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UC DAVIS SCHOOL OF LAW

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MADHAVI SUNDER, EDITOR
Senior Association Dean for Academic Affairs and Professor of Law , University of California, Davis - School of Law
msunder@ucdavis.edu

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"Productive Tensions: Women's NGOs, the 'Mainstream' Human Rights Movement, and International Lawmaking"

Non-State Actors, Soft Law and Protective Regimes: From the Margins (Cecilia M. Bailliet ed., Cambridge University Press, 2012).
UC Davis Legal Studies Research Paper No. 422

KARIMA BENNOUNE, University of California, Davis - School of Law

Non-governmental organizations (NGOs) are among the most discussed non-state actors involved in the creation, interpretation, and application of international law. Yet, scholars of international law have often over looked the

critical issue of diversity among NGOs, and the differing stances they may take on key international law issues and controversies. This oversight exemplifies the ways in which international law scholarship sometimes takes overly unitary approaches to its categories of analysis. Feminist international law questions the accuracy of such approaches. When one unpacks the “NGO” category, one often discovers multiple NGO constituencies reflecting conflicting concerns and perspectives. Hence, feminist international law theories should reflect a view of NGOs as international lawmakers that is equally complexified.

This chapter will focus on one example of such NGO diversity, namely the inter-NGO dynamic sometimes found between women's human rights NGOs and what is often termed the “mainstream” human rights movement. These relationships have long been complicated . At times these constituencies are allies with the same international law priorities. At other times they are opponents or at least involved in what might be described as a tense dialogue. Sometimes the "mainstream" human rights groups become themselves the targets of the lobbying of women's human rights groups. Indeed, women’s human rights NGOs and other human rights NGOs may have very different views of particular international law questions . Over time, however, the women's rights groups have often - though not always - prevailed on human rights groups to evolve their view of international law in a more gender-sensitive direction.

This dialectical relationship between women's groups and other human rights groups has played out in numerous arenas, including in the 1990s debate over the definition of torture, and, most recently in regard to the need to (also) respond to atrocities by fundamentalist non-state actors in the context of critiquing the "war on terror:' In each instance, women's groups and other human rights NGOs have sometimes had uneasy, multifaceted and shifting relationships that have shaped critical international lawmaking processes and debates. Groups within both of those broad categories of NGOs have also taken diametrically opposed positions at times. All of these sets of complexities, these putatively productive tensions, have both enriched and rendered more difficult the role of NGOs as lawmakers, and must be reflected in any meaningful theorizing of the issue.

What then should these layered inter-NGO dynamics tell us about our conception of "NGO" as a category of analysis, and about the role of NGOs in the creation and practice of international law? What can analyzing these dynamics tell us about how progress can most successfully be made toward a feminist reshaping of international law? This chapter will consider each of these questions in light of several case studies.

I come at this subject from a range of vantage points, having been an Amnesty International legal adviser, having also worked closely with a range of women's NGOs, and currently as an academic. Hence, I will try to look at these questions at the intersection of both academic and these various practitioner perspectives. To that end, this chapter begins with a brief overview of NGOs and their roles on the international law stage, as described in the literature. An examination of the categories used here follows, interrogating the meaning of the terms, "women's human rights NGO" and "mainstream human rights NGO." Subsequently, the chapter reviews the case studies drawn from practice, first with regard to NGO interaction concerning the definition of torture, and then bearing on responses to the "war on terror." It then concludes with a brief application of the lessons learned from these case studies about the meaning of NGO participation in international lawmaking.

