

**COMPARATIVE EQUALITY LAW**  
**A Multi-University Course**  
**Academic Year 2023-2024**

**Note time changes due to daylight savings time!**

Comparative Equality Law meets on **Thursdays in a University of California Berkeley Zoom room at 15:00 UTC** (Coordinated Universal Time) for **120 minutes**. Because the course includes students and faculty from at least eight time zones in North America, South America, Europe, Africa and Asia it is essential to set the course meeting time in Universal time. Local time may change in different time zones on different dates, so **the class meeting time in local time will not be uniform throughout the semester**. (Note for Berkeley students: for most of the semester the Thursday class will start at 8:00 am in Berkeley, but when we move from “daylight savings time” (PDT) to “standard time” (PST) on Sunday, November 5, 15:00 UTC becomes 7:00 am in Berkeley.)

**Thursday class Zoom link:**

<https://berkeley.zoom.us/j/91918792341>

Meeting ID: 919 1879 2341

**Course Description**

Comparative Equality Law uses a problem-based approach to examine how equality interacts with society, how equality law provides protections for equality rights in different jurisdictions, as well as how to address inequality. The course will comparatively examine US, European, and other national, regional, and international legal systems (including those of India, Brazil, Colombia, Canada, and South Africa) and provide a global overview of legal protection from and legal responses to inequalities.

Consequently the course covers three overarching themes:

1. Equality in theory (theories, concepts, ideas)
2. Equality in law (rules, legal systems, case law)
3. Equality in society (law in practice, social movements, activism)

**Teachers and Students**

The course is organized and led by Panos Kapotas (University of Portsmouth, UK) and Laura Carlson (Stockholm University), and will include students from approximately 6 universities and 15-20 additional faculty lecturers from around the world. Charlie Tsunoda, Julianna Bass, and Ivette Knapp are recent graduates of UC Berkeley who will be supporting and assisting with the course. For logistical, bCourses, or other questions, please contact them at [charlietsunoda@berkeley.edu](mailto:charlietsunoda@berkeley.edu), [juliannabass@berkeley.edu](mailto:juliannabass@berkeley.edu), [ivette@berkeley.edu](mailto:ivette@berkeley.edu).

**Course Format**

The standard format for the Thursday class meetings will be as follows:

- A five-minute introduction.
- The first fifteen-minute lecture.
- A fifteen-minute discussion in break-out rooms, camera and sound on for all participants.
- A twenty-minute plenary discussion taking up the break-out room discussions.
- A five-minute break.
- The second fifteen-minute lecture.
- A fifteen-minute discussion in break-out rooms, camera and sound on for all participants.
- A twenty-minute plenary discussion taking up the break-out room discussions.
- A ten-minute wrap-up and look-ahead lecture.

The break-out room discussions will focus on a discussion problem related to the day's reading and the lectures. (When possible, the lectures will be distributed in advance.) Each university will determine for its own students the assessment requirements and award of credits in light of that university's academic rules.

The format of the Thursday classes may vary from time to time, in order to accommodate the discussion of state of the art legal responses to equality matters.

### **Course reading assignments**

The reading is divided into essential readings as well as supplementary materials. Your individual institution will decide as to the balance between the essential readings and supplementary materials for each seminar. Individual articles as selected by the faculty lecturers for their lecture are posted to the course website (UC Berkeley "bCourses" site).

In addition, two textbooks and a web-course are used as background course materials:

- Oppenheimer, Foster, Han & Ford, ***Comparative Equality and Anti-Discrimination Law*** (3d ed. 2020)("Casebook"). Copies can be [purchased from the publisher](https://www.e-elgar.com/shop/gbp/comparative-equality-and-anti-discrimination-law-third-edition-9781788979207.html) (Edward Elgar, in the UK <https://www.e-elgar.com/shop/gbp/comparative-equality-and-anti-discrimination-law-third-edition-9781788979207.html>) for a discounted price of \$68 ([or at full price \(\\$94\) from Amazon](#)). Used copies may be available on Amazon. Students are recommended to use the **third** edition.
- Noel and Oppenheimer (eds.), ***The Global #MeToo Movement*** (2020). Copies can be [purchased from the publisher](#) or Amazon for \$16, or [downloaded for free](#).
- Stanford edX web-based course, Ford & Oppenheimer, ***Comparative Equality and Anti-Discrimination Law***. These materials mix video recordings of group discussions, debates, and interviews with 44 scholars and activists from six continents. The material is provided through Stanford University's edX portal <https://www.edx.org/course/comparative-equality-and-anti-discrimination-law-3>. Access is free.

