

Call for Papers for a Special Issue

International Journal of Discrimination and the Law

Undoing Discriminatory Borders

Editors Nicole Busby and Grace James

with Special Guest Editors Shreya Atrey, Catherine Briddick and Michelle Foster

Submissions Deadline: 31 October 2021

Manuscripts will be considered as they are received

The Inter-American Court of Human Rights has described the prohibition of discrimination on certain protected grounds, including migration status, as a *jus cogens* norm (*Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants* OC-18/03). Prohibitions on discrimination may be found in numerous domestic, regional and international instruments, including those concerned with border control and management, as well as in political agreements, such as the Global Compacts on refugees and migrants. Notwithstanding both the multiplicity and ubiquity of such legal prohibitions and political statements, the guest editors of this *Special Issue* contend that discrimination is a pervasive and potentially, *the* defining feature of border ‘control’ and the rules/processes which determine entry, residence and (de)nationalisation. While migration controls intrinsically distinguish between nationals and non-nationals, they also distribute the opportunity to move legally, often in ways that are directly or indirectly discriminatory against women, racial and religious groups and those whose sexual orientation, gender-identity or family status departs from the nuclear heteronorm. Such discrimination may be identified within apparently neutral legal rules or migration statuses, or within certain decision-making processes.

Philosophical, political and legal study of discrimination is flourishing, as exemplified by this journal’s rich contribution to such literature. There has been, however, little sustained analysis of when migration controls (broadly defined) are *unlawfully* discriminatory. The editors of this *Special Issue* invite contributions from scholars interested in non-discrimination, equality, immigration and nationality law to address and remedy this significant gap in the literature.

The editors are interested in submissions which explore discrimination in the context of migration control from a range of different perspectives and welcome contributions that are doctrinal, comparative, sociolegal and/or jurisprudential in nature. Contributors could examine migration law and control, or particular facets of it, using domestic prohibitions on discrimination, regional human rights frameworks or international instruments. Contributions could focus on particular states or groups of states, and could consider issues pertaining to visa and other entry control systems, border enforcement and/or asylum and migration adjudication. Contributors could also explore the linkages between the deprivation of nationality and discrimination/persecution.

Questions for consideration could include:

- (1) What is the impact of migration law’s past and present role in nationalist, colonial and postcolonial projects of racialized and gendered exclusion and subordination?
- (2) What is the empirical nature and extent of discrimination (direct and indirect) on the grounds of sex, race, disability, sexual orientation or other status in migration law/border control? How might such discrimination be revealed and redressed?

- (3) How might discrimination in decision-making processes be identified and remedied?
- (4) Under what circumstances may nationality be considered a protected ground?
- (5) If citizens/non-citizens are comparable (generally or under certain instruments/in certain circumstances) are there particular limits on nationality discrimination? When (and how) may the differential treatment of citizens/non-citizens be justified?
- (6) How might intersectional discrimination in border control be revealed and redressed?
- (7) What are the limitations of relying on discrimination law to remedy migration law's differential treatment of people? What other legal, or other, approaches might be relied on, instead or in addition to discrimination law?

Suggested readings:

- E T Achiume 'Race, Refugees and International Law' *Oxford Handbook of International Refugee Law* (edited by Costello, McAdam and Foster, OUP, forthcoming March 2021) and 'Migration as Decolonization' (2019) 71 *Stanford Law Review* 1509.
- S Atrey, 'Comparison in Intersectional Discrimination' (2018) *Legal Studies* 379
- C Briddick 'Precarious Workers and Probationary Wives: How Immigration Law Discriminates Against Women' (2020) 29(2) *Social & Legal Studies* 201
- M Foster and T R Baker, 'Racial Discrimination in Nationality Laws: A Doctrinal Blind Spot of International Law?' (Forthcoming February 2021) 11 (1) *Columbia Journal of Race and Law*.

Author guidelines:

- Articles should be no longer than 8000 words and should follow the guidelines here: <https://journals.sagepub.com/author-instructions/jdi>.
- Please use the IJDL's submission site <https://mc.manuscriptcentral.com/ijdl> to upload your manuscript. When doing so mark your submission 'Special Issue 2022' above the title to ensure that it is allocated to the guest editors for review.

For further information see [Undoing Discriminatory Borders — Refugee Studies Centre \(ox.ac.uk\)](#) or contact catherine.bridnick@qeh.ox.ac.uk.