ANNOTATED LEGAL BIBLIOGRAPHY

Civil Rights

Kristen Barnes, Article, *Breaking The Cycle: Countering Voter Initiatives and the Underrepresentation of Racial Minorities in the Political Process,* 12 DUKE J. CONST. LAW & PUB. POL'Y 123 (2017).

Voter initiatives are used in today's society as a tactical approach to nullify constitutional protections provided to racial minorities. Therefore, specifically within the educational realm minorities continue to experience inequality. These voter initiatives are typically utilized by white anti-affirmative action plaintiffs asserting that their constitutional rights are violated based on race-conscious college admission policies. The author argues that when courts are asked to deal with issues involving minorities' access to education, oftentimes uniformed voters should not be the ultimate verdict of such. Through voter initiatives, any registered voter can obtain a requisite number of signatures on a petition, and have that petition certified for consideration to change the state's laws. Courts need to be wary of these direct democracy mechanisms, to avoid results such as the holding in Schuette. In Schuette, a voter initiative which sought to prohibit public schools and universities from considering race in admission procedures was upheld as an amendment to the Michigan Constitution. To combat voter initiatives that seek to diminish minority's equal rights, stern restrictions on such democratic mechanisms should be put in place. Courts should focus on insuring that unregulated voter initiatives do not adversely affect minorities' constitutional rights.

Jennifer Bennett Shinall, Article, *The Substantially Impaired Sex: Uncovering the Gendered Nature of Disability Discrimination*, 101 MINN. L. REV. 1099 (2017).

This article addresses the issue of intersectionality of discrimination experienced by disabled women based on both their status as disabled individuals and as women. Gender and disability-based discrimination compounds the effects it has in women, resulting in a larger number of disabled women experiencing discrimination than disabled men. For example, in the past, there has been some literature on the discrimination disabled African American women face and how it is different from that of white men. However, judges continue to treat gender and disability-based discrimination as two different and separate forms of discrimination, for which a victim would have to show both individually, even though it may be difficult to prove one without the other. The author proposes that in order to solve this problem, there needs to be reform in the requirements of proof necessary for disabled women to prove their discrimination case; often, plaintiffs would need to show evidence of how their discrimination was based on both their disability and gender, and it would be too difficult to prove individually. Courts should accept circumstantial evidence that may not be directly related to the disability the person has, such as showing discrimination to others in a similar situation but with different disabilities, different job, or even no disability at all but the same gender. Without access to these intersectional forms of proof, victims of intersectional discrimination seem to have multiple laws that protect them but cannot actually access any of them to seek justice and remedy for the discrimination they face.

Sarah Golabek-Goldman, Note, *Ban the Address: Combating Employment Discrimination Against the Homeless*, 126 YALE LAW JOURNAL 1600 (2017).

Homeless people routinely face discriminatory hiring practices from employers based on their lack of an address or their address being that of a homeless shelter. Although there are reforms in place to remedy discrimination based on other factors, such as reforms for those with a criminal record, there remain inadequate solutions for the homeless, both legal and non-legal, to remedy the high rate of employment discrimination the homeless face.

The author first sets forth the reasons why the homeless are routinely discriminated against in the context of employment: many employers wrongly believe that the homeless have drug and alcohol addiction issues, criminal records, histories of mental illness, and dependability issues. Next, there are several effects that these practices have on the homeless population, such as lack of confidence, and sets forth several viable options for reform, both legal and non-legal, which, taken together, will increase the momentum for reform and the ability of the homeless to prevail on legal claims and in their job searches. The author argues that a "Ban the Address" campaign, like the "Ban the Box" campaign for those with a criminal record, can be the largest driving force behind both legal and non-legal solutions to the issue of employer discrimination against the homeless population because it will require employers to make a hiring decision before they find out whether the applicant is or is not homeless. The Ban the Box campaign required employers to remove the box on job applications that indicates whether someone has a conviction history until after they had made either a provisional offer of employment. This campaign, along with Homeless Bills of Rights passed by several states, combined with Title VII and ADA claims for discrimination in the courts, should provide the homeless with a more level playing field when applying for jobs. While these efforts cannot guarantee that employment discrimination against the homeless will cease to occur, the heightened awareness brought about by the "Ban the Address" campaign, coupled with legal solutions, will at least signal to law makers that more comprehensive statutory solutions are necessary.