Helpful glossaries:

EU Law: <https://eur-lex.europa.eu/summary/glossary.html>

Equality Law Glossary of Terms: <https://www.equalityhumanrights.com/en/secondary-education-resources/useful-information/glossary-terms>

European Institute for Gender Equality Glossary: <https://eige.europa.eu/thesaurus>

### **Learning Objectives**

By the end of the course, students will be able to:

1. Compare how different legal systems (national, regional and international) address problems of inequality and discrimination;
2. Comparatively analyze discrimination law statutes and judicial decisions from different legal systems and connect them to the theories of equality underlying these texts;
3. Explore academic scholarship about equality law and inequalities, and be able to discuss the issues raised in light of the underlying theories of equality, using examples from several legal systems;
4. Connect with students from around the globe as friends/colleagues to discuss ongoing issues of inequality in light of the material they studied together;
5. Reflect on teaching and learning methods used by students and faculty from several different legal systems and countries; and
6. Better understand their own connections to a global community of research and learning.

### **Assessment**

UC Berkeley students will be assessed based on three papers of 5-7 pages each, and class participation (which includes both attending and contributing to the breakout and plenary discussions).

Paper 1	30%
Paper 2	30%
Paper 3	30%
Class Participation	10%

The papers will compare how two or more national/legal systems approach a particular problem of inequality; further details of the assignments will be provided to Berkeley students in the Tuesday class.

**Comparative Equality Law 2023  
Universal Syllabus**

<b>Course Week</b>	<b>Date</b>	<b>Topic</b>	<b>Lecturers</b>
1	24 Aug 2023	Introduction to Comparative Equality Law and Equality Theory  1. What is Gender Equality?  2. What is Legal Equality?	1. Panos Kapotas (University of Portsmouth, UK)  2. Lindsay Harris (UC-Berkeley, USA)
2	31 Aug 2023	Introduction to Equality (in) Law  1. Equality, Discrimination or Anti-Discrimination Law?  2. Strategic Litigation and Access to Justice	1. Panos Kapotas (University of Portsmouth, UK)  2. Laura Carlson (Stockholm University, Sweden)
3	7 Sept 2023	Equality and Society: Redressing Disadvantage through Affirmative Action  1. Comparative Affirmative Action  2. The Diversity Rationale for Affirmative Action	1. Chris Chambers Goodman (Pepperdine University, US)  2. David Oppenheimer (UC-Berkeley, USA)
4	14 Sept 2023	Equality and Society: Addressing stigma, stereotyping, prejudice and violence  1. Work-life Balance  2. Embedded Assumptions in the Legal Responses to Sexual Harassment	1. Sophie Robin-Olivier (Université Paris 1 - Panthéon Sorbonne, France)  2. Lucy-Ann Buckley (National University of Ireland Galway, Ireland)
5	21 Sept 2023	Equality and Society: Accommodation or / and structural change  1. The Limits of Equality Duties and the Rights of Persons with Disabilities  2. Accommodation and race: The example of Italy	1. Mark Bell (Trinity College Dublin, Ireland)  2. Gordon Abeiku Mensah (In-Formazione, Italy)

6	28 Sept 2023	<p>Equality and Society: Law and Voice through Empathy</p> <ol style="list-style-type: none"> <li>1. The Limits of the Law</li> <li>2. Empathy as Redressing Disadvantage</li> </ol>	<ol style="list-style-type: none"> <li>1. Colleen Sheppard (McGill University, Canada)</li> <li>2. Naina Kapur (Advocate and Civil Society Leader, India)</li> </ol>
7	5 Oct 2023	<p>Equality in Theory</p> <ol style="list-style-type: none"> <li>1. Substantive Equality</li> <li>2. The Expanding Concept of Equality</li> </ol>	<ol style="list-style-type: none"> <li>1. Sandra Fredman (University of Oxford, UK)</li> <li>2. Anna Bruce (Raoul Wallenberg Institute of Human Right, Sweden)</li> </ol>
8	12 Oct 2023	<p>Equality Across Grounds</p> <ol style="list-style-type: none"> <li>1. Intersectionality</li> <li>2. Discrimination on Grounds of Religion and Gender</li> </ol>	<ol style="list-style-type: none"> <li>1. Shreya Atrey (University of Oxford, UK)</li> <li>2. Sophie Robin-Olivier (Université Paris 1 - Panthéon Sorbonne, France)</li> </ol>
9	19 Oct 2023	<p>Judicial Reasonings Expanding Equality Protections</p> <ol style="list-style-type: none"> <li>1. Same-sex marriage in the ECtHR</li> <li>2. Women's surnames in the Turkish Supreme Court</li> </ol>	<ol style="list-style-type: none"> <li>1. Nausica Palazzo (Nova University, Portugal)</li> <li>2. Eren Sozuer (Istanbul University, Turkey)</li> </ol>
10	26 Oct 2023	<p>Recent Issues in Equality Law</p>	- TBA
11	2 Nov 2023	<p>The Limits of Judicial Protection</p> <ol style="list-style-type: none"> <li>1. The Limits of Judicial Protection from Violence Against Women</li> <li>2. TBA</li> </ol>	<ol style="list-style-type: none"> <li>1. Denise Abade (Mackenzie Presbyterian University, Brazil)</li> <li>2. Margareth Etienne (University of Illinois, USA)</li> </ol>
12	9 Nov 2023	<p>From Judicial Protection to Equality Bodies</p>	

