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MENTAL DISABILITY AND CAPITAL PUNISHMENT

By Tara Andryshak

Thirty-three years ago, in 1985, Vernon Madison shot and killed a police officer, and shot and injured his girlfriend while on parole. Madison had three trials, arguing during the first two that he was mentally ill and in the third that he was acting in self-defense and thus should be considered not guilty. He was sentenced in 1994 after a jury recommended life without parole. In January of 2018, Madison was set to be executed. He was evaluated and it was determined that he understood enough to know what he was being executed for. Madison filed a petition, arguing that he was not competent enough but did not receive an answer until the day of his scheduled execution. He ate two oranges as his last meal and did not have any final words. Half an hour prior to the execution, however, Justice Clarence Thomas put a stay on his execution.

Justice Thomas' rule was based on the fact that during Madison's time in prison he had several strokes, rendering him unable to remember ever committing the crime due to contracting vascular dementia. "He does not understand why the state of Alabama is attempting to execute him," his attorneys stated. The United States Supreme Court received an appeal from the defense which the justices considered compelling enough to hear as a case. Madison's argument is set to be heard on October 2, 2018. Here, the justices will consider the legality and constitutionality of putting a criminal to death who can not even remember committing the crime.[1]

The constitutionality of this stems from the Eighth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[2] Cruel and unusual punishment includes but is not limited to torture, deliberately degrading punishment, or punishment that is too severe for the crime committed.[3] This is what Madison's attorneys are arguing, that putting someone to death who does not have any recollection of the crime nor can understand why they are being put to death is cruel and unusual punishment, and thus against the Eighth Amendment of the United States Constitution.

One case that pertains to this issue is Atkins v. Virginia (2002). Daryl Renard Atkins was charged with abduction, armed robbery, and capital murder. A psychologist who interviewed Atkins determined that he had an IQ of 59, thirty-one points lower than normal intelligence. He was sentenced to death, but later argued that using capital punishment against someone with a mental disorder constitutes as cruel and unusual punishment and thus should violate the Eighth Amendment.[4] The Virginia Supreme Court agreed with Atkins while disagreeing with an earlier United States Supreme Court Case, Perry v. Lynaugh (1989), which ruled that the execution

of the mentally disabled is not in violation of the Eighth Amendment of the United States Constitution.[5] In a 6-3 decision the court held that executing the mentally disabled is in fact cruel and unusual punishment prohibited by the Eighth Amendment.[6]

Another relevant case pertaining to cruel and unusual punishment is Ford v. Wainwright (1986). In this case, Alvin Bernard Ford was charged with first-degree murder and sentenced to death. At the time of the murder, trial, and sentencing there was no indication of Ford having any sort of mental disability. However, while on death row Ford's mental health diminished. He was evaluated by medical professionals who ruled that he was still competent enough to understand the nature of his crime. Ford sued, causing the case to reach the United States Supreme Court. In its decision, the court found that executing the mentally insane would be "savage and inhumane." Thus, according to the United States Supreme Court, the Eighth Amendment, more particularly the cruel and unusual punishment clause, does not allow states to perform capital punishment on the clinically insane. The court also ruled that further evaluation needed to be conducted on Ford which ultimately concluded that he was too incompetent to be executed.[7]

The justices of the United States Supreme Court have to rely on past cases, such as Atkins v. Virginia (2002) and Ford v. Wainwright (1986) come October when they start the hearing process for Madison v. Alabama (2018). However, Madison's case differs from the others because not only does Madison not understand why he is being executed, but he also does not even remember committing the crime. As Justice Ginsburg puts it, "The issue whether a State may administer the death penalty to a person whose disability leaves him without memory of his commission of a capital offense is a substantial question not yet addressed by the Court," and one that will change the fate of many people on death row today and in the future.[8]

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THE LEGALITY OF VENEREAL DISEASES: TO PROTECT OR BE SERVED?

