

# Inclusivity and the law: do we need to prohibit class discrimination?

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[Equality Act 2010 \(c.15\)](#)

## \*E.H.R.L.R. 274 Abstract

*This article argues that national, regional and international human rights and equality laws have proven insufficient protection against discrimination on the basis of class, birth and social origin. It demonstrates that class is still an important area of discrimination, but that class remains largely invisible to law. It provides evidence that class discrimination is no more difficult to define than disability, gender, and age and the other forms of prohibited discriminations. The author argues that there is sufficient space within existing equality provisions, but human rights fora and equality courts have failed to develop these provisions. The author therefore argues for express prohibitions on class discrimination in national, regional and international law.*

## Introduction

It is an extraordinary lacuna, that to discriminate on the basis of someone's class is lawful in the UK and in the domestic legislation of many countries of the world.<sup>1</sup> Hence, when a student informed me that she had been shortlisted for an interview with a firm of solicitors in England, and that during the interview she was informed that there was too much of a social gap between her and her fellow solicitors, she had no legal remedy.<sup>2</sup> Such an interview rejection would not have been without remedy in relation to any of the nine protected characteristics under the [Equality Act 2010](#).<sup>3</sup> Similarly, in a comment on the recent London Millenium Cohort Study, which found that a higher percentage of middle-class students shoplifted in comparison to working-class students, the researcher said she found the results "puzzling" and "you would think that it would be the other way around",<sup>4</sup> it is unlikely that she was aware of her unconscious bias. These two examples from many prompt the question of whether there ought to be a tenth protected characteristic in the law of the UK and other national laws, and whether class discrimination ought to be prohibited under regional and international human rights law.

This article enquires what is it about the nature of that student's background, my background and other working-class backgrounds, which, although fundamental to our identities and sense of self, makes [\\*E.H.R.L.R. 275](#) working-class heritage invisible to law? As a matter of terminology, the term "heritage"<sup>5</sup> will be used in preference to background, because it better encapsulates the value that many of us place on working-class lives, both past and present. This article is also premised on the basis that those from poorer backgrounds and other classes have suffered arbitrary disadvantage because of their class, and that such disadvantage equates with the effects of other forms of discrimination.<sup>6</sup> The effects of such discrimination in one area of employment, universities, can be gauged from the writings of an academic colleague in the US, who wrote that he found it harder to come out as working class than he did to come out as gay.<sup>7</sup> I have been told the same by academic colleagues in the UK.<sup>8</sup> In focusing on class discrimination, I am referring to a richly intersectional concept of class, not the one portrayed by the media.<sup>9</sup> Class embraces race, religion, gender, rurality,<sup>10</sup> as well as all the protected characteristics under the [Equality Act](#) and international and regional treaties. In arguing for the prohibition of class discrimination, I am not arguing that only working-class discrimination should be prohibited, but that all forms of class discrimination are unacceptable for democratic societies based on dignity, and that a prohibition on class discrimination would reinforce existing prohibitions rather than compete with different identities. The central core of my argument is that, although there is sufficient space in much domestic legislation and in regional and international human rights treaties for governments, courts and human rights fora to read class into the existing categories of prohibited discriminations, this has not occurred. Further, on the basis of historical and existing jurisprudence, it is unlikely to occur for a long time, and the effects of class discrimination are too significant to depend on chance and waiting. Therefore, I argue that the time is now overdue for the inclusion of an express prohibition against class discrimination in law—national, regional and international—because the reliance upon existing standards has proven grossly inadequate. The inequality in rights ranges from the sphere of employment to the right to life, and excluding a prohibition of class discrimination from domestic, regional and international equality and human rights laws, society, national and global, is signalling that such behaviours are both acceptable and justified.

## **The continuing importance of class discrimination**

Law is both hierarchical and a partnership, regulating individual lives and resting on the pillar of consent between a community, the government, legislature and the courts. It is the partnership aspect of law, which is sometimes overlooked, particularly in the UK, where reference to the people is strangely omitted from much legislation.<sup>11</sup> Partnership and trust are relevant to the support of democratic structures, as we have witnessed in relation to the illegal insurrection in the Capitol building in Washington and inaccurate descriptions of the UK's Supreme Court as the Enemy of the People.

A prerequisite of including a prohibition of class discrimination as the tenth characteristic in the [Equality Act](#) and in other national and international legislation is that class is still considered to be important in people's daily lives and that there is a continuing unfairness. As a result of Covid 19, communities in societies around the world are re-examining concepts of fairness, a concept about which many

lawyers [\\*E.H.R.L.R. 276](#) and members of the judiciary feel discomfort, because it is regarded as too loose for definition, and therefore they prefer equality, dignity and justice. Arguably, the triptych of equality, dignity and justice are equally challenging to define. However, a sense of fairness is often the unexpressed grundnorm of equality legislation. It is also because of fairness, a concept that twins dignity with equality, that since 1945 the four grounds of prohibited discriminations set out expressly in the United Nations Charter<sup>12</sup> have expanded.

