking to redress inequality for marginalised and disadvantaged groups, identity is often at its core. This could include the group identity of those discriminated against – women, LGBTIQ+ groups, those of diverse racial and cultural backgrounds, people with disabilities, and others – as well as sub-identities and sub-cultures within those groups.

Human rights discourse and writings regularly consider the concept of positionality: that one understands the world from the position in which they sit. Similarly, there is a significant body of literature and guidance devoted to researching with and about marginalised communities safely, ethically, and responsibly. Positionality and ethical research are concepts often explored from the perspective of a majority group that does not have the same identity as the studied group: for instance, the cisgender heterosexual community when writing on LGBTIQ+ issues. Comparatively less has been written on how these conventions inform human rights research and advocacy work undertaken by those who live within the relevant marginalised community.

In this paper the two authors, who are both LGBTIQ+ people, reflect on their experiences of research and advocacy within the LGBTIQ+ community – especially that work which concerns LGBTIQ+ inequality, and particular LGBTIQ+ identities to which the authors do not themselves belong.

Through an autoethnographic study of these experiences, identities, and values, we posit that those of us within the LGBTIQ+ community are equally bound by 'best practice' rules when doing work with and about our own communities. Positionality and ethical research are not matters solely for those outside of disadvantaged groups; those of us within these groups must also adhere. This is especially important in research on equality law, which is inherently identity-driven, intersectional, and structurally embedded.

We argue for a conceptualisation of ourselves as 'internal allies' when doing this work. Although we typically think of 'allies' of LGBTIQ+ people as those from outside the community who are supportive of us, those of us within the LGBTIQ+ community can – and should – also think of ourselves as allies to each other identity group within our community. In thinking of ourselves as allies, we consider how to best comply with the principles and guidance relating to effective and appropriate allyship, and how we can become better allies in our research and advocacy on LGBTIQ+ inequality. Impactful actions include self-education, consultation, appropriate co-authorship, and platforming more marginalised voices over our own.

We conclude by exploring the obligation inherent in effective allyship, arguing that those of us within the LGBTIQ+ community who experience less marginalisation have a duty to support those who experience more of it. Indeed, though there is much diversity amongst LGBTIQ+ people and their many intersections, we are united by mutual support and an obligation to common advancement of our human rights. It is through such recognition, reiteration, and implementation that we – as community members, allies, advocates, and legal academics – can have the most impact in addressing and redressing structural discrimination against the LGBTIQ+ community.

AI and Discrimination ~ Janskerkhof 2-3, Room 116

Alberto Coddou Mc Manus

The challenges of addressing algorithmic discrimination in Latin America

With the increasing use of digital technologies for making decisions in both the public and private realms, there is a growing interest to address the potential impacts on fundamental rights. Although much of the existing literature on the negative impacts of digital technologies is focused on security, privacy and data protection, recent works have started to address the tensions that arise between the massive deployment of digital technologies and the right to equality and non-discrimination. Several jurisdictions have started to craft sophisticated regulatory frameworks to address these challenges, with a special focus on the prohibition of indirect discrimination, on the potential role to be played by processes of algorithmic impact evaluation and on complex issues of proof or evidence of discriminatory impact. At the EU, for example, the proposal for an AI Act attempts to devise a global gold standard for the regulation of artificial intelligence and the protection of fundamental rights, using novel mechanisms. In the case of Netherlands, and following a public scandal concerning an automated decision-making device used for detecting benefits' fraud, special courts of audit to review the administrative deployment of public algorithms were created. As it is clear, these regulatory attempts go beyond mere algorithmic transparency requirements or safeguards for data protection, in order to address the complex issues that arise in relation to algorithmic discrimination.

Pratiksha Ashok

Algorithmic Discrimination towards Users on Digital Platforms: A Comparative Study of the European Union and India

Algorithms are like the nucleus in our brains, collecting and transmitting messages. Based on the inputs received, the brain makes its decision. Algorithms work similarly; data is received and processed by the algorithm, and information is output.

In the online world, algorithms are sets of instructions designed in a well-defined manner to deal with computational issues. The widespread availability of increasingly large volumes of data and the increasing computing power to process it has meant more complex algorithms. Algorithms are specifications for performing calculations, data processing, automated reasoning, and decision-making. The online platform business model is created around algorithms to generate efficiency.

However, like human intelligence, not everything with the brain is perfectly explained. The brain does work in mysterious ways. The algorithm may not be able to interpret the data inputs to provide the appropriate input. Algorithms are programmed to react in a certain way- to produce a specific result if met with a particular data set. However, if the algorithm is programmed incorrectly, it may lead to issues. Unlike the brain, the reason for issues with algorithms can be traced to the creation of algorithms. Humans create algorithms for humans that use data inputs by humans.

This paper investigates whether users are protected against algorithmic discrimination online. The paper in Section 1 discusses algorithmic discrimination and its unique nature on digital platforms. Section 2 lists the existing anti-discrimination law protecting users on digital platforms in the EU and India and their similarities and differences. Though the algorithms used may be similar, the base discrimination varies in the two jurisdictions. Section 3 discusses the case studies of two digital platforms, Uber and Airbnb and explores instances of algorithmic discrimination towards consumers and service providers.

This paper uses a comparative research methodology to analyse provisions of anti-discrimination law in the EU and India as applicable to users of digital platforms. Though anti-discrimination law is not explicitly intended for digital platforms, its broad ambit reaches the digital environment. The case study method is used to highlight instances of algorithmic discrimination. These two case studies provide illustrations of algorithmic discrimination in the digital world.

The powers of the human brain stun us with discoveries across the sciences every day. The modern marvel of the internet has made the world genuinely fit into the palm of our hands. While the internet brings us closer than ever, algorithmic discrimination drives a wedge forged in the real world and wielded in the online world.

Natalie Sheard

AI-based Hiring Systems: The Impact on Equality Rights in Australia

The use by employers of Artifical Intelligence ('AI') to automate or assist human recruitment decisions (AI-based hiring systems or 'AHSs')) is on the rise internationally and in Australia. While AHSs promise to remove human subjectivity and bias from the recruitment process, it is well documented that they may in fact perpetuate and entrench discrimination against historically disadvantaged and marginalised groups.

In Australia, legal regulation of discrimination by AHSs has been slow to develop. Regulators are yet to undertake a comprehensive analysis of the ability of Australia's current anti-discrimination laws to protect against algorithmic discrimination.

Judicial guidance has not been provided as cases involving discriminatory algorithms have not come before the courts. There is also a paucity of empirical evidence about when and how organisations deploy AHSs, the impact of these systems on equality rights and if bias mitigation measures are attuned the Australian law and demography.

This paper reports the findings of an exploratory research study which seeks to address that empirical gap. Semi-structured interviews were conducted with 17 recruitment specialists who use, or have used, candidate screening AHSs to understand how these systems are used, operationalised and impact equality rights in Australia.

It will argue that: (i) AHSs are shaping and transforming recruitment processes and practices; (ii) bias mitigation measures are largely ineffective as they are not able to tackle structural discrimination; and (iii) legal regulation is required in Australia to protect job seekers from the discriminatory predictions or outputs of these systems.

Fabian Lütz

Learning from Competition Law: Towards cross-pollination and more effective enforcement of equality law in the age of algorithms

While adequate legal frameworks are a precondition for ensuring gender equality, without effective enforcement by the competent authorities or courts, victims of discrimination might enjoy the right to equality in theory but not in practice. This observation1 mostly made with reference to the classical cases of discrimination in the offline world is even more true in the age of algorithms, where the cause and process of discriminations is opaquer and gathering evidence by potential victims is complicated. Considering that in the European Union, progress on social and equality law tends to curtail economic law, competition law can be seen as a laboratory in order to identify innovative ideas for reforming (gender) equality law.

Based on available EU and US literature and an analysis of both competition and equality law's objectives and enforcement systems, this paper identifiesthe potential for gender equality law to learn from substantial and procedural competition law to address the issues of algorithmic discrimination.

First, considering that the origin of algorithmic discrimination is mostly the result of globally designed algorithms or globally available datasets, gender equality law needs to either embrace a more regional or global approach or rely on the "effects doctrine" known for example in EU and US competition law in order to achieve effective enforcement in the age of algorithms. In the same vein, the EU Artificial Intelligence Act recognizes the global nature of AI systems and embraces the effects doctrine which extends the scope of its application beyond the EU.

Second, the enforcement architecture and practice of competition authorities can inform and improve the enforcement of gender equality law in three ways. Primo, innovating public enforcement of gender equality laws by adapting elements of a DG COMP or FTC/DoJ style of enforcement powers, which centralizes decision powers either in a separate authority or grant those powers to a future DG Equality. Segundo, following the trend in competition law and other disciplines, encouraging private enforcement and class actions in discrimination law could improve the effective enforcement of victim's rights. Tertio, a clear division of competences between national and EU level could be established by using Regulation 1/2003 as a blueprint.

Third, the increased use of algorithms and machine-learning in products and services could have both anti-competitive and discriminatory effects. Price discrimination or discrimination on the basis of sex might be caused by automated decision making or machine learning, which could be assessed both from a competition and gender equality law perspective. A forum of exchange that brings staff working on competition policy and gender equality around the table to understand the applicable legal rules in the other field could familiarize and enrich both enforcers and allows to assess for instance whether some equality cases could be dealt with by competition authorities.

Courts and Jurisprudence ~ Janskerkhof 2-3, Room 117

Cathérine van de Graaf & Yannick Schoog

Let's Follow the ECtHR Down Its Slippery Slope: (Im)mutability and Choice in Grounds of Discrimination

On the 9th of June 2022, the Grand Chamber of the European Court of Human Rights (ECtHR or Court) decided the judgment of Savickis and others v. Latvia. The Court was tasked with assessing the Latvian pension system that provides better conditions to Latvian citizens than so-called "permanently resident non-citizens" who chose not to naturalize. In the 2009 judgment of Andrejeva v. Latvia, the Court had held this to be discriminatory. Now – heavily relying on the element of choice – it accepted the differential treatment. The majority argued that the question of naturalization "is largely a matter of personal aspiration rather than an immutable situation especially in light of the considerable time-frame available to the applicants to exercise that option" (§215). Ganty and Kochenov rightly pointed out that this rationale is twisted and amounts to victim-blaming (Strasbourg Observers, 5th of August 2022). Indeed, the Court's unexpected stance raises more questions than it solves. These include: How do courts determine whether a personal trait is "largely a matter of aspiration" or choice, i.e. mutable, or immutable? Is the distinction between mutable and immutable categories really as clear-cut? How much do we dare to ask from potential victims of discrimination? And more importantly, to what extent should courts take this into account?

While we briefly asses the consequences of the judgment for the parties, our contribution's focus is on its impact on the Court's approach to justifying discrimination (law development effectiveness). The effectiveness lens, as introduced by Helfer (in 'the Effectiveness of International Adjudicators', 2013), provides a theoretical starting point for our assessment. As such, in our contribution, we argue that – with the Savickis judgment – a human rights court delivered a reasoning that can be strategically effective for actors with an interest in undermining the protection offered by Article 14 ECHR. States eager to discriminate were provided with the handle to do so by framing grounds of discrimination in a way so that they appear mutable.

To demonstrate this, we go further down the slippery slope the Court has put itself on. In this vein, we graft the Court's logic onto its previous cases going beyond nationality: religion, gender, disability and language. Is it really such a stretch to ask discrimination victims to convert, change their gender, to take – where possible – measures to overcome their disability or to learn and speak another language than their mother tongue to avoid discrimination? By highlighting the absurdity of these hypothetical outcomes, we deconstruct the Court's flawed reasoning. At the same time, we intend to answer questions going to the very heart of discrimination protection: Who is responsible to ensure that discrimination does not occur and can it be validly asked from potential discrimination victims to do everything in their power to "self-optimize" in a way that will no longer put a target on their heads?

Inessa Sakhno

European Court of Human Rights and systemic discrimination: journey in search of consistency

Combating discrimination in its complex forms, such as systemic, institutional, and structural, requires a consistent approach, as well as efforts to shape existing practices. Many issues cannot be resolved at the level of individual complaints: although the latter help to achieve the restoration of rights, they have shown their ineffectiveness in combating harmful practices, leading, in particular, to systemic discrimination.

In recent years, the European Court of Human Rights, one of the main bodies developing and applying new approaches to human rights, has made significant progress in using the concept of systemic discrimination. It has become a useful tool for a deeper and broader consideration of issues, which has made it possible to combat discrimination more effectively. For example, we see this in the case law of the ECtHR on the issue of domestic violence in different countries.

However, it cannot be said that the concept of systemic discrimination has been equally successful in other cases. A more thorough analysis of the jurisprudence of the ECtHR shows that one of the main problems is the inconsistency of the Court's approach both in the application and in the interpretation of systemic discrimination. One gets the impression that the Court has not yet decided on the concerto and, as a result, applies it to a limited extent, and therefore is always effective. For example, in such a way that it is difficult to refer to it when considering other cases of systemic discrimination.

Using the case of Tapaeva and Others v. Russia as an example, I seek to illustrate both the positive and negative aspects of the ECtHR's application of systemic discrimination. The Tapaeva case can certainly be considered a success in expanding the scope of systemic discrimination. However, the absence of a clear interpretation by the Court, coupled with inconsistency in the application of the concept, even if in a decision recognizing systemic discrimination, can be considered a significant shortcoming of both this decision and the position of the Court as a whole.

The analysis is based on legal doctrinal and empirical legal methods. It also includes possible ways in which the concept of systemic discrimination can be applied, based on a comparison with the cases cited in the Tapaeva case. Through its results, I hope to spark a discussion about possible improvements in the Court's application of the concept of systemic discrimination.

Šárka Dušková

Grounding reasonable accommodation under the European Convention on Human Rights: open gates but lenient review

The European Court of Human Rights (“the Court”) has been noted to use reasonable accommodation as an implicit requirement of the right to equality. Nevertheless, beyond cases concerning disability and religion, it has not been clear to whom the requirement practically extends. Such clarification is important, especially as some European jurisdictions, currently mostly legislating reasonable accommodation only for persons with disabilities, may debate extending this right to more grounds. The Court’s case law should be a significant guiding factor in this matter.

The paper clarifies who can and should benefit from the implicit reasonable accommodation according to the Court’s case law. It concludes that many different grounds have already been covered, including gender, gender identity, age, language, ethnicity and/or culture.

The Court's relaxed grounds doctrine moreover indicates that reasonable accommodation may extend even further, such as to the socio-economic status or migrant status. In addition, applicants basing their reasonable accommodation claims on vulnerability or other substantive disadvantages may benefit from a more stringent review by the Court.

The paper first presents a doctrinal analysis which indicates that a requirement of reasonable accommodation can principally apply on all Convention's broadly construed discrimination grounds. It then argues that the Court's doctrine implies two sets of grounds for reasonable accommodation: open grounds for an unintended constructed disadvantage linked with a socially recognizable status and more narrowly construed suspect grounds defined by vulnerability or other substantive disadvantages. The second set of grounds is typically associated with a narrowed margin of appreciation of the state, and reasonable accommodation claims seem more likely to succeed.

Sexual Harassment and Violence ~ Janskerkhof 2-3, Room 118

Zuzana Andreska

Combating gender-based violence at universities: the case of Charles University

Gender based violence (GBV), conceptualized as a continuum of acts ranging from bullying and sexist jargon to sexual abuse and rape,1 occurs in all spaces and spheres of human interaction including educational settings.2 62 % of academics and students in Europe reported to have experienced GBV.3 Such experiences leave them feeling disgusted, ashamed, fearful, vulnerable and lacking confidence. In order to avoid perpetrators, victims avoid courses, exams, meetings and sometimes leave academia altogether.

Universities are obliged to create a safe and non-discriminatory environment,5free from GBV which is a cause and consequence of gender inequalities. However, access to justice using legal measures of antidiscrimination, labour, civil or criminal law, is hindered by the hierarchical nature of academia6 and the time spent at particular institutions does not provide enough time to pursue the legal routes. One of the ways to combat GBV in academia is the adoption of institutional mechanisms.

The study presents an analysis of what solutions to GBV has the Law faculty of the Charles University adopted and how the drafting process is reflected by those involved. The data collection is framed by two events: the publication of accusations of sexual violence allegedly perpetrated by a member of the parliament and a student of the law faculty (May 2021) and the adoption of a measure by the dean to establish the position of a faculty ombudsperson (June 2022). The research is based on a combination of sources (institutional policies, communication of the faculty dean), 23 interviews with participants of the drafting process, and participant observation.

Using the perspective of feminist institutionalism and feminist legal critique, the article identifies that at the core of the process of is the perception of GBV as an individual, not an institutional and social problem. This perception manifested in xx ways: the timing of the adoption of the measures, the delegation of the responsibility for the agenda, the focus of the measures on reporting, rather than prevention. These findings contribute to the research on institutional responses to GBV and the socio-legal aspects of equal opportunities in education.

Danai Nikolakopoulou

Perspectives on workplace sexual harassment in the EU and the ILO

The #MeToo movement served as a catalyst for (re)drawing public attention to the topic of sexual harassment. The pressure that the movement applied also led to a change in the legal status quo. In 2019, the International Labour Organization adopted the Violence and Harassment Convention 190 and the accompanying Recommendation 206, which specifically pinpoint sexual harassment as a form of gender based violence and harassment. The two legal instruments also implicitly view sexual harassment as a form of discrimination and a psychosocial risk. Sexual harassment as a form of gender-based violence, a form of discrimination and a psychosocial risk are the three perspectives that will form the basis of this research paper. The analysis makes it clear that applying each of those perspectives has different implications for victims' protection. A clear example of such a difference is the personal scope of a legal instrument that adopts a certain perspective: an instrument which views sexual harassment as violence against women has a different personal scope compared to an instrument which views the issue as a psychosocial risk.

The paper focuses on sexual harassment at the workplace and limits its scope to the relevant legal instruments in the European Union (EU) and the International Labour Organization (ILO). After analyzing and disentangling the three perspectives, the paper intends to answer two questions. First, what are the advantages and disadvantages of each perspective, as expressed in the existing legal instruments, when the goal of the legal protection of victims is taken into consideration? Second, how do these legal perspectives interact with each other: are they complementary or at odds? In order to answer these questions, I pinpoint the relevant EU and ILO legal instruments and their legal aim. Sexual harassment as a form of discrimination is given specific attention, because of complexity of the legal concept of discrimination, as well as the vast academic literature that tackles it.

The research paper builds on existing academic literature from diverse legal fields, as well as from diverse legal systems. Moreover, I perform a textual analysis on the relevant legal instruments and their definitions of sexual harassment. The perspective is victim-centered and aims at inclusiveness: even though sexual harassment first surfaced as a women's issue, I also take into consideration victims who are harassed on the grounds of sexual orientation, as well as on a combination or intersection of grounds. The legal fields to which the research paper aims to contribute are international and European labour law, with a focus on non-discrimination and occupational safety and health, and human rights law.

Roni Rosenberg

Revenge Porn and Gender Inequality

In recent years the distribution of intimate images without the consent of the victims has become an epidemic around the world. Unfortunately this phenomenon expanded even more during the Coronavirus pandemic. The nonconsensual distribution of an intimate image is sometimes motivated by revenge following a failed relationship and is typically gender-related, in view of the fact that the majority of victims are women. For that reason, the phenomenon has come to be known as "revenge porn," even though the term does not cover the full range of cases in which intimate images are disseminated without consent. Today, the accessibility of the Internet, social media, and messaging apps has created convenient and easily accessible platforms for disseminating sexually explicit materials. Due to the unique characteristics of the virtual domain, the phenomenon of revenge porn has far-reaching implications for the victims.

COVID ~ Janskerkhof 2-3, Room 013

Stéfanie André, Mara Yerkes, & Chantal Remery

What does the corona pandemic teach us about gendered divisions in childcare?

Objective This article empirically tests the salience of relative resources, time availability and gender role theories for understanding gendered divisions of childcare during the corona pandemic.

Background Cross-sectional studies have provided key insights into the effect of the initial shock of the pandemic on gender divisions of care. But as the pandemic progressed, some studies suggested differential impacts of the pandemic on men and women occurred at different stages of the pandemic. Crucially, the few longitudinal studies available suggest that initial shifts towards more egalitarian divisions of care disappeared by later stages of the pandemic (Remery et al., 2021; Rodríguez Sánchez et al., 2021). Yet explanations for these patterns and the potential 'return to normal' are limited. Furthermore, few studies consider the applicability of previously maintained theories for explaining these differences, particularly from a longitudinal perspective.

Method The authors use five waves of probability-based longitudinal data from the COVID-19 Gender Inequality Survey Netherlands (CoGIS-NL) collected between April 2020 and November 2021. They estimate fixed effects regression models investigating the relationship between partners' time availability, relative resources and gender roles, and the division of childcare.

Results To be expected early 2023.

Jordy Meekes & Wolter Hassink

Essential work and emergency childcare: identifying gender differences in COVID-19 effects on labour demand and supply

We examine whether the COVID-19 crisis affects women and men differently in terms of employment, working hours, and hourly wages, and whether the effects are demand or supply driven. COVID-19 impacts are studied using administrative data on all Dutch employees up to December 2020, focussing on the national lockdowns and emergency childcare for essential workers in the Netherlands. First, the impact of COVID-19 is much larger for non-essential workers than for essential workers. Although female non-essential workers are more affected than male non-essential workers, on average, women and men are equally affected, because more women than men are essential workers. Second, the impact for partnered essential workers with young children, both men and women, is not larger than for others. Third, single-parent essential workers respond with relatively large reductions in labour supply, suggesting emergency childcare was insufficient for them. Overall, labour demand effects appear larger than labour supply effects.

Panos Kapotas

What do we owe one another? Equality obligations, autonomy and compulsory vaccination

The Covid-19 pandemic forced the international community and national governments to come up with a wide range of legal responses in order to limit the spread of the virus.

Despite the fact that many of these responses had an asymmetrical impact on different groups of the population, the standard justificatory rationale of national governments and legislators has been one of strict necessity: Limiting individual rights and freedoms was a proportionate means of safeguarding the life and limb of populations and of preventing the possible collapse of public healthcare systems in these unprecedented circumstances. Among these measures, compulsory vaccination seems to have been thought of as a measure of last resort until relatively recently, at least in Europe. Most European countries only started considering compulsory vaccination of parts of the population well into the second year of the pandemic and only for specific groups within the workforce, most notably healthcare workers. In December 2021, Greece became one of the first countries to introduce legislation that rendered compulsory the vaccination of a particular age group. With a Ministerial Decree of the competent Minister of Health authorised under Law 4820/2021, all citizens and permanent residents in Greece over the age of sixty (born until the 31st December 1961) were included in the categories of persons for which vaccination is compulsory and would be liable to pay an administrative fine of 100 euros per month, if they remained unvaccinated after 16 January 2022.

Against this backdrop, this paper seeks to examine whether and to what extent compulsory vaccination laws are compatible with European human rights law, as a justified limitation of individual autonomy in order to pursue wider societal goals. The protection of public health is, indeed, a goal of paramount societal importance and one that constitutes almost automatically a legitimate aim in exceptional circumstances, such as during a global pandemic. However, the aim of preventing a public healthcare system from being overwhelmed and eventually collapsing is, in fact, directly linked to the equality obligations of a state vis-à-vis vulnerable social groups, which are more likely to be in need of a functioning public health system. Building on Ronald Dworkin's notion of equality of concern and respect, the paper will argue that the legitimacy of compulsory vaccination requires a careful proportionality analysis and cannot be determined in abstracto. This proportionality analysis must strike a difficult balance between, on the one hand, showing equal respect to the dignity of all persons irrespective of their age or any other characteristic or status that may render them (more) vulnerable and, on the other hand, showing an appropriate degree of concern for individuals or groups for which such concern is merited due to their particular needs or specific characteristics. The paper will attempt to demonstrate that a better understanding of what we owe one another qua individuals and qua social groups in times of crisis may be the key to unlock the true meaning of substantive equality.

Julian Hettihewa

Young people, youth & COVID-19: Exploring the Hidden Age of Inequality

International legal discourses on equality lack language and interest with regard to young people and youth which was especially visible during the height of the COVID-19 pandemic. I will argue that young people and youth must be included in theorising equality in international law. My paper is structured in five parts: First, I will clarify the terminology and then explain my methodology in the second part. I will then identify shortcomings in international legal scholarship. This sets the scene for the fourth part on the COVID-19 pandemic. At the end, I will present an outlook.

I understand young people as a chronological aged-based group. Today's cohort of young people forms the largest ever and constitutes the majority of the population in many states. I understand youth as a distinct social construct which is shaped and used by international law.

Methodologically, the paper is in the tradition of critical approaches to international, drawing especially on Hilary Charlesworth's and Christine Chinkin's work on feminist approaches to international law. Besides this, it interdisciplinarily builds upon insights from Youth Studies, a non-legal discipline studying social phenomena of youth, and Gerontology, a discipline focussing on old age and older adults.

Inequalities such as sexism and racism are well-known. Feminist approaches to international law, amongst others, offer lenses to permeate all layers of the international legal structure. They deconstruct power-differentials in international law, thereby rebuilding and informing understandings of equality in international law. Yet, they do not engage with young people or youth. There is little awareness of the concept of ageism. Even more problematic, ageism is generally applied – and limited – to the experiences of older adults. The experiences and perspectives of young people lack recognition and research in this context.