By Julianne B Hynes

According to the Centers for Disease Control and Prevention (CDC), sexually transmitted diseases in the United States are on the rise, breaking 2016's record with 2.3 million cases of syphilis, gonorrhea, and chlamydia diagnosed in 2017. This is in formation with what is now a four year-long steady increase of diagnosed STDs.[1] Before the 1970s, STDs were commonly referred to as 'venereal disease' or 'VD'. The colloquial name change came with the destigmatization of casual sex, which subsequently resulted in an increase of individuals with such diseases. However, 'disease' does not accurately represent subclinical symptoms. Thus, sexually transmitted infections or 'STIs' became the more familiar term in the 1980s. STIs include genital herpes and trichomoniasis.[2]

Both sexually transmitted diseases and sexually transmitted infections have been stigmatized to promote dirtiness and promiscuity since the 1970s. According to a study performed in 2014, "23% of 112 men strongly agreed that people with STDs are people that hang with the wrong crowd, whereas 23% of these men strongly disagreed."[3] This indicated that people with sexually transmitted diseases are viewed as people with poor judgement, and are therefore deserving of their predicaments. The stigmatization of venereal diseases has become one of the worst side effects of contracting one.

For example, genital herpes present as sores that can often be mistaken for an ingrown hair or a pimple. Though a person's first outbreak may present with symptoms similar to the flu, future outbreaks are much less severe and less often.[4] With only the symptoms being observed, herpes is no more than an annoying disturbance of the skin. However, the infection's infamousness can lead to a person isolating themself, abstinence, and depression.[5] Due to societal standards, there are more symptoms to a sexually transmitted disease or a sexually transmitted infection than what originally appears on the skin.

There may be other consequences of having a venereal disease: what happens when you pass it on. According to New York state law, "Venereal disease; person knowing himself to be infected. Any person who, knowing himself or herself to be infected with an infectious venereal disease, has sexual intercourse with another shall be guilty of a misdemeanor."[6] This law does not clarify whether or not a person must inform their partner prior to or after sexual intercourse of their venereal disease. However, a lack of prior informance could allow the receiver to sue in court under the title of negligence. For example, famous RnB singer Usher was sued in 2018 by Laura Helm for "negligence, fraud, battery and intentional infliction of emotional distress"[7] after having unprotected intercourse with her on various occasions. In New York, transmitting a sexually

transmitted disease or a sexually transmitted infection would be prosecuted under torts law, which, according to the Restatement (Second) of Torts § 7, is "an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment in fact that an individual suffers."[8]

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50TH ANNIVERSARY OF THE 1968 DEMOCRATIC CONVENTION BRINGS CHANGES TO THE DEMOCRATIC PARTY

By Stephen Perez

"The whole world is watching. The whole world is watching," chanted anti-war protesters on the streets of Chicago as they marched with the spirit of anti-war sentiment in their hearts.[1] Chicago police, armed with tear gas and clubs, did everything in their power to prevent the protesters from interrupting the 1968 Democratic National Convention. It was a battle of old and new, establishment and anti-establishment. Within the convention, a split in the Democratic party over their platform on the Vietnam War matched the ferocity of the protesters outside. This August 26th marked the 50th anniversary of the 1968 Democratic Convention in Chicago, and we are once again reminded of this battle.

A new battle has recently taken place within the Democratic party that could change the outcome of primary elections and shake the establishment that 1968 protesters longed to change. The Democratic National Committee has voted to reform the role of superdelegates in their presidential candidate selection process. Since the mid-19th century, both parties have held national conventions to select their candidate for president and vice-president. Eventually, primaries and caucuses were established to allow voters to select the candidate their delegate will vote for.[2]

In 1972, George McGovern won the democratic nomination but lost by a landslide to Republican candidate Richard Nixon. A similar occurrence took place when Jimmy Carter lost the election to Ronald Reagan in 1980.[3] Democratic party leaders had become frustrated with their losses and wanted more influence in choosing their presidential candidates. Here lies the birth of the superdelegate. Superdelegates are a group of about 700 activists, party leaders, and politicians that are free to back any candidate they want without taking into account how the public votes. They were created to bar future outsider candidates, like Carter and McGovern, from securing the candidacy but losing the election.

