ANNOTATED LEGAL BIBLIOGRAPHY

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I. LGBTQ RIGHTS

Russell K. Robinson, Article, *Mayor Pete, Obergefell Gays, And White Male Privilege,* 69 BUFF. L. REV. 295 (2021).

The author argues that Mayor Pete Buttigieg's success in the 2020 Democratic Presidential Race was attributable to Buttigieg being gay in addition to his masculine qualities and the way in which he utilized his white male privilege against female candidates. Buttigieg's political views were characterized as within the "respectability politics," which is defined as "a strategy that foregrounds only the most affluent, traditional, and 'all-American' gays and lesbians, and it typically excludes or marginalizes bisexual and transgender people and people of color." It is stated that Buttigieg's ideals can explain the lack of votes that he obtained from the LGBTQ community. Some of Buttigieg's most notable qualities, such as his marriage to his husband, military service, Christian beliefs, and moderate views are more aligned with a privileged heterosexual man and less associated with those in the LGBTQ community. Buttigieg's plans, such as not imposing Medicare for All, not only did not further LGBTQ rights, but actually hurt them the most. Buttigieg did not embody the new growing "intersectional movement," which includes understanding that "sexual orientation [i]s interwoven with gender identity, racism, capitalism, and various other vectors of oppression that make transgender people more likely than cisgender gays and lesbians to be injured." The author calls for a more inclusive society and suggests that a future candidate should be one who represents intersectionality. He points to examples of the acceptance of this movement, namely the various protests after the killing of George Floyd that were attended by people of all races and sexual orientations.

Annotated by: Bailey Appel

Marie-Amelie George, Note, *Expanding LGBT*, 73 FLA. L. REV. 243 (2020).

The acronym LGBT that once symbolized commonality and unity between numerous groups appears to be focused solely on improving gay, lesbian, and transgender rights. As a result, the movement completely disregards the needs of other groups within the larger community such as queer, intersex, and asexual. National organizations exist to fight for equal rights on behalf of the LGBT community using the most effective and efficient assimilation tactics: appealing to middle class societal norms and arguing that gays and lesbians are nearly identical to heterosexuals apart from the gender of their chosen sexual partner—tactics which would not benefit the goals of queer, intersex, or asexual communities. The author outlines the differences between the many subgroups within LGBT, their varying and often conflicting goals, and lists reasons why those groups would struggle to coexist within an expanded LGBT movement. Rather than a single, decisive solution, the author offers multiple options for resolutions including LGBT and QIA joining together in an entirely new and expanded movement in which they would engage in a coalition to collaborate in achieving their common goals. Alternatively, LGBT and QIA may participate in defined cooperation where they would assist each other in a specifically defined venture without creating a formal alliance or combining movements which could negatively impact their ability to achieve their individual ambitions.

Annotated by: Samantha Berger

Andrew S. Park, Article, *Respecting LGBTQ Dignity Through Vital Capabilities*, 24 J. GENDER RACE & JUST. 271 (2021).

Andrew Park takes a multidimensional view of how members of the LGBTQ community are not looking for the normative take on equality, but instead for root institutional changes that would foster the principles of dignity and pride. Monumental Supreme Court cases expanded rights for LGBTQ members, such as *Lawrence v. Texas* overturning anti-sodomy rules. However, these cases did not inherently support the tenants of dignity and equal-worth, which are inherent to any person's life. In journeying through the question of rights beyond equality, Park highlights two sides to the story of whether or not part of the solution would be the freedom to outspoken self-expression and identification, or if rather a person's homosexuality is backseat to a person's identity. Park lastly dives into how the capability approach can be used as a framework to assess LGBTQ rights and freedoms and post-equality goals. In order for the government to follow this approach, which is used to evaluate and subsequently expand human rights, the government needs to recognize the LGBTQ experience, comprised of accepting oneself and being accepted by others, as well as difficulty to relate to others based on one's sexuality. Park takes these attributes and the capability approach and ultimately concludes that in order for the government to go beyond "equal rights," policy changes need to occur that would circumvent the limitations of court case precedent and laws.

Annotated by: Hillary Borker

Kyle C. Velte, Article, *The Nineteenth Amendment as a Generative Tool For Defeating LGBT Religious Exemptions*, 105 MINN. L. REV. 2659 (2021).

