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## Editor's Introduction

Welcome to the Twentieth Volume of *Journal of Law and Social Deviance (LSD Journal)*, an independent, peer-reviewed journal. *LSD Journal* encourages submissions from a wide range of professionals, researchers, and scholars in a variety of fields. Within our broader interest in social deviance and the law, we are particularly interested in how law creates, inhibits, or challenges deviant behavior, especially as it evolves from, responds to, or inspires the animal kingdom, art, design, structure, pop culture, hate, religion, sex, illness, work, drugs, terrorism, and youth. Volume Twenty is about darkness. Night, death, uncertainty, and rejection are represented by darkness. Darkness may be factual, convenient, scary, and final. It may mirror equality or an absence of equals. Discussing darkness insulates vulnerability from obscurity. Law requires truth to vanquish lies and find important shadows. *LSD Journal* remains committed to publishing articles, essays, and book reviews that strongly represent the journal's niche and offer readers important, substantive, and useful literature.

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# FLYING, LYING, AND LAYING LOW: HOW TO LEARN FROM NAVAL WAR COLLEGE LESSONS\*

Carmen M. Cusack  
Matthew E. Waranius

## I. INTRODUCTION

A study of the United States Naval War College was conducted.<sup>1</sup> This research questioned whether the Naval War College effectively taught a member of the U.S. Coast Guard, specifically Lieutenant Commander (LCDR) Matthew E. Waranius, about the value of and method for not lying to oneself. The hypothesis was that the Naval War College educated a Coast Guard officer. Education was demonstrated in the impartation and application of values. The professional background of LCDR Waranius, the

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\* Ralph C. Cusack's contribution is acknowledged.

<sup>1</sup> An audio recording of this Article may be obtained at <https://soundcloud.com/matthew-waranius/flying-lying-and-laying-low>. Matthew E. Waranius, "Carmen M. Cusack and Matthew E. Waranius, *Flying, Lying, and Laying Low: How to Learn from Naval War College Lessons*, 20 J. L. & SOC. DEVIANCE 1 n. 1 (2020)," available at <https://soundcloud.com/matthew-waranius/flying-lying-and-laying-low>.



military officer, is discussed in Section II. Section III reviews literature distributed to LCDR Waranius prior to data analysis in this study. Section IV describes pre-intervention, which is enrollment. LCDR Waranius held expectations for the purpose of joining and demonstrated some knowledge about the Naval War College, possible classmates, and course design. The intervention, which was receiving the education, is described in Section V. A particular example about U.S. Army storyboards in a theater is influential. Section VI reviews LCDR Waranius' disenrollment; reasons for leaving the online program; and motives. Section VII presents findings and discussion of LCDR Waranius' history, knowledge, and professional promotion. Possible gains and changes to Naval War College strategies are recommended in Section VIII. The Conclusion is presented in Section IX. The hypothesis, not the null hypothesis, will be described as having been proven. Thus, the Naval War College taught an officer not to lie to himself.

## II. BACKGROUND

This section describes the professional history of LCDR Waranius. The purpose of that background is to explain that the U.S. Coast Guard a) entered the War on Drugs and War on Terror through the Department of Homeland Security and other inlets; b) changed its structure during that process; and c) supplied members with the means to achieve professional goals in conjunction with participation in war. In the fall of 2001, Waranius enrolled in the U.S. Coast Guard Academy. On September 11, 2001, terror attacks provoked alterations to the American way of life, military, and treatment of war. As a direct result of the attacks, the Coast Guard was transferred from the Department of the Treasury to the newly created Department of Homeland Security on November 25, 2002 as part of the Homeland Security Act of 2002.<sup>2</sup> The first Academy class of cadets that permitted any graduates to attend Naval Flight School directly from the Academy was the

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<sup>2</sup> H.R. 5005, 107th Cong. (2001-2002). 6 U.S.C. § 113(a)(2)(c) (2002).

graduating class of 2004. Waranius graduated in 2005 and matriculated to flight school.<sup>3</sup> Waranius is presently a Lieutenant Commander in the Coast Guard specializing in civil engineering.<sup>4</sup>

### III. LITERATURE REVIEW: THE NAVAL WAR COLLEGE

The Naval War College, College of Distance Education supplied students with several materials about ethics and morals.<sup>5</sup> One of the materials explained rights.<sup>6</sup> It spoke about states' rights, federal duties, and the rights of soldiers.<sup>7</sup> One theory is that the profession of the military ensures that all soldiers have an equal right to kill.<sup>8</sup> Killing must be performed with strict regard for moral and ethical

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<sup>3</sup> Waranius attended the United States Air Force Academy as an exchange student while enrolled in the Coast Guard Academy.