Criminal Justice

Paul Butler, Article, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419 (2016).

The disproportionate killings of unarmed African-Americans by police and the vast racial disparities in arrest and incarceration have begun to be viewed as a crisis in American criminal justice. Critics and reform advocates attribute this crisis to problems within the criminal justice system. The author argues that many of these problems are products of the criminal justice system, which is designed to function as a method of social control to maintain a racialized hierarchy and white supremacy in American society. Because these problems are products of the system's design, the system is not broken, thus some attempts to reform the criminal justice system are destined to fail. The United States Supreme Court has permitted the police to kill, racially profile, and arrest African Americans for minor offenses; in doing so the Supreme Court has knowingly provided the police with "super powers" that are intended to be used primarily against African Americans and authorized law enforcement to police in ways that devalue the lives of people of color. Thus, the killings of unarmed African-Americans at the hands of law enforcement are a result of legal police conduct rather than illegal police misconduct. In order to alleviate this crisis, the author suggests an end to the practice of proactive stop and frisk, the use of more affirmative and less oppressive interventions to treat violence in communities of color, and to revoke the "super powers" the Supreme Court has granted to law enforcement.

Martha Guarnieri, Comment, *Civil Rebirth: Making the Case for Automatic Ex-Felon Voter Restoration*, 89 TEMP. L. REV. 451 (2017).

Felon disenfranchisement policies have historically prevented the restoration of ex-felons' voting rights. Felon disenfranchisement may be remedied through the pardon and clemency power reserved to individual states, or the automatic restoration of voting rights after completion of a prison sentence. Although various states' legislatures have instituted reforms loosening restrictions on post-sentence voting, many states have acted to the contrary, raising formal clemency and pardoning standards. The author argues that traditional justifications for felon disenfranchisement, such as retributivism, do not justify contemporary voter restoration procedures and have led to voter restoration processes which are arbitrary, inefficient, and lack any meaningful review of political decisions. Furthermore, automatic voter restoration would eliminate any confusion regarding voter eligibility and process. Though addressing these issues would alleviate many of the restrictions barring ex-felons from regaining the right to vote, the threat to the democratic process posed by voter restoration processes across various states is axiomatic. Automatic voter restoration upon completion of a prison sentence is the most constitutionally sound option.

Erin Collins, Note, *The Criminalization of Title IX*, 13 OHIO ST. J. CRIM. L. 365 (2016).

Title IX guarantees students at federally-funded schools an educational environment free from gender discrimination. The punitive, criminal justice approach to handling Title IX claims is limited in its ability to affect the behavioral and cultural changes necessary to lower incidents of sexual violence. The problematic nature of this approach can be seen most recently in the context of on-campus sexual assault. Although there has been much legal reform, Title IX procedures often respond to institutional desire to shield itself from liability. The author suggests that because Title IX is a civil, and not criminal law, we are presented with an opportunity to respond differently to sexual violence. Specifically, we should explore alternative justice models, utilizing restorative and transformative modes that would require examination of the institution's role and would be more flexible to the needs of the victim.

Kate Evans, Article, *Drawing Lines Among The Persecuted*, 101 MINN. L. REV. 453 (2016).

The inconsistent interpretation of the persecutor bar is a significant issue in American immigration law. All over the world, victims of persecution in periods of war have been forced to become persecutors themselves under the command of their captors. In the United States, the Supreme Court has grappled with "drawing lines" between true persecutors and victims of persecution who are forced to participate in the persecution of others. The distinction is problematic in the face of Congressional bars against persecutors receiving any immigration benefit or refugee protection from the United States. In two cases concerning victims of persecution who were forced to persecute others, the Supreme Court came to two different conclusions. First, in *Fedorenko v. United States*, the Court found applicable the persecutor bar in the Displaced Persons Act, which authorized the admission of displaced Europeans into the United States following World War II. Second, the Court reversed the application of the persecutor bar in the Refugee Act in *Negusie v. Holder*. The author argues that some indication of personal culpability should be required to distinguish these two groups when the Supreme Court interprets persecutor bars and concludes that the proper solution is through a duress defense. Incorporating a defense of duress is consistent with the original understanding of the persecutor bar in the International Refugee Organization Constitution, which formed a United Nations entity to resettle refugees after World War II, and from which the United States Congress has adopted language verbatim, including the persecutor bar, into various laws like the Displaced Persons Act.