"Administering Section 2 of the VRA After *Shelby County*"

Columbia Law Review, vol. 115 Forthcoming
UC Davis Legal Studies Research Paper No. 372

CHRISTOPHER S. ELMENDORF, University of California, Davis - School of Law
Email: cselmendorf@ucdavis.edu
DOUGLAS M. SPENCER, University of Connecticut, School of Law
Email: dspencer@berkeley.edu

Until the Supreme Court put an end to it in Shelby County v. Holder, Section 5 of the Voting Rights Act was widely regarded as an effective, low-cost tool for blocking potentially discriminatory changes to election laws and administrative practices. The provision the Supreme Court left standing, Section 2, is generally seen as expensive, cumbersome and almost wholly ineffective at blocking changes before they take effect. This paper argues that the courts, in partnership with the Department of Justice, could reform Section 2 so that it fills much of the gap left by the Supreme Court’s evisceration of Section 5. The proposed reformation of Section 2 rests on two insights: first, that national survey data often contains as much or more information than precinct-level vote margins about the core factual matters in Section 2 cases; second, that the courts have authority to create rebuttable presumptions to regularize Section 2 adjudication. Section 2 cases currently turn on costly, case-specific estimates of voter preferences generated from precinct-level vote totals and demographic information. Judicial decisions provide little guidance about how future cases — each relying on data from a different set of elections — are likely to be resolved. By creating evidentiary presumptions whose application in any given case would be determined using national survey data and a common statistical model, the courts could greatly reduce the cost and uncertainty of Section 2 litigation. This approach would also end the dependence of vote-dilution claims on often-unreliable techniques of ecological inference, and would make coalitional claims brought jointly by two or more minority groups much easier to litigate.

"Bait, Mask, and Ruse: Technology and Police Deception"

128 Harvard Law Review Forum 246 (2015)

UC Davis Legal Studies Research Paper No. 423

ELIZABETH E. JOH, University of California, Davis - School of Law
Email: eejoh@ucdavis.edu

Deception and enticement have long been tools of the police, but new technologies have enabled investigative deceit to become more powerful and pervasive. Most of the attention given to today's advances in police technology tends to focus either on online government surveillance or on the use of algorithms for predictive policing or threat assessment. No less important but less well known, however, are the enhanced capacities of the police to bait, lure, and dissemble in order to investigate crime. What are these new deceptive capabilities, and what is their importance?

"Richard Delgado's Quest for Justice for All"

Law and Inequality: A Journal of Theory and Practice, 2015, Forthcoming
UC Davis Legal Studies Research Paper No. 421

KEVIN R. JOHNSON, University of California, Davis - School of Law
Email: krjohnson@ucdavis.edu

This is a contribution to a symposium celebrating Richard Delgado's illustrious career in law teaching. This commentary offers some thoughts on Delgado's contributions to pushing the boundaries of Critical Race Theory – and legal scholarship generally – in seeking to create a more just society. This ambitious program has been the overarching theme to his scholarly agenda throughout his career.

"Leaving No (Nonmarital) Child Behind"

48 Family Law Quarterly 495 (2014)
UC Davis Legal Studies Research Paper No. 414

COURTNEY G. JOSLIN, University of California, Davis - School of Law
Email: cgjoslin@ucdavis.edu

Almost ten years, in 2005, I wrote a piece for the Family Law Quarterly describing the legal status of children born to same-sex couples. This Essay explores the some of the positive and some of the worrisome developments in the law since that time. On the positive side, today many more states extend some level of protection to the relationships between nonbiological same-sex parents and their children. Moreover, in many of these states, lesbian nonbiological parents are now treated as full, equal legal parents, even in the absence of an adoption.

There are other recent developments, however, that should be cause for concern. Specifically, this Essay considers recent legislative proposals that contract (rather than expand) existing protections for functional, nonmarital parents. I conclude by arguing that while advocates should celebrate the growing availability of marriage for same-sex couples, they must also be careful not to push legislative efforts that inadequately protect the large and growing numbers of families that exist outside of marriage.

"Amici Curiae Brief of Family Law Professors in Obergefell v. Hodges"

UC Davis Legal Studies Research Paper No. 420

COURTNEY G. JOSLIN, University of California, Davis - School of Law
Email: cgjoslin@ucdavis.edu
JOAN HEIFETZ HOLLINGER, University of California, Berkeley - School of Law
Email: joanhol@law.berkeley.edu

This Amici Curiae brief was filed in the Supreme Court on behalf of 74 scholars of family law in the four consolidated same-sex marriage cases.

