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Period Poverty in a Pandemic: Harnessing Law to Achieve Menstrual Equity

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PERIOD POVERTY IN A PANDEMIC: HARNESSING LAW TO ACHIEVE MENSTRUAL EQUITY

BRIDGET J. CRAWFORD* & EMILY GOLD WALDMAN**

ABSTRACT

Period poverty is not new, but it has become more visible during the COVID-19 crisis. Worldwide, menstruation has long caused marginalization and vulnerability for many. The pandemic has only amplified these conditions. This Article makes three claims. The first is descriptive, identifying four interrelated aspects of global period poverty that have gained new salience during the coronavirus pandemic: lack of access to affordable menstrual products; lack of access to other needed supplies and services for health and sanitation; lack of menstruation-related information and support from schools and health professionals; and menstrual stigma and shame. Using examples from multiple countries, the Article highlights the importance of being able to manage one's menstruation in a safe and affordable way.

The Article's second claim is that law has a role to play in eliminating period poverty—both during a pandemic and beyond. By ensuring that menstruation-related concerns are taken into account when defining “essential businesses,” for example, governments can both address the material needs of approximately half the population and signal that those needs are important.

Finally, the Article explores the heightened visibility of menstruation-related concerns during the COVID-19 crisis as suggestive of an emerging popular awareness of period poverty. This Article's account has important implications for a larger worldwide menstrual equity movement that takes aim at menstruation-related obstacles standing in the way of full participation for all people in private and public life.

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INTRODUCTION

During the lockdown caused by the coronavirus pandemic in Wolverhampton, United Kingdom, 20-year-old student Indu Indu switched to using a cloth rag in lieu of menstrual pads after she lost her part-time job in a beauty salon. Indu found the cloth itchy and uncomfortable; it also limited her mobility. “I’m not comfortable going outside with these cloths on,” she explained, “that’s why I prefer to stay at home.”¹

* * *

After the coronavirus lockdown began in Lucknow, Uttar Pradesh, India, 17-year-old Hina and a group of friends began making menstrual pads to compensate for the dearth of menstrual products at local stores. Hina observed: “Periods are considered shameful. During the lockdown when even medicine shops were closed, many girls were worried how they would manage.”²

1. See Libby Wiener, *Anguish as Women Unable to Afford Sanitary Products During Coronavirus Outbreak*, ITV (June 2, 2020), <https://www.itv.com/news/2020-06-03/period-poverty-coronavirus-outbreak/> [https://perma.cc/N7XP-Q8ZU].

2. See Puja Awasthi, *These UP Girls Are Reminding Us Periods Don’t Stop During a Pandemic*, THE WEEK, (May 28, 2020, 11:52 AM), <https://www.theweek.in/leisure/lifestyle/2020/05/28/these-up-girls-reminding-us-periods-dont-stop-during-pandemic.html> [https://perma.cc/ZWW4-QSZ2] (quoting 17-year-old Hina).

* * *

Dana Marlowe runs a Maryland nonprofit organization called I Support the Girls that collects donations of bras and menstrual products “for shelters, prisons and people in need.”³ In March 2020, during the early days of the pandemic in the northeastern United States, I Support the Girls donated 900,000 menstrual products to the Salvation Army and to the City of Trenton, New Jersey, for use in its homeless shelters. By comparison, in March 2019, the group had donated 200,000 menstrual products to similar organizations.⁴

* * *

Pandemic or not, menstruation goes on. In spite of the sea-changes in how people live, work, and attend school for the foreseeable future, one thing that the COVID-19 pandemic has not changed is the fact that approximately half the population menstruates for a significant portion of their lives.⁵ Menstruation is a biological process; it typically begins at age twelve, but can start as early as age eight and as late as age fifteen.⁶ Every month over a three- to seven-day time frame, the built-up uterine lining sheds approximately two to three tablespoons of blood from the body—this is typically known as a “period.”⁷ In the United States, the average age of menopause (the permanent cessation of menstruation) is fifty-two.⁸

In the United States and Western Europe, most individuals use products like tampons, disposable pads, menstrual cups, period underwear, or reusable menstrual pads to absorb their menstrual flow.⁹ In some countries, locally-made pads, old cloth, mattress cuttings, dried grass, or similar

3. Emma Goldberg, *Periods Don't Stop for Pandemics, So She Brings Pads to Women in Need*, N.Y. TIMES (Apr. 5, 2020), <https://nyti.ms/3bVBI90> [<https://perma.cc/B8MU-WT9W>].

4. *Id.*

5. *What Happens During the Typical 28-day Menstrual Cycle?*, U.S. DEP'T OF HEALTH & HUMAN SERVS., OFF. ON WOMEN'S HEALTH, <https://www.womenshealth.gov/menstrual-cycle/your-menstrual-cycle> [<https://perma.cc/VEX4-QEFX>] [hereinafter *Menstrual Cycle*].

6. *Id.*

7. *See Period Problems*, U.S. DEP'T OF HEALTH & HUMAN SERVS., OFF. ON WOMEN'S HEALTH, <https://www.womenshealth.gov/menstrual-cycle/period-problems> [<https://perma.cc/3LC5-JC BC>] (quantifying the blood flow of the average monthly bleed, which is known as a period); *How Long Should the Average Period Last?*, PLANNED PARENTHOOD (Oct. 14, 2010, 11:52 AM), <https://www.plannedparenthood.org/learn/teens/ask-experts/i-just-got-my-period-and-i-have-been-having-it-for-six-days-now-and-i-am-getting-scared-is-that-to-long-to-be-having-you-period> [<https://perma.cc/BBG9-CY9 E>] (stating the length of the average period is three to seven days).

8. *See Menopause Basics*, U.S. DEP'T OF HEALTH & HUMAN SERVS., OFF. ON WOMEN'S HEALTH, <https://www.womenshealth.gov/menopause/menopause-basics#1> [<https://perma.cc/W45H-T KLA>] (defining menopause as occurring a full year since the last period).

9. *See Menstrual Cycle*, *supra* note 5.

methods may be used to manage menstruation.¹⁰ This is slowly changing, in part because of the work of entrepreneur Arunachalam Muruganantham, featured in the Oscar-winning documentary *Period. End of Sentence.*, whose pad-making machine allows multiple nonprofits, job training organizations, and women's microfinance groups to make and supply low-cost pads to underserved communities in India and elsewhere.¹¹

In recent years, more public attention has focused on the multiple ways that menstruation impacts everyday life. In May 2013, the German nonprofit organization WASH United initiated what would ultimately become Menstrual Hygiene Day, an occasion since commemorated annually on May 28 by various awareness events around the globe.¹² The United States saw its first "National Period Day" on October 19, 2019, marked by rallies and social media campaigns.¹³ All around the world, there is growing awareness of "period poverty," defined in various ways: inability to afford commercial menstrual products;¹⁴ inadequate access to supplies and services needed for menstrual hygiene, broadly understood;¹⁵ lack of adequate menstrual education; menstruation-associated stigma and shame; and the combination of some or all of the above.¹⁶ The COVID-19 pandemic has exacerbated many aspects of period poverty.

10. See, e.g., Shannon A. McMahon et al., *'The Girl with Her Period Is the One to Hang Her Head': Reflections on Menstrual Management Among Schoolgirls in Rural Kenya*, 11 BMC INT'L HEALTH & HUM. RTS. 1 (2011) (discussing non-commercial methods of menstrual management in Kenya).

11. See PERIOD. END OF SENTENCE. (Netflix 2018). See also JENNIFER WEISS-WOLF, PERIODS GONE PUBLIC: TAKING A STAND FOR MENSTRUAL EQUITY 35–36 (2017) (discussing the reach of the work of entrepreneur Arunachalam Muruganantham).

12. See *About Menstrual Hygiene (MH) Day*, MENSTRUAL HYGIENE DAY, <https://menstrualhygieneday.org/about/about-mhday/> [<https://perma.cc/A9K3-9A3J>] (describing the origins and operation of Menstrual Hygiene Day). See also Sarah Young, *Menstrual Hygiene Day 2020: What Is It and Why Is It So Important?*, INDEPENDENT (May 28, 2020), <https://www.independent.co.uk/life-style/health-and-families/menstrual-hygiene-day-28-may-period-poverty-theme-sanitary-products-a9534511.html> [<https://perma.cc/Y996-X92Q>] (same). The "WASH" in WASH United stands for the entity's focus on "safe drinking water, sanitation and hygiene," including menstrual hygiene. See WASH UNITED, <https://wash-united.org> [<https://perma.cc/X8BV-PYBK>].

13. See PERIOD, *National Period Day 2019 Recap*, YOUTUBE (Oct. 22, 2019), <https://www.youtube.com/watch?v=pGInxEAFK0>. See also Abbey Marshall, *Protestors Rally Outside Capitol on First National Period Day*, POLITICO (Oct. 19, 2019), <https://www.politico.com/news/2019/10/19/national-period-day-protesters-tampon-tax-051506> [<https://perma.cc/B7ST-LCMW>] (describing the National Period Day rally in Washington, D.C., and similar rallies in fifty-nine other locations).

14. See Ashley Rapp & Sidonie Kilpatrick, *Changing the Cycle: Period Poverty as a Public Health Crisis*, U. MICH. SCH. PUB. HEALTH (Feb. 4, 2020), <https://sph.umich.edu/pursuit/2020posts/period-poverty.html> [<https://perma.cc/6PVF-6PPS>].

15. See Alexandra Alvarez, *Period Poverty*, AM. MED. WOMEN'S ASS'N (Oct. 31, 2019), <https://www.amwa-doc.org/period-poverty/> [<https://perma.cc/3UKX-ESXB>] (defining period poverty as "the inadequate access to menstrual hygiene tools and educations, including but not limited to sanitary products, washing facilities, and waste management").

16. See, e.g., Erica Sanchez & Leah Rodriguez, *Period Poverty: Everything You Need to Know*, GLOBAL CITIZEN (Feb. 5, 2019), <https://www.globalcitizen.org/en/content/period-poverty-everything-y>

This Article looks closely at the issue of worldwide period poverty through the lens of the public health crisis precipitated by the COVID-19 virus. The pandemic has made it more difficult to manage menstruation—a normal, involuntary occurrence for approximately half of the population. We note at the outset that menstruation is not the exclusive province of cis women and cis girls; there are trans men and trans boys, as well as gender non-binary, intersex, and genderqueer people who menstruate as well.¹⁷ The world health crisis precipitated by the COVID-19 pandemic has made more visible the multiple difficulties faced by all who menstruate.

The Article reveals four distinct areas of concern related to periods in a pandemic. First is the problem of access to affordable products. In the early months of the pandemic, the virtual shutdown of economies in many countries prompted closures of retail shops and disruptions in supply chains, making it difficult for many people to access needed menstrual products.¹⁸ Even in places where these products were still available for sale, price-gouging put them out of reach of some customers, particularly given the other economic strains that the pandemic imposed on people's finances.¹⁹ Second, there are unique challenges for maintaining hygiene and sanitation during a pandemic. In some countries, public toilets or washing facilities have been shut down, making it more difficult or dangerous to find or use shared resources.²⁰ In other places, intermittent water shortages or access to

ou-need-to-know/ [https://perma.cc/3HRA-XGV7] (describing period poverty as “the lack of access to sanitary products, menstrual hygiene education, toilets, hand washing facilities, and, or, waste management”).

17. See, e.g., Wiley Reading, *My Period and Me: A Trans Guy's Guide to Menstruation*, EVERYDAY FEMINISM (Nov. 4, 2014), <https://everydayfeminism.com/2014/11/trans-guys-guide-menstruation/> [https://perma.cc/WNS8-NYDU] (describing a trans man's experiences with menstruation). See also GLAAD Media Reference Guide - Transgender, GLAAD, <https://www.glaad.org/reference/transgender> [https://perma.cc/A37D-9J6J] [hereinafter *GLAAD Media Guide*]. Consistent with the GLAAD Media Guide, we use “trans” to mean “transgender or transsexual - or sometimes to be inclusive of a wide variety of identities under the transgender umbrella.” *Id.* We use “non-binary” and “genderqueer” to refer to the terms preferred by “some people who experience their gender identity and/or gender expression as falling outside the categories of man and woman. They may define their gender as falling somewhere in between man and woman, or they may define it as wholly different from these terms.” *Id.* We endeavor throughout this Article to use inclusive language, but note that we occasionally use terms such as “women” and “girls” when those are terms used by news reporters, researchers whose studies we cite, or activists in countries outside North America, Europe, Australia, or New Zealand. On the general preference for using gender-neutral terms but occasional use of words like “women” and “girls,” see, for example, Chris Bobel & Breanne Fahs, *From Bloodless Respectability to Radical Menstrual Embodiment: Shifting Menstrual Politics from Private to Public*, 45 SIGNS 955, 973 n.10 (2020) (“It might make sense . . . to move back and forth between ‘women’ and ‘menstruator’ so that we do not lose the historical roots of misogynistic oppression . . . This move also carries the benefit of being more legible to many activists in the global South, who are less supported in writing gender fluidity into policy.”).

18. See *infra* Part I.A.

19. *Id.*

20. See *infra* Part I.B.

soap have curtailed personal and household hygiene.²¹ Disposal of used menstrual products has also become challenging during times of stay-at-home orders, especially in societies where custom calls for disposal of these products far from home.²² Third, sources of menstruation-related information and support have diminished during the pandemic. Schools have closed in many places where schools or teachers provide most (or all) instruction in health and the biology of menstruation;²³ in some of these places, schools are also significant providers of tampons, pads, or menstrual cups.²⁴ Relatedly, for people of all ages, access to healthcare has declined. Those suffering from menstruation-related conditions like endometriosis, polycystic ovary syndrome, or other issues have often been reluctant or unable to seek medical help during the pandemic, particularly during the early crisis stage when doctors and hospitals were focusing on treating the sickest patients.²⁵ Fourth, the pandemic elevated occurrences of menstrual stigma and shame, with stay-at-home orders making it difficult for some to maintain personal or cultural standards for privacy surrounding menstruation.²⁶

The Article next considers what role the law can play in facilitating access to material and intangible support necessary for menstruating individuals to participate in daily life. For example, if a particular local or national government permits only businesses that are designated as “essential” to continue operations during the pandemic, lawmakers should treat the manufacture and retail of menstrual products as “essential.” Relatedly, during the first weeks of the pandemic in the United States, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, on March 27, 2020, and included a provision in the Act that allowed funds from tax-advantaged health savings accounts to be used for purchasing any “menstrual care product.”²⁷ With this provision, Congress

21. *Id.*

22. *Id.*

23. *See infra* Part I.C.