<sup>4</sup> LCDR Waranius earned an Ocean Engineering Master of Science from Florida Atlantic University and completed Duke University's Master of Engineering Management Online program. LCDR Waranius is a Professional Engineer (P.E.).

<sup>5</sup> United States Naval War College, Syllabus & Study Guide (Version 1.1) (November 2019).

<sup>6</sup> MICHAEL WALZER, *Rules of War, in JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS*, 34-47 (3rd ed., 1977).

<sup>7</sup> *Id.*

<sup>8</sup> *Id. See*, U.S. Const. art. I, § 8, cl. 12.

standards.<sup>9</sup> Soldiers, like knights and serfs, have equal rights to kill; yet, this premise is established by exiting the United States and entering into another land, or perhaps, invasion, etc.<sup>10</sup> In the United States, constitutionalism is required, but was regarded as a difficult and tedious process that restricts the military.<sup>11</sup> Obedience is a compromise.<sup>12</sup> In actuality, military members' and units' services may be complimentary and without the state's approval.<sup>13</sup> Military presence, within a state and areas including several states and regions comprised by individual states, is relevant to military duty.<sup>14</sup> Yet, the democratic ideals protected by constitutionalism cannot interfere with decision-making, such as a decision to leave the United States.<sup>15</sup> It is upon entering another nation that soldiers realize that those moral equals have a right to kill them.<sup>16</sup> The premise

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* U.S. Const. art. I, § 10, cl. 3.

<sup>11</sup> *Id.*

<sup>12</sup> Walzer, *Rules of War*, 34.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

is national security, not support of other nations, during times of war.<sup>17</sup>

Rights generate interest in membership.<sup>18</sup> A pristine profession will attract brilliant professionals.<sup>19</sup> “In sum, the highest standards of ethical climate and conduct are essential to maintaining a healthy military service and to attracting and retaining the best and most talented of each new generation of Americans.”<sup>20</sup> Ethical conduct and moral bolsters entice civilian and military support.<sup>21</sup> While some civilians, such as legislators, family members, contractors, and police may be able to provide oversight and support efforts to maintain compliance, ethical standards must be held by members.<sup>22</sup> Members cannot place the illusion of satisfaction above compliance.<sup>23</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Infra* note.

<sup>19</sup> Martin L. Cook, *Moral Foundations of Military Service*, 30 PARAMETERS 117 (2000).

<sup>20</sup> *Id.* at 129.

<sup>21</sup> *Id.*

<sup>22</sup> Leonard Wong & Stephen J. Gerras, *Lying to Ourselves: Dishonesty in the Army Profession*, U.S. Army War College: Strategic Studies Institute 1 (2015).

<sup>23</sup> *Id.*

When impossible workloads disrupt military performance, integrity likewise requires disclosure and revision.<sup>24</sup> The military must “introspectively examine how it might be inadvertently encouraging the very behavior it deems unacceptable. The unvarnished treatment of this sensitive topic...hopefully will be the start of a dialogue examining this crucial issue.”<sup>25</sup>

Given that it is impossible to comply with every requirement, how do units and individuals reconcile the impossible task of accomplishing all directed training with a bureaucracy that demands confirmation that every requirement was accomplished? Do they admit noncompliance? Do they submit false reports? Before addressing these questions, it should be noted that U.S. Army officers, and members of the military profession in general, tend to have a self-image that bristles at any hint of dishonesty.<sup>26</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at v quoting Douglas C. Lovelace, Jr. Director, Strategic Studies Institute and U.S. Army War College Press.

<sup>26</sup> *Id.* at 6.

At the Naval War College, LCDR Waranius read that a study of more than 20,000 Army members found that 93% believed that their personal values aligned with values held by the Army, such as “loyalty, duty, respect, selfless service, honor, integrity, and personal courage.”<sup>27</sup>

Ethical fading would cause a military professional privately and professionally to adhere to those values, but fail to apply them in a particular circumstance.<sup>28</sup> Convincing oneself that a dilemma is unrelated to the contemplation of right and wrong causes ethical courage to dwindle during decision-making.<sup>29</sup> “Indeed, many officers even go as far as to insist that lying to the system” is “simply” like “prioritizing, accepting prudent risk, or” “good leadership.”<sup>30</sup> Stealing, cheating, and fibbing result when the servicemember perceives that the deception is remote and consequences are unlikely or distant.<sup>31</sup> Minimization of repercussions correlates

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<sup>27</sup> *Id.* at 7.

<sup>28</sup> Wong & Gerras (2015).

