

## Book Review

Katharina Pistor, *Law in the Time of COVID-19*, New York: Columbia Law School, 2020, pp. 240 (free e-book, <https://scholarship.law.columbia.edu/books/240>)

Reviewed by Jessie Wallace Burchfield

On January 21, 2020, the World Health Organization (WHO) issued its first official situation report on the novel coronavirus 2019-nCoV, believed to have originated in Wuhan in the Hubei Province of China in December 2019.<sup>1</sup> On January 20, 2020, there were 282 confirmed cases in four countries.<sup>2</sup> By March 11, 2020, the WHO director-general, noting “alarming levels of spread and severity” and “alarming levels of inaction,” categorized COVID-19 as a pandemic.<sup>3</sup> Globally, there were 118,319 confirmed cases and 4292 deaths.<sup>4</sup> A group of faculty at Columbia Law School, joined by a few colleagues from other schools and by Columbia Law students, decided to publish an e-book “identif[ying] critical legal issues . . . offer[ing] fresh perspectives for thinking about these issues, and provid[ing] guidance to legislatures and policy makers about the legal challenges ahead” (xi). One month later, they published *Law in the Time of COVID-19* (ix).

According to *The New York Times*, as of July 31, 2020, the United States had seen more than 4.5 million cases of COVID-19, and our nation had suffered at least 153,700 deaths.<sup>5</sup> Myriad legal issues continue to arise, and this e-book is a valuable tool for many of those areas.

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1. *Novel Coronavirus (2019-nCoV), Situation Report-1*, at 1, WORLD HEALTH ORG. (Jan. 21, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10_4). Cases of pneumonia of unknown cause were first reported to the WHO China Office on December 31, 2019. *Id.* Chinese authorities isolated and identified the novel coronavirus on January 7, 2020, and first shared the genetic sequence with other countries on January 12, 2020. *Id.* By January 20, 2020, Thailand, Japan, and the Republic of Korea had all reported confirmed cases of 2019-nCoV. *Id.*
2. *Id.*
3. *Coronavirus Disease 2019 (COVID-19), Situation Report-51*, at 1, WORLD HEALTH ORG. (Mar. 11, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57\\_10](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10).
4. *Id.*
5. *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES (July 31, 2020, 9:51 PM EST), <https://>

The sixteen chapters of this extremely timely work are compiled in four topical sections, “Human Rights Under Strain,” “Public Life and Social Welfare,” “Private Life,” and “The Economy Under Lockdown.” There are also four appendices rich with links to further information. Appendix 1 compiles links to legal alerts from Top Twenty law firms and blog posts from the Center for Progressive Reform. Appendix 2 has links to New York-specific COVID-19 legal resources. Appendix 3 provides links to rules governing medical labs running COVID-19 tests. Appendix 4 lists links to additional resources arranged by the topical sections of the book.

While it would be impossible to address each chapter in-depth, this review will provide short descriptions of each and further examine select chapters from each broad area.

### Human Rights Under Strain

The first three chapters of the book address the rights of prisoners and others in the criminal legal system as well as the impact of COVID-19 on immigration issues.

“COVID-19 and Prisoners’ Rights” gives an overview of the pandemic issues in jails and prisons, noting that incarcerated persons are at heightened risk of contracting and spreading COVID-19 due to crowding and lack of sanitation supplies (2) and reporting that the transmission rate among detainees in New York City jails was eight times that of the general New York City population (2), linking to a page maintained by The Legal Aid Society.<sup>6</sup> Spread of COVID-19 in correctional facilities is a nationwide problem; an April 2020 report from the Centers for Disease Control and Prevention found that eighty-six percent of reporting jurisdictions had at least one confirmed COVID-19 case.<sup>7</sup> As of April 21, 2020, cases among incarcerated and detained individuals totaled 4893, with eighty-eight deaths; cases among staff members totaled 2778, with fifteen deaths.<sup>8</sup> As of July 31, 2020, more than 100,000 people had been infected in American jails and prisons, and at least 802 inmates and staff members had died.<sup>9</sup> Thus, the potential avenues of relief outlined in this chapter are very important.

The chapter discusses the impact of COVID-19 in the context of a prisoner’s constitutional right to be free from cruel and unusual punishment under the

[www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html](http://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html).