		<ol style="list-style-type: none"> <li>1. Protection from sexual harassment in Italy</li> <li>2. Equality Bodies</li> </ol>	<ol style="list-style-type: none"> <li>1. Lucia Parlato (University of Palermo, Italy)</li> <li>2. Paul Lappalainen (University of Stockholm, Sweden)</li> </ol>
13	16 Nov 2023	<p>Equality Strategies and Reproductive Rights</p> <ol style="list-style-type: none"> <li>1. Strategies Protecting Women's Bodies post-Dobbs</li> <li>2. Navigating a post-Dobbs World</li> </ol>	<ol style="list-style-type: none"> <li>1. Rosemary Salomone (St. John's University, USA)</li> <li>2. Severyna Magill (Sheffield Hallam University, UK)</li> </ol>
14	23 Nov 2023	<p>The Costs of Inequality</p> <ol style="list-style-type: none"> <li>1. The Legacy of Bio-inequities</li> <li>2. Who Should Bear the Costs of Discrimination</li> </ol>	<ol style="list-style-type: none"> <li>1. Karen O'Connell (University of Technology Sydney, Australia)</li> <li>2. Debbie Collier (University of Western Cape, South Africa)</li> </ol>
15	30 Nov 2023	<p>Substantive Equality Revisited</p>	<ol style="list-style-type: none"> <li>1. Laura Carlson (Stockholm University, Sweden)</li> <li>2. Panos Kapotas (University of Portsmouth, UK)</li> </ol>
16	7 Dec 2023	<p>Future Challenges in Equality Law</p>	TBA

## COMPARATIVE EQUALITY LAW 2023

### UNIVERSAL SYLLABUS

#### **Week 1: Introduction to Comparative Equality Law and Theory (Aug 24)**

##### **Lectures:**

1. What is Gender Equality?: Panos Kapotas (University of Portsmouth, UK)
2. What is Legal Equality?: Lindsay Harris (UC Berkeley, USA)

**Breakout Questions 1:** Is a general equality clause enough? Do we need to establish legal protection for specific grounds, such as gender? How many protected grounds should then be recognized, seven (US and EU), fifteen (South Africa) or twenty-five (France) or more?

**Breakout Questions 2:** The US census asks every resident to identify themselves by race and by whether they are of Hispanic origin. In France, the census is not permitted to ask about race or racial identity. What are the advantages and disadvantages of each approach?

##### **Essential Reading:**

- [UN Sustainable Development \(SDG\) Goals: Gender Equality, Why it Matters? 2023](https://www.un.org/sustainabledevelopment/wp-content/uploads/2018/09/Goal-5.pdf) <https://www.un.org/sustainabledevelopment/wp-content/uploads/2018/09/Goal-5.pdf>
- [UN 1979 Convention on the Elimination of All Forms of Discrimination Against Women](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>
- <https://www.washingtonpost.com/news/global-opinions/wp/2018/07/13/frances-dangerous-move-to-remove-race-from-its-constitution/>
- <https://hir.harvard.edu/color-blind-frances-approach-to-race/>
- Casebook, Chap. 1 What is equality in the law? pp. 1-53 (Equality as Citizenship, Neutrality, Anti-Subordination, Equal Treatment, Accommodation, Diversity, Intersectionality, and Reparations)

##### **Supplemental (Optional) Materials:**

- UN CEDAW Committee, General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992) <https://digitallibrary.un.org/record/1305057?ln=en>
- UN CEDAW Committee, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women <https://digitallibrary.un.org/record/711350>

- David Oppenheimer, Why France Needs to Collect Data on Racial Identity....In a French Way (2008) 32(2) Hastings Intl Comparative Law Review 735  
[https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol31/iss2/7/](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol31/iss2/7/)

edX web-course: Class 1.12: Contrasting Approaches to Equality: Why Compare?  
edX web-course: Class 8.2: Should France Collect Racial Identity Data?

