SOCIAL SCIENCE RESEARCH NETWORK

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
UC DAVIS SCHOOL OF LAW
Vol. 8, No. 6: December 19, 2006

Editor: KEVIN R. JOHNSON
Associate Dean for Academic Affairs, School of Law,
and Mabie/Apallas Professor of Public Interest Law and Chicana/o Studies,
University of California, Davis
KRJOHNSON@UCDAVIS.EDU

T A B L E O F C O N T E N T S

"International Law and Rehnquist-Era Reversals"
UC Davis Legal Studies Research Paper No. 94
Georgetown Law Journal, Vol. 94, p. 1319, 2006

Contact: DIANE MARIE AMANN, University of California at Davis Law School
Email: dmamann@ucdavis.edu
Auth-Page: http://ssrn.com/author=141248

Full Text: http://ssrn.com/abstract=950189

ABSTRACT: In the last years of Chief Justice Rehnquist's tenure, the Supreme Court held that due process bars criminal prosecution of same-sex intimacy and that it is cruel and unusual to execute mentally retarded persons or juveniles. Each of the later decisions not only overruled precedents set earlier in Rehnquist's tenure, but also consulted international law as an aid to construing the U.S. Constitution. Analyzing that phenomenon, the article first discusses the underlying cases, then traces the role that international law played in Atkins, Lawrence, and Simmons. It next examines backlash to consultation, and demonstrates that critics tended to overlook the Court's longstanding tradition of consulting external norms. The article gives the interpretive practice qualified approval. Thus it calls upon Justices both to articulate when it is appropriate to look to external sources and to set forth a framework for consultation. At a minimum, foreign jurisprudence ought to shed the light of experience on issues like those in the case before the Court; it must arise out of a legal culture that shares with the United States a commitment to fundamental rights; and the way in which the jurisprudence influenced the Court must be set forth in a reasoned explanation. Whether the Court would pursue such a path remained uncertain, however, as the era of the new Chief Justice began.

"The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement"
UC Davis Legal Studies Research Paper No. 96
Harvard Civil Rights-Civil Liberties Law Review, Vol. 42, 2007

Contact: BILL ONG HING, University of California, Davis - School of Law
E-mail: bhing@ucdavis.edu
Auth-Page: http://ssrn.com/author=331631

Co-Author: KEVIN R. JOHNSON, University of California, Davis
Email: krjohnson@ucdavis.edu
Auth-Page: http://ssrn.com/author=185338

Full Text: http://ssrn.com/abstract=951268

ABSTRACT: In the spring of 2006, hundreds of thousands of U.S. citizens and immigrants peacefully marched in the streets of cities across the country. Such mass demonstrations advocating for the rights of immigrants are unprecedented in American history. Energy, enthusiasm, and a deep sense of urgency filled the air. The immigrant rights movement initially spread like wildfire. A second wave followed the initial protests. By the summer of 2006, however, there were signs that the immigrant rights movement had lost steam. A series of marches on and around Labor Day attracted far fewer people than those just a few months before. After much skirmishing during the summer, Congress failed to enact comprehensive immigration reform legislation.

This Article focuses on the efficacy of a new, multiracial civil rights movement seeking social justice. We discern decidedly mixed signals about the possibility of such a movement. Despite some promising signs, there are many formidable hurdles before the emergence of a new, multiracial civil rights movement. Among the first hurdles is defining the scope of any movement. Who will participate if there is to be a new civil rights movement? Will it be a Latina/o civil rights movement or a broader one including African Americans? Will the movement address more than immigrant rights? And just who will be its leaders?

Part I of this Article outlines the context and meaning of the 2006 immigration marches and identifies the conspicuous absence of African Americans from the marches. The absence is consistent with the fact that immigration historically has been an issue dividing African Americans, Latina/os, and Asian Americans. Part II analyzes some central features of the civil rights movement of the 1950s and 1960s, the last relatively successful and broad-based mass social movement in America. Partly in response to broad-based political activism, the courts and political branches of government assisted in bringing forth social transformation. Part III considers the potential for a new civil rights movement. We opine that much work will need to be done before a multiracial movement for social change can be created. Specifically, African American-Latina/o conflict will need to be addressed before meaningful social change can be secured. Ultimately, it is unclear whether the immigrant marches will morph into anything more.