Justin D. Levinson & Robert J. Smith, Article, *Systemic Implicit Bias*, 126 YALE L.J. F. 406 (2017).

Implicit biases have influenced jurisprudence and policies in the justice system. More specifically, systemic implicit biases have resulted in disparities between how the criminal justice system treats white and black Americans. Two recent studies by the authors have found that Americans valued white lives more than black lives. Individuals who had greater implicit racial biases were more likely to support punishment rather than rehabilitative measures for criminal acts. Thus, black defendants are more likely to face harsher punishments and have less access to rehabilitative program. Similarly, policymakers are more likely to choose punitive policies when addressing social problems associated with the black community. The authors recommend that public officials take more effort to restrain from passing and implementing racialized criminal justice policies that disproportionately affect black citizens. Public officials who have an understanding of systemic implicit bias and its effects on the criminal justice system will be less likely to institute punishments that may be unjust and unconstitutional.

Gender Bias and Discrimination

Shirley Lin, Article, *"And Ain't I a Woman?": Feminism, Immigrant Caregivers, and New Frontiers for Equality*, 39 HARV. J.L. & GENDER 67 (2016).

Immigrant women employed in the domestic sphere are being overlooked and unprotected in the workforce due to a variety of factors including their race, gender, and immigration status. While the Fair Labor Standards Act of 1938 and other regulations of minimum wage and maximum hours have sought to guarantee fair and safe work practices, they have not included roles traditionally occupied by women. The feminist movement sought to close the pay gap and promote greater opportunities for women with Title VII and the Equal Pay Act, but these again failed to address the concerns of women in traditional woman jobs. Congress chose not to regulate these types of jobs typically held by women, such as domestic caregiver jobs, of which immigrant women, leaving them unprotected and particularly vulnerable. The feminist movement left behind this class of women who now face discrimination. These women must work long hours below minimum wage, and are sometimes subject to blackmail in the workplace, being threatened with adverse immigration consequences and punishment from the police. The author calls for feminist legal theory and critical legal studies to raise these issues and a discourse around immigrant rights and immigration reform. There needs to be comprehensive immigration reform to implement greater labor standards for these domestic jobs and to protect these workers, paying particular attention to immigration organization groups that already exist and their supporting social movements.

Saru M. Matambanadzo, Article, *Reconstructing Pregnancy*, 69 SMU L. REV. 187 (2016).

In the area of discrimination in employment law, the meaning of pregnancy should expand from biomedical essentialism, which is its current characterization, to a more responsive conception of pregnancy discrimination that draws on social and cultural forces as well as their power to construct and shape the nature of pregnancy. Title VII of the Civil Rights Act of 1964 aimed to protect employees from discrimination based on sex and gender; but because the Act did not protect against pregnancy discrimination, Congress passed the Pregnancy Discrimination Act ("PDA") in 1978 as an amendment to the 1964 Civil Rights Act. The PDA sought to clarify the scope of pregnancy discrimination on the basis of pregnancy, childbirth, and other medically-related issues. Despite the passage of the PDA, circuit courts continue to offer varying and, oftentimes, contradictory interpretations of the amendment. The Supreme Court has not resolved this discrepancy, causing the effect of unreliable judicial precedent, further creating inconsistency in the application of the PDA in employment law. In conjunction with the emergence of non-traditional and diverse formations of families in the United States, the lack of judicial direction leads to inadequate protection of employees against pregnancy discrimination. In an effort to change the perception of pregnancy and its effects on an employee's ability to be an active member of the workforce, the author proposes reconstructing the idea of pregnancy based on a multi-faceted approach that expands the legal conception of pregnancy beyond the presumption of biomedical essentialism, which is the approach courts and employers use to interpret the PDA. The resulting "thick" conception of pregnancy demonstrates the importance of considering the social and cultural aspects of pregnancy to interpret the discrimination protections found in the PDA.