Although young people form a heterogenous group (like e.g. women) the COVID-19 pandemic evidenced that they were distinctly affected in terms of economic opportunities, mental health, and political participation around the globe. At the same time, youth was either constructed as unruly, irresponsible 'superspreader' or as passive, lost victim. The numerous ways in which young people actively mitigated the impact of the pandemic and pushed for participation were neglected. The World Health Organization initiated in December 2020 the process to establish its Youth Council, and also the UN Security Council included young people in its much-anticipated resolution 2532 (2020). While this gives the impression that young people are now included in global health law, structural changes and normative developments cannot be perceived.

This gives rise to a more fundamental engagement with young people and youth in the international legal context of equality. The question whether a distinct human rights instrument for young people is needed to tackle existing inequalities should be given serious thought. This requires on a more conceptual level further research on ageism against young people and on the role of youth and international law in enabling and sustaining ageism. This has implications beyond the COVID-19 pandemic, inviting to explore every aspect of the hidden age of equality.

Parallel Session 2

Structural Inequality ~ Janskerkhof 2-3, Room 109

Geraldine van Bueren (on-line)

Intersectionality, Discrimination and the Missed Global Opportunity of Preventing Intersectional Class Discrimination.

The paper enquires why class discrimination is frequently omitted in discussions about equality law and intersectionality and analyses why intersectionality and class is often confined to the areas of politics, economic, and sociological papers.

The author addresses the question whether class discrimination can be sufficiently prevented through intersectionality both comparatively and globally. This paper questions whether class is only a western social construct and examines the global attempts at prohibiting class discrimination and enquires as to the reasons for the lack of progress, including at the United Nations.

The paper also analyses the hostility by some to the concept of class, by which some regard class equality as undermining racial and gender equality. The approach of the author is that race and gender criticism of class had much merit earlier last century, but that a new intersectional approach to class is both possible and necessary. The author will explore and analyse the possibility of this new approach to intersectionality

The paper will also argue that an expanded approach to intersectionality is necessary and urgent. This is because of the increasing wealth and income gaps within states, and because the prevention of class discrimination will have significant practical cosequences including the essential reinforcement of rather than the undermining of existing protections in relation to communities recognised by law. The paper will introduce evidence to support this.

The paper will also question whether equality movements ought to continue to remain silent about class discrimination because of fears it will play into the hands of undemocratic and anti-egalitarian debates.

The author will also address intersectionality and class not only through the traditional lens of equality, but also through comparative jurisprudential concepts of dignity to enquire whether this strengthens the case for expressly preventing and prohibiting class discrimination globally or whether relying upon an organic development of intersectionality within each state will suffice.

Rana Kuseyri

Weeding out the vulnerable from Dutch neighbourhoods: the Rotterdamswet and discriminatory access to housing

In 2005, the Dutch government introduced national legislation providing municipalities with competences to improve neighbourhood liveability in vulnerable and low-income neighbourhoods. The Wet bijzondere maatregelen grootstedelijke problematiek (translated as the Inner City Problems Act), or the Rotterdamwet as it is commonly referred to, allows municipalities to filter out residents in designated socio-economically vulnerable neighbourhoods. To receive a housing permit in these neighbourhoods, residents must meet a number of cumulative criteria relating to their socio-economic background: these criteria include a minimum income from employment or alternatively a minimum number of years' residence in the municipality; no previous records of criminal behaviour or domestic nuisance; prioritizing socioeconomic factors, such as those relating to their area of employment. As the neighbourhoods this system targets are primarily made up of low-income groups with a migration background, this housing system only serves to 'weed out' some of the most vulnerable members of Dutch society.

Legal and political routes to remedy this discriminatory system of housing permits have been limited in impact. Previous attempts to challenge this law before the European Court of Human Rights, using freedom of movement provisions, were unsuccessful on the basis of proportionality. The Dutch government likewise remains reluctant to engage with evaluations of the *Rotterdamwet* which illustrates its failure to achieve improved neighbourhood liveability and safety as well as its discriminatory character towards vulnerable groups. There is serious concern among activist groups, lawyers, and citizens about the discriminatory nature of the law and its evident restriction of access to affordable housing.

I approach housing discrimination from a human rights-based perspective, specifically using the prohibition on discrimination and the right to housing in the European Social Charter (ESC) and the European Convention on Human Rights (ECHR) as a normative framework. For the prohibition on discrimination portion of this framework, I use Article E ESC on non-discrimination as well as Article 14 ECHR and Article 1 of Protocol No. 12 to the Convention, exploring indirect and direct discrimination on the basis of ethnicity and socioeconomic disadvantage with some marginal reflections on gender and disability. For the right to housing, I primarily use Article 31 ESC as the ECHR lacks a distinct provision on housing – though Article 31 does uses relevant provisions in the ECHR as a source of interpretation. I rely primarily on legal doctrinal methods with a degree of interdisciplinarity, drawing from urban geography and urban sociology to support and give context to my findings.

Chanee Franklin Minor

The Intersectionality of Race, Class, and Property Rights in the Development of US Antidiscrimination Law in Housing

During the height of the COVID-19 crisis and for the first time in U.S. History, Congress issued a federal eviction moratorium. Tenant protections moved front and center in the national debate as the pandemic revealed that being homeless or living in overcrowded, unsanitary conditions became a death sentence for many Americans. Yet long before the COVID-19 virus inflamed the precarious economic position of everyday Americans, cities across the nation faced a pandemic of evictions, increasing homelessness, inadequate housing, real estate speculation and raising rents. We are amid a housing crisis decades in the making, one that is rooted in racialized policies around property and people. Today, stable housing is more important than ever, but for many Black Americans, their ability to stay in the community they call home is eroding.

US Anti-Discrimination Law developed as a remedy to America's history of slavery, white supremacy, and Segregation. Specifically, housing anti-discrimination law emerged to remedy decades of systemic and pervasive discriminatory practices meant to segregate black from white, creating urban ghettos and segregated southern communities with limited resources and substandard housing conditions. At the same time, America at its core was founded upon values of individualism, freedom, and liberty as it relates to property rights coupled with a strong distrust of government interference. This paper will examine the tension between racial justice and economic freedom in the development of U.S. anti-discrimination law in housing and how the failure to recognize the intersectionality of the two issues contributes to the continuing substandard housing experienced by many black Americans and the persistent ghettoization and segregation of black people in America.

Specifically, we will look at the how anti-discrimination laws in the US and the value of equality as opposed to a value that uplifts a right to housing evolved in a particular socio-legal context, where economic liberty and property rights was dominant in the regulation of the housing and the movement for desegregation was separated from the economic justice movement led by trade unions, largely comprised male or white workers, ignoring the intersectionality of the dual struggles, and thus the right to housing never merged in the antidiscrimination context deeply limiting the laws effectiveness' in achieving its overarching goals.

When FHA emerged, it was stripped of its enforcement mechanism and doomed to fail. For over 50 years since it's passage, black people remain subject to a system of institutionalized housing discrimination, increased housing instability, and substandard housing conditions – each time legislative or judicial action was taken to ameliorate segregation or increase tenant protections it is fought by power and people who benefit from the status quo – realtors, bankers, politicians, corporate landlords. I would argue that the main issue at play here is property rights and profit. Equality as the foundation of antidiscrimination law in housing does not threaten property rights whereas a right to housing would.

Gender Equality ~ Janskerkhof 2-3, Room 111

Caroline Joelle Nwabueze

The impact of judiciary actions in the suppression of female-based legal discriminations in Nigeria

Women in Nigeria face many challenges and discrimination under some extant laws promoting masculinity dominance. Some of these laws include the Labour Act, the Police Act, customary practices and sexual violence laws amongst others. Illustrative examples of discrimination comprise the exclusion of a woman from inheriting the property of the parents on the sole basis of her gender under Igbo customary law, the necessity for a female police officer to obtain official approval prior getting married whereas male police officers did not require such permission, etc. Examples are numerous. Nigeria is nevertheless a democratic society with the general guarantee of equality enshrined in the Constitution, most specifically the equality regardless of gender. The supreme law of the land precisely emphasizes that a citizen of Nigeria of a particular sex shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria to restrictions to which citizens of Nigeria of other sex are not made subject, or be accorded either expressly by, or in the practical application of, any law in force in Nigeria any privilege or advantage that is not accorded to citizens of Nigeria of other sex. Whilst, the Nigerian judiciary in its mission to administer justice in the land, has not slugged in the annihilation of these miscarriages of rights. The issue of enforcement of fundamental rights of women to non-discrimination have continued to feature importantly in Nigerian courts, breaking the net of female-male imparity in the legal framework, and restoring the sanctity of equality between both genders. This paper highlights aspects of Nigerian laws accentuating discrimination against women, and analyses the impact of the judiciary actions towards the achievement of equality between male and female, with a focus on the reforms of extant laws.

Elena Ghidoni

Conceptualizing stereotypes in antidiscrimination law: insights from feminism and intersectionality

There has been a growing interest in stereotypes within European institutions and legal scholarship in the last decade. Stereotypes are consistently addressed as concerns for gender equality, with specific attention to how the legislation and judicial practice might enforce stereotyped views on the role of men and women in society. Yet, these elements remain largely elusive in their structure and functioning, making their identification and the strategies to redress them difficult to pin down in legal reasoning. Moreover, no research so far has unfolded the implications of intersectionality in the study of stereotypes, specifically regarding their structure and functioning.

Building on key contributions of feminist theory, this paper addresses these gaps and proposes to frame stereotypes within a ‘structural’ approach to antidiscrimination law: a critical perspective that accommodates the insights of intersectionality theory in its structural version.

Through the analysis of judgments from the ECtHR case law, the paper seeks to unveil the complexity embedded in stereotypes and their impact on adjudication. Moreover, it highlights what intersectionality theory can contribute to the legal understanding of stereotypes as a preliminary task to design effective responses to their wrongful effects.

Jana Kvasnicová

Sexy or sexist? Assessing sexist advertising from the perspective of equality and morality

Public awareness raising campaigns about Sexism in advertising in Czechia had been one of the topics of the NGO "NESEHNUTÍ" which awarded the most sexist advertisement for 10 years (between 2009 and 2018). The NGO identified eight criteria of sexist advertising: 1) stereotyping of men and women, 2) separating roles of men and women, 3) objectification of men and women, 4) use sex sell principle, 5) use parts of human body, 6) promote violence, 7) create beauty myth, 8) use linguistic sexism.

The activity of NGO was followed by regional trade authorities which is imposing a fine for sexist advertising several times a year (up to 10 cases per year in whole Czechia). However, there is no clear definition of sexist advertising in the legislation. Czech regional trade authorities can sanction advertisements which are contra bonos mores e. g. include discrimination based on sex or compromising dignity. The decisions of regional trade authorities were in couple cases followed by the courts – regional court (administrative brunch) and Supreme Administrative court.

Advertising is commercial type of expression. While imposing fines the violation of freedom of expression on constitutional level can arise. Even though commercial expression deserves less protection in comparison with the political or artistic expression (according to e. g. European Court of Human Rights). The alleged violation of freedom of expression was already the subject of the decisions of Czech courts. The regional court qualified the conflict between the freedom of expression on one side and dignity eventually equality on the other side and decided that imposing fine for sexist advertisement which affects human dignity is admissible limitation of freedom of expression. Supreme administrative court contrary to regional court saw in the case of sexist advertising the conflict between the freedom of expression and morality (obscenity) but accordingly to regional court find this limitation of freedom of expression acceptable.

In my contribution I will present the case study of two main decisions of the Czech courts focused on sexist advertising. I will analyse the dialogue between regional court and Supreme administrative court and their argumentation based on dignity and equality on the one hand and the argument of obscenity on the other. I will discuss which of mentioned values is appropriate to limit freedom of expression in democratic society. I will include feminist critic of the decision of Supreme administrative court in the light of the theory of Catherine MacKinnon who criticized obscenity law and reasoned the equality should be used as conflicting value. Additionally, I will explain why sexist advertising is in breach of equality principle and the limits of liberal theory of freedom of expression in context of gender (in)equality.

Inequalities and Employment ~ Janskerkhof 2-3, Room 110

Julie Ringelheim, Olivier Struelens & Jochum Vrielink

What influences the outcome of employment discrimination litigation? A statistical analysis of Belgian Case-Law

That discrimination cases are particularly difficult to win in court is a common finding of legal scholarship in many countries. The problem of proof and a tendency of judges to restrictively interpret the law are often put forward to explain this situation. Yet, such observations are very general and leave unresolved the question whether, among legal actions for discrimination, certain categories of actions are more likely to fail or succeed than others, and if so why.

In the US, the seminal socio-legal research undertaken by Berrey, Nelson and Nielsen[1] has shed important light on the variety of factors susceptible of influencing the outcome of discrimination cases. In Europe, by contrast, similar empirical data are virtually absent.

The research presented in this paper aims to fill this gap. Taking Belgium as a case-study, we seek to assess through a statistical analysis the correlation between a set of variables and the outcome of discrimination litigation in the field of employment. Three categories of factors are taken into account: (1) factors relating to the case itself (ground at stake; type of discrimination alleged; nature of the employment dispute); (2) factors relating to the parties (type of plaintiff and type of defendant); and (3) the jurisdiction deciding the case.

Given the absence of a centralized case law data base in Belgium, we created for the first time in Belgium an original data base which includes all judgments we could identify relating to discrimination based on the six prohibited grounds under European Union law (sex, race or ethnic origin, disability, religion/belief, sexual orientation and age) decided by employment courts between 2009 and 2019. The judgments – 596 in total – were collected from tribunals themselves as well as other sources (equality bodies, legal journals and practicing lawyers).

Our research shows that each of the variables studied has a significant impact on the outcome of the case. Concerning first the characteristics of the case, we unveil a striking disparity in the success rate depending on the ground at stake, ranging from 50% of success rate for cases relating to gender to 35% for disability, 31% for age, 19% for race or ethnic origin and only 11% for religion-related cases. The type of discrimination alleged also correlates with outcome: the success rate is 54 % for pregnancy discrimination claims and 39 % for both direct discrimination and denial of reasonable accommodation but drops to 29 % for harassment and only 19 % for indirect discrimination claims. The discrimination issue at stake matters as well: discriminatory firing has a 38% success rate, whereas e.g. discriminatory hiring and discriminatory harassment respectively present a success rate of 49% and 19%. Secondly, regarding the parties to the case, we observe that where an equality body is involved as a party to the case, the success rate is almost double. But we also find a correlation between the type of defendant and varying rates of success for the plaintiff, with a 22% rate when the defendant is a public organization, 41% when it is a private business and 64% when private individuals are accused of discrimination. Finally, we also highlight a disparity in the success rate depending on the judicial districts, ranging from 25% in Antwerp to nearly 60% in Ghent.

These findings highlight the internal diversity of discrimination case-law and open up new perspectives for a more refined understanding of the factors impacting discrimination litigation in a European context. It also raises new questions as to what influences the trajectory of legal actions for discrimination.

Sarah Knoops

Remedying wage discrimination: the enforcement of anti-discrimination laws in occupational pension schemes (EU)

In this paper, I will explore some of the challenges encountered in enforcing anti-discrimination laws. The focus will be on one specific element of pay: the occupational pension scheme of an employee. Who could be held responsible if this occupational pension scheme is discriminatory? And how will the employee be redressed after a successful claim?

The paper will be structured as follows.

I will start with a brief overview of the legal framework on discrimination related to occupational pension schemes. After the analysis of the principle of equal pay between women and men (art. 157 TFEU), I will highlight the prohibition of age discrimination (Directive 2000/78/EC) and the principle of non-discrimination in the Part-time Work (1997/81/EC) and the Fixed-term Work Directive (1999/70/EC).

In the second section, I will discuss who could be held responsible for discriminatory treatment in an occupational pension scheme. Similar to wage discrimination, the employer will be liable. Nonetheless, several additional actors could be involved in the design and implementation of an occupational pension scheme, including the pension provider, the social partners and the state. Their liability will be examined in addition to the employer's liability.

The third section will focus on judicial enforceability. How can the national court safeguard the primacy of EU non-discrimination laws? After declaring the discriminatory provisions null, the national judge will be prompted to fill the legal void resulting from it. In this matter, the CJEU has offered strong guidance to determine the appropriate compensation. However, in some age-related discrimination cases the employee was left empty-handed due to the lack of a clear reference framework. In my analysis, I will pay special attention to this particular challenge.

This paper ends with a short conclusion. I will conduct traditional legal research, focused on the European Union.

Alex Patrick

Pay inequality and the limiting effect of the business case

In the United Kingdom, the business case for equality continues to be the primary method of encouraging employers to take positive steps to prevent pay discrimination on the basis of sex and race. Lawmakers have been reluctant to impose positive duties on employers which would require them to examine their pay practices and root out conscious and unconscious biases, due to the perceived administrative and financial burdens that this would impose on business. Instead, various campaigns by government, the Equality and Human Rights Commission and business and human resources networks have focused on the economic and reputational benefits that can be attained by diversifying workforces and providing fair wages. Employers are told that they will enhance their reputation by voluntarily conducting and publishing analyses of their pay systems, making it easier to attract and retain high calibre employees, consumers and investors who are drawn to fair and transparent organisations. Voluntary analysis is also presented as a method of offsetting the risk of negative publicity and litigation.

This paper challenges the efficacy of this reliance on the business case, on the basis that it has a limiting effect on employers' commitment to rooting out discriminatory pay practices. It draws on the example of voluntary equal pay auditing – a practice which is intended to reveal whether there are instances of unlawful unequal pay between female and male employees who perform work of equal value. Using content analysis, the paper examines a sample of 30 equal pay audit reports released by UK employers across the public and private sectors. It finds that, where employers are motivated primarily or solely by the business case for equality, audit reports are likely to lack detail, accuracy and usability. With reference to comparative experiences in jurisdictions with mandatory auditing, the paper suggests that the intangible benefits that employers might derive from voluntary action are insufficient to prompt them to engage meaningfully in the auditing process, or to commit to effective follow-up action that might reduce wage inequality. The sole reliance on the business case, and the consequent lack of oversight of employers' voluntary action, permits employers to limit or distort data to present their pay practices in the best light. The paper concludes that the business case for positive action on wage inequality serves only to maintain the status quo, and cannot serve as a catalyst for the elimination of pay discrimination.

Feifei Shen (on-line)

Reconstruction of Judicial Recognition Standards for Employment Discrimination against LGBT people in Mainland China

In China, due to the long-standing limited recognition and inclusion of LGBT people in society, LGBT people face different degrees of discrimination in various fields. Among them, discrimination against LGBT people in the field of employment has become increasingly prominent. According to the United Nations Development Programme's policy brief "LGBT people Workplace Experiences in China" released in 2018, LGBT people in China often face hostility in the workplace, rife with harassment, bullying, and discrimination, and 21% of LGBT people respondents reported having been treated unkindly in the workplace. If we take the 21% incidence of discrimination as the basis, it can be projected that among the approximately 50 million LGBT people in China, there are nearly 10.5 million LGBT people who are suffering from different degrees of discrimination. Despite the high risk of employment discrimination against LGBT people, litigation related to employment discrimination against LGBT people is uncommon in judicial practice. As of November 1, 2022, there are only six concluded LGBT people employment discrimination cases in China that I have retrieved through public channels such as the Chinese Judicial Documents Network and media reports.

The reasons for this are, on the one hand, the parties may be reluctant to go to court due to the risk of their privacy being exposed, fear of discrimination or social ostracism for themselves and their families, and other factors. On the other hand, for LGBT people who have been discriminated against in employment, going to court is not only time-consuming but also requires significant costs. From the trial result, most of the lawsuits are dismissed by the courts, and the success rate is low. Even if they win, the amount of compensation they receive is very small, and the damaged rights and interests of the parties are not satisfactorily remedied in the end. This phenomenon discourages other LGBT people who wish to defend their rights through judicial means.

Eliminating employment discrimination against LGBT people, safeguarding LGBT's equal employment rights, and realizing the enjoyment of human rights and fundamental freedoms are the common goals of China and the international community.

On the one hand, the study will select existing LGBT employment discrimination lawsuits and their legal documents in China for qualitative analysis, sort out the basic facts, controversial focus, judgment results, and adjudication logic of the cases, and point out the shortcomings of China's current judicial determination standards in terms of legal basis, legal interest protection, burden of proof, and legal liability. On the other hand, through combing the anti-LGBT employment discrimination legislation and judicial practice in the United States, United Kingdom and Taiwan, and examining the differences in their judicial recognition standards, we propose a set of systematic, logical and operable standards for the recognition of LGBT employment discrimination in the context of China's current legal system against employment discrimination.

Digital Equality ~ Janskerkhof 2-3, Room 013

Barbara Giovanna Bello

Tackling Online Hate Speech and Discrimination from a European Perspective: Potentials and Challenges of the Inter-legal Approach to Law in the Current Internet Governance

The contestation of States' sovereignty as the only source of law relies on a well-established body of literature. The "boundless" nature of the Web – considered "the network of networks" (Fiorinelli 2021, p. 405) – would have suggested that States would promptly converge towards global agreements on the legal protection against online hate speech and discrimination, a step that still seems hard to take. This is mainly due (though not limited) to two different orientations on the matter: the former one—guiding large platforms and, more broadly, the so-called U.S. approach – is based on the liberal "Marketplace of ideas" theory and extensively interprets the protection of freedom of speech; the latter one is the so-defined European approach to illegal contents, which admits justified limitations of freedom of speech that infringes other fundamental rights (Just 2022; Lee 2010; Rosen 2012; Waldron 2012).

These two approaches influence both the substantive protection against hate speech and discrimination as well as the Internet governance. In fact, today's legal scenario appears to be still fragmented and, at the same time, very dynamic in the attempt to strike a balance between freedom of speech and tackling online hate speech and discrimination. It may be observed that this sphere is characterised by both centripetal trends (towards UN and CoE soft international governance and EU soft and hard supranational provisions) and centrifugal forces of some EU national legislations. Besides them, Platforms owners concur or even compete within these hybrid and polycentric legal spaces.

The metaphor of the transition from the "pyramidal system" to that (horizontal and eterarchic) of the "net" elaborated by François Ost and Michel Van De Kerchove (2002) is particularly relevant for both the offline and online spheres. In such context, the interconnection between norms from multiple legal orders, all simultaneously applicable to concrete cases on the basis of the impact on the very case under scrutiny, is at the core of a recent conceptualisation of inter-legality in legal philosophy (Palombella 2019; Chiti, di Martino and Palombella 2021;) that departs from socio-legal scholar Boaventura de Sousa Santos' original elaboration (interlegality).

The hypothesis guiding my reflection is that, in the lack of a universally recognised definition of on hate speech as well as of a global regulation of online communication, an inter-legal approach to tackling online hate speech and discrimination may provide tools to legal and non-legal actors in handling hate speech-related "cases" in a loose sense, including judicial and non-judicial ones. My assumption is that, due to the characteristics of online hate speech and discrimination, inter-legality may have a strong impact if it is operationalised in all facets – that is, not only by judges but by lawmakers, independent authorities on communication, and even platforms.

Eliana Zatschler

Bridging the pay gap in a digital women's world: pay transparency in platform work

The Proposal for an EU Directive on improving working conditions in platform work defines 1 'platform work' as a type of work where an online platform serves as an intermediary between platform workers, who provide services, and paying clients. Prominent examples include Uber, Lyft and Deliveroo. The digital transformation that occurred through the coronavirus pandemic allowed these work arrangements to flourish and receive even more importance in the public eye, as well as in the case-law of the CJEU. This rapidly increasing segment of the EU economy accounts for 2 more than 28 million people and it is expected to reach 43 million by 2025.

The European Commission's Proposal for a Pay Transparency Directive to strengthen the 3 application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms is one of the current flagship legislative initiatives aimed at bridging the gender pay gap.

criteria, and in particular the consequence of becoming an ‘employer’ and 'worker' and gain access to the applicable labour and social protection rights, and therefore to pay transparency. It will analyse the interaction between the two proposed directives with the lens turned on the following questions:

(i) To what extent does the proposed pay transparency directive cover employment relationships that are couched as self-employment but become employment relationships only by virtue of reclassification under the provisions of the proposed platform directive?

(ii) How are situations dealt with where a worker works on several platforms, e.g. working simultaneously for Uber, Deliveroo and Bolt?

(iii)Why are only relatively few women choosing to work in the platform economy? Are there structural or legal factors restricting the access of female workers to this work?

(iv) Is it possible to promote transparency and protect personal data at the same time?

(v) How does the requirement for human monitoring, ment to ensure fairness and accountability, impact women in the world of algorithmic management?

(vi) How would the proposed directives on pay transparency and on platform work impact women, respectively, in two representative Member States, i.e. Belgium and Romania?

(vii) How can gender-based discrimination and gender biases be tackled by pay transparency?

(viii) To what extent are the two proposed Directives coordinated as regards gender equality?

Kyriaki Topidi

Mapping Intersectionality for Ethno-Cultural Minorities Online: Concepts, Policies and Implications

It is widely acknowledged that online platforms affect in multiple ways social cohesion within communities. More specifically, by adopting content-moderation models that privilege commercial interests, they are actively contributing to the maintenance of entrenched histories of control over specific vulnerable groups such as women and racial/cultural minorities. In addition, they are also involved in setting social standards and benchmarks over what should be considered as harmful.

