ANNOTATED LEGAL BIBLIOGRAPHY

TABLE OF CONTENTS

CIVIL RIGHTS

Luz E. Herrera et al., Note, *The Network for Justice: Pursuing a Latinx Civil Rights Agenda*, 21 HARV. LATINX L. REV. 165 (2018).

Nearly seventeen percent of the United States population is comprised of Latinx individuals, whose lack of access to legal remedies and justice is a direct a result of discriminatory practices arising in employment, housing, education, health care, the criminal justice system, voting rights, and immigration policies. The issue of segregation has been addressed by the legislature and the Supreme Court. In *Alvarez v. Lemon Grove School District*, the Court held that segregated schools for children of Mexican decent were longer permitted to be built. However, defacto segregation still remains prevalent and is a substantial factor in limiting advancement opportunities for the Latinx population in social and economic contexts. Additionally, although various legislation and court decisions have provided access to resources, such as health care and education within the Latinx community, many other political agendas such as criminalization, deportation, and voting rights continue to negatively impact the community at large. The authors argue that the various political and legal issues faced by Latinx communities can be lessened through the Network for Justice, a Latinx network that advances law and policy, which connects existing organizations with law schools, academic institutions, lawyers, and policy makers, made up primarily of members of the Latinx community, with the purpose of establishing a group of Latinx legal and political leaders who can then provide services to the community at large politically, socially and legally. The authors suggest that programs through law schools and various educational programs should focus on providing Latinx members with opportunities in the legal sector, thus, enhancing their presence in the field and curtailing issues faced as a result of segregation. This Network will not displace what Latinx activists have already accomplished, but rather will build upon it and further provide a national program that encourages those in the political and legal fields to confront the issues faced by this group. The theories presented thus far regarding the prosperity of this Network are not themselves substantial, but additionally, the success of this network will stem largely from analyzing regional differences and encouraging various community engagement in dealing with these issues.

CRIMINAL JUSTICE AND PRISONERS' RIGHTS

Hannah Kieschnick, Note, *A Cruel and Unusual Way to Regulate the Homeless: Extending the Status Crimes Doctrine to Anti-Homeless Ordinances*, 70 STAN. L. REV. 1569 (2018).

To protect homeless individuals from laws that criminalize their daily lives, homelessness must be considered a protected status. Amidst rising rates of homelessness, cities across the country have enacted ordinances that prohibit conduct associated with unhoused individuals. These "anti-homeless" ordinances may ban sitting or lying on a public sidewalk during the day, or authorize city police to clear tent encampments with one day's notice. Advocates for homeless individuals argue that laws banning such public behavior criminalize the status of homelessness itself. The Supreme Court has not yet ruled on whether homelessness is a protected status; categorizing homelessness in this way would bring anti-homeless ordinances within the realm of the Eighth Amendment status-crimes doctrine set forth in *Robinson v. California* (in which the Supreme Court struck down a law making it illegal to be addicted to narcotics). Lower courts have reached contradicting outcomes on this question. The author argues that homelessness is a protected status because of its involuntary nature, and ordinances banning involuntary conduct associated with this status (such as sleeping on a public sidewalk), amounts to a criminalization of the status itself. Homeless plaintiffs who challenge such laws should be entitled to retrospective and prospective relief, given their challenges to pay fines, appear in court, and avoid the same future conduct. The classification of homelessness will be necessary to protect the civil liberties of homeless individuals, while the cities they live in attempt to erase their presence from the streets.

Morgan S. Mason, Note, *Breaking the Binary: How Shifts in Eighth Amendment Jurisprudence Can Help Ensure Safe Housing and Proper Medical Care for Inmates with Gender Dysphoria*, 71 VAND. L. REV. EN BANC 157 (2018).

In American prison systems, inmates with gender dysphoria are frequently exposed to cruel and unusual punishment; including abuse, harassment, and sexual violence from other inmates and prison staff. Under the prison system's gender binary, inmates are confined in either all-male or all-female correctional facilities based on their genitalia or sex assigned at birth. This binary categorization has been ineffective to address transgender inmates' unique needs and vulnerabilities in their medical care and housing. The "Farmer-Estelle Framework" provides a legal recourse under the Eighth Amendment in which transgender inmates may challenge their confinement's conditions, but prison officials are given excessive deference by courts and protected by the qualified immunity doctrine. The author argues that courts and facilities must assume a larger role to protect transgender inmates' constitutional rights by clarifying and expanding existing Eighth Amendment jurisprudence to increase access to gender-confirming therapies, including surgical treatments and reasonably safe housing accommodations. The author suggests that reducing deference toward facilities and then focusing on transgender inmates' objective traits when applying the Farmer-Estelle Framework will allow transgender inmates to bring Eighth Amendment claims more successfully, particularly in the lower courts where reform is most likely. Facilities willing to break the gender binary through holistic and non-binary policies in medical care and housing will better protect transgender inmates' constitutional rights, dignity, and identity.

Frankie Herrmann, *Building a Fair and Just New York: Decriminalize Transactional Sex,* 15 HASTINGS RACE & POVERTY L. J. 65 (2018).