24. *Id.*

25. *Id.* *See* Pinar Yalçın Bahat et al., *The Covid-19 Pandemic and Patients With Endometriosis: A Survey-Based Study Conducted in Turkey*, 151 INT’L J. GYNECOL. & OBSTETS. 249 (2020). The U.S. Department of Health and Human Services defines “endometriosis” as the condition in which “tissue similar to the lining of the uterus (womb) grows outside of the uterus,” with possible symptoms including pain, bleeding or spotting, digestive problems and infertility. *Glossary*, U.S. DEP’T OF HEALTH & HUMAN SERVS., OFF. ON WOMEN’S HEALTH, <https://www.womenshealth.gov/glossary/> [<https://perma.cc/V6UR-2896>]. Polycystic ovary syndrome is caused by an imbalance in reproductive hormones which then creates ovarian problems. *Id.* Symptoms may include irregular menstrual cycles, acne, hirsutism, weight gain, skin tags, and acne. *Id.*

26. *See infra* Part I.D.

27. CARES Act § 3702, Pub. L. No. 116-136, 137 Stat. 281 (2020); IRC § 223(d)(2). A “menstrual care product” is defined as a “tampon, pad, liner, cup, sponge, or other similar product used by individuals with respect to menstruation or other genital-tract secretions.” CARES Act § 3702.

implicitly acknowledged how essential such products are to the health of those who menstruate. In all countries, during pandemic times, there should also be a priority on continuing school-based educational programs that facilitate education about menstruation as well as access to menstrual products (or the means of making them). To be sure, the law is not well equipped to deal with all pandemic-era issues related to menstruation. Issues related to stigma, shame, or lack of privacy do not have ready legislative solutions. But raising awareness of period poverty during a pandemic, and taking concrete steps to address it, has the potential to help reduce ignorance and the related stigmas that treat menstruation as something secretive, suspicious, or dirty.

This Article proceeds in three parts. Part I explores the four previously mentioned aspects of period poverty that have been made more visible by the pandemic: lack of access to affordable menstrual products; lack of access to needed supplies and services for health and sanitation; lack of menstruation-related information and lack of support from schools and health professionals; and menstrual stigma and shame. Part II then asks what role the law can play in eliminating period poverty during a pandemic. There may be legislation that can support the ongoing operation of manufacturing supply chains that are important in the distribution of menstrual products, along with greater efforts to promote the dissemination of such products and menstrual education to those students who lack access at home. Similarly, although stopping the spread of disease certainly must be the top priority during a pandemic, it may still be possible to facilitate the safe maintenance of communal washing and sanitation facilities in some way. Part III then assesses the extent to which menstruation-related issues came into focus more sharply during the pandemic due to the efforts of grassroots citizens' groups, nongovernmental organizations, the popular press in multiple countries, and even some lawmakers. For those who are concerned about eliminating period poverty, there is some cause for hopefulness in the growing levels of public awareness of and comfort in discussing menstruation-related matters. In particular, Scotland's unanimous passage on November 24, 2020, of the Period Products (Free Provision) (Scotland) Act—which requires local authorities to ensure that period products are obtainable, free of charge, by all who need them—may signal the beginning of a new era.²⁸

28. See, e.g., Megan Specia, *Tackling 'Period Poverty,' Scotland Is First Nation to Make Sanitary Products Free*, N.Y. TIMES (Nov. 24, 2020), <https://www.nytimes.com/2020/11/24/world/europe/scotland-free-period-products.html> [<https://perma.cc/FQ95-7SPT>] (describing the legislation that makes Scotland “the first country in the world to make period products freely available to all who need them”).

The Article concludes by locating the discussion of period poverty during the COVID-19 crisis in the larger context of the menstrual equity movement. Issues of access to affordable menstrual products, better hygiene and sanitation, and menstruation-related information and support, as well as the elimination of menstrual stigma and shame, are ongoing projects in the overall effort to create a more just society where all people can participate fully in private and public life without regard to the biological fact of menstruation.

I. PERIOD POVERTY IN A PANDEMIC

A. Access to Affordable Products

Poverty—including period poverty—spiked in the months following the onset of the COVID-19 pandemic. Bloody Good Period, a U.K. national charity, typically distributes 2,000 packages of menstrual products each month to refugees, asylum seekers, and others in need.²⁹ But in the three months that followed British Prime Minister Boris Johnson's announcement of stringent stay-at-home orders on March 23, 2020,³⁰ Bloody Good Period distributed, on average, over 8,000 packages per month.³¹ Freedom4Girls, a charity based in Leeds, described an even more striking increase: while it normally distributes 500 packs of menstrual products each month, it distributed over 7,500 packages in the three months after the lockdown began.³² The experience of Indu Indu, who lost her job at a beauty salon and resorted to using a cloth to absorb her menstrual flow, exemplifies the direct relationship between financial strain caused by the pandemic and lack of

29. See About, BLOODY GOOD PERIOD, <https://www.bloodygoodperiod.com/about> [<https://perma.cc/ND73-WQW7>] (describing the organization's history and present work); BLOODY GOOD PERIOD & WOMEN FOR REFUGEE WOMEN, THE EFFECTS OF "PERIOD POVERTY" AMONG REFUGEE AND ASYLUM-SEEKING WOMEN (2019), https://e13c0101-31be-4b7a-b23c-df71e9a4a7cb.filesusr.com/ugd/ae82b1_22dcc28fa137419abf5c9abe6bbf3b45.pdf [<https://perma.cc/9Z2Z-RMLJ>].

30. See Rob Picheta, *Boris Johnson Issues Stay-at-Home Order, Sending UK Into Lockdown to Fight Coronavirus Pandemic*, CNN (Mar. 24, 2020, 4:50 AM), <https://www.cnn.com/2020/03/23/uk/uk-coronavirus-lockdown-gbr-intl/index.html> [<https://perma.cc/A3NR-374F>] (describing the coronavirus stay-at-home orders as "the most stringent restrictions seen in Britain since the end of World War II").

31 See Heidi-Ann Stedeford, *Periods and Pandemics*, BLOODY GOOD PERIOD (July 12, 2020), <https://www.bloodygoodperiod.com/post/periods-and-pandemics> [<https://perma.cc/VFT2-PRMM>] (noting that from the time stay-at-home orders were issued in March to the time of writing in July 2020, Bloody Good Period had distributed "33,500 packs of period products," representing an average post-lockdown monthly distribution of more than 8,375 packages).

32. See *Period Poverty: Rise in Free Sanitary Products Needed in Lockdown*, BBC (July 1, 2020), <https://www.bbc.com/news/uk-england-53236870> [<https://perma.cc/97MY-VTBH>] (interviewing Tina Leslie, the head of Freedom4Girls).

access to menstrual products.³³ “Due to lockdown we’ve lost our jobs,” she explained. “That’s why we have not money to buy pads and better products.”³⁴

Schools are places that increasingly provide access to menstrual products. In the past few years, the states of New York,³⁵ New Hampshire,³⁶ Illinois,³⁷ California,³⁸ and Georgia have all passed laws requiring public school districts to provide free menstrual products to their students.³⁹ This development has also occurred internationally. In Kenya, for example, an estimated 50% to 60% of all girls do not have access to menstrual products.⁴⁰ To address the problem of menstruation-related school absenteeism, a program sponsored by the Kenyan government endeavors to make menstrual products available in all schools; the program supplies approximately four million girls with menstrual products.⁴¹ A variety of nongovernmental organizations also have become involved by supplying Kenya’s schools with menstrual products or “hygiene kits,” which include

33. See *supra* note 1 and accompanying text. See also Alice Broster, *Period Poverty Is Getting Worse During Coronavirus*, *Warns Charity*, FORBES (May 28, 2020, 10:00 AM), <https://www.forbes.com/sites/alicebroster/2020/05/28/period-poverty-is-getting-worse-during-coronavirus-warns-charity/#6f04a7203f73> [<https://perma.cc/BP7Z-BAZW>] (“Period poverty was already a major issue globally. However, due to financial strain, reduced access to products and an increase in the price of products people are suffering more.”).

34. See Wiener, *supra* note 1.

35. N.Y. PUB. HEALTH LAW § 267 (McKinney 2021) (“All elementary and secondary public schools in the state serving students in any grade from grade six through grade twelve shall provide feminine hygiene products in the restrooms of such school building or buildings. Such products shall be provided at no charge to students.”).

36. N.H. REV. STAT. ANN. § 189:16-a (2021) (“The school district shall make menstrual hygiene products available at no cost in all gender neutral bathrooms and bathrooms designated for females located in public middle and high schools.”).

37. 105 ILL. COMP. STAT. ANN. 5/34-18.56(c) (West 2021); 105 ILL. COMP. STAT. 5/10-20.63(c) (West 2021) (“A school district shall make feminine hygiene products available, at no cost to students, in the bathrooms of school buildings.”).

38. CAL. EDUC. CODE § 35292.6(a) (West 2021) (“A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets [certain poverty guidelines] shall stock at least 50 percent of the school’s restrooms with feminine hygiene products at all times.”).

39. Maya T. Prabhu, *Georgia OKs Providing Menstrual Products to Low-Income Girls, Women*, ATLANTA J.-CONST. (April 10, 2019), <https://www.ajc.com/news/state--regional-govt--politics/georgia-oks-providing-menstrual-products-low-income-girls-women/8wRDKwffieuHFslCsg0TML/> [<https://perma.cc/RX47-DNJL>] (explaining the legislative allocation of a portion of the state budget to the Georgia Department of Education for schools to purchase menstrual product supplies).

40. See Jitna, *Fighting Period Poverty to Keep Kenyan Girls in School*, SHE WILL SURVIVE, <https://shewillsurvive.com/2019/09/29/fighting-period-poverty-to-keep-kenyan-girls-in-school> [<https://perma.cc/TAS9-LW4D>] (“In Kenya, period poverty is a huge problem. Approximately 50–65% of all girls do not have access to proper sanitary products.”).

41. See, e.g., Caroline Kabiru, *Periods in a Pandemic: Women and Girls in Low-Income Settlements Need More Support*, THE CONVERSATION (May 28, 2020, 4:58 AM), <https://theconversation.com/periods-in-a-pandemic-women-and-girls-in-low-income-settlements-need-more-support-139480> [<https://perma.cc/J9GD-53Q6>].

innovative reusable products.⁴² Thus, in different regions throughout the world, schools have become key participants in efforts to get menstrual products to those who need them.⁴³

By causing schools to close, the COVID-19 pandemic therefore cut many students off from a primary source of needed menstrual products. On March 15, 2020, schools all over Kenya “abruptly” closed due to the COVID-19 pandemic.⁴⁴ In July of 2020, Education Minister George Magoha announced that all primary and secondary schools would be closed until 2021, with all students required to repeat the previous school year (which started in January of 2020).⁴⁵ Most schools throughout the United States also closed over the course of March 2020, with varying timetables for reopening.

In addition to the affordability challenges imposed by the rise in poverty and closures of schools, COVID-19 also disrupted the manufacture and delivery of menstrual products. In March of 2020, for example, Prime Minister Narendra Modi of India issued “a total ban of coming out of your homes,”⁴⁶ essentially shutting down all commercial and private business by

42. See, e.g., Abdullahi Mire, “*I Wish I Was a Boy*”: *The Kenyan Girls Fighting Period Poverty*, AL JAZEERA (Feb. 24, 2020), <https://www.aljazeera.com/features/2020/2/24/i-wish-i-was-a-boy-the-kenyan-girls-fighting-period-poverty> [https://perma.cc/U5GP-DEJM] (but explaining that in 2018, a government-funded program to “distribute[] supplies directly to schools, ran for four months before it fizzled out as supplies ran out and girls started missing classes again”).

43. See, e.g., *Supporting Menstrual Hygiene Management in Rural Kenya: Commitment by Huru International*, CLINTON FOUNDATION, <https://www.clintonfoundation.org/clinton-global-initiative/commitments/supporting-menstrual-hygiene-management-rural-kenya> [https://perma.cc/BW84-A75A] (describing the distribution of kits with “eight re-usable sanitary pads . . . ; three pairs of underwear; antibacterial soap; a re-sealable, waterproof storage bag” and a variety of health-related information); *About Us*, ZANA AFRICA FOUNDATION, <http://www.zanaafrica.org/fact-sheet> [https://perma.cc/J3CT-4VY3] (describing work to provide “over 50,000 adolescent girls with the menstrual and sexual health support they seek, need, and deserve”). In New Zealand, following a successful pilot program, free menstrual products will be available to all “primary, intermediate, secondary school and kura students” who attend schools or kura that opt-in to the initiative, starting in June 2021. See, e.g., Official Government Press Release, Prime Minister Jacinda Ardern & Honorable Jan Tinetti, *Free Period Products to Be Available in All Schools and Kura* (Feb. 18, 2021), <https://www.beehive.govt.nz/release/free-period-products-be-available-all-schools-and-kura> [https://perma.cc/8DZW-6JR2]. See also Specia, *supra* note 28 (describing access to menstrual products in schools and other facilities in Scotland).

44. See Damaris Seleina Parsitau & Evelyn Jepkemei, *How School Closures During COVID-19 Further Marginalize Vulnerable Children in Kenya*, BROOKINGS (May 6, 2020), <https://www.brookings.edu/blog/education-plus-development/2020/05/06/how-school-closures-during-covid-19-further-marginalize-vulnerable-children-in-kenya/> [https://perma.cc/JVC3-TKQ4] (describing the shutdown of Kenyan schools and colleges during pandemic).

45. See *Coronavirus: Kenyan Schools to Remain Closed Until 2021*, BBC (July 7, 2020), <https://www.bbc.com/news/world-africa-53325741> [https://perma.cc/882K-PB73] (stating that schools are closed until 2021, but colleges and universities may reopen in September under specific safety guidelines).