The paper proposes to unpack platform governance models, tools and principles that entail gendered and racialized lenses of harm that they purport to protect. Starting with the question as to whether online hate and harm is even governable, it will consider the following issues: first, it will discuss conceptually and comparatively the notion of online harm both within legislative frameworks in Europe but also within platform policies, arguing that a narrow definition of harm is not only insufficient but also oppressive. The discussion of online harm will be preceded by considerations of net neutrality, understood as the possibility for users on internet to control what they see and do online, especially in the ways that it can be connected to internet freedom and non-discrimination online.

Second, the analysis will provide an overview of the ways in which platform governance relies on gendered and racialiazed tools (e.g. inequitable moderation policies, hierarchization of interests protected, quantification of harm), to serve the interests of platforms more than those of society at large. The account will be illustrated with examples from ethno-religious groups such as Muslim women in the UK and Roma women in Ireland in the context of hate speech. Special emphasis will be additionally placed in this respect on the growing concern of 'dirty data' used by both states and platforms to create racially biased, flawed algorithmic tools that lead to exclusion but also maintain discrimination against particular groups and the perpetuation of socioeconomic inequalities based on education, employment or income. This section will also show that while platforms make references to protected groups such as minorities or women, there is rarely if at all acknowledgement of the ways that race, gender or culture for example pattern normalization and (il)-legality of online content. The third part of the paper will argue against the digital dominance of Big Tech and for the need of a paradigm shift in moderation policies towards more cooperative modes of governance. Accepting in the European context that platform governance has moved past self-regulation and is firmly in the realm of state imposed regulatory frameworks, the paper will argue in favour of moderation design that is ethical, fair and aware of the differentiated impact that it has on specific categories of users. The idea of a 'regulated internet' matters even more in the context of the emerging dualist vision of the digital ecosystem between those in favour of 'digital freedoms' as opposed to those aligned to digital authoritarian perceptions governing it. Ultimately, the paper will conclude with a critical reappraisal of the tools used online that aim at a categorisation of the world and people, as both individuals and members of groups, that is non-negotiable, abstract and compulsory.

Tanya Krupiy

A new test for a new context: protecting individuals from discrimination when organisations employ artificial intelligence decision-making processes

Organisations in numerous countries are making reliance on artificial intelligence decision-making processes to produce decisions regarding the entitlement of individuals to opportunities. There have been a number of high-profile cases where individuals who have protected characteristics have been disadvantaged by the use of the artificial intelligence decision-making process. Such negative impacts make it imperative that individuals are protected from discrimination. Raphaële Xenidis argues that existing concepts within the prohibition of discrimination in international human rights law need to be reimagined to meet the challenges posed by the employment of artificial intelligence decision-making processes. The goal of this presentation is to propose how the prohibition of discrimination in international human rights law can respond to the advent of the deployment of artificial intelligence decision-making processes. To achieve this aim, the presentation puts forward a new test for discrimination which is particularly tailored to the context of artificial intelligence decision-making processes. The presentation uses the Convention on the Rights of Persons with Disabilities as a case study. The presentation demonstrates that this test can be transposed to numerous existing international human rights treaties without the need to amend the treaties. This presentation uses doctrinal research methodology.

Courts and Jurisprudence ~ Janskerkhof 2-3, Room 116

Tilen Štajnpihler Božič

An uneasy gender (im)balance: Discussing gender equality in the judiciary

The need for a diverse judiciary has long been a topic of discussion in Europe and beyond. Although the issue of diversity in the context of the judiciary pertains to numerous social divisions based on characteristics such as race or ethnicity, religion or class background, the most widely debated aspect of that issue is in relation to gender, where the prevailing concern has been with the underrepresentation of women on the bench (and in the legal profession in general).

However, the OECD observed that in the last decades the number of women in the judiciary has significantly increased worldwide. What is more, the judiciaries of certain European jurisdictions, such as Slovenia, have undergone a dramatic transformation in the form of a significant rise in the share of women among their judges – the phenomenon that is sometimes labelled as the "feminization" of the judiciary. To illustrate, in 1991 the number of male and female judges in Slovenian courts was roughly balanced, whereas by 2019 almost 80 percent of all judges were women. In Slovenia, it was thus the opposite trend – i.e. an underrepresentation of male judges – that first sparked interests in the notion of judicial diversity. Voices from the legal profession and academic circles as well as from the political arena started calling for a balanced gender composition of the judiciary and demand that measures be implemented to address the existing imbalance in favour of women.

Taking the situation in Slovenia as an example, this paper aims to critically evaluate such categorical appeals to diversity. I will argue that more often than not such appeals build on a misunderstanding of the rationale underlying diversity, its relation to (gender) equality, and misconceptions of the legal framework for combating discrimination. This is mostly due to inadequate consideration of the historic development and current social context of gender inequality in general, and within the legal profession and the judiciary in particular. Therefore, in order to be able to adequately evaluate such appeals and decide how to respond thereto, we need to break down the issues involved and distinguish that which we actually do know from speculation or even prejudice. Is it justified to talk about the "feminization" of the judiciary at all? If so, how did the current state of affairs come about? Is this gender imbalance or lack of diversity in the judiciary a problem and why? And, finally, when is it justified to implement policy and legal instruments intended to remedy this disparity in the number of male and female judges? Due to the complexity of the issues raised, and particularly also in order to avoid (further) trivialising the discourse regarding gender and the courts, I will caution against hasty and unconditional responses to calls for interventions on behalf of diversity and gender equality in the judiciary in social contexts as exemplified by the situation in Slovenia.

Ivo Gruev

Gender Backlash: Targeting Equality through Constitutional Adjudication in Central and Eastern Europe

Eastern European constitutional courts have become venues of unprecedented and alarming attacks on gender equality, women's rights, and the rights of LGBTQ+ persons and other historically disadvantaged groups. One major theme of such constitutional contestation, which is gaining growing prominence as a common target of anti-liberal actors and processes in this region is that of 'gender ideology'.

This term, which is originally associated with right-wing populist discourses, was first explicitly endorsed by the Bulgarian Constitutional Court (BCC) in 2018 in a controversial decision that declared the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) incompatible with the Bulgarian constitution due to, inter alia, espousing a hidden gender ideology. In 2021 the same court went even further, coupling Bulgaria's national constitutional identity with Christian Orthodoxy to consolidate the constitutional definition of sex to a biologically determined binary (instead of a socially construed) notion of gender, thus pre-empting any potential legislative developments that could entrench or affirm trans rights. These rulings are part of a growing trend of contesting gender relations before the constitutional courts of other countries in the region, including Romania, Moldova, Latvia and, most recently, Czechia. These cases led to dramatically different outcomes with some courts (in Romania, Moldova and Latvia) deciding favourably to fundamental rights and others (in Bulgaria and Czechia) – curbing them through narrow and illiberal interpretations of their respective constitutional texts. A shared feature among these instances, however, is that either these courts themselves, or the actors intervening before them, merged constitutional discourses and right-wing populist narratives in an unprecedented pushback against efforts to protect vulnerable groups against gender-based discrimination and violence. This paper seeks to answer the questions of whether, in what ways, and to what extent the role of constitutional courts in the region is shifting from that of alleged bulwarks of fundamental rights to venues for backlash and preventive litigation against equality.

Beth Gaze

The costs of enforcing rights: rules about awarding costs in discrimination claims

It's one thing to have rights and another to enforce them. The procedural avenues for enforcing discrimination law can have as much impact on the ability to protect rights as the substantive provisions of the law. This paper will focus on one of the factors that acts as a disincentive to individual enforcement of the law: the costs rules in litigation.

Apart from the substantive law, factors that affect ability to enforce the law can include whether specialist tribunals are available or matters are heard in the ordinary courts, whether public enforcement or publicly supported enforcement is available or it is solely left up to victims of discrimination and harassment to enforce the law, as well as procedural rules that apply to enforcement proceedings. The cost of taking legal action to enforce, the possible remedies available, and the risks, both emotional and financial, of the claim failing all play substantial roles. Individually or cumulatively, these factors can create disincentives for the enforcement of the law, when it may be easier for a victim to just move on with their lives and look for alternative work or other opportunities. This leaves discrimination unchallenged and the law underenforced.

This paper will examine and analyse the litigations costs rules in different jurisdictions to identify the range of different models, and the advantages and disadvantages of each, with particular attention to asymmetrical costs rules that seek to provide a positive incentive for individuals who have been harmed by discrimination to enforce the law. This will include litigation costs rules in the US, UK and other jurisdictions as well as some examples of asymmetrical costs rules in other areas of law. It will support an argument that symmetrical costs rules are dysfunctional in this human rights based jurisdiction, and that alternative approaches should be preferred.

These factors are particularly relevant in Australia, because of the lack of any public enforcement so the law is enforced only by individuals or groups bringing claims for discrimination or harassment. Because individual actions are the only mechanism for enforcing the law, disincentives to enforcement are a major problem.

In Australia's civil procedure system, symmetrical costs rules are always applied. The usual approaches are 'costs neutrality' rules apply, where both sides bear their own costs of litigating and neither side is liable to pay costs for the other whether the case wins or loses (usually applied in tribunals), or 'costs follow the event' rules apply, whereby the loser is required to pay the legal costs of the winner (usually applied in the courts). Neither rule is satisfactory because both offer a disincentive to enforcing discrimination law. The paper seeks to identify better alternatives and build a case for departing from strict symmetry of costs rules.

There has been concern in recent years that discrimination and harassment laws are underenforced when enforcement is left solely or primarily to the victims of discrimination and harassment. The impact of the pandemic has been to exacerbate equality issues for many women and other groups vulnerable to discrimination. Victims face challenges in enforcement including frequent resource and power disparities of the parties, the fact that litigation is personally draining on them in a way that is not the case for many corporate respondents, limited access to expert advice and representation, and general civil procedures such as costs rules that increase the risks of litigation. The two main responses to this problem have been to try to improve enforcement by allowing and encouraging enforcement of the law by a regulator, and to emphasise prevention through the imposition of positive duties on actors who are in a position to bring about changes to behaviour and protect those who are potentially vulnerable.

This paper will assess these responses in light of regulatory and compliance theory, in particular asking whether these steps are sufficient to achieve compliance. Regulatory theory generally focuses on getting organisations to comply with existing law whose legitimacy is generally accepted. However, discrimination and harassment law is still a mechanism of bringing about social change, and to this extent it seeks to instil contentious norms, which even judges may not understand well or be fully committed to. This brings greater challenges to enforcing this law, as it requires both education about the law and its goals and promoting acceptance of those goals as well as 'simple' enforcement.

This paper will explore these issues in the context of the Gender Equality Act 2020 in the state of Victoria, Australia, which requires public sector entitles to conduct gender audits of their workforce, develop and report regularly on a gender equality plan, and carry out gender impact assessments of their policies and services. This scheme draws from the UK public sector equality duty as well as the Australian Workplace Gender Equality Act 2012, but is distinctive in its emphasis on intersectionality in evaluating actions and a pro-active approach to compliance.

The paper aims to explore the applicability of regulatory and compliance theory developed for accepted forms of regulation to equality regulation, where backlash and resistance make enforcement even more challenging. The method used will be analysis of regulatory and compliance theory in the context of efforts to adopt regulatory, positive,. Preventive approaches to discrimination and harassment.

LGBTQI Rights ~ Janskerkhof 2-3, Room 117

Lenka Křičková

The Role of the European Courts in Cross-Border Recognition of Same-Sex Families in Czechia

The Czech Republic (like several other European countries) now allows same-sex couples to enter into civil unions but not to marry or become parents together. However, such family ties can be formed abroad and the question then arises whether (and how) they will be recognized in the Czech Republic.

Courts, both national and international, play a pivotal role regarding this morally and politically sensitive issue. Using the Czech Republic as an example, the paper aims to shed more light on the interaction between the European and the national courts in this area. In particular, the paper will present findings of an empirical study focusing on the Czech courts' compliance with the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU) case law on cross-border recognition of same-sex families. Methodologically, the underlying study uses a three-level approach (pioneered by Kosař et al.) for examining references to European courts' case law in decisions of national courts. The research sample consists of Czech courts' decisions concerning family rights of same-sex couples and their children in cross-border situations, issued in 2014-2021. Based on a combination of macro-, meso- and micro-level analysis, the study assesses how often and in what way the national courts engage with the European courts' case law. The paper will then discuss not only the cases where the national courts used the European courts' case law, but also the cases where the national courts did not include any reference to the European courts although they could have done so.

Russell Robinson

Intersecting LGBTQ Identities and Religious Freedom

For roughly twenty years beginning in 1996, the U.S. Supreme Court consistently expanded the rights of LGBTQ people in a series of landmark cases. While Justice Anthony Kennedy wrote majority opinions championing the dignity, liberty, and equality of LGBTQ people, dissenting Justices often raised concerns about how these rulings might marginalize religious people who object to homosexuality. In 2018, the tables turned in a dispute between an evangelical baker who refused to make a cake to celebrate the union of a gay male couple in Colorado. Since that case (Masterpiece Cakeshop), the Court has focused its concerns about discrimination on evangelicals and Catholics. Religious people are thought to be newly vulnerable because the state has sided with LGBTQ people, using anti-discrimination laws to punish religious people for their beliefs. In short, in the eyes of most Supreme Court Justices, religious claimants have displaced LGBTQ people as the group most in need of judicial protection. Yet this new emphasis on religious freedom has rarely extended to Muslims. Indeed, the Court's rulings have upheld Islamophobic policies from the war on terror to President Trump's "Muslim ban."

For this conference, I would like to expand this project by juxtaposing the U.S. situation with that of the Netherlands. While in the U.S. many perceive Christianity and LGBTQ rights as in tension, media in the Netherlands have depicted Muslim young men as perpetrators of hate crimes against LGBTQ people and Islam as a threat to secular, egalitarian Dutch norms. Critical scholars have suggested that this discourse erases those who are Muslim and queer and overstates the Dutch government's concern for LGBTQ equality. This paper will highlight the intersectional identities of Christian and Muslim queer people to shed new light and understanding on these questions.

Russell K. Robinson is Walter Perry Johnson Professor of Law & Faculty Director, Center on Race, Sexuality & Culture, University of California, Berkeley School of Law. Robinson's scholarly and teaching interests include anti-discrimination law, race and sexuality, law and psychology, constitutional law, and media and entertainment law.

Marjolein van den Brink & Ruth Mestre

Gender identity in daily university life

Recognition of gender identity, whether legal or social, plays an increasingly important role in daily life, including in universities. The use (or non-use) of preferred pronouns and chosen name, both in and outside of classrooms, objections to references to (legal) gender on registration forms, diplomas, grades lists, invitations, information letters and so on, and other bones of contention may flare up.

In recent years, some European universities have undertaken attempts to accommodate gender diversity and gender recognition policies amongst their students and staff.

We propose to start a discussion with workshop participants on best (and possibly worst) practices, on possibilities, and on the benefits and disadvantages of different university approaches. Attention will be paid to (1) the role of legislation - whether or not having a national/ regional law on trans equality has an impact on university procedures; (2) which are the main approaches undertaken; (3) which actors/university services are more active, and which are more reluctant; and (4) the question to what extent universities are willing and able to accommodate identities beyond male and female.

The organisers of the workshop will present their findings on how Spanish and Dutch universities are dealing with this issue. A wide variety of aspects influences the (im)possibilities to tackle this issue, including domestic legal frameworks, IT-related (im)possibilities, differences in opinion in the direction this development should take among stakeholders and others (more options or abolition of markers?), and funding, not to mention the anti-gender backlash. Are universities able to offer their students equal treatment regardless of gender?

We hope to attract one or two other speakers from other countries, but even if not, the discussion is likely to be lively and is hoped to raise new ideas for reform.

Equality and Criminal Law ~ Janskerkhof 2-3, Room 118

Türkan Ertuna Lagrand

Developments in International Criminal Law and Refugee Law Putting Gender Discrimination at the Core of Persecution

'Persecution' as a crime against humanity and as the basis of refugee claims is a concept which is at the center of both international criminal law and international refugee law. Indeed, punishing persecutors and protecting their victims are the two sides of the same coin. In both areas of law, the gender-dimension of persecution has long been accepted. In this context, the Rome Statute of the International Criminal Court (ICC) recognizes the crime against humanity of persecution on grounds of gender; and in refugee law, the term 'gender-related persecution' is used to encompass a range of different claims such as acts of sexual violence and a pattern of discriminatory legal measures that would constitute the grounds for someone qualifying as a refugee.

Despite this recognition, gender-based persecution has rarely been properly investigated or charged by international or domestic courts; and states have failed to adequately take gender into account in the interpretation of international refugee law. Recently, however, there is a movement on both sides of this equation that aims at going beyond this formal recognition and reaching a truly gender-oriented approach towards persecution. In the area of refugee law, following the coming to power of Taliban in Afghanistan in 2021 and imposing a series of discriminatory measures targeting the women in the country, a number of European states have taken steps to explore whether it would be sufficient, in determining refugee status, that a woman is affected by the accumulation of government imposed or supported restrictive measures, merely on the basis of her gender, without the need to assess her individual situation. In the area of international criminal law, the Prosecutor of the ICC launched the 'Policy on the Crime of Gender Persecution' aiming at ensuring accountability for, and prevention of gender persecution.

The common thread shared by these initiatives is that they place gender-discrimination at the core of the concept of 'persecution'. While on the one hand, the ICC policy on the crime of gender persecution underlines that the root of this crime is discrimination, which needs to be eliminated in order to break the cycles of violence; on the other hand, the mentioned steps in the area of refugee law argue that women in Afghanistan risk being subjected to discrimination at such a level that it should constitute 'persecution' resulting in them being recognized as refugees, solely because they are women.

This paper focuses on the intersection of these two fields of law with a view to identifying to what extent a concept of 'Gender Persecution' is emerging in which 'gender discrimination' is understood in the same way.

Wendy Pena Gonzalez

The proportionality principle: towards a fairer criminal law

Recently, scholars have pointed out the relevance of the inequality of the criminal law regarding the poor. This discussion emerged in Spain as of the publication of the book of the philosopher Cortina: Aporophobia: Why we reject poor. It has been demonstrated that aporophobia has institutional roots that reflect a deontological trend of considering the poor non-productive and bad for the community. Several articles and books have been published regarding how and why is manifested this discrimination of the poor in the criminal law. Studies show that the introduction in the criminal law of managerialist logics, the radical functionalistic theory, the punitivism and communitarianism are the bases for the inequality in the criminal law regarding the poor. This inequal criminal law has two distinct features: the focus of the criminal system on the overcriminalization of small crimes - that are the ones committed more by poor people – and the lack of protection of the group in our punitive texts.
The objective of this research is to study the principle of proportionality to deal with this problem. The methodology used is interdisciplinary: it combines the perspective of criminal law with the perspectives of criminal policy, and philosophy of law, and it combines a theoretical analysis with a practical one.

Focusing on the first feature of the aporophobic criminal system, the criminal-law principle of proportionality appears as a good solution for that problem. However, it is not that clear the meaning of the principle (nor its consequences). The theoretical positions about the principle of proportionality are three. The first position has been recently sustained by scholars in Italy, that have brought out the relationship between the proportionality principle and idea of the need of rationality regarding criminal law. Thereby, it has been argued that this view of the principle of proportionality can determine the inconstitutionality of some criminal-law rules through some specific requirements, and that it can substitute the traditional view of the principle of proportionality. The second position is the traditional view of the principle of proportionality in criminal law as the principle that demands a proportional relationship between the offence and the punishment. This principle has become institutionalized and recognized by some Constitutional courts and Constitutions. A third new position has been developed in the Anglo-Saxon context, and it aims to connect the principle of proportionality with the principle of blameworthiness. That is, the principle of proportionality determines to consider the relevance of the circumstances surrounding the offence and the perpetrator, rather the harm produced by the offence.

Even though the three views of the principle of proportionality appear clearly as solutions for the problem of the inequality (disproportionality) of the criminal law, the practical appliance of these three currents is reduced, due to the discretional power of the legislator in modern democracies. The essay tries to solve this question and determine which perspective (rather: perspectives) should be considered and to which extent.

Holning Lau

Decriminalizing Same-Sex Sexual Activity: Jurisprudence from the Global South

A growing number of courts around the world have invalidated laws that criminalize consensual sexual activity between members of the same sex. The majority of these courts are situated in the Global South. At first blush, the judicial decisions from the Global South appear to mirror their counterparts from Europe and the United States. Upon closer inspection, however, one sees distinctive features that set apart the Global South's jurisprudence on decriminalizing same-sex sexual activity. This Article surfaces distinctive features from the corpus of Global South cases and evaluates the significance of such distinctive features.

Among court cases that have decriminalized same-sex sexual intimacy (hereinafter "decriminalization cases"), the cases from the European Court of Human Rights and the U.S. Supreme Court have become canonical—namely Dudgeon v. United Kingdom, Norris v. Ireland, Modinos v. Cyrpus, and Lawrence v. Texas. These cases have influenced legal developments around the world, including the leading cases from the Global South. Yet judicial decision from the Global South have also transcended Dudgeon, Norris, Modinos, and Lawrence by elaborating on legal theories and principles that were absent in Dudgeon, Norris, Modinos and Lawrence. To study the Global South, this Article examines jurisprudence from Antigua and Barbuda, Belize, Botswana, India, Fiji, South Africa, and Trinidad and Tobago.

Specifically, this Article reveals four features of the Global South decriminalization cases. First, some of the cases make it a point to trace criminal provisions to their colonial origins. Repudiation of the laws are framed, to varying extents, as act of anticolonialism. Second, many of the cases from the Global South go further than their Western counterparts in describing the injurious effects of criminalizing same-sex sexual activity. Relatedly, the cases have defined rights more capaciously to address such injuries. The ECtHR and US cases were based on rights to privacy. In contrast, many of the cases from the Global South have gone further, expounding on why sodomy bans not only violate privacy but also violate rights to substantive equality, freedom of expression, and health. Third, Global South cases have innovated the notion of "constitutional morality" as a framework for evaluating whether morality justifies rights restrictions. Fourth, the Global South cases speak to a greater extent about diversity and pluralism as constitutional values.

In sum, the emerging Global South jurisprudence expands the legal theories and principles for dismantling legal provisions that criminalize same-sex sexual activity. This Article will discuss how cross-pollination of decriminalization jurisprudence in the Global South can bolster efforts to decriminalize same-sex sexual conduct in places where such conduct is still currently considered criminal.

Danielle Jefferis

Carceral Deference

Judicial deference to state actors pervades the law of American policing, prosecution, and punishment. Rachel Barkow identifies the "animating principle" of the U.S. Supreme Court's criminal law jurisprudence as a "pathological deference to the government." Sharon Dolovich describes the "unmistakable consistency" in the field of prison law as one that is "predictably pro-state, highly deferential to prison officials' decisionmaking, and largely insensitive to the harms people experience while incarcerated." This sweeping deference, which "takes place in a field of pain and death," leaves matters of policing, prosecution, and incarceration largely free of judicial regulation despite accounts of civil and human rights violations permeating these systems. The deference also exacerbates the pervasive racial and economic inequalities of America's criminal legal systems.

Within this field, this Article focuses on judicial deference to prison systems and administrators — what I call "carceral deference" — and endeavors to excavate the origins of the principle, which transcend U.S. Supreme Court doctrine. Through data collection and analysis of hundreds of lower federal court and state cases beginning in the late eighteenth century, I show that carceral deference is rooted less in substantive constitutional law pronounced by the Supreme Court, as lower courts often claim and where scholars tend to focus, and more in the nineteenth-century evolution of American punishment and the carceral system's legacy in classism and the racism of chattel slavery. Extracting these origins of the carceral deference principle informs our understanding of the systemic and structural flaws and inequalities in the criminal punishment system and aids in assessing the continued value and utility of the principle.

DAY 2

Thursday 29th June, 12:00

PLENARY PANEL 2

Economic Inequality and Redistribution

Professor Cathi Albertyn

Professor Joost de Laat

Dr. Maanik Nath

Professor Sophie Robin-Oliver

Speakers

Professor Cathi Albertyn
Professor Joost de Laat
Dr. Maanik Nath

Moderator

Professor Sophie Robin-Oliver

Parallel Session 3

Intersectional Discrimination ~ Janskerkhof 2-3, Room 111

Amy Locklear

Indigeneity, Gender and Collective Rights: The History of a New Approach to Intersectionality at the CEDAW Committee

On 26 October 2022, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW Committee) published General recommendation No. 39 (2022) on the rights of Indigenous Women and Girls (General recommendation No. 39). General recommendation No. 39 introduces several innovations. It articulates an "Indigenous Women and Girls' perspective" to guide states in interpreting their obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It also interprets the individual rights of indigenous women under CEDAW together with their collective rights recognized under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Both changes have implications for how intersectionality is conceived. The history of how those changes emerged is crucial to fully understanding their implications.

As originally envisaged, CEDAW requires that states achieve de jure and de facto equality between men and women. Despite this focus on sex discrimination, the CEDAW Committee eventually moved beyond discrete notions of discrimination to embrace the concept of intersectionality. This first move towards a more expansive reading of CEDAW revealed possibilities for more nuanced and inclusive understandings of equality and non-discrimination. It, however, was not enough to make space for the ideas reflected in General recommendation No. 39.

