ANNOTATIONS

Table of Contents

CIVIL RIGHTS

Erica Goldberg, Article, Competing Free Speech Interests in an Age of Protest, 39 Cardozo L. Rev. 2163 (2018).

Strictly obeying First Amendment free speech doctrine in all circumstances will increase "free speech values," - the legal protection of speech and the attempted goals in promoting these protections. Since the First Amendment protection of free speech applies only to the government, and not to private entities, competing interests arise between the free speech doctrine and free speech values. The ideal way to resolve this tension is to adopt a state action doctrine- that only government is prohibited from infringing on free speech rights- and to return to a neutral application of free speech doctrine. Essentially, free speech protections from the government should be applied regardless of the viewpoint or content of the speech, and the "public concern test," that the Supreme Court has adopted (when a government employee's speech is sufficiently within the public's concern, it is granted the same protections as private speech) should only be applied in contexts of publication of illegally obtained speech by private parties. The author argues that the tension between government action suppressing speech, but the lack of government action deflating free speech values, reaches its highest point in potentially destructive protests, creating a distinction between violent protesters and legislation to prohibit protests. While violent protesters during controversial speakers or rallies should always be prosecuted, legislation designed to prohibit protests should be unconstitutional, as it has the effect of demonizing particular views and restricting certain speech. Therefore, obeying the First Amendment doctrine will increase free speech values.

Sonia Katyal, Private Accountability In The Age Of Artificial Intelligence, 66 UCLA L. Rev. 54 (2019)

As society continues to become more dependent on the use of algorithms and the harnessing of algorithms into artificial intelligence, the need for protections against abuse is needed more than ever. Algorithms can show what people think, want, and can further explain the reasoning behind those decisions; thus, making algorithms a powerful tool. Instead of focusing on perfecting algorithms, private corporations and decision makers should turn to models that embrace systemic bias and discrimination. In this manner, one that recognizes the pervasive inequalities in the country and world, artificial intelligence can help create a more realistic and positive environment for everyone. Through legislation, the law must adapt to pursue both of these advances in civil

rights and technology. While this algorithmic freedom carries great risks, new protections can be applied to prevent abuse from private actors. Without the involvement of the government, law can prevent abuse by create self-regulation and eliminating secret processes. It is in this unique intersection that both artificial intelligence and civil rights can be furthered and bettered.

Sarah E. Smith, Comment, Threading The First Amendment Needle:Annonymous Speech, Online Harassment, And Washington's Cyberstalking Statute, 93 Wash L. Rev. 1563 (2018).

Because cyberstalking is an omni-present threat and the victim experiences the pervasive fear that their stalker may be present anywhere, cyber-stalking should be classified as the worst of its kind. However, victims must be protected by statutes criminalizing cyber-stalking in a way that does not chill free speech, a fundamental right granted by the First Amendment of the United States Constitution. In efforts to make the Washington cyberstalking statute constitutionally compliant, it must also be ensured that anonymous speech, speech which protects ones identity in order to avoid threats, social ostracism, and other negative effects, is not barred in the process. Fighting words, calls for imminent violence, speech integral to criminal activity, obscene speech, and true threats are the only forms of unprotected speech, and therefore statutes, such as the Washington's cyberstalking statute (RCW 9.61.260), which chill other forms of speech should be altered so that they are not unconstitutional. In conclusion, while cyberstalking statutes are undeniably necessary, their constitutional conformity may not be dispensed with; statutes must gear their enforcement in a way that is not overbroad, facially or as applied.

Scott Skinner-Thompson, Article, Privacy's Double Standards, 93 Wash. L. Rev. 2051 (2018).

Marginalized individuals, who are more likely to be surveilled, and more affected by privacy violations, are less likely to have their privacy rights enforced than privileged individuals, who are theoretically entitled to less privacy. However, in practice the opposite is true, which creates a double standard. Two requirements of the tort of public disclosure of private facts create another double standard, which requires that plaintiffs keep their information secret but also that defendants reveal the information to a significant number of people. To defeat these double standards, the author suggests that constitutional equality principles may allow for more equal application and proposes the use of a more nuanced, contextual approach to determine whether these two requirements of public disclosure tort law are met. Since tort law implicates state action,

the scope of public disclosure tort law is limited by the First Amendment. The author argues that if the First Amendment applies, other constitutional provisions such as equal protection principles should also apply. The author's proposed reforms could lead to a more equal application of the common law in general.

CRIMINAL JUSTICE AND PRISONERS' RIGHTS

Nina W. Chernoff, Black to the Future: The State Action Doctrine and the White Jury, 58 Washburn L.J. 103 (2019).