## **Week 2: Introduction to Equality (in) Law**

**(Aug 31)**

### **Lectures:**

1. Equality, Discrimination or Anti-Discrimination Law?, Panos Kapotas (University of Portsmouth)
2. Access to Justice and Strategic Litigation, Laura Carlson (Stockholm University, Sweden)

**Breakout Questions 1:** Does it make a difference whether we refer to a system of law protecting equality rights as 'Equality law' or 'Discrimination law' or 'Anti-Discrimination law'? And what is the relationship between the law(s) protecting equality rights and international human rights law?

**Breakout Questions 2:** Defrenne is a case of strategic litigation. Why is strategic litigation necessary? What are some of the barriers for plaintiffs litigating discrimination claims? How can access to justice help rebalance the playing field? Can we do more? Are there better alternative?

### **Essential Reading:**

- Casebook, Chap. 2 Sources of Equality Law, pp. 54-85
- Judgment of the Court of 8 April 1976. Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena ECLI:EU:C:1976:56 available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61975CJ0043>

### **Supplemental (Optional) Materials:**

- Eliané Gubin, Eliané Vogel-Polsky, A Woman of Conviction (2007), available at [https://igvm-iefh.belgium.be/sites/default/files/downloads/13%20-%20Vogel-Polsky\\_EN.pdf](https://igvm-iefh.belgium.be/sites/default/files/downloads/13%20-%20Vogel-Polsky_EN.pdf)
- Casebook, Chap. 1 What is Equality in the Law, pp. 1-54 (for students missing Sem 1)
- "The Importance of Civil Procedure for Access to Justice" (Professor Benjamin A. Spencer) <https://www.youtube.com/watch?v=Q6RRlGrk6s>

edX web-course: Classes 2.3 and 2.4: Sources of Equality Law (Europe)

edX web-course: Classes 2.1 and 2.2 Sources of Equality Law (United States)

## **Week 3: Equality and Society: Redressing Disadvantage Through Affirmative Action**



**(Sept. 7)****Lectures:**

1. Remedial Justifications and Comparative Affirmative Action, Chris Chambers Goodman (Pepperdine University, US)
2. The Diversity Rationale for Affirmative Action, David Oppenheimer (UC Berkeley)

**Breakout Questions 1:** South Africa prohibits "unfair discrimination," which means compensatory programs that are deemed "fair" are permissible. In the U.S., such programs are called "affirmative action." Can the name of the program (compensation action in Brazil; positive action in some of Europe; positive discrimination in France; reservations in India) impact or influence support for such equality measures? Is there more or less support when race is not used in affirmative action programs?

**Breakout Questions 2:** What are the advantages and disadvantages of diversity as a justification for equality strategies such as affirmative action? Is it the optimal justification or are there other justifications you would propose (or oppose)?

**Essential Reading:**

- Casebook, Chap. 7 Affirmative Action in the US, pp. 241-257, Chap. 9 Global Affirmative Action in South Africa, pp. 303-311.
- Oppenheimer, 'The South African Sources of the Diversity Justification for U.S. Affirmative Action', California Law Review, July 2022 available at: <https://www.californialawreview.org/online/the-south-african-sources-of-the-diversity-justification-for-us-affirmative-action>
- Chris Chambers Goodman & Natalie Antounian, Dismantling the Master's House: Establishing a New Compelling Interest in Remediating Systemic Discrimination, 73 Hastings L.J. 437 (2022), pp. 442-459 [PDF excerpt available on bCourses]
- SFFA v. Harvard and UNC, 600 U.S. \_\_\_\_ (2023) (slip opinion), Sections III.B, III.C, IV.A and IV.B, and V, [PDF excerpt available on bCourses, with summary/synopsis at pp.1-6]

**Supplemental (Optional) Materials:**

- David Oppenheimer, Brief of Amici Curiae Deans of U.S. Law Schools on Behalf of Respondents before the US Supreme Court, case Students for Fair Admissions Inc v. President and Fellows of Harvard College; Students for Fair Admissions Inc. v University of North Carolina et al. [available on bCourses]
  - David Oppenheimer, Dr. King's Dream of Affirmative Action (2018) [available on bCourses]
  - Casebook, Chap. 8 Affirmative action in Europe, pp. 277-290
- edX web-course: Classes 7.1 and 7.5: Affirmative Action in the U.S.

