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Foreword

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Editor in Chief's and Executive Acquisitions Editor's Foreword

As we discussed in our last issue, this year has been fraught with a racial reckoning against the backdrop of an unrelenting pandemic. To top it off, we are in an election year that has exacerbated deep divides in this country, revealing the lingering oppressive systems the United States of America was founded on. Commentators further described this election as representing a choice between two Americas.

In a cruel twist of fate, what many people feared would happen happened: Justice Ruth Bader Ginsburg passed away with an unfulfilled dying wish that she not “be replaced until a new president is installed.” Swiftly and predictably, our country’s elected officials, via the vague constitutional mechanisms of the nomination and confirmation processes, replaced Justice Ginsburg—who was known as a fierce advocate for Women’s Rights and a defender of abortion rights—with Amy Coney Barrett, who appears to have polar opposite views when it comes to interpreting the Constitution and whether it protects a woman’s right to choose at all.

Feminists and women’s rights advocates have voiced feelings of complicated grief over the death of Justice Ruth Bader Ginsburg. For many women of color, Indigenous People, immigration, and prison reform activists, understanding the legacy of her jurisprudence is unavoidably and necessarily complex. In *Overton v. Bazzetta*, Justice Ginsburg voted to increase barriers to visiting restrictions for incarcerated people. And despite her vote for recognizing tribal sovereignty in *McGuirt v. Oklahoma*, Justice Ginsburg failed to support Indigenous People’s rights for most of her time on the Court, in cases like *United States v. Navajo Nation*, *Strate v. A-1 Contractors*, and *City of Sherrill v. Oneida Indian Nation of New York*. In one of her last cases, *Department of Homeland Security v. Thuraissigiam*, Justice Ginsburg voted against ensuring due process rights for an asylum seeking migrant, a damning decision for refugees with habeas corpus claims.

Still, we remember Justice Ruth Bader Ginsburg for the hundreds of sex discrimination cases she litigated before joining the Court, for her essential and innovative gender jurisprudence, and fiery dissents in cases like *Burwell v. Hobby Lobby*. Yet, as is our duty as students with the privilege of pursuing a legal education, we also remember her fully: as a privileged white woman who had a limited understanding of issues of race, migration status, and class that had lasting effects for countless marginalized individuals subject to the reach of her decisions. In this way, she reminds us of how far the fight for

gender equality has come, and how far the Court, and equality-related jurisprudence, has to go. We are reminded of the integral lived perspectives and embodied knowledge that still have no voice in the law or on the Court. In her death, we experience the sober reminder of how much power nine of the most elite and privileged persons in the institution of law wield over the lives of so many disenfranchised folks in this country.

In this issue, we unearth the structures of legal processes and representations of the United States Constitution that merit critical examination for the important effects they have in the day to day lives of countless individuals in this country. We contend that the United States Constitution has not fulfilled its promises of equality.

We open up the issue with Richard Delgado and Jean Stefancic's critical essay questioning the persistence of civil rights organizations to pursue litigation under the equal protection clause, despite the fact that it has a low rate of success to actually advance the interests of outsider groups. They argue that better and more productive means of advancing the goals of people of color exist, such as street demonstrations and voting—something we are seeing more of today.

Norman Spaulding's essay on procedural due process analyzes how the judicial and academic discourse on procedure is disconnected from how it actually plays out in reality and often fails ordinary people. In this essay, he examines the actual administration of justice in state courts, state and federal administrative agencies, and private administration—the forum where most ordinary people interact with our legal system. Spaulding ends this essay by calling for a reconceptualization of both pedagogy and procedural doctrine.

This issue concludes with two student notes. The first, which our Editor in Chief Richelle Joy Gernan authored, explores avenues of constitutional change to achieve substantial and effective protection of the rights of Black, Indigenous, People of Color, and other marginalized folks. It is a comparative analysis of constitutional provisions to amend governing documents as well as constitutional provisions to promote equality. Gernan ends with the suggestion that we must seriously consider rewriting the United States Constitution if we want to fully achieve the equality that will allow us to repair past wrongs and design a more egalitarian future. The second note, contributed by our fellow UC Hastings student Noelani Nasser, is a critical historical account of the United States' overthrow of the Hawaiian monarchy that demonstrates the atrocities and injustices of American imperialism. This imperialist agenda was made possible by a systemic disregard of the value of Native Hawaiian culture and people.

At the same time that this country's shortcomings are becoming fully exposed, the durability of our Democracy is being challenged in front of our eyes. The veil has been pulled back for more privileged Americans,

uncovering the persistent injustices that have always existed. The same processes that have historically left Black, Indigenous, People of Color disenfranchised and marginalized have begun to affect more Americans, causing many to panic and fear the end of this country as they knew it. But for many of us, this vision of a free and accepting America has never been a reality. To borrow words from poet and author Nayyirah Waheed, “I don’t pay attention to the world ending. It has ended for me many times and began again in the morning.” The year 2020 has externalized and demonstrated in exponential ways the constant necessity for us to be resilient amidst unyielding pain and suffering.

It is in the spirit of acknowledging the worst in America and still finding within it hope for a more promising future that we do this work. We would be remiss to not recognize the labor that was contributed to this issue, not just by the authors, but by the editors of the *Quarterly*. We extend our appreciation to all of you.

Respectfully,

Richelle Joy Gernan and Cecilia Salem
Editor in Chief and Executive Acquisitions Editor, Volume 48
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