

## **Introduction to the Special Issue on Hygiene, Coloniality and Law**

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### **1.0 Writing in a global pandemic**

This special issue was conceived in September 2019, just a few months before the outbreak of a virus that quickly became known as COVID-19 – a strain of coronavirus causing, among other symptoms, a severely acute respiratory syndrome – and unleashed a global pandemic. The Special Issue has been realised throughout these difficult times and many of the features of the global pandemic relate closely to the theme of this Special Issue. Our work started at the end of 2019 and aimed to discuss gendered, racialised and colonial constructions of hygiene, health and law. In the early months of the pandemic, the preparatory work for the Special Issue moved online and the CfP was followed by an online workshop held in September 2020. On that occasion, despite the global circumstances, established academics and emerging early career scholars made space for sharing ideas and methodological tools to tackle this multifaceted research topic.

While state-imposed legal measures to contain the pandemic began to affect aspects of our daily lives – differently and unequally dislodging conceptions and habits of labour and care, responsibility and death – the questions that were raised through our workshop and papers mirrored the contemporary events unfolding in front of us: how do state-sponsored legal regimes cast diseased and stigmatised people; how do states redefine moral and legal grounds for social control; how do states regulate access to health-care systems; how do states control and police mobilities; and how do they define sexuality, affects and love, being a few of them.

The interventions collected in this Special Issue look at hygiene and the intertwining of medical, legal and moral discourses, predominantly reflecting on the historical circumstances that reproduce and reinforce the inequalities and injustices rooted in colonial systems of states. Reading across the articles in the Special Issue, our authors demonstrate how looking critically at the historical construction of hygiene is key to understanding the continuities of these phenomena between the past and the present. Here, disease control shapes and reveals profound gender and racial power relations, marking past and present colonial violence, dispossession and erasures. Through examining the law as a technology of governance, we developed this Special Issue thinking about the construction and management of vulnerable subjectivities and colonial societies, their legal foundations and possibilities of resistance. Using

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interdisciplinary feminist approaches to voice and knowledge production, we take hygiene as a tool of analysis for understanding how western racialised and gendered epistemologies constitute systems of regulation and governance which often reproduce, instead of dismantling, structures of oppression and marginalisation.

In this sense, these feminist reflections on historical legal modes alongside decolonising transnational law projects seek to dismantle the ‘modern’, ‘enlightened’ and ‘civilised’ assumptions of western imperialism and hierarchies between humans, the environment and the planet by focusing on alternative projects, other forms of knowledge and spaces of resistance/survival. Such themes emerge across all of the articles in this collection: Marianne Dhenin’s study of motherhood and state control in Egypt, Amanda Muniz Oliveira’s interrogation of the state sanctioned sterilisation of Janaína Quirino a poor Black woman in Brazil, Paola Zichi’s study of heterodirected legal regulation of sex work in Mandate Palestine, Dipika Jain and Kavya Kartik’s investigation of the persistence of the colony for people with leprosy in India alongside the moments of kinship and care, Alice Finden’s account of mechanisms through which gendered frames infiltrated British emergency powers in Egypt and the construction of the category ‘pre-criminal’, Laura Lammasniemi and Kanika Sharma’s account of the ways in which colonial legal transplants that shaped marriage laws in India persist in form and function and Justine Collins’ account of the gendered mechanisms of control on plantations in the Caribbean after ameliorative laws were introduced. To work with our authors, during a global pandemic, on this kaleidoscope of ground-breaking research into colonial legal forms, hygiene and morality has been both moving and eye-opening.

## **2.0 The coloniality of hygiene**

Scholarly engagement with the notion of health and hygiene, in its historical, normative and political dimension is not new.<sup>1</sup> The Greek etymology of the term ‘hygiene’ refers to the state of being healthy, as in ‘order’, ‘sound’ in mind as well as body, somehow ‘virtuous’ and ‘logical’. Hippocrates saw disease as a purely naturalistic event that could be explained by natural causes and treated by rational means. Despite the plurality of the Hippocratic corpus, ‘scientific medicine’ began in western antiquity and produced the first embodiment of a rational medicine lasting from the fifth century BC to the eighteenth century as the dominant medical paradigm in Europe.<sup>2</sup> As such, histories of western medicine and European legal history share a common positivist scientific genealogy which links them with the consolidation of modern epistemologies of the nation-state and philosophy of science.