Transactional sex work should be fully decriminalized because harsh penalties associated with criminalization are ineffective and have failed to eradicate sex work. On the contrary, criminalization of transactional sex fosters inequity in already marginalized populations, and overall, is unconstitutional. The criminalization of transactional sex has a long standing history in New York: what was once considered a civil breach, adjudicated in the Women's Courts, was criminalized in 1969. About twenty years later, the Manhattan Midtown Community Court as created to adjudicate these matters from a "problem-solving" lens, but the efforts made by this court fell short of providing the appropriate legal solutions to dealing with sex workers. The author references reports by the Red Umbrella Project that detail more recent efforts made by New York legislature to curtail sex trafficking. One such effort is the creation of Human Trafficking Intervention Courts, which enable District Attorneys to adjourn and potentially dismiss cases involving transactional sex, as long as arrestees attend court appointed rehabilitating sessions and avoid arrest for six months. However, this program requires each "victim" of sex trafficking to first be arrested and creates a disparity between those considered criminals for voluntary participation in sex work versus those who are trafficked into the business. The author argues that mitigating all the issues associated with prostitution would require complete decriminalization of sex work. If it is not feasible, then at the very least (1) the loitering statute should be abolished, and (2) the adjournment in contemplation of dismissal should not penalize those who are arrested within 6 months of initial violation. The loitering statutes have been abolished in other states because they were deemed unconstitutional. For example, Florida courts have deemed the loitering statute to be unconstitutional because the time, place, and manner analysis for content-based exclusion of acts in the loitering statute did not serve a compelling state interest that would outweigh a person's constitutional rights. Both of these solutions could go a long way to create a "fair and just approach to sex work" while protecting marginalized women from the stigma and inequity rooted in the criminalization of transactional sex work.

Carlos Berdejo, Article, *Criminalizing Race: Racial Disparities in Plea-Bargaining*, 59 B.C.L. REV. 1187 (2018).

Racially disparate treatment of defendants in the plea bargaining process of the criminal justice system contributes to the criminalization of race and mass incarceration of African Americans. Prior research on the intersection of race and the criminal justice system largely focuses on the initial arrest and the conviction, thereby ignoring the in-between step of plea-bargaining. Plea-bargaining is important because it determines a defendant's initial charge, which sets the groundwork for how and whether the defendant will be convicted. The author relies on a study which used data from Wisconsin's Circuit Courts, where, as of 2010, African Americans made up forty-three percent of the state's prison population but only seven percent of the state's overall population, to analyze racial bias in the plea-bargaining process. In Wisconsin, white defendants are twenty-five percent more likely than African American defendants to have their principal initial charge either dropped or reduced. Significantly, white defendants are seventy-five percent more likely than their African American counterparts to have their initial principle charge carrying a potential prison sentence either downgraded to a charge carrying no jail time or dropped. As such, white defendants are less likely to be convicted or incarcerated than their African American counterparts. Of note, this racial disparity shrinks for defendants with prior convictions and for severe felonies, which, when taken with the racial disparity present for low-level felonies and misdemeanors, the author notes as indicative of the use of the defendant's race to determine to the defendant's latent criminality and probability of recidivism. The author also notes that subsequent to the data collected, Wisconsin elected their first African American district attorney who mandated implicit bias training for judges, prosecutors, and public defenders. In addition to instituting implicit bias training, the data indicates a need for greater transparency regarding the pre-sentencing stages of the criminal justice system so that the data can be used to identify and address prosecutorial discretion's racial bias.

Scott E. Sundby, *The Rugged Individual's Guide to the Fourth Amendment: How the Court's Idealized Citizen Shapes, Influences, and Excludes the Exercise of Constitutional Rights,* 65 UCLA L. REV. 690 (2018).

Many Supreme Court decisions demonstrate the Justices' beliefs that low-income and minority groups should vehemently defend their Fourth Amendment right, in the context of search requests, during their encounters with the police, in a similar fashion to celebrated figures such as Dollree Mapp and Rosa Parks who "heroically" resisted instances of authority abuse by the police. These celebrated figures are part of an "idealized archetype," unflinching or "rugged" individuals who have repeatedly denied consent to unreasonable searches. Such "rugged" behavior has become the measuring stick for evaluating whether a citizen was unconstitutionally deprived of the autonomy right that the Framers intended to protect. Because of this idealized archetype, the Justices came to view a citizen's passivity or acquiescence to unreasonable searches as a voluntary response on their part. The issue with such rationale is that it ignores the militant aspect of search request encounters with the police and the reasonable apprehension of certain groups that refusing to give consent to a police officer is neither safe nor wise. As a resolution, the author suggests the adoption of a new archetype, where the idealized citizen is informed by the police of his or her right to lawfully refuse consent to a search and given the certainty that the exercise of such right will not bear any adverse consequences. Under this new epitome, the Justices can truly honor the principles of "autonomy and dignity" intended by the Framers.

EMPLOYMENT AND WORKPLACE DISCRIMINATION

Angela M. Gius, Article, *Dignifying Participation*, 42 N.Y.U. REV. L. & SOC. CHANGE 45 (2018).

Participatory lawyering often marginalizes populations and excludes minority populations from participating in community, government, and life, thus denying their opportunity to make political and social change. Social justice lawyers often have positive intentions to empower their minority clients; however the results often differ from their intentions. Instead of lawyers working with their clients, they often take a superior position over their minority clients, whether intentional or not, which creates a power imbalance. The author recommends social justice lawyers should implement a "dignity consciousness" mentality to empower marginalized populations to make valuable political and social change. Human dignity is defined as a status in which all people are regarded with a high, equal rank, allowing for his or her presence and ability to be taken seriously by all. To successfully utilize "dignity consciousness", the author urges lawyers to first set transparent goals for the clients and community they are working with to help ensure their practice reflects the actual needs of the community. Additionally, practicing respect on both sides of a dispute, re-visiting previously set goals, framing work in positive terms, and consulting with the most oppressed individuals in a community is emphasized. Consequently, the use of "dignity consciousness" by social justice lawyers will create partnerships with clients, thus empowering marginalized populations to participate and use their voices to create change.

Stephanie Bornstein, Article, *Equal Work*, 77 MD. L. REV. 581 (2018).