When analyzing claims of unfair community representation in the sphere of jury pools, courts have been making the mistake of applying the standard used to evaluate violations of the Equal Protection Clause of the Fourteenth Amendment. Instead, they should be utilizing Sixth Amendment standards to decide whether the right to a racially representative jury pool has been violated. One of the most egregious errors in this field dates back to the state action doctrine, a tool used to determine where the limits of the Constitution lie. State action doctrine is problematic because it leads to blurriness in deciding which conduct is constitutionally protected and which is not. It further produces indistinguishable distinctions between government action and inaction, and the ways in which this applies to private citizens. Taking this concept and applying it to three major ways in which racial underrepresentation occurs in the jury system: reliance of jury pools on voter rolls, undeliverable summons, and non-responders to summons, the author argues that these three common causes are a result of systematic exclusion of minority races and are largely fixable by way of government acknowledgment and action. The ongoing issue of underrepresented jury pools can be better addressed by abandoning the state action doctrine in favor of an assessment of government action and efforts, and a thorough inquiry into the interests at stake in the given criminal case followed by what efforts will satisfy the Sixth Amendment and finally, if the actions being taken by the government are sufficient.

Thomas Ward Frampton, The Jim Crow Jury, 71 Vand. L. Rev. 1593 (2018).

Just like voting, participating on a jury has been a cornerstone of being an American citizen, but historically, African-Americans faced as much segregation within this civic duty as they did with voting. While blatant segregation of juries has been eliminated, the modern day "Jim

Crow Jury" that involves non-unanimous juries, where a jury of one's peers does not have to be unanimous to garner a conviction, and preemptory challenges during jury selection (challenges made by attorneys without stating a reason for their rejection of a potential juror). Non-unanimous juries were part of a strategy by the political majority to allow African-Americans serve on juries but make their votes essentially meaningless. Statistics show that, for the most part, non-unanimous juries return guilty verdicts, and even higher rates of guilty verdicts occur with non-unanimous juries when the defendant is African-American. The author advocates for an amendment in the Louisiana State Constitution that would eliminate non-unanimous juries and was proposed during the 2018 elections. Additionally, the author suggests that more efforts need to be made to diversify juries, including having more jury members represent the identities of the defendants whose convictions they could potentially be deciding. African-Americans have been fighting for their right to serve on a jury for more than a century and even with the legal right granted to them, societal barriers remain, but by amending certain legislation the "Jim Crow Jury" can be eradicated.

Benjamin Levin, Article, The Consensus Myth in Criminal Justice Reform, 117 Mich. L. Rev. 260 (2018).

While the shared reformist language surrounding criminal justice reform alludes to a harmonious consensus on criminal justice reform, in actuality, the criminal justice reform movement is rooted in differing critiques that focus on different policy flaws and solutions. These differing critiques in turn represent the overarching disputes about the relationship between the roles of the state and criminal law with regards to society. Two main critiques of criminal law are the quantitative and the qualitative approached. The quantitative approach is based on the idea that while criminal law in an important legitimate function, the operation of the law exceeds its function and is based on the assumption that there are optimal incarceration and criminalization rates that the current criminal justice system is failing to achieve due to over criminalization and mass incarceration. Meanwhile, the qualitative approach views criminal law as a sociocultural creation and as such, the main goal of reforms should focus on correcting the criminal justice system's marginalization of populations, thereby exacerbating power imbalances. The Author analyzes these two critical approaches in relation to the scholarly and reformative commentary on the issues of mass incarceration and over criminalization. While the quantitative approach to criminal justice reform is pragmatic, such pragmatism contains hidden costs by ignoring the deeper structural issues pertaining to race, class, and power that form the crux of a qualitative approach. Overall, it is important

to understand the nuance and disagreements within the discourse surrounding criminal justice reform so as to best effect change.

EDUCATION

Viona J. Miller, Note, Access Denied: Tracking as a Modern Roadblock to Equal Education Opportunity, 93 N.Y.U. L. Rev. (2018).