**Week 4: Equality & Society: Addressing stigma, stereotyping, prejudice & violence**  
**(Sept 14)**

**Lectures:**

1. Work-life balance, Sophie Robin-Olivier (Université Paris 1 - Panthéon Sorbonne, France)
2. Assumptions Embedded in the Legal Responses to Sexual Harassment, Lucy-Ann Buckley (National University of Ireland Galway, Ireland)

**Breakout Questions 1:** If women are expected to do more housework and caregiving at home, does that affect equality at work? Does the regulation of equality rights in the workplace reach into the home? Is the EU Directive on work-life balance a step toward substantive equality?

**Breakout Questions 2:** What kinds of assumptions are normalized and embedded in our understanding of sexual harassment? How do these assumptions manifest in legal rules and procedures? What are the implications when dealing with intersectional forms of harassment?

**Essential reading:**

- EU Directive on work-life balance, available at: <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9438&furtherNews=yes>
- Press release containing summary of judgment in French case C-463/19 Syndicat CFTC v. CPAM in the CJEU available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-11/cp200139en.pdf>
- The Global #MeToo Movement Chapter 1, Catharine A. MacKinnon, Global #MeToo pp. 1-18
- The Global #MeToo Movement Chapter 34, Lucy-Ann Buckley, Women with Disabilities Forever on the Edge pp. 419-430

**Supplemental (Optional) Materials:**

- Casebook, Chap. 6 Harassment as employment discrimination, Global sexual harassment, pp. 213-219
- Casebook, Chap. 15, Equality and religion: free exercise of religion for religious minorities, pp. 499-549 (Comparative Approaches to Freedom of Religion)
- Global #MeToo Movement
  - o Chapter 8, Marie Mercat-Bruns, The #MeToo Movement in France, pp. 107-130
  - o Chapter 9, Emanuelle Bribosia, Chloe Leroy and Isabelle Rorive, #MeToo Movement in Belgium, pp. 131-138
  - o Chapter 12, Aileen McColgan, Silent Women? Non-disclosure agreements and the #MeToo Movement in the UK, pp. 161-170
  - o Chapter 15, Barbara Havelkova and Zuzana Andreska, Much Backlash Against Nothing: #MeToo in Czechia, pp. 189-196

- Chapter 36, Lauren B. Edelman, The #MeToo Movement, Symbolic Structures, and the Limits of the Law, pp. 445-458
- Chapter 38, Catherine L. Fisk, Non-disclosure Agreements and Sexual Harassment: #MeToo and the Change of American Law of Hush Contracts, pp. 475-484
- International Labour Organization (ILO) Convention 190 – Violence and Harassment Convention, 2019 (No.190) available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190)

### Supplemental (Optional) Materials:

edX web-course: Classes 3.1 and 3.2: U.S. Employment Discrimination Law, 4.1, 4.6 and 4.8

## **Week 5: Equality and Society: Accommodation or / and structural change (Sept 21)**

### Lectures:

1. The Limits of an Equality Duty in the Context of Rights of Persons with Disabilities, Mark Bell (Trinity College Dublin, Ireland)
2. Accommodation and race: The example of Italy, Gordon Abeiku Mensah (In-Formazione, Italy)

**Breakout Questions 1:** Imagine that you are a person with a disability who needs an accommodation in your workplace. What are the limitations of the duty to provide a reasonable accommodation? Consider both the law and practical obstacles to enforcing the law.

### **Breakout Questions 2: ???**

### Essential reading:

- Waddington, L., & Lawson, A. (2016). Chapter 19: The unfinished story of EU disability non-discrimination law in Bogg, A. & Davies, Ann (eds.), Research Handbook on EU Labour Law (pp. 474-491) (available at: [https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/72537064/waddington\\_2016\\_the\\_unfinished\\_story\\_of\\_EU.pdf](https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/72537064/waddington_2016_the_unfinished_story_of_EU.pdf))
- TBA

### Supplemental (Optional) Materials:

- Casebook, Chapter 18, Equality and the rights of persons with disabilities, pp. 675-726

## **Week 6: Equality and Society: Law and Voice through Empathy (Sept. 28)**

**Lectures:**

1. The Limits of the Law, Colleen Sheppard (McGill University, Canada)
2. Empathy as Redressing Disadvantage, Naina Kapur (advocate and civil society leader, India)

**Breakout Questions 1:** What does the #MeToo movement teach us about the limits of traditional legal responses to sexual harassment and violence? What legal strategies do you believe would be most effective in responding to sexual harassment and violence at work?