6. *Pandemic in Prison*, THE LEGAL AID SOC’Y, <https://legaidnyc.org/pandemicinprison/> (last visited July 31, 2020). As of July 24, 2020, the infection rate for NYC Dept. of Corrections staff and detainees was 4.26 times that of the general population of New York City., ANALYSIS OF COVID-19 INFECTION RATE IN NYC JAILS, THE LEGAL AID SOC’Y (July 24, 2020), [https://legalaidnyc.org/wp-content/uploads/2020/07/7\\_24\\_-\\_Analysis-of-COVID-19-Infection-Rate-in-NYC-Jails-1.pdf](https://legalaidnyc.org/wp-content/uploads/2020/07/7_24_-_Analysis-of-COVID-19-Infection-Rate-in-NYC-Jails-1.pdf).

7. Wallace M. et al., *COVID-19 in Correctional and Detention Facilities—United States, February–April 2020*, 69(19) MORBIDITY & MORTALITY WKLY. REP. (MMWR) 587 (2020), <http://dx.doi.org/10.15585/mmwr.mm6919e1>.

8. *Id.*

9. *Coronavirus in the U.S.*, *supra* note 5.

Eighth Amendment, which allows prisoners to challenge their conditions of confinement (3). To obtain relief on a conditions of confinement claim, prisoners must satisfy two prongs: first, an objective element—that the alleged “risk of . . . damage to . . . health” was “sufficiently serious” and second, a subjective element—“that prison officials have a ‘sufficiently culpable state of mind’” (3).<sup>10</sup> In prison conditions cases, “deliberate indifference to inmate health or safety” meets the second prong.<sup>11</sup>

The authors also discuss conditions of confinement claims for pretrial detainees, which are governed by the Due Process Clause of the Fourteenth Amendment rather than the Cruel and Unusual Punishments Clause of the Eighth Amendment (9).<sup>12</sup> Importantly, the “state of mind” prong measured subjectively for prisoners is measured objectively for detainees (9–10).<sup>13</sup> A recent Eleventh Circuit case<sup>14</sup> demonstrates that this is still a high bar. The district court had granted a preliminary injunction to a putative class of pretrial detainees at Metro West Detention Center in Miami, Florida, holding that plaintiffs had shown a substantial likelihood of success on the merits of their conditions of confinement claim.<sup>15</sup> The judge noted the dramatic increase in COVID-19 cases despite precautions taken by the defendants: “Also unrebutted is the fact that over the brief course of this litigation, which began April 5, 2020, the rate of inmate infections has increased dramatically—inmate infections at Metro West have increased by approximately 994% so far this month.”<sup>16</sup> When vacating and remanding, the Eleventh Circuit cited *Farmer*: “[P]rison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, *even if the harm ultimately was not averted.*”<sup>17</sup>

The chapter discusses the requirements of the Prison Litigation Reform Act<sup>18</sup> and the prevailing Supreme Court case on prisoner release,<sup>19</sup> noting that release is typically a last resort in medical risk cases (10). It also notes that release from custody is not a likely remedy in habeas proceedings (13). Compassionate release under 18 U.S.C. § 3852 is a potential remedy for federal prisoners.

10. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citations omitted).

11. *Id.* (citations omitted).

12. The Due Process Clause of the Fourteenth Amendment applies to state detainees; federal detainees are protected by the Due Process Clause of the Fifth Amendment. *United States v. Martin*, 447 F. Supp. 3d 399, 402 (D. Md. 2020).

13. *Darnell v. Pineiro*, 849 F.3d 17, 35 (2nd Cir. 2017).

14. *Swain v. Junior*, 961 F.3d 1276 (11th Cir. 2020).

15. *Swain v. Junior*, 2020 WL 2078580 at \*18 (S.D. Fla., 2020). However, the court found the plaintiffs were not likely to succeed on their habeas claim. *Id.* at \*20.

16. *Id.* at \*15.

17. *Swain*, 961 F.3d 1276 at 1287 (citations omitted).

18. 18 U.S.C. § 3626 *et seq.*

19. *Brown v. Plata*, 563 U.S. 493 (2011).