School districts must abolish grouping students into higher or lower subject-specific courses based on their perceived abilities during their crucial educational years, otherwise known as "tracking". Tracking works as a hierarchal system in which students in lower tracks are foreclosed from ever being able to access the higher-level courses and resources necessary to have a meaningful chance to compete in society; it violates a student's right to equal educational opportunity regardless of whether that student is able to meet the minimum learning standards set by the state. Tracking prohibits many students from accessing high-level courses and does not allow for equitable educational opportunities for all students. Under a tracked system, if students do not take advanced classes in middle school, they will likely not be able to take advanced courses before graduating high school and higher-level courses such as Advanced Placement courses and honors classes have become indispensable for applying to college. The current legal regime, compromised of Federal Equal Protection and Title VI, indicates a need for a different legal strategy. The author suggests changes to this legal regime, including State Constitutional Law Equal Opportunity frame work and litigation, which argues to allow all students equal access to higher-level courses, as a potential remedy to de-track schools and to allow students equal educational opportunities. Overall, changes must be made to the legal system in order to de-track schools to provide all students with the equal education opportunity to gain the skills necessary to compete in a changing society.

GENDER BIAS AND DISCRIMINATION

Hannah Brenner, Article, A Title IX Conundrum: Are Campus Visitors Protected from Sexual Assault?, 104 Iowa L. Rev. 94 (2018).

Title IX of the Education Amendments of 1972 is intended to curb gender-based discrimination–including sexual assault–that may impede access to education; however, the protections do not clearly extend to

campus visitors. The Supreme Court has interpreted Title IX as implying a private right of action that a person may bring against a school for deliberate indifference to severe discrimination about which it has knowledge. Recently, the federal courts have effectively narrowed the class of individuals who are able to seek relief under Title IX by distinguishing between students and non-students, insiders and outsiders. Two recent Title IX cases, K.T. v. Culver-Stockton College and Doe v. Brown University, which both involve non-students who were sexually assaulted on campus, illustrates the importance of extended Title IX protections to campus visitors. The cases center around whether Title IX confers "non-student standing," which would allow campus visitors to bring suit against universities. The district courts dismiss the cases for lack of standing, and the Eight and First Circuits affirmed the districts' dismissals on appeal, although on different theories. The author notes, while Title IX's language is indeed broad enough to encompass the right of campus visitors to be free from gender-based discrimination, Congress's intervention is necessary to ensure that courts will uniformly interpret the statutory language in this way.

Marion Crain and Ken Matheny, Sexual Harassment and Solidarity. 87 Geo. Wash. L. Rev. 56. (2019).

Because the sexual harassment epidemic is a product of unequal workplace dynamics and insufficient pay for women, labor unions should make serious efforts towards its eradication. Over the past few years, there have been an alarming number of high-powered men across a variety of industries who have been accused of sexual harassment in their respective workplaces. The author argues that the resignations of these abusers will not solve the issue, but rather entire reform of workplace dynamic is needed. Labor unions can play an important part in reshaping the power dynamic that currently exists and they should take their proper place in the movement against sexual abuse. Unions have the ability to reform the meaning of solidarity and have yet to take advantage of this opportunity. In order to mitigate sexual harassment, labor unions can protest against the working conditions which have contributed to the gender dynamic and act as a representative for union workers whose voices are not heard. If done sufficiently, labor unions have the power to rebrand themselves as equality-enforcing entities and workplaces will become less hostile for all.

Rodney W. Harrell, Article, State Religious Free-Exercise Defenses to Nondiscrimination Laws: Still Relevant After Masterpiece Cakeshop, 87 UMKC L. Rev. 297 (2019).

Even after Masterpiece Cakeshop, LTD. v. Colorado Civil Rights Commission, 139 S. Ct. 1719 (2018), businesses will likely still be obligated to sell wedding cakes to same-sex couples. In particular, in cases of sexual-orientation discrimination, same-sex couples who live in states that have statutory or constitutional provisions requiring heightened scrutiny of laws that burden the exercise of religion will still likely prevail if the state seeks a civil remedy, as opposed to a criminal remedy. By passing the Religious Freedom Restoration Act of 1993, Congress attempted to restore the strict scrutiny of all religion-burdening, neutral, generally applicable laws, but the Court later found it unconstitutional as it applied to state laws, and therefore, states began enacting their own versions of the federal Religious Freedom Restoration Act ("RFRA") to restore strict scrutiny of such laws. Moreover, states that criminalize sexual-orientation discrimination will have difficulty meeting the second-prong of the strict scrutiny requirement, which requires that the government may substantially burden a person's exercise of religion only if it demonstrates that the application of the burden to the person is: (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest. The author proposes a jurisdiction specific, strict-scrutiny analysis to argue that nondiscrimination laws will survive strict scrutiny under state RFRAs only if those state nondiscrimination laws do not criminalize the discriminatory behavior. States wishing to enact RFRAs should be aware of the potential unforeseen consequences of enacting such laws and should understand that imposing criminal penalties in sexual discrimination cases may not always be effective.