Historically, diseases, epidemics, and viruses have often been accompanied by shame, stigmatisation, mass hysteria, scapegoating and outbursts of religiosity differently from other sources of mortality or medical conditions.<sup>3</sup> In the nineteenth century, British ideals of purity of (private) mind and (social) body were so pervasive that they came to shape public health policies, to inform methods of governance and markers of dangerousness. As a colonial export, hygiene was shaped around Victorian ideals of

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<sup>1</sup> Alison Bashford, *Imperial Hygiene: a critical History of Colonialism, Nationalism and Public Health* (Palgrave 2004) 1.

<sup>2</sup> For a social history of medicine and venereal diseases, see Peter Baldwin, *Contagion and the State in Europe 1830-1930* (Cambridge University Press 1999).

<sup>3</sup> Frank Snowden, *Epidemics and Society: From the Black Death to the Present* (Yale University Press 2019) 2.

morality, and ‘acceptable’ forms of race, class, gender and sexuality constituted the shaping of subjectivities. As Bashford writes, ‘all these spaces – these therapeutic, carceral, preventive, racial and eugenic geographies – produced identities of inclusion and exclusion, of belonging and citizenship, and of alien-ness’.<sup>4</sup>

Noting that processes of colonialism were formed of an entanglement of policies travelling in between the metropole and the colonies provides us a lens to examine how hygiene policies also shaped the lives of the poorest in society. In nineteenth century Britain, poor houses, asylums, hospitals and prisons resembled each other with a sonic and sensory vividness, and reasons for incarceration very often at the intersection of perceptions of an immoral and unclean sexuality, as Foucault writes:

They [peripheral sexualities] circulated through the pores of society; they were always hounded, but not always by laws; they were often locked up, but not always in prisons; were sick perhaps, but scandalous, dangerous victims, prey to a strange evil that also bore the name of vice and sometimes crime.<sup>5</sup>

Illness as a marker of criminality or threat is something that has marked colonial forms of governance of the poor both in the metropole and the peripheries as Jain and Kartik, and Finden demonstrate in their articles on, respectively, the leper colony in India and in constructions of criminality in Egypt. Other articles explore the intersections between hygiene and humanity, showing that uncleanliness can be used as a mechanism to cast certain bodies as abject, inhuman and outside of the public space of politics. Importantly, Collins shows this to be the case for enslaved women in the British Caribbean, whose bodies continued to be used as sexual and productive objects even after the introduction of ameliorative and abolitionist laws in the late eighteenth and early nineteenth century.

In this Special Issue, we use the term coloniality because, distinct from the term colonialism, it refers to the set of concepts, norms, sensibilities and dispositions which characterise colonial societies and their subjectivities. While colonialism pertains to modern state relations within the colony, the concept of coloniality suggests the need to delink with western epistemologies, expressing the potentiality of a project of decolonisation. Introduced by the Peruvian sociologist Anibal Quijano, coloniality ‘names the underlying logic of the foundation and unfolding of western civilisation from the Renaissance to today of which historical colonialisms have been a constitutive, although downplayed, dimension’.<sup>6</sup> Rejecting western teleological narratives of linear historical thinking and understanding the constitutive and spiralling matrix of power between ‘modernity’ and ‘coloniality’, is central to decolonising projects. Mignolo argues how one of the:

defining features of decolonial options is the analytic of the construction, transformation and sustenance of racism and patriarchy that created the condition to build and control a structure of knowledge [...] such knowledge-construction made it possible to eliminate or marginalize what did not fit into those principles that

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<sup>4</sup> Bashford above note 1.

<sup>5</sup> Michel Foucault, *The History of Sexuality, Vol. 1* (Pantheon Books 1978) 40.