The political, as distinct from legal, reactions to Covid 19, have, however, created an opportunity to re-examine our laws on human rights and discrimination, and to inquire whether it offends our sense of fairness that class discrimination remains lawful. If class discrimination continues to remain legal, what does the legality of class discrimination say about our values attributed to law and its role in contemporary society.

An aspect of the continuing importance of class, although unrecognised, is the impact that class has, not only upon the powers and hierarchy of national legal institutions, but also upon the legal powers and the hierarchies of regional and international human rights institutions, with its two different tiers of legal competences. Within Europe, for example, the priority accorded to the [European Convention on Human Rights](#) over the European Social Charter is evidence of the continuing but unexpressed importance of class. The [European Convention](#) creates a judicial body, whereas even the revised European Social Charter 1996 does not create a court, only a committee. This raises significant questions for European democracy—principally, should democratic states in the twenty-first century prioritise civil and political rights, or is there an equally important substantive social justice component to democracy and its democratic institutions? This unexpressed hierarchy of rights, despite the clarion calls that all human rights are equal and indivisible,<sup>13</sup> also raises significant questions for the dignity and value of members of different classes. Socio-economic rights clearly benefit everyone, but they have a particular importance for people living with too few resources, because they are based upon the premise that there is a legally enforceable equitable entitlement for everyone within the jurisdiction of the state to the state's social, economic and cultural resources.

The impact of class upon the legal powers and hierarchies of the Council of Europe also extends to the ratification process and becomes even more significant, because of the nature of the twin track ratification of the European Social Charter. It is rare that a human rights treaty has within the same treaty the legal possibility created for states parties to ratify some articles but not others.<sup>14</sup> The normal legal procedure for such an approach is to permit a state to attach a reservation, providing that such a reservation is not contrary to the objects and purposes of the treaty.<sup>15</sup> This creates the space for legal scrutiny of a reservation. However, in a treaty which is fundamental to democratic social justice, the legal scrutiny approach makes way for the political option of not even becoming party to a substantial part of the treaty. This is in addition to the normal reservation provisions. It is unlikely that Europe, either through the Council of Europe or the EU, would give Member States the opportunity to ratify only part of a treaty on the substantive provisions of freedom of expression or privacy. However, with poverty and the poor, such a partial ratification approach has been made a core aspect of the treaty, despite undermining the dignity of those residing in Europe. This raises important issues for the application of the concept of dignity for members of poorer classes. Rights which are essential to the lives of those who are poorer, and in the terminology of the language of the European Social Charter, are "socially excluded", are formally given a secondary status by a regional [\\*E.H.R.L.R. 277](#) organisation

established expressly to facilitate "economic and social progress".<sup>16</sup> This raises questions about the prohibition of class discrimination within an international human rights system with dignity and equality at its core.

This attitude towards rights affecting the poorest in our community is also reflected in the national legal order of many states which have not incorporated socio-economic rights into their human rights legislation. There is a significant and unacceptable difference in life expectancy in the UK between different classes, even in boroughs of the same city, as was reported in a World Health Organisation study of Glasgow, and was reported about the London Borough of Camden by its local Member of Parliament,<sup>17</sup> and this difference in life expectancies has been documented in national health surveys.<sup>18</sup> This is a clear case of inequality affecting the right to life. However, the class aspects of the right to life are currently very difficult to litigate and to hold a government accountable for in the courts under the existing [Equality Act 2010](#) and [Human Rights Act 1998](#). Both the powers and the hierarchy of national legal orders which adopt the European and UK's approaches to equality and human rights can also be considered from the perspective of an expanded approach to unconscious bias concerning class.<sup>19</sup>

The avoidable tragedy of Grenfell Tower starkly raised the issue of class and intersectionality. I have argued elsewhere that in the avoidable tragedy of Grenfell Tower, class was a dominant theme.<sup>20</sup> Race, asylum status, disability and age also played significant roles, however, in the Royal Borough of Kensington. Bourdieu's ideas of cultural, economic and social capital played out clearly.<sup>21</sup> Residents were perceived, wrongly or rightly, of having little economic, cultural and social capital, and their justifiable concerns were ignored in such a way that arguably breaches both the [Human Rights Act](#) and the [ECHR](#).<sup>22</sup> It is also arguable that the very slow response of the human rights community in perceiving the fire in Grenfell Tower as a fundamental human rights issue, was because it concerned the loss of life in social housing affecting a diverse range of people including working class. Class has played into the demotion of the value of socio-economic rights by successive governments, and intersectional approaches, where they have been brought into legislation on equality, have not minimised this flaw. This is not to underestimate the importance of bringing into effect [s.14 of the Equality Act 2010](#) in the UK,<sup>23</sup> but to observe that class discrimination ought also to be included expressly in any intersectional provisions aimed at equality. **\*E.H.R.L.R. 278**

There are other approaches which have been adopted and which, although they are important in making poorer lives fairer, complement rather than offer a substitute to prohibiting class discrimination, because they focus only on structural approaches, ignoring the cultural aspects of class. Such an example is [s.1 of the Equality Act 2010](#), which introduces a socio-economic duty on public bodies that requires them, "when making decisions of a strategic nature about how to exercise its functions" to "have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".

