



INTRODUCTION

Welcome to the twelfth annual publication of *The Dukeminier Awards: Best Sexual Orientation and Gender Identity Law Review Articles*. Each year, hundreds of scholars, lawyers, judges, and law students publish articles on law and policy regarding sexuality, sexual orientation, and gender identity. *The Dukeminier Awards*, produced by The Williams Institute and students at the UCLA School of Law, recognizes the best among these articles.

We publish *The Dukeminier Awards* to advance the following goals:

- To encourage scholars to begin or continue writing about sexuality and gender identity law and public policy and to provide valuable support and recognition for those who do so;
- To disseminate outstanding scholarship regarding sexuality and gender identity to the general public, as well as to lawyers, judges, legislators, and policymakers; and,
- To stimulate critical thought on cutting-edge topics and inform ongoing legal, political, and academic debates.

Producing *The Dukeminier Awards* also offers a unique educational experience to students here at UCLA School of Law. The Sexual Orientation and Gender Identity Workshop, an annual seminar taught by the senior Williams Institute Law Teaching Fellow, provides a forum for students to read, think critically about, and ultimately vote on which articles constitute the best sexuality and gender identity scholarship of the year.

The process for selecting this year's *Dukeminier Award* winners began in fall of 2013, when a committee of law professors from various institutions reviewed every article related to sexuality and gender identity law published between September 2012 and August 2013. From an initial pool of over 150 articles, this committee, informed by nominations from students and professors from all over the country, selected fifteen articles to advance to the final stage of review—the Sexual Orientation and Gender Identity Workshop. The fifteen finalist articles comprised the core readings for this seminar.

Each week during the seminar, students assessed one or two of the finalist articles' substantive contributions to the field, their arguments' strength and rigor, and their craft, style, and methodology. In addition to reading at least one finalist per class, students also read supplemental materials—either cases or related scholarly works—to inform their evaluations of each finalist and bolster their understanding of the issues implicated therein.

The finalists this year touched on a variety of topics, including: transgender inmate safety in light of state and federal protections against prison sexual assault; the impact of “Don’t Ask, Don’t Tell” and its repeal on female servicemembers; local ordinances requiring government contractors to adopt LGBT-related workplace anti-discrimination policies; “pinkwashing,” or the touting of pro-LGBT state policies to distract attention from other human rights abuses; access to justice for Asian American, Native Hawaiian, and Pacific Islander LGBT youth; the rights and duties of formal versus functional parents; “black versus gay” discourse in judicial and media accounts of transracial adoption by LGBT parents; the field of social science research investigating how lesbian and gay parenting affects children’s wellbeing; the popular fear that exposing children to homosexuality will “turn” them queer; public debates over the retention of Singapore’s male sodomy law; same-sex marriage backlash and the role of courts in creating social change; and the desirability of making formal access to state institutions like marriage and the military a central priority for mainstream LGBT advocacy.

The three articles that emerged from this dynamic and exciting body of scholarship as *Dukeminier Award* winners are similarly diverse in their topical focus. Each of these winners stands out in its originality, advocating novel approaches that promise to break new ground in ongoing debates among legal scholars and practitioners in the LGBT community and beyond. The winners are:

- **Luke A. Boso, *Urban Bias, Rural Sexual Minorities, and the Courts*, 60 UCLA L. REV. 562.**

Dominant narratives about sexual minorities assume that homosexuality is incompatible with rural life. The very act of authenticating oneself as a lesbian, gay, or bisexual person is typically associated with a “coming out” process that involves publicly claiming one’s sexual identity status and assimilating into an urban gay community. Boso identifies how this largely unexamined urban bias penetrates LGBTQ politics, popular discourse, and legal analysis alike, minimizing the experiences of sexual minorities who lack the economic resources or desire to move away from their rural locales. Urban bias, Boso argues, undercuts the agency of rural sexual minorities who choose not to move, undervalues the burdens that accompany severing ties to one’s communities of origin, and places the onus on individuals to liberate themselves from discrimination. Judges perpetuate these problems by infusing urban bias into legal analysis in two ways: by invoking common aspects of rural life to dismiss sexual minorities’ discrimination claims and by ignoring the rural context when it would bolster sexual minorities’ claims for protection in other areas. As a result, the rural context diminishes sexual minorities’ access to justice, compounding the vulnerability of an underserved population already facing significant economic and geographical marginalization.

- **Charlton C. Copeland, *Creation Stories: Stanley Hauerwas, Same-Sex Marriage, and Narrative in Law and Theology*, 75 L. & CONTEMP. PROBS. 87.**