The antisubordination principles championed by pro-suffrage leaders in the late nineteenth century, harnessed by feminists in the 1970's to add "sex" to state public accommodations laws, aptly apply, and could be utilized in today's fight against religious exemptions from Sexual Orientation and Gender Identity (SOGI) antidiscrimination law. Today, it is a common occurrence for those opposed to the extension of Title VII and the Fourteenth Amendment's Equal Protection clause to gay and transgender individuals, to challenge public accommodations laws as violating their First Amendment Rights to free speech and free exercise of religion. The author traces the long history of sex discrimination in the United States, the antisubordination history of the Nineteenth Amendment and suffrage activists to the feminist activists of 1970's and the passage of public accommodation laws to today's SOGI antidiscrimination battles, in an attempt to emphasize that the same principles apply. These principles are that it's a basic human right to be free from discrimination and that the right to vote is not dispositive of equality. In doing so, the author highlights the decision delivered by the Supreme Court in *Bostock*, which held that SOGI discrimination is discrimination on the basis of sex. The author concludes with a recap of the relationship between the antisubordination history of the Women's Suffrage Movement and todays SOGI discrimination battles and suggests that the current momentum could one day result in a cohesive body of antidiscrimination law.

Annotated by: Steven Kaufman

II. GENDER RIGHTS

Jane K. Stoever, Article, *Title IX, Esports, and #etoo*, 89 GEO. WASH. L. REV. 857 (2021).

As participation in esports continues to grow, and colleges and universities nationwide invest millions of dollars into new esports programs, reported instances of "technology-enabled abuse, sexual cyberviolence, and harassment" have become increasingly more prevalent. The author attributes the rise of such reported instances to three key factors: (1) "gender in gaming"; (2) "violent games"; and, (3) "gender-based violence in games and gaming." While the gaming world may be well-suited for gender equality, such is not the case today; the majority of esports players are male, and games rarely portray female characters – if at all. Additionally, the violet nature of many games, where sexual violence and harassment may be promoted and rewarded, fosters a culture of aggression among the players. Accordingly, as colleges look to expand esports opportunities to students, the author contends that colleges must consider and address Title IX issues and First Amendment questions if they want to avoid promulgating a culture conducive to sexual harassment and discrimination. The author offers several strategies that schools can implement to build inclusive esports programs such as involving their Title IX campus coordinators, hiring female and nonbinary program personnel, and educating students who play esports about the school's honor code and cyberbullying policies while mandating that students receive specific training concerning gaming sexual harassment. In conclusion, the author expresses that schools can bring much-needed positive change to the gaming world by building esports programs that prioritize diversity and inclusion and focus on anti-harassment and anti-discrimination principles.

Annotated by: Paloma Bloch

Katherine Sharpless, Article, *California's S.B. 826: Will the Supreme Court Get On Board?*, 42 WOMEN'S RTS. L. REP. 172 (2021).

In response to severe underrepresentation of women on corporate boards of directors, a 2019 California law, S.B. 826, mandates that every publicly held corporation have, at minimum, one female serve on its corporate board of directors by 2020; by the end of 2021, corporations are required to meet a higher threshold. While this law has had resounding success in increasing female representation, here, the author assesses whether the California law is likely to pass constitutional muster. First, the author points to the market's inability to correct itself and bias in the country's social structure as reasons why the market has not shifted. Next, the author lists three non-mandatory approaches to female underrepresentation, but notes that these efforts have largely fallen short of their goals; for example, in California, a non-binding resolution approach increased gender diversity on boards of directors by a mere one percent. Consequently, she suggests that mandatory quotas may be the only successful approach. If S.B. 826 is brought to the Supreme Court, the author argues it would likely be held unconstitutional under strict scrutiny, but suggests that the Supreme Court should apply heightened intermediate scrutiny in reviewing S.B. 826, and hold the law to be constitutional. If California's S.B. 826 law is found to be unconstitutional, the author proposes three alternative approaches that may pass constitutional muster; one alternative, employed by the National Football League, requires each team to include a minority candidate among its final candidates for a head coach and general manager position; used in the context of female representation, it is suggested that this type of approach may be successful in urging corporations to increase female representation on their boards of directors.

Annotated by: Justin Danzinger

Tatsiana Ziniakova, *Gender-Based Violence in International Human Rights Law: Evolution Towards A Binding Post-Binary*, 27 WM. & MARY J. RACE, GENDER & SOC. JUST. 709 (2021).

Despite the growing number of international legal instruments adopted to address gender-based violence in international human rights law, such as the Declaration on the Elimination of Violence Against Women, these legal frameworks have been largely ineffective. In this article, the author compares various treaties, procedures, and legislation to identify three issues associated with effectively combating gender-based violence through international human rights law: (1) inclusivity, given the lack of consensus and the use of binary terms to demonstrate what gender means and what may constitute as gender-based violence; (2) the patriarchy, while one of the well-established causes of gender-based violence, has not been analyzed in respect to how it operates as a universal power structure within a culture; and (3) normativity, to which the value of the prohibition of gender-based violence has been lacking on an international level. The author proposes some short-term solutions to these issues which, include interpreting, amending, or adopting instruments to encompass a more inclusive understanding of gender-based violence. However, the author concludes that in order to adequately address gender-based violence in the long term, a binding international treaty obligation must be adopted. While the author acknowledges that even an inclusive and binding international treaty could lack effectiveness without dismantling the patriarchy on a local level, the document can encourage a human rights response that encompasses progressive interpretations and current realities surrounding the issue.

