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UCC Centre for European Integration

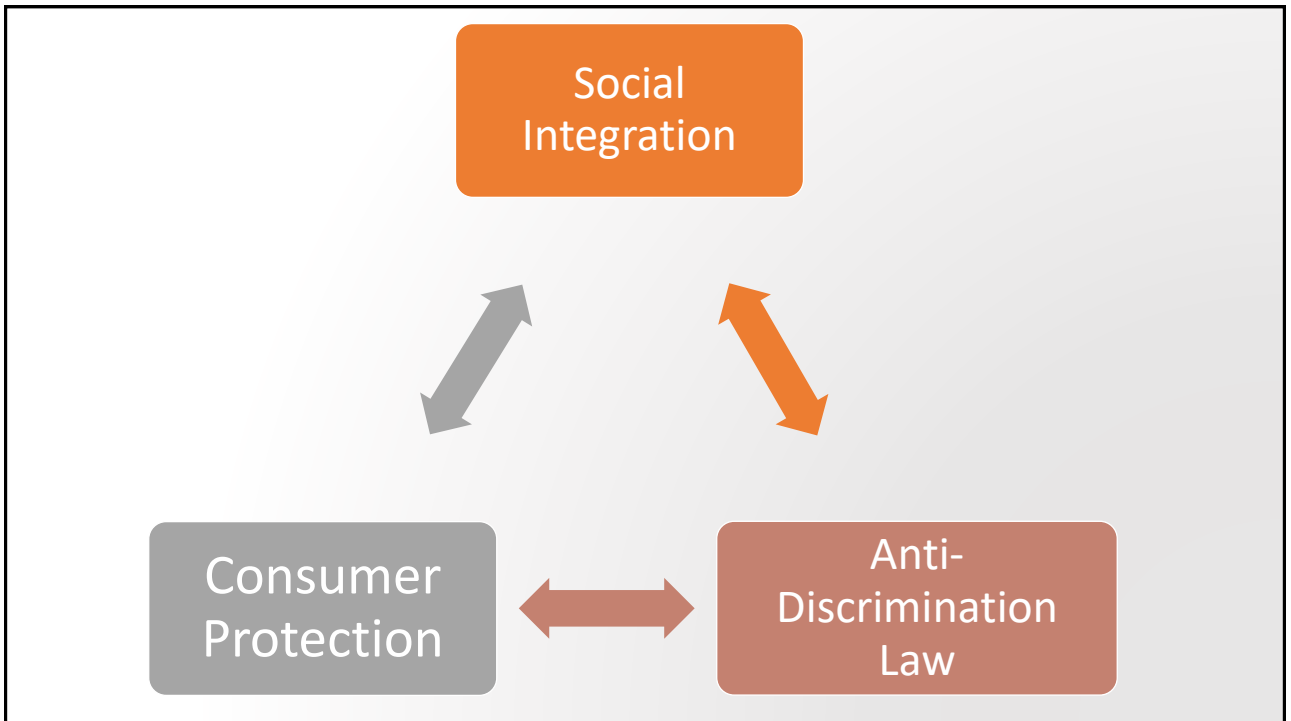
A TRADITION OF INDEPENDENT THINKING  
UCC  
University College Cork, Ireland  
Coláiste na hOllscoile Corcaigh

Prof Dagmar Schiek  
Anti-Discrimination Law,  
Consumer Protection and Social  
Integration

IACL CONFERENCE  
2023

TOP 100  
LAW  
QS WORLD UNIVERSITY RANKINGS  
BY SUBJECT

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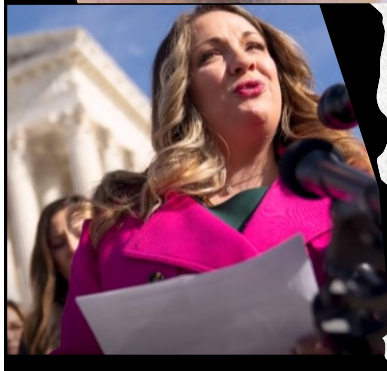
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## Overview

- Consumer anti-discrimination law: Current challenges
- Social integration
- Anti-discrimination law
- Consumer protection (law)
- Alternative paradigms
  - Vulnerability
  - Data protection (transparency)
- A tentative conclusion: a role for consumer anti-discrimination law?