<sup>6</sup> Walter Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options*, (Duke University Press 2011) 2.

aspired to build a totality in which everybody would be included, but not everybody would also have the right to include.<sup>7</sup>

By looking at how the law has sustained coloniality through enforcing hygiene, the concept of coloniality reveals not only the power and violence of the law in shaping societies but also the failures to process and address such violence in the present. A decolonial approach also reveals how hierarchies of knowledge production and the epistemic abandonment of local and indigenous communities intersect with forms of healthcare, often exacerbating the effects of viruses.<sup>8</sup>

### 3.0 Feminist and decolonial methodologies

Feminist and queer scholarship have engaged differently with the topics of law and hygiene and how forms of governance are enacted intimately on bodies. In 1978, Susan Sontag highlighted how metaphors of illness had the effect of casting the *actually-ill* person outside of society and the nation. As a woman fighting cancer amidst the AIDS pandemic, Sontag cast her critical eye on the ‘kingdom of the well and the kingdom of the ill’, fighting the assimilation of illness as the ‘night-side of life, a more onerous form of citizenship’.<sup>9</sup> At the same moment, members of the Cohambee River Collective, a US-based collective of Black feminists, pointed to the racial and sexual injustices in access to basic services like healthcare.<sup>10</sup> As we wrote and spoke through ‘coronatimes’, feminist collectives, such as the Asian American Feminist Antibodies, similarly captured the complex gendered and racialised dynamics in global health, legal regulations and the dynamics of kinship and care that produce intersectional interdependencies and the space for ‘imagining political possibilities through different histories’.<sup>11</sup>

Postcolonial and feminist legal scholars have demonstrated the centrality of the law anchored in the rhetoric of modernity and in the logic of coloniality through the reproduction of gendered, racialised and classed hierarchies of power, both in the metropole and abroad.<sup>12</sup> These interventions have highlighted the relevance of the law in shaping public health strategies and understandings of disease then reproduced in all aspects of the legal system: criminal law, public law, constitutional law, administrative law, emergency law and in civil and family justice.<sup>13</sup> Feminist historians have also shown how colonial domination and the role of state-imposed regulation of public health and sexuality became a critical battleground between the colonised and the colonisers. Liat Kozma, in particular, has highlighted the historical limits of early

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<sup>7</sup> As above XV.

<sup>8</sup> Charles L. Briggs and Clara Mantini-Briggs, *Tell Me Why My Children Died: Rabies, Indigenous Knowledge and Communicative Justice*, (Duke University Press 2016) 4.

<sup>9</sup> Susan Sontag, ‘Illness as Metaphor’ *The New York Review*, January 26, 1978.

<sup>10</sup> Cohambee River Collective, *The Cohambee River Collective Statement* (Zillah Einstein 1978).

<sup>11</sup> Rachel Kuo, Amy Zhang, Vivian Shaw and Cynthia Wang, ‘#FeministAntibodies: Asian American Media in the Time of Coronavirus’ (2020) 6(4) *Social Media + Society*.

<sup>12</sup> Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar 2018); Chandra Mohanty, *Feminism without Borders: Decolonizing Theory, Practising Solidarity* (Duke University Press, 2003); Ratna Kapur, ‘The Tragedy of the Victimisation Rhetoric: Resurrecting the ‘Native’ Subject in International/Postcolonial Feminist Legal Politics’ (2002) 15 *Harvard Human Rights Law Journal* 1.