My presentation will examine several critical junctures in the history of the UN's work on indigenous women's human rights preceding the publication of General recommendation No. 39. Achieving equality for indigenous women was never a simple matter of enjoying the same individual rights as indigenous or non-indigenous men. Because the human rights violations that indigenous women experience emerge from historical, contemporary, multiple, and intersecting systems of oppression, they cannot be adequately rendered based on single axes of discrimination or strict dichotomies between individual or collective rights. As such, the nature and scope of these violations remained largely invisible in the work of the UN for several decades, despite sustained advocacy to expand traditional human rights concepts.

Using a historical methodology, which puts into dialogue the archives of the UN, research authored by nongovernmental organizations, and contemporaneous scholarship, my presentation will recover key events at the UN including, inter alia, the emergence of an international indigenous women's rights movement as an integral part of the indigenous peoples' movement, the positioning of indigenous women's individual rights in tension with collective rights during UNDRIP's development, and the growing articulation of the distinct experiences and realities of indigenous women in the work of international human rights bodies. It will consider how the concepts accompanying these developments shaped human rights norms related to intersectionality. The notion of equality that emerges from this history is grounded in both individual and collective rights and seeks reparative justice responsive to historical discrimination and aggregated inequalities. Finally, the presentation will consider what the interpretation of intersectionality embodied in General recommendation No. 39 might portend for achieving equality for all women in the individual and collective dimensions of their lives.

Titia Loenen

Intersectionality in European equality law: looking for inspiration at South African constitutional jurisprudence

The judgment of the South African Constitutional Court in the case Mahlangu and another v Minister of Labour and others (2020 ZACC 24) is considered a landmark decision in the development of the concept of intersectional discrimination. The case concerned the exclusion of domestic workers from a social security scheme providing benefits to workers in the event of injury or death in the workplace. The decision has been applauded as 'an exemplar in discrimination law and more broadly, constitutional law, in its treatment of intersectionality'. In Europe, intersectionality has been receiving increasing attention, but as a legal concept intersectional discrimination is still underdeveloped and has not crystalized yet into a sufficiently clear notion fit for application in European equality and non-discrimination law; the way in which intersectional discrimination is approached in European law is indeed often criticized for its flaws.

This paper will explore how and to what extent the approach to intersectionality developed by the SA Constitutional Court in its case law, and particularly in the Mahlangu case, could inspire the European Court of Human Rights and the Court of Justice of the European Union in developing their approach to intersectionality under their respective legal mandates.

Nozizwe Dube

Alternative approaches to comparators as a gateway to illuminating intersectional discrimination: a comparative study of EU and South African non-discrimination and equality case law

Translating intersectionality into EU non-discrimination case law is a challenge due to a legislative heritage that entrenched a single-axis framework delineating people into mutually exclusive groups. The fragmented framework and hierarchization of grounds are also problematic. This is merely the tip of the iceberg of what must be addressed in order to acknowledge intersectionality.

Another element of EU non-discrimination architecture that must be addressed is comparators. Comparators are a heuristic to determine whether an individual or group, not sharing the claimant's personal characteristic that is central to unfair discrimination but are similarly situated, experience the same adverse treatment and discriminatory impact as the claimant. The EU approaches comparators strictly, which suits the single-axis framework and formal approach to equality. This is at odds with substantive and inclusive equality, the latter of which seeks to address intersectional discrimination. To ascertain intersectional discrimination, alternatives are necessary. This can entail a comparison with multiple comparators, inter-group and intra-group comparison, or contextual assessments.

The delineation of comparators is impactful for three reasons. Firstly, the single comparator tends to possess dominant societal characteristics (such as being male, non-disabled, white, heterosexual, Christian), concealing intersectional disadvantage. This entrenches assimilationist non-discrimination law, instead of accommodating diversity. Secondly, it individualises disadvantage and overlooks group-based, historical and structural disadvantage. Lastly, the approach to comparators influences the delineation between direct and indirect discrimination, and thus the justifications and scrutiny engaged in by the Court of Justice of the European Union (CJEU).

The CJEU hasshown potential for adjustment with the adoption of hypothetical comparators, a comparator-free approach in harassment and pregnancy discrimination cases. It has opened the door to alternative approaches to comparators before (eg. Meister C-415/10). Recently, comparators have been an issue of contention (eg. WABE C-804/18 and AG Opinions in LF C 344/20, VL C-16/19, Cresco C-193/17). For the acknowledgment of intersectionality, this issue must be elucidated by the CJEU.

A court that offers insights on establishing intersectional discrimination is the Constitutional Court of South Africa (CCSA), due to its corpus of equality jurisprudence resting on a substantive notion of equality enshrined within the equality clause. The CCSA's translation of substantive equality through the protection of human dignity sets the stage for interesting comparative research regarding comparators. It also utilises a contextual approach to analyse similarities and differences between multiple comparators and recognizes intersectionality as a theory of constitutional interpretation, elevating it to an essential analytical tool.

This comparative paper and presentation seek to provide an answer to the question: which alternative approaches to comparators can the CJEU employ in order to illuminate intersectional discrimination in its case law? The following sub-research question aids the formulation of an answer: how do the CJEU and CCSA approach comparators as a heuristic to assess intersectional discrimination? Through comparative research of non-discrimination case law of both the CJEU and CCSA, this research aims to delve into alternative approaches that illuminate intersectional discrimination. This comparative research serves the normative aim of recommending approaches that advance the acknowledgment of intersectionality within CJEU case law.

Gender Equality ~ Janskerkhof 2-3, Room 109

Tsubasa Shinohara

The Equality Between Male and Female ESports Players Through the Lens of the Convention on the Elimination of all Forms of Discrimination Against Women

Esports ('electronic sports' or 'competitive video games') have rapidly grown. According to Newzoo's free report in 2022, the global revenue of the esports industry in 2021 reached 1,136.5 million dollars and the expected global revenue by 2025 will be 1,866.2 million dollars. Furthermore, COVID-19 contributes to the development of the esports industry because COVID-restriction imposes us to stay home and to find recreational activities in this situation. After this global pandemic, the number of esports players has sharply increased and, thus, the esports industry has become one of the important economic industry that cannot be ignored.

In this situation, the majority of esports organisations, esports publishers and even esports governing bodies have not been sufficiently engaged in the achievement of equality between male and female esports players in esports activity. However, it is important to note that the International Esports Federation (IESF) has launched a project to ensure a safe environment of female esports players in collaboration with the Women in Games (WIG). This is because female esports players have frequently suffered online sexual violence, including sexual abuse, harassment and even threat during and after the esports activity by male esports players). This conduct is recognised as toxic behaviours in esports. Due to such behaviours by male esports players, female esports players mostly hesitated and even lost their motivation to participate in the esports activity. This would seem to show a huge negative outcome for the esports society as a whole.

To solve this situation, this article will consider a question of how the esports society may achieve equality between male and female esports players. In doing so, this article will address the following research questions: (1) What is the concept of 'equality'?; (2) What kind of barriers have female esports players faced with to participate in esports activity?; and (3) How can the esports society achieve equality between male and female esports players? In doing so, this article will refer to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This would be able to identify which rights female esports players are entitled to exercise to be safeguarded against toxic behaviours in esports. Through this consideration, it would serve to ensure the equal status of female esports players to male esports players and contribute to removing a huge barrier to the participation of female esports players in the esports activity.

Claudia Cantone (on-line)

Reverse discrimination: are men protected from gender discrimination under the European Convention of Human Rights?

With the aim of generate a reflection on the fundamental values underpinning the European Convention of Human Rights ("ECHR"), my paper will revolve around the concept of gender equality in the case-law of the European Court of Human Rights ("ECtHR") from an unusual perspective. In particular, it will analyse the approach of the ECtHR when dealing with discrimination towards men as a result of the persistence of deep-rooted gender stereotypes in modern society or as a consequence of "positive discrimination" policies.

The first part of the paper will focus on the forward-thinking principles expressed by the Court in its case-law. The Strasbourg's judges have repeatedly stressed that differences based on sex require "very weighty reasons" or "particular reasons" by way of justification, and that "references to traditions, general assumptions or prevailing social attitudes are insufficient justification for a difference in treatment on grounds of sex" (see, above all, Konstantin Markin v. Russia). Accordingly, the Court has declared, for example, the statutory obligation imposed solely on men to serve in fire brigades (see Karlheinz Schmidt v. Germany) or the unavailability of widows' allowances to widowers incompatible with the Convention (e.g., Willis v. United Kingdom; Hobbs, Richard, Walsh and Geen v. United Kingdom).

On the other side, the second part of the paper will critically examine the more hesitant approach of the Court when it addresses differences in treatment on grounds of sex in questions of penal and sentencing policy. Notably, in Khamtokhu and Aksenchik v. Russia and Alexander Enache v. Romania, the Court cautiously recognised that Member States enjoy a broad margin of appreciation in the subject matter, consequently justifying different treatments between sexes in criminal policies. In Khamtoku, the Grand Chamber held that there had been no violation of Article 14 ECHR, although only men in Russia can be sentenced to life imprisonment (meanwhile women and other categories of convicts are exempted by operation of the law). In Enache, the Court found that Romanian legislation, according to which only convicted mothers of children under the age of one can obtain a stay of execution of their sentences, was compatible with the Convention. In this regard, I will discuss how such an apprehensive perspective has lowered the current standards of protection in gender discrimination, allowing the States to override, leveraging on their wide discretion, the mentioned requirements of "particular reasons".

However, in my conclusion, I would finally argue that the most recent judgement Ecis v. Latvia (concerning different prison regime between men and women) apparently represents a pleasing turnaround. Remarkably, the Court seems to pave the way for a more individualised approach in penal policies, which takes into account the particular characteristics and the special needs of the offenders rather than their gender.

Ivana Isailovic

Balanced, Precarious, Essential: women's disposable bodies and social reproduction in EU law

The notion that unpaid or under-paid care is central to the functioning of capitalist societies is not new, but the Covid-19 crisis and its economic consequences have made it obvious to many. Many have realized just how essential care work is, how invisible it ends up being in our systems of measurement, how little economic value is attached to it, and how unequally distributed it is along gender lines impacting primarily women's economic prospects in the labor market and their well-being. The "unencumbered male full-time worker" despite labor law transformations, is still the structuring feature of the labor market, and pregnant workers and carers still experience economic disadvantages and obstacles in terms of hiring, and career evolutions, as well as negative stereotypes related to their competence.

For decades materialist feminists have argued that social reproduction work (e.g. bearing and raising children, cooking, cleaning, providing care for dependents) while essential to the functioning of capitalism is economically and socially erased and devalued. Gender domination is so inherent to capitalism and a capitalist mode (and now the neoliberal mode) of social and economic organization is incompatible with gender justice. Beyond the welfare states in the Global North, feminist argued that a new gendered division of labor emerged as a result of globalization: intensive liberalization of trade and the simultaneous imposition of the neoliberal logic globally, leading to the erosion of welfare states and care infrastructures, went hand in hand with the creation of feminized racialized proletariat from the periphery and the Global South, leaving their dependents, to ensure the social reproduction of the Global North.

Within this context, and drawing on materialist and intersectional feminist approaches and political economy, this contribution examines how social reproduction is regulated in EU law across various legal and policy fields (internal market, gender equality, and immigration law). The contribution argues that the current legal framework creates hierarchies across gender, race, ethnicity and class lines. To show this, I will use the examples of three 'ideal' types of carers and illustrate how each one is differently made precarious within EU law (directives, court decisions, policies): the 'balanced' women, the precarious EU migrant, and the non-EU migrants, who often lack the social networks and access to childcare are channeled towards the poorly paid reproductive labor in host states, and are made legally dependent on EU citizens.

LGBTQI Rights ~ Janskerkhof 2-3, Room 110

Cristiano d'Orsi (on-line)

LGBTIQ communities in Africa: historically fragile rights for vulnerable people made even more vulnerable by the pandemic

According to the OHCHR, LGBTIQ persons are particularly vulnerable and even more during the pandemic. As such, in June 2020 the OHCHR has published a report on the impact of the COVID-19 pandemic on the human rights of LGBTIQ persons.

The situation is even more precarious in Africa where LGBTIQ organisations are historically perceived by many governments as imposing values contrary to "African values".

In the framework of the Universal Periodic Review (UPR) most recommendations by other UN member states to decriminalise or better protect LGBTIQ communities were rejected by the African states concerned. Those of them that provide reasons for their rejection, bring up that sexuality is a private matter, or argue that the recommendations are contrary to their nation's values, customs or religions, hence contesting the expression of sexual or gender preferences as a universal human right.

Despite the fact that many African leaders consider LGBTIQ persons as "un-African" and marginalise them during measures to combat pandemics, the legal framework at the African Union (AU) level is clear on the protection of their rights.

The African Charter on Human and Peoples' Rights (Banjul Charter) in its Article 2 provides that the rights and freedoms therein are applicable to "every individual" without any distinction such as because of sex or "other status". The mention of "other status" makes the list non-exhaustive. Therefore, according to a large doctrine, it could extend to LGBTIQ persons, as well.

In addition to the treaty provisions, the African Commission on Human and Peoples' Rights (ACHPR) in 2014 adopted resolution no 275 on the "Protection against Violence and Other Human Rights Violations against Persons because of their real or imputed Sexual Orientation or Gender Identity". The ACHPR has further released several press statements concerning the protection of human rights during COVID-19 pandemic. Although none of these specifically mentions LGBTIQ persons, many of them mention "vulnerable persons".

Despite the protection framework assured by several African legal instruments and institutions, it is unsurprising that African countries used COVID-19 regulations as a means to curb the rights of LGBTIQ communities. Among the specific challenges that African LGBTIQ persons faced during pandemics there were the restricted access to shelters and community centres; restricted access to health services; threats from hostile/homophobic lockdown environments; increased mental health impacts; increased social discrimination and attacks; and potential use of force and misuse of emergency powers by states.

That is why, in my study, I explore the measures the African continent should embrace to ensure that LGBTIQ communities enjoy their human rights despite and beyond pandemics. These measures can be adopted at different level. For example, the ACHPR would need to be very specific about the challenges that LBGTIQ communities face on the continent, not limiting itself to often release vague press statements. I also investigate the role of African states. Despite the fact that many African states have adopted recently homophobic policies, they should comply with the main human rights conventions they ratified and that prohibit the discrimination of the LGBTIQ communities. On the other hand, they need to take positive steps and set up mechanisms in the form of committees or task forces to ensure that LGBTIQ persons have access to services that contribute to the realisation of their rights. I also examine the opportunity that African states use due diligence by decriminalising same-sex relationships and ensuring that those impeding the rights of LGBTIQ persons are held accountable for their acts.

Finally, I analyse the role of civil society. In addition to calling out governments for the non-respect of the rights of LGBTIQ communities, sensitisation and the provision of services, I consider whether and how civil society should engage in the dialogue with the AU and the ACHPR in bringing this LGBTIQ communities' situation on the continent to the fore.

Paul W.H. Cheuk, Kwan-Yuen Iu

Judicial challenge and children's right in same-sex family: fragmentation and harmonization across Greater China region

This article is a comparative study on the contrasting legal rules and cases regarding child-related legal rights of same-sex families in different jurisdiction across the Greater China region. A growing number of countries around the world has legalized same-sex marriage and allow same sex couple to form families. This is not the case in East Asia. Despite their development and liberal economic policies, all but one jurisdiction (Taiwan) formally allowed same-sex marriage. These countries are often considered conservative, with their legal order characterized as Confucian constitutionalism, which emphasize on tradition and hierarchy. Crucially then, the recognition and protection of family rights of sexual minorities relies on judicial challenge in their various available forms.

The Greater China region is of interest because on the one hand they are all predominately made up of ethnic Chinese and are under similar cultural influence, yet on the other hand these jurisdictions have vastly differing legal traditions and judicial approaches. The Greater China region consist of mainland China, Taiwan, Hong Kong and Macau. While some of them have their law originated from German or Portuguese civil codes, Hong Kong inherited the English common law courts. Consequently, there are distinct judicial review regimes and legal development concerning rights of same-sex family, which hinges on pushing legal change through legal challenge. Despite non-recognition, same-sex couples in the region respond by marrying and legally adopting a child in overseas jurisdictions. Legal conflicts and inequality arise when they move back to live in the Greater China region. The same is true when same-sex families from overseas migrate into the region.

Three legal issues relating to treatment of children's right in same-sex family will be contrasted. First, it is whether the overseas same-sex marriage and child adoption (or by surrogacy) is recognized at all. The next aspect surrounds whether there are equal family rights for a child in the same-sex family, including social welfare and law of protection in domestic violence. The last aspect concerns the issue of child custody following separation of their parent.

In the adjudication of real-life cases, these issues often intertwined: in China, a first lawsuit of child custody between a lesbian couple was adjudicated in 2020, where the court have to decide both on the legality of the overseas same-sex marriage, the legal recognition of a childbirth by surrogacy using the egg of one spouse implanted into the other, and also on the custody of the child.

Through this and other cases, this article at the same time examine the doctrine of judicial review in these jurisdictions. It must be stressed that given the close ties of the population in the region as well as internationally, the potential for conflicts and inequality is amplified and the need to harmonize legal rules is acute. It will argue that whereas the actual judicial review mechanisms in these related jurisdictions are vastly different, there are opportunity to pragmatically improve the judicial review process in order to achieve greater equality, as well as to harmonizing legal rules in the region.

Lu Wenting

An Empirical Study of Impact Litigation of LGBT Equal Employment Rights in China

Although equal employment rights have been repeatedly emphasized by the Chinese government, legislature, and judiciary, employment discrimination based on sexual orientation and gender expression has never been included as a statutory type of prohibited employment discrimination, which leaves a discretion for judges.

Compared to reforms that directly touch on the institution of marriage, such as same-sex marriage or same-sex couples, anti-discrimination in employment is more acceptable to Chinese people. Also impact litigation is judicially practicable China's Supreme Court added equal employment rights to the cause of action in 2018.

Therefore, many Chinese LGBTs chose to seek clarity from judges on the ambiguous legal concept through impact litigation, including defining the concept of discrimination, distinguishing between sexual orientation and gender expression, and balancing corporate autonomy in employment with equal employment rights. Although Chinese judges do not need to follow precedent, it is expected that the impact litigation will arouse more public attention to the LGBTs in China who are suffered from longstanding marginalization and neglect with the help of the media. Also, they expect that impact litigation can stimulate legislative or judicial reforms to allow for an expanded interpretation of employment discrimination. Therefore, it becomes more than a fight between the plaintiff and the defense in the courtroom, but also many Chinese NGOs, media, experts, and scholars are involved in the cases.

This study will focus on the individual cases of LGBT equal employment rights and try to summarize how Chinese courts view the equal employment rights of LGBT the action paradigm of Chinese impact litigation. The research will be based on legal documents such as complaint for civil action or judgments, as well as the interviews with the parties involved in the case, including plaintiffs, lawyers, media, and NGOs.

Racial Discrimination ~ Janskerkhof 2-3, Room 116

Shreya Atrey

Xenophobic Discrimination

The article presents a general account of xenophobic discrimination in international law. It shows that xenophobic discrimination, imagined as based on the ground of foreignness, is rather difficult to be conceptually understood or practically established given the unique character of foreignness as a ground which is in turn constructed by enumerated (race, colour, descent, national or ethnic origin, sex, disability, age etc) and unenumerated (nationality, citizenship, language, accent, appearance, class etc) grounds which cannot themselves be identified independently of the reason for or effect of such a construction. Thus, xenophobic discrimination may be better imagined as not necessarily based on foreignness but as having the ef ect of making people appear as foreign or as someone who does not belong to the political community of a nation-state. The article thus proposes a shift away from a grounds-based to a substantive harm-based approach to xenophobic discrimination in international law.

Emma Varnagy

Does racism translate into anti-discrimination law? The trouble with evidencing structural issues in individual cases

Racist police violence is a serious human rights issue worldwide. In Europe it is all too often members of the Roma community who are treated by law enforcement officers with disrespect and face abuse due to their ethnicity.

The injustice is clear, yet making police judicially accountable for their action holds many challenges both in the domestic legal system and in the international human rights arena. In particular, how can a victim of racist police violence demonstrate to a court that racism was a crucial factor in their abuse?

From a sociological perspective measuring racism, though by far not unproblematic, is possible through several methods, and there exist widely available qualitative and quantitative data which paint an overall picture of the manifestations of structural racism in Europe. At the same time, the logic of anti discrimination law appears to be less receptive to such contextual evidence. Namely, its focus tends to center on individual perpetrators and subjective biases as motive. Some even argue that anti-discrimination law itself is a stranger to the European legal tradition and its architecture, which results in skepticism and restraint even where it could clearly be applicable (Havelková and Möschel, 2019).

This presentation aims to explore the disconnect between understanding racism as a structural issue and trying to navigate legal avenues to challenge incidents of racist police violence as a form of discrimination.

In particular the presentation builds on the 'dissecting' (Dembour, 2015) analysis of over fifty anti-Roma police violence cases brought before the European Court of Human Rights. This body of case law has been widely criticized for the stubborn reluctance of the Court to hold that the abuse was racially charged. The presentation first outlines the efforts of the litigators in these cases to show to the Court that institutional racism was a key element in the case. Then, it demonstrates the arguments used or implied by the Court to dismiss these assertions. Finally, the presentation locates specific clashing points and raises questions for further research on whether and how gaps between anti-discrimination law and the societal realities of racism may be addressed, bridged, or overcome.

Mathias Möschel & Claire Lops

Using the prohibition of discrimination to combat racial profiling by public authorities in France, Germany and at international human rights level

This contribution intends to assess how the prohibition of racial discrimination has or has not been successfully mobilized so far, to combat racial profiling. We will limit our analysis to forms of racial profiling by public authorities, such as police forces, in everyday situations outside of a strict border control context. In terms of geographic coverage, we will look at France, Germany and the international human rights level. We argue that, with a few exceptions, the prohibition of racial discrimination has not been widely and/or successfully used in any of these realities. Whereas some violations have been found, there is still an insufficient linkage in court rooms and decisions of how far racial profiling constitutes a form of racial discrimination. We will finally assess whether recent legislative reforms broadening the scope of anti-discrimination law, such as in Berlin, might provide better protection.

Sara van Cleef

Combating systemic racism in employment. The need for a stronger positive action approach in the EU

Throughout the EU, the employment integration of persons with a migration background tends to be lower than for natives.

Whereas employment discrimination used to be direct, open, and deliberate, it is nowadays more structural in nature and thus new tools are needed to combat it. This paper advocates the use of positive action as a mechanism to advance racial and ethnic equality in employment, as these measures are capable of addressing the shortcomings of traditional anti-discrimination law.

Positive action remains controversial. There seems to be a lack of consensus on what positive action means and entails. Several notions are used interchangeably with the concept of positive action, including affirmative action, temporary special measures, employment equity, and positive or reverse discrimination. The confusion surrounding positive action is deepened by the absence of a generally accepted definition. Nevertheless, some elements can be deduced from existing definitions: positive action measures are group-based, proactive in nature, and aim at transformations in one or more areas of social and economic life. Contrary to popular belief, positive action extends beyond preferential treatment and quotas. It includes a broad range of measures that can be ranked from very weak (and less controversial), to very strong (and more controversial).

The EU views positive action as an exception to the principle of equality, but nevertheless considers it justified to the extent that it is necessary to achieve full equality in practice. Although the Court of Justice of the EU (CJEU) shows a clear commitment to full equality in practice, it ordinarily subjects positive action to a strict proportionality test. The exception enables Member States to adopt positive action, but does not require its adoption (subsidiarity). The overwhelming majority of Member States have implemented EU anti-discrimination law in national law in such a way as to reflect the positive action approach in EU law. They have introduced provisions stating that certain forms of positive action do not constitute unlawful discrimination, without obliging employers to implement such measures (voluntariness).

The current EU approach for positive action is no longer fit for purpose, and should be enhanced with a view to better promote racial and ethnic equality in employment. The EU should frame positive action as a necessary tool to achieve more equality in employment, rather than as an exception to the principle of equal treatment. The CJEU should embrace all the opportunities to allow more radical and far-reaching forms of positive action where a group experiences a particularly severe form of disadvantage in employment, like persons with a migration background. Such a strategy is in line with societal and legislative developments at the EU level, essential for the coherence of the internal market, and more likely to stimulate change at the national level.

Economic Inequalities ~ Janskerkhof 2-3, Room 117

Will McKay, Annika Rosin, Damien Bo & Anne Hewitt

A comparative analysis of universities' role as internship regulators in France, Finland and Australia: Is equity a consideration?

Internships have become entrenched into the labour and education landscape around the world. For example, in 2019 an Australian survey demonstrated the prevalence of internships being undertaken by tertiary students in Australia (Universities Australia, 2019). Australia is not alone in this respect: internships have become a well-entrenched feature of tertiary education in many developed economies (see eg, Stewart et al. 2021).

However, the fact that many internships are unpaid, or paid at less than the relevant minimum wage, has raised significant questions about their impact in creating barriers to degree qualifications and labour market participation for students from disadvantaged groups (see eg, Roberts 2016).