Bridget L. Murphy, Note, The Equal Rights Amendment Revisited, 94 Notre Dame L. Rev. 937 (2018).

Although there are constitutional and legislative protections against discrimination on the basis of sex, these protections are inadequate to ensure equality of the sexes. Since 1932, suffragists have been advocating for an Equal Rights Amendment. While Congress was silent on the matter, in 1971, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment includes protections for women against unequal treatment. Further, the Civil Rights Act of 1964 was signed into law and prohibited discrimination on the basis of sex in the workforce. These bold yet insufficient protections emphasize the need for a more concrete law that ensures equality of the sexes. Thus, The United States

should ratify the Equal Rights Amendment to the Constitution. The passage of the Equal Rights Amendment would eliminate any existing protection available for discrimination on the basis of sex, and would protect against the potential inefficiency of Congress.

Elizabeth C. Tippett, Article, The Legal Implications of the MeToo Movement, 103 Minn. L. Rev. 229 (2018).

With recent expansion of the MeToo movement and the growing publicity surrounding these claims, employers should look internally at their policies and aim to revise provisions related to harassment in the workplace. While Title VII and the NLRA provide employees with limited rights to disclose workplace misconduct related to harassment or discrimination, courts are more likely to enforce contracts and settlement agreements with non-disclosure and other privacy related provisions that favor employers and disfavor employee-victims of sexual harassment. Since the MeToo movement, some states—specifically Pennsylvania, New York, and California—have mobilized to introduce legislation regarding non-disclosure agreements with the purpose of rendering un-enforceable contracts that limit an employee's right to speak out against harassment and sexual discrimination. However, employers may simply react to such legislation by creating carve-outs in policies, which serve to limit an employee's ability to publicly disclose such information. The author proposes that employers revise internal policies related to harassment and discrimination to reflect a great level of transparency in relation to application and factors which influence their ultimate response to workplace misconduct. This greater level of transparency requires the creation of broader discrimination policies which includes the need to disclose factors to be relied upon when faced with misconduct and how such policies will be applied/how the resulting punishment will be determined. Such broadening of internal policies could also include framing supervisory roles as those holding special positions of trust in relation to subordinate employees, which, if breached, would result in a demotion from their roles.

IMMIGRATION

Jennifer J. Lee, Essay, Redefining the Legality of Undocumented Work, 106 Calif. L. Rev. 1617 (2018).

The Trump administration's approach to immigration reform has far reaching implications beyond border security and immigrant detentions

reaching employment and work related issues of undocumented immigrants. As a result of the administration's strict enforcement of immigration law, undocumented workers are now susceptible to exploitation as they fear the attention of immigration authorities. The administration's aggressive worksite enforcement policy (enforcing legal status for all employees) increases the amount of abuse against undocumented workers regarding issues like wage theft, dangerous work conditions, and human trafficking. The author argues that jurisdictions at the state and local level should resist federal prohibition of illegal work of undocumented immigrants. State and local governments need to thwart federal law and protect undocumented workers, thus providing basic workers' rights to those who do not maintain legal immigration status. Resisting the federal prohibition at the local level would recognize the legal opportunities (legalizing undocumented work) in protecting undocumented immigrants through resisting federal law and refusing cooperation with federal authorities. This would lead to a more secure workforce who, along with employers, is more apt to comply with employment law and regulations. Therefore, permitting the work of undocumented immigrants has the potential to undermine the Trump administration's flawed immigration policy.

Thomas Scott-Railton, A Legal Sanctuary: How the Religious Freedom Restoration Act Could Protect Sanctuary Churches, 128 Yale L.J. 408 (2018).

The protection of sanctuary congregations is in line with the current laws surrounding religious freedom, and space exists for agreement regarding religious protections of minority groups. Under the Religious Freedom Restoration Act (RFRA), religious institutions such as churches can lawfully provide sanctuary to minority groups in danger. Previously, during the sanctuary movement of the 1980's, circuit courts applied a standard in which individuals are only protected against obligatory religious conduct. This type of conduct referred to actions understood by clergy members of the same faith. In addition, circuit courts found that the government had a compelling interest in immigration law, and issues of this nature were for the political branches to decide, rather than the judiciary. The court's decisions during the 1980's were during a time of decline in protections of religious freedom. The sanctuary movement was revived in the 2000's when immigration reform led to the deportation of parents of U.S. citizen children. The "new sanctuary movement" focuses on keeping families together. Today, under RFRA, sanctuary congregations are entitled to an exception from federal laws, such as anti-harboring laws. RFRA takes an effects-based approach, ensuring that differences in faiths will not impose unequal legal burdens on these

minority faiths. This approach limits the government's ability to take action which will have a disparate impact on religious minorities. Protecting sanctuary's and those in need of such protections plays a vital role in allowing communities to protect those in danger. Taking individuals in by sanctuary will serve as a form of legal immigration relief, which will potentially defuse the partisan divide over RFRA, and restore a balance around protecting minority groups in our society.