Julia Glen, Note, *Affirmative Action: The Constitutional Approach to Ending Sex Disparities on Corporate Boards*, 101 MINN. L. REV. 2089 (2017).

Despite the large number of women in America's workforce, there is a disparate underrepresentation of women in corporate executive boards. Legislation passed by Congress in the 1960s, such as the Equal Pay Act or Title VII, did not do enough to prevent such employment inequalities, and further steps need to be taken to promote gender equality since this will in turn lead to various societal benefits, including higher productivity levels and fairer social policies. Many nations are successfully addressing this same gender disparity issue by instituting quotas upon their corporations and in essence, mandating equality. However, the Constitution, specifically the Fifth and Fourteenth Amendments, prevents the use of similar quotas here within the USA. The author instead suggests, as a Constitutional alternative, a two-part solution of voluntary affirmative action programs: the first step would be the implementation of an affirmative action program which would be highly publicized in order to hold corporations socially responsible and accountable for their efforts, or lack thereof, in reducing inequality. The second step combines the voluntary program with government incentives, individualizing equality goals for corporations which, if/when these goals were met, the corporation would be rewarded with tax break incentives from Congress. Affirmative action programs have been used throughout American history to promote protected classes, of which women are undeniably included. Such programs could be used today as a Constitutionally acceptable way to successfully promote equal sexual representation in private business's executive boards.

Jordan Aiken, Article, *Promoting an Integrated Approach to Ensuring Access to Gender Incongruent Health Care*, 31 BERKELEY J. GENDER L. & JUST. 1 (2016).

Transgendered or gender nonconforming people often face being denied preventive health care and other standard medical services due to a disparity between their identity and the gender marker their insurance requires them to provide. Although current law provides access to comprehensive preventive and other primary care, gender incongruent individuals still face this problem in the form of discrimination, extra costs, or having to use a gender marker they do not identify with. Additionally, these individuals suffer from unnecessary harassment, humiliation, and misunderstanding. The author suggests that to improve protections and increase the quality of healthcare this community receives, private health providers along with government should institute cultural competency training for healthcare providers to minimize embarrassment and insensitivity patients receive, improve complaint systems to bolster accountability and empower patients, and introduce new intake procedures that allows the patient to enter their own gender. This holistic approach to these systemic problems, as opposed to simply enacting more legislation, will improve healthcare for individuals regardless of gender marker or identity and reduce cost, fear, and stigma widely.

LGBTQ Rights

Dominic McGoldrick, Article, *The Development and Status of Sexual Orientation Discrimination under International Human Rights Law,* 16(4) HUM. RTS. L. REV. 613 (2016).

Adoption of laws which prohibit discrimination based on sexual orientation vary within the United States and foreign countries. Conflict between proponents and opponents of such laws stems from the fact that "sexual orientation" is not expressly included as a human rights category in existing human rights law. Proponents argue that sexual orientation falls into the existing protected categories of "sex" or "other status." However, opponents of legal prohibitions on sexual orientation discrimination consider the prohibition a new human rights category. These opponents argue that absent prior agreement, they cannot be forced by international law to recognize sexual orientation as a protected class.

Different human rights systems have responded to discrimination based on sexual orientation in a variety of ways. For example, all territories under the Council of Europe have abolished the criminalization of homosexuality. However, in territories of The African Union, the criminalization of homosexuality is still prevalent. National laws protecting sexual orientation are similarly varied. The author suggests promoting a "dialogic approach" which involves educating the public through domestic LGBT advocacy in order to bridge this divide. Non-governmental networks must communicate to the public on the internet and via social media to change perception of sexual orientation discrimination and change laws. A more consistent reporting system for human rights violations would aid in this dialogue and promote awareness. The author explains that with continued social outreach and as the next generation takes leadership, more States will prohibit sexual orientation discrimination and abolish those laws which persecute LGBT individuals.