**Breakout Questions 2:** TBA**Essential Reading:**

- The Global #MeToo Movement Chapter 1, Catharine A. MacKinnon, Global #MeToo pp. 1-18 (revisit)(see video)(revisit)
- Contributing to the Global # MeToo Movement, Chapter 3, Colleen Sheppard, #MeToo in Canada: Towards a Culture of Equality, pp. 37-46
- Naina Kapur, Empathy, as a hallmark of equality: Shaping fearlessness into transformative decision-making and teaching? in Kelly Loper, Asia-Pacific Journal on Human Rights and the Law[available on bCourses]

**Supplementary (Optional) Materials:**

- TBA

**Week 7: Equality in Theory****(Oct. 5)****Lectures:**

1. Substantive Equality, Sandra Fredman (University of Oxford, UK)
2. The Expanding Concept of Equality, Anna Bruce (Raoul Wallenberg Institute of Human Right, Sweden)

**Breakout Questions 1:** What is Fredman's four-dimensional approach to equality? Why are all four approaches needed? How have these four dimensions been reflected in the different lectures we have had to date? Is anything missing?

**Breakout Questions 2:** How does the concept of equality in the CRPD expand to be able to catch the disadvantage facing persons with disabilities? Does this continuous development of the concept of equality make it harder or easier to adjudicate if a particular situation amounts to a violation of the equality law? Think about the answer to the last question, as well as the concept of "inclusive equality" adopted by the CRPD Committee.

**Essential Reading:**

- Sandra Fredman, Equality: Concepts and Controversies, Chap. 1 [available on bCourses]
- CRPD Committee General Comment 6, pp. 1-8 [available on bCourses]
- Anna Bruce, The Unfolding of Equality in International Human Rights Conventions, pp. 39-52 [available on bCourses]

**Supplemental (Optional) Materials:**

- Sandra Fredman, "Substantive Equality Revisited," International Journal of Constitutional Law, Volume 14, Issue 3, July 2016, Pages 712–738

edX web-course: Class 2.11: Contrasting Approaches to Global Feminism and Substantive Equality

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**[\*\*\*First Comparative Equality Law assessment due for UC Berkeley students]**

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**Week 8: Equality Across Grounds**

**(Oct 12)**

**Lectures:**

1. Intersectionality, Shreya Atrey (University of Oxford, UK)
2. Discrimination on Grounds of Religion and Gender, Sophie Robin-Olivier (Université Paris 1 - Panthéon Sorbonne, France)

**Breakout Questions 1:** What are the challenges making a claim of intersectionality faces? Should comparators be used? Is there an alternative approach?

**Breakout Questions 2:** Does it make a difference whether the problem of employers declining to employ Muslim women who wear the Hijab is regarded as a problem of religion or gender? Intersectionality? Is it better understood as a problem of discrimination or a failure of accommodation?

**Essential reading:**

- Essay by Shreya Atrey from the Oxford Journal of Legal Studies, On the Central Case Methodology in Discrimination Law (2021) [available on bCourses]
- Joined Cases C-804/18 and C-341/19 -- *IX v WABE and MH Müller Handels GmbH v MJ*  
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=244301&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1305698>

**Supplemental (Optional) Materials:**

- CJEU: Case C-68/17 *IR v JQ*  
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=205521&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=459084>

- Joined Cases C-804/18 and C-341/19 -- *IX v WABE and MH Müller Handels GmbH v MJ*  
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=244180&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1307743>

edX web-course: Classes 2.12: Interview with Shreya Atrey on intersectionality, 5.6 and 15.7: Free Exercise of Religion for Religious Minorities in Europe

### **Week 9: Judicial Reasonings Expanding Equality Protections (Oct 19)**

#### **Lectures:**

1. Same-sex marriage in the ECtHR, Nausica Palazzo (Nova University, Portugal)
2. Women's surnames in the Turkish Supreme Court, Eren Sozuer (Istanbul University, Turkey)

**Breakout Questions 1: TBA**

**Breakout Questions 2: TBA**

#### **Essential Reading:**

TBA

#### **Supplemental (Optional) Materials:**

TBA

### **Week 10: Equality in practice and recent issues in equality law (Oct 26)**

#### **Lectures:**

1. TBA
2. 5-min presentations on recent case law developments

#### **Essential Reading:**

TBA

#### **Supplemental (Optional) Materials:**

### **Week 11: The Limits of Judicial Protection (Nov 2)**

**Lectures:**

1. The limits of judicial protection from violence against women (Denise Abade, MacKenzie Presbyterian University, Brazil)
2. TBA, Margareth Etienne (University of Illinois, USA)