46. See Jeffrey Gettleman & Kai Schultz, *Modi Orders 3-Week Total Lockdown for All 1.3 Billion Indians*, N.Y. TIMES (Mar. 24, 2020), <https://www.nytimes.com/2020/03/24/world/asia/india-coronavirus-lockdown.html> [https://perma.cc/G6PR-5P9E] (quoting Prime Minister Modi).

governmental decree.⁴⁷ Initially, menstrual products were not on India's list of "essential goods" that were exempt from the shutdown orders.⁴⁸ They were later added,⁴⁹ but in the meantime, 17-year-old Hina in the state of Uttah Pradesh made her own pads with friends, inspired by her previous participation in community-based menstrual education programs at her school that were sponsored by the nonprofit organization SAHAYOG.⁵⁰ Doing so made the girls feel more empowered in their own lives. 15-year-old Nazia, for example, said: "Once I could speak at my home about why I needed to be involved in the conversation about menstruation, I could also take on discrimination. For instance, I could question why my brother was given a glass of milk but I was not. It was like I was free."⁵¹

Even for people who could leave their homes and had the money to buy menstrual products, the pandemic made visible a new problem: scarcity. In the first weeks of the pandemic in the United States, the news was full of stories describing consumers who rushed to the store to buy toilet paper in bulk; the resulting bare shelves made for dramatic press coverage.⁵² Garnering somewhat less notice were reports that stores—as well as multiple online retailers—were low in stock or completely out of several major brands of tampons.⁵³ These types of shortages led a friend of Dana Marlowe, the founder of the Maryland-based nonprofit organization I

47. See Annexure to Ministry of Home Affairs Order No. 40-3/2020-D (Mar. 24, 2020), <https://www.mha.gov.in/sites/default/files/Guidelines.pdf> [<https://perma.cc/UJN3-RM3T>] (providing that "[c]ommercial and private establishments shall be closed down," but carving out certain exceptions for "ration shops" selling food and other products and other specific types of establishments).

48. See *id.*

49. See Maanvi, *FAQ: Are Soaps and Sanitary Pads Now Enlisted as Essential Goods?*, THE QUINT (Mar. 31, 2020, 10:03 PM), <https://www.thequint.com/coronavirus/faq/what-are-essential-goods-can-i-go-out-to-buy-sanitary-pads> [<https://perma.cc/WL32-Y5Z6>].

50. See *supra* note 2 and accompanying text. See also *About Us*, SAHAYOG, <https://sahayogindi.a.org/our-story/about-us> [<https://perma.cc/MRV2-9AZ4>] (describing the organization's history and present mission "to promote gender equality and the rights of marginalized women and youth").

51. Awasthi, *supra* note 2.

52. See, e.g., Jay L. Zagorsky, *We Have Plenty of Toilet Paper in the US—So Why Are People Hoarding It? An Economist Weighs In.*, BUSINESS INSIDER (Mar. 12, 2020, 12:45 AM), <https://www.businessinsider.com/america-has-toilet-paper-why-are-we-hoarding-it-2020-3> [<https://perma.cc/CW3Y-WAS3>] (comparing "panic buying" during the coronavirus pandemic to a buying spree in 1973 in response to joke by late night television host Johnny Carson); Chris Talbott, *Why Are People Hoarding Toilet Paper During the Coronavirus Pandemic?*, SEATTLE TIMES (Mar. 19, 2020, 3:00 PM), <https://www.seattletimes.com/life/why-are-people-hoarding-toilet-paper-whats-behind-the-instinct-to-stock-up-a-lot-during-the-coronavirus-pandemic> [<https://perma.cc/2LEH-QPE8>] (quoting one expert who explained excess toilet paper purchases as a "symbol of safety").

53. See Julie Bort, *Amazon and Other Sellers Have Run Out of Tampons as Coronavirus Fears Sell Out Online Stores*, BUSINESS INSIDER (Mar. 20, 2020, 4:11 AM), <https://www.businessinsider.com/amazon-and-other-online-stores-have-run-out-of-tampons-2020-3> [<https://perma.cc/BH4X-J4Y7>] (reporting shortages of tampons at Amazon and Walmart.com). See also Goldberg, *supra* note 3 (accompanied by a picture of almost-bare shelves of menstrual products with the caption: "Feminine hygiene products were scarce at a Brooklyn supermarket.").

Support the Girls,⁵⁴ to call and ask whether Marlowe could provide her with a box of tampons in exchange for homemade matzoh balls.⁵⁵ The friend reported that she had “scoured” local stores for menstrual products, but “the shelves were picked clean.”⁵⁶

The menstrual product shortage was worldwide. It stemmed not only from reduced supply, but also from hoarding behavior. A young woman in Indonesia reported that “[menstrual] products is [sic] rare and hard to find” and that “[m]any people buy too much for themselves,” alluding to the problem created by those who could afford to stockpile supplies.⁵⁷ The shortage, in turn, led to price gouging. A public health specialist in Zimbabwe, for example, noted that “most retail shops have taken advantage of the [lockdown] situation and hiked prices” of menstrual products.⁵⁸ A young woman in Fiji reported: “Prices went up as soon as there was a confirmed case of COVID-19 in Fiji. Sometimes I have to forgo buying hygiene products as money will have to be used on food and bills.”⁵⁹ An Australian woman had the same observation: “Due to bulk buying it has been extremely hard to find any products at all, and when you do find them, they are quite expensive.”⁶⁰ Indeed, during the early months of the pandemic, the nongovernmental humanitarian organization Plan International conducted a survey of professionals from twenty-four countries who work in the fields of water, sanitation, hygiene, and sexual reproductive health rights; 73% of respondents agreed that the COVID-19 pandemic had reduced access to menstrual products through either shortages or supply chain problems.⁶¹

In sum, lack of access to menstrual products during the pandemic is best understood as a problem resulting from multiple overlapping factors. Even before the pandemic, the affordability of such products was an issue—one

54. See *supra* note 3 and accompanying text.

55. Marlowe noted that her friend’s request “set off alarm bells” about the ways “women struggle with feminine hygiene needs” during an event like the coronavirus pandemic and foreshadowed a deluge of requests she would receive from social service organizations and even city governments for donations of menstrual products from I Support the Girls. Goldberg, *supra* note 3.

56. *Id.*

57. See PLAN INTERNATIONAL, PERIODS IN A PANDEMIC: MENSTRUAL HYGIENE MANAGEMENT IN THE TIME OF COVID-19 4 (2020), https://reliefweb.int/sites/reliefweb.int/files/resources/mhm_report.pdf [<https://perma.cc/J32R-SSM3>]. The Plan International report conveys the results of an online survey given to professionals working in the fields of sexual reproductive health rights, water, sanitation, and hygiene in twenty-four countries. It also communicates results of a second survey that was distributed to “people who menstruate . . . across Australia, Ireland, Fiji, the Solomon Islands, Papua New Guinea, Indonesia and Vanuatu.” *Id.* at 3.

58. See *id.* at 7.

59. *Id.*

60. *Id.*

61. See *id.* at 3 (describing the survey design and indicating 73% agreement with the statement that COVID-19 had “worsened key challenges for people who bleed by . . . [r]estricting access to products, through either shortages or disrupted supply chains”).

exacerbated by the fact that in many jurisdictions, menstrual products are not granted the same tax exemptions afforded to certain other necessities.⁶² The pandemic imposed new limitations on the manufacture, supply, and delivery of menstrual products, creating scarcity. And that scarcity elevated prices at precisely the time when people were less able to pay. Meanwhile, places that ordinarily offer menstrual products for free, including shelters and schools, either ran out of them, did not initially provide them while focused on food insecurity, or closed entirely.⁶³ The pandemic created a perfect storm for period poverty.

That said, although lack of access is certainly a salient aspect of period poverty—and the one that received the most public attention—it is not the only pressing menstruation-related challenge. Issues of hygiene and sanitation become especially problematic in a pandemic, too.

B. Hygiene and Sanitation

1. Hygiene

The pandemic-related developments that made access to menstrual products more difficult also created scarcities of soap and other washing materials needed for basic hygiene. Like menstrual products, soap and shampoo were not initially on the list of “essential products” that were exempt from numerous governments’ mandatory shutdown rules, causing delays in the manufacture and transport of these goods.⁶⁴ In Zambia, Plan International’s COVID-19 response efforts in the Kafue District involved the distribution of almost twice as many bars of soap as menstrual kits, suggesting the robust need for soap for purposes beyond menstruation.⁶⁵ For people in refugee camps or poor communities where water, sanitation, and hygiene services are already scarce in non-pandemic times, shortages of

62. See, e.g., Bridget J. Crawford & Carla Spivack, *Tampon Taxes, Discrimination, and Human Rights*, 2017 WIS. L. REV. 491, 492–96 (describing multiple forms of “tampon taxes” and explaining why these taxes violate international human rights norms); Bridget J. Crawford & Emily Gold Waldman, *The Unconstitutional Tampon Tax*, 53 U. RICHMOND L. REV. 439 (2019) (arguing that in the U.S. context, states’ sales taxes on menstrual hygiene products violate the Equal Protection Clause).

63. See, e.g., Sophia Chang, *City Has Handed Out Nearly 14 Million Meals During Outbreak, Adding Tampons and Pads to Distribution Sites After Push*, GOTHAMIST (May 16, 2020, 1:40 PM), <https://gothamist.com/news/city-has-handed-out-nearly-14-million-meals-during-outbreak-adding-tampons-and-pads-distribution-sites-after-push> [<https://perma.cc/4VKJ-REPL>]. In New York City, for example, menstrual products are provided to students free of charge. *Id.* When the pandemic started, public school students could obtain to-go meals from meal distribution sites. On April 3, 2020, the mayor expanded distribution to aid anyone who needed food, regardless of whether they were a student or not. *Id.* In early May, the Department of Education also began to make menstrual products available at food distribution sites, after receiving pressure from two high school students in Queens. *Id.*

64. See *supra* notes 46–49 and accompanying text (discussing the India Ministry of Home Affairs’ response to the pandemic).

65. See PLAN INTERNATIONAL, *supra* note 57, at 2.

soap became more acute. UNICEF, for example, urged humanitarian organizations to monitor access to water and sanitation, water distribution, sewer overflow, and supply shortages or price increases in soap and cleaning supplies.⁶⁶ Washing and toileting are essential to menstrual management; without access to soap, it is difficult to keep oneself clean.⁶⁷

The pandemic reduced access to water as well. In countries like Ethiopia⁶⁸ and the Solomon Islands⁶⁹—to name just two—water shutdowns are not uncommon. Responding to a Plan International survey that examined conditions in seven countries, a young woman in the Solomon Islands said that water shortages made managing her period more difficult: “We sometimes have water cuts. So menstrual hygiene is sometimes tedious.”⁷⁰ A woman in Fiji, where there were isolation rules in place during the original coronavirus outbreak,⁷¹ approached the issue by visiting a nearby spring or river when there was a problem with water supply.⁷² The feasibility of that option, however, depends on both the availability and cleanliness of natural resources. “Some adolescent girls and young women in rural areas may resort to unclean sources of water as a result of the lockdown,” noted a health professional in Zimbabwe.⁷³ Clean water is simply not available in all places.

Access to toilets also became an issue, particularly in light of stay-at-home orders. In one area of the city of Jaipur, India, for example, a study

66. See UNICEF, COVID-19 Emergency Response: Monitoring and Mitigating the Secondary Impacts of the COVID19 Epidemic on WASH Services Availability and Access (Mar. 11, 2020), <https://www.unicef.org/sites/default/files/2020-03/WASH-COVID-19-monitoring-and-mitigating-secondary-impacts-2020.pdf> [https://perma.cc/C33Q-9MDF].

67. See PLAN INTERNATIONAL, *supra* note 57, at 9, 6 (discussing particular challenges faced by women and girls with disabilities who rely on community-based services or caregivers for daily assistance with personal hygiene, including menstrual management).

68. See, e.g., Alan Nicol, *The Pandemic Is Laying Bare a Global Water Crisis*, FOREIGN POLICY (May 12, 2020, 3:44 PM), <https://foreignpolicy.com/2020/05/12/coronavirus-pandemic-global-water-crisis> [https://perma.cc/GSE5-ZBY5] (“For the 4.8 million residents of Ethiopia’s capital city, interruptions to the water supply are nothing new. But in the grip of a pandemic, the latest disruption threw into sharp relief the inequality created by limited and unpredictable access to clean water.”).

69. See Anouk Ride & Georgina Kekea, *Together or Apart Against COVID-19? The Solomon Islands State of Emergency*, ASIA & THE PAC. POL’Y SOC’Y (June 5, 2020), <https://www.policyforum.net/together-or-apart-against-covid-19-the-solomon-islands-state-of-emergency> [https://perma.cc/K8EL-KXVM] (discussing the State of Emergency declared by the Solomon Islands in response to the coronavirus pandemic); *Water Shortage a Vulnerability to Communities in Solomon Islands*, SUNDAY ISLES (Oct. 4, 2018), <https://sundayislessolomonislands.com/water-shortage-a-vulnerability-to-communities> [https://perma.cc/JU25-9GBR] (describing droughts and fresh water pollution in the Solomon Islands that have occurred due to climate change).

70. See PLAN INTERNATIONAL, *supra* note 57, at 9.

71. See *Fiji Gets Rid of COVID-19*, TIMES OF INDIA (June 7, 2020, 5:14 PM), <https://timesofindia.indiatimes.com/travel/destinations/fiji-gets-rid-of-covid-19/as76245520.cms> [https://perma.cc/9Y7L-HAQ7].

72. See PLAN INTERNATIONAL, *supra* note 57, at 9 (“If there is a water problem, I’ll go down to the river or spring nearby.”).

