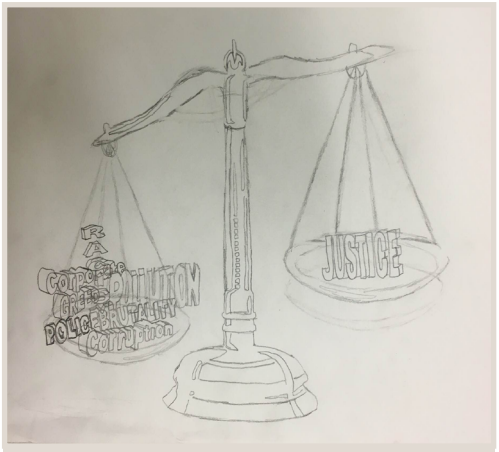
# Blinded Justice

## — by Sumangala Bhattacharya, Ph.D., J.D. candidate 2018

**The authors in this inaugural issue offer a range of engagements with the idea of a judicial system blinded by its own assumptions and practices.**

Everyone is supposed to be equal before the law, without regard to wealth, social status, race, gender, or identity. The iconic image of justice as a female figure wearing a blindfold captures this foundational idea of the judicial system as impartial and objective. Lady Justice's blindfold imposes impartiality by making it impossible for her to play favorites. If she cannot see who is before her, then her decision will not be tainted by fear or favor.

Judicial impartiality ought, in theory, to create a fair legal system, with decisions rendered according to objective legal principles rather than subjective social values. However, in practice, such impartiality is impossible and even troubling. For instance, if the ideal of impartiality allows only the legal characteristics of a case to be acknowledged, an overwhelming imbalance of power among litigating parties that distorts those legal characteristics cannot be addressed. A judicial system that excludes any direct knowledge of social realities could result in unjust decisions because it is blind to contexts that matter.




*Artwork by Alijah R. Godfrey*

The legal community and broader society now recognize that a person's background and experiences are contexts that *do* matter. Race, gender, sexuality, social class, ethnicity, nationality, and other factors shape how individuals perceive others, and, in turn, how individuals are perceived by others. The judicial system is not immune to the influence of these extralegal factors. Too often, the judicial system represents, and is represented by, a dominant, mainstream perspective that claims objectivity, but is oblivious to the concerns and experiences of those outside the mainstream. Justice, in many instances, becomes blinded by its own perceptions and presuppositions, which may masquerade as objectivity even as they operate as bias.

*When Border Patrol and law enforcement officers use boilerplate language to "reverse engineer" the necessary suspicion required for illegal stops, all law enforcement efforts become tainted by association.*

The articles in the Inaugural issue of the Diversity and Social Justice Forum ("DSJ Forum") of the Chapman University Fowler School of Law present a variety of engagements with the idea of a judicial system that is blinded by its own assumptions and practices. The authors offer practice-oriented explorations of the barriers to social justice, and of the strategies implemented to overcome those barriers, both in the courtrooms and the streets.

*The expansive and ambiguous language of the provision sweeps in under "material support" many innocuous activities, such as ordinary social interactions or routine commercial transactions, and even some humanitarian aid.*

Drawing on his experiences as an attorney and a federal law enforcement officer, **Miguel Penalosa, Jr.** calls on courts to prevent dilution of the Fourth Amendment. When Border Patrol and law enforcement officers use boilerplate language to "reverse engineer" the necessary suspicion required for illegal stops, all law enforcement efforts become tainted by association. Peñalosa argues that courts must repudiate bad police practices by closely scrutinizing the motives for initiating an investigation, instead of implicitly rewarding such practices by focusing on the result of the subsequent detention.

Calling for more clarity on the language of the "material support provision" in immigration law, **Hadeer Soliman** investigates how the doctrine, intended to protect national security and public safety, further victimizes asylum seekers who pose no threat. The expansive and ambiguous language of the provision sweeps in under "material support" many innocuous activities, such as ordinary social interactions or routine commercial transactions, and even some humanitarian aid. Soliman argues that recent regulations from the Department of Homeland Security, which place some limits on the provision, do little to protect asylum seekers who provided only minimal material support or those who provided support under duress.

**Brendan Dominguez** examines the vexed history of the United States' obligations under the Vienna Convention on Consular Relations ("VCCR") as it applies to the execution of foreign nationals convicted in U.S. courts. The VCCR requires foreign nationals charged with crimes to be provided consular access without delay. As Dominguez shows, this requirement is often violated in practice because law enforcement may not inform foreign nationals of their VCCR right

to contact their consulate. The Supreme Court has held that if the defendant fails to raise the issue of his VCCR rights at trial (even if he was unaware of that right), the defendant is barred from raising the issue on federal appeal. Dominguez argues that the U.S. stance that the VCCR does not create individual rights and that the procedural default doctrine is valid effectively converts the right into a privilege, thereby evacuating the U.S.'s international obligations under the treaty.

*The problems of Afghanistan's youth are a global concern.*

A diverse judicial branch is one comprised of judges from each diverse category of persons, including lesbian, gay, bisexual, and transgender persons. The **California LGBT Judicial Coalition** raises awareness of the limited representation of LGBT individuals in the state and federal judiciary. The Coalition calls for increasing LGBT representation on the judiciary through mentorship and support programs, and judicial appointments of openly LGBT candidates.

Finally, **Fahima Amini** argues that economic insecurity is the primary tragic driver of insurgency and drug trafficking among youth in Afghanistan. The precarious financial situation of the nation falls heaviest on Afghan youth. Young men and women have few real opportunities for employment and success because of the ongoing insecurity and conflict, as well as low literacy levels, geographic remoteness, limited internet access, and a lack of infrastructure. These conditions make Afghan youth especially susceptible to recruitment by insurgent groups, and vulnerable to exploitation by criminal gangs, warlords, and drug traffickers. Arguing that the problems of Afghanistan's youth are a global concern, Amini calls for international cooperation and a commitment of resources to involve youth in the political process and direct them to reconciliation, reconstruction, rule of law, and development. ■