<sup>29</sup> *Id.* at 8.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

with psychological distance when the outcomes of choices are unknown.<sup>32</sup>

Whether in the garrison or a combat environment, officers report that they shirk responsibilities due to greater pressures to perform.<sup>33</sup>

The combat mission can lead to putting the right ‘spin’ on reports: ‘We got so focused on getting bodies to combat that we overlooked a lot of issues like weight control, alcohol, or...[Physical Training (PT)].’ Not surprisingly, directed training is also often sidestepped in theater.<sup>34</sup>

An officer conveyed that he tried to complete mandatory Sexual Assault Prevention and Response Program (SHARP) training:

We needed to get SHARP training done and reported to higher headquarters, so we called the platoons and told them to gather the boys around the radio and we said, ‘Don’t touch girls.’ That was our quarterly SHARP training.<sup>35</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> Wong & Gerras (2015).

<sup>34</sup> *Id.* at 13.

<sup>35</sup> *Id.* at 13.



Another officer stipulated that lies emerge when nearly impossible conditions are enforced.<sup>36</sup> The officer had altered the truth so that soldiers could receive water heaters and take hot showers after patrolling.<sup>37</sup> They could not receive water heaters until they extended the truth.<sup>38</sup> The water heaters had to be justified for other purposes.<sup>39</sup> The act was unethical, but the imposition of alternative realities was nearly unendurable.<sup>40</sup>

Controls that suppress misappropriation should advance ethical environments.<sup>41</sup> Focus on internal controls indoctrinating and subordinating a professional is as important as external controls that monitor and punish.<sup>42</sup> Another option is utilizing internal and external controls to calculate the effect of persuasion in a given circumstance.<sup>43</sup> Persuasion

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<sup>36</sup> *Id.* at 22.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Wong & Gerras (2015).

<sup>41</sup> Jessica Blankshain, *A Primer on U.S. Civil-Military Relations*, adapted from Mackubin Owens, *What Military Officers Need to Know about Civil-Military Relations*, Naval War College faculty paper (May 2015).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 4.

should augment morality and reduce unethical compromises.<sup>44</sup> Persuasion became a hot-button issue in 2006 when the “Revolt of the Generals” publicized views of retired Army and U.S. Marine Corps generals that antagonized, criticized, and helped the executive branch of the government.<sup>45</sup> Retired military (i.e., civilian) endorsements may have significant or insignificant effects on the military’s ability to be honest with itself in the workplace and in consideration of the profession.<sup>46</sup>

#### IV. PRE-INTERVENTION

Pre-intervention occurs prior to the introduction of a variable. It signifies how much knowledge a research subject has going into the intervention. The enrollment of Coast Guard LCDR Waranius occurred pre-intervention through the Naval War College, which remained constant. LCDR Waranius

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id. See, Carmen M. Cusack, Blind Rhyme: The Reasonable Person Standard Violates the First Amendment*, 19 J. L. & SOC. DEVIANCE 3 (2020).

enrolled in Naval Command & Staff Online Program. The program is exclusively available to members of the military and select civilian officials in the government. Admission is a meticulous process requiring command support and qualifying credentials. LCDR Waranius conveyed to Dr. Carmen Cusack, Esq. that he held an expectation that leadership would be discussed and the Naval War College's expertise in leadership would be imparted. He intended to use the reputation of the Naval War College to build professional approval and networks. He believed that he may complete five modules. He completed the Foundational Knowledge Course, a pre-requisite to the Naval Command and Staff course, and one week of the first module.

## V. INTERVENTION: EDUCATION

The intervention occurred when LCDR Waranius received educational materials.<sup>47</sup> The materials professed to discuss the ethical standards to which

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<sup>47</sup> Wong & Gerras (2015).

society holds military officers, such as the importance of disclosing the truth to oneself.<sup>48</sup> LCDR Waranius read a description of an officer's experience.<sup>49</sup> The officer compiled storyboards.<sup>50</sup> A storyboard should carefully describe and document (e.g., using data and photos) the process of an attack.<sup>51</sup> The battles documented by the officer were never recognized.<sup>52</sup> They were printed and shuffled.<sup>53</sup> Yet, the veracity and accuracy were not registered.<sup>54</sup> The officer felt disconnected from the process of following rules requiring storyboards.<sup>55</sup>

Dismissing any potential damage that may result from a misleading or incomplete storyboard allows leaders to view the requirement as yet another petty bureaucratic obligation void of any ethical considerations.<sup>56</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Wong & Gerras (2015).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Wong & Gerras (2015) at 20.