Adele P. Kimmel, Feature, *Title IX: An Imperfect but Vital Tool to Stop Bullying of LGBT Students*, 125 Yale L.J. 2006 (2016).

LGBT students suffer from peer-harassment and bullying in schools at a higher rate than other students. Although Title IX has been useful in combating these issues, more action can be taken to fully eradicate LGBT harassment in schools. LGBT students have successfully brought claims under Title IX, but courts are still divided as to whether LGBT harassment is per se sex discrimination and do not consider the full spectrum of gender stereotypes when addressing these Title IX claims. The author addresses this issue by showing examples of how The Office for Civil Rights and Department of Justice have treated Title IX claims, as well as the improvements and flaws the courts have in shown in recent sex discrimination LGBT cases. However, even if Title IX were to be interpreted more broadly by the courts, or Congress passed new legislation with LGBT protections, schools should still implement their own LGBT-inclusive policies and training programs in order to effectively eliminate all LGBT harassment in schools.

Ido Katri, Article, *Transgender Intrasectionality: Rethinking Anti-Discrimination Law and Litigation*, 20 U. PA. J.L. & SOC. CHANGE 51 (2017).

As awareness of transgender individuals and the discrimination they face has risen, the limitations of the American legal system to address that discrimination have become increasingly clear. Current anti-discrimination laws have been used to address discrimination aimed at specific protected categories, such as gender or sexual orientation. But this usage is inadequate when transgender people are involved, as the discrimination often occurs in what the author here deems "intrasectional" ways. When a transgender individual is discriminated against, their gender, sex, and sexuality, as well as the way those identities are expressed or performed, may all play a role in the discrimination they faced. The author argues that neither "liberal" legal strategies (which privilege transgender people who are "normal" aside from their gender identity) nor "radical" legal analyses (which seek to break down the gender binary entirely) are sufficient on their own to address transgender discrimination, but must be combined. Advocates should utilize the law to effect necessary change while also working to push back against the overall societal structures which currently limit the efficacy of anti-discrimination litigation.

Dominic McGoldrick, Article, *The Development and Status of Sexual Orientation Discrimination Under International Human Rights Law*, 16(4) HUMAN Rts. L. REV. 613 (2016).

Adoption of laws which prohibit discrimination based on sexual orientation vary internationally, regionally, and nationally. Conflict between proponents and opponents of such laws stems from the fact that "sexual orientation" is not expressly included as a human rights category in existing human rights law. Proponents argue that sexual orientation falls into the existing protected categories of "sex" or "other status." However, opponents of legal prohibitions on sexual orientation discrimination consider the prohibition a new human rights category that has not been agreed to as a protected class. States in opposition to enacting laws to prohibit discrimination based on sexual orientation argue that out of respect for cultural and religious values they cannot be forced by international law to do so.

There are currently no UN human rights treaties which expressly reference sexual orientation as a protected class. Regional human rights systems have responded to discrimination based on sexual orientation in a variety of ways. For example, all territories under the Council of Europe have abolished the criminalization of homosexuality. However, in territories of The African Union, the criminalization of homosexuality is still prevalent. National laws protecting sexual orientation are similarly varied, ranging from express prohibition of such discrimination to laws which impose the death penalty for homosexuals. The note author suggests promoting a "dialogic approach" which involves educating the public through domestic LGBT advocacy in order to bridge this divide. The author explains that with continued social outreach and as the next generation takes leadership, more States will prohibit sexual orientation discrimination and abolish those laws which persecute LGBT individuals.

Parenting

Jennifer E. Karr, Note, *Where's My Dad? A Feminist Approach to Incentivized Paternity Leave*, 28 HASTINGS WOMEN'S L.J. 225 (2017).

