

ENGAGING WITH LAW'S MENSTRUAL MOMENT¹

1.0 INTRODUCTION

Menstruation is a hot topic. *Period. End of Sentence.*, a film about production of menstrual pads in India, won an Oscar for best short documentary at the 2019 Academy Awards.² The period emoji (a drop of blood) was introduced in 2019 by the Unicode Consortium, the body responsible for deciding on new emoji symbols.³ Both are examples of growing cultural acceptance that menstruation should be acknowledged rather than hidden. These shifting social attitudes are reaching the market which has responded with socially conscious advertisements and new products such as period underwear, cups and more sustainable disposable products. The recent Libra advertisement, showing menstrual blood for the first time on an Australian television advertisement, led to hundreds of objections to this purportedly 'adult content', since dismissed by the advertising standards authority.⁴ These developments follow significant feminist activism to challenge stigma and silence attached to menstruation and to address the disadvantages accompanying this gendered bodily experience.⁵

This article gives specific attention to the role of law in recent developments related to menstruation. The general 'menstrual moment' of the last few years has taken a legal turn with growing resort to the law by activists and policy makers around the world to entrench social and political gains. Recent activism has taken the form of campaigns in a number of countries to remove 'tampon taxes'.⁶ In Australia a long-running campaign led to reform of legislation to facilitate the inclusion of menstrual products on the list of General Sales Tax exempt items

¹ Linda Steele, Senior Lecturer, Faculty of Law, University of Technology; Honorary Senior Fellow, Faculty of Law, Humanities and the Arts, University of Wollongong; linda.steele@uts.edu.au; Beth Goldblatt, Professor, University of Technology Sydney; Honorary Professor, School of Law, University of the Witwatersrand, beth.goldblatt@uts.edu.au.

² *The Pad Project* (online) <<https://www.thepadproject.org/period-end-of-sentence/>> (last accessed 30 April 2020).

³ See the proposal for this new emoji: <<https://www.unicode.org/L2/L2018/18092-blood-drop-emoji.pdf>> (last accessed 30 April 2020).

⁴ Mary Lloyd, 'Depicting Blood During Libra Commercial Does Not Breach Ethics Code, Watchdog Rules' *ABC News* (online) 18 September 2019 <<https://www.abc.net.au/news/2019-09-18/as-standards-rule-on-period-blood-after-complaints-over-libra-ad/11521530>> (last accessed 30 April 2020).

⁵ Current activism follows earlier challenges to product safety and a range of other issues spanning second and third wave feminism as described and analysed in Chris Bobel, *New Blood: Third Wave Feminism and the Politics of Menstruation* (Rutgers University Press 2010).

⁶ Bridget J Crawford and Carla Spivack, 'Tampon Taxes, Discrimination and Human Rights' (2017) *Wisconsin Law Review* 491.

in 2018.⁷ There has been a related focus in some western countries such as the United States (US) and the United Kingdom (UK) on the issue of ‘period poverty’ leading to demands for law reform to compel government provision of menstrual products in schools, prisons and other government facilities. An increasing number of countries in the Global South including India, Kenya and Uganda have introduced policies to address menstruation in schools and poor communities. These policies are related to the focus by development agencies on what is termed ‘menstrual hygiene management’ (MHM) as a response to inadequate access to education by girls.⁸ This language has appeared in United Nations’ (UN) documents including in the agreed conclusions of the 2019 Commission on the Status of Women.⁹ Nepal has turned to criminal law in an attempt to end harmful *Chhaupadi* (menstrual huts) through punishing individuals participating in these practices. Workplace policy around menstruation – notably menstrual leave in the corporate sector – is a growing topic of debate leading to changes in some industries.¹⁰ Recent judicial decisions across a number of diverse jurisdictions – including Colombia, India, and the United States of America – have considered constitutional rights in relation to menstruation.

There is a nascent legal scholarship, particularly in the United States of America, that is offering a rich commentary on the potential and actual impacts of legal developments within the menstrual moment as they unfold.¹¹ However, the turn to law per se over other possible strategies and the particular legal methods and areas of law engaged have not been adequately

⁷ Parliament of Australia, *Removing GST on Feminine Hygiene Products* (online) 29 November 2018 <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2018/November/Removing_GST_on_feminine_hygiene_products> (last accessed 30 April 2020).

⁸ For a critical discussion of the MHM approach see Chris Bobel, *The Managed Body: Developing Girls & Menstrual Health in the Global South* (Palgrave Macmillan 2019) (‘The Managed Body’).

⁹ *Social Protection Systems, Access to Public Services and Sustainable Infrastructure for Gender Equality and the Empowerment of Women and Girls: Agreed Conclusions*, 63rd sess, Agenda Item 3(a)(i), UN Doc E/CN.6/2019/L.3, 25 March 2019 at 19.

¹⁰ Caitlin Fitzsimmons, ‘Menstrual Leave the New “Woke” Workplace Right’ *Sydney Morning Herald* (online) 18 August 2019 <<https://www.smh.com.au/business/workplace/menstrual-leave-the-new-woke-workplace-right-20190815-p52hlc.html>> (last accessed 30 April 2020); Menstrual Matters, *Menstrual Leave* (online) <<https://www.menstrual-matters.com/category/leave/>> (last accessed 30 April 2020).

¹¹ See Jennifer Weiss-Wolf, *Periods Gone Public* (Arcade Publishing 2017); Bridget J. Crawford, Margaret E. Johnson, Marcy L. Karin, Laura Strausfeld & Emily Gold Waldman (2020) ‘The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism’ *Michigan Journal of Gender & Law* 26, 341; Margaret E. Johnson (2019) ‘Menstrual Justice’ *UC Davis Law Review* 53:1, 1-79; Margaret E. Johnson, Emily Gold Waldman and Bridget J. Crawford (2020) ‘Title IX and Menstruation’ *Harvard Journal of Law and Gender*, Forthcoming; Abigail Durkin, ‘Profitable Menstruation: How the Cost of Feminine Hygiene Products is a Battle against Reproductive Justice’ (2017) 18 *The Georgetown Journal of Gender and the Law* 131; Crawford and Spivack above note 6; Elizabeth Montano, ‘The Bring Your Own Tampon Policy: Why Menstrual Hygiene Products Should Be Provided for Free in Restrooms’ (2018) 73 *University of Miami Law Review* 370; Inga Winkler and Virginia Roaf, ‘Taking the Bloody Linen out of the Closet: Menstrual Hygiene as a Priority for Achieving Gender Equality’ (2015) 21(1) *Cardozo Journal of Law and Gender* 1.

questioned or explored. Taking the legal turn in the menstrual moment as an entry point, this article considers some examples of recent legal developments across a range of jurisdictions. We apply critical menstruation scholarship to highlight possibilities, as well as complexities and limitations, associated with engaging law to respond to menstrual injustice. The article makes contributions in two ways by: (a) offering preliminary observations about menstruation-related legal change for lawyers, activists and scholars engaged in social justice struggles pertaining to menstruation; and (b) using menstruation as a lens through which to contribute to the broader feminist debates around the strategic use of law and choice of legal method. Ultimately, this article provides some foundations for a more sustained and comprehensive theoretical exploration of law, menstruation, embodiment and justice.

In Part 2.0 we draw out key concepts within critical menstruation studies to provide a lens with which to examine current legal developments related to menstruation. This informs our analysis of a set of cross-jurisdictional case studies dealing with law and menstruation. These case studies have been identified according to three themes: 1) Legislation providing access to free menstrual products in developed countries (Part 3.1). The examples of the USA and Scotland were chosen because of the advanced state of law reform on product provision in these jurisdictions; 2) Legislation and litigation addressing menstrual stigma (Part 3.2). Here the article focuses on the Indian Supreme Court decision regarding entry to the Sabarimala temple¹² and legislation outlawing menstrual huts in Nepal as notable efforts to counter stigma associated with menstruation. 3) Policies, legislation and litigation pertaining to menstruation in developing countries to address the needs of disadvantaged groups (Part 3.3). This section uses the examples of policy guidelines in South Africa which are broadly representative of similar measures elsewhere in Africa and Asia, and two recent decisions of the Colombian Constitutional Court addressing gendered disadvantage and homelessness as they relate to menstruation. In Part 4.0 we draw some conclusions from the case studies regarding the possibilities, limitations and contradictions that are becoming apparent in the legal turn with the aim of informing future engagement with menstruation, law and justice.

2.0 BRINGING A CRITICAL MENSTRUATION STUDIES LENS TO ENGAGEMENTS WITH LAW

¹² *Indian Young Lawyers Association & Others v The State of Kerala & Others*, Supreme Court of India, Writ Petition (Civil) No 373 of 2006, 28 September 2018
<https://sci.gov.in/supremecourt/2006/18956/18956_2006_Judgement_28-Sep-2018.pdf>.

This section highlights some of the central ideas arising from the newly-named field of critical menstruation studies which will inform the case study analysis that follows. Conventionally, menstruation is understood as a natural bodily process associated with people sexed as female. In seeking to complicate and disrupt this view, critical menstruation scholarship explores menstruation as a social, political and cultural phenomenon and in doing so highlights the role of menstruation in social injustice. Critical menstruation scholars ‘think beyond anatomy and biology’ to the broader political contexts in which menstruation is situated.¹³ As noted by Winkler, this body of scholarship demonstrates that ‘menstruation is so much more [than a normal biological process] for many people; in fact, it is *fundamental*. Menstruation unites the personal and the political, the intimate and the public, and the physiological and the socio-cultural.’¹⁴ Bobel describes critical menstruation studies as

a field that, from its beginning, has been a site where activists, artists, journalists, clinicians, and researchers have each contributed to its articulation and application. A field that, until recently, went largely unnamed. Similar to critical race studies or critical gender studies, *critical menstruation studies* is premised upon menstruation as a category of analysis: asking how systems of power and knowledge are built upon its understanding and, furthermore, who benefits from these social constructions. Critical menstruation studies—which some argue might be more aptly named critical *menstrual* studies, to capture the menstrual cycle across the life course, including, but not limited to, menstruation itself—is a coherent and multidimensional transdisciplinary subject of inquiry and advocacy, one that enables an exciting epistemological clarity that holds significant potential for knowledge production and social transformation.¹⁵

In emphasising the constructed and contingent meanings of menstruation, critical menstruation scholarship draws attention to the role of stigma both in societal understandings of menstruation and the socio-political and material experiences of menstruators. In particular, menstruation is equated with menstrual blood, which in turn is associated with dirtiness, impurity, disease, and irrationality and rationalises responses to menstruating bodies

¹³ Chris Bobel, ‘Introduction: Menstruation as Lens. Menstruation as Opportunity’, in Chris Bobel, Inga T Winkler, Breanne Fahs, Katie Ann Hasson, Elizabeth Arveda, Kissling, and Tomi-Ann Roberts (eds), *The Palgrave Handbook of Critical Menstruation Studies*, Palgrave Macmillan, 2020 1, 7.

¹⁴ Inga T Winkler, ‘Introduction: Menstruation as Fundamental’, in Chris Bobel, Inga T Winkler, Breanne Fahs, Katie Ann Hasson, Elizabeth Arveda, Kissling, and Tomi-Ann Roberts (eds), *The Palgrave Handbook of Critical Menstruation Studies*, Palgrave Macmillan, 2020 1, 1.

¹⁵ Chris Bobel, ‘Introduction: Menstruation as Lens. Menstruation as Opportunity’, above n 13, 5.

characterised by discrimination, exclusion and violence. In the words of Bobel: ‘menstrual stigma hurts’.¹⁶

Critical menstruation scholarship approaches menstruation as situated within power relations. As Winkler notes, ‘Menstruation is fundamental because it is ultimately about power relations—the power of the guard in the prison or staff in a homeless shelter to dispense or withhold menstrual products, the power of judges to authorize sterilizations, the power of parents and relatives to force young girls to marry, and the power of religious authorities to expect unflinching conformity with religious norms.’¹⁷ As intimated by Winkler’s quote, menstruators do not have a singular and homogenous experience of the social, political and cultural dynamics of menstruation. Critical menstruation scholarship highlights intersectionality and inequalities between those who menstruate, in at least three ways.

First, while menstruation is associated with individuals sexed as cis-female, women are not the only menstruators and not all women menstruate. For example, some critical menstruation scholarship notes the additional injustices trans and intersex people experience from failing to meet normative gendered ideas of the menstruating body and can also be excluded from efforts to address menstrual inequities facing cis-women and girls.¹⁸ In this way, the scholarship highlights menstruation as a vehicle for sex and gender normativity and ideals of embodiment.