The present-day legal approaches to achieving equal pay are not sufficient and do not factor in crucial elements; namely gender and racial segregation and stereotypes, which are the cause of the severe pay gap in America. Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963 have attempted to end pay discrimination, however the definition of "equal work" and "comparable worth" in these statutes are too narrow and require reforms. The note author argues that these laws have rendered antidiscrimination laws inefficient and are unable to solve the gender and racial pay gaps unless reform is implemented. The author also submits scientific data on American inequalities and analyzes current laws to support her findings on the causes of unequal pay and the solutions. The argument that not all differences in jobs need to be factored into setting wages is one proposed solution to expanding the laws; another solution would be to allow the language of "similarity" in the definition of "comparable worth" to include a great amount of similar roles. Antidiscrimination laws need to confront the gender and racial stereotypes that effect wage determination and provide more effective means for bringing claims against wage disparity through expansion of key terms in the statutes.

Madelaine Cleghorn et al., Annual Review Article, *Employment Discrimination Against LGBT Persons*, 19 GEO. J. GENDER & L. 367 (2018).

The legal protections afforded to those facing employment discrimination, based on their gender identity or sexual orientation, are lacking. Title VII of the Civil Rights Act of 1964 set in place legal protections against work place discrimination based on certain protected classes. "Sex" is one of the protected classes under Title VII, but was originally only construed by the courts to mean discrimination on the basis of sex as assigned at birth. More recently, the definition of "sex" has expanded to encompass discrimination on the basis of gender identity. However, plaintiffs are not always successful in their claims because courts have been reluctant to interpret sex discrimination as including sexual orientation, even though the EEOC has issued a ruling recognizing claims of discrimination on the basis of sexual orientation as violating Title VII. For example, transgender plaintiffs have often succeeded in claims where they face discrimination based on gender identity, but do not where claims are based on sexual orientation.

There are other causes of action available to the LGBT community; such as disability and intentional infliction of emotional distress but they are often lacking the adequate protections needed by these communities. Courts often times do not accept intentional infliction of emotional distress claims based solely off of harassing behavior due to the actual or presumed sex of the claimant. The Don't Ask Don't Tell (DADT) act also limited the protections of LGBT service men and women. Although DADT has recently been repealed, transgender service men and women face even greater discrimination in the armed forces after President Trump's policies. The Trump administration has also issued statements expressing that as a matter of law, sexual orientation discrimination is not covered under Title VII. Due to the current administration's unwillingness to protect other forms of sex discrimination, many advocacy organizations are working to pass a comprehensive anti-discrimination bill that would update Title VII to include discrimination based on sexual orientation, gender identity, and sex, however the bill is unlikely to be passed during the current congressional session. Even though some states and localities have implemented protections for individuals facing discrimination in employment based on sexual orientation, other states have refused to do the same. The uncertainties in the legal remedies and protections available to the LGBT community remain apparent.

Alexander M. Nourafshan, Article, *From the Closet to the Boardroom: Regulating LGBT Diversity on Corporate Boards*, 81 ALB. L. REV. 439 (2018).

While corporations have professed an increased commitment to diversity, their initiatives have not reached the highest levels of their organizations, their boardrooms. Board membership has diversified slightly over time due to companies' voluntary improvements to recruitment, mentorship, and non-discrimination policies. However, women, non-white, and especially LGBTQ individuals remain severely underrepresented on corporate boards, and efforts to diversify lack sufficient attention to intersectionality. The SEC's 2009 diversity disclosure rule requires boards to disclose their board nomination committees' efforts to diversify, but companies have either ignored it or construed it to include diversity of education or experience instead of making the demographic changes the rule intended. The SEC should improve its diversity disclosure rule by adding an enforcement mechanism, defining diversity, and including sexual orientation in the aggregate. There is a strong business case for diversification on corporate boards; having openly LGBTQ board members improves financial performance by providing additional perspectives, signaling the company's commitment to inclusivity, and increasing productivity and loyalty from consumers and employees. Demographic definitions and increased enforcement of the SEC's diversity disclosure rule would help remedy the problematic underrepresentation of minorities and especially LGBTQ individuals on corporate boards.

GENDER BIAS AND DISCRIMINATION

Alexandra Brodsky, Article, *Against Taking Rape "Seriously": The Case Against Mandatory Referral Laws for Campus Gender Violence*, 53 HARV. C.R.-C.L L. REV. 131 (2018).

It is time for a new, victim-centered approach to curbing sexual assault at U.S. colleges and universities. In recent years legislators, committed to taking rape "seriously," have proposed many "mandatory referral laws" that require schools to report gender-based violence to law enforcement, even against the wishes of victims, in order to prevent such violence and protect the rights of the accused. This legislation responds to recent widespread national concerns about on-campus gender violence, and the "seriousness" rhetoric echoes feminists of decades ago, who spoke out against law-enforcement inaction in response to allegations of domestic violence and sexual assault. However, mandatory referrals decrease student reporting of assaults to their schools, which prevents these victims from accessing school services, such as mental health counseling. Further, it prevents schools from disciplining perpetrators. When victims do report, compulsory law-enforcement involvement regardless of the students' wishes deprives them of autonomy. Supporters of mandatory referral include prominent men's rights groups—some of which conduct harassment campaigns against women—that oppose schools' investigation of gender-based violence and disciplining of victims, and that attempt to use the "seriousness" argument to delegitimize schools' anti-gender-violence programs. Feminists should replace the "take rape seriously" mantra with "take survivors' needs seriously," and victims-advocates' efforts should refocus on understanding victims' actual needs and supporting victim-centered legislative proposals. This approach will result in policies that truly protect victims' civil rights.

Daniel Del Gobbo, Article, *The Feminist Negotiator's Dilemma*, 33 OHIO ST. J. ON DISP. RESOL. 1 (2018).

