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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
UC DAVIS SCHOOL OF LAW

Vol. 10, No. 2: Mar 18, 2008

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"Are Statutes Constraining Gubernatorial Power to Make Temporary Appointments to the Senate Constitutional under the Seventeenth Amendment?"

Hastings Constitutional Law Quarterly, Vol. 35, 2008
UC Davis Legal Studies Research Paper No. 131

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Last summer, when Republican U.S. Senator Craig Thomas died, a Wyoming statute obligated the state Governor,

a Democrat, to pick a replacement (to serve until an election was held) from among three names submitted by state Republican party leadership. At least two other states have statutes that similarly obligate governors to temporarily fill Senate vacancies using short lists compiled by state party officials. This Article argues, based on the text, structure and history of the Seventeenth Amendment and related provisions and concerns, that such statutes violate the Constitution.

"Legal Services Support Centers and Rebellious Advocacy: A Case Study of the Immigrant Legal Resource Center"

Washington University Journal of Law and Policy, 2008
UC Davis Legal Studies Research Paper No. 132
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Public interest lawyers and clinical law faculty are quite familiar with the strategies of rebellious or collaborative lawyering set forth forcefully by scholars such as Gerald López, Lucie White, and most recently Ascanio Piomelli. Some of the principles include educating clients and communities to support resistance; opening ourselves to being educated by clients, communities, and allies; respecting and not subordinating our clients; collaborating with clients and allies; recognizing that collaborative advocacy can lead to extremely challenging battles; and understanding that the rebellious style involves integrating and navigating many worlds. These principles have been adopted by those aspiring to practice in a manner that not only seeks to make systemic changes on behalf of subordinated communities, but that also empowers clients themselves to seek social change on their own behalf.

The world of legal services to subordinated communities also includes support or backup centers that provide training, consultation, advice, and support to services providers at the frontlines, as well as educational outreach to low income communities. This article hopes to illustrate that the work of support and backup centers is quite conducive to practicing in the collaborative approach. And many of the practice examples described can, in fact, be incorporated into the day-to-day work of law school clinical programs and direct services law offices.

The work of one particular legal services support center, the Immigrant Legal Resource Center (ILRC), is of particular interest to me. The ILRC is the outgrowth of an immigration law clinic that I started in 1979, and the ILRC has endeavored to practice social change lawyering through a collaborative, rebellious style since its inception. While I provide a brief review of many ILRC programs, this article more fully describes ILRC's work to build capacity among immigrants and refugees and the organizations that serve them to enhance the engagement and influence of newcomers in American civic life.

"The Devastating Impact of the Initiative Process on Latino and Immigrant Communities"

California Law Review, Forthcoming
UC Davis Legal Studies Research Paper No. 133
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This article is forthcoming in a symposium issue of the California Law Review. Although popular in many states, direct democracy remains alive and well. Recent years have seen a fascinating twist in the deployment of initiatives. In pursuit of a conservative political agenda, activists have begun to employ initiatives as a last resort to head off civil rights gains of racial and other minorities. Showcase examples include the rejection of affirmative action by the voters of California and Michigan through initiatives after courts declined to bury race-conscious admissions in higher education. Similarly, in response to governmental policies believed by many voters to be too liberal, immigrants - disproportionately Latina/o in modern time - also have suffered initiative setbacks with reduced access to public benefits and services, English-only laws, and the elimination of bilingual education in the public schools.

This article focuses on the devastating impacts of lawmaking by initiative on Latina/os and immigrants. The question is whether there is anything to be done to help ensure fundamentally fair treatment of political minorities, especially discrete and insular minorities who may be discriminated against and punished with impunity by the majority in the electoral process.

Latina/os are minorities who often have suffered the disfavor of the majority in the political process. Their lack of political power as a minority is exacerbated by the fact that a significant portion of the community is composed of noncitizens, who lack the right to vote. Immigrants themselves historically have been nothing less than sitting ducks for fear and loathing, which has repeatedly resulted in their harsh treatment in U.S. history.

Part I of the article outlines the special political process defects that severely handicap Latina/os and immigrants in the United States. Part II offers concrete illustrations of the operation of the process defects. The article demonstrates that the political difficulties facing Latina/os and immigrants, many of whom are barred from voting and thus experience the diminution of their raw political power, are greater in direct democracy than those facing racial and other minority groups that lack a significant noncitizen component. To ameliorate the political process defects diluting the electoral power of people of color and immigrants, Part III advocates more scrutinizing - and less deferential - judicial review of initiatives that implicate the rights of Latina/os, as well as other racial minorities, and immigrants.

"Of Spaces and Spheres: What Critical Geography Can Teach Law about Rural Women"

UC Davis Legal Studies Research Paper No. 129

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Like other legal scholars, feminists often think about social change over time, using history as a lens to reveal disadvantage and injustice. They have demonstrated, for example, that the public/private divide and related separate spheres ideology are socially contingent developments based on evolving perceptions of women and gender roles. Shifts in such perceptions have thus informed legal changes, and vice versa.

This Article argues that a more grounded and more nuanced understanding of women's lived realities requires legal scholars to engage not only history, but also geography. Because spatial aspects of women's lives implicate inequality and moral agency, they have direct relevance to an array of legal issues. I thus deploy the tools of critical geographers - space, place, and scale - to inform law and policy-making about an overlooked population for whom spatiality can be a profoundly influential force: rural women.

"Disputants' Perceptions of Dispute Resolution Procedures: A Longitudinal Empirical Study"

UC Davis Legal Studies Research Paper No. 130

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Disputants who file claims in civil court have a multitude of procedural options. They can settle via negotiation, mediation, arbitration, trial or a host of other alternatives. To the extent that courts and lawyers want to competently advise disputants about how various procedures might satisfy their needs, legal professionals face the challenge of understanding how disputants initially evaluate their options, and how they perceive procedures after they have experienced them. To date, empirical studies of actual civil disputants have examined their perceptions of procedures almost exclusively after their disputes have ended. Moreover, none of the published research has assessed their perceptions both before and after experiencing a dispute resolution procedure for the same dispute. The relevant research as a whole, then, appears to disregard important ways in which disputants' perceptions might be dynamic. To fill this significant gap in the literature, we present the first pre-experience (ex ante) and post-experience (ex post) longitudinal field study of actual civil disputants. Consistent with previous laboratory research, we found that disputants initially evaluated their options on the basis of the relative control they offered disputants as opposed to third parties. We also found that initial attraction to third party control predicted ex post satisfaction with adjudicative procedures. However, initial attraction to disputant control did not predict ex post satisfaction with nonadjudicative procedures. This pattern suggests that adjudication met disputants' expectations but nonadjudicative procedures failed to do so. Recommendations for court policy and future research are discussed.

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