



# CO-EDITORS-IN-CHIEF NOTE

By Rewa Ousman & Jenna Hou

**T**o All our Readers,  
Our names are Rewa Ousman and Jenna Hou and it is our honor to serve as Co-Editors-In-Chief of the Diversity and Social Justice Forum for the 2021-2022 academic year. We are proud to lead and be a part of an organization that is committed to implementing notions of diversity through the inclusion of a broad scope of unique perspectives, ideas, and backgrounds. To put our mission into metaphorical terms, diversity is having a seat at the table, and inclusion is having the opportunity to speak.

On behalf of the Diversity and Social Justice Editorial Board, we invite you to immerse yourself in our annual Publication, Volume V: Reviving Our Social Consciousness: Examining the Perpetual Inequities Faced by Minorities.

In 2020, we reflected on the social injustices faced disproportionately by minorities. Although these injustices are deeply embedded in our American history, we, as a society, were forced to confront these injustices—injustices that have been historically swept under the rug.

Progress has been made in 2021 with respect to recognizing the pervasive and prevalent social inequities and injustices against minorities. However, there is still more work to be done.

Our job now is to revive our social consciousness so we do not fall back into the lull of ignorance.

Our contribution to the mission of reviving our collective social consciousness lies within the pages of this publication. Each article represents a ubiquitous form of discrimination aimed at historically marginalized communities, and invites the reader to acknowledge how we as a collective can further mitigate discriminatory thought and practice.

We hope that this publication not only encourages you to challenge your biases, but also inspires you to immerse yourself in intersectional discourse to advocate for the implementation of diversity and inclusion in various legal spaces.



**Janine Young Kim** is the Wylie A. Aitken Professor of Law, Race, and Social Justice at the Chapman University Fowler School of Law. Prior to joining the Fowler School of Law faculty in 2016, Professor Kim taught at Marquette University Law School for eight years, and previously taught at Southwestern and Whittier Law Schools. She received her JD from Yale Law School and both her M.A. and B.A. from Stanford University, where she was selected as a member of Phi Beta Kappa. At Yale Law School, she was an editor of the Yale Law Journal, a Coker Fellow, and the executive editor of the Yale Human Rights & Development Law Journal. Prior to teaching, Professor Kim practiced for three years with Simpson Thacher & Bartlett LLP in New York. She also served as a law clerk to the Honorable Alfred T. Goodwin of the United States Court of Appeals for the Ninth Circuit. Professor Kim's scholarship focuses on criminal law theory and race and the law, with recent articles appearing in such journals as the SMU Law Review, University of Colorado Law Review, and the Journal of Criminal Law & Criminology.

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## INTRODUCTION **By Professor Janine Kim**

**I**t is truly daunting to reflect on this year's theme, for how does one arrive at an understanding of perpetual inequity? In a nation like ours that was founded upon the ideal of equality and the dream of opportunity, the very notion of perpetual inequity should strike us as incoherent, the condition of perpetual inequity as repugnant. Yet there is no gainsaying that unjust discrimination has been an enduring, and maybe even integral, feature of many of our most fundamental institutions (state, church, school, family, etc.). Moreover, our current struggle with multiple global crises – pandemic, climate change, authoritarianism – has demonstrated how easily inequity can grow ever more acute.

A little more than a year ago, it seemed that mainstream America was finally awakened to the existence of perpetual inequity by a video, taken by a teenager, of a police officer killing a Black man by kneeling on his neck for over nine minutes. Although outrage over such events, along with promises of change, have come before, many commentators observed that this time was different and we had at last arrived at a breaking point in our tolerance for injustice. The summer of 2020 was marked by what appeared to be sustained mass protest against police violence in the U.S. and across the world. Support for Black Lives Matter surged and decision makers vowed to challenge and change their practices. Yet in a matter of mere months, that support has eroded and the vows are languishing while reactionary forces gather. It now appears that we are in danger of falling back into our old patterns of forgetting and accepting, of perpetuating inequity once more.

What is to be done? Social justice is not hard to define – we know that it has to do with attending to fairness, sharing our freedoms, respecting diversity, and enabling a sense of belonging among all within the community. Our failings in this regard are not due to a lack of understanding about what social justice entails or even how to achieve it. Many brilliant minds have proposed a vast array of potential solutions to reform the criminal justice system, enhance community resources, equalize education funding, ameliorate residential segregation, and so on. Instead, much of the problem appears to be a lack of desire or will to change, driven in part by an inability to recognize

especially those inequities that we have been living with for so long. In conjunction with the murder of George Floyd, the world-wide crisis caused by COVID-19 has brought these long-standing inequities into sharper relief and provided us with a newly urgent sense of their terrible consequences. In the shadow of such unprecedented devastation and the new forms of knowledge it brings, it is my hope that perpetual inequity will finally be met with a perpetual activism that is characterized by an abiding curiosity, compassion, and readiness to take action in the service of others.