Although scholars have subjected principled negotiation to feminist scrutiny in an effort to alleviate inequality at the bargaining table, the current discourse acknowledges a gender binary, reinforces it through gender stereotyping, and limits a negotiator's access to bargaining tools. Scholars have traditionally analyzed gender difference in principled negotiation through the lenses of liberal feminism and cultural feminism, both of which reinforce the gender binary. The author argues that by subscribing to a gender binary, traditional feminist critiques have created two narrow visions of intervention; the first proposes to alter a woman's behavior in negotiations and mandates that female negotiators adopt masculine bargaining techniques (liberal feminism), the second proposes to alter the behavior of others around the woman and demands that male negotiators adopt feminine bargaining techniques (cultural feminism). These two frameworks do not fully account for the complex range of contradictory behavior arising in both genders. This creates the "Feminist Negotiator's Dilemma," wherein access to both masculine and feminine behaviors is necessary to successfully negotiate, but the two categories are pitted against each other as mutually exclusive. The author offers a postmodern critique of principled negotiation, separating negotiating activities traditionally identified as masculine or feminine into a non-gendered list of beneficial negotiation qualities. There may be no way to solve the feminist negotiator's dilemma, but negotiators should consider what a non-gendered approach to principled negotiation may look like.

HOUSING AND PROPERTY RIGHTS

Kathryn A. Sabbeth, *Housing Defense As The New Gideon*, 41 HARV. J. L. & GENDER 55 (2018).

New York City's newly enacted statute, requiring the appointment of council to low income defendants in civil eviction proceedings, is decreasing eviction rates, promoting gender equality, and regulating abuses from private actors. Although *Gideon v. Wainwright* created a right to council in criminal proceedings, the Court had no clear objective to combat discrimination or racial inequality generally. Concurrently, the increasing numbers of incarcerations and massive evictions have been growing nationwide. The author argues that by providing counsel for tenant defendants in eviction proceedings, not only will the number of evictions drop dramatically; the city will be able to save millions of dollars that it currently spends on the displacement of evicted tenants. The centrality of housing as a primary need is emphasized and its landslide effect on the economy, social mechanisms, education, and medical treatment. However, the author recognizes a drawback to the legislation in that it does not provide affirmative housing counsel. Without affirmative housing counsel, low income tenants will still fall prey to discrimination, harassment, and substandard conditions. New York City's statute will not solve the eviction crisis and has limitations, yet its action as the first jurisdiction to create a civil right to council on eviction matters has the potential to inspire other jurisdictions to similarly create real solutions to those who truly need the help.

Isaac Saidel-Goley & Joseph William Singer, Article, *Things Invisible to See: State Action & Private Property,* 5 TEX. A&M L. REV. 439 (2018).

Since its inception, the state action doctrine has oppressed and discriminated against minorities, particularly African Americans, by denying equal access to public accommodations, impairing voting rights, decreasing access to housing, and fostering residential segregation. The state action doctrine is a legal concept by which the protections of the Constitution apply only to governmental conduct and not to the behavior of private individuals. Due to the difficultly in defining the difference between state and private action, courts have struggled to apply the doctrine consistently throughout history. After its inception, courts applied the doctrine in a formalistic and unequal manner. However, beginning in the 1940s, courts transitioned to a more functional and progressive approach. Relying on property law theory, the authors argue that the state action doctrine should be fundamentally reformed by applying a more functional and egalitarian approach in order to ensure the equal protection of law. What matters most is whether the law provides for equal treatment by ensuring access, liberty, and dignity to all persons, all of which are ensured by a free and democratic society.

IMMIGRATION

Richard C. Schragger, *The Attack on American Cities*, 96 Tex. L. Rev. 1163 (2018).

There is an increasing amount of legislation by states which conflict with or entirely override ordinances implemented by cities, causing in a decrease in urban authority. As a result, cities have limited power to make and enforce laws in response to the needs of local people. States and cities have opposing views on a wide variety of topics such as environment, labor, worker's wage, and firearm and tobacco laws. This anti-urbanist trend has resulted from the underrepresentation of cities in state and national legislatures, as well as in the Senate. The author argues that the U.S. Constitution is generally anti-urbanist and favors those who vote in rural regions. However, cities can litigate preemption cases and attempt to defend themselves through constitutional guarantees. The author suggests that cities right to govern at a local level is protected under the Tenth Amendment, even though the Supreme Court has not yet recognized it. Further, cities should form relationships with state officials who support urban ideals, but first there is a need for general reform on the state level.

Jaclyn Gross, Note, *Neither Here nor There: The Bisexual Struggle for American Asylum*, 69 HASTINGS L.J. 985 (2018).

Bisexual individuals confront more problems when seeking asylum in the United States, compared to other sexual minority individuals. Even though United States asylum laws have the intention to protect bisexuals, the prevalent inherent biases and fundamental misunderstandings of bisexuality among immigration officials and Immigration Judges create higher barriers for bisexual asylum seekers. The author argues that such barriers can be lowered by providing Immigration Judges with more LGBTI-centered training that is similar in character to the Refugee, Asylum and International Operations (RAIO) requirements, and by redefining "immutability" so that it reflects current social perspectives. The author suggests that such improvements can be made through introducing legislation that requires the above mentioned training and by establishing more precedents that protect bisexual asylum seekers along with the LGBTI. These efforts may not help decide every bisexual asylum seeker case, but if such changes are not attempted, the United States may become subjected to future criticism about its approach to human rights because of inconsistency is found in dealing with matters regarding equal protection of sexual minorities in asylum cases, giving the impression that the United States deems one group more worthy of legal protection than the other.