73. *Id.* at 9 (quoting an anonymous “Program Facilitator from Zimbabwe”).

found that only 51.27% of all households had access to a toilet in their own homes.⁷⁴ Additionally, even for those who do have a toilet at home, the suddenly reduced availability of public restrooms still presented a challenge. The comments of two Australian women in response to Plan International's survey are illuminating. One observed that "[w]ith public restrooms closed everywhere changing tampons or emptying cups became quite difficult."⁷⁵ The other woman added that, even if available toilets could be found, they were not necessarily useable: "I work outside and use public toilets often but with COVID-19 a lot of the toilets are closed and also a lot of them do not have soap available to wash your hands."⁷⁶

2. Sanitation

In some parts of the world, sanitation services were not disrupted by the coronavirus pandemic.⁷⁷ Although sanitation workers faced unprecedented amounts of residential trash—and some cities in the United States, for example, cut back on waste removal services—basic service in many countries continued to be provided,⁷⁸ and disposal of used menstrual products presumably continued as part of that process. Elsewhere, however, the pandemic had a direct impact on the ability to dispose of used menstrual products. In some places, for instance, it is conventional to bury menstrual waste far from home.⁷⁹ If traditional disposal methods like these are not possible due to restrictions on movement, individuals may resort to practices for menstrual waste that are unhygienic, inconsistent with cultural

74. See Shobhita Rajagopal & Kanchan Mathur, 'Breaking the Silence Around Menstruation': *Experiences of Adolescent Girls in an Urban Setting in India*, 25 GENDER & DEV. 303, 306–7 (2017) (citing the 2012 Baseline Survey of Select Slums of Jaipur by the Centre for Advocacy and Research).

75. See PLAN INTERNATIONAL, *supra* note 57, at 6.

76. *Id.*

77. See, e.g., Yelena Dzhanova, *Sanitation Workers Battle Higher Waste Levels in Residential Areas as Coronavirus Outbreak Persists*, CNBC (May 16, 2020, 10:15 AM), <https://www.cnbc.com/2020/05/16/coronavirus-sanitation-workers-battle-higher-waste-levels.html> [<https://perma.cc/MZ6C-W43Z>] (describing pandemic-era sanitation operations in five U.S. states).

78. See *id.* See also E.A. Crunden, *Municipalities Suspend Recycling Due to Coronavirus Impact on Prison Labor, Broader Safety Concerns*, WASTE DIVE (Mar. 19, 2020, 9:04 AM), <https://www.waste-dive.com/news/recycling-mrfs-prison-labor-suspensions-coronavirus-covid-19/574301/> [<https://perma.cc/DGQ6-KBK5>] (describing suspended recycling programs in Franklin, Tennessee, and Decatur, Georgia); Dave Bartkowiak Jr., *GFL Is Suspending All Yard Waste Collection Amid COVID-19 Pandemic*, CLICK ON DETROIT (Apr. 13, 2020, 10:22 PM), <https://www.clickondetroit.com/news/local/2020/04/10/gfl-is-suspending-all-yard-waste-collection-amid-covid-19-pandemic> [<https://perma.cc/R43U-GEGP>] (describing a suspension of yard waste collection in Detroit to allow sanitation workers to focus on increased levels of residential trash); Robert Pozarycki, *COVID-19 Budget Cuts Force Suspensions of NYC Compost, E-Waste Collection Program*, AMNY (Apr. 17, 2020), <https://www.amny.com/coronavirus/covid-19-budget-cuts-force-suspensions-of-nyc-compost-e-waste-collection-programs> [<https://perma.cc/CS9K-PAHY>] (describing the suspension of curbside compost and food waste collection programs).

79. See PLAN INTERNATIONAL, *supra* note 57, at 9 ("Without access to rubbish disposal systems, people often burn or bury pads some distance from home.").

beliefs, or both.⁸⁰ A young woman in Papua New Guinea, for example, reported her experience during the coronavirus pandemic: “We were not allowed to move around to dispose [products] and it was really uncomfortable.”⁸¹ Almost half of all health officials surveyed by Plan International said that “there had been issues with disruptions to hygienic management of periods” caused by the pandemic.⁸² A survey of girls and women in the Pacific Islands revealed that one in three “had trouble knowing where they could comfortably dispose of period products” during this time.⁸³

While disposal of menstrual waste may not seem to be as urgent an issue as access to safe water, soap, toilets, and menstrual products, problems with such disposal nevertheless represent another way that the COVID-19 pandemic intersects with issues of menstruation. In some ways, cultural attitudes about both menstruation and waste are characterized by an “out of sight, out of mind” approach. Menstruation-related stigmas and shame are longstanding;⁸⁴ they have prompted people all over the world to adopt various strategies to hide their menstruation from others in the community.⁸⁵ The pandemic, however, suddenly rendered some of those strategies impracticable.

80. See, e.g., Marni Sommer, Marianne Kjellén & Chibesa Pensulo, *Girls' and Women's Unmet Needs for Menstrual Hygiene Management (MHM): The Interactions Between MHM and Sanitation Systems in Low-Income Countries*, 3 J. WATER, SANITATION & HYGIENE FOR DEV. 283, 287 (2013) (discussing cultural beliefs about menstrual waste among Igbo in southeastern Nigeria).

81. See PLAN INTERNATIONAL, *supra* note 57, at 10 (alteration in original).

82. See *id.* at 10.

83. *Id.*

84. See Crawford & Spivack, *supra* note 62, at 506–12 (reviewing cultural taboos about menstruation).

85. See, e.g., RIMA MAJED & HODA TOUMA, OXFAM RESEARCH REPORTS, MENSTRUAL HYGIENE MANAGEMENT AMONG SYRIAN REFUGEE WOMEN IN THE BEKAA 15 (2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/r-menstrual-hygiene-management-syrian-refugee-women-bekaa-180620-en.pdf> [<https://perma.cc/BNR9-CKRE>] (reporting on menstrual management practices of Syrian refugee women in an Informal Tented Settlement in the Bekaa Valley of Lebanon, whose “chosen methods of disposing of the used [menstrual] materials are indicative of cultural beliefs of shame and humiliation around menstruation, as well as the stigmatization and taboo around menstrual blood”); Alanna Lauren Greco, *I'm Not Hiding My Tampons on the Way to the Bathroom Anymore—and You Shouldn't Either*, GLAMOUR (Apr. 21, 2017), <https://www.glamour.com/story/im-not-hiding-my-tampons-on-the-way-to-the-bathroom-anymore-and-you-shouldnt-either> [<https://perma.cc/6BSB-7ADW>] (“I’ve discovered various ways to transport my tampon to the restroom. There’s the take-your-bag-with-you, which I stopped doing at work because inevitably a coworker would ask me where I was headed . . . [T]here’s my personal favorite, the sleeve trick, in which you place the tampon in your sweater sleeve right above your wrist, and scuttle to the bathroom with your arm pinned at your side so it doesn’t fall out.”).

C. Information and Support

1. Schools

The closure of schools during the coronavirus crisis not only cut off young people's access to menstrual products. It also deprived them of an important source of menstruation-related education: teachers. In Indonesia, for example, "[s]chools are the only formal venue for menstrual hygiene promotion," according to one health professional in the country.⁸⁶ Similarly, recall that 17-year-old Hina and her friends in Lucknow, India, had previously learned to make menstrual pads through their school, where the SAHAYOG organization sponsored educational programming.⁸⁷ Kenya provides another such example—there, the government approved a National Menstrual Hygiene Management policy in 2019. Kenya's policy aims to make menstrual health part of "the mainstream of the country's health and development agenda by considering the prevailing social, economic, cultural and demographic contexts of women and girls."⁸⁸ The program contemplates the expansion of the distribution of menstrual products, which is currently centered on schools, to include refugees, homeless individuals, and those living in crowded urban conditions as recipients of such products.⁸⁹ It also aims to integrate menstrual hygiene programming into existing government programs aimed at decreasing gender-based violence and childhood marriages.⁹⁰

To be sure, not all schools were openly and comprehensively addressing menstrual health and related issues prior to the pandemic. The lack of such education in numerous regions of India, for example, has been correlated to what two Indian researchers have considered an absence of "safe and hygienic menstrual practices."⁹¹ A study of adolescent girls in the state of Rajasthan, in both rural areas and poorer parts of the capital city Jaipur, found that "silence around the issue within homes also transmits into educational institutions; this is not a topic dealt with openly in schools."⁹²

86. PLAN INTERNATIONAL, *supra* note 57, at 8 (quoting the Program Manager for Plan Indonesia's Water for Women Project).

87. See *supra* notes 50–52 and accompanying text.

88. See Kevin Mwanza, *Kenya Paves the Way for Menstruators: The Government Approves a Policy Exclusively on Menstrual Health and Hygiene*, WATER SUPPLY & SANITATION COLLABORATIVE COUNCIL (Nov. 26, 2019), <https://www.wsscc.org/media/resources/kenya-paves-way-menstruators> [https://perma.cc/BTT5-DL53] (quoting a statement issued by the Kenyan President's Strategic Communications Unit about the newly approved policy).

89. *Id.* ("While the government has already been distributing sanitary pads to schoolgirls under sanitation and hygiene health programmes, officials will now be able to include fragile and vulnerable communities such as refugees, slum dwellers and street families in state-led MHM programmes.").

90. *Id.*

91. Rajagopal & Mathur, *supra* note 74, at 306–07.

92. *Id.*

Even in the United States, not all students receive adequate—or indeed any—menstrual education at school. For example, in one study of New York City adolescents, a female participant told researchers that “[s]ome girls find out about their periods when they actually get them. It’s just never talked about in schooling.”⁹³ Another participant pointed to a related problem: “[S]ome people have questions, but they’re too ashamed or scared to ask them, which is terrible.”⁹⁴

But where schools *did* previously play significant educational roles in menstrual education before the pandemic, the pandemic-induced school closures represented a major setback. As Plan International reported back in May of 2020, “COVID-19 lockdowns have caused problems with access to reliable information and support around menstrual health and hygiene.”⁹⁵ Plan International recommended that schools respond by incorporating menstrual education into remote curricula.⁹⁶ But the extent to which this has happened worldwide remains unclear. The unprecedented, emergency nature of the shift to remote education has not been conducive to methodical curricular planning. Moreover, the lack of internet access in many areas makes this an incomplete solution at best.

Exacerbating the challenge, social distancing mandates have cut students off from alternative sources of information, such as friends, extended family members, and health professionals.⁹⁷ The pandemic thus has created a glaring information void with no easy answers. It is not surprising, therefore, that more than half of the health professionals surveyed by Plan International recounted disruptions to menstruation-related education because of the pandemic.⁹⁸ This is especially concerning in light of pre-pandemic research indicating that a lack of education about menstruation correlates with negative social development outcomes. UNICEF, for example, found that lack of basic menstruation-related information “may contribute to early and unwanted pregnancy; the stress and shame associated with menstruation can negatively affect mental health; and unhygienic sanitation products may make girls susceptible to reproductive tract

93. Jhumka Gupta et al., *How Do Adolescent Girls and Boys Perceive Symptoms Suggestive of Endometriosis Among Their Peers? Findings from Focus Group Discussions in New York City*, 8 *BMJ OPEN* 5 (2018), <https://bmjopen.bmj.com/content/bmjopen/8/6/e020657.full.pdf> [<https://perma.cc/6G8F-AKCS>].

94. *Id.*

95. PLAN INTERNATIONAL, *supra* note 57, at 8.

96. *Id.* at 12.

97. *Id.* at 8 (“With millions of students out of school around the world, the immediate connections that adolescent girls have with their teachers, schools, friends, health workers and family networks are absent and can result in girls having limited information on their first period and menstrual hygiene management.”).

98. *Id.*

infections.”⁹⁹ One U.S.-based study of low-income girls similarly determined that those “who felt unknowledgeable or unprepared for menstruation were more likely to report having worse experiences of menarche, negative attitudes about menarche, and more menstrual distress.”¹⁰⁰ Indeed, as compared to education about many other topics, the *timeliness* of menstrual education is particularly important. Pandemic-caused delays in menstrual education for students approaching puberty cannot be easily remedied after the fact.

2. Medical Professionals

The closure of schools particularly affected students, to be sure. But the ways in which the pandemic necessarily redirected the efforts of medical professionals affected people of all ages. Especially during the early months of the pandemic, the bulk of medical attention and resources appropriately turned to the COVID-19 crisis. Many healthcare providers closed their offices altogether (at least for non-urgent appointments), and numerous hospitals cancelled elective surgeries. Relatedly, many people preemptively cancelled or rescheduled their own appointments to avoid possible exposures to COVID-19. Indeed, throughout the pandemic, a large number of people have been skipping or delaying non-COVID-related medical care.¹⁰¹ General practitioners in Australia, for example, reported a significant decline in the number of patients seeking treatment, despite telehealth offerings.¹⁰² In other places, telehealth is not available at all.

99. UNICEF, GUIDANCE ON MENSTRUAL HEALTH AND HYGIENE 15 (2019), <https://www.unicef.org/wash/files/UNICEF-Guidance-menstrual-health-hygiene-2019.pdf> [<https://perma.cc/6DKC-QKHBJ>].

100. Ann C. Herbert et al., *Puberty Experiences of Low-Income Girls in the United States: A Systematic Review of Qualitative Literature from 2000 to 2014*, 60 J. ADOLESCENT HEALTH 363, 364 (2017), https://toolkits.knowledgesuccess.org/sites/default/files/puberty_experiences_of_low-income_girls_in_the_united_states_herbert.pdf [<https://perma.cc/5W6X-M5CC>]. Specifically, the lower-income girls in the survey population described their experiences with menstruation and menarche as “embarrassing, traumatic, scary, and confusing and associated with feeling gross, dirty, smelly, and disgusting.” *Id.* at 366. The students also reported having “felt unprepared and ill equipped for this transition.” *Id.*

101. See Elizabeth Lawrence, *Nearly Half of Americans Delayed Medical Care Due to Pandemic*, KAISER HEALTH NEWS (May 27, 2020), <https://khn.org/news/nearly-half-of-americans-delayed-medical-care-due-to-pandemic/> [<https://perma.cc/SFK5-Q4Z7>] (reporting results of a Kaiser Family Foundation poll that found “48% of Americans said they or a family member has skipped or delayed medical care because of the pandemic, and 11% of them said the person’s condition worsened as a result of the delayed care”).

102. See Christopher Knaus & Michael McGowan, *Australia’s Small Medical Practices on Brink of Collapse Amid Coronavirus*, THE GUARDIAN (Apr. 8, 2020, 1:30 PM), <https://www.theguardian.com/world/2020/apr/09/australias-small-medical-practices-on-brink-of-collapse-amid-coronavirus> [<https://perma.cc/GG2A-SEH8>] (“The peak body for GP-owned clinics, the Australian General Practitioners Alliance, said the reductions were delivering a ‘brutal’ hit to many clinics already operating on razor-thin margins.”).