Second, the social, political and cultural experiences of menstruation depend on multiple forces and dynamics of oppression and privilege such as heterosexism, ableism, racism, nativism and classism. For example, menstruators who are in prison or other institutions of confinement can experience lack of access to menstrual products as a source of carceral control and degradation¹⁹ and, individuals in these populations¹⁹ are more likely to be Indigenous, racialised, disabled or poor. Another example is that the focus on able-bodied menstruators overlooks the differing issues facing people with disabilities, including being subjected to sterilisation which

¹⁶Ibid, 6.

¹⁷Inga T Winkler, ‘Introduction: Menstruation as Fundamental’, above n 14, 6.

¹⁸Breanne Fahs *Out for Blood: Essays on Menstruation and Resistance*, (State University of New York Press, 2016) at 77-90; Sarah E. Frank, ‘Queering Menstruation: Trans and Non-Binary Identity and Body Politics’ (2020) *Sociological Inquiry* 1-34; Beth Goldblatt and Linda Steele (2019) ‘Bloody Unfair: Inequality Related to Menstruation – Considering the Role of Discrimination Law’ *Sydney Law Review* vol. 41, no. 3, pp. 293-325 (‘Bloody Unfair’).

¹⁹ Tomi-Ann Roberts, ‘Bleeding in Jail: Objectification, Self-Objectification and Menstrual Injustice’ in Chris Bobel, Inga T Winkler, Breanne Fahs, Katie Ann Hasson, Elizabeth Arveda, Kissling, and Tomi-Ann Roberts (eds), *The Palgrave Handbook of Critical Menstruation Studies*, Palgrave Macmillian, forthcoming; Goldblatt and Steele, ‘Bloody Unfair’ above note 18.

removes the capacity to menstruate.²⁰ A further line of analysis is provided by Park who traces eugenics logics in societal responses to menstruation and the menstrual ‘hygiene’ industry.²¹

Third, some critical menstruation scholarship situates menstruation in global dynamics of capitalism, colonialism, imperialism and globalisation. For example, the attention on girls’ menstruation in the field of development via the MHM movement is critiqued for its role in affirming western/white supremacy of developing nations through representations of and interventions in respect of women’s bodies. Critical menstrual scholarship also critiques the MHM movement for placing individual responsibility on girls to ‘manage’ their bodies rather than addressing the societal attitudes that produce shame and the structural causes of global poverty and inequality.²² A critical historical understanding challenges contemporary responses to menstruation based on technology, medicalisation and consumption;²³ and recognises the erasure by western worldviews of menstruation of Indigenous and racialised women’s knowledge, resistance and power as part of longer trajectories of imperial expansion and colonial occupation.²⁴ Some scholars have criticised the dominance of corporate interest in societal responses to menstruation, notably through the disposable products market and the way in which profit might be prioritised over women’s safety and health (as exemplified by toxic shock syndrome).²⁵ On a related note, another criticism is the focus on unsustainable products (such as disposable pads and tampons) that reinforce consumerism and environmental harm.²⁶

²⁰ Goldblatt and Steele, ‘Bloody Unfair’ above note 18; Inga Winkler and Virginia Roaf, above n 11; Margaret E Johnson above n 11; Ela Przybylo and Breanne Fahs, ‘Feels and Flows: On the Realness of Menstrual Pain and Crippling Menstrual Chronicity’ (2018) 30(1) *Feminist Formations* 206.

²¹ Shelley M Park, ‘From Sanitation to Liberation?: The Modern and Postmodern Marketing of Menstrual Products’ (1996) 30(2) *Journal of Popular Culture* 149

²² Bobel, *The Managed Body* above note 8; Shenila Khoja-Moolji, ‘Death by Benevolence: Third World Girls and the Contemporary Politics of Humanitarianism’ (2019) *Feminist Theory* 1; Shenila Khoja-Moolji and Esther O Ohito, ‘Containing the Leakiness of Impure Inhumans: Bleeding Third-World Bodies and the Confining Politics of Menstrual Hygiene Campaigns’ in Susan Talburt (ed) *Youth Sexualities: Public Feelings and Contemporary Politics* (ABC-CLIO 2018) vol 1 at 107.

²³ Elizabeth A Kissling, *Capitalizing on the Curse: The Business of Menstruation* (Lynne Rienner 2006) (‘Capitalizing on the Curse’).

²⁴ Shenila Khoja-Moolji, above n 22.

²⁵ Nancy King Reame, ‘Toxic Shock Syndrome and Tampons: The Birth of a Movement and a Research “Vagenda”’ in Chris Bobel, Inga T Winkler, Breanne Fahs, Katie Ann Hasson, Elizabeth Arveda, Kissling, and Tomi-Ann Roberts (eds), *The Palgrave Handbook of Critical Menstruation Studies*, Palgrave Macmillan, 2020, forthcoming; Kissling, ‘Capitalizing on the Curse’, above n 23.

²⁶ Bobel, *The Managed Body* above note 8 at 272-5. However, there is the risk that the discussion about the excessive ‘waste’ involved in sanitary products can track onto longstanding discourses about the dirtiness of menstruation and menstrual blood, in turn causing people to ‘feel(ing) even more shame, guilt, and gendered responsibility as a menstruating human being’: Sally King, ‘Can Periods Save the Planet?’ *Menstrual Matters*

Critical menstruation scholarship also challenges some of the purported strategies to address these injustices and oppression outlined above. Some scholars problematise the focus on products by pointing to the centrality of capitalism to the framing of menstrual empowerment in terms of products.²⁷ Crawford refers to this as ‘menstrual capitalism’, that is, ‘the marketing and selling of menstrual hygiene products by means of feminist messages that attempt to create a public-relations “halo effect” for companies that are, at their core, commercial enterprises that seek to profit from women’s bodies’.²⁸ Another criticism is that responses to menstruation focused on access to menstrual products sanitise women’s bodies rather than acknowledge their social realities or tackle the root causes of stigma and shame. For example, Bobel and Fahs argue that: ‘hypervisibility of menstrual products (often white, clean, and increasingly, environmentally-friendly) has ultimately (and ironically) moved menstruation back into hiding and, more importantly, largely failed to examine the bedrock of menstrual stigma’.²⁹ Zivi problematises use of human rights (and specifically the right to dignity) as a political frame, explaining that while dignity can be invoked to ‘contest period stigma and expose structural inequities. ... This challenge is not, however, without ambiguity’ and ‘may unwittingly risk reinforcing conceptions of properly public embodiment that can undermine the fight against period stigma and for menstrual human rights.’³⁰

In envisioning liberatory or transformative alternatives, Bobel and Fahs propose ‘moving away from the hazardous politics of respectability and its product-focused framework’ to ‘a new vision of menstrual activism that prioritizes what we term “radical menstrual embodiment”’. They describe ‘radical menstrual embodiment’ as ‘an uncompromising feminist approach to combatting menstrual stigma and forging an invigorated connection between menstruation and fertility, sexuality, and gender’ that ‘seeks to build bridges with other movements for social justice by making explicit the shared goal of promoting agency and liberation from oppressive social norms’.³¹

(online) 7 March 2017 <https://www.menstrual-matters.com/blog/enviromenstrual_matters/> (last accessed 30 April 2020).

²⁷ Elizabeth A Kissling, *Capitalizing on the Curse: The Business of Menstruation* (Lynne Rienner 2006).

²⁸ Bridget Crawford, ‘Against Menstrual Capitalism’, *Feminist Law Professors*, <https://www.feministlawprofessors.com/2018/06/against-menstrual-capitalism/>, 25 June 2018 (last accessed 30 April 2020).

²⁹ Chris Bobel and Breanne Fahs (2020) ‘From Bloodless Respectability to Radical Menstrual Embodiment: Shifting Menstrual Politics from Private to Public’ *Signs* (forthcoming).

³⁰ Karen Zivi, ‘Hiding in Public or Going with the Flow: Human Rights, Human Dignity, and the Movement for Menstrual Equity’ (2020) 42(1) *Human Rights Quarterly* pp. 119-144.

³¹ Chris Bobel and Breanne Fahs (2020), above n 29.

Critical menstruation studies provides a lens through which to analyse recent legal engagements with menstruation. While many of these new laws arise from activism and popular pressure for change it is important to examine whether they have proved successful in challenging oppressive conceptions of menstruation or whether they have left structural inequalities of power largely intact. Informed by the threads in critical menstruation scholarship which we have outlined above, we consider whether the selected legal changes, understood within their specific jurisdictional contexts: 1) undermine or reinforce menstrual stigma; 2) exclude certain groups of menstruators from their ambit and in so doing maintain harmful ideas of the ‘normal’ menstruator; 3) provide superficial responses that leave structural injustices intact; 4) preference commodified consumerist responses to menstruation over more far-reaching methods such as education; and, 5) promote Western development agendas rather than indigenous solutions to menstrual injustice. In addition, we consider implementation concerns and the challenges of achieving social change via legal reform in contexts where there is a gap between law and its implementation, realisation and enforcement.

In critical menstruation scholarship, menstruation is both a *site* of analysis (as outlined above) and a *lens* of analysis through which to broach larger questions of equality, justice and liberation, as articulated by Bobel:

Attention to menstrual issues across the life span surfaces broader societal issues and tensions, including gender inequality, practices and discourses of embodiment, processes of racialization and commodification, and emergent technologies ... [M]enstruation--as--unit-of--analysis serves as a gateway—both conceptually and symbolically—to reveal, unpack, and complicate inequalities across biological, social, cultural, religious, political, and historical dimensions.³²

With this in mind, the analysis that follows also reflects on what law’s menstrual moment might illuminate about broader feminist debates around the strategic use of law and choice of legal method.

3.0 LAW’S MENSTRUAL MOMENT: EXPLORING KEY EXAMPLES ACROSS JURISDICTIONS

³² Chris Bobel, ‘Introduction: Menstruation as Lens. Menstruation as Opportunity’, above n 13, 6.

3.1 LEGISLATING ACCESS TO MENSTRUAL PRODUCTS IN DEVELOPED COUNTRIES: UNITED STATES OF AMERICA AND SCOTLAND

Legislative reforms related to menstrual products have been a key feature of the ‘legal turn’ in some jurisdictions. This includes reforms related to removing sales tax on menstrual products (‘tampon tax legislation’) and access to free menstrual products, notably in public buildings and services (‘menstrual product legislation’). In contrast, in the Global South legal reforms related to access to menstrual products have usually emerged from policies directed towards addressing MHM in order to enhance the rights of women and girls to education and services within the broader focus on development (see discussion in Part 3.3 below).

The discussion in 3.1 focuses on menstrual product legislation rather than tax laws, by reason of the more complex issues of equality that arise from these reforms. Tampon tax legislation, in removing an unfair tax burden that falls on consumers of menstrual products, the majority of whom are women, is a formal equality measure aimed at all women. It can be a ‘blunt’ instrument for addressing menstrual injustices because it is not attentive to the financial and other inequalities between women which can shape the capacity of women to purchase products. In contrast, menstrual product legislation, in targeting specific public spaces or services frequented by women less likely to have the financial or other means to access menstrual products, is directed towards addressing inequalities between women so as to achieve substantive equality for women. Thus, we see menstrual product legislation as ‘second-generation’ menstrual legislative reform by reason of its more nuanced approach to gender equality. It might be *prima facie* difficult to find fault with menstrual product legislation – who can complain about giving free resources to disadvantaged women? – and yet for this reason these laws might not be scrutinised for their potential limitations.³³ As such, we now examine menstrual product legislation, looking first at the United States of America (US) and then Scotland.