<sup>13</sup> Frank Mort, *Dangerous Sexualities: Medico-Moral Politics in England since 1830* (Routledge 2000), 103-209.

feminist reformers embedded in the contradictions of the politics of the nation state: by casting medical and social reform as ‘civilised’ and ‘modernising’, feminist reformers failed to grasp coloniality structures and the way in which other vectors of power – class, religion, gender, race – are practised and circulated in colonial states.<sup>14</sup>

Other scholars have moved towards a critique of the hegemonic archive and of historiography itself. For example, through a methodology that combines archival research and speculative fiction, Saidiya Hartman centres the experiences of those who are traditionally excluded from the hegemonic archive, predominantly the unwritten voices of women slaves. In her latest book Hartman reconceptualises the archive to tell a story of desires and yearning for freedom, of female friendship, cohabitation and queer relations between free lovers, socialists and anarchists in twentieth century New York. In this sense, the Black feminist turn to the archives not only renders visible the striking inequalities of slavery but also foregrounds and reinscribes possibilities of resistance and joy against neo-colonial and neoliberal spaces of power, dispossession and oppression.<sup>15</sup> In a similar way, in the previous issue of *Australian Feminist Law Journal*, Natalie Harkin’s evocative unmaking of the archive in her poetic rendering of Aboriginal people’s livelihoods and memories is a means to undo the rigidity and falsehoods with which the Australian state proclaims its sovereignty.<sup>16</sup>

Held together, our Special Issue asks us, as feminists, to similarly question the spaces and methods that we use to do emancipatory work. Many of the articles detail the ways in which feminist organisations have been complicit in the production of disciplinary discourse and practice, or how their work has been co-opted by forms of governance. Our authors do this through interrogating different sources (diaries, travel notes, missionary reports and biographies) in conversation with legal sources (traditional forms of statutes, constitutions and judicial rulings) and from different disciplinary perspectives (critical theories, decolonial studies, literature, history). For example, as Oliviera demonstrates in this Special Issue, US hegemony and European coloniality have a direct role to play in the forced sterilisation and eugenicist policies towards poor Black women in Brazil and have done so through the co-optation of hard-won feminist rights and freedoms. By re-thinking reproductive rights through the decolonial lens of ‘reproductive justice’, Oliviera explores the careful attention that must be paid to lived experience and material inequality in questions of the body and healthcare. Similarly, Jain and Kartik tell us the importance of writing and activism to patients of leprosy in shifting attitudes, creating spaces of care and taking back freedoms of movement.

#### **4.0 Law: interdisciplinary and transnational approaches**

In this Special Issue, our reading of the law brings up questions of justice (i.e. what is a right and fair politics of law?) and questions of humanity (i.e. a law and justice for whom?). Our authors map these questions through different legal temporalities, demonstrating the flow of legal forms across legal transplants and in important transnational ways. They also interrogate these questions regarding law, justice and

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<sup>14</sup> Liat Kozma, *Global Women, Colonial Ports: Prostitution in the Interwar Middle East* (SUNY Press 2018).

<sup>15</sup> Saidiya Hartman, *Wayward Lives, Beautiful Experiments: Intimate Stories of Social Upheaval* (London: Profile Books, 2019)

<sup>16</sup> Natalie Hardin, ‘Whitewash-Brainwash: An Archival-Poetic Labour Story’ (2020) 45(2) *Australian Feminist Law Journal* 267-281.

humanity while telling us about prejudices and blind spots, about ethics and normative beliefs, about shared histories and law's central role in the relationship between progress, colonialism and empire. In these ways the Special Issue challenges the modern liberal assumption that sees law as a constituted field and with its own referential logic. The law is read together with other methodological tools not to unveil 'empirical realities' – already traditionally hidden by classic accounts of the law – but to question the construction of these 'realities', and to highlight the complicity of the law in their making. Throughout our Special Issue, law emerges as a mechanism ensuring continuity and transformation of specific legal forms and assumed values. For instance, Jain and Kartik's study of the regulation of the lives of people living with leprosy, first under colonial laws in India and thereafter to this day, provides a useful study of how colonial law, as a dominant form of transnational legal transplant, is more than a form of words within the legal document and is also a series of values about gender, racialised and queer lives brought to law through the regulation of hygiene and morals. Similarly, Finden's study of the construction of criminality and the pre-criminal in colonial Egypt further demonstrates the ways in which legal knowledge is not only never neutral but the ways in which power manifests in law to reassert the status quo of privileged voices and subjects.