For example, students from non-traditional backgrounds without industry contacts may have difficulty securing high-quality work experience placements (Milburn 2012) while others may be subject to discrimination which limits their capacity to secure or complete work experience (Booth et al. 2010). Requirements to undertake unpaid or low paid work experience also create obstacles for a diverse range of students, including those with caring responsibilities and existing financial commitments, which are difficult to surmount (Grant-Smith & de Zwaan 2019). The Universities Australia (2019) report confirms that such obstacles are contributing to the inequitable participation of equity/disadvantaged students in Australian internships. This is because even "[o]pportunities designed with the best of intentions may, in fact, prove to be differentially available to students when considered in the wider nexus of background, self-concept, self-efficacy and human and other capitals." (Dalyrymple et al. 2021, p66).

As internships have become more deeply entrenched in our societies and educational systems, the potential equity implications are intensified. In this context, it is important to consider the extent to which the universities encouraging and facilitating students to undertake internships as a part of their degree studies are aware of the implications, and what, if any, affect this has on the way they conduct themselves as internship regulators.

This presentation will report on a multi-jurisdictional empirical study investigating how universities in three different countries, France, Finland and Australia, undertake their role as internship regulators. The project has collected data through semi structured interviews conducted with academic and professional University staff involved with internships programs at two universities in each country. In particular, it will consider the local equity dimensions of internships in each jurisdiction, and the extent to which representatives of universities are aware of the equity implications of internships for their students, and what (if any) measures they put in place to respond to those issues.

Michael Smith

Limiting austerity measures through human rights law: the limits of the principle of equality and non-discrimination

Evidence points to the unequal impact of austerity on already-disadvantaged groups and individuals. Particularly, austerity measures exacerbate socioeconomic inequality, widening income and wealth gaps. These policies are justified as 'difficult choices' in the need to address economic crises. Under human rights law, states have a wide discretion when developing socioeconomic policies. For instance, as frequently stated by the European Court of Human Rights (ECtHR), governments enjoy a wide margin of appreciation in giving preference to one socioeconomic policy over another. However, human rights law does place limits to this discretion. As clarified by the Committee on Economic, Social and Cultural Rights (CESCR; Committee), obligations for the realisation of economic and social rights are still in place in times of crisis. For the Committee, policies should not be designed to further privileges at the expense of the underprivileged. Additionally, the prohibition of discrimination cannot be ignored in drawing economic and social policy. To the contrary, the principle of equality and non-discrimination is more important than ever in times in which disadvantaged groups and individuals are set to suffer the hardest consequences of crises. Despite these guidelines, however, human rights law has been significantly ineffective in limiting policies of austerity. While austerity measures have increasingly been questioned from an economic perspective, the same cannot yet be said about a legal perspective. From a human rights law lens, this silence is justified by law's supposed impartiality when it comes to designing and implementing socioeconomic policy. Given the detrimental effects of austerity measures to the realisation of human rights, however, it is problematic that human rights law has been limited to the role of superficially correcting rather than guiding socioeconomic policy.

This paper examines if and to what extent the principle of equality and non-discrimination within human rights law places limitations on the adoption of austerity measures. In doing so, it focuses on the European context, drawing mainly from the case-law of the ECtHR, although attending to how the issue has been dealt with by the CESCR in the interest of comparison. The paper points to three challenges facing the principle's effectiveness in limiting austerity measures. The first one concerns its limited applicability to socioeconomic matters. Given its significant focus to horizontal inequality (inequality between socially defined groups), vertical inequality (inequality between individuals or households) is widely side-lined in the principle's applicability. Secondly, and related to the first, is the assumed impartiality of human rights law concretised in the wide discretion conceded to states in the development of socioeconomic policy. Lastly, and due to the principle's limited grip on socioeconomic issues, the test of proportionality ultimately serves the counterproductive role of a framework for justifying (and thus legitimising) interferences. The article concludes, therefore, that without a fundamental review of the principle of equality and non-discrimination, policies detrimental to the realisation of human rights may not only slip past the scrutiny of courts, but also be legitimised by them.

Sophie Robin-Olivier

The role of "poverty" (or "socioeconomic disadvantage"), as a discriminatory ground, in the context of climate change reforms

Reforms rendered necessary by climate change can affect victims of poverty in various ways. Although the ultimate goal of these reforms is to address the adverse impact of climate change on all individuals, including, in particular, the most vulnerable (who are also the more severely impacted by climate change), there are good reasons to think (and some striking examples showing) that the immediate effect of climate change laws will be particularly detrimental for the poorest. Higher price of energy, due to increased carbon pricing, is probably the most obvious example. In this context, the prohibition of discriminations based on poverty emerges, in many jurisdictions, as a way to address the adverse impact of climate change reforms on the most vulnerable.

However, "poverty" or "socioeconomic disadvantage" is a particular ground (as compared to other, more classical, prohibited grounds such as gender or race), and it is not always prohibited by the law. In EU law, for instance, there is no power granted to the EU to combat discrimination on "poverty" (or property), whereas the EU has competence to combat discrimination on gender, race and ethnicity, religion, disability, age, and sexual orientation.

Our contribution intends to explore the role that "poverty" or "socioeconomic disadvantage" could play, in the context of climate change, especially in the EU and its member states.

To this aim, it will first look back at poverty as a discriminatory ground, focusing on national law developments in Europe. How is this discriminatory ground defined, when it is prohibited by the law? In other words, what is the perimeter of the group that such a discriminatory ground intends to protect? What is the impact of such a prohibition, in particular when it comes to the conception of equality? To what extend does it improve the situation of people in poverty? Is the need to go beyond formal equality and provide accommodation, on the one hand, and to take into account intersectionality, on the other, taken into account?

The contribution will then consider how "poverty" as a discriminatory ground emerged, and is transformed, in the context of climate change reforms. This will require examining notions such as "energy poverty" or "mobility poverty", which have made their way into EU institutions' discourse on "just transition" (defined as a transition towards a climate-neutral economy that is fair, and leaves no one behind). What do these qualifications of poverty mean, compared to a more general prohibition of discrimination on poverty? What kind of a different vision of what social justice requires, in the context of climate change, do they bring about? To try to answer these questions, we will rely, as much as possible, on recent examples, in national or EU law.

Beth Goldbatt

Adapting equally to climate change – gender equality and social and economic rights

Climate change exacerbates existing vulnerabilities and generates new forms of inequality. Women are shouldering greater responsibilities for subsistence and care for family and community affected by climate change, often with reduced state support. As the world confronts a range of climate-related disasters and new climate realities that affect everyday existence we are being forced to adapt our social, economic and political systems. These adaptations cannot be gender blind if they are to address the unequal impacts of climate change. A climate justice approach, informed by eco-feminist understandings, ensures that systems changes comprehend the deep roots of gender inequality and work to overcome these. The paper examines how equality law, in its interaction with states' obligations to realise social and economic rights, can assist to embed gender equality into climate adaptation that is transformative. It does this through examining examples from a range of jurisdictions where creative legal efforts are underway. The paper suggests a reframing of social and economic rights through a climate and gender justice lens. This includes a critical reimagining of rights that go beyond the human subject and challenge the instrumental treatment of the earth as an unlimited resource.

Sexual Harassment and Violence ~ Janskerkhof 2-3, Room 118

Karen O'Connell

Gendered workplace violence: a multi-dimensional, intersectional approach

Workplace violence, in the form of sexual harassment, sexual assault and other gendered harms, has been neglected in every aspect of law and policy that should address it. In jurisdictions around the world, violence against women has been conventionally treated as a private matter, under the jurisdiction of men in the home, while work presumptively belongs to the public sphere. Early equality protections, extending to work, did not explicitly include violence, and workplace health and safety laws have almost universally dealt with physical risks to the person, while sexual harassment has been considered a psychosocial risk best dealt with through workplace relations. In Australia, for example, each of these areas of regulation -- equality, health and violence – has operated independently of the other, rather than as an integrated whole.

#Metoo provided a much-needed corrective, illustrating the global ubiquity of gendered violence. With the International Labor Organization's Violence and Harassment Convention (ILO 190) in 2019, gendered workplace violence was given a global focus and a broad set of State obligations to address it. Since then, countries around the world have put in place laws attempting to better address sexual harassment and other forms of gendered workplace violence. Taking the most promising of these laws, in this paper I present a multi-dimensional approach to sexual harassment prevention, arguing that to be effective, laws must treat sexual harassment as a compound form of inequality, health harm and violence.

A multi-dimensional approach potentially makes sexual harassment law an exemplar for future discrimination laws. To test this, I measure how a multi-dimensional health/violence/inequality approach would deal with intersectional sexual harassment using recent Australian case law as examples. Can intersectionality be 'seen' in this way? Will a more systemic approach better address the multiple aspects of gendered workplace violence?

Jennifer Drobac

The "Mann Effect": Is the Scientific Evidence Regarding Sexual Harassment/Assault Survivors Consistent with the Law and Legal Remedies?

The Harvey Weinstein trial highlighted that Weinstein's accusers, Mimi Haleyi and Jessica Mann, were not "perfect victims."[1] They are, however, representative of many survivors (usually women), coping with the aftermath of sexual harassment, including sexual assault. I saw my own former clients and other survivors in Haleyi and Mann. I noticed that their coping behaviors sometimes complicated or thwarted their legal challenges. Mann's behaviors—in particular—what I describe as "the Mann Effect"—are common in sexual harassment survivors.

This article examines available neuroscience and psychosocial science evidence to discern common responses, if there are any, to sexual assault and sexual harassment. It evaluates whether scientific evidence supports the "Mann Effect" theory. Then, the article explores whether survivor responses, common or not, obstruct successful legal prosecutions of sexual harassment and other claims. It also discusses an additional layer of research to determine whether antidiscrimination and other laws are congruent with the scientific evidence or whether legal requirements, combined with survivor responses, thwart legal remedies for survivors. Lastly, the article investigates the science regarding how other participants in the legal process respond to survivors and their behaviors to facilitate or impede their remediation efforts.

The objective of this research is to draw conclusions from the science to make recommendations for legal reform, if needed. It answers the question whether scientific research regarding sexual harassment/assault survivors uncovers a flawed legal framework that breeds unsuccessful legal claims and denies remedies? At the very least, this article seeks to highlight areas where more scientific study of sexual harassment/assault survivors and legal process participants might be indicated and useful.

Jaigris Hodson & Andréa Galiziabac

Beyond the Office Walls: Technology-Facilitated Violence and Abuse as an Occupational Health and Safety Issue

Digital communication technologies – DCTs for short – have become an integral part of our everyday lives.1 This has become particularly true since the onset of the Covid-19 pandemic. DCT use is often a tacit expectation for workers across the knowledge economy. For example, journalists, academics, public health and government officials, science communicators, and workers in the non-profit sector are now more than ever expected to use DCTs to communicate with the public.3 DCT use, especially in the form of social media use, affords knowledge workers the opportunity to connect directly with the public. While this has many benefits with respect to knowledge mobilization and public engagement, increased use of DCTS and visibility online comes with the grave risk of experiencing technology-facilitated violence and abuse (TFVA).

Members of equity-deserving groups are at a heightened risk of experiencing TFVA.5 In many ways, TFVA is another mechanism by which systems of oppression can operate. Research suggests that individuals often become targets of abuse due to their gender identity, race, sexuality, age, ability, socioeconomic status, or migration background.6 Moreover, individuals that occupy more than one of these positions are at an even higher risk of becoming a target of abuse than someone who occupies one.7 By disproportionately affecting historically marginalized groups, TFVA puts a serious strain on equity, diversity and inclusion in the workplace.

Extant literature indicates that workplaces do not have viable support mechanisms in place to respond to incidents of TFVA in a way that is meaningful for targets.8 Moreover, employers can evade their responsibility to protect workers by characterizing the abuse as something that has occurred outside of the "workplace." As such, targets are often left to employ a variety of coping mechanisms to manage abuse on their own. The idea that digital spaces are fundamentally separate from the 'workplace' is a myth that no longer holds true in a modern day economy. Moreover, it is a myth that leaves employees vulnerable for simply doing their job in a workforce where in many cases, staying offline is not a viable option. In this paper, we argue that in theory, workplace health and safety legislation does bestow a responsibility on employers to protect their workers from TFVA. However, occupational health and safety laws should be clarified to account for the vast technological changes that have taken place in the modern workplace. We conduct a comprehensive review of tribunal and court decisions that address the meaning of the work spaces outside the conventional definition of the "workplace". From this review, we argue that workplace harassment laws need to be clarified and carefully extended so as to support workers experiencing TFVA while simultaneously not overreaching to limit individual's rights to personal social media use. We will explore these tensions in this paper in order to understand the role of the law when workplaces are extended into cyberspaces.

Refugee Status/Statelessness ~ Janskerkhof 2-3, Room 013

Sarah Hungler

Destined to Stay – A Case Study of Rome Refugees from Ukraine

The war in Ukraine forced millions to flee their homes. Since February 2022, 7.6 million refugees from Ukraine have been recorded across Europe, and 4.2 million registered for Temporary Protection or similar national protection schemes in Europe. Even though it is assumed to be the largest refugee crisis in Europe after the Second World War, a recent survey by pollster Ipsos indicates an attitude change: data suggest that public openness to people fleeing war or oppression has increased.

However, not all refugees are welcomed in the same way; some experience ignorance and even hostility due to their ethnicity or social status. The war has had a different impact on Ukrainian people's life: many homes have been destroyed, and armed conflicts create imminent danger to one's life. Citizens of the Transcarpathian region in South-West Ukraine - most of them belong to the Roma community - live relatively far from the military attacks; nevertheless, their everyday lives have changed, and their usual resources have dramatically decreased. These people often live in severe material deprivation and social exclusion. Hence, when they joined the flow of refugees, they were soon labelled as "economic migrants" who did not deserve assistance provided for "genuine" war migrants.

This paper presents the outcome of a survey based on interviews with NGOs, local helpers and administrative leaders in Hungary. The results show that even though the general perception of refugees has ameliorated since the 2015 migration crisis, negative attitudes toward Roma and the poor are prevailing. When resources are scarce, aid workers are forced to create their own definition of deservingness, which results in discriminatory practices. The hostile treatment made many Transcarpathian refugees decide to return to their hometowns, depriving them of a new start.

First, the paper argues that while most of the attention is paid to refugees settling down across Europe and to some extent, in the US, resources should also be allocated to those who have no choice but to stay in their war-stricken homes. Second, it argues that despite the efforts to eliminate ethic-based discrimination, members of the Roma community face disproportionate hardship in accessing resources, which further impairs their prospects for social inclusion. Overcoming marginalization requires a joint effort by all actors.

Kelley Ann Loper

The implications of the right to equality in international human rights law for refugee protection responses

In recent years, UN human rights treaty monitoring bodies (treaty bodies) have increasingly considered the relevance of core UN human rights treaty norms for states' responses to the arrival of refugees on their territories, including in jurisdictions not bound by the 1951 Convention relating to the Status of Refugees or its 1967 Protocol (Refugee Convention). At the same time, the treaty bodies have also recognized that the right to equality and non-discrimination in international human rights law imposes duties on states to redress discrimination against non-citizens (including refugees) and on related, intersectional grounds. This paper draws on a dataset of treaty body materials from 2013-2021 (e.g. concluding comments on state reports, general comments, and views on individual communications), to examine these developments and their implications for refugee policy. The findings of this study shed light on the extent to which human rights law prohibits – or allows for – the differential treatment of non-citizens, such as refugees, and overlaps, supplements, or goes further than the Refugee Convention's requirements. As such, it contributes to debates about the ongoing significance of the Refugee Convention and the potential of other, subsequently adopted human rights treaties.

Gonca Kuru

Statelessness and Gender Discrimination

"Statelessness" describes people who are not considered nationals by any state under the operation of its law. Shortly, no country recognizes stateless people as citizens. Statelessness is prohibited under international law, such as the Universal Declaration of Human Rights, the 1954 Convention relating to the Status of Stateless Persons and the1961 Convention on the Reduction of Statelessness.

The right of all persons to a nationality has been stated as a fundamental human/legal right by the UN Human Rights Council and the Council of the European Union. The Universal Declaration also states that "Everyone has the right to a nationality" and "No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality". However, UNHCR states that there are millions of stateless people around the world who may face barriers that preventing them to go to school, get a job, access basic health services, own a property, vote, travel, marry or enjoy the protection of a country. These problems of stateless people have to live with, conducts us to think and research about the link between nationality laws and statelessness.

There are many causes of statelessness but the notion of discrimination and inequality is one of the major underlying causes of statelessness. In spite of the many international and regional human rights protections against discrimination, there are still some countries having gender discriminatory provisions in their nationality laws. It is clear that, for decades, majority of the states did not provide equal rights to women because of patriarchal legal values. Though since the adoption of the Convention on the Elimination of All Forms of Discrimination against Women there has been a positive change to achieve gender equality in nationality laws. However, in countries where gender-biased laws still remain may continue to create statelessness.

As the reports indicate, there are over fifty countries in the world that do not give women equal rights with men to acquire, retain, change or transfer their nationality and in twenty-four of them women cannot pass on their nationality to their children on an equal footing with men. These laws can create statelessness where children cannot acquire nationality from their fathers or the country of their birth. Therefore, the prevention of statelessness deriving from gender discrimination should be taken into consideration as a human rights issue, not just a nationality law issue.

In the light of these issues, methodology of this paper consists of an extensive literature review, considering international human rights documents, instruments and country examples which have in progress for the achievement of gender equality in their nationality laws.

Parallel Session 4

Gender Equality ~ Janskerkhof 2-3, Room 116

Marjolein van den Brink & Jet Tigchelaar

Sex/gender registration: empowering for whom?

National civil registration systems are increasingly challenged by transgender and non-binary people, because of their rigid rules, grounded in a binary and essentialist conception of sex. The more easily legal gender recognition (LGR) is granted, the more urgent questions become as to 'what' exactly is registered (physical characteristics, gender expression), for which purpose(s), the validity of those purposes, and whether these cannot be achieved by other, possibly less intrusive means? Can the state do without registration of sex/gender in civil status registries (regarding birth, marriage, parenthood, death)? Which interests are at stake and how can these be balanced?

Dutch law only allows LGR from male to female or vice versa, yet the lower courts increasingly do grant a third option for persons (both trans and intersex) identifying as non-binary. One important argument for awarding such third options, relied upon by the courts, is equality of treatment between transgender individuals who can opt for an M or an F, staying within the binary on the one hand, and non-binary people who cannot obtain a gender marker that fits their experienced gender; an argument that can also be found in the landmark cases of both the German (2017) and Belgian (2019) Constitutional Courts on LGR legislation.

In the Netherlands the legislator works on legislative changes to allow for an alternative option for legal gender. At the same time the national government explicitly encourages a policy to decrease 'unnecessary sex/gender registration'. Arguments for this latter policy are: the reduction of administrative burdens, including what has been coined 'administrative violence' by HRW, respect for privacy and the necessity to combat sex/gender stereotypes.

The argument of combatting stereotypes is interesting, in that it questions the relevance of legal sex/gender markers for all kinds of purposes. However, stereotypes are also invoked by opponents of the reduction strategy: it might make structural inequalities between (cis) men and women in practice less visible, while - statistical - differences can highlight discrimination efficiently and give an incentive to policy to empower cis women and combat gender stereotypes. Such arguments are reflected in calls by NGOs to collect more, rather than less data on (legal) gender, including on third gender markers.

These two projects, categorical expansion (Neuman Wipfler, 2016) on the one hand, and a movement towards invisibility (albeit not abolition) on the other, to some extent are in tension. The proposed paper aims to explore the similarities, differences and inconsistencies in the current legislative and policy debates regarding gender identity recognition, and assess the quality of these policies in terms of their effectiveness in terms of non-discrimination of cis, trans and non-binary individuals. To this end, a critical frame analysis (Dombos, Krizsan, Verloo & Zentai, 2012; Van der Haar & Verloo, 2016) will be used to unravel the various interests and underlying assumptions in the debate.

Lídia Balogh

What did gender do for women? Considering the potential of gender as a legal concept

The definition of the term gender has diversified a lot over the last decade, and it is far from fixed now. It may be used in various ways and meanings in public or political discourse, and in legal and policy documents. Previously the constructivist understanding of gender prevailed in all these fields: as an analytical concept, gender used to refer to the social roles of women and men, and the related norms, expectations, stereotypes and power dynamics. But since the 2010s, the term gender is more and more often used as an activist concept, with the meaning of individually sensed and defined gender identity, and this created new challenges with regard to the conceptualisation of women's social equality. The author of the proposed paper argues that gender as an analytical concept may be still functional to promote women's social equality during policymaking, but it did a lot of disservice to women as a political buzzword, while it proved to be rather irrelevant as a legal concept if it comes to women's rights. The paper discusses some elements of the Istanbul Convention's tormented story, namely the heated debates about the contested relationship between women's rights and the concept of gender. However, the paper's focus is not on the fight against violence against women, but rather on combatting sex-based discrimination. The paper's claim is tested by analysis, aimed at considering the theoretical implications and practical consequences of the paradigm shift with regard to the concept of gender, in the realm of equality law. The paper discusses a somewhat analogous phenomenon, as well: the controversial evolution of the concept of intersectionality, which was coined in a social science context, as an analytical tool, then utilised in political discourse to articulate identity-related claims, and experimented with in legal contexts, eventually, to address complex forms of discrimination.

Naema Tahir

Breaking misleading Eurocentric frames on arranged marriage: articulating power inequalities in migrant families by exploring the role of parental authority in arranged marriage

There is ample literature on migrant families of South Asian origin that practise arranged marriage. Much of this literature is about intergenerational conflicts between parents and their adult children - the marital agents: parents wishing to hold on to traditional ways of arranging marriages are faced with demands to modernize made by their children who desire more freedom of choice and involvement in the orchestration of their marriage. There is a tendency in literature to analyse such conflicts from the equal rights and freedom paradigm. Central in this is the issue of full and free marital consent, which is interpreted to support individual choice, freedom and equality. This interpretation ignores that in the arranged marriage system, the collective incorporates to varying degrees the individual in a hierarchized interdependent relationship and parents play a pivotal role in match making shaping marital consent. As a consequence of that ignorance, the arranged marriage system is seen as a marriage of shortcomings; it is perceived to violate the freedom of agents to consent as equal individuals; it is valued as a space in which marital agents are victimized and oppressed by parents, especially patriarchs, whose power dominates marriage choices and hinders equality and freedom. This Eurocentric frame of equality misrepresents the cultural space of the arranged marriage system as a battlefield between marital agents, who quest for equality and freedom, and patriarchs who quash that equality and freedom. At the same time, this frame hinders a proper understanding of the cultural specificity of power differences in the arranged marriage system.

This paper is a call to break Eurocentric frames on arranged marriage and to recognise that the arranged marriage system is deeply engrained in duty, trust and dependence on parental authority and approval. In the arranged marriage system, the selection of life partners is considered a burden to be borne by the most fit, which are the parents - experienced custodians of their children. Marital agents invest much expectation in this traditional role, even when the these marital agents have an increasingly active role in their own match making. At the same time, in case of conflict, marital agents navigate a space in which they challenge parental authority when not exercised well. This space is not so much a battlefield of inequal partners, but a space in which marital agents demand a legitimate exercise of parental authority. This paper will study parental authority by drawing on leading scholars on the topic, amongst them Hannah Arendt and Richard Sennet. Parental authority and its dynamics are much understudied in literature on arranged marriage. Not giving articulation to its dynamics results in a missed opportunity to research with adequate nuance and understanding intergenerational power differences in the arranged marriage context which in turn marginalizes migrant families even further.

Social Inclusion ~ Janskerkhof 2-3, Room 109

E. Prema, D. Binu Sahayam & Andy Cons Matata

Social Stigma, Discrimination and Neglection State of Manual Scavengers in India: the Present Scenario

Millions of Dalits (are caste-based community, who are considered as untouchables and officially mentioned as Scheduled Caste in India) are still trapped in the casteist clutches of manual scavenging five decades after it was outlawed. Even in 2022, manual scavenging continues to be prevalent in India, disproportionately affecting Dalits and infested by nearly 50 years of manual scavenging laws. The practice of manual scavenging is hereditary and caste-based in Indian society. The challenges are complex and are numerous such as caste-based discrimination, social beliefs and cultural indifferences, social stigmas, inadequate knowledge and technology support, inadequate labour rights, poor documentation etc. It is important note that as per the Socio-Economic and Caste Census 2011, the highest number of manual scavengers is in Maharashtra, where there are 1, 82,505. In this line, the present study focuses on the challenges faced by the Dalits and their experience of dealing with the situation. A qualitative and quantitative method of enquiry was adopted as an exploratory design and interviewed 50 dalits through the Convenient Sampling Method in India. In the quantitative part, SPSS was used to analyze the data, and in the qualitative part, the data was analyzed thematically and represented verbatim within themes. Erving Goffman theory of stigma is adopted as a theoretical base in conducting this study. The findings insisted on a multifaceted solution with Government, Labour welfare department, the employment sector, the health sector, NGO's, and the social planning and policymakers in addressing their needs and assisting them to overcome the unprecedented crisis.