Public bodies have to consider how their decisions and policies could increase or decrease inequality that results from socio-economic disadvantage, however, successive UK governments have failed to bring [s.1](#) into force.<sup>24</sup> Within the UK, the Fairer Scotland Duty came into force as [s.1 of the Equality Act 2010](#), but only in relation to Scotland.<sup>25</sup> This duty requires local authorities to actively consider how they could reduce inequalities of outcome in any major strategic decision they make, and to publish a written assessment showing how they have done this. Similarly in Wales, the Welsh

Government plans to enact the duty on 31 March 2021 as part of its strategic programme to help public bodies deliver A More Equal Wales. Neither of these legislative provisions is a substitute for prohibiting class discrimination, but they are a valuable complement, and also serve as evidence that governments in the UK are capable of considering the entitlements of poorer classes. England, however, despite its medieval protection of what would be socio-economic rights to contemporary ears,<sup>26</sup> has forgotten its own history, and is falling behind Scotland and Wales. Several western democratic governments also think class continues to be important, at least at the political level. Canada, for example, has a Minister in its government for Middle Class Prosperity. It is not made clear which minister's portfolio looks after the prosperity of the other classes, but it still demonstrates that, in some form, class remains relevant in Canada.

## The law—an appropriate tool for the prohibition of class discrimination?

Because class remains an important facet of identity the question which requires addressing is whether the prevention of class discrimination is appropriate for a legal remedy, or ought class discrimination to be left exclusively to the political spheres? The Victorians regarded the overcoming of specific aspects of class discrimination as appropriate for law. The Housing of the Working Classes Act of 1890 was designed to improve housing conditions, although the statute is a rare example of an inclusionary approach to class. Historically, legislation in Europe, including during the Roman period, as well as in Asia, and during Colonial America, focused on class. In England, for example, the sumptuary laws, such as the Statute Concerning Diet and Apparel 1363, prescribed who could wear specific styles of clothing and eat specific foods, drilling down into the regulation of most of fundamental aspects of medieval personal life. This is a medieval example of law as a tool for social engineering. It was not until the twentieth century that class eventually became formally invisible in the electorate, with the passage of the Representation of the People Act 1928. Hence law is capable of dealing with class issues, although within the UK there has been a significant difference because, with rare exceptions, traditionally laws were intended to reinforce rather than remove class barriers—excluding those from poorer backgrounds. I am arguing that the situation should be reversed and, as successful as law has been in reinforcing class exclusions, the tool of law can be equally successful in including the excluded. **\*E.H.R.L.R. 279**

There has been space for courts to read into existing human rights treaties a prohibition on class discrimination, and this jurisdictional space has existed for over half a century. The [ECHR](#), for example, provides in [art.14](#) a right not to be discriminated against in exercising the Convention's rights on "any ground such as, social origin, property, birth or other status". This is repeated and expanded in [Protocol 12 of the Convention](#) by converting [art.14](#) into a self-standing law unrestricted to specific articles of the Convention. The UK is not a party to [Protocol 12](#) and has not yet lodged its signature indicating an intention to be bound.<sup>27</sup> This non-exhaustive list is repeated with differences in the major global and regional human rights treaties. It is also found in domestic legislation through the incorporation in the [Human Rights Act](#), and in many European states which have incorporated the Convention and the other human rights treaties. Hence, it is possible to read class discrimination into "social origin, birth and

other status". In fact, I would argue that its non-exhaustive nature, together with the context of property, social origin and birth, positively invites such an interpretation. However, this has not generally been the approach of national courts and regional and global human rights fora.

There are some occasional flickering flames lighting the way towards prohibiting class discrimination, but they are rare, such as the occasional decisions from United Nations bodies, including the UN Human Rights Committee. In *Mellet v Ireland* the UN Human Rights Committee found breaches of women's socio-economic status, because inter alia they had to travel abroad for abortions due to its criminalisation.<sup>28</sup> *Mellet* also highlights that under socio-economic status it is illegal to value women's worth less than men, thus reinforcing the prohibition of gender discrimination. This points the progressive way forward to interpreting class discrimination in a way that creates space for it to accord with human rights. This includes the International Labour Organisation's Women at Work initiative, seeking to combat the unequal distribution and undervalue of care work.<sup>29</sup>

There are General Comments from human rights treaty bodies, but very little space is devoted to class discrimination, even where it would be most expected to be included, within General Comment 20 of the United Nations Committee on Economic, Social and Cultural Rights on Non-Discrimination. General Comment no 20 only provides that "Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places." <sup>30</sup>

There is also reference to descent-based discrimination which includes some form of class discrimination but is not exhaustive, as it does not appear to include the newer forms of socio-economic disadvantage, including members of the precariat. General Comment 20 provides that the prohibited ground of express discrimination based on birth also includes