In each article the spaces of hygiene and morality are shown to coalesce in legal structures that carry with them histories of power filled with insidious and elitist assumptions about identities, bodies and livelihoods. From the sex worker to the person with leprosy, to the wife or the resistance fighter, from mothers to poor women, the law's construction of each subject is never neutral. However, it is important to note the inconsistencies amongst various colonial projects and the role gendered discourse played in disguising such inconsistencies, such that while Dhenin and Collins identify the ways in which some women's reproductive lives were controlled through pronatalist projects, Oliveira, as well as Jain and Kartik, demonstrate the ways in which hygiene was collapsed into morality within colonial governance as forms of population control. The consistent theme is the reproduction of long-lasting assumptions about the intersection of disease, hygiene and health with gender and sexuality, as well as race. Alongside reproduction and mothering, the legal regulation of marriage also looms large in our authors' work, from the ways in which labour laws - rather than protecting women during pregnancy - kept women out of work in Egypt (Dhenin), to the very specific forms of persecution and regulation of unmarried women in mandate Palestine (Zichi) to the way in which the restitution of conjugal rights in India functions as a gendered privilege for men long after independence (Lammasniemi and Sharma).

The Special Issue taken as a whole makes an important intervention into feminist legal writing through offering methodologies for interdisciplinary writing, transnational legal feminisms and legal transplants that approach critical comparative law as a means to decolonise perceptions of the parameters and purposes of law. In that process the histories of white imperial feminisms are interrogated alongside elite subaltern feminisms as mechanisms for understanding how discourses of exclusion, acts of violence and silencing are enacted on the bodies of those with less recourse to the law. Zichi speaks of white imperial feminisms as a proto-governance feminism, interacting in the international and contributing to the transnational dimensions of gender law reform. We regard these as vital critical legal methodologies because of the self-reflective standpoint that interrogates colonialism, gender and archives of feminisms

with intersectional lenses to understand exclusions, marginalisations and silences in processes of gender legal reform.

The Special Issue was conceived of and written from outside of Australia: our authors wrote from Brazil, India, Egypt, the Netherlands and the United Kingdom and as editors we are all located in the UK. We write into the *Australian Feminist Law Journal* at a time when Australian borders have been subject to numerous restrictions, throughout the COVID-19 pandemic. As editors we think this matters, in the sense of thinking of a journal otherwise edited and curated in Australia and in the sense of asking how Australian scholarship is made. As guest editors we are conscious that this issue of the journal comes after an important – ground-breaking – issue on First Nations women that resonates deeply with the themes in this issue, and we are aware of the role that discourses of hygiene and morality played in Australia’s genocides and law – the after effects of which live on through white Australian privilege and we recognise the important spaces of resistance and refusal that exist.<sup>17</sup>

Our hope is that the global stories and analysis in this Special Issue prompt transnational legal conversations about white Australian policies and laws. This might, likewise, present further opportunity to know the legacy of harm and pain inflicted on generations of First Nations peoples that is yet to be fully recognised or understood in mainstream legal contexts. At the heart of that project is a commitment to seeing the role that constructions of gender, race, sexuality, caste and class have played in the production of colonial laws and, we argue, their deconstruction and decolonisation central to alternative ways of knowing. We acknowledge Aboriginal and Torres Strait Island peoples as the owners of the territory known as Australia and that their sovereignty was never ceded.

And to close, given the amount of suffering, loss, stress, isolation and disorientation brought about by the COVID-19 pandemic and experienced by many of us, we think it is paramount to thank the authors and the workshop participants for having engaged and written throughout this period, while often bearing additional responsibilities and coping with difficult personal circumstances. Each of our authors have been important companions in our personal journeys, as editors, through the COVID-19 pandemic and their resilience and perseverance is reflected in the pages before you.

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<sup>17</sup> Alison Whittaker and Nicole Watson, ‘First Nations Women: Law, Power, Story’ (2019) 45(2) *Australian Feminist Law Journal* 179-184; Irene Watson, ‘Illusionists and Hunters: Being Aboriginal in this Occupied Space’ (2015) 22(1) *Australian Feminist Law Journal* 15-28.