Colleen Sheppard

Social Inclusion and the Promise of Equality

In this paper, I examine the concept of social inclusion as a dimension of justice, focusing on its potential to enhance our understanding of the purpose, functions, and meaning of equality rights. The concept of social inclusion is not widely used in equality law; it has been relied upon more robustly by social theorists and in public policy. A 2016 UN Report defines social inclusion as "the process of improving the terms of participation in society, particularly for people who are disadvantaged, through enhancing opportunities, access to resources, voice and respect for rights." These concerns resonate with key objectives of human rights law, particularly equality rights. A social inclusion lens, therefore, has the potential to advance the promise of equality for some of the most socially disadvantaged groups and vulnerable communities in society.

Three dimensions of the concept of social inclusion are explored, including: (i) integration (without assimilation) into mainstream societal institutions and access to public benefits; (ii) prohibitions/restrictions on the institutionalization of individuals from marginalized groups; and (iii) process-based entitlements to participate in social, institutional, political decision-making (consultation, participatory democracy). An examination of jurisprudential and legislative developments through a comparative lens attests to the importance of these three critical domains where equality law and social inclusion theory overlap.

Refia Kaya (on-line)

The Dilemma of Discrimination Grounds: the Case of Turkey

Equality law prohibits discriminative treatment of individuals because of their traits that are recognised as "discrimination grounds" by the law. The traits that are enumerated in the legislations usually are race, ethnicity, colour, gender, disability, religion, and age. However, there are numerous other personal traits that are unrecognised by the law, such as eye colour, weight, height, accent, mimics, place of birth, job, income. Moreover, discrimination with respect to some traits arises more attention. For example, race discrimination is usually perceived as more serious wrong than age discrimination.

This paper aims to discuss the following dilemma of discrimination grounds. Although the grounds that are recognised as discrimination grounds hardly differ when different legal systems are compared, the presumption of authorities and public with regard to the traits that should be recognised as discrimination grounds and the traits that should be taken more seriously as discrimination grounds highly depends on various dynamics, such as the historical, socio-cultural, and political factors in a given state. Hence, the hierarchy of discrimination grounds can significantly differ. For example, discrimination on the grounds of marital status is the most common type of discrimination in Turkey according to the applications that come before the Human Rights and Equality Institution of Turkey (TIHEK). Additionally, discrimination based on the town that one was born in is very common.

This dilemma should be taken seriously to ensure that equality law does not exclude anyone in society without any reasonable justification. This is important for eliminating discrimination in a given society, especially if some individuals with a trait that is poorly recognised by the law are in a vulnerable situation and remain unnoticed.
This paper suggests that it could be possible to tackle discrimination on the grounds that are poorly recognised without changing the legislation by making an extensive interpretation of an existing discrimination ground. However, the legitimacy of such a strategy should also be discussed. The paper mainly focuses on the applications that are brought before the TIHEK. Although there are thousands of stimulating applications that come before this institution, which is ENNHRI and GANHRI member, an academic study to thoroughly discuss them are non-existent.

The first part of this paper discusses the phenomenon of the hierarchy of discrimination grounds and the historical, socio-cultural and political dynamics (i.e. causes, effects, implications) of the hierarchy. The second part focuses on the applications that come before the TIHEK and the existing hierarchy of discrimination grounds in Turkey compared to hierarchy that can be observed across Europe. The third part explores whether the current laws in Turkey, and beyond, facilitate utilising one discrimination ground to address discrimination on another ground among advantages and disadvantages of such a strategy.

Sujata Gadkar-Wilcox (on-line)

Emancipatory Constitutionalism: Reconceptualizing Justice in the Indian Constitution to Empower Marginalized Communities

Across the globe, from the rise of Donald Trump in the United States to that of Xi Jinping, and Narendra Modi in Asia, capitalist structures, social hierarchies, and political power dynamics are currently at the forefront of public narratives. The structural constraints that weigh down and corrupt our current political system in many neo-liberal societies are very different from the structural conditions that informed the constitutional principles of equality and liberty derived from the social compact. In the United States for example, the current conditions of gross material inequality, failing systems of public education, and deep-seated racial and gender discrimination require a consideration of a new set of constitutional remedies. In fact, these conditions are more akin to the conditions faced at the time of drafting of the Indian Constitution. Not surprisingly, the Indian framework supports a separate and distinct social compact, one which incorporates a different conception of equality and justice. That comparative analysis will provide a better model to incorporate different facets of a social compact that would better suit the many countries whose constitutions replicate the U.S. model.

Scholars have already argued that there is an urgent need for a new political ethos to direct liberal constitutional republics in the twenty-first century. Such a new social compact must go beyond procedural rules designed to protect individual rights from intrusion by the state. It must broaden conceptions of equality, due process, and liberty to include responsibilities that individuals owe to each other, the environment, and their posterity. There has not been much discussion, however, of a constitutional framework that in fact already attempts that same orientation. The Indian constitutional framework has already reconceptualized transcendental forms of justice to account for the acute material conditions at the time of drafting. And while the Indian context may not have successfully maintained every aspect of that reorientation, it certainly created the structural conditions and political vision for the judicial activism that followed the period of drafting, which incorporated broad rules for social action litigation, and enabled social mobility along caste lines, something that would have been unattainable outside of the new constitutional framework. The drafting of the Indian Constitution utilizes a different conceptual logic that effectively applies what Amartya Sen subsequently describes as a realization-focused account of justice, to address the lived reality of inequality. Under the leadership of Dr. B.R. Ambedkar, the drafters of the Indian Constitution created a system of reservations to make social mobility a reality, established directive principles for horizontal obligations among community members, and established a strong central government to set the agenda under which local states and provinces would be able to rule. This paper will explore in more detail how that constitutional framework would aid other countries in reconstituting a social compact that would account for the actual conditions of inequality, lack of social mobility, corporatist political structures, and failing systems of education.

Gender Pay Gap: Comparative Approaches ~ Janskerkhof 2-3, Room 117

Katharina Miller

Pay inequity: Old problem, new solutions?

The principle of equal pay for equal work or work of equal value has been on the agenda for decades in Europe and beyond. The International Labour Organisation (ILO) Equal Remuneration Convention (No. 100) was adopted in 1951.

At the European level, Article 119 of the Treaty of Rome already recognised this principle in 1957. Iceland adopted its first pay equality legislation in 1963. That same year, the US Federal Equal Pay Act of 1963 addressed equal pay and pay equity with respect to women and men, and Title VII of the Civil Rights Act of 1964 with respect to race. These legal initiatives had something in common: they relied on challenging unequal pay retroactively, via (mostly individual) remedial action, resulting in limited litigation and the slow reduction of the average Gender Pay Gap (GPG). As a response to this inertia, proactive pay equity legislation addressing pay transparency was introduced in the US and Canada in the 1980s. In other jurisdictions, such as in various Nordic countries and Australia, the GPG was tackled (perhaps not always fully intentionally) via coordinated wage-setting systems, with the involvement of social partners. Building on these early experiences and on the chapters of this edited book, this paper (based on the book's introductory chapter) demonstrates that pay transparency has been part of the policy-mix to tackle the GPG for more than 60 years. The paper also analyses the potential of more recent endeavours to rely on pay transparency to further reduce the GPG and it puts those initiatives in a wider social and policy context. In doing so, the paper underlines that effectively tackling the old and complex problem of the GPG requires a comprehensive and multi-faceted approach.

Sara Benedí Lahuerta

Gender pay transparency: an attempt to systematise national, supra-national and non-governmental approaches

Pay transparency regulatory approaches to address the GPG vary widely at the national level. International, supranational and not-for-profit transparency initiatives to tackle the GPG have also developed recently, e.g. the EU 2014 Recommendation and 2021 EU Commission Proposal for a Pay Transparency Directive, as well as the joint efforts of several international organisations that led to establishing the 'Equal Pay International Coalition' (EPIC). This paper (based on one of the book's horizontal chapters) systematises pay transparency initiatives according to certain approaches: (1) pay information (e.g. which actors are involved in collecting information, data disclosure levels, reporting thresholds and accessibility), (2) action (e.g. whether action is required to identify potential issues identified in the pay information) and (3) enforcement (e.g. if there are independent bodies overlooking the implementation of pay information and related actions, if there are penalties in cases of inaction). The paper offers a transversal overview to key pay transparency experiences developed in Europe and beyond, with cross-references to the 2021 EU Commission Proposal for a Directive as regards the three above-mentioned areas.

Laura Carlson

Dealing with the GPG in Sweden: With or Without the Social Partners?

The Swedish labour law model has long seen itself as creating a highly satisfactory balance between social partners. Often-cited evidence for this is the low number of days lost to industrial action, for 2020 it was zero. According to Eurostat, Sweden is placed in the middle of the member countries with a gender pay gap of approximately 12 %. Sweden has no minimum wage legislation, a direct result of leaving the Swedish labour law model intact. The social partners are to regulate the issues in the labour market. Historically Sweden had tariff wages set out in collective agreements much based on a gendered division of work, but has in recent decades gone towards a combination of wages as set in collective agreements with a certain room for individual wage-setting. Union density is about 67 %, collective agreements do not have erga omnes effect, but as applied cover almost 90 % of all employees. Sweden has a high degree of occupational segregation and compressed wages. The rule of thumb with respect to wage-setting is that "Industry leads", that no wage increase percentage-wise can be greater than that negotiated in the male-dominated sector of trade.

There is no transparency with respect to wage negotiations, most negotiators are men (even for the female-dominated sectors). Collective agreements are to be submitted to the government authority, Medlingsinstitut (mi.se), but are not easily accessible publicly except for the unions' own members. There is no transparency with respect to individual wage-setting, and one of the arguments against the European Commission Proposal as to wage transparency is that employees will then be pitted against each other if they have such information available. At the heart of the objections of the social partners to the European Commission Proposal is the desire to retain the power over deciding issues in the labour market. This has been a consistent response of the Swedish social partners with respect to discrimination legislation, that discrimination issues are best left to them to resolve, beginning already in the 1970's when sex equality legislation was first considered. The question now is whether the Swedish social partners can indeed reconcile the human right of non-discrimination, particularly pay equity, with the very labour law approach as taken by the social partners.

Alex Patrick

Resistance to equal pay auditing as an enforcement tool in the UK

This paper examines ongoing political resistance to the introduction of widespread mandatory equal pay auditing in the UK. The only provision for mandatory auditing is contained in the Equal Pay Audits Regulations 2014, which empower employment tribunals to order employers found to have breached equal pay law to conduct an audit. The purpose of such an order is to determine whether the subject of the equal pay claim was anomalous, and to identify actions necessary to address systemic discrimination, thus preventing ongoing or future breaches. Given that there are several exceptions to the requirement for tribunals to make such an order, and the fact that very few equal pay claims proceed to hearing, it is perhaps unsurprising that no such orders have as yet been issued. The context in which these Regulations were introduced suggests that this mandatory system was never intended to effect widespread change. While successive governments have relied on a 'business case' to encourage voluntary auditing, many employers remain unwilling to do so, often because they believe they already provide equal pay. Despite low voluntary uptake, increasing calls for mandatory equal pay auditing have been resisted, owing to a reluctance among lawmakers to be seen as over-regulating business. The paper suggests that, as enforcement tools, pay audits have potential to turn individual equal pay claims into stepping stones for tackling systemic pay inequity. Yet, the limited circumstances in which equal pay audits can currently be ordered by UK tribunals fits a wider pattern of delaying and watering down pay transparency measures in order to limit burdens on UK employers. Indeed, pay information published under the UK Gender Pay Gap Information Regulations (2017) is insufficient for employees to obtain pay information necessary to bring an equal pay claim. While mandatory pay transparency measures appear to be on the horizon within the EU, the desire among UK lawmakers to deregulate the labour market is likely to continue to inhibit the introduction of mandatory equal pay auditing post-Brexit.

Cross-discipline ~ Janskerkhof 2-3, Room 110

Aatika Singh (on-line)

How Law classicizes Dance: Burden, Bane and Banishment

In India, dance is deemed as 'choreographic works' and is protected under the Copyright Act, 1957. Section 2(h) of the Act makes it clear that choreographic work falls within the meaning of 'dramatic work' under copyright law.

Thus, if a person wants to register the copyright in a choreographic work, they will be required to reduce it in writing and apply for registration in that form only. This is only one instance out of many regarding how the law controls dance and body both by consolidating itself as the medium between the nation and aesthetics. Dance therefore ends up as a toolkit used by the nation and the law to self expand and self propagate their benevolent fascism, especially in today's context.
Law and its duty to represent and provide space has often brutalised the body, especially the dancing one. The dancing body cannot retain its own ephemerality, however most of the laws governing it continue to be based upon a faulty reading of a rigid history. This approach not only becomes androcentric but also Brahmanical in the Indian context. All laws follow an oppressive binary of either relegating the dance form as exotic or as ancient. Neither does justice to the socio- political multiplicity encapsulated in a dancing body. These binaries have to do more with power than with a plurality of progressive practices that exist in the Indian dance tradition. For instance, In 2019 the Supreme Court relaxed the stringent conditions imposed by the Maharashtra government for obtaining licenses and running dance bars, which are an important source of livelihood for female dancers. These dancers generally belong to the traditional dancing communities and are following their hereditary occupation.

State laws across the country impose similar restrictions on the employment of female performers, bartenders, waitresses, restaurant managers, housekeeping staff, and others similar occupations, all based in a gendered understanding. We see a pattern here of law's attempts to discipline and punish the dancing body, especially when it is in the very act of it. Here, law becomes a deadly weapon capable of mass erasure and everyday violence. We know about the glaring cases that resulted from the law permeating the world of the Devdasi performers as well. On the other hand, classical forms continue to be perpetuated post 1947 by the law through codes of legitimacy, funding and contextualization. The law helps form the body and the grammar of these dances often through a hegemonic process seeped in negation. The treatise is to control the cultural front, whether by cleansing, curtailment or censorship. After the effects generated by law take control of the dancing body, especially the ones outside academies and institutes, but on the road, park and bars, participation and presence become sites of contestation. This also leads to a decline in shared public spaces. Care and conformity then operate against one another leading to increasing constrictions in the dancing body. The burdened body is therefore banished due to the bane of law.
The paper therefore posits; As body and belonging are inextricably linked, why should law be given a space in between? And, what performances of bodily autonomy might look like without any imposed governing law especially in post covid world? And lastly we also question the canon of classicization in Indian dance.

Alysia Blackham

Illuminating Intersections between Equality Law, employment Law and Public Law

Equality law sits in a liminal space at the boundaries of employment law and public law. In some jurisdictions, equality law is framed as largely being a creature of employment law, given its primary enforcement via labour courts and tribunals, and enactment in industrial statutes. In these jurisdictions, equality law might be perceived as a form of private law, akin to tort law, and primarily concerning the rights of private parties.

In other jurisdictions, equality law is positioned as being part of constitutional and human rights law, embedded in national constitutions, or part of human rights statutes. This is reflected, for example, in the growth of human rights instruments that include prohibitions of discrimination, such as the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the Charter of Human Rights and Responsibilities Act 2006 (Vic); the use of judicial review to enforce the UK public sector equality duty; and the integration of equality matters into public procurement.

Some jurisdictions sit at the intersection of these two approaches, with equality law having both employment and public law facets. Scholars and practitioners are divided as to whether this positioning makes a practical difference. Are those impacted by discrimination more likely to enforce their rights to equality, if the rights are seen as human rights, with broader significance? Conversely, are employers more likely to comply with equality law, if it is seen as a species of employment law?

This paper considers what difference, if any, this positioning and framing of equality law makes in practice, by illuminating the intersections between equality law, employment law, human rights law and constitutional law. Drawing on a comparative doctrinal case study of equality laws in the UK, Canada and Australia, and comparing case law handed down in the employment context with that in the public law context, this paper considers how the positioning and positionality of equality law affects the development of equality law, and the enforcement of rights in practice. It considers what the positioning of equality law might mean for its scope; the role of the 'public interest' in adjudicating claims and disputes; the methods or tools by which discrimination law is enacted (such as individual rights, positive duties and public procurement rules); and its means of enforcement (such as the role of government agencies, individual enforcement, private conciliation and available remedies).

Jane Thomson & Asleigh Keall

Discrimination and the private law in Canada: the shameful legacy of Christie v York Corporation, [1940] SCR 139

Canada has robust constitutional laws and human rights codes that preserve the right to equality and protect its peoples from discrimination. However, large pockets of private law remain completely insulated from the purview of such legislation. In those areas, namely private wills, trusts, and scholarships, the doctrine of public policy is used by Canadian courts to invalidate otherwise legal operations in private law that harm the public interest.

While this practice is now well established among trial level and appellate courts in Canada, the Supreme Court of Canada has yet to affirm this approach. In fact, the last time the Court directly considered the use of public policy to remedy discrimination was in its infamous 1940 decision of Christie v York, in which it declined to find that a Montreal tavern's whites-only policy was contrary to public policy.

Our paper reviews Christie in detail, explaining how the Court could and should have found that the discrimination at issue contravened the doctrine of public policy, even back in 1940. We then illustrate how the Supreme Court of Canada has consistently refused to revisit its holding in Christie in a series of cases involving discrimination in the private law. We provide a close read of those cases and argue that the Court's failure to rule on the question of public policy and discrimination in the private law perpetuates harm.

Rather than focus on the substantive harm caused by the Court's failure to clarify this area of law, we focus on the resulting expressive harm. 'Expressive harm' refers to the injury stemming from the expression of a negative or inappropriate attitude that is distinct from its subsequent material consequences. The harm lies in the expression itself and the message it sends. The Supreme Court is Canada's highest court and thus a speaker of great authority; its judgments send powerful messages about the nation's social norms and shared values. We argue that the Court's silence on whether discrimination in the private law should be understood as contrary to public policy sends a harmful message of ambivalence about the wrongfulness of discrimination. We call on the Court to take the first opportunity to finally break from its legitimisation of discrimination in Christie and to affirm the role of public policy in curbing discrimination in private wills, trusts, and scholarships.

It is our understanding that the use of the public policy doctrine to censure discrimination in the private law was, until recently, a uniquely Canadian endeavour. We believe that this research provides a useful comparative perspective on judicial responses to discrimination in the private law for countries of both common and civil law traditions, and serves to highlight the universal importance of attending to the expressive dimension of state responses to discrimination along with its more substantive reach.

Territory and Inequalities ~ Janskerkhof 2-3, Room 118

Leonardo Pasqui

Equality law and local dimension. The importance of the territorial perspective for gender disparities

The relationship between territory and women's conditions has been recently faced through the analysis of the urban conditions (Kern, 2020). However, from a legal point of view it's crucial to consider also other institutional dimensions, in order to understand how territory could actually influence women lives.

In the past, several scholars have faced this relationship through the prism of federalism (Vickers, 2017). As a matter of fact, it has been pointed out how different types of federalisms could have a range of consequences on women's lives. In particular, it has been noted that multilevel governance and decentralisation have not helped women's conditions for two reasons: first, because of the lack of women's representation in public institutions and, secondly, in a more structural sense, because of the intergovernmental nature of federalist systems, which are mostly male centered (Gray, 2010).

However, focusing only on the institutional relations across the multilevel governance could hide some significant dynamics. As noted, contemporary phenomena do not belong to a single territorial unit (Brenner, 2009), but they live in several scales, at the same time.

Therefore, it is crucial to analyze how gender issues are translated into a territorial level, also beyond the traditional administrative borders foreseen by the public law. More specifically, the study aims to put a light on the existing legal disparities between cities and the rural areas (Pruitt, 2007). As highlighted by the European Commission, women achieved more results and have more opportunities in more developed regions and cities, while they suffer worse conditions in less developed regions. Moreover, «political positions in less developed regions are predominantly held by men. This means female experiences are less likely to be considered when designing public policies» . Furthermore, the Commission shows that there is a correlation between the economic development of an area, expressed as GDP per capita, and gender equality; however, this is not a strong relationship, as beyond a certain level of prosperity, the benefits for women begin to diminish.

In this sense, the study of the relations between the local dimension and gender policies must go beyond the analysis of the administrative decentralization; rather, it is necessary to consider how only a gendered vision of the local dimension can drive a fair and sustainable future for all.

Fatima Osman

The Traditional and Khoi-San Leadership Act: Entrenching inequality in South Africa's rural areas

The Khoi-San is the collective terms used to refer to the 'lighter skinned indigenous peoples of Southern Africa', namely the Khoi Khoi and the San, who are regarded as the first people of South Africa. The Traditional and Khoi-San Leadership Act ('the Traditional Leadership Act') was advocated as being necessary for the long over-due recognition of Khoi-San leaders in South Africa. In 2021, after years of deliberation and contestation, the Act was brought into force to replace the existing Traditional Leadership and Governance Framework Act. Since its commencement, the Traditional Leadership Act has been critiqued on a number of grounds such as a lack of meaningful public participation in the legislative process, but this article focuses on how the Act differentiates between traditional and Khoi-San leaders and the potential impact of the legislation on South Africans in rural areas.

Using doctrinal research, the article analyzes the Traditional Leadership Act and argues that it entrenches inequality between the Khoi-San and other traditional leaders despite the ostensible purpose of the Act.

The article then scrutinizes the controversial section 24 of the Act. The section empowers traditional councils to conclude partnership agreements regarding communities without requiring the explicit consent of the community, or at the very least those impacted by the agreement. Furthermore, section 24, when read in conjunction with the Communal Land Tenure Bill which seeks to regulate customary land tenure in rural areas and confers ownership of land to traditional leaders, threatens the land rights of millions of South Africans.

The article argues that the notion of bifurcated citizenship is a disappointing reality as citizens in rural South Africa are subject to traditional councils and leaders who may make significant decisions about their lives without their consent and very little accountability. Citizens in rural South Africa are thus unable to participate in the constitutional democratic project in an equivalent manner to their urban counterparts.

Ofra Bloch

National Priority Regions: Redistribution, Development and Settlement

National Priority Regions (NPRs) is one of Israel's most robust tools for redistribution: a resource allocation governmental plan that favors some regions over others mostly according to their socio-economic status and peripherality. Despite being a central redistributive tool that reallocates billions of shekels annually, the NPR mechanism has drawn almost no scholarly attention. Drawing on archival research, this article aims to start filling this gap by providing historical and theoretical accounts of NPRs.

This article conveys the history of NPRs in three parts. The first begins in 1970s and continues to the early 2000s. During the course of these early years, the NPR maps grew to include more and more Jewish localities while disproportionately excluding Palestinian-Arab ones. The second part of the NPR story describes the progressive moment of 2006, when the Supreme Court struck down the NPR map for overtly discriminating against Palestinian-Arab citizens of Israel, and required the use of "objective criteria" for distribution. The third part examines what transpired after the court's famous decision. Here I show how this was not a "hollow hope" story. The government eventually adhered to the Court's ruling, provided clear and seemingly neutral criteria for the classification of NPRs and gradually included most of the relevant Palestinian-Arab localities into the NPRs map. Yet, during the same time frame, NPRs also became a predominant and massive mechanism for allocating funds to Jewish settlement in the occupied West Bank.

The first to focus on this topic and to provide a detailed description and analysis of this measure, this article adds an empirical contribution to the literature on Israel's equality law. Yet, tracing the history of NPRs over three periods—showing how it was used and abused—allows for some important theoretical observations about the complex relationship between redistribution, development and settlement, at both the local and the global levels. At the domestic level, this article shows how NPRs changed over the years from a discriminatory tool that excluded almost all Palestinian-Arab localities, to a more inclusionary mechanism, but one that comes with a price: supporting, incentivizing and legitimizing Jewish settlement at the Occupied West Bank. At the universal level, this article raises critical questions about the use of seemingly race-neutral criteria, showing how they are an elusive exercise of power that often deepens racial and ethnic inequality: excluding some groups and overly including others.

Marie Mercat-Bruns

Inclusive cities around the world: using innovative tools to fight racism and discrimination?

UNESCO has developed the concept of inclusive and sustainable cities. Drawing from a global study on racism and discrimination in the different regions of the world, this paper will attempt to capture how intersectional and structural forms of discrimination can be grasped and apprehended with a more local perspective and through a diversification of legal tools and policies. Cities are faced with multiple risks of discrimination linked to hate speech in local campaigns, housing migrants or seasonal workers, inclusion of residents of different religions, supporting economically disenfranchised communities, ethnic groups (Roma), or indigenous population. This study delves into innovative practices developed across the different nations to secure bottom-up, long term solutions in urban settings which have an impact on employment, access to a better quality of life and social cohesion.

Disability ~ Janskerkhof 203, Room 111

Felix Welti

Sustainable Development Goals and Disability Human Rights

Disability Human Rights are enshrined in the Human Rights Treaties and specified in the CRPD of 2006, ratified by 185 states and by the EU. The Sustainable Development Goals (SDG) are subject of an unanimous resolution of the UN General Assembly (A/RES/70/1) of 2015 "Transforming our world: the 2030 Agenda for Sustainable Development". They are a political document, described as a plan of action for all countries and all stakeholders in collaborative partnership.

The SDG-resolution is related to the UN Human Rights system. This is specified in Goal 16b to promote and enforce non-discriminatory laws and policies for sustainable development. One of the keywords is vulnerability. Explicitly it states that vulnerable people must be empowered. It names children, youths, persons with disabilities, people living with HIV, older persons, indigenous people, refugees and internally displaced persons as vulnerable.