3.1.1 United States of America

Over the past four years in the US there has been much activism and law reform related to providing access to free menstrual products in the context of public spaces and public services. Bills have been introduced at all levels of government in the US – city, county, state and

³³ See, similarly, Bobel and Fahs above note 29.

federal³⁴ – and a number of these have been passed and entered into law. This part discusses a few specific legislative developments in the US across city, state and federal levels.³⁵

In the US’s menstrual moment feminist and reproductive justice-inspired activists, campaigns and organisations are driving or are otherwise integral to the legal turn. The exemplar is ‘Period Equity’, an organisation founded by lawyers Jennifer Weiss-Wolf and Laura Strausfeld, each with experience in menstrual law (Strausfeld in litigation related to tampon tax, Weiss-Wolf in the US’s first menstrual product legislation).³⁶ Period Equity describes itself as ‘the nation’s first law and policy organisation fighting for menstrual equity – committed to ensuring that menstrual products are affordable, safe and available to those in need’.³⁷ Period Equity has been involved in some of the free product access legislative developments in the United States, as well as leading a national campaign with menstrual product company ‘Lola’ to ‘leverag[e] the tools of law and policy to mobilise legal action to challenge [discriminatory tampon tax laws] in the remaining 35 states that charge it’.³⁸ Another example is the organisation, ‘Period’³⁹ which is ‘the largest youth-run nonprofit in women’s health’ and ‘gives women access to the period products they need to feel confident and clean every menstruation cycle, no matter their income’.⁴⁰ In a ‘National Petition to End Period Poverty’ run by ‘Period’ which is headed ‘the Menstrual Movement Manifesto’, signatories call on: ‘clean and healthy period products to be freely accessible in schools, shelters, and prisons’ and ‘eliminat[ion of] the

³⁴ See, for example, menstrual product legislation passed at the state level in California: Cal Education Code § 35292.6 (2018); Illinois: Ill Comp Stat § 5/10-20.60 (2018); Maryland: Md Code Ann Housing & Community Development § 4-2401 (2017); and New Hampshire: *An Act Requiring Menstrual Hygiene Products in School Restrooms*, ch 252, NH Laws (2019). Legislation applying to county jails has been passed in Colorado: *An Act Concerning Providing Free Menstrual Hygiene Products to People in Custody*, ch 131, Colo Sess Laws 587 (2019); and Maine: *An Act to Ensure Comprehensive Access to Menstrual Products in All Maine’s Jails, County Correctional Facilities and State Correctional and Detention Facilities*, ch 139, Me Laws (2019). At the council level see, for example, Boston Public Schools, ‘Pilot Program Launched to Provide Free Menstrual Supplies to BPS Students’ *City of Boston* (online) 17 June 2019 <<https://www.boston.gov/news/pilot-program-launched-provide-free-menstrual-supplies-bps-students>> (last accessed 30 April 2020); Salt Lake City Council, ‘City Council Approves Free Hygiene Products’ (Press Release, 18 June 2019) <<https://www.slc.gov/council/press-releases/council-approves-free-hygiene-products/>>.

³⁵ For commentary on other US jurisdictions that have introduced menstruation-related legislation, see Crawford and others, above n 11; Johnson above n 11.

³⁶ Shay Maunz, ‘Meet the Women Who Helped Repeal New York’s Tampon Tax’ *Glamour* (online) 1 September 2016 <<https://www.glamour.com/story/meet-the-women-who-helped-repeal-new-yorks-tampon-tax>> (last accessed 30 April 2020); Bridget Crawford, ‘Interview with Laura Strausfeld, New York Attorney Challenging the “Tampon Tax”’ *Feminist Law Professors* (online) 15 November 2016 <<http://www.feministlawprofessors.com/2016/11/interview-laura-strausfeld-new-york-attorney-challenging-tampon-tax/>> (last accessed 30 April 2020).

³⁷ *Period Equity* (online) <<https://www.periodequity.org/>> (last accessed 30 April 2020).

³⁸ *About Our Partnership* (online) <<https://www.taxfreeperiod.com/about-us>> (last accessed 30 April 2020).

³⁹ *Period* (online) <<https://www.period.org/>> (last accessed 30 April 2020).

⁴⁰ As above.

“tampon tax”⁴¹. Women’s rights and reproductive justice organisations have also been key players in this space. One such example is the Massachusetts chapter of National Organization for Women (NOW) which has as one of its 2019 legislative priorities the ‘I AM Bill’ (An Act to Increase Access to Disposable Menstrual Products in Prisons, Homeless Shelters and Public Schools).⁴² Associated with this Bill, Mass NOW has a ‘Menstrual Access Coalition’. In 2019 its members were being tasked with surveying to ‘collect data on the current state of menstrual access among school nurses, shelters & sheriffs offices’, ‘[o]rganizing consciousness-raising or “period talk” open mic events in your living room, favorite cafe or neighborhood library’, and ‘[c]ollecting testimony to support this measure in the legislature’.⁴³ The results of the survey are being used by Mass NOW as an evidence base for its lobbying for the ‘I Am Bill’.⁴⁴

New York City was the first US jurisdiction to legislate for free product access.⁴⁵ In 2016, New York City Council voted unanimously on a set of three laws to require the provision of ‘feminine hygiene products’ defined as ‘tampons and sanitary napkins for use in connection with the menstrual cycle’.⁴⁶ These specifically require provision of feminine hygiene products by Department of Correction to detainees,⁴⁷ by Department of Citywide Administrative Services to people in homeless shelters, youth in detention centres and youth in congregate care facilities awaiting foster placement,⁴⁸ and by Department of Education to students in

⁴¹ *Sign our National Petition to End Period Poverty* (online) <<https://actionnetwork.org/petitions/endperiodpoverty>> (last accessed 30 April 2020).

⁴² ‘I AM’ Bill: An Act to Increase Access to Disposable Menstrual Products in Prisons, Homeless Shelters, and Public Schools, Massachusetts Senate Bill No 1274 and House of Representatives Bill No 1959, 191st General Court (2019). The Bill was co-written by Mass NOW and Senator Patricia Jehlen and Representative Jay Livingstone’s offices. It was voted favourably out of the Joint Committee on Public Health in December 2019 and has now been referred to the Committee on Senate Ways and Means: Mass Now Inc, *Supported Legislation* (online) <<http://www.massnow.org/our-work/supported-legislation>> (last accessed 30 April 2020).

⁴³ Mass NOW Inc, *Increasing Access to Menstrual Products* (online) <<http://www.massnow.org/iam>> (last accessed 30 April 2020).

⁴⁴ Mass NOW Inc, *Increasing Access to Menstrual Products* (online) <<http://www.massnow.org/iam>> (last accessed 30 April 2020).

⁴⁵ Menstrual product legislation was passed by the New York City Council on 13 July 2016: see ‘Mayor de Blasio Signs Legislation Increasing Access to Feminine Hygiene Products for Students, Shelter Residents and Inmates’ *City of New York* (online) 13 July 2016 <<https://www1.nyc.gov/office-of-the-mayor/news/611-16/mayor-de-blasio-signs-legislation-increasing-access-feminine-hygiene-products-students>> (last accessed 30 April 2020).

⁴⁶ See, for example, A Local Law to Amend the Administrative Code of the City of New York, in Relation to Requiring That the Department of Correction Issue Feminine Hygiene Products to Inmates, New York City Council, Enactment No 2016/082, 13 July 2016 (amending Chapter 1 of Title 9 of the Administrative Code of the City of New York to add a new § 9-141).

⁴⁷ As above.

⁴⁸ A Local Law to Amend the Administrative Code of the City Of New York, in Relation to the Provision of Feminine Hygiene Products, New York City Council, Enactment No 2016/083, 13 July 2016 (amending Chapter 2 of Title 12 of the Administrative Code of the City of New York to add a new § 12-207).

public schools.⁴⁹ These laws were sponsored and promoted by City Councillor Julissa Ferrares-Copeland (who became known as the ‘period legislator’),⁵⁰ after having been developed in consultation with Weiss-Wolf.⁵¹ A Press Release issued on the eve of the vote explained that ‘[f]eminine hygiene products are essential for the health and well-being of women and girls. Inadequate menstrual hygiene management is associated with both health and psycho-social issues, particularly among low-income women.’⁵²

In New York State, a Bill (referred to as the ‘Total Access to Menstrual Products’ or ‘TAMP’ Bill) has been introduced by Democrat Assemblywoman Linda Rosenthal to provide ‘total access’ to menstrual products across a variety of public spaces.⁵³ This amends various laws to ensure free provision of ‘feminine hygiene products, including, but not limited to, sanitary napkins, tampons and panty liners’ in toilets for females in a variety of public settings: workplaces, property owned or leased by a county, city, town or village,⁵⁴ public buildings,⁵⁵ parks, recreation and historic preservation,⁵⁶ multiple dwellings,⁵⁷ hospitals, nursing homes, and residential health care facilities,⁵⁸ trains,⁵⁹ universities,⁶⁰ schools,⁶¹ state and local prisons,⁶² temporary housing assistance (including domestic violence shelters, runaway and homeless youth shelters, and safe houses for refugees),⁶³ property owned or leased by a public

⁴⁹ A Local Law to Amend the Administrative Code of the City of New York, in Relation to the Provision of Feminine Hygiene Products in Schools, Enactment No 2016/084, 13 July 2016 (amending Chapter 8 of Title 21-A of the Administrative Code of the City of New York to add a new § 21-968).

⁵⁰ “‘Menstrual Equity’: Free Tampons for New York City Schools and Jails’ *BBC News* (online) 22 June 2016 <<https://www.bbc.com/news/world-us-canada-36597949>> (last accessed 30 April 2020).

⁵¹ See discussion in Shay Maunz, ‘Meet the Women Who Helped Repeal New York’s Tampon Tax’ *Glamour* (online) 1 September 2016 <<https://www.glamour.com/story/meet-the-women-who-helped-repeal-new-yorks-tampon-tax>> (last accessed 30 April 2020).

⁵² New York City Council, ‘Council to Vote on Legislation Expanding Access to Feminine Hygiene Products’ (Press Release, 21 June 2016) <<https://council.nyc.gov/press/2016/06/21/79/>>.

⁵³ ‘Total Access to Menstrual Products’ Bill: An Act to Amend the Labor Law, the General Municipal Law, the Public Buildings Law, the Parks, Recreation and Historic Preservation Law, the Multiple Dwelling Law, the Public Health Law, the Railroad Law, the Multiple Residence Law, the Education Law, the Correction Law, the Social Services Law, the Public Authorities Law and the General Business Law, in Relation to Enacting the “Total Access to Menstrual Products (TAMP) Act”, New York State Assembly Bill No 305, 2019-2020 Legislative Session (2019).

⁵⁴ As above at § 7.

⁵⁵ As above at § 8.

⁵⁶ As above at § 9.

⁵⁷ As above at § 10.

⁵⁸ As above at § 11.

⁵⁹ As above at §§ 15–16.

⁶⁰ As above at §§ 18, 20.

⁶¹ As above at § 19.

⁶² As above at § 21.

⁶³ As above at § 22. This is with the exception of a social services district with a population of five million or more.

authority,⁶⁴ and any real property which is being used for business activities.⁶⁵ Hotels and motels are required to provide products on request of guests.⁶⁶ The TAMP Bill has been in Assembly Committee since January 2019.⁶⁷ While this Bill is still being considered, it is notable that other menstrual legislation has passed. On 17 June 2019, a Bill requiring informational materials concerning menstrual disorders to be provide to school districts and health care practitioners upon request (Bill S6368) passed Senate and Assembly.⁶⁸ On 11 October 2019, New York State became ‘the first state in the nation to require period product makers to disclose ingredients’.⁶⁹ This was seen as a significant victory for the menstrual justice and environmental justice movements.⁷⁰

At the US Federal level, Congresswoman Grace Meng (lawyer and a Democratic member of the United States House of Representatives) has led legislative reform efforts.⁷¹ During 2015 and 2016, Meng proposed a number of Bills focused on various aspects of ‘menstrual hygiene products’,⁷² although all of these died in earlier Congresses. In 2019, Meng again proposed to

⁶⁴ As above at § 23.

⁶⁵ As above at § 24.

⁶⁶ As above at § 13.

⁶⁷ See also a 2019 Bill to provide feminine hygiene products at no cost to adults and children receiving temporary housing assistance that has been in Assembly Committee since 30 April 2019 and amendments to § 267 of the Public Health Law that mandate access to feminine hygiene products in restrooms of all elementary and secondary public schools in the state serving students in any grade from grade six through grade twelve, effective 1 July 2018. Although it has been stated that this mandate remains unfunded: Jeena Sharma, ‘The State of Period Poverty in the United States’ *Paper Magazine* (online) 12 March 2019

<<https://www.papermag.com/period-poverty-tampon-tax-united-states-2631311601.html?rebelltitem=7#rebelltitem7>> (last accessed 30 April 2020); Meghan Finnerty, ‘Free Tampons Available in Schools (Period); Districts Spend Thousands on Dispensers’ *Democrat & Chronicle* (online) 10 September 2018 <<https://www.democratandchronicle.com/story/news/local/communities/2018/09/10/free-feminine-hygiene-products-schools-districts-spend-thousands/990572002/>> (last accessed 30 April 2020). A 2019 Bill amending § 267 of Public Health Law to extend access requirement to charter schools was passed by the Assembly and Senate on 27 February 2019 and is awaiting signature by the Governor.

⁶⁸ An Act to Amend the Public Health Law, in Relation to Informational Materials Concerning Menstrual Disorders, New York State Senate Bill No 6368 and Assembly Bill No 484, 2019-2020 Legislative Session (2019) (amending the Public Health Law to add a new § 268).