The United States is the only developed country which lacks government mandated parental leave after the birth of a child. Despite the introduction of The Family Medical Leave Act (FMLA) in 1993 to address the issue of parental leave, the United States is still lacking when it comes to maintaining access to leave for new parents. This deficiency is even more true of paid leave and paternity leave. This article explores the issue of paid parental leave under a reconstructive feminist lens, using evolving gender roles as support for the need for a concrete system of paid parental leave which addresses the sexes equally. The author explores the accessibility of parental leave in other parts of the world, and uses this data and other interpretive sources to conclude that the United States should implement a parent friendly leave package for parents with newborn children. A six-part package modeled primarily after Scandinavian Countries is proposed to solve the problem within the United States, hopefully functioning as a strong step towards promoting equality between mothers and fathers.

Jennifer S. Hendricks, Article, *Fathers and Feminism: The Case Against Genetic Entitlement*, 91 TUL. L. REV. 473 (2017).

Parental rights of unwed fathers is an evolving area of law that threatens to infringe upon the constitutional rights of the biological mother by prioritizing the father's wishes over the mother's autonomy interest. By creating legal rights for the unwed father automatically equal to those of the biological mother, courts impose their own will, and the father's will, upon the mother without regard to her own decisions about her life and the child's life. Through a series of cases in the 1970s, the U.S. Supreme Court attempted to find an equilibrium on this scale of competing interests by establishing a "biology-plus-relationship" test—the father must be able to prove that he has a relationship with the child; genetics alone will not be sufficient to establish paternal rights. However, many states have expanded upon this test and have created their own procedural requirements for single fathers to establish a legal relationship with the child in a way that disproportionately affects low-income families and women generally. Some proponents argue that a child is genetically "equal parts" of the mother and father, and they should therefore have equal rights to said child; but this misconception is debunked by explaining the science behind conception—specifically, that women's eggs carry nuclear and mitochondrial DNA whereas sperm simply carries nuclear DNA. The implications of a court imposing equal parental rights based solely on faulty genetics-based science may result in a legal system that automatically undermines the mother's autonomy in favor of the father. Instead, the legal system can simultaneously increase the rights of unwed fathers and protect the mother's autonomy interests by amending adoption laws to provide more counseling to mothers and more time to make decisions, and increasing access and coverage of child welfare systems to ease financial pressure of adoption and abortion.

Race and Immigration Issues

Perry Grossman, Article, *The Case for State Attorney General Enforcement of the Voting Rights Act Against Local Governments*, 50 U. MICH. J.L. REFORM 565 (2017).

The right to vote provided by the Voting Rights Act does not completely protect minority voters from underrepresentation in state and local elections. For example, some minorities in certain school districts tend not to be accurately represented in school board decision-making positions. Minority representation is important in order to fulfill the needs and interests of the people who are represented. This lack of minority representation is due to different types of disenfranchisement as well as the fact that filing individual lawsuits are expensive, time consuming, and often fail to solve the problem of marginalization. The author suggests that State Attorney Generals should file civil rights lawsuits on behalf of the people that they represent, since they tend to have more resources at their disposal. The idea is that local representation would surmount to representation on the federal level and the Attorney General is in a position to aid in making sure that the goals of the Voting Rights Act are properly carried out.

Simon Y. Svirnovskiy, Article, *Finding a Right to Remain: Immigration, Deportation, and Due Process*, 12 NW. J. L. & SOC. POL'Y 32 (2017).

A significant distinction exists between United States citizens and lawful permanent residents ("LPRs"). Namely, United States citizens do not feel pressured to live mistake-free lives in the same way that LPRs feel compelled to. The reason being that, over the past twenty years, both Congress and the courts have widely broadened the categories of deportable offenses resulting in the legal phenomenon known as "crimmigration." In recent years, an outstanding number of nonviolent long-term LPRs have been subjected to lengthy removal procedures, in part, due to exercised discretion of Immigration and Customs Enforcement (ICE) investigators, ICE prosecutors, or immigrations judges. Such discretion is inherently unpredictable and susceptible to conscious and unconscious biases. Where both prosecutorial and relief discretion fail, LPRs facing long-delayed removal proceedings may find protection in laches, an affirmative defense in equity used to bar federal government action. However, laches is not a comprehensive solution; the more impactful solution is for the courts to recognize the right to remain for lawful permanent residents as a substantive due process right, which LPRs can cultivate as they continue living as peaceful, productive community members. The author urges the Supreme Court to recognize outright the right to remain and calls upon immigration scholars and practitioners, respectively, to help fully establish and develop the right to remain as a substantive due process right and further employ it in courts.