**Breakout Question 1: TBA****Breakout Question 2:****Essential Reading:**

TBA

**Supplemental (Optional) Materials:**

TBA

**Week 12: From Judicial Protection to Equality Bodies****(Nov 9)****Lectures:**

1. Protection from Sexual Harassment in Italy (Lucia Parlato, University of Palermo, Italy)
2. Equality Bodies, Paul Lappalainen (Stockholm University, Sweden)

**Breakout Questions 1:**

**Breakout Questions 2: What are the benefits and drawbacks of an Equality Body (government body) representing claimants in discrimination claims, particularly compared to representation by a private or non-government attorney? Beyond a broad mandate to represent individual claimants and sufficient financing, is anything else needed?**

**Essential Reading:**

- Sara Benedi Lahuerta, Equality Bodies: advancing towards more responsive designs? in 17 International Journal of Law in Context (2021) pp. 390–412  
<https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/equality-bodies-advancing-towards-more-responsive-designs/19723D3A42A7C29760A88EF2A3C7C393>
- TBA

**Supplementary (Optional) Materials:**

- EU Commission Proposal for Council Directive on Equality Bodies (Race, ethnic origins, religion, belief, disability, age or sexual orientation)

[https://commission.europa.eu/system/files/2022-12/1\\_1\\_201224\\_prop\\_council\\_dir\\_eq\\_bo\\_en.pdf](https://commission.europa.eu/system/files/2022-12/1_1_201224_prop_council_dir_eq_bo_en.pdf)

- EU Commission Proposal for Council Directive on Equality Bodies (Gender) [https://commission.europa.eu/system/files/2022-12/1\\_4\\_201221\\_prop\\_dir\\_parl\\_council\\_eq\\_bod\\_en.pdf](https://commission.europa.eu/system/files/2022-12/1_4_201221_prop_dir_parl_council_eq_bod_en.pdf)
- Paul Lappalainen, The Role of Civil Society Advocacy in Equality Law – Lessons for the Nordics in EQUALITY, Scandinavian Studies in Law 2022, Volume 68, 451-490. Especially 451-467 [available on bCourses]
- K. Aggestam, Mediating Asymmetrical Conflict, in Mediterranean Politics, 7, 1, 2002, pp. 69-91 [available on bCourses]
- European Commission, Recommendation of 27 November 1991 on the Protection of the dignity of women and men at work (92/ 131 /EEC).

[\*\*\*Second Comparative Equality Law assessment due for UC Berkeley students]

### **Week 13: Equality Strategies and Reproductive Rights (Nov 16)**

1. Strategies Protecting Women’s Bodies, Rosemary Salomone (St. John’s University, USA)
2. Navigating a post-Dobbs World, Severyna Magill (Sheffield Hallam University, UK)

**Breakout Questions 1:** Why are questions on abortion so difficult for constitutional courts to resolve? In the face of Dobbs, what other legal or litigation strategies might be effective in protecting the right of women to make choices about their own bodies?

**Breakout Questions 2:** How may the legal histories of Ireland play a role in navigating a post Dobbs world? What rights can be engaged to support the claim there is a right to abortion? How can the legal strategies and comparative parallels presented support a right to abortion in your jurisdiction?

#### **Essential Reading:**

- Casebook. Chap 17, Equality and reproductive rights, pp. 632-645 (Roe v. Wade, Planned Parenthood v. Casey).
- *Dobbs v. Jackson Women’s Health Organization* (S. Ct. 2022), summary by Professor Salomone ) [available on bCourses]
- Fiona de Londras, ‘Fatal Foetal Abnormality, Irish Constitutional Law, and Mellet v Ireland’ (2016) 24(4) Med Law Rev <https://academic.oup.com/medlaw/article-abstract/24/4/591/2731246?redirectedFrom=fulltext>



- Mellet v Ireland CCPR/C/116/D/2324/2013 (UN Human Rights Committee) abridged handout by Dr Magill ) [available on bCourses]