"descent, especially on the basis of caste and analogous systems of inherited status. States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against the dissemination of ideas of superiority and inferiority on the basis of descent. **\*E.H.R.L.R. 280**" <sup>31</sup>

As the Indian Supreme Court has noted, caste discrimination may be a form of class discrimination.<sup>32</sup> However, this same unnecessary nervousness about class which is found in some national legal systems extends to international human rights fora. Indeed, the guidance given by the UN Committee on Economic, Social and Cultural Rights in the General Comment does not point in the direction of class discrimination. The Committee recognises that "it is in the nature of discrimination that it varies according to context and evolves over time" and that a flexible approach is required. However, the examples of this flexible approach do not point in the direction of class discrimination, because the examples provided by the Committee point in the direction of the denial of legal capacity because of imprisonment or detention in a psychiatric institution, or the intersection of two prohibited grounds of discrimination, such as access to a social service denied on the basis of sex and disability. It is the intersectional approach where class issues have been raised, particularly within the Council of Europe. Hence in *Yordanova v Bulgaria* the European Court adopted an

intersectional approach to socio-economic disadvantage in relation to the Roma because of their "underprivileged status", which "must be a weighty factor",<sup>33</sup> and account was not taken of their essential need for alternative forms of housing, which the Court held is an element of the principle of proportionality.<sup>34</sup> However, a fully intersectional approach cannot be adopted without the inclusion of a prohibition on class discrimination, expressly or implicitly.

The European Social Charter has also moved some way towards meeting a prohibition of class discrimination but needs to move further. Social exclusion, originally a French concept, is defined in the literature as applying to those who are systematically excluded from participation in society.<sup>35</sup> Participation in this context refers to four dimensions: the capacity to purchase goods and services, participation in economically or socially valuable activities, political engagement, and social interaction.<sup>36</sup> Social exclusion, as with class, is not just a temporary phase of poverty; it is systemic, often passed from generation to generation, and can be self-perpetuating. Although social exclusion is valuable in tackling poverty, it has demonstrated that by itself combating social exclusion is insufficient, as the figures on inequality and social mobility in the UK continue to demonstrate.<sup>37</sup> This is not to argue that social exclusion policies or the concept itself should be abandoned; rather, it is to maintain that adopting both a social exclusionary approach reinforced by a prohibition on class discrimination would be more effective, because class discrimination entwines both structural and identity facets. It is structural in the sense of the relationship between law and economic power. The EU's Charter of Fundamental Rights expressly links social exclusion and poverty, but art.34 only considers the linkage in relation to social and housing benefit. The approach of the Council of Europe's Social Charter is broader, because it guarantees to everyone the right to protection against poverty and social exclusion without limiting the right by linking it only to particular forms of assistance.<sup>38</sup> Similar to the approach of the European Court, this intersectional approach to socio-economic disadvantage has also been applied by the European Committee on Social Rights to groups expressly included in the non-discrimination provisions, including persons living with disabilities,<sup>39</sup> pregnant women,<sup>40</sup> child \*E.H.R.L.R. 281 refugees,<sup>41</sup> and older persons.<sup>42</sup> However, as class discrimination has not been recognised, intersectionality has not provided a comprehensive safety net or tool for legal remedy.

There have also been some powerful dissenting judgements, including in *Garib v Netherlands*, where there was a recognition that Garib belonged to "the sociologically underprivileged", and that the applicant's poverty constituted a threat to the "*ordre publique*".<sup>43</sup> Although Ruth Bader Ginsberg eloquently and optimistically observed that dissenting judgments are speaking to a future generation,<sup>44</sup> the issue of class discrimination, because of its significant negative impacts on life and life chances, is too urgent to wait for a future generation.

Such occasional approaches demonstrate that a new way forward is required—an express prohibition of class discrimination in national, regional and international law. Hence a more promising approach is that of Cyprus, which does expressly prohibit discrimination on the basis of "social descent, birth, ... wealth, social class".<sup>45</sup> This raises the question that if Cyprus, a member of the Council of Europe and party to the European Convention on Human Rights and the major global treaties, is able to raise its standards of equality and dignity of treatment to include prohibiting class discrimination, the same approach is open to other European Member States.

At a global level, there has now been the recognition of a specific class, in the 2018 UN Declaration on the Rights of Peasants: something which fills both the lacuna of tackling

discrimination against a specific class and also encompasses the much-overlooked rurality. This provides in its preamble that peasants and other people working in rural areas suffer disproportionately from poverty, hunger and malnutrition. Article 2(3) importantly recognises "the existing power imbalances" between peasants and those who make the decisions that affect their lives. These legal provisions show awareness not only of poverty, but also of class in terms of the way in which class relationships work in entrenching poverty and, in turn, the violation of human rights. However, a recognition of the power imbalances when class discrimination is not prohibited, has not generally been developed by the courts.