Irene Scharf, Article, Second Class Citizenship? The Plight of Naturalized Special Immigrant Juveniles, 40 Cardozo L. Rev. 579, (2018).

Denying undocumented children fleeing parental abuse the right to live with the one parent who cares for them is a present-day example of citizenship inequality. Congress granted these children naturalized status but restricted their use of this status to reunite with a non-abusive parent if they wish to do so. This paradoxical distinction is unlawful and irrational as naturalized citizens have the same status under the constitution as citizens from birth. Specific historical examples of citizenship inequality are the denial of citizenship related rights to African-Americans, felons and women. After a discussion on the roots of citizenship and the historical impact of discrimination concerning citizen status on various sub-groups of society, the author stresses that citizenship must provide equal treatment to all that fall under its protection. In conclusion, granting these children naturalized "citizenship" while restricting their right to a life with their loved ones is unfair, and Congress or the Judiciary must remedy this injustice.

JUVENILE JUSTICE

Kristin Henning, Note, The Challenge of Race and Crime in A Free Society: The Racial Divide in Fifty Years of Juvenile Justice Reform, 86 Geo. Wash. L. Rev. 1604 (2018).

In an attempt to reform the juvenile criminal system, the new National Criminal Justice Commission (NCJC) should identify and redress the racial biases responsible for the disproportionality of the arrest rates and sentencing of black youths. While the current NCJC put forth a report in 1967 expressing its commitment to reducing systemic unfairness, it failed to consider how race has impacted the system's policing of black youth. It also explained its statistical findings using language carrying racial undertones that reinforce fear of black youth.

Data gathered from police officers and university students' surveys reveal an "adultification" of black youth, and this is reflected in lawmakers' unwillingness to accord black youth the same leniency as other youths in the criminal system. As a solution, the author suggests using the results of neurobiological studies on brain development differences between children and adults to influence the decision-making process behind law enforcement practices and juvenile policing. Additionally, the author advocates for funding states working to decrease disparities, the decriminalization of certain adolescent behavior on school grounds, banning local ordinances that criminalize hip-hop culture wear, having racial impact statements, legislating against racial profiling, and focusing on community education and reforms for the police, courts and bail system. If those measures are implemented, they will facilitate obedience and cooperation with law enforcement, along with the effective rehabilitation of offending youths.

LAW AND SOCIAL JUSTICE

Amna A. Akbar, Toward a Radical Imagination of Law, 93 N.Y.U. L. REV. 405 (2018)

To understand and learn from radical social movements and their impact on law reform, it is important to consider how intersectional politics, legal precedents, and historical racial biases interact, to help create laws indicative of the movement's vision. In order to actualize the progress proposed by such social movements, the typical lens for law reform must be put aside to foster more imaginative solutions to social problems. In 2015, the rebellions in Ferguson and Baltimore inspired a new movement by a national gathering of Black organizers: The Movement for Black Lives. To overcome the violence and inequality that transpired through the policing of black communities, the Movement, established by a nationwide conglomerate of community activists, created the Vision: a policy proposal for law reform beyond just criminal justice. This reform touches on the capitalist, socialist, and racial prejudices that historically hindered the ability to produce meaningful legal reform in black communities. The author uses the Vision to compare and illuminate the drastic differences to the solution proposed by the DOJ. While both DOJ and the Vision agree that the biggest cause at issue is policing, the two criminal law critiques are drastically different. Specifically, the author argues that the Vision's policy proposals support her contention for a more progressive social movement that takes into account the various juxtapositions that affect black lives in communities

that are policed for the protection of white lives. The author suggests that social welfare can be maximized through imaginative visioning: instead of focusing on the rule of law, there must be radical imagination, which emphasizes the need to bring underlying issues to the forefront in order to bridge the gap between legal institutions and the people. By studying radical social movements such as The Movement for Black Lives, policy makers can create better and more successful law reform that adequately targets and disrupts social inequality in black communities.

Tom C.W. Lin, Article, Incorporating Social Activism, 98 B.U. L. Rev. 1535 (2018).