The authors cite several courts that have used this provision to order prisons to release inmates who are at high risk of death or serious illness should they contract COVID-19 (14).<sup>20</sup>

“Linked Fate: Justice and the Criminal Legal System During the COVID-19 Pandemic” is an essay written as a companion to a broader report, which is linked from the e-book.<sup>21</sup> The forty-eight-page report is “a guide to information and resources related to COVID-19 about (1) release from incarceration, (2) health, safety, and education issues in and after incarceration, (3) benefits and the social safety net in the community, and (4) domestic violence.”<sup>22</sup> While specific legal and social resources highlighted in the report focus on New York City, the issues raised have broad applicability. An important takeaway: “[E]fforts to support the community affected by incarceration ha[ve] to extend beyond the remedy of release. People coming home require[] a place to live, health and mental health resources, means to support themselves, and protection from domestic violence” (20).

*Immigration in the Time of COVID-19* provides a snapshot as of April 8, 2020, briefly discussing the three federal agencies making and revising immigration policy, the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Department of State (DOS) (27). The chapter gives good basic information about the role played by each agency and their relevant subdivisions, such as Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) under DHS. The author urges these agencies to make decisions prioritizing the health and safety of all involved in immigration proceedings. The footnotes provide some useful links, including one to information about a complaint filed by the American Immigration Lawyers Association (AILA) against USCIS.<sup>23</sup>

### Public Life and Social Welfare

The five chapters in this section address election law, social goods, public health law, child welfare, and environmental law. Brief descriptions of each chapter follow.

“COVID-19 and the Law: Elections” describes some of the initial consequences experienced by various jurisdictions during primary elections, discussing the Ohio and Wisconsin primaries in some detail (36–42) and looks ahead to potential solutions for the general election in November 2020 if COVID-19 remains a

20. For a compilation of federal cases on requests for release from custody due to pandemic concerns, see Fern L. Kletter, *COVID-19 Related Litigation: Effect of Pandemic on Release from Federal Custody*, 54 A.L.R. FED. 3D Art. 1 (2020).

21. Susan Sturm et al., *Covid-19: Legal And Social Resources For People Affected By Incarceration* (Apr. 2020), <https://change-center.law.columbia.edu/sites/default/files/content/docs/COVID19%20-%20CISC%20Report.pdf>.

22. *Id.* at 4.

23. American Immigration Lawyers Association, AILA FILES COMPLAINT SEEKING MAINTENANCE OF STATUS, EXTENDED DEADLINES FROM USCIS, <https://www.aila.org/infonet/aila-files-complaint-seeking-maintenance-of-status>.

threat (42-47). The author states unequivocally, “If the pandemic persists into the fall, it will be impossible for the November elections to be held in a fair and safe manner unless early in-person voting and especially voting-by-mail are available to all Americans” (43), and outlines some of the legal changes and resource allocations that will be necessary.

“The New ‘Essential’: Rethinking Social Goods in the Wake of COVID-19” examines pandemic effects on the country’s social insurance systems and infrastructure. Throughout the chapter, the author links to reports and recommendations from various nonprofits and public interest organizations, allowing a much deeper dive into the issues presented.<sup>24</sup> She also links to relevant primary sources such as the text of the CARES Act<sup>25</sup> and provides links to many other additional resources at the end of the chapter.

“Public Health Law Tools: A Brief Guide” gives an overview of U.S. domestic public health law and discusses measures available to state and federal authorities seeking to protect public health. The author explains the allocation of powers between state and federal governments in protecting public health and provides links to relevant sources in the text of the chapter (60-67).<sup>26</sup> A topical list of links to additional resources is provided at the end.

“Child Welfare and COVID-19: An Unexpected Opportunity for Systemic Change” opens with a description of an online meme circulated early in the pandemic: a young mother peacefully working from home, her small child in the background, gagged, bound, and duct-taped to the floor (71). The author uses the “joke” to drive home the reality that only certain families enjoy the luxury of posting such jokes, while far too many families eke out a harsh existence in which every choice<sup>27</sup> may have a negative consequence like getting investigated and potentially being caught up in the child welfare system. In the remainder of the chapter, she discusses a proposed reexamination of “Three R’s . . . : Reporting, Reasonable Efforts, and Reunification” (73-79), noting that a reduction in