Robin Pomerenke, Note, *Intersectional Resistance: A Case Study on Crimmigration and Lessons for Organizing in the Trump Era,* 29 HASTINGS WOMENS L.J. 241 (2018).

The coexistence of the enforcement of criminal and immigration law, both which seek to oust the "other" and both which have escalated in the Trump era, have brought to the forefront the idea of intersectional resistance. Based on a framework of systematic criminalization of black and brown individuals, crimmigration divides immigrants into a dichotomy of those who either do or do not deserve protection, and deals with a legal make-up lacking any semblance of facial neutrality. The author argues that these "movement makers" work with a grassroots, ground-up mentality and focus on the impact of these laws to allow for meaningful resistance to happen against local authorities seeking to perform ICE-related duties against poor people of color. The movement makers also seek to create legislation that protects lower-level poor and minority offenders who lack proper documentation. Groups like ICE Out of Calitifornia Coalition are broadly-based dividing yet organized into areas of expertise in order to fight against policies such as S-Comm, which automatically sends the fingerprints of those detained at local jails to ICE. The incorporation of key strategies such as issue framing, goal setting, and expanding the scope of the objective allows these coalitions to move towards goals big and small. Using a flexible approach that is not limited to the legal realm but reaches and pulls together an expansive audience allows for the resistance movement, against harsh crimmigration policies to continue to draw the masses together to push for meaningful change that is capable of impacting the largest amount of people possible.

JUVENILE JUSTICE

Fanna Gamal, *Good Girls: Gender-Specific Interventions In Juvenile Court,* 35 COLUM. J. GENDER & L. 228 (2018).

Because Girl Courts are constructed on hierarchal notions of womanhood and an ideal form of femininity, they actually function to deter self-reliance and self-determination in girls. In response to the rapid increase in detention rates for young girls based on non-violent offenses (specifically, black and low-income girls), states have created Girl Courts to oversee and address the particular needs of girls after their guilt has been decided. The author argues that by attempting to reform girls towards a white, middle-class, heterosexual image of girlhood; girls of color, girls from poor families, and LGBTQ+ girls will struggle to follow the court ordered requirements and will continually endure detention or probation. Furthermore, by subjecting girls to excessive surveillance by courts, social service providers, and probation officers, Girl Courts institutionalize young females' submission to paternal figures and limits feelings of free will; with high-risk minority girls can lead to trouble in avoiding exploitation. Implicit in the white, middle-class model that Girl Courts follow are probationary requirements which ignore and sometimes exacerbates the social hardships that large numbers of girls in the system face. Unlike in white, middle-class environments, mandatory school attendance in high poverty schools continually influence girls towards the direction of underemployment through over-policing and harsher punishments, and directives to stay at home can constrain girls to possible abuse, exploitation and further court-involvement. The author suggests one way to remedy Girl Courts could be to adapt them into a pre-adjudication diversion program, where mediation would involve girls expanding on their own perception of the circumstances that create barriers for them to thrive. However, as gender-specific juvenile courts continually are accepted by states, harmful gender stereotypes will continually be systematically advanced and disadvantaged girls will have trouble finding freedom from the social order.

Jordan Blair Woods, Article, *Unaccompanied Youth and Private-Public Order Failures*, 103 IOWA L. REV. 1639 (2018).

The government should stress programs that empower unaccompanied youth positively versus its current family-centric approach, to allow youths that do not fit into the traditional family system to thrive. Nearly two million youths a year become homeless or live in unstable living conditions for a significant amount of time. The teenagers run away from abusive family environments or are kicked out by their own families. The government, utilizing an outlook formed from two primary theories of causation, stresses a family-centric approach as the most optimal solution. Working to either repair the biological family unit or place the youth in foster care or adoption, the youths are encouraged to return to a family system. However, this approach fails when it comes to many, particularly unaccompanied LGBTQ youth, resulting in devastating consequences. The youths, who cannot find their place in the traditional family system, are thrust into a continuous cycle of homelessness and despair and fall into criminal activity, which leads to their arrest and detention. The author argues that to succeed a paradigm shift is necessary to accommodate many youths who do not fit into the traditional family system. The government should put greater emphasis on programs where unaccompanied youths are empowered positively and encouraged to self-rely and self-actualize as adults outside of the traditional family unit.

LEGAL PROFESSION

Stacy L. Hawkins, Article, *Baston for Judges, Police Officers, & Teachers: Lessons in Democracy From the Jury Box*, 23 MICH. J. RACE & L. 1 (2018).

The ideals and legitimacy of representative democracy become strengthened when there is a guarantee of equal participation for racial minorities in integral areas of civic life as shown by the jury selection. Since *Baston*, racially diverse juries have legitimized the judiciary by increasing sentiments of trust between the public and judicial institutions, as equal participation promotes procedural justice. The author argues that American civic institutions should learn from the experience of the judiciary and expand the race conscious selection process utilized during jury selection to other areas of civic life; mainly to the of hiring judges, police officers, and teachers. Equal protection doctrine jurisprudence, through the lens of social research focused on procedural justice and representative bureaucracies, justifies and supports this approach. A wide array of academic studies have concluded that the interests of racial minorities are heightened when civic institutions are racially heterogeneous and lowered when they are homogenous. By ensuring racial diversity among civic institutions proportional to the racial diversity of American communities, racial minorities' interest and participation in civic life would increase, thus strengthening the ideals of representative democracy.

Gemma Donofrio, Article, *Exploring the Role of Lawyers in Supporting the Reproductive Justice Movement*, 42 N.Y.U. REV. L. & SOC. CHANGE 221 (2018).

