

“Beyond the Virus” Work-in-Progress Symposium

Contributor Abstracts – 9 & 10 JUNE 2021

9 JUNE 2021

PANEL 1

14:15 – 16:15

Dr Gwilym David Blunt (City, University of London) – *‘Lockdowns and Liberty’*

It is a trite observation to say that the COVID-19 pandemic has changed the way billions of people live their daily lives. There has been an escalation of government interference in the mundane experiences of day to day existence. However, the real issue is not with COVID-19 restrictions in themselves, but that they are arbitrarily formulated and liable to partial enforcement. This reveals that the problem is not just one of liberty, but of equality. This chapter will examine and revise the liberty objection to make it more attuned to the problem of arbitrary power and inequality. The chapter will draw on republican political thought to argue that freedom is better conceptualised as non-domination. This tradition claims that if laws are made under appropriate institutional constraints to render them non-arbitrary, they do not meaningfully undermine liberty. This conception of liberty is more compelling because it provides conceptual clarity to the intuition that there is a difference between a law that is produced by a democratic legislature, subject to judicial review, and is impartially enforced versus the fiat of a dictator. The idea of freedom of non-domination provides a way to safeguard individual liberty and equality, while combating pandemic diseases.

Dr Marie-Ève Couture-Ménard, Professor Louise Bernier, Dr Mylaine Breton and Professor Jean-Frédéric Ménard (Université de Sherbrooke) – *‘Inequities during the COVID-19 Crisis in Quebec: Governance Law to the Rescue’*

All over the world as in Quebec, the COVID-19 crisis forced the government to declare a state of public health emergency. Under this exceptional regime, decision-making is extremely centralized and is more based on a top-down approach. The government has thus ordered public health measures of an exorbitant scope, applying to all citizens regardless of their particular living conditions, for example measures of physical distancing and wearing masks inside. Certain measures have thus created or exacerbated social inequalities, particularly in terms of exposure to the risk posed by COVID-19, access to health care or educational services or the ability to comply with certain health instructions, adding a burden for populations that are often already vulnerable, such as people with low income, with addiction issues or mental health problems, persons experiencing homelessness and the elderly. To mitigate this phenomenon, bottom-up initiatives addressing social inequities have emerged in the margins of state action; other initiatives bringing stakeholders together to find solutions have been demanded by the state. Taking a few of those initiatives as examples, the authors propose an analysis of this governance born during the crisis to remedy the shortcomings of state law, paying particular attention to the norms developed by the participating actors to organize their actions. This exploratory study aims to show how this governance law complements traditional state law in crisis management and can help better take into account the issues specific to certain populations in vulnerable situations.

Dr Natalia Pires de Vasconcelos (Insper Instituto de Ensino e Pesquisa) – *‘Business as usual: inequality and health litigation during the COVID-19 pandemic for Brazilian prisoners’*

Inequality is a central feature of Brazilian society. The country constitutionalized the right to health in 1988, creating a universal and free healthcare policy, but access to health is not equal to all. This inequality is institutionalized through Brazil’s carceral system. Operating in the midst of this unequal context, Brazil’s active judicial system has the power to define the constitutional content of the country’s healthcare policy by forcing the public administration to embrace more equal protection of the right to health. In this chapter, I examine a key part of the question of the pandemic’s effect on judicial protection of the right to health for those incarcerated and free. In both cases, courts had serious incentives to take the pandemic seriously and to consider its disproportionate impact on marginalized communities. For the judicial system, however, it has mostly been business as usual. Despite the pandemic, judges have been unwilling to guarantee the right to health for those imprisoned. By analysing *habeas corpus* petitions filed because of COVID-19 in Brazil and the higher risks faced inside prisons, I reveal how judges were indifferent to the public-health risks presented by overcrowded and unsanitary conditions. For those who are free, most health litigation was still presented in the form of individual cases seeking access to services and uncovered medicines. These cases followed the same patterns as before the pandemic: courts kept deciding in favour of claimants regardless of the potential disruptive effects of their decisions over public policy, including priorities related to COVID-19.

Professor Roy Gilbar (Netanya Academic College) & **Dr Nili Karako-Eyal** (Haim Striks School of Law College of Management) – *‘Authority and Governance in Israel during the COVID-19 Pandemic: A Crumbling of Solidarity and the Rise of Social Inequalities’*

At the beginning of February 2020, the first cases of Covid-19 infection were detected in Israel. As the number of confirmed patients increased, movement and activity restrictions were imposed on the public. While stopping the spread of the virus and almost eradicating the pandemic, the results were short-lived. Several months after the removal of most of the restrictions, Israel experienced a second outbreak, which resulted in the re-imposition of restrictions. The reappearance of the pandemic revealed not only the fragility of the human body but also exposed a weakening of solidarity in Israeli society. In this paper we describe the weakening of the value of solidarity in Israeli society as it manifested during the pandemic. We also claim that this phenomenon played an important role in deepening existing social inequalities. It is suggested that while the refusal to carry the costs required to stop the spreading of the pandemic (such as wearing a mask, social distancing and avoiding gatherings) affected the entire population, it had a greater impact on disadvantaged and vulnerable sectors (such as the elderly, the disabled, individuals with a low socioeconomic status, women and victims of domestic violence), thus exacerbating social inequalities.