⁶⁹ *An Act to Amend the General Business Law, in Relation to Menstrual Product Labeling*, ch 362, NY Laws (2019) (amending the General Business Law to add a new § 39-aaa).

⁷⁰ See, for example, WE ACT for Environmental Justice, ‘WE ACT Celebrates New York State Governor Andrew M Cuomo Signing the Period Products Labeling Act’ (Press Release, 30 April 2020) <<https://www.weact.org/2019/10/we-act-celebrates-signing-of-the-nys-period-products-labeling-act/>>.

⁷¹ On 23 May 2019 Meng proposed a resolution ‘Supporting the Goals and Ideals of Menstrual Hygiene Day’ which highlighted the issues of poverty and stigma associated with menstruation in the US and internationally: Resolution Supporting the Goals and Ideals of Menstrual Hygiene Day, HR Res 206, 116th Congress (2019).

⁷² Menstrual Products Right to Know Act of 2017: A Bill to Require Menstrual Product Ingredient List Labels, HR 2416, 115th Congress (2017); Menstrual Equity for All Act of 2017: A Bill to Increase the Availability and Affordability of Menstrual Hygiene Products for Women And Girls with Limited Access, and for Other Purposes, HR 972, 115th Congress (2017); Menstrual Products for Employees Act of 2016: A Bill to Amend the Occupational Safety and Health Act of 1970 to Require Employers to Provide Menstrual Hygiene Products for Employees, HR 5929, 114th Congress (2016); Menstrual Products Tax Credit Act of 2016: A Bill to Amend the Internal Revenue Code of 1986 to Provide a Refundable Credit for Menstrual Products, HR 5917, 114th Congress (2016); Accurate Labeling of Menstrual Products Act of 2016: A Bill to Amend the Federal Food,

the US Congress legislation related to ‘menstrual hygiene products’.⁷³ The ‘Menstrual Equity for All Bill’⁷⁴ consists of provision of menstrual hygiene products (‘sanitary pads and tampons’ that ‘conform to industry standards’) in federal agency public bathrooms (but not including a ‘restroom designated solely for use by men’),⁷⁵ to employees in workplaces with 100 or more employees, and in schools and in prisons. In a similar vein the Bill provides for funding in private health insurance and Medicaid for menstrual products to homeless emergency food and shelter organisations. The Bill also covers ‘menstrual products’ (‘menstrual cup, a scented, scented deodorized, or unscented menstrual pad or tampon, a therapeutic vaginal douche apparatus’ as well as some ‘obstetrical and gynecological devices’). A further Bill, the ‘Menstrual Products Right to Know Bill’, requires provision of thorough product information of all components and ingredients of menstrual hygiene products.⁷⁶ While these Bills are yet to be passed, there was some earlier reform at a federal level specifically for women prisoners. The *First Step Act of 2018* (First Step Act), an Act principally concerned with criminal sentencing reforms, has one section providing that:

The Director of the Bureau of Prisons shall make the healthcare products [defined as ‘tampons and sanitary napkins’⁷⁷] ... available to prisoners for free, in a quantity that is appropriate to the healthcare needs of each prisoner.⁷⁸

Pursuant to this provision, the Director of Bureau of Prisons ‘shall ensure’ these products ‘conform with applicable industry standards.’⁷⁹ The United States recently passed the

Drug, And Cosmetic Act to Require the Label on Certain Menstrual Products to Include an Ingredient List, and for Other Purposes, HR 5916, 114th Congress (2016); Menstrual Products for Employees Act of 2016: A Bill to Amend the Occupational Safety and Health Act of 1970 to Require Employers to Provide Menstrual Hygiene Products for Employees in Workplace Bathrooms, HR 5915, 114th Congress (2016).

⁷³ Menstrual Equity for All Act of 2019: A Bill to Increase the Availability and Affordability of Menstrual Hygiene Products for Individuals with Limited Access, and for Other Purposes, HR 1882, 116th Congress (2019); Menstrual Hygiene Products in Federal Buildings Act: A Bill to Require Agencies to Ensure That Menstrual Hygiene Products Are Stocked in, And Available Free of Charge in, Restrooms in Public Buildings, and for Other Purposes, HR 2403, 116th Congress (2019); Menstrual Products Right to Know Act of 2019: A Bill to Amend the Federal Food, Drug, and Cosmetic Act to Treat Certain Menstrual Products as Misbranded If Their Labeling Does Not List Each Ingredient or Component of the Product, and for Other Purposes, HR 2268, 116th Congress (2019).

⁷⁴ Menstrual Equity for All Act of 2019: A Bill to Increase the Availability and Affordability of Menstrual Hygiene Products for Individuals with Limited Access, and for Other Purposes, HR 1882, 116th Congress (2019).

⁷⁵ As above at § 8.

⁷⁶ Menstrual Products Right to Know Act of 2019: A Bill to Amend the Federal Food, Drug, And Cosmetic Act to Treat Certain Menstrual Products as Misbranded If Their Labeling Does Not List Each Ingredient or Component of the Product, and for Other Purposes, HR 2268, 116th Congress (2019).

⁷⁷ *First Step Act of 2018*, Pub L No 115–391, § 611(c), 132 Stat 5194, 5247 (2018).

⁷⁸ As above at § 611(a).

⁷⁹ As above at § 611(b).

Coronavirus Aid, Relief, and Economic Securities (CARES) Act. This legislates the \$2 trillion stimulus package to provide relief from the economic fallout caused by COVID-19. Pursuant to s 4402, entitled “Inclusion of certain over-the-counter medical products as qualified medical expenses”, US citizens can purchase menstrual products with pre-tax dollars, using their health savings accounts (HSAs) or flexible spending accounts (FSAs).⁸⁰

3.1.2 Scotland

Monica Lennon MSP introduced the Period Products (Free Provision) (Scotland) Bill in the Scottish Parliament on 23 April 2019. The Bill passed Stage 1 on 25 February 2020.⁸¹ This Bill provides for a general right to free ‘period products’. It also extends the provision of period products to students and in public service buildings. The Scottish Bill goes further than the New York legislative developments discussed in 3.1.1 insofar as it enables universal access to menstrual products rather than access in the context of public buildings and services. The Bill provides that ‘Everyone in Scotland who needs to use period products has the right under this Part to obtain them free of charge’.⁸² ‘Period products’ is defined as ‘manufactured articles the purpose of which is to absorb or collect menstrual flow’.⁸³ In order to realise this right, Scottish Ministers are required to design a ‘period products scheme’ which will ‘set out and regulate that right and facilitate its exercise’.⁸⁴ The period products scheme can extend to requiring councils and public-facing bodies to provide period products.⁸⁵ The period products scheme ‘must be such that persons using it to obtain period products can do so reasonably easily and with reasonable privacy’.⁸⁶ The legislation indicates this scheme can operate through a voucher system,⁸⁷ but leaves it open for design of other arrangements.⁸⁸ The Bill provides the Minister can make provisions to secure the scheme’s ‘full and efficient operation’ and to ‘prevent[...] its abuse’, which may extend to ‘measures to ensure that a person may not obtain quantities of period products that are greater than reasonably commensurate with the person’s use of

⁸⁰ *Coronavirus Aid, Relief, and Economic Securities (CARES) Act* (2020).

⁸¹ ‘Period Poverty: MSPs Back Plans for Free Sanitary Products’ *BBC News* (online) 25 February 2020 <https://www.bbc.com/news/uk-scotland-scotland-politics-51618103> (last accessed 30 April 2020); Ceylan Yeginsu, ‘Scotland Set to Be First Country to Provide Free Pads and Tampons’ *New York Times* (online) 27 February 2020 <https://www.nytimes.com/2020/02/27/world/europe/scotland-pads-tampons.html> (last accessed 30 April 2020).

⁸² Period Products (Free Provision) (Scotland) Bill (UK) s 1.

⁸³ As above at s 10(1).

⁸⁴ As above at s 2(1).

⁸⁵ As above at s 2(2).

⁸⁶ As above at s 4(1).

⁸⁷ As above at s 3.

⁸⁸ As above at s 3(3).

them’.⁸⁹ In a similar vein to the New York legislation, the Bill also requires schools, universities, and colleges to ‘make period products available free of charge for pupils or students who need to use them’⁹⁰ and to ensure that products are always available in the toilets and there is a reasonable range of products.⁹¹

The Financial Memorandum states that the Bill ‘is intended to remove any barriers which stop women, girls and trans people accessing period products – items which are essential to the health, hygiene and wellbeing of those who menstruate’.⁹² It is principally directed towards addressing these in the context of ‘period poverty’ and the impact of periods on ‘educational attendance and performance’.⁹³ Although the scheme is universal, the target population is ‘menstruating women not in full-time education and living in relative poverty’.⁹⁴

In 2018, prior to the introduction of the Period Products (Free Provision) (Scotland) Bill, the Scottish government ‘launched schemes to provide free period products to low-income households and in educational establishments’⁹⁵ with Scotland claiming to be the first nation worldwide to provide free menstrual products to all school students.⁹⁶

The Scottish scheme was followed by announcements in neighbouring jurisdictions of schemes (but not legislation) for free products in specific public facilities. In England, in March 2019, Chancellor Philip Hammond introduced government funding for free sanitary products in all English secondary schools and colleges.⁹⁷ In April 2019, England’s Department of Education announced free sanitary products will be offered to girls in all primary schools in England from early 2020.⁹⁸ In March 2019, National Health Service (NHS) England announced that from summer 2019 all women and girls being cared for by the NHS will be given, on request, free

⁸⁹ As above at s 4(6).

⁹⁰ As above at s 5(1).

⁹¹ As above at s 5(2). Not also that the Bill provides that a ‘specified public service body’ must make period products available free of charge for persons in its premises who need to use those products’: at s 6(1).

⁹² Financial Memorandum, Period Products (Free Provision) (Scotland) Bill (UK) para 4.

⁹³ As above at para 5.

⁹⁴ As above at para 25. See also para 23.

⁹⁵ As above at para 8. This was principally being administered by charity ‘FareShare’: at para 9.

⁹⁶ Kieran Guilbert, ‘Scotland Provides Free Tampons to All Students in World First’ *Thomson Reuters* (online) 26 August 2018 <<https://www.reuters.com/article/us-britain-women-health/scotland-provides-free-tampons-to-all-students-in-world-first-idUSKCN1LB082>> (last accessed 30 April 2020).

⁹⁷ Phillip Hammond, ‘Spring Statement 2019’ (Speech, HM Treasury, 13 March 2019).

⁹⁸ Department of Education, ‘Free Sanitary Products in All Primary Schools’ (Press Release, Government of the United Kingdom, 16 April 2019) <<https://www.gov.uk/government/news/free-sanitary-products-in-all-primary-schools>>.

sanitary products.⁹⁹ In relation to Wales, in April 2019 the Welsh government announced it would supply free products in primary and secondary schools.¹⁰⁰ On 13 March 2019, in the Republic of Ireland a motion was brought in the Dáil Éireann by Deputy Catherine Martin TD, chair of the Oireachtas Women’s Parliamentary Caucus, calling on the government to take wide reaching action on menstrual issues including providing a range of ‘free, adequate, safe and suitable sanitary products and comprehensive, objective menstrual education information distributed through all public buildings ... so as to tackle period poverty and de-stigmatise and normalise menstruation’ and ‘work with other countries across the European Union to remove VAT on all sanitary products, including healthy and environmentally-friendly sanitary products such as cups and period-proof underwear’.¹⁰¹ She went on to state that:

This motion will be a significant move in addressing the issue of period poverty and bringing further attention to this issue, building on a growing movement across Ireland and the world.¹⁰²

However, none of these other jurisdictions has proposed legislation similar to that in Scotland.

3.1.3 Critical Reflections on Menstrual Product Legislation in Developed Countries

At first glance, addressing economic, physical safety and personal liberty barriers to accessing menstrual products through directing provision of free products towards groups of women who have limited access to products by reason of finances, domestic violence or incarceration might be seen as beneficial because these laws address material inequalities between women. Further, the explicit mention of menstruation in the legislation might be viewed as a direct challenge to the historical silence in law around menstruation. However, on closer consideration, some limitations and contradictions arise in relation to these legal developments.

The primary or exclusive focus in the legislation on menstruation is provision of menstrual products. This focus might sustain stigma associated with menstruation because products are

⁹⁹ ‘The NHS in England Will Offer Free Tampons and Other Sanitary Products to Every Hospital Patient Who Needs Them’ *NHS* (online) 12 March 2019 < <https://www.england.nhs.uk/2019/03/the-nhs-in-england-will-offer-free-tampons-and-other-sanitary-products-to-every-hospital-patient-who-needs-them-simon-stevens-announced-today/>> (last accessed 30 April 2020).