Nina Kucharczyk, Note, *Thinking Outside The Box: Reforming Employment Discrimination Doctrine To Combat The Negative Consequences of Ban-The-Box Legislation*, 85 FORDHAM L. REV. 2803 (2017).

To combat employment discrimination against formerly incarcerated individuals, many states have enacted laws preventing potential employers from asking applicants about their criminal history. However, this has led to increased employment discrimination against minority applicants both with and without criminal records. Studies about the effect of these statutes, called "ban the box" laws, have shown that employers are now hiring fewer minority applicants due to a potentially unconscious bias that minorities are more likely to have a criminal background. In addition, applicants who believe they have experienced hiring or employment discrimination because of their race, sex, or national origin have a notoriously difficult time proving their claims; nearly three-quarters of all federal employment discrimination lawsuits are resolved on summary judgment. However, since "ban the box" laws have statistically decreased discrimination against job applicants with a criminal record the author states that it would not be beneficial to simply repeal the laws. The author instead proposes using the negative consequences of "ban the box" laws to inspire change in the legal remedies available to employment discrimination victims by adopting the "mixed-motive framework." The mixed-motive framework lowers the evidentiary standard for plaintiffs and allows courts to consider that the employer may have had multiple motivations behind not hiring the applicant, both legitimate and discriminatory. This judicial framework would allow the "ban the box" laws to continue to help formerly incarcerated individuals, and provide employment discrimination victims with increased legal protections.

DeLeith Duke Gossett, Article, *[Take From Us Our] Wretched Refuse: The Deportation of America's Adoptees,* 85 U. CIN. L. REV. 33 (2017).

The adoption of foreign children in the United States is a multi-billion dollar industry that has been expanding since the mid-1900s. Adopted children, usually unbeknownst to their adoptive families, do not automatically become American citizens after legally entering the United States and becoming adopted. Adopted children who do not undergo the legalization process are thus treated like any other illegal immigrant and face the fear of being deported. Currently, the Child Citizenship Act of 2000 only grants children under the age of 18 who are legally living in the US citizenship upon the finalization of their adoption. While this act does help many current foreign adoptees, it still leaves about 18,000 adoptees in a state in which they are neither citizens of the United States nor true members of their home country's society. The author stresses that this issue is not simply an immigration issue but a humanitarian right. Thus, the Child Citizenship Act of 2000 should be fully expanded to include all foreign adoptees regardless of their age.

Anita Sinha, Article, *Arbitrary Detention? The Immigration Detention Bed Quota*, 12 DUKE J. CONST. L. & PUB. POL'Y 77 (2017).

In 2009, Congress implemented the immigration detention quota to be mandated through the U.S. Department of Homeland Security (DHS) as a federal legislative act. Today, the DHS must maintain at least 34,000 immigrants behind bars prior to their court dates to meet Congress's quota. Due process precedents and U.S. legislative history suggest that detention rates ought to be determined by need rather than an arbitrary quota imposed by Congress. Quotas have a high correlation with discrimination-motivated practices, raising concerns of constitutional violation. The quota is also inextricably linked to private prison corporations which raises public policy concerns as these for-profit facilities are prone to higher rates of abuse and lower access of medical care for inmates. The author analyzes the detention bed quota by first providing a contextual overview of recent developments in immigration policy, then by examining previous intersections of the Fifth Amendment's Due Process Clause with immigration policy, and finally touching on how international human rights law has approached the topic. International human rights law, alternatives to detention, and domestic incarceration analyses are areas committed to promoting a discourse in which the quota model is rendered both incorrect and unnecessary. The detention bed quota is responsible for the flawed immigration system and its influence in other areas of the U.S. criminal justice system is alarmingly inconsistent with due process.