10 JUNE 2021

PANEL 2

10:45 – 12:00

Dr Joe Tomlinson (University of York & Public Law Project) & **Dr Jed Meers** (University of York) – *‘COVID-19 and Lockdown: An Equalities Analysis’*

In March 2020, the government introduced a set of restrictions to ‘lockdown’ the UK in response to the COVID-19 pandemic, the central purpose of which was to protect public health by both containing

the rate of infection and protecting the NHS' capacity to treat a potential influx of patients. These rules represented a profound interference with everyday life, but it was clear that this interference was experienced differently throughout the population. In this chapter, we draw upon an extensive dataset—constituted of national surveys, focus groups, and interviews—gathered during the first wave of the virus in the UK to provide an analysis of how was experienced by different groups. The dimensions we examine are age, gender, ethnicity, religion, and disability.

Dr Valentina Cardo (University of Southampton) & **Dr Julia Boelle** (Cardiff University) – *'(In)Equality, Expertise and the COVID-19 Crisis: An Intersectional Analysis'*

Inequality for women and ethnic minority voices in the public arena is sadly old news and is well documented in scholarly work. It should not come as a surprise then that, during the coronavirus pandemic, such inequality was not only reinforced but it also became the norm. This chapter is concerned with the presence, or lack thereof, of (ethnic minority) women experts from health officials to politicians during the first national lockdown period (23 March – 10 May 2020). It focuses on the daily Government Press Conferences, and their national press coverage, in order to establish the extent to which (ethnic minority) women were allowed to speak as experts during the pandemic. Adopting an intersectional approach, this chapter argues that the lack of diversity in official Government communication during the crisis, is not only indicative of the way experts are viewed in contemporary British society. It may also discourage (ethnic minority) women in presenting themselves as experts and having a voice in matters of the State. Ultimately, this chapter argues that the mis- and underrepresentation of diverse voices in public discourse is detrimental to an equal society and has wider democratic consequences.

PANEL 3

13:00 – 14:45

Professor Buhm-Suk Baek (Kyung Hee University) – *'A new normal, or new abnormal? The South Korean government's handling of the pandemic from the perspective of LGBT rights'*

With the concern of stigmatization, discrimination, hate speech, and attacks on the sexual minority groups, UN OHCHR has issued a series of statement and report on "the impact of the COVID-19 on the human rights of LGBT persons" and urged States to give visibility to and protect them in the context of the pandemic. However, such concern came true in Korean society, though the South Korean government's health policy in dealing with the virus itself has been effective. In early May, the social distancing policy had finally relaxed to "distancing in daily life" measures with no new cases of COVID-19 confirmed in Seoul for several days. But only a week later, the entire nation was put back into a state of emergency due to a mass infection centred on Itaewon clubs during a long holiday weekend. Although Itaewon clubs are not exclusive places for sexual minority groups, unverified information appeared online. The Korean media outlet has unnecessarily and irresponsibly placed a particular emphasis on linking the Itaewon cluster to the LGBT community. They then became the most stigmatized targets with the growing discrimination and hate speech spread on social media. As the fear of disease was projected onto sexual minority communities, it added to their reluctance to get tested with a concern about exposure to domestic violence and discrimination in the workplace once their identities are disclosed during self-quarantine or after a test result returns positive. As the situation got worse, the South Korean government introduced a new anonymous testing procedure. Recently the anti-discrimination bill to outlaw discrimination in Korea, including against LGBT persons, was proposed too. This paper carefully examines the way in which the South Korean government has dealt with the COVID-19 pandemic from the rights-based perspective, mainly focusing on Itaewon club incidents.

Dr Aya Musmar (University of Petra) & **Dr Zainab Naqvi** (De Montford University) – *‘Responsibilising Women Lecturers in Jordan through Pandemic: COVID-19 and the Neoliberal University in the Global South’*

How have women academics in Jordan been affected by the continued operation of their institutions during the COVID-19 crisis? And what are the impacts of this on them and their experiences of existing injustices in the higher education sector? In this chapter, we interrogate responses to the COVID-19 pandemic crisis and their gendered impacts. Our exploration of this live crisis is reimagined as a series of critical feminist complaints inspired by the work of Sara Ahmed (2014). The word ‘complaint’ shares a root with the word ‘plague’ rendering this framing even more poignant.