¹⁰⁰ ‘All Welsh Schools to Get Free Sanitary Products’ *BBC News* (online) 13 April 2019 <<https://www.bbc.com/news/uk-wales-politics-47883449>> (last accessed 30 April 2020).

¹⁰¹ Republic of Ireland, *Parliamentary Debates*, Dáil Éireann, Wednesday 13 March 2019, vol 980, no 8 at 907-8 (Deputy Catherine Martin). See also subsequent motion and debate in Seanad Éireann: Republic of Ireland, *Parliamentary Debates*, Seanad Éireann, Wednesday 27 March 2019, vol 264, no 10 at 569-584.

¹⁰² Republic of Ireland, *Parliamentary Debates*, Dáil Éireann, Wednesday 13 March 2019, vol 980, no 8 at 909 (Deputy Catherine Martin).

concerned with the *concealment* of blood, as argued by Bobel and Fahs (Part 2.0 above). Bringing menstruation into law via menstrual products shapes how we then problematise and respond to menstruation as a matter of in/justice. While not disputing that lack of menstrual products can be associated with poverty, stigma or degradation, the legislation positions product access as the end point such that the justice of this legislation is inextricably bound up with menstrual products and, more specifically, with disposable consumer products.¹⁰³ The association of menstruation with menstrual products can confirm ideas about menstruation as dirty and hidden which undercuts the radical potential of these laws to challenge the silence around menstruation and the broader material impacts of stigma.¹⁰⁴

Framing ‘justice’ through menstrual products will not address injustice and harm related to the stigma of menstruation per se including that perpetuated by the very existence and cultural representations of disposable menstrual products (as well as their naming in some jurisdictions as ‘hygiene products’). The potential for menstrual product legislation to sustain stigma and gender oppression is heightened by those pieces of legislation that refer to products as ‘menstrual hygiene products’, including all of the US legislation featured in 2.1.1 above.¹⁰⁵ Przybylo and Fahs note that:

The phrase *feminine hygiene* — a relic from 1930s advertisements for birth control — emphasises the dirtiness of menstrual bleeding and the aspirational “cleanliness” women can have when using certain products while also rendering menstrual bleeding a unilaterally *feminine* experience.¹⁰⁶

Indeed, drawing on Park (discussed in Part 2.0 above) the recent wave of menstrual product legislation might even be situated in enduring eugenics logics. In her historical exploration of

¹⁰³ Chris Bobel, ‘Opinion: Menstrual Pads Can’t Fix Prejudice’, *New York Times* (online) 31 March 2018 <<https://www.nytimes.com/2018/03/31/opinion/sunday/menstrual-periods-prejudice.html>> (last accessed 30 April 2020). Free access is generally for disposable products and thus does not address environmental sustainability concerns nor use this as a catalyst to provide people with more financially sustainable long term options.

¹⁰⁴ Bobel and Fahs above note 29.

¹⁰⁵ See menstrual product legislation referring to ‘feminine hygiene products’ passed in California: Cal Education Code § 35292.6 (2018); Illinois: Ill Comp Stat § 5/10-20.60 (2018); and Maryland: Md Code Ann Housing & Community Development § 4-2401 (2017); and ‘menstrual hygiene products’ in New Hampshire: *An Act Requiring Menstrual Hygiene Products in School Restrooms*, ch 252, NH Laws (2019). See, similarly, the *Basic Education Act No 14 of 2013* (Kenya) s 39(k) which refers to ‘sanitary towels’; and government policy in England and Wales which has been expressed in terms of ‘sanitary products’: Department of Education, above note 86; Welsh Government, ‘Period Dignity: Thousands to Benefit from Multi-Million Pound Funding for Schools’ (Press Release, 15 April 2019) <<https://gov.wales/period-dignity-thousands-benefit-multi-million-pound-funding-schools>>.

¹⁰⁶ Przybylo and Fahs above note 20 at 211 (emphasis in original, citations omitted).

menstrual products, Park suggests the racial underpinnings of ‘female hygiene’.¹⁰⁷ Certainly the concept of ‘hygiene’ was popular in the eugenics era with racial hygiene and mental hygiene legislation and policies enabling segregation, confinement and intervention (and at its most extreme, genocide) in relation to ‘unfit’ populations. Thus, entrenching in law the concept of ‘menstrual hygiene’ implicitly associates menstruation with impurity and also engages a longer history of abjection at the confluence of heterosexism, racism, ableism and classism.

Ultimately, the legislation confirms rather than disrupts norms of gendered embodiment and does not envisage the notions of radical menstrual embodiment proposed by Bobel and Fahs (see Part 2.0 above). For example, the legislation is not cast wider so as to address menstrual discrimination by reason of the stigma associated with menstruation, nor does it provide a right to ‘free bleed’¹⁰⁸ and legal protections against repercussions for exposing menstrual blood on one’s body or clothing (rather than concealing it through use of menstrual products).

Framing of the ‘justice’ of menstruation through menstrual products also overlooks structural drivers of poverty, homelessness, and domestic violence, reflecting the core point made by critical menstruation scholars of menstruation being about power relations. Moreover, legislative reforms for access to products in carceral settings (such as prisons, immigration detention centres and juvenile justice centres) might serve to ‘pinkwash’¹⁰⁹ the broader legal frameworks enabling and legitimating women’s incarceration.¹¹⁰ Indeed, this has been noted by the American Civil Liberties Union (ACLU) Women’s Rights Project lawyer Anjana

¹⁰⁷ Shelley M Park, ‘From Sanitation to Liberation?: The Modern and Postmodern Marketing of Menstrual Products’ (1996) 30(2) *Journal of Popular Culture* 149 at 166 n 1.

¹⁰⁸ See, for example, trans men and female athletes who have chosen to free bleed and have received significant backlash for this: Eleanor Ainge Roy, ‘Otago University Seizes and Destroys Copies of Student Magazine Depicting Menstruation’ *The Guardian* (online) 23 May 2018 <<https://www.theguardian.com/world/2018/may/23/otago-university-seizes-and-destroys-copies-of-student-magazine-that-depict-menstruation>> (last accessed 30 April 2020); Kiran Gandhi, ‘Here's Why I Ran the London Marathon on the First Day of my Period – and Chose Not to Wear a Tampon’ *Independent* (online) 14 August 2015 <<https://www.independent.co.uk/voices/comment/heres-why-i-ran-the-london-marathon-on-the-first-day-of-my-period-and-chose-not-to-wear-a-tampon-10455176.html>> (last accessed 30 April 2020).

¹⁰⁹ See discussion by Bobel and Fahs above note 29, referring to earlier critiques in the context of breast cancer by Ehrenreich and Sulik.

¹¹⁰ See, for example, this glowing commentary in women’s magazine *Marie Claire*: ‘A bright spot has appeared at the tail-end of a year likely to be remembered for its extraordinary government-approved cruelty in the form of a bipartisan justice reform bill, which is expected to pass Congress and has the support of President Trump. The sweeping new bill offers better access to period products and more humane treatment of pregnant women in incarceration.’: Cady Drell, ‘This New Criminal Justice Bill Could Finally Give Incarcerated Women the Period Products They Need’ *Marie Claire* (online) 19 December 2018 <<https://www.marieclaire.com/politics/a25630624/first-step-act-pads-tampons/>> (last accessed 30 April 2020).

Samant in her critique of the *First Step Act* as a ‘first step’ in a much more profound and widespread set of injustices experienced by incarcerated women and others who menstruate.¹¹¹

Another striking limitation of the menstrual product legislation is that the positioning of products as the solution means, in terms of legal method, this legislation becomes the limit point of ‘redress’ for menstrual injustice. There is no focus on accountability and oversight in the legislation. For example, submissions to the *First Step Act* noted that the Act does not provide for an oversight mechanism.¹¹² The menstrual product legislation also has a temporal effect in being focused on future provision of products and thus failing to recognise and confront historical menstrual wrongs. For example, there is no mention of compensation for the impacts of period poverty or the impacts of menstrual humiliation and control associated with lack of access to menstrual products in prisons and other institutions.¹¹³ In these ways, the menstrual product legislation sits within, rather than transforming, power relations and sustains historical injustice.

Framing the ‘justice’ of menstruation through menstrual products also presumes all can menstruate, as demonstrated by the name of the Federal Bill ‘Menstrual Equity For All’ and the Scottish budget estimations for its universal scheme calculating menstrual product use by every female of menstruating age.¹¹⁴ This has been viewed as positive in terms of including people of all genders in the legislation and thus addressing discrimination experienced by trans men, gender diverse and intersex people. Yet, on the other hand this inclusive presumption of menstruating bodies might turn our attention away from injustices related to those who are prevented from menstruating, at times through coercion and violence permitted by law. For example, the inclusive approach in menstrual product legislation might be in tension with laws in many jurisdiction requiring trans people to be sterilised in order to have their gender formally recognised by the state, a practice that Lowik argues tracks onto longer term eugenics logics.¹¹⁵

¹¹¹ Anjana Samant, ‘The First Step Act Is a Small Step for Incarcerated Women’ *ACLU* (online) 27 December 2018 <<https://www.aclu.org/blog/prisoners-rights/women-prison/first-step-act-small-step-incarcerated-women>> (last accessed 30 April 2020).

¹¹² The Arthur Liman Center for Public Interest Law, Yale Law School, ‘Recommendations’, Submission to US Commission on Civil Rights *Women in Prison: Seeking Justice Behind Bars* 22 March 2019 at 2 <https://law.yale.edu/sites/default/files/area/center/liman/liman_women_in_prison_recommendations_for_usccr_march_22_2019.pdf>.

¹¹³ See, for example, litigation in the context of prisons and immigration detention which shows this is a live issue.

¹¹⁴ ‘Menstruation usually starts around the age of 13 and the average age of menopause is 50 years old. The number of women and girls in Scotland within this age-range (using data from mid-2015) is estimated to be around 1,336,100.’ Financial Memorandum, Period Products (Free Provision) (Scotland) Bill (UK) para 15.

¹¹⁵ AJ Lowik, ‘Reproducing Eugenics, Reproducing while Trans: the State Sterilization of Trans People’ (2018) 14(5) *Journal of GLBT Family Studies* 425.

Other contemporary examples include non-consensual menstrual suppression and sterilisation of disabled women,¹¹⁶ and hysterectomies of precarious women labourers in contexts of profoundly limited choice.¹¹⁷ The coercive cessation or suppression of menstruation as a means of reproductive control has a long history, as demonstrated by the eugenics era at the beginning of the twentieth century which targeted ‘unfit’ populations including disabled, racialised, Indigenous and poor women,¹¹⁸ and population control focused development policies which began in the 1970s and 80s but still persist.¹¹⁹ These remain live issues with coercive menstrual suppression and sterilisation still lawful in relation to disabled women¹²⁰ and sterilisation of Indigenous women and racialised women understood as an issue of historical injustice.¹²¹ Indeed, the recent Canadian National Inquiry into Murdered and Missing Indigenous Women and Girls stated: ‘The forced sterilization of women represents directed state violence against Indigenous women, and contributes to the dehumanization and objectification of Indigenous women, girls, and 2SLGBTQQA people’.¹²² The past ten years has witnessed a number of jurisdictions recognise the injustice caused by historical sterilisation laws and introduce redress schemes¹²³ and there are longstanding campaigns by disabled women activists to prohibit

¹¹⁶ Linda Steele, ‘Disability, Abnormality and Criminal Law: Sterilisation as Lawful and “Good” Violence’ (2014) 23(3) *Griffith Law Review* 467; Linda Steele and Beth Goldblatt, ‘The Human Rights of Women and Girls with Disabilities: Sterilisation and other coercive responses to menstruation’ in Chris Bobel, Inga T Winkler, Breanne Fahs, Katie Ann Hasson, Elizabeth Arveda, Kissling, and Tomi-Ann Roberts (eds), *The Palgrave Handbook of Critical Menstruation Studies*, Palgrave Macmillan, (2020) forthcoming.

¹¹⁷ Anhijit Mulye, ‘Over 13,000 Female Sugarcane Workers in Beed Have Undergone Uterus Removal Surgery, Says Probe Panel’ *The New Indian Express* (online) 29 August 2019 <<http://www.newindianexpress.com/nation/2019/aug/29/over-13000-female-sugarcane-labourers-in-beed-have-undergone-uterus-removal-surgery-says-probe-pan-2026166.html>> (last accessed 30 April 2020); Geeta Pandey, ‘Why are menstruating women in India removing their wombs?’ *BBC News* (online) 5 July 2019 <<https://www.bbc.com/news/world-asia-india-48836690>> (last accessed 30 April 2020).