William C. Kidder, Article, *How Workable Are Class-Based and Race-Neutral Alternatives at Leading American Universities?*, 64 UCLA L. REV. DISC. 100 (2016).

This article addresses whether a university can achieve racial and ethnic diversity if the university considers socioeconomic factors, instead of racial factors, when selecting students for admission. Statistical analyses determine that diversity does not equally vary when students of low socioeconomic status, as compared to students who are minorities, are more readily accepted to universities. This reveals that accepting students based on socioeconomic factors has not yielded a class with the same racial make-up as accepting students based on racial factors. Statistical analyses also determine that under "percent plan" admissions programs, which guarantee students college admission solely based on high school rank, racial diversity is not achieved as it would be if only racial factors were considered. Thus, while socioeconomic diversity can be supported for other social policy reasons, it is not a valid alternative to racially conscious affirmative action programs.

Sex Offenses

Catharine A. Mackinnon, Feature: *In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education*, 125 YALE L.J., 2038 (2016).

The treatment of sexual harassment victims by their schools, and of schools by courts, under the institutional liability standard of deliberate indifference for damages in private suits is inconsistent with Title IX's guarantee of equal educational outcomes based on sex. The deliberate indifference standard is used to analyze whether the procedural steps taken by an educational institution after a student reports he or she has been a victim of sexual harassment were "clearly unreasonable in light of the known circumstances." The main issue is that under the deliberate indifference standard, the focus is not on whether the steps taken by the institution produce a sex-equal education for the survivor(s). The author suggests that the deliberate indifference standard be replaced with the international human rights liability standard of due diligence, which would shift power into the hands of survivors, guarantee institutional accountability, end current impunity for sexual abuse in schools, and promote change toward sex equality in education. To meet the due diligence standard, there must (1) the prevention of deprivations of equality rights, (2) victims of equality violations be protected, (3) investigations be effective and based on accurate empirical data, (4) punishment be exacted where justified, (5) remedies, compensation, and reparations be provided to victims and (6) prevention should include transformative change that ensures such abuses do not happen again. Furthermore, the due diligence standard requires that states effectively implement human rights law, of which Title IX is one example, to prevent, protect, prosecute, and provide compensation for violence against women by intervening against sexual abuse at all levels—meaning effective investigation, responsive process, and compensation. Crucially, due diligence requires that known human rights violations, or those of which an entity should have been aware, actually be remedied and prevented from recurring.

Bethany A. Corbin, Article, *Riding The Wave Or Drowning?: An Analysis Of Gender Bias And Twombly/Iqbal In Title IX Accused Student Lawsuits*, 85 FORDHAM L. REV. 2665 (2017).

District courts regularly prevent accused perpetrators of sexual assault on college campuses from pursuing reverse Title IX cases against their universities. Following the reasoning in the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) district courts have required plaintiffs to prove a facially plausible basis for sexual discrimination during the university's investigatory proceedings or else dismiss such cases under Fed. R. Civ. P. 12(b)(6). But this creates situations where plaintiffs' reverse Title IX cases are dismissed for failure to meet the standard for plausibility pleading long before they can engage in discovery to confirm discriminatory actions on the part of a university. The district court decisions also effectively contravene the still extant Supreme Court decision in *Swierkiewicz v. Sorema N.A.* which states that proving a prima facie case of discrimination is a matter for the evidentiary stage rather than pleading. The author suggest that courts should instead interpret the Supreme Court's decisions as establishing that a higher standard than notice pleading is necessary to prove discrimination, but not to the extent of needing to establish a prima facie case. This would involve the adoption of a more flexible pleading standard where for the plaintiff in a reverse Title IX case must claim that they were affected as a result of their gender and that the general conditions of the university allow for an argument that bias was present. Switching to this more flexible pleading standard would allow accused perpetrators of sexual assault to preserve their reverse Title IX cases long enough to be decided on the merits rather than dismissed as a matter of procedure, and establish consistency concerning judicial interpretation of pleading requirements after *Twombly* and *Iqbal*.