This chapter is invested in the process of “constituting” the complaint; we approach the complaint as a tactical methodology through which we bear testimony to the ‘institutional mechanics’ (Ahmed 2018). To address the institutional mechanics involved in processes of responsabilisation, we gather the experiences of women academics in Jordan through a qualitative survey on their work and lives during this pandemic. Aided by our grounding in decolonialist feminist critique, we construct our arguments for this piece as three complaints: against the missing voices of women in the “Global South”; the effects of the crisis on their lives and work; and the epistemic dominance of the “Global North”. We conclude this chapter by proposing “complaint” as a collective testimony that not only registers to processes of responsabilisation but also has the affective capacity to instigate feminist academic activism that aspires to transform larger legalistic structures shaping Jordanian Higher Education (HE) institutional mechanics.

Professor Muna Ndulo (Cornell Law School) – *‘International Perspective on Barriers to Accessing Justice for Women during a Global Pandemic’*

The chapter looks at the challenges judicial systems are facing because of the pandemic and how this impacts women in particular. The pandemic has increased long-standing structural inequalities in society and undermined the progress made over the years towards ending both economic and gender inequality. Understanding the impact of the pandemic on justice delivery, especially as it relates to women, requires a realization that its effects are shaped by deeply entrenched gender norms and structures that determine both the impact of the crisis and the efficacy of policy interventions. This chapter outlines and evaluates the responses of international judicial systems and measures that have been taken to ensure that courts are safe and continue to dispense justice, ensuring effective protection for women. The chapter will consider whether the crisis brought about by the pandemic provides an opportunity for the judicial system and courts to enhance the use of technology and retool them for the 21st century. It will consider how the post-pandemic court system will look like and what form it will take, in terms of resources and infrastructure to finance.

PANEL 4

15:00 – 16:45

Dr Diana Yeh (City, University of London) – *‘COVID-19, Anti-Asian Racial Violence and Structural Inequality’*

Since the outbreak of COVID-19, there has been a global surge of racial violence against the Chinese and East and Southeast Asians (E/SEAs) more widely due to COVID-19’s apparent outbreak in China and the racialization of the virus. However, as this demonstrates, these physical and verbal racial

attacks are constructed in dominant discourses by international agencies, and locally in the UK, by the state, the media and law enforcement as 'hate crimes'. In this chapter, I critique the concept of 'hate crime', focusing on the way in which it individualises the attacks and constructs racism against East and Southeast Asians as interpersonal rather than structural. To challenge this, I discuss how this anti-Asian racial violence needs to be understood in the context of on-going historical racial violence against East and Southeast Asians in the UK. I also examine how the 'hate crime' response contributes to maintaining the racial status quo via the specific construction of 'the Chinese' as a 'model minority' in contradistinction to other 'problem' racialised groups. Drawing on recent theorisations of racial violence as encompassing intersecting physical, psychological, symbolic and structural dimensions, I further discuss the structural dimensions of the way in which East and Southeast Asians experience COVID-19-related racial violence, and how these intersect with other structural inequalities. To do so, I highlight a heterogeneity of experiences among East and Southeast Asians, which differ according to gender, ethnic group, migration status and other social divisions.

Dr YY Brandon Chen (University of Ottawa) – *'Essential but Expendable: Canada's Pandemic Responses Regarding Migrant Workers'*

As a part of its responses to the COVID-19 pandemic, Canada's federal and provincial governments have introduced measures that aim to specifically safeguard the health of foreign nationals, including migrant workers, asylum seekers, and undocumented migrants. Among other things, rules are put in place to help temporary foreign workers safely quarantine for fourteen days upon arrival, and public funds have been allocated for improving health and safety on farms, where many migrant workers are employed. As well, some jurisdictions have temporarily extended publicly-funded health care to previously uninsured migrants and instituted policies to ensure migrants' health care coverage would not lapse due to their legal documents expiring. This chapter canvasses these measures and identify gaps therein. It also illustrates how the effectiveness of these measures can at times be frustrated by paying inadequate attention to migrants' vulnerabilities. In particular, the precariousness of migrants' legal status in Canada limits their ability to speak out against unsafe working conditions and it deters them from accessing their entitled health care services. To the extent that the government has broadened the pathways for migrants to obtain securer legal statuses as a result of the pandemic, these policy changes are under-inclusive and reflect an unduly utilitarian calculus. These gaps in the government's pandemic responses put migrants' health at risk, and in turn, as the Canadian society has come to rely on migrants to carry out many of the essential services, they threaten the country's ability to weather the pandemic over time.