The two questions presented in the cases concern whether the Fourteenth Amendment requires a state to license or recognize a marriage between two people of the same sex. Those defending the marriage bans rely on two primary arguments: first, that a core, defining element of marriage is the possibility of biological, unassisted procreation; and second, that the "optimal" setting for raising children is a home with their married, biological mothers and fathers. The brief demonstrates that these asserted rationales conflict with basic family laws and policies in every state, which tell a very different story.

"Fracking and Federalism: A Comparative Approach to Reconciling National and Subnational Interests in the United States and Spain"

Environmental Law, Vol. 44, No. 4, 2014
UC Davis Legal Studies Research Paper No. 424

ALBERT LIN, University of California, Davis - School of Law
Email: aclin@ucdavis.edu

Hydraulic fracturing presents challenges for oversight because its various effects occur at different scales and

implicate distinct policy concerns. The uneven distribution of fracturing's benefits and burdens, moreover, means that national and subnational views regarding fracturing's desirability are likely to diverge. This Article examines the tensions between national and subnational oversight of hydraulic fracturing in the United States, where the technique has been most commonly deployed, and Spain, which is contemplating its use for the first time. Drawing insights from the federalism literature, this Article offers recommendations for accommodating the varied interests at stake in hydraulic fracturing policy within the contrasting governmental systems of these two countries.

"Access to Justice in Rural Arkansas"

UC Davis Legal Studies Research Paper No. 426

LISA R. PRUITT, University of California, Davis - School of Law
Email: lrpruitt@ucdavis.edu
J. CLIFF MCKINNEY, Quattlebaum, Grooms & Tull PLLC
Email: cmckinney@QGTlaw.com
JULIANA FEHRENBACHER, University of California, Davis
Email: jfehr@ucdavis.edu
AMY DUNN JOHNSON, Arkansas Access to Justice Commission & Foundation
Email: adjohnson@arkansasjustice.org

This policy brief, written for and distributed by the Arkansas Access to Justice Commission, reports two sets of data related to the shortage of lawyers in rural Arkansas. The first set of data regards the number of lawyers practicing in each of the state's 25 lowest-population counties and the ratio of lawyers per 1,000 residents in each of those counties. This data is juxtaposed next to the poverty rate and population of each of county.

The policy brief also reports the results of a survey of Arkansas lawyers and law students, the latter from both the University of Arkansas Fayetteville Law School and the University of Arkansas at Little Rock/Bowen School of Law. These surveys probed respondents' attitudes toward rural practice, among other matters. The policy brief reports a summary of those responses. Finally, the policy brief reports on a 2015 legislative proposal aimed at alleviating the shortage of lawyers serving rural Arkansans.

This policy brief is a forerunner to a fuller, academic analysis of these and other data sets relevant to the geography of access to justice in Arkansas. That analysis will appear in an article that will be published by the University of Arkansas at Little Rock Law Journal (forthcoming 2015). The authors anticipate that these investigations in Arkansas may provide a model for other states concerned about the shortage of lawyers working in rural areas.

"Using Taxes to Improve Cap and Trade, Part I: Distribution"

75 State Tax Notes 99 (2015)
UC Davis Legal Studies Research Paper No. 425

DAVID GAMAGE, University of California, Berkeley - Boalt Hall School of Law
Email: david.gamage@gmail.com
DARIEN SHANSKE, University of California, Davis - School of Law
Email: dshanske@ucdavis.edu

In this article, the first of a series, we analyze the distributional issues involved in implementing U.S. state level cap-and-trade regimes. Specifically, we will argue that the structure of California's AB 32 regime will unnecessarily disadvantage lower-income Californians under the announced plan to give away approximately half of the permits to businesses and pollution-emitting entities.

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BERNARD S. BLACK
Northwestern University - School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)
Email: **bblack@northwestern.edu**

RONALD J. GILSON
Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)
Email: **rgilson@leland.stanford.edu**

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