Women of color and women in the LGBTQIA community are routinely excluded from the traditional feminist movement involving reproductive rights. While mainstream feminist organizations focus on abortion rights, communities of color have a need to address issues such as forced sterilization and accessibility to fertility treatments. The author argues that public interest attorneys need to be client-centered and focus on community engagement to better serve and fight for reproductive rights for marginalized groups. Lawyers must put their personal goals aside and focus on collaboration with reproductive rights organizations and movements in order to gain a better understanding and respect for intersectionality; to assist with coalition building and garner financial support. While contemporary feminist rights organizations have made strides toward the rights of affluent women, attorneys need to spearhead in the expansion of reproductive rights for marginalized communities.

Alexi Nunn Freeman & Lindsey Webb, Article, *Positive Disruption: Addressing Race In A Time Of Social Change Through A Team-Taught, Reflection-Based, Outward-Looking Law School Seminar*, 21 U. PA. J. L. & SOC. CHANGE 121 (2018).

Law schools have not sufficiently addressed race in the classroom, which deprives students of a full understanding of our legal system and the necessary skills for successfully practicing law. Some schools offer classes that focus on or incorporate race, but race has usually been avoided in law school courses. The authors analyze a race-focused class taught at the University of Denver Sturm College of Law, called the Critical Race Reading Seminar (CRRS). The seminar applies critical race theory to various legal and social issues. CRSS is taught by a group of professors from multiple disciplines to encourage collaboration, uses a different non-fiction book each semester, and assesses students based on their reflections. The authors provide a template for other law schools to create a similar race-focused course and also offer ways to address the challenges that law schools may face during its creation. Ultimately, they find that despite these challenges, this seminar is a positively-disruptive way to address race in the legal curriculum.

Jennifer Rosen Valverde, Article, *Preparing Tomorrow's Lawyers to Tackle Twenty-First Century Health and Social Justice Issue*s, 95 DENV. L. REV. 539 (2018).

The landscape of health and social justice in the United States is changing in a way that will negatively affect the lives of low-income or poor Americans. This changing landscape has made it essential to re-evaluate the way law schools are preparing students to tackle this timely issue. Recent amendments to the American Bar Association's (ABA) accreditation standards called for a "quantum shift" in legal education; citing the need to increase practical skills, values, and to develop new competencies essential to practice. Such competencies include preventative law, interdisciplinary collaboration, and community engagement. One way law schools address this problem is the clinical program approach; which combines theory and doctrine with practical application to provide students with applied skills, while instilling social justice values and promoting professional confidence. The author discusses the medical-legal partnership (MLP) clinic model–and the H.E.A.L. Collaborative as an implementation of the MLP model–to demonstrate how clinics can be effectively interdisciplinary while addressing the complex social and legal needs of communities. The author argues that while the MLP model, and the clinical model as a whole, are an effective, successful method, it is only a starting point. Curriculum based clinical instruction should be implemented to further provide opportunities for law students to develop the necessary competencies.

Renee Nicole Allen & Deshun Harris, Article, *#SocialJustice: Combatting Implicit Bias in an Age of Millennials, Colorblindness & Microagressions*, 18 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 1 (2018).

Implicit biases run rampant in the Millennial generation, despite the fact that Millennials generally view themselves as egalitarian, tolerant, and "colorblind." However, in actuality, Millennials display racial biases through micro-aggressions, specifically unconscious micro-insults or micro-invalidations, which subtly diminish the experience of minorities. Because law students and lawyers have a false perception that their legal training is objective and eliminates bias, academic support offices and educators should be tasked with actively assisting students to mitigate these biases. Instituting implicit bias trainings in law schools would foster awareness of individual biases and provide strategies to break the habit of biased thinking. Trainings would educate law students about the consequences implicit biases have on marginalized groups and would provide trainees with alternative responses. These alternatives would include focusing on counter-stereotypes, contact with stereotyped groups to increase empathy, and teaching trainees to replace stereotypical responses with non-stereotypical ones.

LAW AND SOCIAL JUSTICE

Scott L. Cummings, Article, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 WIS L. REV. 441 (2018).

Modern, new canon approaches to promote progressive legal reform differ from old canon approaches utilized during the period from the New Deal to the Civil Rights Eras, but have similar negative outcomes. The old canon approach is showcased through several landmark cases, including *Brown v. Board of Education*, *Roe v. Wade*, and *Goldberg v. Kelly*. The author argues that old canon progressive movement leaders' efforts actually prevented these movements from achieving their ultimate goals of desegregating schools, providing easier access to abortion, and strengthening unions. Laws aligned with fundamental movement tenets were enacted and subsequently were undercut by administrative reform, the implementation of progressive policy resulted in backlash and insurgence from opposition groups, and there was increased intra-movement disagreement. The author discusses the new canon approach in reference to the anti-sweatshop campaign of the 1990s, post-9/11 unlawful detainment litigation, the fight for marriage equality, securing rights for undocumented immigrants, and the Black Lives Matter movement; detailing how new canon lawyers have adjusted their approach to combat issues based on the outcomes of old canon campaigns. New canon movement leaders employ intersectional efforts that are not confined to achieving objectives solely in the courtroom; in addition to legal strategies, they implement grassroots mobilization, collective political advocacy, and media representation to fortify public support. However, these new canon actors experience similar negative outcomes as those of the old canon. In conclusion, it is not the methods by which lawyers attempt to secure progressive gains that are at fault; instead, it is the power political rivals possess to oppose these movements and structural inequality that are to blame.

Elizabeth L. MacDowell, Article, *Vulnerability, Access to Justice, and the Fragmented State*, 23 MICH. J. RACE & L. 51 (2018).