Efforts by Democrats like DNC chair Tom Perez and 2016 presidential candidate Bernie Sanders have resulted in a new reform that will bar superdelegates from voting in the first ballot, leaving the decision largely to the general public. "Today we demonstrated the values of the Democratic Party," Mr. Perez said. "We want everyone to have a seat at the table. That's what today is about."[4] This decision was largely influenced by the outcome of the 2016 primaries, where Hillary Clinton secured the majority of superdelegate support, allowing her to win states that Sanders had won the majority vote in.

Reform of superdelegates could not be done by state or federal government, as political parties are considered private entities. In the case of Democratic Party of United States v. Wisconsin

ex rel. La Follete (1980), the question at hand was whether or not states could compel a National Party Convention to allow delegates from their state if they were chosen by non-affiliated voters. Wisconsin allowed registered republicans to vote in a democratic primary. The court ruled in a majority 6-3 decision in favor of the Democratic Party, in that states could not compel parties to allow their delegates at national conventions because it "...would impair the right of political parties to associate with whom they wish, especially when non-party members could influence the interests of the delegates."[5] Cases like these not only emphasize the private nature of parties but also the autonomy of them. The reform of superdelegates was the result of a long process of planning and debate within the party.

While the Democratic party is a private entity that requires navigating its established bureaucracy for reform, this is not to deny the influence that protesters and others in the public sphere had on superdelegate reform. Selina Vickers, an activist from West Virginia, went on a hunger strike for over a week to push for superdelegate reform. When asked about why the Democratic Party is making these changes, Vickers said, "They're doing this very strategically because they want to win, when people feel like their vote doesn't count, they're not going to turn out to vote."[6] She's right. While this reform will aid in voter transparency and involvement, there's no denying that it is a strategic play by the Democrats to secure a winning candidate.

By removing superdelegates from the first ballot, supporters of the reform argue that they will no longer be able to influence voter attitudes. Candidates will now have to pay more attention to influencing voting in primaries and caucuses. Critics of the superdelegate system have argued that it gave too much power to party insiders, and theoretically allow them to overturn the will of the voters.[7] It is no surprise that superdelegates are upset about losing their influence. In a letter written to Tom Perez expressing his disapproval, Rep. Cedric Richmond, D-LA., writes "One group should not be harmed at the expense of the other. To add insult to injury, it appears that this is a solution in search of a problem. Unelected delegates have never gone against the will of primary voters in picking Democratic presidential nominees."[8] African American caucus members like Richmond are wary of this reform because it could potentially remove the influence minority superdelegates have in making sure candidates fight for racial justice.

This decision is in line with the 1968 sentiment of shifting establishment and pushing reform. Reforming the role of superdelegates to allow for a more transparent candidate selection process is an important first step in creating a participatory democracy. Furthermore, we are seeing a sense of unity in the democratic party that reflects an important change from 1968, where the party was split along a clear line. While there is confidence that this is a good decision, representatives like Richmond that question it are imperative to ensuring that our democratic system stays open to all. Will this reform improve the face of the democratic voting process or are we better off sticking to the established system? Are we a step closer to achieving the ideal democracy? Only time will tell

as to whether or not this reform will have the desired impact the Democratic party is looking for. The world is still watching.

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LETHAL EXPRESSION: FREE SPEECH AND ENCOURAGING SUICIDE

By Max J Hyams

The American political experiment was designed to promote free expression and "life, liberty and the pursuit of happiness"– going so far as to etch these ideas into its founding documents. While scarcely anyone objects to the core of these principles, disagreement looms at the edges. When these values appear to collide, which prevails? Are acts of free expression– exercises in liberty–that appear to incentivize, encourage or valorize the termination of one's life and the discontinuation of one's pursuit of happiness afforded constitutional protection?