There may be a lack of political will, but it is no longer possible to argue convincingly that class is too complex to define in legislation or for courts to adjudicate, when several democratic states have already enshrined a prohibition on class discrimination, including Cyprus and India, and other states, including South Africa, have created indirect methods of protection through the courts.<sup>46</sup>

## Class discrimination—the definitional challenges

There are many different sociological definitions of class, including the impact on definitions of the shift from production to consumption, and culture and considerations of welfare reliance. Many of these sociological critiques of class are from those in wealthier states, hence the focus on the differences between the European and the North American approaches to definition. Consumption and fragmentation are arguably greater in wealthier states, so that much European and North American scholarship considers class only from an industrialised state's perspective, an approach which has been rejected by the global community.<sup>47</sup>

Another argument concerning definition is that class discrimination ought to be treated differently and remain permitted because class itself is different from the other prohibited grounds of discrimination, because of its fluidity: the movement from one class to another. However, on both legal and cultural \*E.H.R.L.R. 282 grounds such a sought distinction fails. In law, parallels can be drawn with the other protected characteristics, including religion and gender. The right to change one's religion is recognised both in international law under the International Covenant on Civil and Political Rights 1966 and in the regional treaties, and such fluidity has not been regarded as an insurmountable obstacle to prohibiting religious discrimination.

Similarly, there is also fluidity in definitions of gender. In *Taylor v Jaguar Land Rover Ltd* it was found that parliament intended gender reassignment to be "a spectrum i.e. not at point A or point Z, 'gender fluid' i.e. at different places between point A and point Z at different times, or "transitioning" i.e. moving from point A but not necessarily ending at point Z." <sup>48</sup>

The fluidity argument is also in some senses self-denying, because there is no compulsion in having to abandon all working-class cultural values in order to move into spheres traditionally the domain of other classes. The same would apply to someone moving in the other direction: from the traditional middle and other classes.

Some may argue that it is not desirable to prohibit class discrimination, because such notions of equality are entangled with notions of revolution and dictatorship, as evidenced in the opening article of the Constitution of the People's Republic of China, which declares China "under the people's democratic dictatorship led by the working class".<sup>49</sup> Hence the assumption is sometimes arrived at that all attempts to prohibit class discrimination have been prompted by communist and former communist states.



However, as other Constitutions, including Cyprus and India demonstrate, this is not the case. In addition, during the drafting of the Universal Declaration of Human Rights 1948 much of the failed efforts to include an express prohibition of class discrimination came not from the Soviet Union but from Latin America. The aim of a legal prohibition of class discrimination is not to outlaw all private property, but to prohibit arbitrary and unjustifiable discrimination as a result of different forms of arbitrary exclusion. This is the reason that during the drafting of the Universal Declaration of Human Rights the UK was one of a number of non-revolutionary democratic governments which did not object to the inclusion of class in an international human rights instrument, although it was not finally expressly included.

There have been other approaches in focusing on improving the lives of poorer classes. These include the poverty class referred to in some Canadian literature, lower socio-economic status cited in Australia, low class, socio-economic status as a proposed inclusion in the [UK's Equality Act](#), and the French-originated concept of social exclusion and vulnerability. The underlying principle in approaching the language of class, and arguably any language, is to adopt a language that respects everyone's dignity and heritage, so that terminologies which include underclass are inherently disempowering and lacking in dignity. The approach of vulnerability is more complex,<sup>50</sup> because it may be applicable at different points of what may be a class-journey for some and appear disempowering for others.

I am proud to say that I come from a working-class background or heritage, however, the terms low class,<sup>51</sup> poverty class, or lower socio-economic status, are rarely self-selected, because of their undignified and disempowering nature. This is not to deny that there are definitional challenges in including a prohibition on class discrimination,<sup>52</sup> however, human rights law is replete with complex problems and [\\*E.H.R.L.R. 283](#) definitional challenges. When we were drafting the UN Convention on the Rights of the Child 1989, it literally took a decade to reach global consensus (other issues were also being discussed). The perceived problems of definition are often a reason raised by those who wish to retain the status quo in a range of human rights issues. Law makers rarely arrive at a short non-exhaustive definition of who should be protected against discrimination or who should be the focus of protection in human rights treaties, and further evidence of this is the challenges in defining disability for the global Convention on the Rights of Persons with Disabilities 2006. However, in none of these cases did definitional challenges prevent the adoption and wide ratification of the relevant treaties and their optional protocols.

In India class is expressly included in the Constitution. The Preamble setting out the Constitution's spirit enshrines "equality of status and opportunity". Class has numerous mentions in the Constitution within particular contexts, and is also mentioned in language which, to this author's ears, is undesirable, because the Constitution refers to "backward classes" and "socially and educationally backward classes",<sup>53</sup> albeit as a goal towards improving the life conditions and representation of under-represented groups, as set out in the Constitution. Because of its express inclusion, it has created the jurisdictional space for the Indian Supreme Court to recognise, in cases such as *Indra Sawhney*, that caste is often a form of "social class" linking it to occupation and poverty.<sup>54</sup> The Supreme Court also considered that those who have already benefited from such protections should not do so over and over again, thus eradicating one of the objections to prohibiting class discrimination: that it can benefit those who may no longer require its protection.<sup>55</sup> India's example shows how class is capable of being described beyond the traditional western working and middle class, and is capable of

being identified by different countries according to the relevance of different classes. There has been much focus, for example, on the intergenerational precariat class in Latin America.