Organizations like the Diversity and Social Justice Forum participate in this endeavor year after year by exploring some of our most pressing social issues and the various steps that we can take to improve the lives of those who have been systematically disadvantaged. The dedicated students who make up the Forum embody the type of activism I spoke of, as individuals and as a collective that inspires succeeding generations of law students to continue the work toward a more just and equitable society. We owe them a debt of gratitude for all that they do, but more than that, we owe it to them and to ourselves to engage in the opportunity that the Forum provides for rigorous dialogue and to act upon what we learn from this experience.



**Denis Binder** is entering his 50th year of Teaching. His first article, published in the California Law Review in 1971, was “Sex Discrimination in the Airline Industry: Title VII Flying High.” He has published three indices of Environmental Justice Cases, and in 2017 “Some Rough Historical Parallels Between South Africa and the United States.” He consulted with Cesar Chavez and the United Farm Workers in 1991.

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## INTRODUCTION **By Professor Denis Binder**

**H**ugo Salazar, a 2L, had an inspiration seven years ago. The students at the Dale E. Fowler School of Law at Chapman University should have a Diversity and Social Justice Forum, not just as a student organization, but also as an academic program. A student organization does not need Faculty approval, but an academic program both publishing an annual journal and holding an annual symposium on social justice issues does. Hugo, April Cristal, and Hadeer Soliman represented their fellow students in petitioning the Faculty for Approval. They asked Professor Deepa Badrinarayana and I to be Faculty Advisors.

The Faculty approved the request. The then Provost, now Chapman President, Daniele Struppa and Law School Dean Tom Campbell provided funding for the Diversity and Social Justice Forum. The Forum’s Mission Statement is clear – to provide a voice:

“The Diversity and Social Justice Forum is a student-run scholarly publication at Chapman University Dale E. Fowler School of Law, dedicated to providing a forum that can give expression and representation to a wide spectrum of progressive and diverse voices at Chapman. We believe that the key to fostering a strong and diverse student body is to ensure that we do not confine ourselves to an echo chamber, and that we are not dismissive of alternative viewpoints and methods. The Diversity and Social Justice Forum hopes to promote a climate of engagement and dialogue on issues of social justice  
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Both the Journal and the annual symposia have fulfilled this statement. The Journal is not intended as a traditional law review but as a forum for writers to express their views, often in the form of essays rather than articles. The Journal is one of reasoned discourse. The writers have strong opinions, but do not engage in the polemics so common today on social media. The students from the beginning have selected the topics, lined up speakers, and sought out the writers.

The never-ending pursuit of social justice goes back millennia. Supreme Court Justice Ruth Bader Ginsburg had this quote from the Torah on her office wall: “Justice, justice thou shalt pursue.”

Progressive lawyers pursuing social justice are increasingly entering the legal profession, reforming the law. They did not acquire their zeal for social change in law school, but law school sharpened their minds.

Matt Hong and Elizabeth Kim focus on the anti-Asian animus, both in general in San Francisco and California, and specifically in San Francisco’s historic Chinatown. Anti-Chinese racism goes back 170 years in San Francisco, beginning with the

miners. They relate the long history of discrimination. The anti-Asian animus seemed to disappear after World War II, but Chinatown remains an economically poor enclave in the city, often separated by a language barrier.

I grew up in San Francisco during the 1950s and 1960s. Affluent Chinese were moving out of Chinatown into the Richmond and Sunset Districts just as immigrants “moved on up” in other cities. Tourists see the glitter, restaurants, and tourist shops on Grant Avenue, but usually do not see the byways and sideways of Chinatown. The historic Chinatown remains economically depressed and the new home of immigrants trying to adjust to their new country.

The anti-Asian racism, especially anti-Chinese animus has returned in recent year with discrimination in education and the rise of violent attacks against Chinese Americans. Some Americans attack Chinese Americans, especially elderly Chinese, in response to the COVID-19 virus which originated in Wuhan, China. Bias, discrimination, and racism often have no rational basis.

Social justice issues arise in new contexts. Kelly Ha discusses the effectiveness of “Ban-the-Box” laws. Persons with a criminal past have trouble obtaining meaningful employment because they are asked to disclose any criminal record on job applications. States, including California, have banned the “Box.”

Kelly studies the acts in practice and finds they are not totally effective. She then recommends changes that can improve the goal of employment prospects for previously incarcerated applicants.

Sharon Stephanie Perez proposes that intersectionality factors be considered under Federal rules of Evidence §403. Race can currently be considered, but intersectionality would allow the law to go beyond race since multiple intersectionality factors may be involved in understanding actions.

Social justice principles are universal, but the specific issues will vary. Professor Mohammad Umar of Bennett University, India and Nizamuddin Ahmad Siddiqui, Ph.D. candidate at Global Jindal Law school discuss the practice in the State of Maharashtra of blaming and incarcerating Muslims during the COVID Emergency. An estimated 207 million Muslims reside in India, about 10.9% of the country’s population. The Muslim population has periodically experienced Islamophobia and violent attacks. A recent manifestation is the response to the COVID-19 epidemic which is raging through India, with some casting blame on Muslims just as some in America cast blame on Chinese Americans.

These excellent papers further the Forum’s intent of providing a voice.