The specialized problem solving courts such as family, housing, and consumer courts expands state power at the expense of the lives of low-income litigants. "Tightening," or the coordination and consolidation among the judicial system's constituent parts to bolster state power, can compromise due process rights for low-income individuals and subject them to detrimental, unwanted, and coercive state measures such as use and referral to social workers and aggressive child support enforcement. By using instances from family courts, the author demonstrates how a tightened court system, as well as de-legalized and informal processes in problem solving courts, may work against low-income litigants' interests. Racial and gender biases in these courts where the state is a party are also problematic, and may cause even more detrimental results for low-income families. There should be thorough analysis of the vulnerability theory — the notion that humans and institutions' vulnerability justifies a strong, responsive, and accountable state — to analyze institutional susceptibility to internal and external disruptions, as well as functional fragmentation (or the reversal of the "tightening" process) to address punitive aspects of state involvement from those that are supportive to low-income litigants. If there is such functional fragmentation and analysis, courts may better be able to serve the interests of low-income individuals and will create a greater capacity for justice.

LGBTQ+ RIGHTS

Ari Ezra Waldman, *Are Anti-Bullying Law Effective?*, 103 CORNELL L. REV. ONLINE 135 (2018).

Merely implementing anti-bullying laws has little to no impact on bullying, cyberbullying, and suicidal thoughts among LGBTQ youth. Instead, state legislatures need to address LGBTQ safety and health by adopting pro-equality laws. In light of recent teen suicides, all fifty states enacted anti-bullying laws in schools. Further, the Department of Education (DOE) published a list of sixteen recommended components for states to follow when implementing anti-bullying laws, but compliance of the guidelines varied widely. Nonetheless, even the most comprehensive anti-bullying laws played a minor role in protecting LGBTQ youth from bullying. Rather, the most important factor in explaining state differences in rates of bullying, cyberbullying, and suicidal thoughts among LGBTQ youth in schools was the state's commitment to LGBTQ equality. Thus, state legislatures should consider adopting pro-equality laws to protect LGBTQ persons, which would consequentially reduce rates in bullying, cyberbullying, and suicidal thoughts. Implementing anti-bullying laws are an important step, but they do not significantly impact LGBTQ student health and safety the way state officials hoped they would.

Marie-Amélie George, Article, *The LGBT Disconnect: Politics and Perils of Legal Movement Formation*, 2018 WIS. L. REV. 503 (2018).

A major disconnect between American's support for gay and lesbian rights versus transgender rights has created a legal and social gap in the LGBT community. Although LGBT groups have become more transgender inclusive in pursuing legislation, these groups still devote their contributions and resources towards issues that impact gays and lesbians significantly more than transgender individuals. The author proposes three solutions by which advocates can affirmatively address transgender rights to resolve this LGBT disconnect. The first solution is abandonment, meaning that LGBT organizations can abandon their representation of transgender individuals in order to separate gay and lesbian rights from those of transgender individuals. Second, assimilation, proposes the idea that these organizations should begin prioritizing transgender rights in their legal agendas. Third, transformation, involves a full integration of the LGBT rights movement, by emphasizing ways in which these identity categories are connected. This would make transgender individuals evident to legislators, administrative officials, and the voting public. These proposed solutions will guide LGBT organizations in re-structuring their approach to transgender rights.

Maayan Sudai, Article, *Revisiting The Limits of Professional Autonomy: The Intersex Rights Movement's Path to De-Medicalization*, 41 HARV. J. L. & GENDER 1 (2017).

With the intersex label comes multiple forms of activism, two of which are known as medical activism and legal activism. While the two forms of activism have the same objectives, they go through vastly different avenues to achieve a better standard of living for individuals who identify as intersex. When a person is born without distinguishable sex indicators, they are deemed intersex, which comes with a multitude of consequences including, but not limited to; sex assignment surgery as a minor, hormone therapy, and conforming to one gender role. The intersex rights movement has fought against the gender binary because the movement believes these interventions performed without an individual's consent violate human rights, principles of liberty, and autonomy of one's own body. The intersex rights movement has diverged into two different paths since 2006. Previously, the intersex rights movement was united in patient advocacy and destigmatizing intersex individuals. After 2006's "Consensus Statement on Management of Intersex Disorders" was created, the intersex rights movement became divided into those who believed in collaborative efforts with the medical community (known as "treatment activists") and those who believed in disassociating the intersex identity with pathology and fighting societal norms through legislation and the judicial system (known as "identity activists"). A third group called the "assimilators" exists as well, but it is not considered part of the overall intersex rights movement because they wish to accept the medical interventions they received and choose to reject the social identity of "intersex". The treatment activists and the identity activists of the movement are analyzed through their successes and failures. The author argues that identity activists are more effective in the progression of the intersex rights movement than the medical activists because the court system is more flexible to navigate societal and cultural norms. Advocating for the intersex movement via legal routes allows the ordinary person in society to view intersex issues as more than just the territory of medical and science professionals. The author compares this to the medical activists who undermine the ideals and values that are core to a majority of the intersex community through collaboration with medical professionals who might not all share the same liberal approach to intersex individuals and their rights. The identity activist

movement has resulted in legislation allowing for "X" markers on official documents, international recognition of a "third gender/sex" category, and litigation through the courts that acts as a catalyst for the change in medical practices regarding intersex patients. Both the medical and identity activism movements have served vital functions for the progression of the intersex rights movement but combining the two and using the legal route for advocacy has seemed to be the most efficient for the intersex rights movement as a whole.

RACIAL JUSTICE

David B. Oppenheimer, Article, *Dr. King's Dream of Affirmative Action*, 21 Harv. Latinx L. Rev. 55 (2018).