The upcoming appeal of Commonwealth v. Michelle Carter (June 16, 2017) might help clear the fog and allow for an unobscured surveyance of First Amendment jurisprudence pertaining to exhortations to suicide. In 2017, a Massachusetts juvenile court found defendant Michelle Carter guilty of involuntary manslaughter for encouraging her erstwhile long distance boyfriend–Conrad Roy–to commit suicide.[1]

Over the course of several months in 2014, Roy, who had long suffered from depression and social anxiety, sought the consolation of his girlfriend to help him cope with his conditions. However, as the months passed, it appeared– in Carter's view–that Roy's affliction was incurable; death was his only remaining means of escaping the implacable mental anguish. Consequently, Carter began to suggest suicide as a viable option, going so far as to text:

I Still don't think you want to do this, so you'll have to prove me wrong…hang yourself, jump off a building, stab yourself. I don't know. There's lots of ways.[2]

Evidently, in the hour leading up to moment at which Roy killed himself via carbon monoxide poisoning, the couple had spoken on the phone and Carter had convinced her boyfriend to remain in the car and disregard his second thoughts.[3]

Carter's legal team appealed the ruling to the Massachusetts Supreme Judicial Court, arguing– among other issues–that the state's involuntary manslaughter statute contravenes the First Amendment as applied to Carter's speech.[4]

It is not clear how this fact pattern dovetails with First Amendment jurisprudence, or whether Carter's speech will be enveloped by one of the amendment's well-known exceptions.

At first glance it seems plausible that Carter's speech constitutes either incitement–more specifically, "incitement to imminent lawless action"[5]–or "speech integral to criminal conduct."[6]

However, Carter's action eludes the reach of both exceptions because Massachusetts, like every other state in the union, no longer has a codified statute criminalizing the act of suicide.[7]

Might the source of suicide's illegality be found elsewhere? In Wackwitz v. Roy (1992), the

Virginia Supreme Court found that Wackwitz's widow was not barred from suing the decedent's psychiatrist for negligence in the aftermath of his suicide. The Court reasoned that since Wackwitz was not of sound mind, he was not guilty of the common law crime of suicide, thus his wife's suit could proceed.[8] While the Virginia Supreme Court implicitly left the state's common law prohibition on suicide intact, for Carter's purposes Wackwitz is of no moment; no analogous doctrine can be found within the annals of Massachusetts caselaw.

The arguments raised by defense in their appeal suggest that the Court may focus on whether the statute was sufficiently tailored to achieve the state's compelling interest in preserving human life. Availing themselves of the fact that the state's application of the statute implicated the First Amendment in a non-content neutral manner (thus triggering strict scrutiny), defense points to State v. Melchert-Dinkel (2014)– in which the Minnesota Supreme Court struck down a portion of a statute that criminalized "advising" or "encouraging" another to commit suicide, but upheld the section proscribing "assisting" the act.

The Court in Melchert–in which defendant posed as a suicidal nurse and entered into suicide pacts with others in online chatrooms, leading to the suicides of up to five individuals [9]–found that the ban on encouragement and advocacy of suicide would ensnare "speech that is more tangential to the act of suicide [and]… general discussions of suicide." On the other hand, the proscription of assistance would only target "speech or conduct that provides another person with what is needed for the person to commit suicide… beyond merely expressing a moral viewpoint or providing general comfort or support." Beyond suggesting well-known methods like hanging and stabbing, Carter appears not to have provided her boyfriend with specific information better enabling him to carry out his suicide, whereas Melchert- Dinkel provided one of the suicide victims with instructions on effectively tying the rope he used to hang himself.[10] On this line of reasoning Carter's actions appear to fall outside of the Minnesota Supreme Court's conception of assistance. The prosecution, however, could conceivably argue that Carter's speech was so incessant, demanding and unavoidable that it rose to the level of detailed assistance–enabling Roy to follow through with an act which, otherwise, he might not have committed.