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Current problems:  
between identity  
litigation and  
digitisation



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## What is social integration

- And what does anti discrimination law contribute to it
- Or consumer law
- Or consumer anti discrimination law

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## (Accused of) liberal / economic bias

- Anti-discrimination law
  - Kaithan's theory of anti-discrimination law is explicitly liberal
  - Solanke's stigma idea can also be interpreted as addressing harm, in an individualistic way
  - Somek's critique of EU anti-discrimination law specifically highlights its orientation on markets
- Consumer law
  - EU consumer law in particular is criticised for being focused on market enabling / market making, and potentially failing in the task of consumer protection (Helberger et al, 180 with references to Howells et al and Reich)

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## Alternative paradigms

- Vulnerability in both consumer and anti-discrimination law
  - Hellberger et al, Mulder 2021, Albertson Fineman
- Transformative anti-discrimination law
  - Fredman (not in literature list)
- Anti-discrimination law and social exclusion
  - Mulder (2021) with further references, Somek
- Anti-discrimination law as a field in its own right
  - Schiek, McColgan



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## How does all this play out

- Addressing identity wars
  - Arguably these constitute an abuse of anti-discrimination law
  - Yet identities are gaining in relevance for individuals, and so does the truly asymmetric dimension of ADL
- Addressing new techniques of exclusion
  - Is Anti-Discrimination law really useless? Or just its US emanation?
  - Can consumer law better address discrimination by algorithm?
  - Do we need a specific focus on anti-discrimination law in legislation and case law addressing AI?



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## Tentative conclusion

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### References (1)

Author (Year) Title, Source – or case law /legislation as appropriate	Slide
Lee v Ashers Baking Company Ltd and others [2018] UKSC 49	4
21-476 303 Creative LLC v. Elenis (06/30/2023) US Supreme Court [600 U.S. 21-476 (2023)]	4
Gera, Vanessa "Poland's Supreme Court rules against printer who refused to make banners for LGBT+ group Independent Friday 15 June 2018 (independent.co.uk)	4
Möser, Cornelia; Ramme, Jenifer; Takacs, Judith; Paradoxes That Matter: Introducing Critical Perspectives on Right Wing Sexual Politics in Europe, in: Idem (eds) Paradoxical Rights Wing Sexual Politics in Europe, Cham: Springer 2022	4
Bartlett, Robert; Morse, Adair; Stanton, Richard; Wallace, Nancy (2021) "Consumer-lending discrimination in the Fin-Tech Era " Journal of Financial Economics 143, 30-56	4
Zuiderveen Borgesius, Frederik (2020) Price Discrimination, Algorithmic Decision-Making, and European Non-Discrimination Law European Business Law Review 31 (3) 401-422	4, 8
Falkner, Gerda (2019) The European Union's Social Dimension. In: M. Cini & N. Pérez-Solórzano Borragán, eds. European Union Politics. Oxford: OUP, pp. 310-322	5

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## References (2)

Author (Year) Title, Source	Slide
Khaitan, Tarunabh (2017) <i>A Theory of Discrimination Law</i> . Oxford: Oxford University Press	6
Somek, Alexander (2011) <i>Engineering Equality: An Essay on European Anti-Discrimination Law</i> . Oxford: Oxford University Press	6
Solanke, Iyiola (2017) <i>Discrimination as Stigma. A Theory of Anti-Discrimination Law</i> . Oxford: Bloomsbury.	6
Helberger, N; Sax, M; Strycharz, J; Micklitz, Hans-Wolfgang (2022) "Choice Architectures in the Digital Economy: Towards a New Understanding of Digital Vulnerability" <i>Journal of Consumer Policy</i> 45 (1) 175-200	6, 7
Schiek, Dagmar (2016) "Revisiting intersectionality for EU anti-discrimination law in an economic crisis – A critical legal studies perspective." <i>Sociologia del diritto</i> 25 (2): 23-44	7
Mulder, Jule (2021) "What is vulnerability anyway? Tracing the EU notion of vulnerable consumer through the eyes of EU non-discrimination law" <i>European Law Review</i> 46(6) 719-45	7
Albertson Fineman, Martha (2020) <i>Beyond Equality and Discrimination</i> SMU L Rev F 51 (article 7)	
McColgan, Aileen (2023) <i>Discrimination Law. Text Cases and Materials</i> . 3rd. Oxford: Hart	7

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## References (3)

Author (Year) Title, Source	Slide
Sears, Alan (2019) <i>The Limits of Online-Price Discrimination in Europe</i> <i>The Columbia Science &amp; Technology Law Review</i> XXI (1) 1-52	4, 8
Correa, Ana Maria (2022) "Regulating targeted advertising: Addressing discrimination with transparency, fairness and auditing testing remedies" <i>Computer Law &amp; Security Review</i> 46 (105732)	4, 8
Sablosky Elengold, Kate (2019) "Consumer Remedies for Civil Rights" <i>Boston Law Review</i> 99, 587-639	8

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