Given many people's reluctance to seek care for general health needs, including menstruation-related issues, during the pandemic, it makes sense that concerns about the intersection between menstruation and the pandemic increasingly made their way into the popular press. U.S. and U.K. magazines and websites featured headlines like "You're Not Imagining It—Quarantine is Messing With Your Periods,"¹⁰³ and "How the Coronavirus Could Be Affecting Your Period."¹⁰⁴ Anecdotally, these stories suggest that disruptions in menstrual cycles have not been uncommon during the pandemic, and that people have questions about what is happening to their bodies.¹⁰⁵ Fears about inadequate access to menstrual products have also been in the mix. An article in *Ms. Magazine*—noting the shortage of pads and tampons due to pandemic-induced closures and hoarding—¹⁰⁶ even featured a doctor's suggestions for how to avoid periods entirely, by using existing birth control methods in different ways (such as, skipping the last week of "placebo" pills in a birth control pack and going straight to the next pack).¹⁰⁷ Doing so "decreases your need and use for tampons and panty liners," the doctor commented. "So, now that you're sheltering at home, it would be a great time to try skipping your periods."¹⁰⁸

Even those who want to seek in-person medical help for their menstruation-related concerns have sometimes reported mixed feelings about doing so. The response of one young woman in Australia to the Plan International survey reflected a common pandemic-era sentiment: "I want to go to the doctors to discuss significant pain I'm having during my period. But I'm not sure if I'm allowed or if the doctor will think less of me for

103. Carla Sosenko, *You're Not Imagining It—Quarantine Is Definitely Messing With Your Periods*, WELL & GOOD (May 13, 2020), <https://www.wellandgood.com/can-stress-affect-your-period/> [<https://perma.cc/4LVU-L934>] (explaining impact of quarantine-related stress on various bodily infradian rhythms, including menstruation).

104. Jessica Lopez, *How the Coronavirus Could Be Affecting Your Period*, HEALTH NEXUS (Apr. 8, 2020), <https://thehealthnexus.org/how-the-coronavirus-could-be-affecting-your-period> [<https://perma.cc/Q5A5-CUBM>] (reporting an interview with gynecologist Beth Schwartz about patients experiencing spotting or missed, late, or early periods during the pandemic due to stress and disruptions in daily routines). See also Lindsay Dodgson, *How the Coronavirus Pandemic Might Be Affecting Your Periods*, INSIDER (Apr. 5, 2020, 9:52 AM), <https://www.insider.com/how-the-coronavirus-pandemic-might-be-affecting-your-periods-2020-4> [<https://perma.cc/2XV5-QHNF>] (reporting an interview with doctor Sarah Toler, who explains how stress can impact all aspects of the menstrual cycle).

105. See, e.g., Rhandi Wise, *Can the Pandemic Be Affecting My Period?*, BATON ROUGE GENERAL (June 22, 2020), <https://www.brgeneral.org/news-blog/2020/june/can-the-pandemic-be-affecting-my-period/> [<https://perma.cc/CV5G-3DF5>].

106. Fiona Pestana & Roxy Szal, *Periods Don't Stop for a Pandemic—But They Can, Says Pandia Health's Dr. Yen*, MS. MAG. (Apr. 21, 2020), <https://msmagazine.com/2020/04/21/periods-dont-stop-for-a-pandemic-but-they-can-says-pandia-healths-dr-yen/> [<https://perma.cc/XM6A-J6PL>].

107. *Id.* (quoting Dr. Sophia Yen, founder of a commercial birth-control delivery service, who says that medically stopping menstruation "decreases your chance of endometrial, ovarian and colorectal cancer").

108. *Id.*

using their time rather than those with COVID-19.”¹⁰⁹ Similarly, a survey of 261 Turkish patients suffering from endometriosis indicated that 83.86% were afraid of having endometriosis-related problems during the pandemic, and 53.63% thought that the pandemic was affecting management of their endometriosis.¹¹⁰ A much smaller percentage (8.57%) reported actually having a planned endometriosis surgery that was postponed, but it is not clear how many of the survey participants were scheduled for surgery in the first place.¹¹¹

For trans men and trans boys, as well as gender non-binary, intersex, and genderqueer people—all of whom already may face obstacles in talking with healthcare providers about menstruation-related issues¹¹²—the fraught nature of seeking medical care in a pandemic may exacerbate the situation. Relatedly, in some places, it is not acceptable for a woman to travel alone to receive medical care, or to seek medical treatment without her husband’s consent.¹¹³ These women do not have unfettered access to medical care, even in non-pandemic conditions. During a pandemic, both the patient’s and her husband’s coronavirus-related fears about leaving home to see a doctor can pose additional complications.¹¹⁴

D. Stigma and Shame

Menstrual taboos and traditions are not new. Going back millennia and continuing to the present day, menstruation has been treated as something that is unclean, mysterious, or both in many cultures. For example, in the Torah, according to Leviticus:

When a woman has a discharge, her discharge being blood from her body, she shall remain in her impurity seven days; whoever touches her shall be unclean until evening . . . and anyone who touches any object on which she has sat shall wash his clothes, bathe in water, and remain unclean until evening.¹¹⁵

109. PLAN INTERNATIONAL, *supra* note 57, at 8.

110. See Bahat, *supra* note 25, at 251.

111. *Id.* at 250.

112. See Sarah E. Frank, *Queering Menstruation: Trans and Non-Binary Identity and Body Politics*, 90 SOCIOLOGICAL INQUIRY 371, 376–77 (2020), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/soin.12355> (discussing difficulties faced by trans patients in talking to healthcare providers about menstruation-related issues).

113. See SARAH HOUSE, THÉRÈSE MAHON & SUE CAVIL, WATER AID, MENSTRUAL HYGIENE MATTERS: A RESOURCE FOR IMPROVING MENSTRUAL HYGIENE AROUND THE WORLD 32 (2012), <https://washmatters.wateraid.org/sites/g/files/jkxoof256/files/Menstrual%20hygiene%20matters%20low%20resolution.pdf> [<https://perma.cc/77JH-BW25>] (detailing obstacles women in Bangladesh face in obtaining medical care).

114. See *id.*

115. *Leviticus* 15:19–22.

Similarly, the Irish epic *Táin Bó Cúailng*, written down in the Middle Ages and set in the first century, recounts the defeat of a woman warrior whose battle loss is caused by her menstruation, which “made three great trenches in in each of which a household can fit.”¹¹⁶

Customs and expectations surrounding the separation of menstruating individuals from the remainder of the population exist throughout the world. In contemporary Orthodox Judaism, those who are menstruating are considered *niddah*, or “separate,” and it is customary for wives to observe a ritual separation from their husbands, which can involve behaviors like sleeping in different beds.¹¹⁷ It is also a custom in parts of India for those who are menstruating to sleep in a separate part of the house and to use the same dishes and wear the same clothes for the duration of menstruation, because menstrual bleeding is associated with uncleanness and the possibility of contaminating the household’s food.¹¹⁸ In parts of Ethiopia, it is traditional to exile from the home anyone who is menstruating, postpartum, or giving birth.¹¹⁹ In parts of Afghanistan, it is common to refrain from washing one’s body during menstruation, for fear of becoming infertile.¹²⁰ In Bangladesh, some women bury their menstrual cloths in order to prevent evil spirits from using them.¹²¹ Menstrual taboos take different forms in various places, but they exist throughout the world.

In the initial stages of the COVID-19 pandemic, as governments around the world encouraged or ordered people to stay at home,¹²² many people

116. TÁIN BÓ CÚAILNG FROM THE BOOK OF LEINSTER 269 (Cecile O’Rahilly ed., 1970).

117. See, e.g., Ilana S. Cristofar, *Blood, Water and the Impure Woman: Can Jewish Women Reconcile Between Ancient Law and Modern Feminism?*, 10 S. CAL. REV. L. & WOMEN’S STUD. 451, 452 (2001) (“In traditional Judaism, menstruating women are considered *niddah*, literally meaning separate, and are associated with impurity and debasement Women’s behavior in observing *niddah* includes ritual separation from their husbands during which time they are not allowed to touch certain everyday household items.”); Channa Lockshin Bob, *A Detailed Explanation of Niddah, or “Family Purity” Laws*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/the-laws-of-niddah> [https://perma.cc/R5AD-LJHL] (“Jewish law forbids sexual relations while a woman is a *niddah* and until she then immerses in the mikveh, or Jewish ritual bath, and the rabbis prescribe a number of additional regulations. The main ones are avoiding physical contact between spouses and sleeping in separate beds while a woman is *niddah*.”).

118. See, e.g., *Menstruation and Human Rights – Frequently Asked Questions*, U.N. POPULATION FUND (May 2020), <https://www.unfpa.org/menstruationfaq#Taboos%20and%20Myths%20about%20menstruations> [https://perma.cc/QZP6-MCY6] (including picture of an adolescent girl in Rajasthan, India, behind a sheer curtain in her home, with the caption: “15-year-old Priyanka Meena sleeps outside her home, in a space cordoned off by a sari, when she has her periods. She wears the same clothes and uses the same utensils when she menstruates; these are believed to be unclean and cannot be taken into the home, even after her period is over.”).

119. See *id.*

120. See *id.*

121. See House et al., *supra* note 113, at 27 (listing a variety of menstrual taboos and cultural norms).

122. See Michael Smith, *China Forces Millions of People to Stay at Home as Virus Toll Rises*,

found themselves sharing closer quarters than usual with more individuals than before, often for long uninterrupted periods of time.¹²³ These conditions made it more difficult to conceal menstruation. Additionally, during the coronavirus pandemic, fears about illness have become rampant, ratcheting up household stress. Such fears can play into myths about menstruation as an illness—a common belief among teenage girls in Iran, for example.¹²⁴ UNICEF issued a fact sheet entitled “Periods in the pandemic: 9 things we need to know” in order to combat pandemic-related legends that emerged in some places, including the myths that “menstruation is a symptom of COVID-19” and “menstruating people are more likely to infect others.”¹²⁵ The pandemic thus created a worrying combination: people became *less* able to conceal their menstruation precisely at the same time that others became *more* afraid of menstruation as some sort of vector of disease. The resulting tension may cause those who are menstruating to be particularly vulnerable to abuse or stigma.¹²⁶ This concern is heightened for already marginalized people, such as disabled persons, trans men and trans boys, and gender non-binary, intersex, and genderqueer individuals who menstruate.¹²⁷

The United States is not immune from menstruation-related stigmas. A study conducted at the University of Colorado in 2002 featured a woman who “accidentally” dropped either a tampon or a hair clip during an experiment.¹²⁸ The results indicated that the woman was viewed as “less competent, less likeable, and [as someone] to be both psychologically and

FIN. REV. (Feb. 16, 2020, 6:16 PM), <https://www.afr.com/world/asia/china-forces-millions-of-people-to-stay-at-home-as-virus-toll-rises-20200216-p5419e> [<https://perma.cc/BSZ3-KGS7>] (describing strict prohibitions on the movement of people in early weeks of pandemic in China).

123. See, e.g., Kate Cimini & Jackie Botts, *Close Quarters: Overcrowded Homes Fuel Spread of Coronavirus Among Workers*, MERCURY NEWS (June 21, 2020, 9:51 AM), <https://www.mercurynews.com/2020/06/21/close-quarters-overcrowded-homes-fuel-spread-of-coronavirus-among-workers/> [<https://perma.cc/LSQ5-DHRW>] (describing the situation in California, where an estimated two-thirds of the four million people living in overcrowded homes are either essential workers or living with essential workers); Joshua Berlinger, *Social Distancing in 100 Square Feet: Hong Kong's Cage Homes Are Almost Impossible to Self-Isolate In*, CNN (April 26, 2020, 4:26 AM), <https://www.cnn.com/2020/04/25/asia/hong-kong-social-distancing-coronavirus-intl-hnk/index.html> [<https://perma.cc/A4NZ-AT2C>] (explaining that 90% of people in Hong Kong reside in dwellings smaller than 753 square feet).

124. See House et al., *supra* note 113, at 31 (reporting that “48% of girls in Iran, 10% in India and 7% in Afghanistan believe menstruation is a disease”).

125. See *Periods in the Pandemic: 9 Things We Need to Know*, UNICEF (Aug. 31, 2020), <https://www.unicef.org/coronavirus/covid-19-periods-in-pandemic-9-things-to-know> [<https://perma.cc/W9KR-5X99>] (providing facts about menstruation during the pandemic) [hereinafter *9 Things*].

126. See PLAN INTERNATIONAL, *supra* note 57, at 10 (“In cultures where menstruation is considered impure, people who menstruate are often systematically excluded from daily activities and discriminated against.”).

127. *Id.* (“The discrimination for those who face intersecting issues such as being transgender, non-binary, intersex and a-gender is even greater.”).

128. See Tomi-Ann Roberts, Jamie L. Goldenberg, Cathleen Power & Tom Pryszczynski, “Feminine Protection”: *The Effects of Menstruation on Attitudes Towards Women*, 26 PSYCHOL. WOMEN Q. 131 (2002).

physically avoided” when she dropped the tampon instead of the hair clip—in other words, when the study participants believed that she was menstruating.¹²⁹ The researchers concluded that efforts of menstrual concealment “may indeed be well-founded, for reminders of menstruation do appear to lead to negative judgments of women.”¹³⁰ This wide-scale concealment has created its own reinforcing cycle, wherein “the sanitized, deodorized, and idealized images of women’s bodies become the only ones we encounter and accept.”¹³¹

Such expectations are internalized and acted upon. A U.S. study of 1,000 teenagers who menstruate, conducted in 2019, indicated that eighty percent of respondents “feel there is a negative association with periods, that they are gross or unsanitary” and fifty-seven percent of respondents “have felt personally affected by the negative association surrounding periods.”¹³² Taboos and stigmas seep into daily behavior and into large-scale cultural attitudes.