Alternatively, if the above mentioned Minnesotan precedent does not play a prominent role on appeal, the Supreme Judicial Court could construct a test similar to the "true threat" analysis, but for gauging the purpose of individual exhortations to suicide. These case-by-case evaluations would measure the subjective intent of the speaker by determining whether there was a continuous effort to effectuate the suicide. This test could leave unscathed vicinal protected speech, namely: advocacy of suicide made in political jest, uncharacteristic bouts of anger, and expressions of philosophical misanthropy.

It is entirely possible that the Supreme Judicial Court–following the lead of the highest court in Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (2018)[11]–avoids

the First Amendment question altogether, electing instead to rule on the constitutionally suspect broad application of the involuntary manslaughter law, whether the state met its burden in proving that Carter inflicted bodily harm, or any number of other issues

What's clear is that this case could have significant implications for prominent areas of law. In light of the recent bout of high profile suicides–and the attendant national conversation about mental health–the limits of the judiciary's commitment to civil liberties will be tested. Legal aficionados and outsiders alike are bound to be chomping at the bit for the outcome.

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YOU CAN'T SUE A CAR

By Nicholas Bukofsky

With companies such as Tesla, GM, and even Uber racing to make the next breakthrough in transportation technology, the dream of streets lined with cars that drive themselves is now more than ever less of a possibility and more of an inevitability. A country, and eventually the world, where vehicles are driven autonomously and without the need for human operation seems likely at this point due to the fact that without the possibility of human error and misjudgement, autonomous vehicles will be a safer and more easily and widely accessible alternative to human-driven vehicles. However, no machine is without its malfunctions, and when an autonomous vehicle causes harm, upon whom will the liability fall according to the law?

Since autonomous vehicles are a fairly recent technology (though some have been manufactured they are far from being commonly driven) there is very little specific case law regarding them. In fact, the first instance of an autonomous vehicle causing harm was not until 2016, in which 40 year old Joshua Brown was killed when his self-driving Tesla Model S drove itself into a tractor-trailer.[1] Although Joshua Brown's estate chose not to press charges against Tesla, this event sparked the debate over whether Tesla had acted negligently by selling a product so easily misused, or whether Brown was at fault for choosing to misuse Tesla's product. As autonomous vehicle technology becomes more popular and available and more autonomous vehicle tort lawsuits are filed as a result, this debate raises points that are likely to influence actual court decisions in the near future.

Many attorneys weighed in on the feasibility of building a case against Tesla soon after the Brown incident. Anthony Johnson, CEO of the American Injury Attorney Group, claimed that Tesla's warnings about proper conduct as the car was driving itself were, "far from sufficient to exculpate them from liability."[2] From this point of view, although the car did warn Brown to take control of it himself, the warnings were not reasonably effective and thus Tesla could be held negligent. Johnson also argued that marketing Tesla's assisted driving technology as "autopilot" implied that it was 100% self-sufficient, as is the autopilot in airplanes. If a court held this to be true, Tesla's marketing of the "autopilot" systems could be deemed fraudulent, as the systems presently require human assistance to drive the car.

On the other side of the debate, Tesla argued that the warnings and guide to proper use that came with the car were disregarded by Brown, further noting "The system also makes frequent checks to ensure that the driver's hands remain on the wheel and provides visual and audible alerts if hands-on is not detected."[3] They also argue that upon selling him the car with the assisted driving system he was

informed that the system was in the Beta phase and turned off by default, meaning turning it on was Brown's own willful decision. If this is the case, then Brown willingly assumed the risk associated with using the system, and Tesla would be absolved of liability for this issue, following the precedent set by Murphy v. Steeplechase Amusement Co (1929).[4]