Annotated by: Katherine Dunayevich

Jamillah Bowman Williams, Article, *Maximizing #MeToo: Intersectionality & The Movement*, 62 B.C. L. Rev. 1797 (2021).

The article delves into how women of color ("WoC), despite experiencing higher rates of workplace harassment, have been left out of the mainstream #MeToo movement. Despite strengthened enforcement of the existing laws and introduction of new legislative reform to combat workplace harassment, #MeToo has failed to address the intersectional experiences of WoC. The author cites to Crenshaw's groundbreaking work, *Race, Gender, and Sexual Harassment*, that explains the concept of *intersectionality*. It notes ways in which race and gender interact to shape experiences of WoC, and that those experiences cannot be adequately assessed by looking at race or gender aspects separately. For example, the intersectional claims based on a combination of race and sex discrimination, or harassment are half as likely to prevail on summary judgement as claims alleging harassment or discrimination based on either sex or race. One of the reasons for this inequality is that Title VII of the Civil Rights Act of 1964 requires plaintiffs to allege that their harassment claim is either "because of sex" or "because of race."

To combat this inequity, the author critiques various proposed, passed, and pending legislation that address sexual harassment, and highlight the need for the said legislation to be narrowly tailored to address WoC's intersectional experiences. In addition to legal reform, the article introduces proposals and emphasizes the need for organizational and cultural reform without which progress for WoC will remain limited.

Annotated by: Gursimran Kaur

Michele Goodwin, Article, *WOMEN ON THE FRONTLINES*, 106 CORNELL L. REV. 851 (2021).

Women, especially women of color, have continuously been erased from history, which in turn helps uphold systems of power and oppression. The "intersectional blind spot" and "intersectional invisibility" contribute to the erasure of women of color and it was more pronounced during this global pandemic because although their support is vital, their experiences are unceasingly overshadowed and ignored. Factors such as gender, socioeconomic status, disability, and race expose inequities that were highlighted within the context of school, home, and the workplace. For example, Breonna Taylor is used as an example of what being "essential" yet "indispensable" means. Michele Goodwin explores the tension between women of color and their historical plight in this country that especially presented itself during Covid-19 and explains how they are underrepresented in various institutions and unconsidered in legal issues. The many combinations of these factors demonstrate the indispensability of women in this country and reveal the economic and health gaps that result from them. To remedy these issues there needs to be critical mass hiring in law firms, courts, and schools; affirmative action that benefits women while recognizing previous implementations were discriminatory; and public policies and laws that actively advocate for women, especially the marginalized. These solutions will help close gaps, avoid tokenism, and dismantle misogyny, while creating a more equitable and livable world for all women.

Annotated by: Niara Morrison

Amelia Miazad, *Sex, Power, and Corporate Governance*, 54 U.C. DAVIS L. REV. 1913 (2020).

The problem of gender-based power imbalance in the workplace remains one that spans across firms of all industries, sizes and cultures. This power imbalance has resulted in "sex segregation", which has in turn created a culture that invites and tolerates sexual harassment in the male-dominated workplace. However, the recent buzz created by the #MeToo movement has helped raise awareness of the issue, as well as shine a public spotlight on corporate executives, allowing company stakeholders such as investors, employees, regulators, and board advisors to hold them more accountable and reduce complicity. The author provides a thorough framework for understanding why traditional sexual harassment training and compliance programs have proven ineffective, and how modern corporate governance is now evolving to deal with harmful institutions and practices in the workplace, including but not limited to the poor handling of sexual misconduct cases, pay discrimination, and managerial gatekeeping or "boys' clubs." She also examines several case studies of corporate governance, such as Uber, illustrating how effectively and rapidly companies can transform themselves simply by devoting resources and personnel to target issues of diversity and inclusion. Lastly, the author takes note of the benefits already seen emerging from the #MeToo movement, such as unprecedented board gender diversity, the use of executive compensation agreements that reward diversity and punish sexual harassment, and greater due diligence for "cultural risk" in private equity transactions.

Annotated by: Sean Murphy

Kelsey Scarlett & Lexi Weyrick, *TITLE IX, ME TOO & ADMINISTRATIVE LAW: RESPONDING TO BACKLASH & LOOKING TO THE FUTURE SYMPOSIUM IN HONOR OF JUSTICE RUTH BADER GINSBURG 2020: Transforming the Focus: An Intersectional Lens in School Response to Sex Discrimination,* 57 CAL. W. L. REV. 391 (2021).