LGBTQ activists frequently use narrative, or the personal perspectives of members of marginalized groups, as a way of challenging stereotypes and increasing support for their cause. Particularly in the context of same-sex marriage advocacy, the use of narrative has been primarily aimed at mainstream publics outside the LGBTQ movement, such as legal decision-makers, with the goal of fostering empathy and identification with LGBTQ people. Copeland evaluates this use of narrative in same-sex marriage advocacy through a critical comparison with the use of narrative in quite a different context: “narrative theology,” a scholarly movement within contemporary Christian theology that emerged to offset the discipline’s perceived liberal leaning. Narrative theologians, much like critical race scholars in the legal academy, use narrative to amplify the voices of those excluded from the mainstream and to challenge the dominant paradigms that generate their exclusion. For narrative theologians in particular, the objective is to cultivate the common values and religious tenets that position Christians as “outsiders”—to celebrate the collective group identity that differentiates this group from the mainstream. For marriage equality advocates, by contrast, the use of narrative serves more to highlight the values that LGBTQ “outsiders” share with the heterosexual mainstream, or to minimize the differences between same-sex couples and “everybody else” which might serve as the basis for same-sex couples’ exclusion from marriage. Some within the movement have critiqued this use of distance-minimizing narratives, saying that it hinges the social acceptance of LGBTQ people on their assimilation of dominant sexual mores and idealized social institutions. Copeland offers the narrative theology approach as resource for LGBTQ advocates who take this critique seriously or who otherwise hope to cultivate movement solidarity by embracing, rather than downplaying, alternative forms of intimacy that remain highly stigmatized.

- **Dolovich, Sharon, *Two Models of the Prison: Accidental Humanity and Hypermasculinity in the L.A. County Jail*, 102 J. CRIM. L. & CRIMINOLOGY 965.**

The K6G unit of L.A. County’s Men’s Central Jail, which houses gay and male-to-female transgender inmates, is virtually free of the problems that tend to define typical prison life: gang politics, hypermasculine posturing, and the endemic threat of sexual victimization and other physical violence. Drawing on original data gathered from within the L.A. County Jail, Dolovich analyzes the key features that distinguish the K6G unit from the standard model of prison life (in the Jail’s general population) and enable K6G’s relatively safer and more humane carceral conditions. Dolovich emphasizes a unique set of structural arrangements—including the unit’s impermeable boundaries to keep out would-be predators, the respectful and trustworthy demeanor of its supervising officers, the certainty of automatic reassignment for re-offenders, and the popular interest in the unit’s success—which combine to create a collective sense of safety among its residents. Whereas the constant fear of violence causes general population residents to self-protect through tough posturing, emotional repression, and even anticipatory attacks, the absence

of such vulnerability in the K6G unit enables residents to relax, show emotion and creativity, and reject newcomer's efforts to introduce gang politics into the unit. While the sexual identity of the K6G residents may have contributed to some of its positive developments, sexual identity is an insufficient explanation on its own, and as Dolovich explains, overemphasizing its causal role requires a reliance on unfounded assumptions regarding inmates' innate preferences and abilities. By looking instead to how K6G's structural features may contribute to its residents' psychologically healthier carceral experience, Dolovich offers productive insights into the types of penal reforms that could effectively restructure and humanize carceral conditions more broadly.

This volume of *The Dukeminier Awards* also recognizes two winners of the Williams Institute's annual student writing competition: **Gregory K. Davis' "A Bottom-Up Approach to LGB Defamation: Criticizing Narratives of Public Policy and Respectability"** and **Natalie Knight's "Keeping Closets in Our Classrooms: How the Qualified Immunity Test Is Failing LGBT Students."**

Davis' comment concerns LGB defamation cases, where a plaintiff has alleged injuries resulting from the false imputation of homosexuality or bisexuality. Most courts today, with the encouragement of mainstream LGBT advocates, look to the existence of state and local laws to determine whether an imputation of homosexuality would be defamatory in that jurisdiction; if these laws exist, the assumption goes, there must be sufficient support for LGB people such that falsely identifying someone as LGB should not cause great harm to his or her reputation. Davis argues that this "top-down" approach to LGB defamation inaccurately offers formal measures as a stand-in for community norms—an assumption that is particularly problematic in poor, rural, and racial minority communities marginalized by the political process—and circumscribes the remedies available to people living in the many communities where homosexuality imputations can still be quite harmful. Davis argues that the courts should instead take a bottom-up approach, which takes into account a plaintiff's actual community situation, and the particular norms that constitute that community, to make a more realistic determination of the likely reputational effects of falsely identifying someone as LGB.

Knight's comment explores the privacy rights of LGBT students who are "outed" to their parents by public school officials. Despite recent advances, homophobia remains pervasive in many schools and homes, endangering and obstructing progress for LGBT youth. Knight draws attention to one area where the hope for progress appears especially dim: the unauthorized disclosure of a public school student's sexual identity to her parents. In particular, Knight highlights how the qualified immunity doctrine presents a seemingly insurmountable hurdle for public school students wanting to establish and protect a right to informational privacy in this area. Qualified immunity prohibits lawsuits against public employees *except* where there is a violation of an established constitutional right. Yet when that right is the right of public school students to be free from disclosure of their sexual identities, precedent cannot establish that right because those students are incapable of filing suit to establish such a right. The qualified immunity doctrine thus



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puts LGBT students in an impossible paradox of requirements, blocking effective resolution of this important problem.

A final word regarding the online publication format for these outstanding articles and student comments: *The Dukeminier Awards* is published exclusively online. The winning articles appear exactly as they did in the journals that first published them. The winning student comments are published on the Williams Institute website and are also available via WestLaw and Lexis.

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