If fear, distrust, and lack of education are at the root of some menstruation stigmas, then increasing education about human biology and normalizing conversations about menstruation may help eliminate misconceptions. The new, closer living arrangements that the pandemic has imposed on many people have heightened the need for these steps. The involuntary biological process of menstruation should not be an obstacle to participation in family or public life, both during the pandemic and beyond. In considering how society can become more responsive to the biological needs of approximately half of its population, advocates have started turning to the law as a tool for change.¹³³

II. THE ROLE OF LAW

Period poverty is not a recent phenomenon, but it became more acute and visible during the pandemic. Until recently, the primary actors attempting to resolve issues of period poverty were community organizations, nongovernmental organizations, and professionals in the

129. *Id.* at 136.

130. *Id.* at 138.

131. *Id.*

132. THINX & PERIOD, STATE OF THE PERIOD: THE WIDESPREAD IMPACT OF PERIOD POVERTY ON US STUDENTS 1, 2, https://cdn.shopify.com/s/files/1/0795/1599/files/State-of-the-Period-white-paper_Thinx_PERIOD.pdf?455788 [<https://perma.cc/9A4J-KETE>] [hereinafter *State of the Period*]; Laura Blackburn, *The Hidden Effects of Period Poverty in the US*, THINX (Oct. 17, 2019), <https://www.shethinx.com/blogs/thinx-piece/hidden-effects-period-poverty-us> [<https://perma.cc/DEQ9-556F>].

133. This is the topic of our forthcoming book, *Menstruation Matters: Making Law and Society Responsive to Human Needs*. BRIDGET J. CRAWFORD & EMILY GOLD WALDMAN, MENSTRUATION MATTERS: MAKING LAW AND SOCIETY RESPONSIVE TO HUMAN NEEDS (forthcoming 2022) (discussing both existing laws and potential future legal changes relevant to taxation, employment, public spaces, and health and consumer protection, among other topics).

fields of water, sanitation, hygiene, and sexual reproductive health rights.¹³⁴ Representatives of these groups have been active around menstruation matters for years.¹³⁵ Culturally speaking, issues of period poverty crossed over into popular consciousness in Australia, New Zealand, Europe, and North America around 2015, when news of local and national efforts to repeal the tampon tax (i.e., the imposition of value added tax or sales tax on menstrual products, particularly where certain other products are tax-exempt) and otherwise transform the culture of silence around menstruation spread from country to country. This shift was facilitated by the internet—and, in particular, by social media.¹³⁶ In the United Kingdom, for example, tampon tax activists used an online campaign to draw attention to their cause in 2014, an idea that was picked up in 2015 in Canada, Australia, and the United States.¹³⁷ These efforts were successful in the U.K.,¹³⁸ Canada,¹³⁹ and Australia,¹⁴⁰ and in a growing number of states within the United

134. See, e.g., *supra* note 50 and accompanying text (concerning the nongovernmental organization SAHAYOG and its partnership with community groups); *Our Structure*, PLAN INTERNATIONAL, <https://plan-international.org/organisation/structure> [<https://perma.cc/LVW7-A46S>] (describing the organization's reliance on directors in each country).

135. See, e.g., *Our History*, WATER AID, <https://www.wateraid.org/uk/our-history> [<https://perma.cc/66J7-5PYV>] (providing 1981 as the year of establishment, when projects started in Zambia and Sri Lanka).

136. *Cosmopolitan*, for example, proclaimed 2015 “The Year the Period Went Public.” See Anna Maltby, *The 8 Greatest Menstrual Moments of 2015*, COSMOPOLITAN (Oct. 13, 2015), <https://www.cosmopolitan.com/health-fitness/news/a47609/2015-the-year-the-period-went-public/> [<https://perma.cc/MTB3-H9L7>] (naming eight events from the year that implicated period poverty, including a tampon tax repeal in Canada and a menstruating runner who completed the London Marathon while “free bleeding”).

137. See Subeta Vimalarajah, *Stop Taxing My Period!*, <https://www.communityrun.org/petitions/s-top-taxing-my-period> [<https://perma.cc/K98Y-2HCF>] (internet-based petition directed towards Australian state and territorial treasurers); Jill Piebiak, *Government of Canada—No Tax on Tampons: A Campaign to Remove the GST Charged on Menstruation Products*, <https://www.change.org/p/no-tax-on-tampons-a-campaign-to-remove-the-gst-charged-on-menstruation-products-sign-the-petition> [<https://perma.cc/KWH4-6Q58>] (Canada petition); Jennifer Weiss-Wolf, *No Tax on Tampons: Stop Taxing Our Periods! Period.*, <https://www.change.org/p/u-s-state-legislators-stop-taxing-our-periods-period> [<https://perma.cc/QC82-WF5J>] (U.S. petition); Laura Coryton, *Stop Taxing Periods. Period. #EndTamponTax*, <https://www.change.org/p/george-osborne-stop-taxing-periods-period> [<https://perma.cc/3CS2-LELP>] (U.K. petition) (enthusiastically informing viewers: “This petition made change with 318,054 supporters!”).

138. See, e.g., Amy Woodyatt, *U.K. Abolishes ‘Tampon Tax’ on Menstrual Products*, CNN (Jan. 2, 2021, 10:07 AM), <https://www.cnn.com/2021/01/02/uk/tampon-tax-abolished-intl-scli-gbr/index.html> [<https://perma.cc/Q5FH-RNBK>].

139. See, e.g., Jessica Ware, *Tampon Tax Scrapped in Canada After Petition Convinces Conservative Government*, INDEPENDENT (May 30, 2015, 2:56 PM), <https://www.independent.co.uk/news/world/americas/tampon-tax-scrapped-canada-after-petition-convinces-conservative-government-10283929.html> [<https://perma.cc/L4XM-FRYU>].

140. See, e.g., Steve George, *Australia Scraps Controversial Tampon Tax*, CNN (Oct. 3, 2018, 12:57 AM), <https://www.cnn.com/2018/10/03/australia/australia-tampon-tax-intl/index.html> [<https://perma.cc/VB24-8Q4G>].

States.¹⁴¹ These successes have highlighted the role that law can play in addressing menstruation-related issues.

With growing international public awareness, lawyers in the United States and elsewhere have started to consider the myriad of ways that law can be harnessed to achieve what attorney and menstrual advocate Jennifer Weiss-Wolf calls “menstrual equity.” In one early formulation, she explained the concept as creating and enacting “laws and policies that ensure menstrual products are safe and affordable and available for those who need them. The ability to access these items affects a person’s freedom to work and study, to be healthy, and to participate in daily life with basic dignity.”¹⁴² The concept of menstrual equity is not limited to access to products, however:

The most commonly recognized definition refers to the affordability, accessibility and safety of menstrual products. But menstrual equity is not just defined by products—it is also about education and reproductive care. It’s about making sure that people have the needs, support, and choices to decide how they want to take care of their menstrual health. And it’s about finally ending the stigma around periods that has prevented not only decision-makers, but also healthcare providers, educators and individuals from ensuring that menstrual health is a priority.¹⁴³

141. For a regularly updated map depicting which states do and do not impose the tampon tax, see <https://www.taxfreepperiod.com>. For further discussion of this issue, see *infra* notes 148–152 and accompanying text.

142. WEISS-WOLF, *supra* note 10, at xvi. Note that some scholars are critical of the focus on menstrual products, saying that such a focus “values respectability over radicalism, it effaces some of [the movement’s] important complexities and settles on small, incremental changes” instead of “larger, broader, and more substantive changes like reducing menstrual stigma, teaching menstrual literacy, and addressing the needs of trans and nonbinary menstruators.” Bobel & Fahs, *supra* note 17, at 956 (citations omitted). Bobel and Fahs also claim that they do not attempt to create “an either/or framework whereby there is One. Right. Way. to do menstrual activism, thus reinscribing a new tyranny of embodiment.” *Id.* at 958. Yet they have set forth a hierarchy of the issues they deem to be more important—reducing stigma, enhancing literacy, and meeting menstruation-related needs of trans and nonbinary individuals—than others, like ending the tampon tax. *Id.* at 956.

143. *What Does Menstrual Equity Mean to You?*, WOMEN’S VOICES FOR THE EARTH, <https://www.womensvoices.org/what-does-menstrual-equity-mean-to-you/> [<https://perma.cc/RER9-9SVR>] (defining menstrual equity). Thus, the hierarchical ranking of menstruation-related issues by Bobel and Fahs, *supra* note 17, appears to miscomprehend both law-related menstrual equity efforts and the nature of legal change itself. Indeed, it is through both issue-specific advocacy and efforts to change public opinion that effective and lasting change can occur. See Bridget Crawford, *Interview with Jennifer Weiss-Wolf, New York Attorney and Menstrual Equity Advocate*, FEMINIST L. PROFESSORS (Nov. 22, 2016), <https://www.feministlawprofessors.com/2016/11/interview-jennifer-weiss-wolf-new-york-attorney-menstrual-equity-advocate/> [<https://perma.cc/HTJ2-8X7K>] (describing her work at the Brennan Center for Justice at New York University School of Law: “At the Center, we often say that it is not enough to win in the court of law – and that winning in the court of public opinion is equally vital. For an issue like menstruation and related policy -- where the conversation has been stifled for hundreds,

The term “menstrual equity” is used frequently in the United States press.¹⁴⁴ Internationally, “period poverty” is a more common phrase used to describe all of the economic, social, and political obstacles that menstruation imposes on full participation in public life.¹⁴⁵ Essentially, a principal goal of menstrual equity is to eradicate period poverty.

In the United States, early legal efforts by Weiss-Wolf and others largely focused on trying to eliminate the tampon tax, with state-by-state legislative reform accompanied by litigation when necessary.¹⁴⁶ By the end of 2016, New York, Connecticut, and Illinois had all changed their laws to give menstrual products tax-exempt status, and numerous other states eventually followed suit, including Florida, Ohio, Rhode Island, Utah, California, Nevada, and Washington, as well as the District of Columbia. In June of 2016, New York City also passed groundbreaking legislation that made it the first city in the nation to require free menstrual products in public schools, prisons, and homeless shelters.¹⁴⁷

thousands of years due to stigma and shame – that strategy is doubly important.”). Professor Margaret Johnson takes a similarly capacious approach to law-related menstrual equity efforts, which she calls “menstrual justice.” Margaret E. Johnson, *Menstrual Justice*, 53 U.C. DAVIS L. REV. 1, 22–23 (2019). Menstrual justice is the “oppression of menstruators . . . simply because they menstruate,” which can take various forms: the proliferation of harassment and stigmas at work and school, the failure to consider the dignity of vulnerable people like incarcerated persons and the homeless, and the failure to recognize the needs of trans and non-binary individuals who menstruate. *Id.* at 5–8.

144. The term is used in both local and national papers. *See, e.g.*, Roni Caryn Rabin, *Period Activists Want Tampon Makers to Disclose Ingredients*, N.Y. TIMES (May 24, 2017), <https://nyti.ms/2qVDTQw> [<https://perma.cc/X2K4-RBS4>] (referring to “a vocal group of health activists focused on ‘menstrual equity’”); *Cheyenne Mountain and Broadmoor Area Community News in Brief*, GAZETTE (June 11, 2020), https://gazette.com/cheyenneedition/cheyenne-mountain-and-broadmoor-area-community-news-in-brief/article_b82b3016-9469-11ea-b7e9-7ba731b0ea72.html [<https://perma.cc/3M52-JJ89>] (referring to a community project devoted to “menstrual equity” in a Colorado Springs, CO, newspaper); Kate Finman, *REBUILD Coalition Announces Final ASUC Senate Candidates*, THE DAILY CALIFORNIAN (Mar. 16, 2020), <https://www.dailycal.org/2020/03/16/rebuild-announces-final-asuc-senate-candidates/> [<https://perma.cc/5T4C-4S7H>] (listing “menstrual equity” as the goal of a college student running for elected campus position).

145. *See, e.g.*, Bérénice Magistretti, *FemBeat: Period Poverty Is A Thing, Even in The U.S.*, FORBES (Jan. 25, 2019, 11:55 AM), <https://www.forbes.com/sites/berenicemagistretti/2019/01/25/fembeat-period-poverty-is-a-thing-even-in-the-u-s/#6b392707569e> [<https://perma.cc/MUA8-HG4L>] (saying “[t]he issue of period poverty has slowly begun to draw much-needed attention, especially in developing countries like India where menstrual hygiene is such a taboo,” but also mentioning the menstrual equity framework introduced by Jennifer Weiss-Wolf).

146. *See, e.g.*, Bridget J. Crawford, *Interview with Laura Strausfeld, New York Attorney Challenging the “Tampon Tax,”* FEMINIST LAW PROFESSORS (Nov. 15, 2016), <https://www.feministlawprofessors.com/2016/11/interview-laura-strausfeld-new-york-attorney-challenging-tampon-tax> [<https://perma.cc/DMF4-THF8>] (discussing the first state class-action litigation brought to challenge the tampon tax).

147. *See, e.g.*, Eillie Anzilotti, *How New York City Is Easing Access to Menstrual Hygiene Products*, BLOOMBERG CITYLAB (June 21, 2016, 1:45 PM), <https://www.bloomberg.com/news/articles/2016-06-21/new-york-city-is-the-first-to-pass-laws-mandating-that-menstrual-hygiene-products-be-freely-available-in-public-schools-shelters-and-prisons> [<https://perma.cc/NW2V-MPM8>]. This New York City legislation grew out of work that began when advocate Jennifer Weiss-Wolf met with former New York City Council Member (and Finance Chair) Julissa Ferreras-Copeland. *See, e.g.*, WEISS-WOLF, *supra* note 11, at 148–52.

Over the last several years, the menstrual advocacy movement has gained more momentum, pushing not only to eliminate the tampon tax in the states that still impose it (currently, approximately thirty), but also to make free menstrual products available in certain public spaces, particularly schools and prisons. As discussed in Part I, five states (New York,¹⁴⁸ New Hampshire,¹⁴⁹ Illinois,¹⁵⁰ California,¹⁵¹ and Georgia¹⁵²) have now passed laws requiring public school districts to make menstrual products available to students free of charge. The First Step Act, passed by Congress and signed into law by President Trump in 2018, required federal corrections facilities to provide free menstrual products to inmates.¹⁵³ Numerous states also passed laws requiring free menstrual products to be provided to all state prisoners.¹⁵⁴ Additionally, U.S. Representative Grace Meng (D-NY) emerged as a national leader in the menstrual equity movement, proposing the Menstrual Equity for All Act, first in 2017¹⁵⁵ and then in 2019.¹⁵⁶ The 2019 version of the proposed bill included provisions giving states the option to use federal grant funds to provide free menstrual products in schools, requiring all incarcerated individuals and detainees throughout the United States to have free menstrual products, requiring all public federal buildings to provide free menstrual products, allowing people to use their own pre-tax dollars from their health flexible spending accounts to buy

148. N.Y. PUB. HEALTH LAW § 267 (McKinney 2021) (“All elementary and secondary public schools in the state serving students in any grade from grade six through grade twelve shall provide feminine hygiene products in the restrooms of such school building or buildings. Such products shall be provided at no charge to students.”).