Holistically, this debate, though it never went to court, may one day provide the legal justification for assigning liability in autonomous vehicle-related accidents. The points raised by each party must be weighed to place blame on the manufacturer, car seller, or the client accordingly. The issue of comparative negligence will likely be part of the debate; in the Brown debate, Tesla would likely have been held liable for a small percentage of the damages, since having any option in the car's system that may imply it is reasonable for a driver to take their hands off the wheel and not pay attention to the road is negligent, although there are mitigating factors and partial assumption of risk by the driver that would likely reduce Tesla's liability. Like Li v. Yellow Cab (1975), the fact that both parties bear some fault would necessitate that the comparative negligence of both parties be assessed by a court.[5]

When assessing each individual case of autonomous vehicle torts, the way in which the vehicle was marketed, how the vehicle was intended and stated to be used, if the vehicle was actually used that way, and what went wrong with the car's systems must all be taken into account to determine liability. Marketing plays a role in determining liability because if the automated driving systems are presented as not requiring driver assistance but they do (as Johnson argues in the Brown case discussed above), the car seller could be held accountable for fraudulent sales tactics. The way that the vehicle is supposed to be used (which would likely be stated in an owner's manual) versus how it is actually used is important because if the car driver uses the car exactly as they are told and still suffers harm, that harm is much more likely to be the fault of the car seller. Lastly, the specifics of what went wrong with the car's systems must be examined because if it was a technical error or design flaw the seller or manufacturer would likely be held liable, but if the malfunction was caused by the driver's misuse of the vehicle then the driver would bear the responsibility of the damages.

We have seen the beginnings of the logical arguments that will arise from tort cases of autonomous cars. Although they are largely an extension of current arguments and the precedents that will be created surrounding this issue will likely be similar to current precedents involving non-autonomous automobile accidents and malfunctions there are also some additional nuances and dimensions to this emerging field of debate and law. It may not be a large issue or topic of conversation right now, but as autonomous vehicles become better, cheaper, and more widely used, the legal intricacies of who pays when something autonomous fails are likely to come to the forefront of national discourse.

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THE VALUE AND ROLE OF SUPREME COURT DISSENTS

By Glenn Moss

In a time in American political and legal life, when the deep and often long-lasting impact of the Supreme Court is at the nexus of contentious, and even vitriolic, debate over core Constitutional issues, the nature and history of Supreme Court dissents is worthy of consideration. Dissenting opinions can be minority views that, through the power of their reasoning and arguments, lay the groundwork for later majority opinions and new legal precedent. Historically, this has given rise to the best and most influential dissents

Of particular historical note are the widely acknowledged and revered dissenters of the Supreme Court, Oliver Wendell Holmes Jr. and Louis Brandeis. Both justices emphasized judicial restraint, taking exception to the majority in a period of a staunchly conservative Supreme Court and the widespread judicial philosophies it embodied. Holmes wrote the famous dissent in Lochner v. New York (1905), opposing the Court's use of "liberty of contract" to strike down a state law regulating harsh working conditions. Brandeis laid the groundwork for the right to privacy in his dissent in Olmstead v. United States (1928), arguing that wiretapping without a warrant violates the Fourth Amendment.

While the Supreme Court appears to be taking a decidedly conservative turn, which may be longer lasting than the Court under Earl Warren (e.g., Brown v. Board of Education (1954), outlawing segregation; Cooper v. Aaron (1958), requiring states to comply with federal law; and Katzenbach v. McClung (1964), upholding the Civil Rights Act of 1964.), It is important to note that these decisions were unanimous and there is jurisprudential and precedential value in the Court seeking to reach unanimity on such significant issues of American legal principles.