24. For example, in her reference to weaknesses in the U.S. healthcare infrastructure, she links to an open letter to administration, legislators, and policymakers. Howard P. Forman et al., *Health Care Priorities for a COVID-19 Stimulus Bill: Recommendations to the Administration, Congress, and Other Federal, State and Local Leaders From Public Health, Medical, Policy and Legal Experts*, HEALTH AFFAIRS FOREFRONT (Mar. 12, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200312.363618/full/>.
25. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020).
26. See, for example, *Legal Authorities for Isolation and Quarantine*, CTDS. FOR DISEASE CONTROL AND PREVENTION (2021), <https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html>. A collated list of Federal Actions Related to the Coronavirus is provided at *NCSL Coronavirus (COVID-19) Resources for States*, NAT’L CONF. OF STATE LEGIS., <https://www.ncsl.org/research/health/ncsl-coronavirus-covid-19-resources.aspx> (last visited 7/1/2022).
27. For example, paying rent or paying for needed dental care; leaving an older child to watch a toddler while buying groceries or going to the laundry or risking being caught with no food or clean clothes; etc. (71).

unnecessary reporting<sup>28</sup> and investigations will disrupt fewer families and keep the most vulnerable children safer (74).

In her discussion of reasonable efforts (75-78), the author highlights the finding that child abuse and neglect strongly correlate with poverty and low income and recommends that financial assistance and services should be a high priority (75). She posits that some of the stopgap measures enacted during the pandemic might serve as a template for the future.

“Emergency Exemptions from Environmental Laws” examines laws that may be implicated by emergency responses to COVID-19. The national emergency declaration by President Trump on March 13, 2020,<sup>29</sup> invoked the Stafford Act,<sup>30</sup> which gives powers to the Federal Emergency Management Agency (FEMA) and also provides an exemption from the National Environmental Policy Act for “immediate response actions”<sup>31</sup> (82). Several states with strict environmental regulations also have emergency exemptions that may be interpreted broadly. The author cautions that even absent exemptions, enforcement of environmental regulations may be lax.

### Private Life

“Privacy and Pandemics” discusses two types of government data collection: (1) mass collection of nonanonymized cell phone location data revealing the location of surveilled community members (who are not criminal suspects) without their consent and (2) state-collected data, also nonanonymized, on an individual’s health or immunity status (89). Both those types of data collection raise serious privacy concerns, and neither could be implemented without amending existing U.S. laws and regulations or enacting new ones, but the author warns that governments may indeed seek to change those laws in the aftermath of the pandemic.

The chapter notes that government collection of “personally identifiable information” (PII) and “protected health information” (PHI) might be normalized and even seen as desirable in the face of a pandemic, citing evidence indicating better outcomes for countries like South Korea, Singapore, and Hong Kong, where the government quickly identified and isolated infected persons and did rigorous contact tracing (90). The author also references reports of countries that have used “surveillance-camera footage, smartphone location data and

28. The author contends that too much reporting stems from “[h]unches, vague suspicions, better-safe-than-sorry beliefs, passing the buck to someone else instead of figuring out how to be helpful, anonymous calls and instances of malicious false reporting” (74).

29. Letter to Federal Agencies on an Emergency Determination for the Coronavirus Disease 2019 (COVID-19) Pandemic Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 2020 DAILY COMP. PRES. DOC. 159 (Mar. 13, 2020).

30. Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended, 42 U.S.C. § 5121 *et seq.*

31. 42 U.S.C. § 5159.



credit card purchase records to help trace the recent movements of coronavirus patients and establish virus transmission chains” (90).<sup>32</sup>

Arguably, there is tremendous potential benefit in using nonanonymized cell phone location data to monitor and track the movement of infected and potentially infected individuals during a global pandemic. But as the author points out, prevailing U.S. law deems that data protected by the Fourth Amendment (91).<sup>33</sup> She rightly notes that any governmental intrusions that become permissible during a pandemic may not be easy to disallow once the crisis has passed, referencing the FISA courts as an example. (92).

In the context of the collection of PHI by government entities, the author warns of a “slippery slope” (COVID-19 is not the only contagious virus and likely won’t be the only pandemic) and urges that lawmakers, public health experts, and privacy advocates work together to help meet the next pandemic while balancing the sometimes competing interests of individual privacy protection and public health (97). She rightly concludes that “[t]hese issues will not be going away” (97). Indeed, with the pervasiveness of technology in everyday life,<sup>34</sup> these issues will likely become more complex. The work to fashion equitable solutions must begin now.

