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ABSTRACT CONTENTS

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JOURNAL CONTENTS

MOVEMENT LAWYERING: A SOCIAL INNOVATION TO ACHIEVE CLIMATE JUSTICE

Josephine Balzac-Arroyo

Social movements emerge when a fundamental injustice is caused by unjust laws. The unjust laws perpetuating the injustices of climate change are exactly the type of social problems that propel social innovation and movement lawyering processes with a goal to solve the systemic issue and achieve meaningful social change. This Article analyzes whether movement lawyering, an innovative approach within the legal community, utilizes similar processes as social innovation with the intent to bring about systemic social change through the breaking down of hierarchical lawyer-client relationships. A comparative analysis is conducted between the main themes of movement lawyering and the definitions and pathways of social innovation. A model case study is provided by showcasing the Climate

Defense Project, as climate movement lawyers, advancing climate justice by filling the gap in the legal landscape by supporting front-line climate activists through integrated advocacy. Ultimately, the Article concludes that movement lawyering is a socially innovative approach that combines legal theories with co-creation and empowering communities with the goal of achieving systemic social change.

TICKET TO RIDE: EXPANDING FREE AND SUBSIDIZED SCHOOL-AGED YOUTH TRANSIT ACCESS TO REDUCE FRICTION, DISMANTLE POLICE-MINORITY YOUTH INTERACTIONS, AND DECRIMINALIZE LOW-LEVEL TRANSIT MISCONDUCT

Sarah Husk

In 2019, New York City announced a crackdown on transit crime, specifically fare evasion—despite the fact that such a measure was unlikely to recoup unrealized revenue, was certain to be detrimental to minority youth, and even had the potential to incite violent conflict between youth and police. The legacy of broken windows policing in New York City and the persistent and escalating surveillance of bodies of color provides critical context for problematizing this policy change. This Article identifies the problems with such an approach, focusing primarily on the historical and

contemporary context and ongoing detrimental impact of overpolicing on youth of color. It argues that education system-based reforms are an adept mechanism to mitigate these problems and further contends that expanding youth transit access has the potential to functionally decriminalize low-level youth transit crimes, such as turnstile jumping, by providing youth with unlimited free transit access and thus obviating the criminality of fare evasion among qualifying students. In proposing these reforms, this Article considers Boston's recent expansion of its youth transit access initiatives and identifies Boston's approach as a potential model for New York City.

RESOLVING SMALL CLAIMS ON A LARGE SCALE: A PROCEDURAL PREFERENCES STUDY

Jing-Huey Shao

This study deals with generally ignored, yet important, small claim class disputes. When the cost and the time required to handle such disputes prevents rational individuals from pursuing the rights they are entitled to, unscrupulous enterprises can easily extract benefits from the general public and cause harm to the commercial environment and society. Many jurisdictions hence have devised specific types of class actions or group litigations to remedy this situation. However, some of the dispute resolution mechanisms have rarely been utilized as expected. While improvements in such mechanisms require knowledge of the factors influencing them, there has not been a well-developed theoretical framework by which to account for small claims procedural preferences on a large scale.

In this study, a framework is proposed for the purpose of evaluating procedural preferences for small claim class disputes in order to provide a theoretical explanation of how people are influenced by the following two iconized criteria: joining rules and standing/representation. The results show the following: (1) an opt-out design is more preferred to an opt-in design when considering both substantive and intangible costs; (2) jurisdictions influenced by Chinese culture or collectivist nature prefer representation by public officials or entities to solve their problems; and (3) aggregated mechanisms (e.g., joinder claims) and representation are both more preferred to pursuing rights individually in small claim class disputes. It is hoped that this study will contribute to the body of knowledge on people's procedural preferences in small claims in class form and will support reforms with better features that conform to the behavioral preferences of those concerned.

THE COLOR OF COLLATERAL DAMAGE: THE MUTILATING IMPACT OF COLLATERAL CONSEQUENCES ON THE BLACK COMMUNITY AND THE MYTH OF INFORMED CONSENT

Trevor I. Shoels

The rights of the convicted have long been constrained by the relentless imposition of collateral consequences of criminal convictions. More specifically, collateral consequences of drug convictions have a disparate impact on the Black community due to over-policing of Black neighborhoods. Consequently, Black people are over-prosecuted, leading to more convictions and ultimately making them the primary victim of collateral consequences. Certain collateral consequences almost exclusively affect Black people and are strikingly similar to Jim Crow laws. Similar to Jim Crow laws, these collateral consequences prohibit the Black convicted from public housing,

welfare assistance, financial aid, the ability to vote, the ability to receive certain jobs and licenses, and more.