Some may seek to argue that class is appropriate for law to define nationally but not internationally. Admittedly there are different stratifications of class and relationships with class, ranging from class based on economic power to social honour and esteem to social and political power. Several states in South America have, for example, considered the inclusion of "emergents" as a new class of affluent younger citizens who have benefited from the emergence of democracy, yet in the UK age has not been a defining factor concerning class. There are a variety of different approaches to definition, including the adoptions of broad definitions. In protecting both the right to hold and practice religious belief and thought under both the [Human Rights Act](#) and the [Equality Act](#), trust is placed on the implementing bodies, including the courts, to set the boundaries on the definition of religion and thought, which extends from the Abrahamic faiths to secularism and through to veganism.<sup>56</sup> Because national and regional courts are able to arrive at judgments on religious belief and thought, preventing discrimination on the basis of class will not be a greater challenge. It can therefore be left to the discretion of each state or to the specific regional or global human rights forum, provided that it does not undermine democratic values or civil, political, economic, social or cultural internationally recognised human rights. Consequentially, the Constitution of the People's Republic of China's "dictatorship of the proletariat" breaches this principle. Cuba is similar, even though the Cuban Constitution does not formally establish a dictatorship. However, the observance of democratic values and international human rights law goes beyond the formal and into the substantive. As with religion and belief, definitions of class and who belongs to which class can be explored on a case-by-case basis. This allows space to discuss class which, as well as being economic, is also social and cultural.

Some may also seek to argue that instead of prohibiting class discrimination and its definitional challenges, there are already sufficient alternatives in law, including that of poverty. Courts in the US and [\\*E.H.R.L.R. 284](#) South Africa have considered whether poverty is a ground for discrimination, and they have taken opposing views. The US Supreme Court, in the *San Antonio* case, rejected arguments that policies against poor people can attract heightened judicial scrutiny, because the Supreme Court did not regard poverty as discrete and insular like race.<sup>57</sup> In South Africa, however, in the *Social Justice Coalition v Minister of Police* case,<sup>58</sup> the Equality Court found that, although poverty was not listed as a ground of discrimination, it did amount to unfair discrimination for a variety of reasons, including that poverty was analogous to social origin, that poverty impacted on constitutionally protected socio-economic rights, and that poverty undermines the constitutionally protected right to dignity. Although the South African approach is preferable, there is the problem of legal uncertainty, with different courts in different countries reaching different conclusions concerning poverty. In addition, although the terms may change from country to country, as with blue collar in the US, there is an added value in acknowledging that class is an important facet of some people's identities.

If class discrimination offends because it undermines human dignity, then all forms of class discrimination require prohibition, and the concept of poverty does not capture all of these forms—those who work extraordinarily hard in life but were born into wealthier homes and in England may be called "toffs". Another added value in prohibiting class discrimination is that it would achieve a change in culture so that

insulting terms, such as "chav", "toffs" and more indirectly "bog-standard comprehensives", and "Essex girls" in England, "hillbillies" in America, "bogan" in Australia would no longer be acceptable and, importantly, such a change in language could lead to a change in political and media perceptions and depictions.

## Conclusion

The silence of law about class discrimination means that law is enforcing, albeit implicitly, the social closure<sup>59</sup> that excludes some people from employment, longevity and many of life's opportunities. This is further evidenced by the Runnymede Trust, in the UK, which in its recent evidence to the Education Committee argued that "we should recognise that the working-class has been 'left behind' and actively held back and these issues affect all working-class people, including BME working class groups". The omission of prohibiting class discrimination in many national, regional and international laws undermines the value not only in democracy but also in the under-valued democracy of knowledge and experience. The democracy of knowledge and experience implies that there are many stories of great value which have yet to be unearthed but which demonstrate that to come from a working-class heritage can be a matter of pride, an illustration of resilience and a strength in the power of community. The long overdue acknowledgement of racial equality, and more recently Black Lives Matter, has shown how much can be learnt from histories and stories which have been devalued and therefore ignored by many. Hence a significant advantage for society were class discrimination to be made illegal, is that other equally valuable and overlapping stories can be told. John Lennon may have sung that a working-class hero is something to be, but to law class is largely invisible. A prohibition on class discrimination would assist in making the invisible, visible.

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## Footnotes

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[1](#)

For a list of countries see *Geraldine Van Bueren, Class and Law (Hart Publishing, forthcoming)*.

[2](#)

Speaking at an "I Belong" University of Law seminar, 2020.

[3](#)

The nine protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

[4](#)

*The Times*, 10 February 2021. 9% of students from middle-class families admitted to shoplifting as opposed to 5% from working-class backgrounds. Even on a charitable interpretation that working-class students are stealing out of necessity, it still carries the imputation of a propensity for dishonesty.