Title IX was designed to protect a singular identity: white, straight, cis-gendered women. By failing to incorporate intersectional identities within its protections, Title IX fails to offer any substantial protection to students with different identities that inform discrimination, such as race, class, sexual orientation, gender identity, citizenship status, and any other marginalized identities. This paper first explores the history of Title IX and women's access to education in America, emphasizing the historic and prevalent focus on essentializing white women and catering only to them. This paper then introduces "the 2020 rule": the limitations on and enhanced requirements of Title IX imposed under the Trump Administration by then-Secretary of Education Betsy DeVos. As students with intersectional identities experience sexual misconduct and barriers to reporting at a disproportionate rate compared to non-marginalized white women, the authors argue that Title IX must adapt to this reality by developing an intersectional approach. The authors suggest that Title IX should implement preventative and educational measures, such as researching and compiling data of the specific needs of each marginalized group, as well as of each campus community. In analyzing the shortcomings of both disciplinary procedures and restorative justice, the authors recommend that Title IX adopt a transformative justice model that will establish systems of both rehabilitation and reeducation, going beyond the limits of what restorative justice can accomplish. The goal is to enhance Title IX protections for all students and address the oft-ignored sexual misconduct against students of marginalized identities that is currently happening across American campuses.

Annotated by: Heidi Sandomir

Jordan Buckwald, Note, *Outrunning Bias: Unmasking the Justifications for Excluding Non-Binary Athletes in Elite Sport*, 44 HARV. J.L. & GENDER 1 (2021).

Supported by unconclusive science about the effects of testosterone on athleticism, non-binary female athletes, those who do not fit into the rigid classification of sex or gender, face scrutiny on whether their participation in sports against their cisgender counterparts gives the former an unfair advantage. This obsession with protecting cisgender female athletes strengthens the outdated notions that men are stronger than women, and traditional standards of femininity should still apply. Esteemed sports associations have a history of implementing prejudicial scrutiny by allowing different forms of sex verification as a consequence of an instance and false accusations of men identifying as women to compete in women's sports. In order to protect the integrity of female sports, differences of sex development regulations are currently allowed even though these regulations are ruled to be discriminatory. Educating the public about the intricate science behind hormones and physiology can create compassion within people who carry biases. The author recommends that sport organizations discontinue hormonal checks on non-binary women, which further stigmatizes these athletes rather than focusing on their achievements. Popular athletes can also speak out with the hope of influencing not only public opinion, but also similar treatment towards athletes in high school and college. There will always be winners and losers in sports; if non-binary athletes do have an advantage, they do not ruin the fairness of female sports when there are factors besides hormone levels that attribute to the superiority of some of the most celebrated athletes.

Annotated by: Payten Slaughter

Noah M. Kaziz, Note, *Fair Housing for a Non-Sexist City*, 134 HARV. L. REV. 1683 (2021).

In this article, Noah M. Kaziz demonstrates how discrimination based on sex is built into the housing laws of the United States and argues that the Fair Housing Act (FHA) prohibits such discrimination in housing (as of 1974). However, the Act has not been used to tackle structural discrimination based on sex in society, with law and policy focusing instead on blatant forms of such discrimination on an individual level. Kaziz discusses how discrimination based on sex in housing and land use are rooted in gender norms that are embedded in zoning laws and American urban planning of the 19th century. He begins with a deep analysis of the FHA, HUD (Department of Housing and Urban Development) funding, the DOJ (Department of Justice), and the AFFH (Affirmatively Further Fair Housing) process. Kaziz examines case law and presents case arguments on how the sex-based fair housing claims brought under the FHA have been narrowly utilized for individual cases. He then provides three examples where the American housing system perpetuates gender disparities and can be addressed by the FHA. In the last section, the author argues that, although the FHA can help resolve sex-based housing claims, it is not the "perfect fit." Kaziz advocates a change in the law and societal gender norms to remove the separation between residential and commercial and to dispense with the gendered ideology that is connected to it. Kaziz recommends that states fill this statutory gap from the bottom up, thus creating structural, nation-wide change.

Annotated by: Anda Totoreanu

III. RACIAL EQUALITY

Mikah Thompson, Article, *Just Another Fast Girl: Exploring Slavery's Continued Impact on the Loss of Black Girlhood*, 44 HARV. J. L. & GENDER 57 (Winter, 2021).

Modern society's misperceptions of Black girls, including that they are dishonest, hypersexual, and immoral, originate from the slavery era, and continue to have severe consequences, particularly for Black females who come forward with allegations of sexual violence. The believed promiscuity and sexual deviancy of Black girls and women has continued to serve as a rationalization for sexual violence committed against them, even in the justice system, which often fails to hold the perpetrators accountable. White society has perpetuated the stereotype concerning inherent dishonesty of African Americans, impacting the credibility assessments of victimized Black girls, and making their achievement of justice even more challenging. Moreover, the Black community scrutinizes Black girls and women who accuse Black men of sexual violence as subjecting their own people to an unjust and racist criminal system, so they are pushed from all angles to remain silent. These stereotypes also influence essential figures in the justice system, who often rely on rape myths when handling allegations of sexual assault, resulting in legal discrimination against Black victims. The author proposes and details solutions for removing these barriers, focusing on using bias and courtroom training to equip police and prosecutors to educate all players on the intersectional bias Black female crime victims face and the effects it has on their sexual assault and rape cases. There is a modern-day hierarchy of legal protection, rooted in slavery-era stereotypes, which continues to cause Black girls and women to suffer disproportionately from sexual violence.