Collateral consequences are considered categorically different from forms of direct punishment like fines, jail time, and probation. Due to this deceptive distinction, there is no notice requirement for collateral consequences at the plea stage. Thus, many defendants will accept deals for guilty pleas, completely unaware that collateral consequences will affect them for what could be the rest of their lives. In regard to this mockery of justice, this Article implores the argument that the informed consent requirement, as it stands, is a myth.

This Article discusses the constitutional implications surrounding the prejudicial imposition of collateral consequences and the blurred distinction made between collateral consequences and direct punishment. In doing so, this Article proposes (1) Congress employ a legislative overhaul to remove prejudicial collateral consequences, (2) the United States Supreme Court change the standard of judicial

review from the rational basis test to strict scrutiny and extend their holding in *Padilla v. Kentucky* to apply to all collateral consequences, and (3) federal and state legislators enact legislation aimed at placing procedural safeguards—like a notice requirement—at the plea stage.

ASSUMED CORPUS AND PRESUMED CORPUS TO SAVE THE ENVIRONMENT: WHEN *URINE* GREEN SPOTS, ON NATURE TRAILS, AND SLOPPING THROUGH SOIL

Carmen M. Cusack

This Article advises that assumed corpus and presumed corpus are replacements for empathy and sympathy; collective effervescence, collective conscience, and superego; and fight or flight. They may be used to save the environment. Section II states that assumed corpus is the belief that one has experienced others' triumphs. It supposes the details and assumes that one has embodied or may embody those experiences. Therefore, one is or will be successful. Section III states that presumed corpus is when the details and the embodiment are imagined. The person is inexperienced and presumes to be safe. Sections IV through VI respectively discuss empathy and sympathy; collective effervescence, collective conscience, and superego; and fight or flight. An act

as basic as strolling down a nature trail may help to save the environment. Section VII discusses legislative history and issues; and Section VIII discusses environmental law enforcement strategies. Two thoughts may impede a clear understanding of a nature trail, which is required to save the environment. Discussed in Section IX covering enjoyment of nature, these are the thought of oneself as being invincible and the thought of oneself as being capable of coexisting without saving nature. The Article concludes in Section X.

THE REASONABLE PERSON AS MACINTYREAN CHARACTER: STANDARDIZED MORAL COMPETENCE IN MODERNITY

Michael Bruce Hill

Prevailing communitarian interpretations of modernity focus on the individual will as an appetitive organ. The orthodox Kantian view, however, is more complex. In Immanuel Kant's view it represents a convergence of certain anthropological, sociological, physical, and psychological facts. That convergence is also captured normatively by reasonableness cognates in the American legal system. Benjamin C. Zipursky shows, through private law, that Americans are bound to moderation-in-action and mutuality-in-personhood. With that in view, the common law tracks Kant's requirements for validity in willing, supplying citizens a shared impersonal standard of conduct grounded in moral competence. The ethico-juridical embodiment of that standard—the

reasonable person and their use of reasonable care—represents a challenge to the communitarian critique of modernity. It highlights the self-defeating nature of communitarian attempts to restore moral standards by subverting the state. Insofar as the state secures the jurisdiction of private law, communitarian efforts to attack the state simultaneously undermine the standards communitarians wish to restore. This Article will illustrate this principle through the literary analytic of Alasdair MacIntyre by applying it to right-wing politics in America.

THE IMPACT OF WELFARE REFORM ON DUAL-DIAGNOSIS DISABILITY CLAIMANTS AND THEIR REPRESENTATIVES: LESSONS FROM THE DISABILITY DENIALS PROJECT AT GREATER BOSTON LEGAL SERVICES

Alessandra Suuberg

In the 1990s, driven in part by widely publicized concerns about government benefits funding or enabling substance abuse, Congress implemented sweeping reforms of the nation's welfare system ("Welfare Reform") that included stricter eligibility rules for Social Security disability benefits. Starting in 1997, dual-diagnosis claimants with co-occurring addiction and mental health disorders faced a heightened standard when applying for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). Under the Social Security Administration's new rules, claimants had to demonstrate that their functioning

would not improve to the point of non-disability if they stopped using drugs or alcohol. The new rules led to a loss of benefits for more than 100,000 beneficiaries in the first year, and they continue to pose challenges for claimants and their representatives today. Between 2019 and 2020, the Disability Denials Project at Greater Boston Legal Services (GBLS), a non-profit legal aid provider, revealed that GBLS had been losing an estimated 80% of its SSDI/SSI cases involving substance abuse, in contrast with a roughly 34% loss rate across all SSDI/SSI cases handled by the organization. Closer examination of GBLS's addiction cases highlighted the following four potential areas for further study 25 years after Welfare Reform: an emerging circuit split over the burden of proof in dual-diagnosis disability cases; a parallel evolution of medical and legal views on substance abuse; the 1996 reforms' driving assumption that disability payments incentivize addiction; and the reforms' impact on practitioner decision making in cases involving substance abuse.