American corporations use techniques including boycotts, policies, sponsorships, lobbying and fundraising to fight for social change in areas such as immigration and gun regulation, and racial and gender equality. Increasingly, corporations collaborate with government entities, nonprofits, and other social activists to effect societal change, but they could be doing so more effectively. The author proposes that, in order to maximize the benefits of their corporate activism initiatives, business leaders should include social goals in their corporate missions and management strategies, along with standard profit-seeking goals. Corporations should also work with law schools to include corporate social activism concepts in their public interest law programs. This will potentially lead to improved collaboration between public and private entities' social activism initiatives, benefiting society as well as the businesses themselves.

Danieli Evans Peterman, Article, Socioeconomic Status Discrimination, 104 Va. L. Rev. 1283 (2018).

Socioeconomic status should be added to the list of classes protected by discrimination statutes that govern employment, housing, education, voting, public accommodations, and credit/lending in the United States. Discrimination based on one's socioeconomic status has become routine. In the United States, discrimination statutes were initially put in place to foster social mobility. However, failing to statutorily protect one's socioeconomic status actually limits one's social mobility because employers use socioeconomic status to weed potential job candidates or housing applicants out by running credit checks or screening home addresses. Therefore, the author argues for the protection of socioeconomic status to prevent these discriminatory behaviors. The author proposes framing disparate-impact claims, claims of unintentional discrimination, in the context of socioeconomic status to show how people of lower-socioeconomic status share common experiences of

marginalization. To maximize social mobility and self-determination for all, it is necessary to protect one's socioeconomic status so that it cannot lawfully be used against them.

LEGAL PROFESSION

Anna S. Bradley. The Disruptive Neuroscience of Judicial Choice. 9 UC Irvine L. Rev. 1. (Sept. 2018).

Although judges have always been viewed as impartial distributors of the law, and historical scholars consistently emphasize the idea of judicial impartiality, the reality of neuroscience reveals that judges experience susceptibility to biases. The law is not a product of bias or emotion, yet judges cannot cast aside their feelings and beliefs when making decisions. In fact, different parts of the brain work together to operate and make decisions. Because emotions are often necessary to making decisions, the historical view that judges are neutral and unbiased is challenged. Judicial decision-making will inevitably run afoul of emotions and biases, and this can both help and hurt the judicial system. The author advocates moving away from the understood principles of judicial selection, independence from political ties and impartiality. The proposed framework consists of decisions that make sense and are consistent while being rich, deep, useful, and measurable. Judges are human, and their humanity plays a role in their decision-making.

Bridget J. Crawford, et. al, Article, Feminist Judging Matters: How Feminist Theory and Methods Affect the Process of Judgment, 47 U. Balt. L. Rev. 167 (2018).

Feminism provides the foundation for a new form of legal scholarship that can be used as a powerful means and approach to resolve legal problems. Feminist judging is defined as an innovative intersection between feminism and judicial decision-making that can transform the reasoning or outcome of a case, offer theoretical and practical gains in the law, and continue to embrace equality and justice for all. The problem with non-feminist judging is that it fails to examine legal problems from multiple angles and is too short-sighted, restricted, and narrow. In contrast, Justice Sonia Sotomayor's dissent in Utah v. Strieff embodied feminist judging when she used contextual facts from her lived experiences to connect the issue of race and the broader historical and social context of illegal police stops. In another example, Justice Ruth Bader Ginsberg's majority opinion in Sessions v. Morales-Santana used

feminist methods to highlight a cycle of discrimination that results from stereotypes of women's domestic roles. The author suggests that feminist judging should be implemented by showing how cases are decided differently through feminism, using feminist judicial language and ideas to present a new lawyering model, and connecting students to feminist judgments as an educational tool. As one solution, feminist judgment projects rewrite past opinions with feminist theory and method. By narrowing the gap between feminist theory and judicial decision-making, feminist judging is invaluable to advance justice and support gender equality.

Charles Du, Article, Securing Public Interest Law's Commitment to Left Politics, 128 Yale L.J. Forum 244 (2018).

It is necessary for all public interest lawyers to show a dedicated commitment to progressive, left politics in order to align the various strands of radical movements into a cohesive whole. Public interest law has adapted and changed over the years; however, due to a recent political shift, including the most conservative Supreme Court in modern history, left political progressive power has declined. In recent years, union membership has decreased, left political power has declined, and passing progressive labor law reform has come to a halt leaving employees more vulnerable to unfair and illegal actions by employers. The American working class does not have the political power to address these systematic failures; instead, they need public interest lawyers with a commitment to left politics to create the legal reforms needed. Public interest lawyers can start by striking a balance between filing lawsuits that tackle legal violations to advance the rights of employees in order to motivate action and by providing workers with realistic expectations of the lack of remedies available. In order to promote left politics, lawyers must take the next step to raise workers' consciousness about the deficiencies in the current legal system and the need for reform. Lawyers can also embrace legal strategies outside of their expertise and connect issues recently brought to light about racism, sexism, and xenophobia to the labor movement in order to push organizers forward in their movements. These methods of practicing left focused lawyering in public interest law can expand to all forms of lawyering in any practice area and will contribute to the growth of progressive movements.