[5](#)

Jonathan Prangnell and Geraldine Mate, "Kin, fictive kin and strategic movement: working class heritage of the Upper Burnett" (2011) 17(4) *International Journal of Heritage Studies* 318–330; Carole Binns, *Experiences of Academics from a Working-Class Heritage: Ghosts of Childhood Habitus* (Newcastle: Cambridge Scholars Publishing, 2011).

[6](#)

Evidence of such perceived disadvantage has been given at numerous seminar and seminar presentations of the Association of Working Class Academics <https://www.workingclassacademics.com/> [Accessed 10 June 2021].

[7](#)

Justin Quarry, "Why coming out as working class was harder than coming out as gay" (*The Guardian*, 13 November 2018) <https://www.theguardian.com/inequality/2018/nov/13/coming-out-as-working-class-difficulties-gay> [Accessed 21 May 2021].

[8](#)

I am grateful to my academic colleagues for sharing their experiences.

[9](#)

On an intersectionality approach to class see Geraldine Van Bueren, "Class, Intersectionality, the Right to Housing and the Avoidable Tragedy of Grenfell Tower" in Shreya Atrey and Peter Dunne (eds), *Intersectionality and Human Rights Law* (Oxford: Hart Publishing, 2020), pp.111–125.

[10](#)

Lisa Pruitt et al., "Legal Deserts: A Multi-State Perspective on Rural Access to Justice" (2018) 13 *Harvard Law and Policy Review* 15.

[11](#)

The Representation of the People Acts are exceptions in constitutional legislation. I am grateful to Professor Robert Blackburn QC for this perceptive observation.

[12](#)

Article 55(c): "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

[13](#)

See, e.g. the Vienna Declaration of Human Rights, 12 July 1993, A/CONF.157/23.

[14](#)

The US is the only state party to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000 which is not party to the principal treaty, the Convention on the Rights of the Child 1989, but even here it is a mechanism created within in an ancillary treaty and not in the same treaty.

[15](#)

Article 19(c) of the Vienna Convention on the Law of Treaties 1969, unless "the reservation is incompatible with the object and purpose of the treaty".

## 16

Preamble to the European Social Charter 1961, which was retained in the Revised European Social Charter 1996. See also Andrew Fagan's criticism of those who only wish to focus on life-threatening socio-economic harms in "The Gentrification of Human Rights" (2019) 41(2) Human Rights Quarterly 283–308.

## 17

In relation to Glasgow, see "*Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health*" (Commission on Social Determinants of Health Final Report, 2009), World Health Organization, [https://www.who.int/social\\_determinants/thecommission/finalreport/en](https://www.who.int/social_determinants/thecommission/finalreport/en) [Accessed 21 May 2021]. See also S.D.S. Fraser and Steve George, "Perspectives on Differing Health Outcomes by City: Accounting for Glasgow's Excess Mortality" (2015) 8 Risk Managed Healthcare Policy 99.

## 18

Louise Marshal et al., *Mortality and life expectancy trends in the UK: Stalling progress* (The Health Foundation, November 2019), <https://www.health.org.uk/publications/reports/mortality-and-life-expectancy-trends-in-the-uk> [Accessed 21 May 2021]. Although the report does not cite class by name, it does focus on different forms of socio-economic disadvantage.

## 19

G. Van Bueren, *Class and Law* (Hart Publishing, forthcoming).

## 20

Geraldine Van Bueren, "Class, Intersectionality, the Right to Housing and the Avoidable Tragedy of Grenfell Tower", in Shreya Atrey and Peter Dunne (eds), *Intersectionality and Human Rights Law* (Oxford: Hart Publishing, 2020), pp.111–125.

## 21

Pierre Bourdieu, "The Forms of Capital", in J.G. Richardson (ed.), *Handbook of Theory and Research for the Sociology of Education* (Greenwood Press, 1986), pp.241–258.

## 22

Geraldine Van Bueren, "The Grenfell Disaster and the Right to Life" (*The Times*, 22 June 2017), <https://www.thetimes.co.uk/article/grenfell-disaster-the-uk-is-in-violation-of-the-right-to-life-kknpi68gx> [Accessed 21 May 2021].

## 23

Section 14 would provide, if enacted, the following:

- (1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.
- (3) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).
- (4) But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics in the combination.
- (5) Subsection (1) does not apply to a combination of characteristics that includes disability in circumstances where, if a claim of direct discrimination because of disability were to be brought, it would come within section 116 (special educational needs).
- (6) A Minister of the Crown may by order amend this section so as to—

- (a) make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1);
- (b) specify other circumstances in which subsection (1) does not apply.
- (7) The references to direct discrimination are "to a contravention of this Act by virtue of [section 13](#)."

[24](#)

The non-governmental organisation Just Fair has been campaigning for the UK to implement [s.1](#).

[25](#)

It entered into force in Scotland in April 2018.

[26](#)

See in relation to Carta de Foresta 1217, Geraldine Van Bueren, "Socio-economic rights and a Bill of Rights—an overlooked British tradition" [2013] Public Law 821.