Annotated by: Emma Bruder

Susan Ayres, *Inside the Master's Gates: Resources and Tools to Dismantle Racism and Sexism in Higher Education*, 21 J. L. SOCIETY 20 (2021).

The United States has experienced a reckoning with its own structural racism following the 2020 police killings of people of color. The national conversation has now turned to the responsibility of professors in higher education to encompass this issue of systemic racism, referred to by the author as "the master's house," into the curriculum while accounting for the intersectionality of race, gender, and social class. The author pinpoints two essential questions that should be asked of students: (1) how may a certain area of law produce racist and sexist consequences, and (2) how does institutional racism and sexism impact students and faculty? The author utilizes Richard Delgado's *Substance of Fire: Gender and Race in the College Classroom* to address these questions and acknowledge that, despite the need to bring antiracism teachings into the classroom, many professors fear possible repercussions of addressing race and gender in their lesson plans. Higher education institutions such as law schools seek to subdue the restructuring of classically white, heterosexual, wealthy spaces in order to proliferate the social structures that already exist in society. Thus, the author lays out resources and strategies that may be employed to combat this structural racism and sexism such as communicating one's own story and sharing one's own biases, as well as encouraging class participants to listen to and reflect with one another. While it is likely impossible to completely demolish "the master's house," it is possible to affect change through the sharing of stories that chronical racial and gender discrimination.

Annotated by: Lindsay Brocki

Chinyere Ezie, Article, *Not Your Mule? Disrupting the Political Powerlessness of Black Women Voters*, 92 U. COLO. L. REV., 659 (2021).

The passage of the Nineteenth Amendment promised to provide women a working mechanism to advance their political concerns. Yet, one hundred years later, this dream has still not been fully realized for Black women. This article posits that Black women voters are a "trapped constituency"—a group whose votes are relied upon by the political establishment but whose concerns are repeatedly overlooked. Instead of prioritizing Black women in recognition of their dependable support, the Democratic Party devotes time to appeasing swing voters, who are largely white, moderate suburbanites. Black women are stuck engaging in "caretaker voting"—voting for a party which safeguards the rights of others, but in doing so perpetuates their disempowerment. The article shows how despite every promise that suffrage promotes, Black women's strong political participation has not correlated with meaningful changes in their "experience with lived equality" or their material realities. Chinyere Ezie proposes that in order to disrupt their political powerlessness, Black women should pursue strategies of strategic non-voting to make the Democratic Party court them like swing voters. Ezie puts forth four such strategies: lobbying candidates prior to the primaries and conditioning their support on policy demands; post-election political engagement to ensure electoral promises are kept; staging a protest non-vote until their needs are prioritized; and a national statement explaining "caretaker voting," expressing their willingness to engage in it during exceptional circumstances and committing to withdraw support in future elections if they continue to be ignored.

Annotated by: Peri Feldstein

Veronica Root Martinez & Gina-Gail S. Fletcher, Article, *Equality Metrics*, 130 Yale L.J.F. 869 (2021).

In response to the surge of awareness of systemic issues sparked by the death of George Floyd and the Black Lives Matter protests following, corporations have begun to listen and take steps to aid systemically disadvantaged communities. There have been a series of responses by corporations, unfortunately, most of which have had little to no real impact. The author proposes the implementation of a system of "equality metrics," that would allow corporations to make actual and lasting change by: (1) measuring and disclosing the diversity both within its employees (at all levels of management) and within its stock chain, (2) creating goals to improve such diversity, (3) implementing policies and structures to meet those goals, (4) disclosing the progress towards these goals regularly, and (5) using the data collected to aim future efforts and more effectively meet diversity goals. This will not only allow the public to see if any progress is being made by corporations, but also allow other corporations to identify what methods are effective at making such progress. The author pushes for institutional investors, who own significant equity in these corporations, to incentivize corporations to implement this system. A majority of corporations push a commitment to diversity and a support of the Black Lives Matter movement through press releases and advertising, but shining a light on what actually goes on behind the closed doors of a corporation—by requiring the collection, analysis and disclosure of equality metrics—is the first step in implementing new and better systems that effect lasting and meaningful change.

Annotated by: Salisha Kayum

Deepa Das Acevado, Essay, *(Im)mutable Race?*, 116 NW. L. REV. ONLINE 89 (2021).

