EDITORIAL: WIDENING PERSPECTIVES

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It gives me great pleasure to introduce this volume of the York Law Review. Now in its third edition since its launch in the 2019–20 academic year, the journal remains young but is, I hope, becoming increasingly established in its form and purpose. Indeed, we were very pleased, after a pandemic-enforced delay, to be able to properly mark the launch of the journal in-person in this academic year, as part of an event with the former President of the Supreme Court, Lady Hale, hosted at the University of York. There is much strong research-informed writing produced by law school students, which for the most part does not see the light of day once it has been examined. Each year, the majority of the articles published in the Review represent edited versions of student dissertations submitted as part of the undergraduate and postgraduate taught programmes. This year is no different, with one LLM dissertation and four undergraduate dissertations completed by members of the 2020–21 student cohort, as well as a shorter piece completed by a LLM student in the 2021–22 cohort. As in the previous volumes of the Review, the breadth of subject matter covered in these articles is a testament to the diverse research interests cultivated among the Law School's student body, in an engaged learning community of staff and students.

While the articles selected in this volume are diverse in subject matter, certain cross-cutting themes can be identified. For instance, our first two articles share an interest in protecting against the harms that can be caused to victims through online technology and its associated communities. The unique characteristics of communication in the online sphere may present difficulties when seeking to address the infliction of harm by applying particular statutes or legal doctrines — here, in criminal and tort law — which have not necessarily been

designed or developed with the digital sphere in mind. The extent to which existing mechanisms suffice to approach new challenges, or whether bespoke techniques are required for the online space, is a pressing and increasingly common question in our rapidly digitalising age, and these articles engage with the issues thoughtfully and with nuance. First, Eloise Hewson engages with the concerning patterns of abuse against women endemic to the esports — that is, competitive video gaming — community. Eloise demonstrates how tort law offers more realistic solutions to address this behaviour than non-tortious action, and argues that although individual esports players could thus be tortiously liable, many abusive players lack the financial means to pay damages in practice. Accordingly, it is argued that the esports teams themselves could be held vicariously liable to remedy the behaviour of their team members. Eloise highlights three areas where ambiguity in the doctrine of vicarious liability could be clarified in a manner facilitating esports teams to be held to account. Second, Danial Kamal Shahreen tackles the issue of online content, prevalent on social media, which encourages its — predominantly young — audience to self-harm. He establishes a case to protect children from online self-harm content notwithstanding concerns as to freedom of expression. Crucially, he argues that the theoretical basis upon which the protection of children is often founded is overly justified in terms of vulnerability, and advocates for a more rights-based approach to children's relationship with the online world. Finally, Danial addresses the Law Commission's proposal to create a new offence dealing with harmful online communications, which has been adopted in the Online Safety Bill, arguing that it offers some improvements in dealing with online self-harm content, but that deficiencies remain.

A number of our articles also demonstrate an interest in the role of law and legal norms in our innermost spheres of private life, in particular the treatment of children and family life. In addition to Danial's aforementioned piece analysing the protection of children from online self-harm content, we have James Garrity's article seeking to assess the prospects of a problem-solving court model for the Youth Justice

System for addressing persistent criminal activity by young offenders. Drawing from criminological theory, James applies an insightful and fascinating 'pathways' conceptual device, understanding young people as encountering institutions and their lived experiences to produce individual pathways, whereby they may go along pathways towards or away from crime at different points. Accordingly, James suggests that a problem-solving court model, designed to encourage young people along positive pathways towards desisting from crime, could be better placed than the current Youth Courts to enable youth to build lives beyond crime, and thus can represent a useful tool for the system of Youth Justice. Another article which analyses the law's relationship to children and family is Freya Cole Norton's discussion of 'legal sex' and 'gendered parenting'. Using the work of Michel Foucault, Freya argues that the concept of 'legal sex' — the birth registration process whereby new-born children are categorised as female or male — has become an unquestioned practice and, while appearing simply a banal formality, may help to construct a social message about sex and gender, and the distinction between the two, that is then accepted by society to be true. Freya proposes that the emphasis on 'legal sex' maintained in society is disseminated into the institution of the family through gendered parenting, whereby parents adopt and sustain expectations of sex and gender.

