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Isaac Marks Memorial Lecture

YOUR STAKE IN AMERICA *Bruce Ackerman & Anne Alstott* 249

Economic inequality has dramatically increased over the last quarter century. Many seem resigned to life in a country where the top twenty percent appropriate virtually all the gains from growth. But what would our society look like if America made good on its promise of equal opportunity by granting every law-abiding high school graduate a citizen's stake of \$80,000?

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DEFINING MALE AND FEMALE:

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A number of federal and state statutes utilize the terms "male," "female," and "sex." None of these enactments, however, define these terms because legislators assume that these words are unambiguous. Disciplines other than law recognize that millions of people are intersexed and have ambiguous or noncongruent sexual attributes. Based upon a number of recent studies, some experts in the medical community and in other disciplines are questioning some of their long-held assumptions about the factors that should be used to determine sex assignment. This Article critiques the currently accepted binary sex

classification system that emphasizes biological factors, such as chromosomes, gonads, and genitalia over self-identification in determining an individual's legal sex. It recommends that legal institutions look to other disciplines such as medicine, psychology, anthropology, and history and reassess how legal institutions should interpret the words sex, gender, male, and female.

END-OF-LIFE DECISION MAKING,
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In addressing how end-of-life decisions should be made, courts have mandated the use of a hierarchical model in which one person is provided sole decision-making authority. However, this exclusionary approach fails to consider the well-being of a range of individuals deeply affected by these decisions. In contrast, a consensus-based model has been widely endorsed and applied by health care providers. The integrated principles of Therapeutic Jurisprudence and Preventive Law and data from an empirical study of laypersons provide further support for a consensus-based model.

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Therapeutic Jurisprudence asserts that law—rules, procedures, and roles—can psychologically help or harm people. Therapeutic Jurisprudence also accepts that other values, such as social control or efficiency, may override the goal of enhancing psychological well being. This Article examines how sexual predator laws are being implemented in some states and concludes that these laws are doing such serious psychological harm to offenders, staff, and the community that Therapeutic Jurisprudence must take a normative stance and insist on change.

LEGAL PLANNING FOR UNMARRIED
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This Article applies the perspectives of Therapeutic Jurisprudence and Preventive Law to legal planning for persons in nonmarital

committed relationships. The Article describes, generally, the law affecting the long-term property and health care planning of unmarried committed partners. In addition, the Article describes the synthesis of Therapeutic Jurisprudence and Preventive Law as a framework for analysis of this problem. The results of an empirical study are presented in order to shed light on the current long-term planning practices of unmarried committed partners. Finally, these results are discussed in the context of TJ-preventive law principles and practice of TJ-preventive law.

PUNISHMENT METED OUT FOR ACQUITTALS:
 AN ANTITHERAPEUTIC JURISPRUDENCE
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In the recent consolidated decision, *United States v. Watts* and *United States v. Putra*, the United States Supreme Court approved the federal sentencing procedure whereby judges punish defendants for offenses for which they have been acquitted. That decision is, of course, disturbing for many reasons: it is the demise of the reasonable doubt standard, the derogation of the right to a jury trial, and the violation of the spirit of double jeopardy protection. This Article, however, examines the decision in the context of Therapeutic Jurisprudence by isolating its serious antitherapeutic consequences. Essentially, what the Article shows is the procedure, which allows a judge to trump a jury's acquittal by meting out punishment for that acquittal, engenders in prisoners a disrespect for the legal system, anger, helplessness, and disregard for human life. What the Article ultimately suggests is that the Supreme Court approved sentencing procedure, by its very nature, should promote, not curtail, recidivism.

SEX OFFENDER LEGISLATION AND THE
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In response to widely publicized heinous crimes of sexual violence, different types of sex offender legislation are appearing in an increasing number. This Article summarizes disparate research findings that show that the legal system consistently reserves the worst condemnation for the stranger sex criminal while treating more leniently the family and acquaintance offender. It also examines the iatrogenic effects of current sex offender laws that target strangers on current and prospective victims of family and acquaintance child sexual abuse and rape. Solutions are then proposed for future law reform efforts to effect therapeutic outcomes for victims.

Notes

UNMASKING WHITE PRIVILEGE TO EXPOSE THE FALLACY OF WHITE INNOCENCE: USING A THEORY OF MORAL CORRELATIVITY TO MAKE THE CASE FOR AFFIRMATIVE ACTION PROGRAMS IN EDUCATION.....	<i>Erin E. Byrnes</i>	535
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This Note debunks the “white innocence” objection to affirmative action programs in education. By unveiling the persisting link between rights and racial identity, this Note seeks to obviate the white innocence criticism. A solution to this and other criticisms is proposed and explored. The suggestion is to view rights according to a rubric of moral correlativity. Such a view addresses many of the criticisms of affirmative action programs and thereby strengthens the case for these programs.

CONTENT-BASED RESTRICTIONS ON FREE EXPRESSION: REEVALUATING THE HIGH VERSUS LOW VALUE SPEECH DISTINCTION	<i>Christopher M. Schultz</i>	573
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This Note critically examines the current United States Supreme Court framework used to determine when free expression can and should be curtailed. Specifically, the high versus the low value speech distinction is criticized as a false dichotomy. Using the judicial and academic debate concerning pornography regulation as a starting point, a new tripartite speech classification is proposed, one designed to meet the often-encountered criticisms of the current two-part system.