¹¹⁸ See e.g., *Eugenics Archive*, <https://eugenicsarchive.ca/>.

¹¹⁹ Meredith Turshen, *Women’s Health Movements* (Palgrave Macmillan 2007) 205-9; Kalpana Wilson, ‘The “New” Global Population Control Policies: Fuelling India’s Sterilization Atrocities’ (2015) 87 *Different Takes*.

¹²⁰ See, for example, Steele above note 116; Steele and Goldblatt, above note 116.

¹²¹ See, for example, Nicole L Novak, Natalie Lira, Kate EO Connor, Siobán D Harlow, Sharon LR Kardia and Alexandra Minna Stern, ‘Disproportionate Sterilization of Latinos Under California’s Eugenic Sterilization Program, 1920-1945’ (2018) 108(5) *American Journal of Public Health* 611; Karen Stote, ‘The Coercive Sterilization of Aboriginal Women in Canada’, (2012) 36(3) *American Indian Culture and Research Journal* 117; Lisa Ko, ‘Unwanted Sterilization and Eugenics Programs in the United States’ *PBS Independent Lens* (online) 29 January 2016 <<http://www.pbs.org/independentlens/blog/unwanted-sterilization-and-eugenics-programs-in-the-united-states/>> (last accessed 30 April 2020); Mary Crossley, ‘Reproducing Dignity: Race, Disability, and Reproductive Controls’ (2020) *UC Davis Law Review*, forthcoming.

¹²² National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls – Volume 1A* (2019) 266 <www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a.pdf>.

¹²³ See, for example, sterilisation compensation legislation passed in North Carolina: NC Gen Stat § 143B-426.50 (2013); and Virginia: *Act of 26 March 2015*, ch 665, Va Acts 306 (2015). Legislation has recently been proposed in California: Forced or Involuntary Sterilization Compensation Program, California State Assembly Bill No 1764, 2019-20 Legislative Session (2019) (amending the Health and Safety Code and the Welfare and Institutions Code). Sterilisation redress schemes have also been introduced in Canada: ‘Alberta Apologizes for Forced Sterilization’ *CBC News* (online) 9 November 1999 <<https://www.cbc.ca/news/canada/alberta->

contemporary sterilisation¹²⁴ (which, contradictorily remains lawful pursuant to different legal frameworks to those that enabled the sterilisation subject to historical compensation schemes). Thus, the menstrual product legislation might not embrace a sufficiently complex understanding of menstruation injustice nor of broader concepts of intersectionality, equality, universality and inclusivity and, in terms of feminist legal method, also signals the challenges of engaging legislation to address structural injustice.

To conclude, there are many progressive developments in the legislation in terms of acknowledging inequalities between women (notably the impact of financial and liberty dynamics), recognising menstruation by non-cis women and addressing material resource needs. These developments however, sit within a broader context of laws that take a focus on blood that contributes to normative ideas of menstruation and womanhood and to a focus on individual product use at the cost of structural issues that sustain violence, coercion and degradation.

3.2 UNDOING STIGMA: INDIA'S *SABARIMALA* DECISION AND *CHHAUPADI* LAWS IN NEPAL

The turn to law on menstrual matters as a response to discriminatory exclusion and 'harmful practices'¹²⁵ is illustrated in prominent recent examples from Nepal and India. These examples highlight the impact of feminist activism in opening legal spaces around menstruation but also suggest some critical concerns about the effectiveness and dangers of law in these terrains.

apologizes-for-forced-sterilization-1.169579> (last accessed 13 October 2019); Japan: 'Japan Sterilisation Law Victims Get Compensation and Apology' *BBC News* (online) <<https://www.bbc.com/news/world-asia-48036732>> (last accessed 30 April 2020); and Sweden: Stephen Bates, 'Sweden Pays for Grim Past' *The Guardian* (online) 6 March 1999 <<https://www.theguardian.com/world/1999/mar/06/stephenbates>> (last accessed 30 April 2020).

¹²⁴ Leanne Dowse, Karen Soldatic, Aminath Didi, Carolyn Frohmader and Georgia van Toorn, Women With Disabilities Australia, *Stop the Violence: Background Paper* paper presented at the National Symposium on Violence Against Women and Girls with Disabilities, Sydney 25 October 2013 <http://wwda.org.au/wp-content/uploads/2013/12/STV_Background_Paper_FINAL.pdf>; Stephanie Ortoleva and Hope Lewis, 'Forgotten Sisters – A Report on Violence Against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences' (Research Paper No 104-2012, Northeastern University School of Law, August 2012).

¹²⁵ This is the term used by the UN Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child: *Joint General Recommendation No 31 of the Committee on the Elimination of Discrimination against Women/General Comment No 18 of the Committee on the Rights of the Child on Harmful Practices*, UN Doc CEDAW/C/GC/31-CRC/C/GC/18 (14 November 2014). Harmful practices are defined as: 'persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering': at 5 para 15.

3.2.1 Nepal: Laws against *Chhaupadi*

Chhaupadi is a practice amongst Hindus in the far and mid-west of Nepal where menstruating women are separated from others and prevented from touching fruit, livestock and attending religious sites. The underlying taboo rendering menstruating women untouchable is prevalent across Nepal in Hindu communities but it is *chhaupadi* that has received intense global focus.¹²⁶ In terms of the practice, women, and their children, are sent outside of the house for certain days while they are menstruating (and immediately after childbirth), often to cowsheds or huts.¹²⁷ The practice is rooted in the belief that menstruating women are impure and the fear that exposure to them can cause livestock and crop damage and harm to others (including miscarriage, illness and death).¹²⁸ In addition to their physical banishment, menstruating women are subject to dietary restrictions as they are denied dairy products and only allowed rice, salt and some dry foods.

The practice, highlighted by development agencies,¹²⁹ has received significant media attention.¹³⁰ There has been particular focus on a number of deaths as a result of the practice where a woman and her sons suffocated in a hut,¹³¹ a teen died from smoke inhalation and

¹²⁶ Sara Parker and Kay Standing, 'Nepal's Menstrual Huts: What Can Be Done About This Practice of Confining Women to Cow Sheds?' *The Conversation* (online) 24 January 2019 <<https://theconversation.com/nepals-menstrual-huts-what-can-be-done-about-this-practice-of-confining-women-to-cow-sheds-109904>> (last accessed 30 April 2020).

¹²⁷ Binita Pandey, Manisha Rajak, Pramila Pantha and Roshi Bhandaree, 'Traditional Practices and Victimisation of Women in Nepal: The case of *Chhaupadi*' in K Jaishankar (ed) *Routledge Handbook of South Asian Criminology* (Routledge 2019) 327-40; Prabisha Amatya, Saruna Ghimire, Karen E Callahan, Binaya Kumar Baral and Krishna C Poudel, 'Practice and Lived Experience of Menstrual Exiles (Chhaupadi) Among Adolescent Girls in Far-Western Nepal' (2018) *PLOS ONE* <<https://doi.org/10.1371/journal.pone.0208260>>; Shanti Kadariya and Arja R Aro, 'Chhaupadi Practice in Nepal – Analysis of Ethical Aspects' (2015) 5 *Medicolegal and Bioethics* 53.

¹²⁸ Amatya and others, *ibid*.

¹²⁹ ActionAid, *Chhaupadi and Menstruation Taboos* (online) <<https://www.actionaid.org.uk/about-us/what-we-do/womens-economic-empowerment/chhaupadi-and-menstruation-taboos>> (last accessed 30 April 2020); Centre for Health and Social Justice and MenEngage Alliance South Asia, *Against the Practice of Chhaupadi in Nepal* (online) <http://www.chsj.org/uploads/1/0/2/1/10215849/the_practice_of_chhaupadi_in_nepal.pdf> (last accessed 30 April 2020); WaterAid, *When Your Period Means You Have to Live in a Shed* (online) <<https://www.wateraid.org/uk/stories/when-your-period-means-you-have-to-live-in-a-shed>> (last accessed 30 April 2020).

¹³⁰ Hannah Summers, 'Nepal Outlaws Custom of Exiling Women During Their Periods' *The Guardian* (online) 11 August 2017 <<https://www.theguardian.com/global-development/2017/aug/10/nepal-outlaws-custom-of-exiling-women-during-their-periods>> (last accessed 30 April 2020); Rojita Adhikari, 'Destroy "Period Huts" or Forget State Support: Nepal Moves to End Practice' *The Guardian* (online) 14 January 2019 <<https://www.theguardian.com/global-development/2019/jan/14/destroy-period-huts-or-forget-state-support-nepal-moves-to-end-practice-chhaupadi>> (last accessed 30 April 2020); Bhadra Sharma and Kai Schultz, 'Woman and 2 Children Die in Nepal Menstruation Hut' *The New York Times* (online) 9 January 2019 <<https://www.nytimes.com/2019/01/09/world/asia/nepal-menstruation-taboo.html>> (last accessed 30 April 2020).

¹³¹ 'Nepal Woman and Children Die in Banned "Menstruation Hut"' *BBC News* (online) 10 January 2019 <<https://www.bbc.com/news/world-asia-46823289>> (last accessed 30 April 2020).

another from a snakebite,¹³² all due to their banishment during menstruation. Bobel suggests that development agency and media coverage of *chhaupadi* as a ‘spectacle’ is aimed at shocking western viewers to obtain their support for MHM programs and product driven solutions.¹³³ Related to this, Parker and Standing note that the focus on the practice tends to obscure some of the challenges of sexual and domestic violence,¹³⁴ presumably because these cross-cultural harms are more relatable and less exotic in the western imaginary.

In 2005 the Supreme Court of Nepal found the practice of *chhaupadi* to be discriminatory and directed the government to develop laws to eliminate it.¹³⁵ In 2008 the government produced guidelines¹³⁶ to tackle the practice that included short term awareness raising programs, health and nutrition services and acknowledgment of those in the community taking action to end the practice. Longer term measures related to efforts to empower women and build equality through a developed legal system based on human rights.¹³⁷ In 2017 an amendment to the *State Criminal Code, 2074* at section 168(3) prohibited *chhaupadi* as ‘an inhumane and degrading act’ punishable by a three month prison sentence and a 3,000 Nepalese rupee fine (AU\$39) or both, to come into force on 17 August 2018.¹³⁸ Compensation for the victim can also be awarded by a court in terms of this law.¹³⁹ A report in the Guardian set out strategies employed by different local councils to undermine *chhaupadi*. Some have told people to destroy the huts or face withdrawal of state food support.¹⁴⁰ A village official listed the government services that could be stopped including ‘nutrition allowance, old age allowance, birth registration, citizenship recommendation, loan recommendation, etc’.¹⁴¹ Another village is taking a less punitive approach with an awareness raising campaign that includes building a temple in the centre of the village and asking people to ‘keep their gods respectfully at the temple and let woman and girls stay at home during their period’.¹⁴² Slow changes are being observed in the eradication of the practice with strategies such as collaborative filmmaking.¹⁴³ A women’s

¹³² Summers above note 130.

¹³³ Bobel, *The Managed Body* above note 8, 118-20.

¹³⁴ Parker and Standing above note 126.

¹³⁵ *Dil Bahadur Bishwakarma and Other v Council of Ministers and Others*, Supreme Court of Nepal, Writ Petition No 3303 of 2004, Judgment 2 May 2006.

¹³⁶ Ministry of Women, Children and Social Welfare, Government of Nepal, *Chhaupadi Tradition Elimination Guideline 2064* (2008).

¹³⁷ Pandey and others, above note 127.

¹³⁸ As above, at 331.

¹³⁹ As above.

¹⁴⁰ Adhikari above note 130.

¹⁴¹ As above.

¹⁴² As above.

¹⁴³ Parker and Standing above note 126.

organisation working on this issue for a decade estimates that *chhaupadi* use has dropped from 95% to 60%.¹⁴⁴

The challenge of using law to undo an entrenched cultural practice is recognised by government, non-government agencies and researchers working on this issue. Tham Maya Thapa, Nepal's Minister for women, children and senior citizens, noted that:

Since last August, it's a crime to force a menstruating woman into seclusion, punishable by up to three months in jail and a fine. But law and rule always don't work to break such a long-running tradition.¹⁴⁵

There are a few concerns with the legal response to *chhaupadi*. One issue is the perverse impact of criminalising the practice which has led some women and girls to sleep in the open when huts are destroyed, resulting in greater risks of harm.¹⁴⁶ Related to this, making the provision of social services conditional on compliance with the new law is a troubling trend. Attaching conditions to social protection may harm vulnerable families who find themselves torn between honouring traditional beliefs and material need. Rights to social security and social services as well as to food should not be encumbered with conditions that serve to undermine human rights entitlements.¹⁴⁷ An incentive based approach that encourages change might be more consistent with a rights-based approach and may also prove more effective than one based on punishment.