David Nahmias, Note, The Changemaking Lawyer: Innovating the Legal Profession for Social Change, 106 Calif. L. Rev. 1335 (2018).

As the legal community struggles with the modern emphasis of innovation and entrepreneurship, changemaking lawyers provide

guidance to a legal community in a rapidly evolving world. Changemaker lawyers serve as examples and pioneers, saving a legal profession currently struggling with new realities of a rapidly evolving globalized world that emphasizes innovation. The author argues that the legal profession must recognize the existence of this breed of changemaking lawyers to benefit from their example by focusing on how these lawyers approach their work. This is accomplished through a series of ten ainterviews with lawyers who fit the author's changemaker lawyer model while sharing their varied approaches and strategies toward their legal practices. These changemaking lawyers share the commonalities of disruptive-entrepreneurship, values driven-organizational structures, and cooperative work cutting through fields and sectors. They incorporate innovation, challenge traditional institutional structures with value-driven organization, and extend their scope outside of their conventional legal niche with a focus on positive societal impact, making them ideal examples for members of the legal community seeking to adapt to modern realities. Law schools and legal organizations must start emphasizing and requiring innovation among lawyers to guarantee that the legal field will be able to impact positive societal change in the modern world.

LGBTQ+ RIGHTS

Jessica A. Clarke, They, Them, and Theirs, 132 Harv. L. Rev. 894 (2019).

Gender labels in law could be reformed to support nonbinary gender rights by avoiding gender labels which fail to serve a purpose. Despite increased visibility, gender nonbinary individuals face significant discrimination. However, this could be mitigated by legal approaches to gender which do not prioritize gender classification or segregation without any need to do so. Reducing sex-segregation has an underestimated compatibility with feminist and post-colonial movements due to the shared interest in liberation from societal constructs which limit identity and expression. While opponents claim that nonbinary gender rights would require an overhaul of legislation or complete destruction of any gender identity, the author suggests multiple possibilities for inclusive gender reform in regulations; including legal recognition of a third gender, decoupling gender from other distinguishing traits which better serve relevant policy interests, or limiting the use of gender classification to contexts in which it furthers regulatory interests. Contexts, such as; data collection, education, athletics, housing, healthcare, and restrooms demand application of

different approaches to meet regulatory needs without needlessly policing the gender binary. Laws and regulations could reduce exclusions of nonbinary people in various settings by taking a more thoughtful, tailored, and interests-based approach to gender.

J. Shahar Dillbary et al., *An Empirical Analysis of Sexual Orientation Discrimination, 86 U. Chi. L. Rev. 1 (2019).*

Despite strides in legal protections for the LGBT community, sexual orientation discrimination remains commonplace in mortgage lending. Not only is such discrimination commonplace, but rates of discrimination can also be even worse where sexual orientation and race are both involved. For example, data gathered shows the probability of loan acceptance with several types of applicants and co-applicants by gender and race (i.e. combinations of white couples of either genders, black couples of either genders, and interracial couples of either genders). This data also accounts for other variables such as region, political party lines, bank sizes, population density, and states with changes to city or state law. Regardless of the variables used, the results consistently indicate all possible racial combination of male pairs are disadvantaged when getting a loan application approved, with pairs consisting of two black men being least likely to get a loan application approved. Furthermore, that even among heterosexual pairs, pairs consisting of a black male and black female are still statistically less likely to have a home loan application approved. Overall, this points to both a systematic, nationwide bias against perceived gay male applicants, and a compelling evidence of intersectional discrimination. The Authors suggest that this discrimination decreases in areas that pass anti-sexual orientation discrimination laws, and intend for their study to inform any ongoing legal debates about sexual orientation and discrimination.

Adam Mengler, Note, Public Dollars, Private Discrimination: Protecting LGBT Students from School Voucher Discrimination, 87 Fordham L. Rev. 1251 (2018).