149. N.H. REV. STAT. ANN. § 189:16-a (2021) (“The school district shall make menstrual hygiene products available at no cost in all gender neutral bathrooms and bathrooms designated for females located in public middle and high schools.”).

150. 105 ILL. COMP. STAT. ANN. 5/34-18.56(c) (West 2021); 105 ILL. COMP. STAT. 5/10-20.63(c) (West 2021). (“A school district shall make feminine hygiene products available, at no cost to students, in the bathrooms of school buildings.”).

151. CAL. EDUC. CODE § 35292.6(a) (West 2021) (“A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets [certain poverty guidelines] shall stock at least 50 percent of the school’s restrooms with feminine hygiene products at all times.”).

152. Prabhu, *supra* note 39 (explaining the legislative allocation of a portion of the state budget to the Georgia Department of Education for schools to purchase menstrual product supplies).

153. *See* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5247 (2018) (federal prison must provide “for free, in a quantity that is appropriate to the healthcare needs of each prisoner . . . tampons and sanitary napkins . . . [that] conform with applicable industry standards”).

154. For examples of state statutes that require prisons to provide menstrual products to incarcerated individuals, see, for example, ALA. CODE § 14-3-44(b) (2021); CAL. PENAL CODE § 4023.5 (West 2021); CONN. GEN. STAT. ANN. § 18-69e (West 2021); FLA. STAT. ANN. § 944.242(2) (West 2021); FLA. ADMIN. CODE ANN. r. 33-602.201 (2021); ILL. ADMIN. CODE tit. 20, §§ 701.100(b)(5), 720.60(d) (2020); 501 KY. ADMIN. REGS. 13:010:8(5) (2020); LA. STAT. ANN. § 15:892.1(B) (2021); ME. REV. STAT. ANN. tit. 34-A, § 3031(9) (West 2020); MD. CODE ANN., CORR. SERVS. §§ 9-616, 4-214 (West 2020).

155. Menstrual Equity For All Act of 2017, H.R. 972, 115th Cong. (2017).

156. Menstrual Equity For All Act of 2019, H.R. 1882, 116th Cong. (2019).

menstrual products, and more.¹⁵⁷ The Menstrual Equity for All Act has not yet become law, but the concept of letting people use the money in their flexible spending accounts to purchase menstrual products did make it into coronavirus-related legislation passed in 2020, as discussed further below.

Legal cases brought in other countries have also taken up the cause of menstrual equity. In 2018, the Constitutional Court of Colombia declared that the tax on menstrual products was unconstitutional; it also mandated that the city of Bogotá provide menstrual products to homeless women.¹⁵⁸ In India, two legal challenges to the country's tampon tax became moot when the country reclassified menstrual products into the zero tax bracket in 2018.¹⁵⁹ That same year, the India Supreme Court declared unconstitutional certain state laws that prohibited girls and women between the ages of ten and fifty from visiting the Lord Ayyappa Temple at Sabarimala in the southern state of Kerala, a prohibition that was premised on the idea that the menstrual cycles of girls and women made them impure for worship.¹⁶⁰ With these precedents, it is likely that lawyers in other countries will turn to legal systems to address menstruation-related inequalities; there are certainly human rights grounds for doing so.¹⁶¹ It is possible to imagine a robust role for law in eliminating period poverty and achieving menstrual equity—the freedom for all people “to work and study, to be healthy, and to participate in daily life with basic dignity.”¹⁶²

When considering particular issues of period poverty that arise in a pandemic, there is room for the law to provide greater security for human needs. One notable development early in the pandemic was the bipartisan Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted on March 27, 2020, which included a provision allowing funds from tax-advantaged health savings accounts to be used to purchase any “menstrual care product.”¹⁶³ The change is applicable to Flexible Spending Accounts

157. *Id.*

158. See, e.g., Monica Arango Olaya, *Blood, Taxes, and Equality*, OXFORD HUMAN RIGHTS HUB (Nov. 17, 2019), <https://ohrh.law.ox.ac.uk/blood-taxes-and-equality/> [<https://perma.cc/D2CD-MANG>] (describing the adoption of Decision T-398 of 2019, which confirmed that Bogotá had violated women's rights “by not including in their policies the provision of sanitary pads”).

159. See, e.g., *SC Stays Proceedings Challenging GST on Sanitary Napkins in High Courts*, THE WIRE (Jan. 23, 2018), <https://thewire.in/economy/sc-stays-proceedings-challenging-gst-sanitary-napkin-high-courts> [<https://perma.cc/W7PA-FMU5>]; see Press Release, GST Council, On GST Rate on Goods as Recommended by the GST Council (July 21, 2018), <http://gstcouncil.gov.in/sites/default/files/goods-21-07-18.pdf> [<https://perma.cc/GVD2-YUHP>].

160. *Indian Young Lawyers Association v. Kerala*, (2018) 11 SCC 1, https://scobserver-production.s3.amazonaws.com/uploads/case_document/document_upload/474/18956_2006_Judgement_28-Sep-2018.pdf [<https://perma.cc/AW5S-6CNM>].

161. See Crawford & Spivak, *supra* note 62, at 512–27 (discussing multiple human rights grounds for the basis of a legal challenge to the tampon tax in particular).

162. See *supra* note 142 and accompanying text.

163. See *supra* note 27 and accompanying text.

(employer-owned and funded by the employer and/or employee), Health Savings Accounts (for those who self-insure), and Health Reimbursement Arrangements (employer-owned and funded). The provision had previously been included in both the Menstrual Equity for All Act, as discussed above, and in the Restoring Access to Medication and Modernizing Health Savings Accounts Act, sponsored by Representative Lynn Jenkins (R-KS). (Like the Menstrual Equity for All Act, that bill did not ultimately become law.)

Commenting on the CARES Act provision, attorney Jennifer Berman described the change in law as a victory for advocates who wanted “for a lot of years to be able to add [menstrual products] to the list of reimbursable expenses.”¹⁶⁴ Indeed, the change matters for several reasons. First, it improves the affordability of menstrual products, although it is important to note that the people who have flexible spending accounts, health savings accounts, and health reimbursement arrangements are not necessarily the lowest income earners. Second, as Jennifer Weiss-Wolf noted, the change “lays the groundwork for additional and more expansive policy reform.”¹⁶⁵ She explained: “The particular wording in the stimulus bill acknowledges the medical necessity of these products. That will be an important bedrock for future policy advocacy.”¹⁶⁶ It opens the door, too, for further conversations about how to reduce the burdens that menstruation places on full participation in public life. This type of signaling at the governmental level thus has both expressive and functional value.

More broadly, menstrual products must be classified as essential throughout any future crisis.¹⁶⁷ This means that the businesses involved in their production and manufacture must be allowed to remain open from the start of the crisis. Indeed, the president of the Feminine and Infant Hygiene Association of India, Rajesh Shah, later explained that there were far-reaching repercussions of the four-day period in March during which menstrual products were not on the list of exempted essential items.¹⁶⁸ “After the government allowed us to operate, it took us another three to four days to restart the factories,” he stated, noting that the delay caused nearly

164. See Selena Simmons-Duffin, *Save Those Pharmacy Receipts! New Payment Flexibility, Courtesy of COVID Rescue Act*, NPR (Apr. 1, 2020, 5:30 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/01/825490269/save-those-pharmacy-receipts-new-payment-flexibility-courtesy-of-covid-rescue-act> [https://perma.cc/9Q25-Y2C9] (quoting Jennifer Berman, lawyer and CEO of MZQ Consulting).

165. See Leah Rodriguez, *US Government Acknowledges Period Products Are Necessities in COVID-19 Stimulus Bill*, GLOBAL CITIZEN (Apr. 10, 2020), <https://www.globalcitizen.org/en/content/cares-act-covid-19-menstrual-products-fsa-hsa/> [https://perma.cc/BB59-2YWC] (quoting Jennifer Weiss-Wolf).

166. *Id.*

167. See *supra* notes 46–49 and accompanying text.

168. See *Coronavirus Sparks a Sanitary Pad Crisis in India*, BBC (May 22, 2020), <https://www.bbc.com/news/world-asia-india-52718434> [https://perma.cc/ZRG3-RVBJ].

ten days of total production loss.¹⁶⁹ Additionally, during lockdowns, the relevant laws must either allow people to leave their homes to procure menstrual products, or ensure that such products can be delivered. Otherwise, when pandemics or other crises disrupt access to menstrual products, people may be forced to manage their menstruation with materials that are uncomfortable, unreliable, or unsafe.¹⁷⁰

Yet there are also profound limitations to what the law per se can accomplish during the acute phase of a pandemic. For example, the ability of online retailers to stock menstrual products is only useful if people have adequate and reliable internet connections, as well as sufficient mail service. In times of severe shortages, it may become necessary for some people to turn to reusable products like menstrual cups, reusable menstrual pads, period underwear, or “home remedies.” This is not something that governments can legislate, but the potential of alternative, reusable products may be worthy of further attention by grassroots and community-based education organizations. For many customers, increased availability of a wider range of reusable menstrual products will be a salutary change. At the same time, however, businesses that sell reusable products likely will seek to capitalize on pandemic-era experiences and fears in future advertising, and this may have unpredictable consequences.¹⁷¹

Sanitation and access to water, essential for maintaining personal hygiene after changing menstrual products and for washing hands as regularly as recommended to stop the spread of the coronavirus,¹⁷² might also be proper subjects for further lawmaking. Water shortages and inadequate government efforts in response to them, particularly outside the

169. *Id.*

170. See, e.g., Joanna Crichton, Jerry Okal, Caroline W. Kabiru & Eliya Msiyaphazi Zulu, *Emotional and Psychosocial Aspects of Menstrual Poverty in Resource-Poor Settings: A Qualitative Study of the Experiences of Adolescent Girls in an Informal Settlement in Nairobi*, 34 HEALTH CARE FOR WOMEN INT’L 891 (2013) (providing results illustrating the ways that Kenyan girls and women manage menstruation in the absence of access to commercial products).

171. One can realistically predict the increased operation of menstrual capitalism in response to the pandemic. “Menstrual capitalism” refers to “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.” Bridget Crawford, *Against Menstrual Capitalism*, FEMINIST LAW PROFESSORS (June 25, 2018), <https://www.feministlawprofessors.com/2018/06/against-menstrual-capitalism> [<https://perma.cc/34A7-PPQT>]. To be sure, increased utilization of reusable menstrual products may have salutary environmental effects, and for this reason it should be welcomed as a consumer choice. See, e.g., Elizabeth Peberdy, Aled Jones & Dannielle Green, *A Study into Public Awareness of the Environmental Impact of Menstrual Products and Product Choice*, 11 SUSTAINABILITY 473, 473–75 (2019) (describing some of negative environmental effects of disposable menstrual products).

172. See *Coronavirus Disease (COVID-19) Advice for the Public*, WORLD HEALTH ORGANIZATION (Feb. 16, 2021), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> [<https://perma.cc/2VHH-EHUS>] (recommending handwashing as an effective precaution against infection or spread of COVID-19).

United States and Europe, are long-standing challenges.¹⁷³ Monitoring compliance with existing laws, as well as further developing and implementing them where necessary, should be priorities during both pandemic and non-pandemic times. In Kenya, for example, the government has implemented programs designed to provide menstrual products more broadly to those in need *and* to improve access to water in low-income areas.¹⁷⁴ According to local commentators, the COVID-19 pandemic has made clear that the government needs to accelerate its efforts on both fronts.¹⁷⁵

On the school front, shutdowns or stay-at-home orders interrupt all aspects of education. In places where schools are primary sources of menstruation-related education, is important that continuity planning and remote instruction include these lessons.¹⁷⁶ Achieving meaningful menstrual equity in both crisis and non-crisis times requires increased menstruation-related education in all countries. When schools are closed and remote instruction is not possible—due to lack of access to radio or electricity, for example—or where schools are not vehicles for the delivery of menstrual education regardless, community groups and nongovernmental organizations have an opportunity to develop more robust educational programming. Similarly, contingency plans to deliver menstrual products to students' homes when schools shut down should be developed.

Regarding access to medical care during a pandemic, there may be very little that law itself can do to alleviate practical obstacles to menstruation-related care. At times and in places where healthcare providers and hospitals are devoted entirely to the serious needs of pandemic patients at the height of a crisis, it is not realistic to divert those efforts to anything other than

173. See, e.g., Lori Beail-Farkas, *The Human Right to Water and Sanitation: Context, Contours, and Enforcement Prospects*, 30 WIS. INT'L L.J. 761, 763–64 (2013) (“While there is an international legal framework in place guaranteeing the human right to access safe water and basic sanitation, roughly one in six people lacks access to sufficient safe water, while more than a third of the world’s population lacks access to basic sanitation . . . International human rights law requires States to act as the primary guarantor of human rights and to respect, protect, and fulfill the human right to water and sanitation for all.”).

174. See Kabiru, *supra* note 41 (emphasizing the need for the country’s National Menstrual Hygiene Management Policy).

175. *Id.* (“Access to water has always been an issue in low-income settlements where majority of households lack safe and piped water.”).