John Marshall, the first Chief Justice of the Supreme Court and perhaps most appropriately acknowledged for establishing the concept of the Court as a co-equal branch of government (Marbury v. Madison (1803), Fletcher v. Peck (1810), and McCulloch v. Maryland (1819)), was critical of dissent and believed that unanimity was a value to be sought. In a 34 year career on the Court, he dissented only 7 times. Yet after his death, his surviving colleague, Justice Storey, wrote several important dissenting opinions referencing Marshall's more national and federal beliefs as the Court became more oriented to states' rights and limiting Congressional powers.

This road may be seen culminating in Dred Scott v. Sandford (1857), where the Court held that a slave was not a citizen and lacked the standing to sue for his freedom. Justice Benjamin Curtis filed a dissent that has been called "one of the great masterpieces of constitutional opinion-writing,"

completely refuting the Court's reasoning and disproving its assertions of fact. Further, his lengthy historical analysis of laws governing citizenship are seen as laying the foundation for the Civil rights Act of 1866 which explicitly overruled the Scott decision. Yet, earlier in his career as a Massachusetts legislator, Curtis had defended the Fugitive Slave Act as valid under the Constitution and never advocated for full equal rights for Blacks.

A key motivating factor for Curtis' dissent was his belief that Chief Justice Tanney was seeking to advance his personal political beliefs rather than seeking a defensible legal analysis. It is this distinction that is important in assessing the dissenter's purpose and the dissent's value.

For example, there is a view that in these increasingly polarized political times, the Court's dissents reflect more personal and vitriolic motives. Some point to former Justice Scalia who, in his dissent in the case that struck down state laws prohibiting Gay marriage, begins with "I write separately to call attention to this Court's threat to American democracy." In prior dissents on cases involving Gay rights, Romer v. Evans (1996) and Lawrence v. Texas (2003), Scalia's personal views on homosexuality were in clear display. With Justice Clarence Thomas, his dissents often reflect a very personal view of American judicial and legal history. His dissent in Obergefell strongly questioned the idea that the Constitution encompasses rights like privacy and marital autonomy. The Court had rejected this position decades ago in Griswold v. Connecticut (1965) and Loving v. Virginia (1967).

One example of a sometimes lonely dissenter from the other side, especially in his later years on the Court, is William O Douglas. In his over 36 years as a Justice, Douglas wrote over 500 dissents, often as the fiercest proponent of the most expansive view of individual rights and press freedom under the Constitution. In a case like Terry v. Ohio (1968), involving the Constitutional scope of police in stopping and questioning, Douglas was the lone dissenter advocating a view that would have virtually every action or encounter with the police be bounded by a the most expansive protections of the 4th and 5th Amendments, and stating that if the police are to have rights to question and stop someone, a Constitutional amendment should be required. Often at odds with even other liberal Justices, Douglas represented a belief in natural law of freedom that, while celebrated by some, would not lay the foundation for the kind of Constitutional reach a majority of Justices would follow regardless of their placement on the political spectrum.

More recently, the dissent of Justice Sonia Sotomayor, joined by Justice Ginsburg, in Trump v. Hawaii (2018), the case deciding Trump's travel ban from designated Muslim countries, represents the mix of passion, facts, and legal analysis that affirms basic Constitutional principles in a way that can be built up by later decisions. In that dissent, Justice Sotomayor wrote,

The United States of America is a Nation built upon the promise of religious liberty. Our Founders honored that core promise by embedding the principle of religious neutrality in the First Amendment. The Court's decision today fails to safeguard that fundamental principle. It leaves

undisturbed a policy first advertised openly and unequivocally as a 'total and complete shutdown of Muslims entering the United States' because the policy now masquerades behind a façade of national-security concerns.

The role of a Supreme Court dissent can be a powerful one in shaping views and later decisions, or it can be an angry or lonely cry that defines the dissenter rather than seeking to establish legal principles for broader adoption over time. If the Supreme Court is to maintain its vital position as a co-equal branch of government and not just another politically partisan entity, the examples of dissent set by Justices Storey, Holmes, Brandeis, Sotomayor, and Ginsburg may show the way.

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