President Trump and Attorney General Sessions have decided to challenge affirmative action policies in higher education as a form of discrimination against white people. It is expected that they will propose class-based affirmative action to replace race-based affirmative action, and again cite Dr. King as a supporter of remedies for poverty, regardless of race. Dr. King dreamed of a time when race would be irrelevant and unquestionably supported both race-conscious and class-based approaches to affirmative action, and wanted both forms to be used together. From the 1920s to 1960s the Civil Rights Movement sparked a demand for equal hiring, or quotas, in order to force white employers to hire black workers, and activists were holding demonstrations and boycotting against employers for the recognition of this right. Inspired by "Don't Shop Where You Work" boycotts, as well as the work of Reverend Leon Sullivan, an activist minister, and his trip to India in 1959, Dr. King developed Operation Breadbasket, a boycott/quota program to promote race-conscious affirmative action, including the use of racial quotas in employment. The author addressed debates over affirmative action by recognizing the historical context of racism and the views of Dr. King during the Civil Rights Movement. In conclusion, the unifying theme in Dr. King's advocacy was inclusiveness of all potential remedies, which is clear throughout his work. In his speeches and deeds, Dr. King clearly supports race-conscious affirmative action as a remedy for past and continuing racism, as well supporting class-based affirmative action as a social response to endemic poverty and lack of social mobility.

Amanda Levendowski, Article, *How Copyright Law Can Fix Artificial Intelligence's Implicit Bias Problem*, 93 WASH. L. REV. 579 (2018).

Copyright law's fair use doctrine is underutilized in training Artificial Intelligence (AI) systems, which causes system bias. AI systems "learn" by sifting through different files, called "training data," and honing an ability to find patterns. For example, an AI system designed to identify pictures of people would be exposed to training data of thousands of different images, and it would learn to identify human features by sorting the images into different categories: images with humans and images without humans. If the AI developer only exposes their system to people with light skin tones, the program will develop a bias – it may be unable to identify darker skinned individuals as "people." Much of AI's training data is protectable by copyright law, which limits the information developers can use to teach their algorithms. While large AI creators like Facebook or IBM can either build their own datasets or purchase access to protected works, many developers turn to small datasets of biased, low-friction data (BFLD), which includes works in the public domain and creative-commons licensed works. BFLD is easily available and legally low-risk, but often results in biased AI systems due to the small amount of works available. So far, AI developers have yet to invoke copyright law's fair use doctrine in order to gain access to a broader set of training data. The author argues that this strategy is a crucial step in creating less biased AI systems in the future, especially as our algorithms grow more complex.

Patricia Okonta, Note, *Race-Based Political Exclusion and Social Subjugation: Racial Gerrymandering As A Badge of Slavery*, 49 COLUM. HUM. RTS. L. REV. 254 (2018).

Even though the Thirteenth Amendment abolished slavery, the remnants of the institution still linger; one of those institutions that still effects black people today is racial gerrymandering. The Supreme Court held in *Cooper v. Harris,* that overt, discriminatory racial gerrymandering is unconstitutional. Many of claims challenging racial gerrymandering are brought under the Fourteenth Amendment, and Congress has also enacted the Voting Rights Act to help curb the practice. The Voting Rights Act (VRA) distinguishes two types of racial gerrymandering, "negative" and "affirmative," with negative gerrymandering being prohibited. The author argues that racial gerrymandering satisfies both prongs of the two-prong test to determine whether an establishment or practice is a badge or incident of slavery. The first prong asks whether or not the conduct in question has a recognized link to slavery, and the second requires that the person bringing the claim show that the practice has a risk of leading to a renewed legal subjugation of the class that is being targeted by this practice. Case law that shows that racial gerrymandering is linked to slavery, and most racially drawn gerrymandering lines affect black communities and limits their voice within the political realm, thus satisfying the second prong of the test. While the "affirmative" way of gerrymandering a district might empower black voters, it has been the case in America that gerrymandering tends to disenfranchise them; election boundaries and elections should not be decided by mapmakers but rather by the natural boundaries that are found within communities so that all votes are equal.

Kimberly A. Yuracko & Ronen Avraham, Article, *Valuing Black Lives: A Constitutional Challenge to the Use of Race-Based Tables in Calculating Tort Damages*, 106 CALIF. L. REV. 325 (2018).

The practice of using race-based wage, life expectancy, and work-life expectancy tables in determining damages for tort plaintiffs discriminates against black victims and violates the Equal Protection Clause of the Fourteenth Amendment. While some courts have rejected the use of such tables in the past several decades, the constitutionality of utilizing race and sex-based statistics in calculating tort damages has gone largely unchallenged. The author argues against this practice not only because it results in lower damage awards for black tort plaintiffs, but also incentivizes potential tortfeasors to disproportionately distribute risk to communities of color. Under the state action doctrine and interpretations of *Shelley v. Kreemer*, which established that state enforcement of racially-restrictive covenants were subject to strict scrutiny, the state may enforce, promote, and both functionally and materially facilitate social discrimination. Such tables classify individuals based on the controversial category of race, lower damages influence the ability of black victims to contribute to society on equal terms, encourage industries to disproportionately allocates risk to racial minority communities, decrease the quality of health and career prospects of black victims, and facilitates systemic social segregation through judicial enforcement. Thus, race and sex-based tables should be subject a balancing test under strict scrutiny that prompts courts to weigh the harms of using such harmful tables against their purported social interests. To avoid discriminatory outcomes that fail to both account for recent social changes and predict truths about individual victims, courts should instead consider viable race and sex-neutral methods of serving the state's interest in award accuracy, including generalizations based on the victim's parents' educational background, socioeconomic level of the victim's family, and the geographic location of the victim. Though challenges to the usage of these tables do not fully abolish racially discriminatory behaviors in tort law, these changes will abolish an unconstitutional practice and foster a more just legal system.