176. See *supra* Part II.C. See also *France Begins ‘Phase II’ of Easing Lockdown Measures as Coronavirus Abates*, FRANCE24 (June 2, 2020, 7:41 PM), <https://www.france24.com/en/20200602-france-lifts-more-covid-19-restrictions-what-you-need-to-know-for-phase-ii> [<https://perma.cc/5BAF-ZYWT>] (describing lifting corona-related restrictions and ending the use of “red zones,” with only three French territories continuing to be demarcated as “orange zones”); Alex Putterman, *Four-Stage Process to Reopen Connecticut Will Start May 20 If Numbers Continue to Decline*, HARTFORD COURANT (Apr. 30, 2020, 6:55 PM), <https://www.courant.com/coronavirus/hc-news-coronavirus-daily-updates-0430-20200430-mogn56d6frdlfm64vw7sxwsuji-story.html> [<https://perma.cc/6BT9-YT8S>] (describing phased-in reopening plans for schools, businesses, and recreational facilities in Connecticut).

urgent and critical care.¹⁷⁷ That said, it would be health-enhancing to make available clearer and more comprehensive information about what types of health issues, including menstrual health issues, are appropriate for medical attention at what point—perhaps borrowing from the staged city reopening model of “red zones,” “orange zones,” and “yellow zones.”¹⁷⁸ Such a system, if developed with expert medical input, would communicate more clearly to members of the general public about when it is safe and appropriate to seek medical care, which doctors and other providers are available to provide that care, and what safety precautions patients should take when availing themselves of healthcare services.

Finally, menstrual-related stigmas and shame certainly cannot be legislated out of existence, especially where persistent myths and behaviors are the product of longstanding religious or cultural beliefs.¹⁷⁹ Nevertheless, including menstrual products on lists of essential items, and taking steps to ensure that adequate menstrual education and health support are provided remotely, can contribute to a greater openness about the needs of those who menstruate.

III. THE SALIENCE OF PERIOD POVERTY

Even though issues of period poverty are not new, the coronavirus crisis brought new aspects of it to life. As middle-class and affluent people experienced potential or actual short-term disruptions in regular access to menstrual products for the first time—particularly in North America, Europe, Australia, and New Zealand—they became more conscious of similar experiences of others during non-pandemic times.¹⁸⁰ This, in turn, spurred some people to action. In the United States, for example, local news outlets carried stories of citizen-organized drives for menstrual products.¹⁸¹ At an international level, organizations such as UNICEF and Plan

177. See, e.g., Jessica Glenza, *Over 40 Florida Hospitals Max Out ICU Capacity as Covid-19 Cases Surge Across US*, THE GUARDIAN (July 10, 2020, 3:51 PM), <https://www.theguardian.com/us-news/2020/jul/10/florida-coronavirus-cases-icu-beds-arizona-texas> [https://perma.cc/XF3N-Q9U7] (describing influx of seriously ill coronavirus patients, especially in the states of Arizona, Florida, and Texas).

178. See *supra* Part I.C.

179. See *supra* Part I.D.

180. See, e.g., notes 54–56 and accompanying text (describing the call that Dana Marlowe received from a friend “desperate” for menstrual products after stores in the area ran out).

181. See, e.g., Caren Lissner, *Periods Don’t Stop in a Pandemic, Say Westfield and Summit Women*, PATCH (July 20, 2020, 11:41 AM), <https://patch.com/new-jersey/westfield/periods-dont-stop-pandemic-say-summit-westfield-women> [https://perma.cc/2WN5-5KYR] (reporting on a menstrual product drive organized by two women from Union County, New Jersey, and inspired by the fact that during the pandemic, “while food and PPE [personal protective equipment] shortages received attention, people’s need to obtain period products did not”).

International drew attention to menstruation-related needs heightened by the pandemic and sought to dispel menstrual myths.¹⁸²

In the United States, the pandemic-era heightened sensitivity of lawyers to menstruation-related issues specifically coalesced at the end of July 2020, around news that several state boards of bar examiners had rules preventing test-takers from bringing menstrual products with them to the bar exam.¹⁸³ For example, Arizona sent to July bar exam candidates a list of items “strictly prohibited” in the exam room.¹⁸⁴ The list included predictable items, such as cell phones and backpacks, but also “feminine hygiene products,” explaining that these “will be made available in women’s restrooms.”¹⁸⁵ While such a rule would be problematic even in normal times, it was particularly troubling in a pandemic, when the last thing test-takers wanted to do was reach into a communal bowl in a restroom.

Social media pressure, some of which used the hashtag #bloodybarpocalypse, caused Arizona to change its policy.¹⁸⁶ A group of over 2,800 lawyers and law professors signed an open letter to the National Conference of Bar Examiners, urging the group to establish policies that prohibit these bans on menstrual products.¹⁸⁷ In response, the National Conference sent states a communication that “strongly discourage[d]” the bans.¹⁸⁸ This letter, along with further social media pressure, also prompted

182. See 9 *Things*, *supra* note 125 (explaining that “[m]enstruation is not a sign of COVID-19” and that “[m]enstrual supplies are essential items”) (emphasis in original); PLAN INTERNATIONAL, *supra* note 57, at 2 (reporting results of a survey of health professionals in 24 countries and revealing that “81% were concerned people who menstruate would not be supported to meet their menstrual hygiene management needs” and “75% said COVID-19 may pose increased health risks for people who menstruate, as resources, such as water, are diverted to other needs”).

183. See, e.g., Bridget J. Crawford & Emily Gold Waldman, *Tampons and Pads Should Be Allowed at the Bar Exam*, N.Y.L.J. (July 22, 2020, 2:09 PM), <https://www.law.com/newyorklawjournal/2020/07/22/tampons-and-pads-should-be-allowed-at-the-bar-exam/?slreturn=20200626124347> [<https://perma.cc/4DFG-CJ7Q>] (identifying Texas and West Virginia as two states that do not permit test-takers to bring menstrual products to the bar exam).

184. ARIZONA SUPREME COURT, INSTRUCTIONS AND INFORMATION: ARIZONA UNIFORM BAR EXAMINATION (2020).

185. *Id.*

186. See Crawford & Waldman, *supra* note 183; Bridget Crawford, *You Can Now Bring Tampons to the Bar Exam in Arizona, but Not in West Virginia (What About Texas?)*, THE FACULTY LOUNGE (July 18, 2020, 1:35 PM), <https://www.thefacultylounge.org/2020/07/you-can-bring-tampons-to-the-bar-exam-in-arizona-now-but-not-west-virginia.html> [<https://perma.cc/Y6SM-PXJZ>]; Cat Moon (@inspiredcat), TWITTER (July 16, 2020, 4:27 PM), <https://twitter.com/inspiredcat/status/1283875875273007104> (“I don’t even have the words to describe how degrading, disrespectful, offensive, and utterly unacceptable this [menstrual product ban at the bar exams] is.”). Professor Moon is the originator of the #bloodybarpocalypse hashtag, at least in the context of menstrual products at the bar exam. *Id.*

187. See Letter from a group of professors, lawyers, recent law school graduates, and law students to Judith Gunderson, President & CEP of the National Conference of Bar Examiners (July 20, 2020) (on file with author) (asking the NCBE “to clarify that examinees throughout the country must be allowed to bring their menstrual products into the bar examination”).

188. See Stephanie Francis Ward, *Do Some States Really Prohibit Bringing Tampons and Pads to*

Texas to change its similar policy, at least for the September 2020 exam. West Virginia, meanwhile, retained its written policy that applicants cannot bring their own menstrual products into the exam and that the “WVBLE [West Virginia Board of Law Examiners] will provide exam items as well as, ear plugs, tissues, and first aid and feminine hygiene products.” However, a spokesperson for the West Virginia courts told the press that applicants *could* bring their own menstrual products into the exam, leaving the issue ambiguous.¹⁸⁹

Pandemic sensitivities may have played a similar role of elevating menstruation-related issues in areas outside of the law, as evidenced by an otherwise unexpected business decision of the New Zealand supermarket chain Countdown. In June 2020, the company announced that it would no longer use words like “sanitary products” and “personal hygiene” in advertising certain products, adopting the less-stigmatizing term “period care.” A store spokesperson explained the decision this way:

Words like “personal hygiene” and “sanitary products” give the impression that periods—which are an entirely natural part of life—are somehow something to hide to yourself, or that they’re unhygienic. They absolutely aren’t, and we can play an important role in helping change that.

We want to help normalise the language around periods and continence as well as making products like pads, tampons and menstrual cups much easier to find when our customers are shopping online.¹⁹⁰

This move pleasantly surprised leaders of local New Zealand menstrual advocacy groups. Sarah Mikkelsen, a co-founder of the New Zealand

the Bar Exam?, ABA J. (July 23, 2020, 12:47 PM), <https://www.abajournal.com/web/article/one-state-prohibits-bringing-tampons-and-pads-at-bar-exam-while-another-retreats-on-its-position> [<https://perma.cc/52VE-6FXB>].

189. See Bridget Crawford, *Does @WV Courts Have a Secret Policy Permitting Tampons and Pads at the Bar Exam? #bloodybarpocalypse*, FEMINIST LAW PROFESSORS (July 24, 2020), <http://www.feministlawprofessors.com/2020/07/does-wvcourts-have-a-secret-policy-permitting-tampons-and-pads-at-the-bar-exam-edienash-professormlk-bloodybarpocalypse/> [<https://perma.cc/4XP9-T9VV>] (noting a discrepancy between the publicly available bar exam policies in West Virginia and a statement by a West Virginia court representative). At its 2021 midyear meeting, the American Bar Association’s House of Delegates passed a resolution recommending that test-takers be able to bring their own menstrual products to the bar exam. See Midyear Meeting 2021 House of Delegates Res. 105, Am. Bar Association, <https://www.americanbar.org/content/dam/aba/administrative/news/2021/02/midyear-resolutions/105.pdf> [<https://perma.cc/7QA6-2VA2>]. It is not certain what impact this non-binding “recommendation” will have. See *id.*

190. Press Release, Countdown, Countdown Calls It What It Is. Period. (June 26, 2020), <https://www.countdown.co.nz/news-and-media-releases/2020/june/countdown-calls-it-what-it-is-period> [<https://perma.cc/9YGB-7ZYQ>] (“General Manager Corporate Affairs, Safety and Sustainability, Kiri Hannifin, says this is another step Countdown is taking to help remove a stigma that many women and girls continue to face around periods and their bodies.”).

nonprofit The Period Place, heralded the Countdown supermarket chain's decision, noting that this was the first decision of its kind worldwide; she said that "to see a big brand jump on a train that they haven't really even been asked to jump onto is very cool, very inspiring."¹⁹¹

To be sure, when a large company makes a decision like this, it likely does so with the expectation of profits.¹⁹² Nevertheless, the move has brought international attention to menstrual equity issues in New Zealand and elsewhere.¹⁹³ Indeed, changes of this nature can help transform the way consumers talk about menstrual products—and perhaps even change the larger public conversation about menstruation itself. As menstruation becomes increasingly normalized, it is possible to seriously consider the changes to law and society that will enable menstruating individuals to live with basic dignity. The increasing salience of period poverty during the COVID-19 crisis has raised public awareness about menstruation and related topics with momentum that can continue for many years.

Indeed, the most recent—and the most wide-reaching—menstrual equity development that occurred during the COVID-19 pandemic was Scotland's previously mentioned passage of the Period Products (Free Provision) (Scotland) Act on November 24, 2020. This law, which passed unanimously in the Scottish Parliament, requires local authorities to ensure that period products are obtainable free of charge by all who need them. Although it had been in the works even before the pandemic began—a draft bill received initial approval in February 2020—the pandemic heightened its urgency. The lawmaker who submitted the bill, Monica Lennon, explicitly linked its final passage to the pandemic, telling her fellow lawmakers right before the vote: "In these dark times, we can bring light and hope to the world this evening."¹⁹⁴ Lennon further reflected that the bill "matters now more than ever, because periods don't stop in a pandemic."¹⁹⁵

191. Charlotte Graham-McLay, *New Zealand Supermarket Chain Becomes First to Use 'Period' Label on Menstrual Products*, THE GUARDIAN (June 25, 2020, 9:17 PM), <https://www.theguardian.com/world/2020/jun/26/new-zealand-supermarket-chain-countdown-becomes-first-to-use-period-label-on-menstrual-products> [<https://perma.cc/Q6GD-S8XB>] (quoting The Period Place co-founder, Sarah Mikkelsen).

192. See *supra* note 171 (discussing the existence of "menstrual capitalism").

193. See, e.g., Graham-McLay, *supra* note 191; Peter Aitken, *New Zealand Supermarket Chain First to 'Period' Label on Menstrual Products*, FOX NEWS (June 26, 2020), <https://www.foxnews.com/world/new-zealand-supermarket-period-label> [<https://perma.cc/F6ZU-K825>]; Shreya Chauhan, *New Zealand Supermarket First Ever to Use 'Period' Label on Menstrual Products*, INDIA TIMES (June 26, 2020, 6:43 PM), <https://www.indiatimes.com/trending/social-relevance/period-label-new-zealand-supermarket-516622.html> [<https://perma.cc/2VHW-6DHJ>].

194. See Specia, *supra* note 28.

195. *Id.*

CONCLUSION

If “period poverty” encompasses the lack of access to menstrual products, supplies and services for health and sanitation, and information and treatment from educators and health professionals—as well as the reality of stigma and shame that can accompany menstruation¹⁹⁶—then the absence of period poverty should be a hallmark of equitable and just society. While this Article does not purport to be a comprehensive study of period poverty in all parts of the globe during the COVID-19 crisis, there is sufficient evidence from multiple countries to conclude that the pandemic exacerbated longstanding issues related to menstruation. Important menstruation-related needs have been left unmet during the COVID-19 pandemic, and they will remain so in the future unless government leaders specifically take them into account. Menstrual equity is, after all, a subset of the larger project of gender equity.¹⁹⁷ All around the world, the COVID-19 crisis has placed great strain on individuals, families, businesses, healthcare systems, public infrastructures, social safety nets, governments, and beyond. During this time, menstrual equity issues have come into sharper focus, setting the stage for further work: creating laws that make society responsive to the needs of all people.

196. See *supra* Part I.

197. See Bridget J. Crawford, Margaret Johnson, Marcy L. Karin, Laura Strausfeld & Emily Gold Waldman, *The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism*, 26 MICH. J. GENDER & L. 341, 369–74 (2019) (discussing the relationship between menstrual equity and gender equity). As one of us has explained:

I see menstrual equity as a subset of gender equity. For gender equity to be achieved, we need to take account of menstruation, pregnancy, and breastfeeding, and ensure that these natural biological processes aren't limiting women's ability to participate fully in school, the workplace, and other aspects of society. That requires certain accommodations; there's just no way around that, and no shame in acknowledging it.

Id. at 370.