Incidents of reverse passing – when dark-skinned, white individuals attempt to pass as Black, Indigenous, or People of Color – have proliferated over recent years. The incident involving Rachel Dolezal in 2015 brought to light the ethical and legal ramifications of transforming racial identity. Dolezal, a former Africana Studies professor and chapter president of the National Association for the Advancement of Colored People (NAACP), possessed none of the Black ancestry she claimed to have. Instead of terminating her employment, the NAACP chose not to renew her contract. Similar occurrences of reverse passing have increased since then, but courts remain ill-equipped to adjudicate these issues despite the availability of doctrinal resources. Both the Supreme Court and social scientists are hesitant to accept race as a biological construct. The Supreme Court's decision in *Bostock v. Clayton County* exemplifies this. Although it concerned discrimination of transgender or homosexual employees, *Bostock* signifies that "it is not beyond the doctrinal scope of our law or the institutional capacity of our courts to account for transformations within a seemingly immutable and biologically determined characteristic." In rejecting the mutability of race, courts diverge from considerable legal and social science views. Courts will continue to address issues of racial identity, most likely in cases involving contract disputes and employment discrimination. To better adjudicate these matters, the author calls for a cultivated attentiveness to race-claiming and increased awareness to experiences and acquired attributes of the person claiming a new racial identity.

Annotated by: Hannah Kramer

Gregor Maučec, Article, *Law Development by the International Criminal Court as a Way to Enhance the Protection of Minorities – the Case for Intersectional Consideration of Mass Atrocities*, 12 J. Int. Disp. Settlement 42 (2011).

When evaluating extreme human rights abuses and mass atrocities, the International Criminal Court ("ICC") has historically left out a key component: intersectional discrimination. The concept of intersectionality originates from black feminists rationalizing groups underlying traits and experiences and how they have intertwined with discrimination concerning race, gender, economic class, religion, and social relations. Without intersectionality, international criminal trials accept the discriminatory practices suffered because they only advocate for one distinct group. Examining the legal analysis on why particular identity groups are disproportionately affected by atrocities, the author considers group's underlying identities and attempts to pinpoint why individuals in particular groups live with heightened vulnerability. The author states that the international criminal legal system must simultaneously consider protected characteristics to repair the multi-faceted experiences of extreme atrocities rather than enforce a single-ground approach. The ICC uses interpretations of the Rome Statute, but should specifically implement Article 21(3) since it firmly holds that non-discrimination should be internationally recognized. Without contradicting the doctrine of strict legality, Article 21(3) offers potential for merging international human rights approaches and intersectional discrimination into the current ICC framework. The author suggests that if the ICC adopted intersectionality to modify international criminal law, the Court can overcome conceptual flaws and more efficiently capture the intersection of discrimination and conduct against ethnic, religious, political, and gender-based violence.

Annotated by: Calli Schmitt

David A. Grenardo, *It's Worth a Shot: Can Sports Combat Racism in the United States?*, 12 Harv. J. of Sports & Ent. Law 237 (2021).

David Grenardo uses the lens of sports to explain the problem of racism in the United States and offer a possible solution. The layers of overt racial bias, unconscious racial bias, institutional racism, and white supremacy are rooted in our past and continue to manifest in events like the Charlottesville Incident, the killing of George Floyd, and the 2020 summer protests that followed. Ultimately, these racist attitudes permeate into the realm of sports, where evidence of racist incidents directed toward black and brown athletes have remained at elevated levels since a sharp increase in 2018. Professional and academic sports organizations like the NBA, NFL, MLB, and NCAA have taken initial steps to stem the spread of racist attitudes by implementing the Rooney Rule and various diversity initiatives. The Ross Initiative in Sports for Equality (RISE) is one of these initiatives, which creates programming to educate, empower, and engage athletes, coaches, and administrators to combat racism. Grenardo takes this idea of *the three e's* and adds an "o" for opportunity to create his solution for addressing racism. He contends that sports are an ideal avenue for *e*ducation and *e*ngagement with anti-racism programs at an *e*arly age. Lectures on racism's impact, mentorship programs, and other initiatives can help dismantle racism in all forms when paired with programs that expand opportunities for black athletes to assume head coach and administrative positions, which currently overrepresent white males. This proposal may not be a silver bullet to ending racism the United States', but Grenardo takes the competitive spirit to heart in this piece, arguing that the possibility of victory makes these changes worth a shot.

Annotated by: William Seguin

Melissa Murray, *Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 Harv. L. Rev. 2025 (2021).