"The Discourse of 'Contract' and the Law of Marriage"
UC Davis Legal Studies Research Paper No. 95
Research in Law and Economics, Vol. 22, 2007

Contact: THOMAS WUIL JOO, University of California at Davis Law School
Email: twjoo@ucdavis.edu
Auth-Page: http://ssrn.com/author=173668

Full Text: http://ssrn.com/abstract=951250

ABSTRACT: Marriage is often compared to a "contract." The contract analogy appears to be an argument about the law of marriage based on a settled concept called "contract." But it is in fact an assertion of a contested view of "contract": that legitimate obligation must derive from consent. This focus on consent ignores another, contradictory, strand of contract law that imposes obligations without consent. The pervasiveness of the consent-centered "contract"

analogy affects our understanding of "contract" as much as it affects our understanding of marriage.

"No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession"

UC Davis Legal Studies Research Paper No. 93
Michigan Journal of International Law, Vol. 23, 2002

Contact: LISA R. PRUITT
University of California, Davis - School of Law
Email: lrpruitt@ucdavis.edu

Auth-Page: http://ssrn.com/author=85999

Full Text: http://ssrn.com/abstract=951233

ABSTRACT: Although there have long been black lawyers in South Africa, during apartheid only a handful joined the ranks of the country's large commercial firms. Now, in the post-apartheid period, these firms are keenly aware of a range of economic and political incentives to hire black attorneys, and most are doing so at a record pace. Very few black attorneys, however, are enduring the path to partnership in these firms. Based on more than seventy-five interviews conducted in South Africa in 1999 and 2000, this Article both documents and critically examines the reasons for black attrition. While firms' incentives to integrate include commercial ones associated with clients' newfound attention to the racial diversity of their vendors, such incentives apparently have not yet outweighed the forces impeding integration - some of those forces being incidental to the country's history and politics, some attributable to the institutional characteristics of law firms, and others to the acts of individuals within those institutions.

Although the under-representation of blacks in these firms is frequently attributed to blacks' own failings or choices, Professor Pruitt argues that the lack of integration is also the result of discriminatory actions of white individuals and the institutions they run. Building on the descriptive platform she has laid, Professor Pruitt goes on to construct a model of efficient discrimination with respect to South Africa's elite legal sector, arguing that firms are able to survive in the new marketplace, even absent retention of black attorneys, because the actual power of the incentives to integrate does not match the rhetoric around it. In addition, because no firm is achieving integration and thereby taking advantage of existing incentives, the integration quotient is not being raised, leaving firms effectively unchallenged by the market to retain and promote black lawyers.

To submit your research to SSRN, log in to the SSRN User HeadQuarters, http://hq.ssrn.com, and click on the My Papers link on the left menu, and then click on Start New Submission at the top of the page.

D I S T R I B U T I O N S E R V I C E S

If your Institution is interested in learning more about increasing readership for its research by becoming a Partner in Publishing or starting a Research Paper Series, please email: Management@SSRN.com.

D I S T R I B U T E D B Y

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing, Inc. (SSEP) and Social Science Research Network (SSRN)

SITE LICENSE MEMBERSHIP

Many university departments and other institutions have purchased site licenses covering all of the journals in a particular network. If you want to subscribe to any of the SSRN journals, you may be able to do so without charge by first checking to see if your institution currently has a site license.

To do this please click on any of the following URLs.
Instructions for joining the site are included on these pages.

Accounting Research Network
http://www.ssrn.com/update/arn/arn_site-licenses.html

Economics Research Network
http://www.ssrn.com/update/ern/ern_site-licenses.html

Entrepreneurship Research & Policy Network
http://www.ssrn.com/update/erpn/erpn_site-licenses.html

Financial Economics Network
http://www.ssrn.com/update/fen/fen_site-licenses.html

Legal Scholarship Network
http://www.ssrn.com/update/lsn/lsn_site-licenses.html

Management Research Network
http://www.ssrn.com/update/mrn/mrn_site-licenses.html

Social Insurance Research Network
http://www.ssrn.com/update/sirn/sirn_site-licenses.html