“COVID-19 and LGBT Rights” begins with a stark reminder that the LGBT community is vulnerable even absent a global pandemic. The chapter discusses recent federal withdrawal of antidiscrimination protections for LGBT individuals (100-03),<sup>35</sup> heightened risks and vulnerabilities of LGBT individuals when seeking healthcare (103-06), issues of familial recognition in the context of COVID-19 (106-07), employment discrimination against LGBT individuals (107), and segments of the LGBT population that are particularly at risk (108).<sup>36</sup> The chapter ends on a hopeful note: Though there are still many challenges, the LGBT community has legal protections, resources, and support systems

32. Citing David M. Halbfinger et al., *To Track Coronavirus, Israel Moves to Tap Secret Trove of Cellphone Data*, N.Y. TIMES (Mar. 16, 2020).

33. Citing *Carpenter v. U.S.*, 138 S. Ct. 2206 (2018). In *Carpenter*, the Justices emphasize the astonishing breadth of the surveillance power available via cell phone location tracking, noting: “the time-stamped data provides an intimate window into a person’s life, revealing not only his particular movements, but through them his ‘familial, political, professional, religious, and sexual associations.’” *Id.* at 2217. And “because location information is continually logged for all of the 400 million devices in the United States—not just those belonging to persons who might happen to come under investigation—this newfound tracking capacity runs against everyone.” *Id.* at 2218.

34. Stop and consider the many devices or applications you use that possibly collect/store/transmit data about you: Smartphone? Tablet? Smart TV? Smartwatch? Digital assistant (Alexa, Echo)? Internet browsers? Facebook? Customer loyalty apps? Reward programs? Online gaming?

35. See Notice of Nonenforcement of Health and Human Services Grants Regulation, 84 Fed. Reg. 63809-01 (Nov. 19, 2019) (“Notice of Nonenforcement”), <https://www.federalregister.gov/d/2019-24384>.

36. These include LGBT youths and elders, transgender individuals, and LGBTQ immigrants. (108).

far greater than those that existed at the onset of the AIDS epidemic four decades ago.

### **The Economy Under Lock-down**

The six chapters in this section address small business concerns, bankruptcy, force majeure, a comparative examination of COVID-19 impacts on commercial contracts, dispute resolution in a pandemic, and contactless payment.

“How to Help Small Businesses Survive COVID-19” acknowledges the critical importance of grants like those provided by the Paycheck Protection Program<sup>37</sup> but urges that much more must be done to assist small businesses struggling to stay afloat during the pandemic. It briefly examines past government attempts to stabilize the economy (113-14) and makes recommendations for using existing “intermediary structures” such as banks to aid small businesses, while describing potential pitfalls (115-17). The chapter also discusses the growing importance of online lenders to small businesses, and the problems faced by these nonbank finance companies that are funded by the capital markets. The authors propose some avenues for the government to assist small businesses but note that “every path forward is fraught” (123).

“Bankruptcy’s Role in the COVID-19 Crisis” provides an overview of how bankruptcy works at both the consumer and corporate levels and proposes a framework for effectively deploying this tool to help consumers, small businesses, and corporations survive the pandemic. The authors give succinct definitions of each type of bankruptcy: Chapter 7 liquidation, available to businesses and individuals; Chapter 11 reorganization, primarily used by corporations; and Chapter 13 repayment plans, available to individuals with regular income (129).

The authors posit that the automatic stay triggered by any bankruptcy filing is likely the most important benefit of filing for bankruptcy and might be enough by itself during a temporary crisis, at least for some debtors. The automatic stay gives individual debtors time to assess their financial situation, negotiate with their creditors, and either liquidate assets under Chapter 7 or propose a Chapter 13 payment plan. The automatic stay in a Chapter 11 proceeding allows time to determine the value of the business, calculate claim amounts, restructure, and propose a reorganization plan (129).

The authors compare the pros and cons of Chapter 7 versus Chapter 13 for consumers: Chapter 7 is fairly speedy, but the debtor loses all assets above certain state and federal thresholds. Debtors in Chapter 13 can retain certain assets, instead giving up disposable income while paying off creditors. However, debtors who are unable to make their Chapter 13 payments have their cases dismissed or converted to Chapter 7 (129-30).

For businesses, the authors equate Chapter 7 with a funeral while Chapter 11 at least offers the ailing enterprise a chance at new life. They give several examples of large corporations that have successfully used Chapter 11, and

37. *Paycheck Protection Program*, U.S. SMALL BUSINESS ADMIN., <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program> (last visited Aug. 2, 2020).



they highlight the government-supported restructuring of General Motors and Chrysler as “win-win” situations, an investment of taxpayer money to save jobs and thus stabilize the economy while also saving the companies. However, they note that Chapter 11 has its problems as well—for example, lower wages for the workers of a business in Chapter 11 after restructuring (131–32). They also note that while Chapter 11 is a good option for large corporations, it is often a poor fit for small businesses (133).

