

WILLAMETTE UNIVERSITY COLLEGE OF LAW

SOCIAL JUSTICE & EQUITY
LAW JOURNAL



VOLUME 2
ISSUE 2
JUNE 2019

THE SOCIAL JUSTICE & EQUITY LAW JOURNAL OF WILLAMETTE UNIVERSITY COLLEGE OF LAW

June 2019

VOLUME 2, ISSUE 2

EDITORIAL BOARD

MEGAN IRINAGA
EDITOR-IN-CHIEF

MARGARET DICK
MANAGING EDITOR

DALE WILHELM
BUSINESS & SYMPOSIUM EDITOR

THOMAS YBARRA
ARTICLES EDITOR

CAYLEE CAMPBELL
SENIOR EXECUTIVE EDITOR

TRAVIS MERRITT
EXECUTIVE EDITOR

MIKAYLA FREI
*SR. NOTES & COMMENTS
EDITOR*

SAMANTHA GALIMBA
NOTES & COMMENTS EDITOR

JULIETA CORDOVA
NOTES & COMMENTS EDITOR

BRIDGET LAWSON
NOTES & COMMENTS EDITOR

STAFF

MARYSSA FERRIES

MATTHEW FLORES

CHRIS KILLMER

CHRISTINA LUEDTKE

NATHANIEL WOODWARD

PROFESSOR STEVEN K. GREEN
FACULTY ADVISOR

JOURNAL TABLE OF CONTENTS

LETTER FROM THE EDITORIAL STAFF.....	3
ACKNOWLEDGMENTS	4
TARGETING THE HARM: PROSTITUTION AND THE LAW, SHULAMIT ALMOG.....	5
THE DIFFERENCE DILEMMA IN MASCULINITY STUDIES: THE CREATION OF GENDER CATEGORIES IN ANTIDISCRIMINATION LAW, DYLAN YAEGER.....	33
HAVING THEIR CAKE AND EATING IT TOO: HOW THE SUPREME COURT’S RELIGION JURISPRUDENCE LED TO THE IRRECONCILABLE DECISIONS OF <i>MASTERPIECE CAKESHOP</i> AND <i>TRUMP V. HAWAII</i>, TREVOR R. BYRD	94
VALUING THE DEATH PENALTY, BRANDON H. WILSON	128
FIREARM STOCKPILING AS A SYMPTOM OF THE WHITE PATRIOT IDENTITY OR: HOW WHITES LEARNED TO STOP WORRYING AND LOVE THE GUN, JULIA MARKHAM-CAMERON.	157

LETTER FROM THE EDITOR

Dear Reader,

I have the privilege of introducing the second issue of Volume two of Willamette University's Social Justice and Equity Law Journal (the *Journal*). As our inaugural second issue publication in one academic year, I am incredibly grateful to the staff of this incredible journal for making this academic pursuit a reality.

The *Journal* was formed with one mission: to create an interdisciplinary academic forum in Oregon for scholars, practitioners, policy makers, and students to contribute to society's understanding of legal and policy issues³ concerning social justice and equity. It has been my great honor to uphold and lead the effort of upholding this mission through the labor of love that has gone into this publication.

In our first article, "Targeting the Harm: Prostitution and the Law" author and Professor of Law Shulamit Almog discusses the direct, indirect, subjective and objective harms that come to women engaged in prostitution. Almog conveys the theory of harm through defining the term *social infamy tax* and positing this as an unavoidable precondition to achieving an appropriate legal solution for prostitution.

Published second, is the note, "Having Their Cake and Eating it Too: How the Supreme Court's Religion Jurisprudence Led to the Irreconcilable Decisions of *Masterpiece Cakeshop* and *Trump v. Hawaii*" authored by Trevor Byrd. He is able to convey the Supreme Court's disparate treatment of statements made by government actors and attempts to reconcile the two decisions by a thorough analysis of the similarities and differences in the holdings.

The next note, "Firearm Stockpiling as a Symptom of the White Patriot Identity Or: How Whites Learned to Start Worrying and Love The Gun," written by Julia Markham-Cameron, uses case studies to create a profile: "White Patriot Identity." It is through this identity, formed at the creation of our nation by the Founders, that Markham-Cameron analyzes the rise of the National Rifle Association (NRA). She analyzes the history of gun ownership and how the NRA continues to shape gun legislation, or rather the lack thereof, by purporting and propagandizing the Second Amendment.

Fourth, is the note, "Valuing the Death Penalty" by Brandon Wilson, which addresses the problems of the death penalty including: lack of oversight, extreme costs, and rampant misuse. In the first part of his note Wilson discusses the cost disparity between the death penalty and life without parole. In the second part of his note, Wilson specifies where the extra expense comes from, that creates more expense than life without parole; and in the third section of his note he explains the benefits of scrutinizing capital punishment cases more closely.

Our last article, "The Difference Dilemma in Masculinity Studies: The Creation of Gender Categories in Antidiscrimination Law," written by Dylan Yaeger, discusses the struggle for sex equity. In his article Yaeger illustrates the distinction between formal and substantive equity. In his analysis of anti-discrimination law, he looks specifically at pregnancy, "lack of interest," and gender stereotyping cases; this conveys Yaeger's

theory that in addressing questions of anti-discrimination, the courts are actively engaged in policing and creating masculinity.

The theories and ideas purported by the authors within this publication are not those of the *Journal* or Willamette University College of Law. However, it is our mission to give voice to issues not commonly published by Law Reviews or other non-special interest journals. It is our hope that this publication can foster discussion of change in the interest of social justice and equity for all.

Sincerely,

Megan Irinaga
Editor-in-Chief

* * *

ACKNOWLEDGEMENTS

The editorial staff of the Willamette University Social Justice and Equity Law Journal extends their gratitude to Professor Steven K. Green, Fred H. Paulus Professor of Law at Willamette University. In addition to serving as the *Journal's* faculty advisor he continues to participate in and further the *Journal's* mission through his mentorship.

The editorial staff also appreciate the contributions and guidance of Danial Santos. Mr. Santos is a former Dean of Student Affairs at Willamette University College of Law.

The editorial staff also appreciate Professor W. Warren H. Binford, Director of the Clinical Law Program as a supporter of the *Journal's* mission.

The editorial staff also thank Ms. Galin Brown, Access Services Manager of the Willamette University College of Law Library, and Ms. Mary Rumsey, Reference & Instruction Services Librarian of the Willamette University College of Law Library.

Lastly, the editorial staff thank Felipe Rendon, founding Editor-In-Chief of this journal, without whose efforts this publication would not exist to address legal issues that are often overlooked by mainstream academia.