### Supplemental (Optional) Materials:

- Kate Zernike, "Is A Fetus a Person? An Anti-Abortion Strategy Says Yes," *New York Times*, Aug. 22, 2022, <https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html>.
- TK Sundari Ravindran, Pascale Allotey, and Sofia Gruskin, "The US Abortion Decision is Already Having Global Impacts," *Knowable*, August 31, 2022, <https://knowablemagazine.org/article/health-disease/2022/us-abortion-decision-already-having-global-impacts>
- Cora Hernandez Anderson, "Latin America's 'Green Tide' Has Lessons for U.S. Abortion Rights Activists," *World Politics Review*, May 31, 2022, <https://www.worldpoliticsreview.com/on-fight-for-abortion-latin-america-is-leading-the-way/>
- Fiona de Londras and Máiréad Enright, *Repealing the 8th: Reforming Irish Abortion Law* (Policy Press 2018) see chapter on Legislative Design/Model Legislation.
- Health Service Executive (Ireland), Final Report: Investigation of Incident 50278 from time of patient's self-referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October 2012.' (2013) <<http://cdn.thejournal.ie/media/2013/06/savita-halappanavar-hse-report.pdf>> accessed 27th October 2017
- Murray, C. 'The Protection of Life During Pregnancy Act 2013: Suicide, Dignity and the Irish Discourse on Abortion' (2016) *Social & Legal Studies*, 25(6)
- Attorney General (SPUC) v Open Door Counselling Ltd [1988] IR 593 – re. whether the ability of an organisation to give information on abortion, and how to access abortion in Great Britain was permissible • McGee v. The Attorney General [1974] I.R. 284 – re. access to contraception within marriage, privacy.
- Severyna Magill, 'Five Years After Indian Woman Who Was Denied an Abortion Died, Will Ireland Finally Reform Its Laws?' (*The Wire*, 28 Oct. 2017) <<https://thewire.in/gender/five-years-indian-woman-denied-abortion-died-will-ireland-finally-reform-laws>> accessed 1 Sept 2022 – re the Citizens Assembly and referendum process in Ireland.
- Ruth Fletcher, 'Contesting the cruel treatment of abortion-seeking women' *Reproductive Health Matters*, 22:44, 10-21
- Sandra Fredman, *Comparative Human Rights Law* (OUP 2018), specifically chapter 7, Abortion, and chapter 8, The Right to Health

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**UC Berkeley classes do not meet on Thursday Nov 23 due to the public holiday; attendance at this class is optional for Berkeley students.**

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**Week 14: The Costs of Inequality****(Nov 23)****Lectures:**

1. The Legacy of Bio-Inequities, Karen O'Connell (University of Technology Sydney, Australia)
2. Who Should Bear the Costs of Discrimination?, Debbie Collier (University of Cape Town, South Africa)

**Breakout Questions 1:** Is positive action in the form of quotas or preferential treatment the most effective way of achieving substantive equality? Does substantive equality require instead putting more emphasis on the positive duties of state and non-state actors in dealing with existing inequalities?

**Breakout Questions 2:** Which actor should bear primary responsibility for preventing discrimination and ensuring equality in the workplace: the courts, public authorities or the employers themselves?

**Essential Reading:**

- K. O'Connell, I. Karpin, (2020). Bioinequalities: Rethinking Legal Responses to the Biological and Intergenerational Harm Caused by Inequality. In: Dietz, C., Travis, M., Thomson, M. (eds) A Jurisprudence of the Body. Palgrave Socio-Legal Studies. Palgrave Macmillan [available on bCourses]
- Casebook, Chap. 5 Employment Discrimination in Brazil, India, China, Hong Kong, South Africa, Australia and Israel, pp. 163-205

**Supplemental (Optional) Materials:**

edX web-course: Classes 5.4 and 5.5: Global Employment Discrimination (Argentina, Australia, Brazil, China, Colombia, India, Mexico, South Africa, and Tanzania)

**Week 15: Substantive Equality Revisited****(Nov 30)****Lectures:**

1. Laura Carlson (Stockholm University, Sweden)
2. Panos Kapotas (University of Portsmouth, UK)

**Breakout Questions 1:**

**Breakout Questions 2:**

**Essential Reading:**

- Sandra Fredman, Substantive equality revisited, International Journal of Constitutional Law, Volume 14, Issue 3, July 2016, pp. 712–738
- MacKinnon & Crenshaw, Reconstructing the Future: An Equality Amendment [available on bCourses]

**Week 16: Future Challenges to Equality Law**

**(Dec 7)**

**Lectures:**

**Breakout Questions 1:**

**Breakout Questions 2:**

**Essential Reading:**

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**Berkeley Exam Period (Dec 11-15)**

**Final Take-Home Exam for Berkeley Students**

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