A further commonality across several articles is an emphasis on critically broadening the perspectives through which we understand the construction of legal rules and norms. As discussed, Freya's article takes a Foucauldian Legal Feminist view to suggest we attend to the role of legal registration in helping to structure social beliefs, which is imparted through gendered parenting in the family. Emily Forbes, in her article on the use of 'alternative care models', an alternative to immigration detention, calls for an intersectional approach to the design and assessment of these models, in order to expand the understanding of how they are experienced by women and girls seeking asylum, and ensure that their needs are met. Alternative care models are interim measures applied when asylum-seekers enter a

country, avoiding the asylum-seekers being detained. Taking a case study of the Makeni Transit Centre in Zambia, an alternative care model, Emily develops a series of wellbeing indicators for children, and demonstrates that these indicators are met to varying degrees in the Zambian example. She advocates for attention to be paid to intersectionality — of gender, age, and migration status — when designing the alternatives to detention and in international human rights law more broadly. The research underpinning this article was conducted in collaboration with the International Detention Coalition, and was used in a research brief for the Thai Government concerning alternatives to immigration detention in relation to children and families. This is a testament to the valuable research and impact that is conducted by staff and students in the Centre for Applied Human Rights, and we are very pleased to be able to publish this work in the Review.

Continuing the emphasis on broadening the gaze through which we view the production of law and legal norms, we see recognition of how the construction of the judicial role in its current form may affect and narrow the results that it produces. This takes place at a systemic level — James Garrity shows how the construction of the Youth Justice System, without the therapeutic considerations which a problem-solving court could provide, has accordingly been ill-suited to encouraging young people along prosocial pathways desisting from crime. It also takes place at the internal level, with Ed Clothier discussing the injunctions pursued against Insulate Britain protestors and demonstrating how an environmentally conscious judge may have identified sources of indeterminacy in legal doctrine and, using the same reasoning in the case, decided in favour of the protestors and nudged the law in their favour. Both arguments demonstrate that, by widening our gaze, whether to incorporate new types of courts with different core aims, or to consider how different values in judging might affect judicial approaches, different results can accordingly be delivered. Whether such change is desirable is, of course, a matter of

debate, but these articles suggest that it is possible to rethink commonly accepted but narrow paths.

Ed's article differs from our other offerings in that, rather than starting life as a dissertation, it was selected as a winning piece in the York Law Review's annual competition process. The competition is a feature of the Law Review which enables students to write interesting, shorter pieces specifically for the journal, providing a perspective on recent developments in an area of law of their choice. On that metric, Ed's article certainly meets the brief. The approach of the legal system towards the human right to protest, while rarely too far from public view, has been firmly in the news cycle in recent months. In January, a Bristol jury acquitted the so-called 'Colston Four' on criminal damage charges, following the toppling of the statue of 1600s slave-owner Edward Colston, as part of the Black Lives Matter protests in June 2020. In March, the High Court ruled in the *Leigh and others* judicial review that the Metropolitan Police's conduct in preventing a vigil being organised following the death of Sarah Everard in 2021 was in breach of the claimants' right to protest. Members of Extinction Rebellion are regularly arrested for their protest actions around climate change. Ed's article focuses on the injunctions pursued by National Highways against Insulate Britain protestors. Ed explores how indeterminacy in the law can be applied with considerable judicial discretion, even in supposedly 'easy cases', and that this can be used to direct the law in a particular ethical direction. This exploration of judicial values and discretion may be challenging to those who insist, perhaps unrealistically, upon a sharp divide between the realms of legal doctrine and political or value-led decisions, but the role of values in judicial decision-making is worth taking seriously.

In bringing together this selection of articles in their current form, a number of thanks are due. First, I personally owe many thanks to the rest of the Review's student editorial team. All but two of the team — myself and Megan Hurcombe — were new to the role this year, and so

we needed to hit the ground running building a new dynamic and discerning which methods would enable us to work best, while engaging quickly with the process of reviewing articles. The team has organised effectively through the now-familiar pandemic-era communication of regular Zoom meetings, supplemented by WhatsApp updates. They have proven adaptable, generous, and collegiate, and I am very grateful to have coordinated the team for the year.

I would also like to extend gratitude to our copyeditor, Carol Stephenson, for her willingness to support the journal and for her flexibility as we have organised the copyediting process — it has been very much appreciated. The professional support team within the Law School, in particular Jackie Richmond and Louise Stokes, have provided invaluable practical assistance on various tasks such as contacting authors, advertising positions within the team, and distributing copies of the journal. A last note of thanks must go to each member of the Review's Editorial Board. Thanks go to Martin Philip for continued support with matters relating to publication, indexing, and distribution. After an excellent two years as the journal's first Editor-in-Chief, Carl Makin has continued work on the Review behind-the-scenes as the 'Outgoing Editor-in-Chief', for which I am grateful. Finally, many thanks are due to the Review's joint Academic Liaisons, Professor Caroline Hunter and Dr Jed Meers, both have been very supportive, finding time to provide assistance with reviews, offering helpful advice, and giving personal encouragement which has been much appreciated. I very much hope that you enjoy reading the selection of articles in this volume.