The difficulty in implementing the prohibition arises where law comes into conflict with powerful forces of religion and superstition leading to resistance and mistrust of law. Efforts to unseat the practice are based on human rights understandings of individual bodily autonomy and equality that are fundamentally at odds with patriarchal culture.¹⁴⁸ This law, based as it is on human rights, may be viewed as 'gender imperialism' that characterises people who practise their traditions as backward, ignorant and uncivilised.¹⁴⁹ However, efforts to develop more 'vernacular' strategies that work within the culture and draw on existing community practices in an attempt to remake these may be more effective than laws, or should at least accompany

¹⁴⁴ Adhikari above note 130.

¹⁴⁵ As above.

¹⁴⁶ Parker and Standing above note 126.

¹⁴⁷ Magdalena Sepúlveda and Carly Nyst, Ministry for Foreign Affairs of Finland, *The Human Rights Approach to Social Protection* (Report, 2012); Sandra Fredman, 'Engendering Social Welfare Rights' in Beth Goldblatt and Lucie Lamarche (eds) *Women's Rights to Social Security and Social Protection* (Hart Publishing, 2014) 19.

¹⁴⁸ Sally Engle Merry *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2009) 137.

¹⁴⁹ See Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2018).

them. The example of the new village temple becoming the site for religious expression while allowing women to remain at home during menstruation is an interesting attempt to respond to a strong belief but to reframe its observation. Providing education and opportunities to empower women and girls in response to stigmatising and ‘harmful practices’ is needed to address the structural causes of poverty and patriarchy that limit their capacity for cultural contestation.

3.2.2 India: Supreme Court judgment of *Sabarimala*

In October 2018 the Supreme Court of India finally provided its judgment in a case that began in the courts twelve years earlier on the exclusion of girls and women aged between 10 and 50 from the Sabarimala temple in Kerala.¹⁵⁰ The rule derives from the age range of female menstruation when women are viewed as impure, their presence threatening pollution of the sacred space. An additional argument for their exclusion relates to their inability to perform 41 days of austerity leading up to the pilgrimage to the temple since physical discomfort resulting from menstruation makes ‘intense and chaste spiritual disciplines’ impossible.¹⁵¹ In addition, the presence of women in this age range poses dangers to the celibacy and austerity of the male pilgrims.¹⁵² It becomes clear from the arguments of the supporters of the ban that menstruation is understood as a state of being rather than merely a monthly bodily process. It shapes girls’ and women’s access to religious sites in terms of their innate capacity to menstruate rather than their actual condition of menstruating. In so doing, it tars all women of menstruating age with the brush of impurity, while treating those outside of the age range as less dangerous or infecting. It also links a fear of sexual temptation to menstrual age thus assuming that girls under 10 and women over 50 are not the objects of sexual attraction by men. These interpretations of religion demonstrate that women can be viewed simultaneously as polluting and seductive while also be seen as weak, infirm and in need of protection from the rigors of religious observance. The case demonstrates that menstruation in its many manifestations and attached meanings linked to pain, shame, dirt, and the untameable female body is used to justify women’s inferiority while preserving male privilege.¹⁵³

¹⁵⁰ *Indian Young Lawyers Association & Others v The State of Kerala & Others*, Supreme Court of India, Writ Petition (Civil) No 373 of 2006, 28 September 2018
<https://sci.gov.in/supremecourt/2006/18956/18956_2006_Judgement_28-Sep-2018.pdf>.

¹⁵¹ At 62 (Nariman J): citing the affidavit of a person responsible for rituals in the temple.

¹⁵² As above.

¹⁵³ See for example, Simone de Beauvoir, *The Second Sex* (trans H M Parshley) (Penguin 1949).

The case, initiated by an organisation of women lawyers and spurred by social movements pressing for women's broader access to religious spaces,¹⁵⁴ led to the overturning of the ban by the Supreme Court. The 4:1 majority found the religious rule violated women's rights to practise their religion and was impermissible gender discrimination. While the decision of Misra CJ (Khanwilkar J concurring) talked broadly about such discrimination without explicitly addressing the issue of menstruation, the judgment of Nariman J provided detailed examination of the basis of menstrual taboo in many of the major religions of the world; and the judgment of Chandrachud J explicitly addressed menstruation as a matter of justice and human rights. Interestingly, the only judgment by a woman, Malhotra J, found the ban to be permissible on the basis of freedom of religion.

The judicial statement by Chandrachud J, a justice of a major apex court, is a significant one in the context of the current 'menstrual moment'. Chandrachud J explained that menstruating women have been labelled impure and it is this label that has been used to exclude them from 'key social activities'.¹⁵⁵ The judge stated that:

Notions of "purity and pollution", which stigmatize individuals, can have no place in a constitutional regime. Regarding menstruation as polluting or impure, and worse still, imposing exclusionary disabilities on the basis of menstrual status, is against the dignity of women which is guaranteed by the Constitution. Practices which legitimise menstrual taboos, due to notions of "purity and pollution", limit the ability of menstruating women to attain the freedom of movement, the right to education and the right of entry to places of worship and, eventually, their access to the public sphere.¹⁵⁶

He went on to stress that:

Women have a right to control their own bodies. The menstrual status of a woman is an attribute of her privacy and person. Women have a constitutional entitlement that their

¹⁵⁴ Deepa Das Acevedo 'The Battle for Sabarimala: How a Hindu Temple Became a Crucible for Indian Gender Politics' *Foreign Affairs* (online) 4 April 2019 < <https://www.foreignaffairs.com/articles/india/2019-04-04/battle-sabarimala> > (last accessed 30 April 2020).

¹⁵⁵ *Indian Young Lawyers Association & Others v The State of Kerala & Others*, Supreme Court of India, Writ Petition (Civil) No 373 of 2006, 28 September 2018 <https://sci.gov.in/supremecourt/2006/18956/18956_2006_Judgement_28-Sep-2018.pdf> at 114 (Chandrachud J).

¹⁵⁶ As above.

biological processes must be free from social and religious practices, which enforce segregation and exclusion.¹⁵⁷

Unlike the main judgment of Misra CJ which was concerned with gender discrimination without engaging closely with its relationship to menstruation, Chandrachud J focused on rights to dignity and liberty that lead to social exclusion of menstruating women. Issues of stigma that attach to menstruating women are associated, impermissibly, with issues of ‘untouchability’ prohibited under the Indian Constitution. He suggested that the case is less about freedom of religion for women as about ‘freedom from societal oppression’.¹⁵⁸ Chandrachud J’s judgment, in tackling menstrual injustice openly and fully, situates menstruation as a ‘proper’ subject of legal inquiry and determination. It acknowledges the material impacts of menstrual stigma on the lives of women and girls in terms of their access to education; alongside the ‘misrecognition’¹⁵⁹ that harms women and impacts their social, cultural and religious lives.

The decision of the Indian Supreme Court, hailed as a legitimation of feminist struggles for equality, was met with country-wide debate and violent protest in Kerala, the site of Sabarimala, that included groups of devotees (many women among them) preventing female worshippers from entering the temple.¹⁶⁰ Hundreds have been arrested for blocking women’s entry while women have responded with a 620 kilometre human chain in support of gender equality.¹⁶¹ One year after the court decision one of the first women to enter the temple in January 2019 believes that despite the political bluster people are starting to accept the reality and that women are gaining access to the temple.¹⁶²

The decision, while a legal landmark, is also a stark reminder of the limits of law in a context where judicial pronouncements can be publicly ignored, opposed and frustrated. Nevertheless, the Indian Supreme Court ruling is a milestone in reflecting the impact of feminist struggle to

¹⁵⁷ At 115.

¹⁵⁸ At 116.

¹⁵⁹ Using Nancy Fraser’s understanding of status inequality: Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Columbia University Press 2009) 16.

¹⁶⁰ Deepa Das Acevedo, ‘Pause for Thought: Supreme Court’s Verdict on Sabarimala’ (2018) 53 *Economic & Political Weekly* 12 at 15.

¹⁶¹ ‘Sabarimala Temple: Indian Women Form “620km Human Chain” for Equality’ *BBC News* (online) 1 January 2019 <<https://www.bbc.com/news/world-asia-india-46728521>> (last accessed 30 April 2020).

¹⁶² K A Shaji, ‘One Year After Sabarimala Verdict, Kerala’s Women Say No Going Back’ *Huffington Post* (online) 28 November 2019 <https://www.huffingtonpost.in/entry/sabarimala-supreme-court-kerala-women_in_5d8e40d9e4b0019647a82ac6> (last accessed 30 April 2020).

highlight menstruation as a bodily reality that can be discussed openly and adjudicated, even in the highest court.

3.3 LEGISLATION, POLICY AND LITIGATION ON DISADVANTAGE RELATED TO MENSTRUATION IN DEVELOPING COUNTRIES

In September 2019 a 14-year old Kenyan schoolgirl took her own life after being shamed by her teacher for having stained her clothes during her first period.¹⁶³ The incident led to violent protests at the school by parents and a ‘siege’ at the education ministry by female MPs.¹⁶⁴ This followed limited implementation of a 2017 amendment to the *Basic Education Act 2013* providing free sanitary products for all school girls who have reached puberty and for disposal facilities at every school.¹⁶⁵ The protests by MPs were a response to the poor rollout of the policy, and various investigations of the death and the policy are now underway.¹⁶⁶ Kenya is seen as one of the leading countries dealing with menstrual product access for girls in school. Other developing countries, including India, Ghana, Uganda and Rwanda have introduced programs to address hygiene issues and product provision.¹⁶⁷ Many of these initiatives have occurred in collaboration with UN agencies and international donor organisations as well as local non-government organisations in the Water, Sanitation and Hygiene (WASH) sector under the banner of Menstrual Hygiene Management (MHM).

Bobel and Fahs raise various concerns with MHM in general and its human rights framing in particular. They argue that the focus on menstrual products (market-based commodities) as solutions to poverty and under-development draw attention away from their structural causes – capitalism and colonialism – and the broader responses needed.¹⁶⁸ The focus on products means less attention is provided to menstrual education and measures to address stigma.¹⁶⁹ They argue that there is insufficient evidence to show that the provision of products increases girls’ access to schooling as the reasons for absence are multi-causal and cannot be remedied

¹⁶³ Ginger Hervey, ‘Kenyan Schoolgirl, 14 Kills Herself After Alleged Period Shaming by Teacher’ *The Guardian* (online) 13 September 2019 <<https://www.theguardian.com/global-development/2019/sep/13/kenyan-schoolgirl-14-kills-herself-after-alleged-period-shaming-by-teacher>> (last accessed 30 April 2020).

¹⁶⁴ As above.

¹⁶⁵ *Basic Education Act No 14 of 2013* (Kenya) s 39(k), as amended by *Basic Education (Amendment) Act No 17 of 2017* (Kenya) s 20.

¹⁶⁶ Hervey above note 163.

¹⁶⁷ See discussion of each of these in Department of Women, Government of the Republic of South Africa, *Draft Sanitary Dignity Policy Framework* (Version No 1, June 2017) <<http://pmg-assets.s3-website-eu-west-1.amazonaws.com/RNW3693sanitary.pdf>>.

¹⁶⁸ Bobel and Fahs above note 29.

¹⁶⁹ Bobel, *The Managed Body* above note 8.

by products alone. They question the human rights framing of menstruation as an issue of dignity suggesting it leads to a paradox where stigma and shame is called out but the solution provided results in greater hiding of menstruation with unsustainable commercial products.¹⁷⁰ They show that there is limited evidence of better health outcomes or greater school attendance as a result of these ‘improved’ products. Their concern with the human rights dignity-based framing of MHM and the focus on managing the messy/leaky body perversely reinforces the silencing of menstruation and accommodates stigma. Bobel and Fahs argue that:

Development initiatives to provide girls and women of the Global South with Western-style products is yet another colonial project, casting the bodies of primarily South Asians and Africans as deficient and in need of rescue.¹⁷¹

Many of the menstruation-related initiatives in developing countries are located within legislation and policy guidelines, sometimes underpinned by international and domestic human rights. This section considers whether this turn to law and rights to advance MHM and other responses to menstrual injustice contributes to the entrenchment of some of the critical concerns raised by Bobel and Fahs. We examine South Africa’s response as one of the more recent efforts by a developing country to introduce such policies. We also consider two recent decisions of the Colombian Constitutional Court dealing with menstruation and disadvantage through this same critical lens.