The authors discuss the limitations of bankruptcy law to help in the current crisis, identifying three weaknesses in the system. First, many who might benefit from bankruptcy do not seek this relief. In addition to the costs of filing, there is a perceived societal stigma and a very real “flag” on a filer’s credit report. Small businesses may also avoid filing because bankruptcy wipes out owner and shareholder rights. Second, the discharge of old debts does nothing to help the problem of having no or low current income to meet expenses. The third weakness concerns the capacity of the bankruptcy courts to adjudicate a flood of cases. Because of these weaknesses, the authors conclude that bankruptcy should not be the primary vehicle to help consumers and small businesses. They recommend nonbankruptcy solutions instead, specifically encouraging Congress to enact policies that create an automatic stay for consumers and small businesses under certain circumstances and offering the Servicemembers Civil Relief Act of 2003<sup>38</sup> as an example (134–37).

The authors say they believe that Chapter 11 bankruptcy is a desirable remedy for large corporations in distress, particularly those they describe as “zombie companies” that have repeatedly financed debt. By requiring these companies to file Chapter 11 to receive government assistance, the costs—especially those costs not related to COVID-19 distress—are shouldered by the investors and not taxpayers (137–38). They conclude by urging lawmakers to optimize and openly encourage use of Chapter 11 for large corporations in distress, and acknowledge that while bankruptcy is not the optimal remedy for consumers and small businesses, it may be necessary if the crisis continues long-term. They urge Congress to expand the capacity of the bankruptcy courts in light of the anticipated flood of cases (138–39).

“COVID-19 as a Force Majeure in Corporate Transactions” discusses force majeure or “act of God” provisions in mergers and acquisitions, examining a dataset spanning transactions from 2003 through the end of 2020. The authors analyze the language of “material adverse change/material adverse effect” (MAE) provisions in these deals and discuss whether and when COVID-19 might give a buyer the right to walk away.

The following chapter, “A Comparative Perspective on Commercial Contracts and the Impact of COVID-19—Change of Circumstances, Force Majeure, or What?” examines various impact commercial contracts, with an international focus. The author briefly discusses force majeure clauses, the doctrine of frustration, “impediment beyond control” (CISG Art. 79 and UNIDROIT Principles

38. 50 U.S.C. § 3901 *et seq.*

Art. 7.1.7). He notes that in many instances existing contract law mechanisms may address the impact of COVID-19 on current agreements, but also posits that the pandemic may provide a springboard for reexamining contract law regimes to address major unforeseeable events.

“Dispute Resolution in Pandemic Circumstances” discusses litigation and arbitration proceedings in the wake of the pandemic, noting that litigation has traditionally assumed or even required in-person proceedings for at least some phases, while videoconferencing is already widely used for arbitration hearings. The author discusses some of the challenges of online versus in-person, but also notes many aspects of in-person hearings can be replicated online and predicts that the present crisis will be a catalyst for long-term change.

In “Driver for Contactless Payments,” the author discusses the policy, legal, and institutional arrangements for payment via cash, check, card, or other methods and how concerns about the transmission of COVID-19 will impact those arrangements. He notes that several jurisdictions have laws obligating businesses to accept cash payment, to prevent discrimination against the unbanked, but believes those laws should be repealed because of the transmission risk posed by cash transactions. He recommends a public-awareness campaign about the benefits of card-based payments over cash, emphasizing the public health implications of cash transactions. He notes that there is still transmission risk with card transactions and advocates widespread adoption of contactless payment via smartphone-based applications.

### **Conclusion**

As illustrated by the variety of issues addressed in this e-book, COVID-19 has impacted the daily lives and work of almost the entire world, especially vulnerable populations. “Unprecedented” may be the most-used adjective of 2020, but this certainly is an unprecedented time. The authors are to be commended for producing this excellent reference tool and making it freely available. Is every issue addressed in detail? Certainly not, but in the important topical areas covered the authors provide a solid baseline from which scholars and advocates can begin.

When it was first published, I questioned whether a work produced so early in the pandemic experience would retain its value. Throughout the e-book and in the appendices, the authors provide numerous links to resources, many of which are frequently updated, mitigating this concern.