State voucher school programs, through which students receive state funds to pay tuition for private schools, discriminates against LGBT students. Many voucher-accepting private schools are religious in character and have admissions policies which provide for the rejection or removal of LGBT students and/or students with LGBT families. State-level protections, such as voucher statutes, anti-discrimination statutes, and state constitutional remedies, as well as federal constitutional protections under the Equal Protection Clause and federal Title XI

remedies, are all currently insufficient to provide student-plaintiffs with an adequate remedy for the discrimination the voucher system engenders. The author argues that revising Title XI or expanding the state action doctrine in Equal Protection jurisprudence may provide LGBT students who are victims of voucher system discrimination with an adequate legal remedy, but that expansion of Equal Protection is more likely to be successful than Title XI revision. Although remedies under the Equal Protection Clause typically only apply to state actors, the state action doctrine extends Equal Protection remedies to a private actor where it performs a public function usually reserved for the State, or where the state has encouraged a private actor to engage in discriminatory conduct. In conclusion, the state action doctrine, which has been applied to private schools with racially discriminatory practices, could be extended to apply to private schools with discriminatory practices against LGBT people, thereby providing a legal remedy to student-plaintiffs.

Ashley Milosevic, The Tides Of Transgressions: An Analysis of Defamation and the Rights of the LGBT Community, 82 Alb. L. Rev. 323 (2019).

Although there is wider acceptance of the LGBT community today, there remains a persisting threat to the community with regards to bringing a cause of action for tort offenses, specifically defamation. Jurisdictions have varied in opinions on whether or not a false statement regarding someone's homosexuality is defamation per se, finding a false accusation of homosexuality either to be defamatory without a showing of harm, or not defamatory at all. For example, the fourth department in Stern v. Crosby rejected a defamation per se rule with regards to homosexuality and found it appropriate only in the context of sodomy, yet in dicta of Privitera v. Phelps articulated a new defamation per se rule regarding homosexual behavior, which some courts have adopted. On the other hand, the Third Department in Yonaty v. Mincolla, has completely rejected a per se rule on the grounds that "statements that falsely impute homosexuality as defamatory per se are based upon the flawed premise that it is shameful and disgraceful to be described as lesbian, gay or bisexual" and thus, held that having a per se rule would equate these individuals with having committed a crime, demeaning to the LGBT community. Here, the author proposes two arguments advocating for the end of a per se rule with regards to defamation based on false allegations of homosexuality: (1) the per se standard will negatively affect the LGBT community and (2) the judge's biases may lead to affirming homophobia, which would lead to a negative perception of the LGBT community, reinforce homophobic trends and ultimately impute to society that being gay is equated with committing a crime, as a articulated in Yonaty.

However, the author acknowledges that completely dispersing any cause of action for defamation based on false allegations of homosexuality may cause a threat to certain individuals, including celebrities, politicians and religious communities; a threat, which the author, along with proponents of reform, acknowledge as deserving of some sort of remedy due to the incomplete acceptance of homosexuality in society today. Thus, the author articulates that although on one hand a per se rule for a cause of action for defamation is not warranted, on the other hand, dispersing of any cause of action for defamation here, based on a premise of one societal perception, would cause certain groups of individuals irreparable harm, and therefore, concludes that the court should adopt a per quod rule, a tougher standard which requires a showing of real harm to recover for this cause of action.

Judith Stacey, Article, Towards Equal Regard for Marriages and Other Imperfect Intimate Affiliations, 32 Hofstra. L. Rev. 331 (2003).

Laws in the U.S. should grant all members of "equal-regard" families, or non-nuclear families which consist of unmarried parents romantically or sexually affiliated to either of the two married parents, the same legal rights as nuclear families. Currently, unmarried parents of "equal-regard" families do not have the same rights or responsibilities as married parents. Granting unmarried parents access to same-sex marriage fails to account for the complex nature of "equal regard families," since there are currently no protections for caretakers who are not biological, residential, or adoptive parents. The legalization of same-sex marriage provides rights and responsibilities for lesbian and gay married parents to the detriment of unmarried parents. Moreover, marriage itself (1) reproduces social inequalities, since only those economically privileged can afford to enter into and sustain it and (2) is an increasingly unstable childrearing framework. Instead, unmarried parents should be granted the same legal rights as married parents on the basis that unmarried parents (a) are usually queer and thus do not divide their caretaking duties on the basis of existing gender norms, (b) invest as much of their lives caring for children in "equal-regard" families, and (c) have greater access to community support groups. As a solution, legislators should establish a registered kinship system involves a process of negotiated agreements between members of "equal-regard" families to replace marriage. This kinship system sufficiently addresses the conditions of postmodern human society by providing "equal-regard" families the equal protections they deserve.