3.3.1 South African Policy Guidelines

The South African government, through its Department of Women, launched its Sanitary Dignity Programme in February 2019.¹⁷² It also removed tax on sanitary products in April 2019.¹⁷³ The Minister’s launch speech referred to the need for regulation of product safety and standards, particularly for new products entering the market.¹⁷⁴ The tax, product safety and ‘period poverty’ elements of the South African response are similar to those of developed countries. However, the Sanitary Dignity Programme aligns more closely with MHM in other

¹⁷⁰ Rather than cloth and other materials traditionally used by women.

¹⁷¹ Bobel and Fahs above note 29. This resonates with the understanding of representations of menstruation in the global south by Khoja-Moolji who argues that ‘[T]he dirty, primitive, leaking body then performs the crucial function of clarifying the constitution of the proper human as the clean, contained, and implicitly White body’: Khoja-Moolji above note 22.

¹⁷² Bathabile Dlamini, *The Sanitary Dignity Framework Set to Guide Menstrual Health Management in South Africa* (28 May 2019) <<http://www.women.gov.za/images/MHD-Opinion-Piece-by-Ms-Bathabile-Dlamini-28-May-2019-V2.pdf>>.

¹⁷³ As above.

¹⁷⁴ As above.

developing countries. The program is underpinned by a Sanitary Dignity Implementation Framework drafted in 2017,¹⁷⁵ which, though not formally adopted into policy, is used to guide government activity on MHM.¹⁷⁶ The government has committed funds to the program alongside provincial funding and a small scheme to give tertiary students a ‘personal health care allowance’.¹⁷⁷

The Sanitary Dignity Framework is directed at addressing lack of access to menstrual products by indigent women and girls, in order to promote their dignity. The focus on ‘sanitary dignity’ defined as ‘the preservation and maintenance of the self-esteem of an indigent girl or woman especially during menstruation’¹⁷⁸ brings attention to feelings of discomfort and financial hardship that lack of access to products produces. The guidelines point to the implications of lack of products on missed schooling, workplace absenteeism, health, participation in social and cultural activities, and self-esteem.¹⁷⁹ It also notes the problem of unemployment and the need to spend social assistance payments on items other than menstrual products.¹⁸⁰ The document points to the lack of access to products by reason of affordability but also geographical location since products are not fully available in rural areas. The guidelines define their purpose as contributing national standards, consistent provision between groups and provinces, and monitoring of implementation.

The focus on dignity and products as the solution leads, as Bobel and Fahs suggest, to a narrow understanding of menstrual injustice and limited, product-oriented responses to it. While the South African framework uses the term ‘sanitary dignity’ instead of MHM¹⁸¹ its focus on ‘managing’ menstruation to promote dignity is clear. The whole policy is directed at girls and women facing poverty needing to be supported to be ‘clean’ to advance their ‘self-esteem’.¹⁸² Interestingly, the guidelines themselves acknowledge the limits of this approach in noting that:

¹⁷⁵ Department of Women, Government of the Republic of South Africa, above note 158.

¹⁷⁶ Dlamini above note 172.

¹⁷⁷ As above.

¹⁷⁸ Department of Women, Government of the Republic of South Africa, above note 175.

¹⁷⁹ As above at 5 para 3.1.4.

¹⁸⁰ As above at 6 para 3.1.5.

¹⁸¹ As above at 14 para 8.1.2.

¹⁸² As above at 14.

The South African approach may be criticised for being too narrow since it focusses mainly on the preservation and maintenance of an indigent girl or woman's self-esteem during menstruation by means of the provision of sanitary products.¹⁸³

This is justified on the basis of aiming to address ‘the needs of the most vulnerable first’.¹⁸⁴ The subjects of the guidelines for state provision of products are defined as indigent women and girls who have reached puberty and are menstruating and who attend schools (ranked as poor), state tertiary institutions, state institutions (hospitals, mental facilities, orphanages, places of care and safety), and prisoners.¹⁸⁵ There is brief mention of awareness campaigns and education¹⁸⁶ but this is clearly not at the heart of the policy which is almost entirely about provision of products. The need for products to address a range of ills is justified without significant evidence. The policy thus fails to develop the more challenging solutions needed to overcome stigma and deepen understanding of menstruation. The attention to the needs of girls and their education is laudable and emerges from a strong tradition of feminist activism, however, the singling out of products in a context where sexual violence (including within schools) is epidemic and schools lack basic amenities and teaching materials raises some questions about the efficacy of this policy. The policy arguably diverts attention away from, or at the very least, fails to acknowledge the systemic causes of poverty and multi-dimensional gender inequality in South Africa.

The guidelines try to make menstrual injustice legible as a legal harm by referring to the Constitution, legislation governing children, and case law dealing with dignity as well as with the right to education. The guidelines state that ‘The ability to manage menstruation with adequate dignity is essential to the human rights of a woman’.¹⁸⁷ They locate ‘sanitary dignity’ within the constitutional rights to life and dignity and link these to freedom and physical integrity.¹⁸⁸ They see access to menstrual products as an equality issue and note the constitutional prohibition of discrimination.¹⁸⁹ The guidelines also reference international and regional treaties. In locating menstruation within a legal frame the guidelines effectively argue for the validity and legitimacy of government policy and resource allocation related to menstruation. However, in her speech launching the government’s sanitary dignity campaign,

¹⁸³ As above at 15.

¹⁸⁴ As above at 15.

¹⁸⁵ As above at 12.

¹⁸⁶ As above at 24–5.

¹⁸⁷ As above at 5 para 3.1.1.

¹⁸⁸ As above at 5.

¹⁸⁹ As above at 6 para 3.2.2.

the Minister noted that ‘Governance also has challenges as implementation is not always done according to policy’.¹⁹⁰ This is a significant understatement in a country with major implementation challenges related to lack of infrastructure, state capacity, corruption and mismanagement. Campaigns including litigation have challenged the lack of adequate toilets in schools following the death of a child in a pit latrine,¹⁹¹ alongside broader struggles for sanitation in poor communities.¹⁹² Thus, while law and rights are engaged through the guidelines, by the Minister’s own admission, there would be legitimate doubt regarding their likely impact.

The South African example points to the limits and difficulties with the MHM approach, its human rights articulation, and the legal framing of this development response. Law operates here as a mechanism to realise and legitimate policy that is both problematic in its response to stigma and narrow in its reach. In addition, law and policy framed in terms of human rights and using international development terminology, may be viewed with some cynicism when it fails to achieve concrete change.

3.3.2. Columbian Constitutional Court decision

The Colombian Constitutional Court in Decision T-398 of 2019 ordered the city of Bogota to support homeless women with their MHM through access to products, facilities to dispose of products, water and soap, and education on the menstrual cycle.¹⁹³ The decision included a structural remedy requiring the city to come up with a contingency plan for six months to provide products and a longer term policy for MHM for women living on the streets.¹⁹⁴ The decision was based on rights to dignity, autonomy and sexual and reproductive health and emphasised women’s rights to participation in public life. In a prior Decision C-117 of 2018 based on the right to non-discrimination and the right to an adequate standard of living the Court had removed tax on menstrual products. In a sophisticated application of indirect

¹⁹⁰ Dlamini above note 172.

¹⁹¹ Franny Rabkin, ‘The Law and the Horror of the Death of Michael Komape’ *Mail & Guardian* (online) 4 September 2019 <<https://mg.co.za/article/2019-09-04-the-law-and-the-horror-of-the-death-of-michael-komape>> (last accessed 30 April 2020).

¹⁹² Brendan Halloran, International Budget Partnership, *Budgets that Exclude: the Struggle for Decent Sanitation in South Africa’s Informal Settlements* (Case Study, September 2017) <<https://www.internationalbudget.org/wp-content/uploads/south-africa-sanitation-struggle-ibp-case-study-2017.pdf>>.

¹⁹³ Monica Arango Olaya, ‘Blood, Taxes, and Equality’, *Oxford Human Rights Hub Blog*, 17 November 2019), <<http://ohrh.law.ox.ac.uk/blood-taxes-and-equality/>>, (last accessed 30 April 2020]. Note that this discussion relies on Monica Arango Olaya’s summary of the decisions as the authors’ are unable to translate the Spanish judgments.

¹⁹⁴ *Ibid.*

discrimination and intersectionality the Court recognised that the tax laws operated particularly harshly on poor women who face economic disadvantage for a range of structural reasons including lower wages, less access to employment and property, and greater expenditure on childbearing and their dependents.¹⁹⁵

The decisions are significant in bringing the bloodied bodies of women into the focus of the country's highest court and in attaching rights and remedies to those bodies. By recognising that menstruation has material and financial impacts, particularly affecting poor women, the Courts situate women's bodies within their social and economic location; and by raising issues of participation in public life the Court also acknowledges the political dimensions of embodied citizenship. Requiring the city of Bogota to provide education alongside products and facilities addresses Bobel and Fahs' criticism of many of the MHM policies; but arguably the focus is still on assisting homeless women to hide their messy bodies rather than to address the social stigma attached to menstruation. Measures to address the dignity of poor women by assisting them to manage their menstruation can be viewed as somewhat superficial within the context of the broader loss of dignity that attaches to homelessness and poverty. The decision regarding product taxes appears to go somewhat further in attributing causal responsibility to gender inequality and the structural disadvantage this generates. Law plays a complex role here in both exposing injustice but remediating it in relatively restricted ways, and in so doing exposing its own deficiency as a mechanism to achieve far reaching social change.

4.0 CONCLUSION

The case studies illustrate the enthusiasm with which menstrual activists have engaged law and in turn the extent to which law has embraced the menstrual moment. Law has lent authority to feminist activism and proved influential in bringing menstruation into the public terrain. While this is cause for some celebration, the limits of these legal successes should be acknowledged, and their impacts carefully evaluated.¹⁹⁶ Valid critical concerns with their incrementalism, ineffectiveness and narrow framing suggest the need to approach future legal strategies with caution.

Our discussion of the US, Scotland, South Africa and Colombia show that legal responses to menstrual injustice might be contributing to greater public discourse on menstruation and

¹⁹⁵ Ibid.

¹⁹⁶ See, for example, some of the reflections in Crawford and others, above note 11.

greater access to free or low price menstrual products; but are generally failing to engage directly with stigma and discrimination associated with menstruation, to address structural dynamics that drive violence and control associated with menstruation, to question the underlying causes of poverty and inequality, and to provide redress and other remedies for menstrual injustices. At the same time, the *Sabarimala* case points to the importance of legal recognition of the injustice of menstrual stigma and the laws of Nepal may be contributing, along with other measures, to redefining a harmful practice. But these examples, as with the South African case, point to the limited reach of law and the dangers of imported ideas that are not sufficiently rooted in local struggle or have meaning and impact on the ground. As such, we argue that law occupies a contradictory position in the current menstrual moment and that greater reflection is required by scholars, activists and policymakers on the discursive and material impacts of bringing about change through law.

Our analysis highlights the importance of scale in analysis of the law's menstrual moment and how to make sense of the contradictions, tensions and possibilities that arise when we consider these legal developments as a collective body of law. First, we should take a more granular approach to law, being attentive to how different legal methods (legislation, litigation, policy) might be appropriate in advancing strategic efforts and structural justice in relation to menstruation. In turn, any subsequent findings from this analysis about the strategic use of these legal methods by feminist activists (and their *prima facie* success in some respects) might inform broader discussion of feminist legal methods and feminist legal activism. Another dimension of scale relates to the geographic and geopolitical. For example, different approaches and contexts for legal reforms targeted at menstrual products in the Global North and Global South might lead to different responses, as well as illuminating how dynamics of colonialism and neoliberalism circulate in different ways across jurisdictions. Thirdly, we have focused on legal developments engaging the nation state or its composite jurisdictions (for example, state, provincial and local governments), though we note that the 'legal turn' in the menstrual moment is also occurring at other scales such as at the international level (notably MHM) and in individual companies in the Global North and Global South (notably in the context of menstrual leave in corporations), some of which are transnational. Careful attention to jurisdictional scale in analysis of the legal turn is necessary not least of all to further explore the particular transnational, neoliberal and colonial dynamics at play.¹⁹⁷ Lastly, we should

¹⁹⁷ Fraser above note 159.

consider how justice is delineated in the specific context of menstruation (individualised justice, structural justice, historical justice) and the extent to which this impacts on the transformative potential of the turn to law.