[27](#)

Nicholas Grief, "Non-discrimination under the European Convention on Human Rights: a critique of the UK Government's refusal to sign and ratify Protocol 12" [2002] 27 European Law Review 3.

[28](#)

UN Doc.CCPR/C/116/D/2324/2013.

[29](#)

*Women at Work—Trends (Geneva: International Labour Organisation, March 2016).*

[30](#)

Committee on Economic, Social and Cultural Rights, General Comment 20, "Non-Discrimination in Economic, Social and Cultural Rights", UN Doc.E/C.12/GC/20 (2009), para.35.

[31](#)

General Comment 20, para.26. The author will be heading a global project with the British Institute of International and Comparative Law drafting international Guidelines on Descent-Based Discrimination.

[32](#)

See further below.

[33](#)

*Yordanova v Bulgaria (App. No.25446/06), judgment of 24 April 2012* at [133].

[34](#)

The Court found a violation of [art.8](#) but not of [art.14](#). In the relationship of socio-economic rights on civil and political rights see, Adélaïde Remiche, "Yordanova and Others v Bulgaria: The Influence of the Social Right to Adequate Housing on the Interpretation of the Civil Right to Respect for One's Home" (2012) 12(4) Human Rights Law Review 787.

[35](#)

Contemporary political interest in the concept began in 1974 when René Lenoir, then Secretary of State for Social Action in a French Gaullist government, first popularised the term.

[36](#)

See Jane Mathieson *et al.*, *Social Exclusion Meaning, Measurement and Experience and Links to Health Inequalities: A Review of Literature (WHO Social Exclusion Knowledge Network Background Paper 1, September 2008).*

[37](#)

*State of the Nation 2016: Fourth Annual "State of the Nation" (Social Mobility Commission, 16 November 2016).*

[38](#)

"Everyone has the right to protection against poverty and social exclusion"; art.30, Revised European Social Charter.

[39](#)

*International Federation of Human Rights (FIDH) v Belgium, (Complaint No.75/2011), decision of 26 March 2013.*

[40](#)

*International Planned Parenthood Federation—European Network (IPPFEN) v Italy (Complaint No.91/2013), decision of 10 September 2013.*

[41](#)

*Defence for Children International v Netherlands (Complaint No.47/2008), decision of 20 October 2009.*

[42](#)

*The Central Association of Carers in Finland v Finland (Complaint No.71/2111), decision of 4 December 2012.*

[43](#)

*Garib v Netherlands (App. No.43494/09) [GC], judgment of 6 November 2017.* See the powerful dissent of Judge Pinto de Albuquerque, joined by Judge Vehabovic.

[44](#)

See also on dissenting judgments, Claire L'Heureux-Dube, "The Dissenting Opinion: Voice of the Future" (2000) 38 Osgoode Hall Law Journal 495.

[45](#)

Constitution of the Republic of Cyprus art.28(2).

[46](#)

See below.

[47](#)

For example, describing peasantry only as historical, see the Declaration on the Rights of Peasants, above.

[48](#)

[Taylor v Jaguar Land Rover Ltd \[2020\] 9 WLUK 200](#) at [178].

[49](#)

Article 1.

[50](#)

For an analysis of vulnerability and the Council of Europe see *Colm O'Cinneide, "The Potential and Pitfalls of Intersectionality in the Context of Social Rights Adjudication" in Shreya Atrey and Peter Dunne (eds), Intersectionality and Human Rights Law (Oxford: Hart Publishing, 2020) pp.59–83.*

[51](#)

Although see low class as used in Alex Benn, "The Big Gap in Discrimination Law: Class and the Equality Act 2010" (2020) 3(1) University of Oxford Human Rights Hub Journal 30. In helpful discussions with the author, he pointed out that he used it, understandably, as a recognition of existing hierarchies.

[52](#)

Although note Hall's observation that class "is both more real and more simple to address, than say gender; that "class" because it is linked to the economic, is somehow more materially determining

...", *Stuart Hall, "Some 'Politically Incorrect' Pathways through PC", in Sarah Dunant (ed.), The War of the Words: The Political Correctness Debate (Virago, 1994), p.178.*

[53](#)

See, e.g. the "socially and educationally backward classes" in art.15(4) and "backward class of citizens" in art.16(4).

[54](#)

*Indra Sawhney v Union of India (1993) AIR 1993 SC 477.*

[55](#)

See further *G. Van Bueren, Class and Law (Hart Publishing, forthcoming).*

[56](#)

A. Benn, "The Big Gap in Discrimination Law: Class and the Equality Act 2010" (2020) 3(1) University of Oxford Human Rights Hub Journal 30.

[57](#)

*San Antonio Independent School District v Rodriguez (1979) 411 US 959, 93 S.Ct.*

[58](#)

*Social Justice Coalition v Minister of Police [2018] ZAWCHC 181; 2019 (4) SA 82 (WCC).*

[59](#)

As Mutua comments, it "harkened back to conversations about class and class relations that had ostensibly been discredited and in any event seemed inapplicable to discussions of law": Athena D. Mutua, "Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality" (2008) 56 Buffalo Law Review 859.