The recent decisions and jurisprudence connecting abortion restrictions to antidiscrimination policy, along with Justice Thomas's concurring opinion in *Box v. Planned Parenthood*, has given anti-abortion activists a new platform which could help them overturn the abortion protections established in *Roe v. Wade*. Since its modern conception during Reconstruction, the anti-abortion movement emphasized that abortion was a way for eugenicists and racists to ensure that the white population would continue to grow while discouraging the growth of African American populations in the United States through ads and policies targeting the black community and encouraging abortions. *Roe*'s protections of abortion rights cannot be overturned simply because the current Supreme Court disagrees with it. However, *Planned Parenthood of Southeastern Pennsylvania v. Casey* decreased the standard of review required of the Court when analyzing abortion regulations passed by states from strict scrutiny, meaning any infringement on abortions were suspect and unconstitutional, to an undue burden standard, which made it so only abortion regulations which created a "substantial obstacle" to a woman's ability to get an abortion was unlawful. This change in the law combined with Justice Thomas's *Box* concurrence, which equates abortion with racism, and the fact that race is a suspect class analyzed under a strict scrutiny standard, creates a new pathway for the Court and anti-abortion activists to overturn *Roe* using strict scrutiny analysis for racial discrimination. If *Roe* is overturned in this manner, antidiscrimination and racial laws could have an even broader effect in overturning other contested Supreme Court decisions.

Annotated by: Emily Silverman

Erika George, Jenna Martin, and Tara Van Ho, *Reckoning: A Dialogue About Racism, Antiracists, and Business & Human Rights*, 30 Wash. Int'l L.J. 171 (2021).

Employing a dialogical methodology, the authors examine whether the field of Business and Human Rights (BHR)—through its historical and modern roots in capitalism, its contemporary scholarly research, and its practical real-world implications—offers an effective tool of combating systemic racism (i.e., existing as a tool of antiracism), or rather, functions to reinforce the existing structures of racism on which the field itself was arguably established. In providing historical as well as personal frameworks to investigate racism/antiracism in BHR, the dialogical method allows the authors to present diverse and interdisciplinary readings of how BHR does, may, and should function through the context of critical race theory, its racist legacy rooted in capitalism and imperialism, and its potential to be a powerful antiracist tool. Though they deny providing any identifiable conclusions, the authors makes clear that in the context of BHR it is *not enough* to simply be "not racist"; rather, individuals as well as multi-national corporations must actively work to be *antiracist*, combating the very capitalist foundations of systemic racism on which BHR was conceived, in a broader pursuit of social and economic justice. In investigating the ways in which antiracism has the potential to positively impact BHR while also identifying its historic foundation and modern interaction with systemic racism—and capitalism more generally—the authors present a nuanced, scholarly discussion in asking the simple question: "is BHR racist or antiracist?" and, if so, what can/should we do about it?

Annotated by: Davis Villano

IV. OTHER

Raymond H. Brescia, Note, *Lessons From The Present: Three Crises And Their Potential Impact On The Legal Profession,* 49 HOFSTRA L. REV. 607 (2021).

The year 2020 endured three crises (a pandemic, a civil rights reckoning, and a crisis of democracy), each of which was not only influenced by the law but also an influence on the law. The author suggests the impact on the legal profession could lead to a more equal and inclusive community. The pandemic and police brutality protests revealed the inequalities of the legal profession exposing its lack of diversity and unequal access to justice. Moreover, the attack on the U.S. Capitol left many concerned that the disciplinary bodies are not strict enough to ensure those bound by ethical obligations are held accountable. The author provides avenues to eliminate the inequalities embedded within its field; for example, remote work has proven beneficial in combating the lack of diversity and access to justice by allowing those to tend to their familial obligations while still being attentive to work schedules. Additionally, remote work has extended the jurisdictions in which an attorney could provide adequate representation by making it possible to appear "in court" through online sources for clients who live in remote distances. The author argues those at "the top" must confront these issues and promote "zero tolerance" policies for racial bias. Lastly, the attack on the Capitol exemplifies the urgency for stricter standards, by strengthening the Rules, when it comes to attorneys who violate ethical obligations, making it clear that lawyers have a duty to uphold the rule of law. As a result of the pandemic, summer police protests, and the insurrection, the legal profession was forced to adapt using new technologies promoting increased efficiency, evaluate its diversity goals, and reconsider its ethical obligations and professional standards.

Annotated by: Danielle Bluth

Shaun Ossei-Owusu, Article, *Velvet Rope Discrimination*, 107 VA. L. REV. 683 (2021).