Disability is explicitly mentioned with equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities (Goal 4.5.), productive employment and decent work for alle women and men, including for young people and persons with disabilities (Goal 8.5.), empowerment and promotion of the social, economic and political inclusion of all, irrespective of disability (Goal 10.2.) and to access to safe, affordable, accessible and sustainable transport systems for all with special attention to those in vulnerable situations, including persons with disabilities (Goal 11.2.). Goal 17.18. names the availability of data, disaggregated inter alia by disability as capacity-building support to developing countries.

The interconnecting of the SDG process with Human Rights raises legal, political and scientific questions. The SDG process is designed to overcome the ecological and social crisis of humanity. Therefore, Sustainable Development is a prerequisite of Human Rights. The SDG document describes a democratic, participatory way of transformation respecting and strengthening legal institutions. Therefore, Human Rights are a prerequisite of Sustainable Development. This could strengthen the concept of the indivisibility of social, civil and democratic rights.
SDGs can be used for the interpretation of Human Rights. The UN committees, including CRPD, use them in this sense. Other arenas for strengthening the interconnection can be ILO, WHO, WTO and UNESCO and international scientific cooperation.

It should be discussed how Human Rights can influence the understanding of the SDG process. The subsumption of disability under the category of vulnerability could lead to a shortcoming of the specific dimensions of CRPD which consist in transforming disability policies and rights from care and welfare to equal rights. Practical conflicts could appear when technical aids and accommodations for equal participation and accessibility could be questioned and denied because they need energy and resources or when a “back to nature” urban design is less universal accessible.
A key for theoretical and practical solutions could be the systematic combination of the participation demand in Art. 4 sec. 3 CRPD with the empowerment goal of the SDGs to show that a just transformation depends on a human right driven participation.

Elpitha Spyrou

Disability Discrimination in Education

Internationally, disabled children and young people have a fundamental human right to ‘education’ and ‘inclusive education’. However, in Australia, only the Australian Capital Territory and Queensland inc
orporate certain aspects of the former right through their human rights Acts.
While most Australian jurisdictions have no expressed right to education, let alone inclusive education, all States, Territories, and the Commonwealth, recognise that every student should have access to primary and secondary education free from discrimination. This recognition is derived from the concurrent operation of compulsory education schemes, as well as applicable equality frameworks.

Despite this legal landscape, the compulsory education of students with disability-related challenging behaviour produces a unique clash of interests between the student; their legal guardian; as well as the wider school community. But the confidential nature of statutory conciliation means little is known about how the conflict within such complaints are resolved, if at all. Literature also suggests that complainants in settings often experience power imbalances and lawyers may hinder the conciliatory nature of these resolution attempts. Scholars have also queried the utility of resolving conflict outside of courts when matters concern complex legal issues, such as the education of these students.

My research investigates how compulsory South Australian and Victorian students with disability related challenging behaviours, and their supporters, attempt to seek redress under the student’s anti-discrimination protections at both state and federal levels. The research addresses this knowledge gap through employing a ‘multi-methods’ approach across three phases to understand how equality law is working in this context. The three phases are (1) a doctrinal review of the three equality Acts, (2) a questionnaire to the three equality bodies, and (3) semi-structured interviews with practitioners and supporters of these students.

The research findings address a data gap that exists in the literature allowing both a critical appraisal of the applicable law and process, as well as an investigation into the different levels of stakeholder satisfaction. This is achieved by reporting on otherwise secret information to determine how the complaint-pathways are working, the situation post complaint, the impact of legal practitioners and how power imbalances are addressed. It also gives a voice to users of resolution processes who are often not heard which is achieved by gaging user satisfaction. In doing so, the research seeks to revolutionise both legal and educational scholarship.

Lilit Grigoryan

The role of parliaments in promoting, protecting and monitoring the implementation of human rights of disabled persons: Comparative evaluation of western and eastern EU Member States

Historically, parliaments have been established to ensure the legitimacy of domestic laws and policies. In the meantime, the evolving international and supranational laws began recognizing the national parliaments as one of the most important domestic actors in promoting, protecting and monitoring the implimentation of human rights.

The research shows, however, that the form, acting powers, financial capacities, working methods and oversight mechanisms of parliaments and their standing Committees differ from state to state. Similarly, their actions are affected by the respective historical heritage, sociocultural attitudes and mobilisation strength of civil society and other independent human rights bodies. This becomes particularly visible in comparing disability-rights related laws and policies of western and eastern EU member States.

The study was based on the case study approach based on a number of empirical methods such as four-actor expert interviews and analysis of legal and political documents.

Equality Law in Australia ~ Janskerkhof 2-3, Room 013

Robin Banks, Alysia Blackham, Liam Elphick, Beth Gaze, Anne Hewitt, Simon Rice, Belinda Smith & Alice Taylor

Law Reform Through Collective Academic Expertise: Lessons and Reflections in Advancing Equality Law

Australian equality law is currently witnessing a period of rapid growth in media attention, public interest and focus, and law reform inquiries. Few other areas of law in Australia reach the front page and public consciousness as frequently and deeply as equality law. Lacking a comprehensive human rights framework – with no national bill of rights or constitutional equality protections – Australian discourse concerning civil and political rights and, especially, the right to equality, largely occur through the lens of discrimination law. Found almost entirely within legislation across Australia's federal system, its five national and eight state/territory equality law statutes play a key role in shaping this discourse. Their reform and advancement, therefore, are crucial in ensuring effective equality protections in Australia.

Within this context, several actors and groups have played increasingly important roles in shaping equality law reform in Australia. The Australian Discrimination Law Experts Group (ADLEG) is one such group.

ADLEG is a network comprised of 20 academics from across Australia with expertise in discrimination and equality law and policy. Members of ADLEG first convened in Canberra in 2010, and have worked together since. ADLEG's goal is to inform Australian human rights law and policy development, particularly in respect of discrimination and equality, by undertaking and disseminating research, and providing research-led expert submissions to law reform processes.

In the context of a federal, parliamentary system without constitutional equality protections, the focus of ADLEG's law reform work has been informing and influencing legislative policy and drafting in each of the federation's jurisdictions (one national and eight state/territory). In the last 5 years alone, ADLEG has made nearly 30 joint law reform submissions on Australian equality law, on issues ranging from sexual harassment at work, to the intersection of LGBTIQ+ rights and religious freedom, to whole-scale reviews of entire legislative schemes. ADLEG members have been invited to appear before numerous parliamentary committee hearings at federal and state levels, and to provide expert advice on complex questions concerning equality law to human rights commissions, law reform bodies, and parliamentary and governmental bodies.

In a number of these inquires, ADLEG has had significant impact: in two recent law reform inquiries into equality law in the states of Western Australia and Queensland, ADLEG was consulted by the law reform body throughout and its recommendations were largely supported. Various other proposals by ADLEG have found their way into Australian equality laws.

In this panel, several ADLEG members, who are also members of the Berkeley Centre on Comparative Equality and Anti-Discrimination Law, will:

- Share their experiences as individual members of ADLEG, and how they have – each and together – pursued, and helped achieve, law reform in Australian equality law. Case studies for this discussion are three key inquiries in which ADLEG has played a leading role: the proposed federal Religious Discrimination Bill, the Respect@Work inquiry into sexual harassment in work, and the Victorian Gender Equality Act.

- Reflect on their experiences and, specifically, questions of how and where collective academic expertise can be most effective in reforming equality law in different contexts, in light of existing work on group collaboration and law reform.

- Prompt discussion of the need to build rigorous processes for internal dialogue and debate and to ensure individual academic voices, values and expertise are not drowned out in the search for the collective good. Academics are, by nature, one of the key remaining sources of rigorous, thoughtful, and independent expertise; tapping the well of academic experts without rendering their views singular is a crucial balance to get right in advancing equality law.

- Consider what other, innovative, models of advocacy could be utilised as we continue the project of equality law reform, both in Australia and beyond.

DAY 3

Friday 30th June, 11:00

Opening Speech

Shefali Razdan Duggal

US Ambassador to the Netherlands

PLENARY PANEL 3

Judging Inequalities

Friday 30th June, 11:30

Judge Dr. Emmanuelle Bribosia

Judge Dr. Ivana Jelic

Judge Dr. Sacha Prechal

Nozizwe Dube

Speakers

Judge Dr. Emmanuelle Bribosia
Judge Dr. Ivana Jelić
Judge Dr. Sacha Prechal

Moderator

Nozizwe Dube

Parallel Session 3

Synergies between intersectionality, vulnerability, and stereotyping ~ Janskerkhof 2-3, Room 111

Charly Derave & Isabelle Rorive

Polemic around chosen (non-)mixity. Thinking about these forms of 'safe spaces' in law

On 10 December 2020, the Brussels feminist group Imazi.reine planned an online workshop entitled "For a convergence of non-consensual struggles". This workshop, supported by several associations as well as public authorities, was organized "in non-mixed gender, without cis-hetero men and without white people". While less than forty people were registered, a few polemical tweets denouncing "a racialist and sexist move" were enough to provoke an outcry on social networks. The invitation was later rephrased to address "primarily racialized women and queers". Unia, the Interfederal Centre for Equal Opportunities in Belgium, reacted in the following terms: "It needs to be possible to organise safe spaces insofar as these are spaces that, for a limited time, offer people the opportunity to communicate, exchange experiences (empowerment), strengthen their self-confidence, express themselves freely and reflect collectively. [...] Those who organise safe spaces must focus, as a priority, on the specific target groups [...] but must also avoid communicating in a way that suggests exclusion [...]. In any case, this can never happen on the basis of someone's skin colour"1.

In view of the extent of the controversy in Belgium and similar polemics in other European countries, the Equality Law Clinic of the Université Libre de Bruxelles (ULB) took up the issue in 2020-2021. At the time, the aims were, on the one hand, to map these practices by conducting a survey of feminist associations and student circles that gathered in a non-mixed environment and, on the other hand, to draw the legal framework for civil society.

We intend to deepen this analysis in our contribution. First, we will place non-mixity practices in a historical perspective. If non-mixed modes of organization have been used to raise oneself as political subject and therefore promote emancipation (e.g. Black panthers in the USA in the 60-70s or the activists of the Women's Liberation Movement after May 1968), they were preceded, as early as the beginning of the 19th century, by men's clubs conceived and perceived as 'entre-soi', i.e. places of strong power and networking. This model of British origin has been mirrored elsewhere. For instance, it is appalling that in Brussels, the Cercle Royal Gaulois Artistique et Littéraire, which came up in 1847, is exclusively composed of male individuals. We will then go on with the interviews of social groups practicing non-mixity to identify the contemporary reasons for this mode of political organisation. Finally, we will carry out a rigorous legal assessment in the light of an articulation between European non-discrimination law and other human rights. Alongside freedom of assembly and association, freedom of speech will be considered in order to tackle the practice of 'safe spaces' which has arisen from university campuses in North America where so-called 'sensitive' topics are proscribed.

Hania Ouhnaoui

Categorisation, intersectionality and migrant women

It is only very recently that migration phenomena have begun to be studied through a gender lens. This has highlighted the different experiences of migrant women and the long-invisible discriminations and abuses they face.

Current migration policies and legislations are built around the categorisation and assignment of status to foreigners. These categories determine the legal situations of migrant people and condition all aspects of their lives (rights of stay, access to the labour market, access to housing, family relations, etc.). They are created by the States with the aim of controlling migration flows, thus creating a gap with the reality experienced by migrants. This disparity is even more present in the case of migrant women because migration law is general and gender-blind, which places them in a particularly vulnerable situation.

They are discriminated against on the basis of their sex/gender but also on the basis of other characteristics that are inseparable from their identity, such as their race, nationality, ethnic origin, class or religion. The prism of intersectionality, which emphasises the interaction of several grounds of discrimination, makes it possible to place the unfavorable treatments suffered by migrant women in a structural system of hierarchisation while at the same time making visible the gender dynamics and the interaction of the various components of a migrant woman's identity.

The usefulness of intersectional analysis in the field of discrimination and migration will be considered through the presentation of some case studies such as the situation of women arriving for family reunification and victims of domestic violence or that of women seeking international protection.

Raphaële Xenidis

Theorising the heuristic synergies between intersectionality, vulnerability and anti-stereotyping

How does the law respond when someone is being discriminated against on the basis of more than one protected characteristic? For example, when an applicant seeks redress for a disadvantage linked to their gender and ethnic origin? The notion of 'intersectionality' and the range of critical theoretical insights it offers captures this multidimensionality of inequalities. In law, engagements with intersectionality highlight a major problem: the categorical understanding of disadvantage prevailing in the articulation of anti-discrimination protection frameworks around protected characteristics obfuscates the complexity of inequality. As a result, minority groups situated at the crossroads of several axes of inequality might be prevented from asserting their fundamental right to non-discrimination. Problematically, if equality law fails to redress the disadvantage experienced by the most marginalized parts of society, it cannot fulfil its justice function. Therefore, intersectionality can valuably contribute to improving the performance of the legal and social functions of equality law.

Intersectionality has timidly emerged in the European courts' anti-discrimination doctrine in recent years, along with other doctrinal devices that have been described as contributing to a more substantive approach to equality, namely the concepts of vulnerability and anti-stereotyping. Although the relationship between these doctrinal devices – particular vulnerability, anti-stereotyping and intersectionality – is not formally articulated, they display considerable analytical affinity. For example, the concept of particular vulnerability was prominent in Crenshaw's elaboration of intersectional discrimination in her "Mapping the Margins" article: "Intersectional subordination (...) is frequently the consequence of the imposition of one burden that interacts with preexisting vulnerabilities to create yet another dimension of disempowerment." In turn, an anti-stereotyping approach can facilitate the operationalisation of intersectionality as an analytical tool, for example by identifying and addressing multidimensional stereotypes and prejudice grounded in several protected grounds of discrimination.

All three doctrinal devices draw their explanatory power from attention to the socio-historical construction of social differentiations, legal categorisations and their consequences in terms of in/exclusions. This paper interrogates the theoretical links and complementarity between these theoretical frameworks – intersectionality, vulnerability and anti-stereotyping – when applied by the European Court of Human Rights. In particular, it explores how the frameworks of vulnerability and anti-stereotyping can serve as vehicles for accommodating and operationalising intersectionality as a doctrinal frame that unearths the complexities and multidimensionality of inequality. The paper reflects on how these devices challenge the ways in which the law authoritatively delimits legitimate representations of equality and discrimination, thereby excluding certain parts of social reality from the realm of these notions. To do, it examines how these three frameworks have been harnessed together in the equality case law of the ECtHR. The paper is structured in three parts and examines:

(1) how these analytical devices challenge and modify traditional legal categorisations and their meaning;
(2) how they provide lenses to look past individual identity markers to focus on the hierarchical meaning attached to them;
(3) and how all three devices substitute the traditional comparative sameness/difference approach, which has been criticised for being normatively empty and for yielding formal equality, with a more structural understanding of discrimination.

Gender Equality ~ Janskerkhof 2-3, Room 110

Spyridoula Katsoni

Towards a Feminist Interpretation of the 'Right to Abortion' in the Jurisprudence of the ECHR

As a scientific art and an artful science, treaty interpretation has been argued to be so flexible that it renders critical approaches to international law superfluous. This presentation seeks to evince the illusiveness of this argument, to underline the limited impact of the prohibition of discrimination on the interpretation of the 'right to abortion', and, ultimately, to highlight that adopting a feminist approach towards the interpretation of the rules on treaty interpretation is the only way to combat discrimination in the context of access to abortion.

To this end, the presentation will initially outline the main criticisms that feminist scholars have raised concerning abortion-related jurisprudence of human rights fora. As an overview of this jurisprudence will show, these fora have adopted such narrow interpretations that, unless States voluntarily provide more inclusive protection through domestic legislation, access to abortion will be afforded to pregnant persons only if their life is endangered, or if their pregnancy has resulted from criminal offences. Those who do not fall within these categories can safely access abortion only through 'abortion travelling'. As feminist scholars note, these narrow interpretations victimise pregnant persons, annihilate their personal life and psychological well-being and enhance discriminatory access to abortion, which eventually is available only to those, who can afford 'abortion travelling'.

Subsequently, the presentation will explore whether the customary rules on treaty interpretation enshrined in the Vienna Convention on the Law of Treaties provide for tools capable of feministising the reading of 'the right to abortion', i.e. leading to an interpretative outcome that meets the standards of feminist critiques. Therein, the presentation will argue that due to morality perceptions that are deep-rooted in the interpretation of human rights treaties this is impossible, and that the interpretative influence of the prohibition of discrimination cannot overcome these inherent boundaries of treaty interpretation.

Against this background, the presentation will highlight that the only way towards the feministisation of the interpretation of human rights provisions on access to abortion is the feministisation of the interpretation of the rules on treaty interpretation themselves. Only the endorsement of feminist critiques in the process of interpretation of the rules on treaty interpretation can prevent the latter from infusing morality perceptions into the interpretation of provisions on access to abortion and can replace these perceptions with interpretative tools that accommodate feministised interpretative outcomes (e.g. with the consideration of only subsequent practice that meets feminist standards). Hence, the presentation will eventually highlight that enhancing the feministisation of the 'right to abortion', without embracing feminist approaches thereto, would be a Sisyphean task.

Devran Gülel (on-line)

'I Want To Break Free!': A Study on Women Who Seek Freedom from Religion and the Islamic Veil in Turkey

Women's freedom from religion is a pertinent topic at the moment, particularly in light of the uprising of women in Afghanistan and Iran. However, the current study focuses on Turkey as it has experienced de-Europeanisation, de-democratisation, and Islamist and authoritarian transformation since the late 2000s. Studies in the literature show that pressure on secular segments of Turkish society, demanding conservatism in everyday life started as early as the late 2000s. This transformation has undeniably reinforced patriarchal and islamist understanding of gender relations. The everyday lives and pressures on women who are from Islamist and conservative social circles demonstrate this since the other side of the coin, women's liberty to not veil, has never been on the agenda of R. T. Erdogan's regime. Thus, this mixed-methods, empirical, socio-legal study specifically centres on women's freedom from religion and their liberty to wear an Islamic veil in such a gendered socio political climate.

The platform Yalnız Yürümeyeceksin [you will not walk alone] was born in 2018 as an online discursive safe space and it anonymously publishes women's life experiences around veiling. By examining 592 letters published on the platform, the study uncovers that women's rights and freedoms under the European Convention on Human Rights (ECHR) have been disregarded against the backdrop of oppressed women's lived histories. The analysis revealed how the decisions of various parties (that is immediate family, relatives, social circles and the State) around Islamic dress codes shape and limit women's lives and opportunities to a point that they violate women's rights and freedoms.

Methodology: Data collection stopped by the end of July 2020 to create a dataset for a total period of two years. Ten letters were excluded from the analysis because seven letters were written by men about social pressure in their circles and three letters had insufficient data about women's lives. In the end, 582 letters that give voice to the life experiences of 572 women were analysed. The letters are hand coded as they were written in Turkish and hand-coding was the appropriate method to get the richness and nuance of the meaning in the cultural context before using R to produce figures from the data. The ECHR was used as an index in analysing the content of women's letters – their capabilities, experiences, desires, interests, values and goals.

In the end, the analysis revealed which individual articles were the most representative of the findings: Article 3 (prohibition of torture, degrading treatment or punishment), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), and Article 2 of Protocol No.1 (right to education).

The article gives voice to the veiled women and their experiences, and greatly contributes to the discussion on the relationship between religion, gender, and human rights.

Sophia Ayada

He Fights like a Man – Advocating for and Mobilising EU Gender Equality Laws to Advance Men's Rights

The extent to which EU law played a motor force in the adoption and the implementation of UK sex discrimination law is unquestioned, and so is its positive impact on British women lives. However, a closer look at the UK landscape of organisations which played a role in the development of gender equality law sheds light on one particular British organisation, which was – and is still today – an all-men group. From its very early days, the organisation identified the European forum as a favourable legal avenue, alongside domestic political lobbying and legal mobilisation, to pursue its agenda to "secure the removal of all discrimination on grounds of sex from State pension provision". Its so-called 'Constitution', drafted in October 1986, mentioned the ambition of the group to bring litigation before 'European Courts', and quickly enough, the European forum was to include European politicians, considered to be "the most important area in which [it] must take its influence felt".

Building on the archives of this organisation, this contribution explores the meaning of EU gender equality advocacy and mobilisation for men. Beyond bringing to the fore the particularly rich material of an organisation that has not yet been studied by either socio-legal or historical scholarship, and which members' identity clearly differs from that of other gender equality organisations, this paper offers a fuller understanding of EU gender equality law in contexts. On the one hand, it sheds light on one often undervalued aspect of European gender equality activism, that is the presence of opponents to gender equality involved in and legitimised by political and legal circles. In addition, by building on archival materials of a British organisation interested in the making of EU law, this article offers to go beyond an exclusively internalist approach which entails the scrutiny of EU law (and its making) from the perspective of the production of knowledge by EU actors and institutions, and eventually allows to better understand the practical and political meanings of EU gender equality law.

Agency, Autonomy and Self-determination

~ Janskerkhof 2-3, Room 117

In this panel, we discuss the role and potential of agency, autonomy, and self-determination in achieving equality. According to the self-determination theory, people benefit from autonomy, relatedness and competence (Ryan & Deci 2000). Rights that contribute to self-determination such as participation and decision-making, often subsumed under 'legal capacity', are not universal. The possibilities and capacity to act and decide autonomously are more limited for various groups in vulnerable situations, including children, people with disabilities, migrants, indigenous peoples, racial minorities, women, and gender minorities (Davies & Naffine 2001; Dayan 2013; Erickson 2005; Holcombe 1983; Naffine 2003, 2009; Pavlich 2014; Travis 2014; Tur 1987). These limitations may be practical, but are also often embedded in the law. The presumptions underlying these limitations have some aspects in common. For instance, children are traditionally limited in their decision-making rights on account of their supposed inability to make "good" decisions. Likewise, adults with declining cognitive abilities (DCA), for instance due to dementia, are often faced with restricted decision-making rights and guardianship-like measures in order to protect their interests.

Both groups thus deviate from the 'norm' of the rational adult, who is fully capable of making decisions and thus granted the right to legal capacity. In the literature, the concepts of agency, autonomy, self-determination and legal capacity at times overlap, and at times appear as conflicting definitions. There is also a lack of clarity regarding the application of the concepts. Moreover, when self-determination relates to controversial or challenging notions, such as reproductive rights, gender identity, and bodily interventions, more tensions emerge. This interdisciplinary panel explores the points of connection and departure between these legal notions in human rights law and their impact in terms of equality for groups in vulnerable situations. The papers explore these issues in a conceptual, doctrinal and practical point of view, with particular focus on the Convention of the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention for the Elimination of all forms of discrimination against women (CEDAW).

Laura Weiss

Challenging ideas on vulnerable groups: the benefits of supporting autonomy of vulnerable people

Laura Weiss is an Assistant Professor at the Self-Regulation Lab in the department of Social, Health & Organisational Psychology at Utrecht University. She received her PhD at the University of Twente in the field of positive psychology. She is interested in how to improve the well-being of vulnerable groups. She uses self-determination theory, specifically how we can satisfy people's need for autonomy, relatedness and competence, to design, implement and evaluate positive psychology interventions for those groups. She worked as a postdoctoral fellow at the North-West University in South Africa to examine the well-being of postgraduate students, where she is still connected as an extraordinary researcher. She also worked as postdoc at VU Amsterdam, where she examined eyewitness interviews from a cross-cultural perspective.

Charlotte Mol & & Fiore Schuthof

Justified inequality? The decision-making rights of children and adults with declining cognitive abilities

Dr. Charlotte Mol and Fiore Schuthof are both affiliated with the Utrecht Centre for European Research into Family Law (UCERF) and the Molengraaff Institute for Private Law, at Utrecht University. Charlotte is an assistant professor and her research focuses on child participation in family law disputes, from a human rights and (more recently) an interdisciplinary empirical perspective. Fiore is a PhD candidate who conducts research on the decision-making rights of older persons from a human rights and a comparative law perspective.

Lorena Sosa

Voices and echoes: decision-making on controversial issues regarding children's bodies and identities

Dr. Lorena Sosa is Assistant Professor at the Netherlands Institute of Human Rights (SIM), at Utrecht University, affiliated with the Utrecht Centre for European Research into Family Law (UCERF). She has published extensively in the area of intersectionality and her research explores the inclusiveness of international human rights law in relation to gender, sexual orientation, gender identity/expression, and sex characteristics (SOGIESC). Her current research examines parent-child conflict resolution approaches regarding trans and intersex issues from a comparative perspective, incorporating the views and experiences of trans and intersex individuals, parents of trans and intersex children and legal professionals.

Structural Discrimination ~ Janskerkhof 2-3, Room 118

Cathi Albertyn

Economic, or structural? Addressing socio-economic inequalities via Equality Law: Lessons from South Africa

Equality law has made massive strides in advancing the rights and interests of selected status groups in South Africa, generally in terms of inclusion and recognition, but with some distributive consequences. However, its ability to shift structural, social and economic inequalities has been limited. There is some consensus that the role of equality law here is necessarily constrained, especially where its trenches on economic and redistributive issues. Nevertheless, for the past two and half decades South Africa has arguably been one of the leading jurisdictions in seeking to test the boundaries of equality law, especially in its economic and transformative effects. It also remains one of the most unequal countries in the world. This gap between equality law's intent and South Africa's reality makes it a fascinating case study of equality law's promise and limits. Drawing on a forthcoming book dealing with equality law and transformation in South Africa, this paper will offer a birds eye view of 25 years of equality law, it interpretations and applications. It speaks to South Africa's early aspirations, its evolving jurisprudence, its disappointments, it multi-faceted victories and to future possibilities. Overall it tests the idea of transformative substantive equality, within a broad idea of equality of condition, as part of the toolkit for achieving meaningful change in South Africa.

Judy Walsh

Disentangling structural, systemic, and institutional discrimination

'Institutional discrimination', 'structural discrimination', and 'systemic discrimination', are terms developed by social scientists to denote discrimination that extends beyond individual decision-making or behaviour. Drawing on a literature review and analysis of secondary sources, the paper illustrates that these terms are not used consistently in scholarship and by key entities such as international human rights bodies. Having addressed this ambiguity, the paper argues that each term should be understood distinctly and delineated with greater precision.

The implications of these insights for anti-discrimination law are explored through content analysis of decisions issued by the Irish Workplace Relations Commission (WRC). The WRC is quasi-judicial body and the primary forum of redress for complaints under the Equal Status Acts 2000-2018 (ESA). It has produced a significant body of case law spanning two decades. Approximately 1,500 WRC decisions have been issued under the ESA, which prohibits discrimination in goods, services, housing, and education. Incorporating ten discriminatory grounds and addressing significant subject manner such as public housing and social protection, the ESA case law provides rich insights into the nature of discrimination encountered outside the employment context. Using quantitative and qualitative content analysis, a sample of WRC determinations that implicate structural, systemic, and institutional discrimination is analysed. The analysis illuminates the limits and potential of meso-level anti-discrimination laws for addressing entrenched and intersectional forms of discrimination.

Dolores Morondo Taramundi

Structural discrimination and the instability of antidiscrimination law

The term "structural discrimination" is increasingly present in EU documents regarding equality and discrimination.

Feminist antidiscrimination scholars used to refer to systemic, diffuse, structural or institutional discrimination to point to those dimensions of the phenomenon of inequality and discrimination that could be inferred from women's subordinated social status, but could not be apprehended by the existing antidiscrimination tools (mainly, the categories of direct and indirect discrimination). Also today, most of the uses of the expression "structural discrimination" refer to the uncharted territory from where discrimination (the one we see with our antidiscrimination tools) comes from. Still now there is quite a lot of uncertainty in the distinctions between structural, institutional, and systemic discrimination. Although still unreferred to by the Court of Justice, it is widely considered that structural discrimination is a fundamental aspect of equality and discrimination, and it is much preferred to the seemingly synonymous notion of "structural inequality".

For decades, that uncharted source of discrimination (structural, systemic, or institutional discrimination) was confronted with the idea of "substantive equality". Yet the idea of substantive equality remains also elusive. Much feminist thought (and even more EU antidiscrimination scholarship) has been devoted to developing the means through which more substantive forms of equality could be achieved: Indirect discrimination was initially talked of as a means to achieve substantive equality, and the same goes for positive action, mainstreaming, equal opportunities, reasonable accommodation, intersectionality and –lately – vulnerability.

The theoretical concepts developed to capture the complexity of persisting inequality reveal frictions or "fatigue points" in the structure of current European antidiscrimination law. I have called this instability of antidiscrimination law. While this instability, this "bursting the seams" of the anti-discrimination law, is a source of concern, it can also be seen as a possibility, as the "haemorrhagic point" (Celia Amorós) that gives us the opportunity to irrationalize a system that refuses to address the root of the problem, which is none other than the structural character of group oppression. This paper aims at exploring the use and the function of "structural discrimination" in EU equality and antidiscrimination documentation with a view to understand a) its relationship with substantive equality and its semantic family, and b) its potential impact on (the instability of) antidiscrimination law.

The research will carry text analysis on relevant EU documentation to classify different uses of the concept "structural discrimination" (extension of the concept), establish its main characteristics (intension of the concept), and draw the relationships it entertains with other relevant concepts of antidiscrimination law or equality policy (through co-occurrences). Particular attention will be paid to US literature on racial discrimination (which has had a prominent role in the development of the idea of "structural discrimination") to compare findings in EU documentation to some of their categories (such as lack of intention/prejudice, or lack of imputable individual action or treatment).

Barbara Havelková

Is there a difference between equality and discrimination law and does it matter?

The paper examines the question whether (and how) to make sense of two terms often used to describe our field of study: equality law or anti-discrimination law (a-d law). And the question whether such conceptual line-drawing is of benefit. The paper is primarily concerned with clarifying boundaries of terms or concepts; its aims are not prescriptive.

Several permutations of the relationship between equality and non-discrimination will be explored. Firstly, they can be seen as coterminous/synonymous (eg Fredman). And they certainly have a lot in common, perhaps most notably a foundation in comparative thinking in identifying a problem (as opposed to an absolute one).

Second, equality can be seen as the umbrella term or a wider concept. This can manifest in at least two way. One is that the general concept of equality in many constitutions guarantees equal treatment beyond specifically protected grounds (prohibition of arbitrariness by the state), whereas a-d law is typically premised on a previous normative choice about suspect characteristics. On this understanding, some would say that equality is the lex generalis and anti-discrimination lex specialis. The other option for equality as wider is based on an understanding of the two as describing different things: equality an aim, anti-discrimination a tool. In this sense, equality can be seen as an aim pursued by a wide range of policies, including anti-discrimination law, but also tax law, social security law, health and housing law and policy, etc.

Third, they can be seen as separate projects. This is to some extent true of how they are discussed in (legal) philosophical debates: the debate on equality/egalitarianism focuses on redistributive choices (eg Parfit, Cohen); the debate on anti-discrimination law assesses the wrongs a-d law – and its different elements - is aiming to remedy (Gardner, Foran), with some scholars indeed arguing that a-d law's normative underpinning is not equality but autonomy (eg Raz, Khaitan).

Does this matter? First, it might matter where there is a legal textual difference – in other words the law expressly mention one or the other. I argue elsewhere that ground-indifferent general principle of equality might require different approach to ground-based anti-discrimination law (for example in relation to the use of comparator or presumption of wrongness leading to different burdens of proof and levels of scrutiny).

Second, whether seen as 'wider' or 'other', equality seems to be concerned with class or redistribution, in a way that anti-discrimination law traditionally has not been (class in many jurisdiction is not an explicitly prohibited ground). A-d law, on the other hand, has by some been seen as specifically focusing on recognition harms or stigma (Hellman). Thinking in terms of distinction between 'equality law' and 'anti-discrimination law' might shed some light for example on the debates whether to include class in the list of a-d law grounds.
Third, whether seen as 'wider' or 'other', equality might be viewed as more political; a-d law as more legal (or adjudicative). Or, a slightly different point, equality might be viewed as a public law/constitutional project, and a-d law a regulatory-private-law one. I will explore whether these takes are correct and with what conceptual/doctrinal consequences.

Ultimately, far from aiming to recommend a line to be drawn and where, the paper more modestly aims are to shed light on when we might to at least pay attention to the term we use.

Health and Disability ~ Janskerkhof 2-3, Room 116

Pablo Marshall

Assisting and supporting the vote of people with mental disabilities: experience from Latin American reforms

This proposal considers electoral law responses to the challenges posed by human rights standards regarding the right to vote for people with disabilities. It argues that human rights standards, mainly since the emergence of the CRPD, demand not just the elimination of the legal exclusion of people with mental disabilities from the electoral roll and the creation of more accessible electoral environments but significant policy intervention in the exercise of the right to vote. These interventions include assistance in casting the ballot in the ballot box. Still, they may also include the support for decision-making in electoral contexts associated with the idea that voting is an instance in which people with disabilities exercise a type of legal capacity.

The presentation is divided in 4 sections. It starts by identifying the standards of international human rights law regarding the right to vote of people with disabilities. Emphasis is placed on the influence of the CRPD in extending voting assistance mechanisms to people with mental disabilities and the paradigm shift that the support model for decision-making in all spheres of life as a replacement for the model of substituted decision-making of rights by people with disabilities. The second section reviews the academic literature that has addressed the issue of assistance and support for the exercise of suffrage for people with mental disabilities, focusing on two questions: who is in a position to receive assistance and support, and what type of assistance and support can be provided. A third section reviews the progress of 4 Latin American jurisdictions in implementing assistance or support for the exercise of suffrage for persons with disabilities. The cases of Argentina, Colombia, Costa Rica, and Peru are reviewed, identifying legislative and administrative innovations and paying attention to jurisprudential developments that may have influenced the former. In the fourth and final section, it discusses, based on Latin American development and academic literature, how best to interpret the introduction of the standards set in international human rights law into domestic law.

We examine law and policy responses to the Convention of the Rights of the Persons with Disabilities adoption in Latin American countries, looking for clarity in applying the human rights standards. We focus on Latin America because the region has experienced a revolutionary wave of reforms in the regimes of legal capacity, implementing systems of support to exercise legal capacity for persons with disabilities. Findings indicate that despite the broad implementation of support measures for exercising legal capacity in private law, they have not been introduced in electoral law and policy. On the contrary, electoral law has been reviewed and reformed in light of CRPD focused on the enfranchisement of people with mental disabilities and the implementation of accessibility and assistance for voting. We conclude that the lack of conceptual clarity regarding the differences and relations between human rights obligations remains a crucial aspect to discuss. We claim that a correct understanding of the CRPD obligations complements voting assistance with measures of support for meaningful decision-making in all spheres of life, including the electoral domain.

Suzanne Kim

Law and Political Economy of Self-Care

Talk of “care” pervades U.S. mainstream law and policy circles like never before. An often repeated articulation of care is that of “self-care.” As we approach the three-year mark of the Covid pandemic, the notion of self-care is all the more salient. Mental health professionals have reported dramatic increases in patient depression and anxiety and in demand for mental health care. In healthcare workplaces during early pandemic days, we saw self-care pursued by medical professionals seeking to ensure they had the proper protection to do their jobs. The much touted “great resignation” (more recently re-cast as a “great rethink”) in the American workforce, has reflected reevaluation by workers of their priorities, goals, and work lives. In addition, persistent racialized violence against communities of color and immigrants and backlash against racial and gender justice projects have prompted evocations of collective self-care.

The $11 billion self-care economy is one of the most visible answers to calls for self-care. This thriving industry encompasses workplace wellness programs, consumer goods and services, and entrepreneurship. While we are currently witnessing increased awareness about legal and social needs occasioned by relational care, the leading vision of self-care, reflected in this self care industry, continues to be construed along an individualized paradigm. This approach assumes that self-care needs are experienced individually and that they can and should be provided individually. During a time of legal and political turmoil in the U.S., the self-care economy is as robust as ever, and the workplace has come to play an important role in shaping and producing this vision of self-care.

Despite its impact, self-care as a concept and industry has gone underexplored in legal scholarship. Legal scholars have, however, begun to focus on the law and political economy implications of "care" more generally. The theoretical framework of law and political economy encompasses examination of "the relationship between market supremacy and racial, gender, and economic injustice." In examining the "care crisis" revealed and exacerbated by the ongoing pandemic, advocates, scholars, and journalists have helped illuminate deficiencies in how care is supported, valued, and produced in society.

The law and political economy implications of "self-care," however, are underexamined. This Article seeks to fill this gap by addressing such implications in the context of economic structures of self-care. This Article uses an interdisciplinary methodology that examines legal cases and statutes as well as social science research pertaining to economics, psychology, sociology, history, and political theory. As I argue here, the individualized paradigm of self-care misunderstands the deep connection between self- and relational care. In advancing a concept of relational self-care, focused on the workplace as a site of self-care need and provision, I spotlight some ways in which key drivers of self-care need are relational and how relationships subsidize self-care. Relationships driving self-care need and provision are shaped by power dynamics rooted in racial, gender, economic, and other forms of social inequality. Unleashing the full potential of and avoiding pitfalls of self-care involve engaging with its embeddedness in such relationships. I argue here for a lens that refutes the prevailing, individualized paradigm of self care in favor of one that bolsters racial, gender, and economic justice.

Lucy-Ann Buckley

Disability harassment and intersectionality in Irish law

Persons with disabilities experience high levels of harassment at work and in other contexts, and are particularly exposed to multiple and intersectional forms of harassment (Shaw et al, 2011). This may be based on a variety of factors, including race, gender, age and sexual orientation. Women with disabilities are especially likely to be targets of sexual harassment and gender-based violence, which may also take disability-specific forms (Buckley, 2022). Both disability harassment and intersectional harassment are addressed in the human rights framework, most notably the Convention on the Rights of Persons with Disabilities (CRPD), and the ILO Convention on Violence and Harassment (C-190). Within the EU, disability harassment is also addressed in the Framework Employment Directive (FED), though this does not encompass intersectional claims. However, despite this strong human rights framework, both disability harassment and intersectionality are often unaddressed in national legislative frameworks (Heymann et al, 2021). Available evidence also suggests that equality and harassment cases are often unsuccessful in practice, and there are indications that this is particularly the case in relation to claims involving multiple or intersectional forms of discrimination (Rosette et al, 2018).

This paper reviews the effectiveness of the Irish Employment Equality Act 1998-2021 (EEA) in addressing disability harassment, focusing specifically on multiple and intersectional forms of harassment. Although the EEA is fully compliant with the FED, it falls short of CRPD requirements as it does not address intersectional discrimination. However, it does encompass claims of multiple discrimination. This research employed content analysis to scrutinise all publicly available decisions on disability harassment under the EEA from 1998 to early 2020. Key objectives included establishing the prevalence of multiple and intersectional forms of harassment among complainants with disabilities, and quantifying outcomes where multiple discrimination was alleged in harassment cases. In line with existing research findings, it was hypothesised that that multiple discrimination claims would be common but would be less successful than single ground claims, and that sexual harassment claims would also be common, especially by female complainants. However, while the first hypothesis was borne out, the second was not.

The research also identified few cases that raised potential intersectional concerns. The paper suggests possible explanations for this finding and considers the implications for legal harassment frameworks. It argues that the lack of a legal framework for intersectional harassment claims and the comparative lack of success for multiple discrimination cases encourage complainants to focus on single discriminatory grounds. This is because complainants need to tailor their claims to fit with the existing legislative framework. While tactically sound, this is likely to increase the invisibility of intersectional forms of harassment and may be taken to indicate that legal reform is not required, reinforcing the status quo. The paper concludes with a number of proposals to combat these difficulties.

Sexual Harassment and Violence ~ Janskerkhof 2-3, Room 109

Furaha Joy Sekai Saungweme (moderator) (on-line)

Ebenezer Durojaye

The Potential of the African Commission on Human and Peoples' Rights in Developing Norms and Standards on Sexual Harassment

This paper examines the potential of the African Commission on Human and Peoples' Rights (African Commission), in holding accountable African governments, to address sexual harassment. It starts by discussing feminist arguments around power, patriarchy, discrimination and violence. It examines the norms and standards to address sexual harassment under international law. Thereafter, the paper examines the norms and standards under the African human rights system and the possibility of the African Commission in addressing sexual harassment in the region. It concludes by noting that opportunities exist under the African Human Rights System to address sexual harassment but this will depend largely on the effectiveness of the African Commission and the cooperation of states and other stakeholders

Carol Ngang

Critical reflections on equality, sexual harassment and the right to sustainable development for women in Africa

In this chapter, I analyse the interwoven principles of equality in law, the right to a workplace free of sexual harassment, and the right to sustainable development for women in Africa. I aim by this, to illustrate that genuine equality is not attainable under conventional legal frameworks. Providing protection and entitlement to women in Africa requires a model law that prioritises the quest for justice and equity above seeking to achieve equality under pre-existing instruments of law, many of which are overtly biased. The analysis is framed on the argument that if Africa is to attain sustainable development, much thought needs to be given to the opportunities accessible to women and how they are perceived and treated in society, particularly with respect to gender discrimination and sexual harassment. It entails as part of the right to sustainable development; African state governments to take adequate legislative and other measures in creating favourable conditions for women; anticipating new measures to reform the distinct attributes and situational realities that render women particularly vulnerable.

Gladys Mbuyah

Sexual harassment and the impairment of women's ability to enjoy other human rights under national and regional laws

The Chapter will discharge the burden of showing that sexual harassment is a human rights abuse that equally stands in the way of women's enjoyment of other human rights enshrined in national and regional laws. It will analyse the extent to which national and regional laws need to be harmonized to ensure sexual harassment is eradicated and will offer recommendations to the state of Cameroon in best practice standards to combat sexual harassment.

Victoria Lihiru

The Legal Protection of Women with Disabilities against Sexual Harassment in Tanzania.

This chapter presents the legal framework for addressing sexual harassment for women with disabilities in Tanzania looking at national legislations in comparison to the basic standards for protection of women with disabilities against sexual harassment deduced from international instruments including International Labour Organization Convention 190.

Yondela Ndema

A critical analysis of vicarious liability of an employer in South Africa

The focal point of this Chapter is a critique of the current law on sexual harassment in South Africa, conducted in the light of the common-law principles of vicarious liability and statutory vicarious liability as applied by the courts in our case law.

Migration ~ Janskerkhof 2-3, Room 013

Jordan Dez

Political Rights of Migrants Under Human Rights Law: Challenging a de facto exemption from equality

Article 25 of the International Convention on Civil and Political Rights (ICCPR) protects citizen's political participation rights in their country of citizenship, including the right to vote, under international human rights law. The corresponding exclusion of resident non-citizens (migrants) from the scope of political participation rights in their country of residence is echoed throughout human rights legal scholarship on the rights of migrants and the limits of non-discrimination. While states generally must provide equal human rights protection for migrants and citizens, political rights for migrants are exempted from equality. The Inter-American Court of Human Rights has justified this disenfranchisement as a de facto exemption from equality based on the practices of states, relying on the ECHR Article 14 jurisprudence of the ECtHR on European consensus in its reasoning. This article will examine this concept of de facto exemption closely, especially in light of the ECHR protection of political participation rights via the right to free elections in Protocol 1 Article 3 (P1-3), which unlike Article 25 ICCPR does not limit political participation to citizens in its text. The legal interpretative method employed in this article reads P1-3 textually, teleologically, and systematically, with the jurisprudence of other human rights instruments and adjudicative bodies. Political participation rights of migrants are approached as an international norm, but then contextualizes it to the European system, ultimately questioning the de facto exemption in the European context and proposing that ECHR P1-3 could allow non-citizen residents a right to political participation under an individual assessment of the case. This move relies on the reasoning in the recent ECtHR case of Selygenenko and Others v Ukraine (Applications nos 24919/16 and 28658/16) and takes inspiration from the political rights jurisprudence of the African Commission on human rights.

Giulia Cristiano

May third country nationals aspire to equal mobility rights in the EU?

The legal status of EU third country nationals is strongly different from that of the Union citizens. The distinction is based on the assumption that only EU-citizens fully enjoy the fundamental freedom to movement under the Treaties and FRCharter.

TCNs still have limited and highly fragmented mobility rights, even if the ECJ case-law has progressively contributed to broaden their fundamental socio-economic guarantees. Indeed, their movements across EU territories are not covered by basic non-discrimination standards. EU TCNs can be identified in relation to the situations they experience and the corresponding legal status they may acquire, as family members of EU citizens, long-term residents, applicants for international protection, refugees, single permit holders or Blue Cards holders. These multiple qualifications contribute to shaping different "categories" of TCNs living in-between to which corresponds different set of rights. Moreover, the EU regulatory framework in this field seems to enhance TCN's mobility rights following an economic oriented approach, giving priority to short-term market needs and to the benefits of high skilled migrants, leaving behind the others.

Against this background, my research proposal explores selected categories of third country nationals (TCNs) in EU Law, focusing on their intra-mobility rights. More specifically, it aims at analyzing the EU new trends and approaches toward fairer and more effective intra-EU mobility rights. In so doing, it examinates the New Pact on Migration and Asylum and the recasting of various legal instruments – e.g., the long-term residence directive, the Single permit directive, and the Blu Card directive – under equality and non-discrimination 'Law and Policy' lens. In order to assess whether and how migrants' mobility rights are conceived in most recent institutional regulatory processes and widening the scenario in a global perspective, the research will also benefit from the insights raised by the UN Global Compact for Safe, Orderly and Regular Migration (specifically the objective no. 5 'Enhancing availability and flexibility of pathways for regular migration').

Overall, the paper proposes a critical rethinking of how mobility rights in the EU can be effectively guaranteed to TCNs. It argues that a strong and systematic reconceptualization of free movement rights in migration law and internal market policies is an essential path towards better equality standards of people living in the EU.

Tatiana-Maria Ceronica-Dragomir

The (Un)equal Treatment of Migrants in Europe

The war in Ukraine spurred European solidarity and mobilisation, in support of Ukrainians fleeing the war. Border countries took immediate action to support Ukrainians. The European Union (EU) deployed funds in support of both member and non-member states to help manage the crisis, and activated the Temporary Protection Directive, for the first time since its entry into force in 2001. Yet, the migration crisis triggered by the war in Ukraine is by no means the first instance when the EU was confronted with an overwhelming influx of migrants. In the past, in 2011 there was a wave of migrants fleeing from Tunisia and Lybia, and in 2015 there was another wave of migrants, coming from Syria. Although those events prompted a response, it was set out in a different paradigm and the treatment of migrants, to this day, seems to be quite different, depending on the country of origin and nationality. Inequalities in treatment of migrants seem to appear not just in hindsight, looking at the 2011, 2015 and 2022 migratory waves, but also while looking at the current context. As the war in Ukraine is sending more and more people to seek refuge abroad, these migrants are receiving different protections than others, be they from other countries or even non-Ukrainians fleeing Ukraine.

As such, the paper aims to explore the European response to migration crises in a comparative manner, highlighting the differences and similarities, and exploring the impact of adopted measures on shaping the national and supranational norms with regard to protecting the rights of migrants.

From a methodological standpoint, the proposed research will employ qualitative methods, in the sphere of historical, archival, and socio-legal methods. To conduct the analysis, I propose to rely on critical literature review and primary sources. In reconstructing the narratives, parliamentary debates from European countries and the EU Parliament are indicative of the political drive that determines certain actions to be taken. With regard to media coverage of events, all sources will be selected having the CRAAP test (currency, relevance, authority, accuracy, purpose) in mind. Through a comparative lens, one can further explore the similarities and differences between past and present situations and responses, also with a view towards the normative question of (in)action and justification.

As Europe proposes to reshape the way it manages migration, through its New Pact on Migration and Asylum, insight on past and current narratives and legislative measures holds value in determining weaknesses and vulnerabilities in approaching the rights of migrants.

PRE-RECORDED PRESENTATIONS

Amanda Selvarajah (she/her/hers)

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Creating Effective Flexible Work Rights: Lessons from Australian Experiences During Covid-19

Link to Presentation
Link to Paper

In 2019, the EU issued a directive for member states to introduce a right for carers to request flexible work arrangements by August 2022, prompting legislative changes and proposals in several countries.This right mirrors that of similar existing frameworks in Western jurisdictions such as the Netherlands, the United Kingdom, New Zealand, and Australia. This paper offers key insight into how Australia's framework operates in practice and how effective the right to request flexible work has been in allowing Australian workers to work flexibly. Despite its focus on Australia's legislative framework, the findings have useful implications for how effective flexible work rights may be established internationally. The paper draws upon interviews with 22 human resource professionals in Australia from August to November of 2021. The interviews offer a contemporary understanding of how the 'right to request' influences workplace policies and experiences of flexible work across various organisations in a post-Covid context. In doing so, the paper enables a current, evidence based discussion of the strengths and limitations of the right to request flexible work.

In Part II, the right to request flexible work in Australia and extant literature on its operation are discussed. Part III explains the methodological approach. Part IV discusses the interview findings to explore flexible work experiences in Australia under the current legislative framework. Part V condenses these findings and discusses its implications for the effectiveness of the right to request framework and flexible work rights more broadly.

Feminist scholars have long argued that a gender just society requires the relevant institutional scaffolding to provide for the equal distribution of paid and unpaid labour whereby the historically 'feminine' tasks of caregiving are respected 'enough to ask men to do them too'.3 To achieve this, 'both the economic structure and the status order of contemporary society' must be changed.4 The 'ideal worker' in Australia continues to be 'an unencumbered (male) citizen available for long hours, without home and care responsibilities', while caregiving is generally considered a feminine endeavour that is undervalued and therefore costly (both literally and socially) to perform.5 Flexible work plays an essential role in disrupting these norms and facilitating the equal participation of carers in the workforce, a role that continues to disproportionately fall to women. This paper builds new insight into how legislative mechanisms may bridge the gap between policy and practice and foster positive flexible work cultures to facilitate a more equal treatment of carers in the workplace. These findings are especially timely given the growing popularity of flexible work, accelerated by the events of Covid-19, and an increased international interest in flexible work.

András László Pap (he/him/his)

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Harassment: a secret weapon to be navigated between the Scylla of institutional discrimination and the Charybdis of identity politics

Link to Presentation
Link to Paper

Using Hungarian case law, this essay first explores the singular potential in the anti discrimination legal concept of 'harassment', as it is perceived under EU law, to tackle institutional discrimination. Following this, the author turns to the risks and limitations of the practical operationalization of institutional discrimination in human rights litigation, as well as the uniqueness and subsequent challenges the subjectified standards of evidence for harassment may pose for due process/fair trial, as demonstrated by harassment cases in American universities.