Despite the evolution and expansion efforts of anti-discrimination laws in the realm of public accommodations, racial minorities, women, and members of other legally protected classes are routinely denied access and equal treatment in the world of nightlife. In efforts to regulate the racial and gender makeup of patrons in their establishments and maintain a desired demographic, nightlife establishments engage in various forms of "velvet rope discrimination" through the use of exclusionary practices such as gender-based pricing and unreasonable dress codes. Nightclub and restaurant owners use these practices as a way to evade detection and avoid liability under anti-discrimination laws by denying entry to certain members of otherwise legally protected classes based on arbitrary policies. Consequently, these types of widely employed discrimination practices are demonstrably repugnant to local, state, and federal anti-discrimination laws that are aimed at protecting vulnerable groups from the exact social harms these policies produce. The author suggests that legislating against the use of dress codes for only health and safety purposes and urging judicial rejection of gender-based pricing through anti-subordination principles will most effectively combat these powerful discriminatory weapons used by nightlife facilities. While these would be effective steps in the efforts to eliminate velvet rope discrimination, these types of prejudicial and exclusionary practices continue to exist in many other areas of public accommodations and, in return, affect the social mobilization of racial and gender minorities in many important areas of life.

Annotated by: Brooke Hodgins

Katie Eyer, Article, *Claiming Disability*, 101 B.U. L. REV. 547 (2021).

Despite most Americans being able to qualify as disabled, self-identification is rare, which is largely due to outdated definitions of disability, and the fears of being deemed an "imposter" and experiencing stigma and discrimination. As a result, millions of Americans are not getting the disability benefits that they are entitled to. Initially, the Americans with Disabilities Act Amendments Act had a social welfare basis, meaning that disability status was tied to functional limitations and the inability to work, but the Act has since been amended to become more inclusive and depart from the idea that disability status is linked with functional limitations. The advent of this amendment and disability positive movements, both in-person and on social media and the Internet, has the potential to lead to an increased self-identification as disabled, which could transform the disability rights movement and the disability law sphere. The author finds that looking to other social movements such as the fight for LGBTQ+ rights and the Civil Rights Movement provides an important insight into what steps can be successful in encouraging self-identification. Despite critiques that greater self-identification of disability would lead to vagueness surrounding the definition of disability, issues with representation of the movement, overconsumption of resources, and further stigmatization, the author states that the benefit of more self-identification outweighs the concerns. Self-identification, as well as external identification, is a substantial step in destigmatizing disability status and furthering the civil rights of disabled people.

Annotated by: Olivia Nevola

John Tehranian, Article, *Paternalism, Tolerance, and Acceptance: Modeling the Evolution of Equal Protection in the Constitutional Canon*, 62 WM. & MARY L. REV. 1615 (2021).

When it comes to Equal Protection jurisprudence, there have been two distinct stages of governmental protection that track the evolution of opinions towards minority groups and protected classes. While both of the stages, paternalism and tolerance, offer small victories for marginalized groups, these decisions claiming to be moving towards equality are truly only moving inches as legal regimes continue to hold onto various ideologies of group supremacy while failing to recognize the interest of marginalized communities. The author argues that the solution to achieve truly equal protection is to move to a third stage of acceptance, where governmental protection consists of reception of minority groups and their interests. The author states that to properly move onto this third stage, the government must remove two obstacles that stall acceptance of minority communities, the first being the historical understandings of Equal Protection as based in unchangeable birth classifications that rely on the assumption that certain groups should be protected because they cannot control their classification. By removing this narrow view and accepting and protecting all groups, chosen or not, the door is opened to a true form of equality for historically marginalized groups with a blanket high level of scrutiny. The second obstacle to remove is the history of basing the extension of civil rights in a "they are just like us" mentality. Rather than focusing on the acceptance of differences, the reason for enhanced protection rests in the showing of a similarity or a benefit to the majority. Removing this barrier will allow for not only an acceptance of marginalized groups, but also a celebration of difference that will bolster true equality.

Annotated by: Julia Patz

Casey E. Faucon, Article, *Third Parties with Benefits*, 17 STAN. J.C.R. & C.L. 185 (2021).

Marital relationships involving more than two consenting adults are still prohibited by American law, presenting difficulties for polyamorous individuals and their families in areas such as child custody, legal assistance in abusive situations, or protection from discrimination. While there is no exact number as to how many people are affected by the taboo on polygamy, data suggests millions; whether for religious motives of plural marriages or more liberal, sex-based motives, the non-dyadic marriage and family life appeals to many. Casey Faucon discusses the laws against polygamy, the history of the political polygamist movement, and the biases against it. While many polygamists turn to private ordering, a business-contract type legal regulation between the parties, a commercial approach is not suitable for all poly families, since the dynamics mirror a corporation in rigid rule-setting. Faucon presents a new legal solution: using the third party beneficiary (3PB), a plaintiff who can sue for benefits from a contract between two other parties which intended to advantage this third party. Using 3PB rules, if two parties of a poly relationship draft a contract with explicit language, naming the third party or class in the relationship as a beneficiary with specific benefits in their contract, they could include the 3PB in their support and assets contract. This lends structure to the relationship in a more family-like style of obligations towards other spouses. As polyamorous relationships become more visible but retain criminal status and public disapproval, the 3PB solution could aid many families in finding a way to legal standing.

Annotated by: Elka Wiesenberg