LCDR Waranius understood details not presented in the literature.<sup>57</sup> For example, one possible way to misrepresent the truth would be to reuse photographs from another attack. The course materials provided a method for being honest with oneself.<sup>58</sup> The method was the following a) “Acknowledge the Problem;”<sup>59</sup> b) “Exercise Restraint;”<sup>60</sup> and c) “Lead Truthfully.”<sup>61</sup>

## VI. POST-INTERVENTION

After completing some studies on professionalism, LCDR Waranius disenrolled. He reasoned that he should not lie to himself. He was not passionate about the material and could use his time to pursue other professional activities and interests that were more satisfying and beneficial to his career. His exit demonstrated that learning was intended to have occurred. He satisfied core purposes of the

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<sup>57</sup> Wong & Gerras (2015).

<sup>58</sup> Wong & Gerras (2015).

<sup>59</sup> *Id.* at 29.

<sup>60</sup> *Id.* at 30.

<sup>61</sup> *Id.* at 32.

program by demonstrating competence. The program's core competencies included, a) "Comprehend the ethical and moral responsibilities associated with being a member of the profession of arms" and b) "Comprehend the potential leadership challenges and decision-making pitfalls within joint organizations and how mid-level leaders can effectively address such challenges."<sup>62</sup>

## VII. FINDINGS AND DISCUSSION

The cause of disenrollment was education and self-analysis. Understanding the restrictions of time and complying with every requirement were outweighed by the seriousness of his job commitment. To have stayed in the program would have meant that he was passionate about it. He has demonstrated passion and enthusiasm for the Coast Guard and willingness to learn Naval tactics and

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<sup>62</sup> U.S. Naval War College, Naval Command & Staff Online Program, College of Distance Education, Syllabus & Study Guide (Version 1.1), app. B NC&S Program Core Competencies, 2 and 4 (B-1) (Nov. 2019).

techniques to meet the Coast Guard's goals, such as beginning Naval Flight School as an Ensign, completing the program, and flying with the Coast Guard. The program taught him to analyze whether the upcoming modules, focused on war, were going to be of value to his position.

LCDR Waranius enrolled to gain prestige. Prestige is gained by learning, applying the information, being truthful with oneself, and managing one's time. Being a good leader requires an officer to accept given constraints, abide by the requirements, disclose debilities, and optimize. LCDR Waranius acknowledged the problem by evaluating the material and his circumstances. He exercised restraint by ending his time commitment and only learning lessons that directly benefited his employment goals. He led truthfully by presenting a candid explanation to the Naval War College and fulfilling his pledge to continue gaining employment activities that impassioned him.

## VIII. RECOMMENDATIONS

A goal of Joint Professional Military Education offered by the Naval War College is to create well-rounded officers who are familiar with all aspects of the Navy and other branches. The Coast Guard is different. Since it is so small, most officers working with other communities (e.g., U.S. Air Force) may get much more experience than officers in the Navy, who stay in one specialized community for most of their careers. Unlike many Coast Guard officers, Navy officers may not be introduced and accustomed to the array of linkages. The Naval War College should rely on this study and recommendations to help enrolled professionals achieve goals. The Naval War College addresses the Coast Guard later in the program, Block Four. It may include this study to enrich discussions. This is relevant to attitudes and learning accomplishments, such as those exhibited by LCDR Waranius; theater-level security arenas affecting the Coast Guard; and civilians overseeing or implementing rules affecting the Coast Guard (e.g., War on Terror and War on Drugs). Academic



perspectives presented in this study may demonstrate professional passion and should be included in the Naval War College's path to connect paid warriors to civilians and other servicemembers. Perhaps civilians, who do not meet the current enrollment criteria, but who have the desire and motivation, could be valuable contributors to the program and specific classroom discussions by bringing in more varied experiences. The Naval War College may improve by pre-screening for desire and motivation to be in the program. It may include a discussion of what the program is and is not to verify that everyone's expectations are aligned prior to starting the program. LCDR Waranius' self-reflective decision-making may be like interagency executive-level decision-making because the educational principles were embraced by LCDR Waranius demonstrating the efficaciousness of the educational channel. Therefore, the Naval War College should recognize that fellowship and instruction were received by LCDR Waranius, who is an officer in the

Coast Guard and graduate of Naval Flight School and the Coast Guard Academy.

## IX. CONCLUSION

This research investigated whether the Naval War College educated and fulfilled a member of the Coast Guard. The Naval War College, concerned with integrity and chivalry, presented lessons about how not to lie. Lying to oneself results in deception spreading through the military. It not only violates protocols, it harms individuals, missions, jurisdictions, and a purpose of abiding by the U.S. Constitution. The result of having learned, early-on, not to lie to oneself is that LCDR Waranius can impart a) the knowledge through this work; b) the values through his dissemination of moral decision-making; and c) attempt to fulfill increasing expectations for the Coast Guard to operate as the military, a security agency, and a body of leadership among civilians who provide and require direct

oversight for personal, public, and professional affairs.<sup>63</sup>

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<sup>63</sup> Carmen M. Cusack, FISH, JUSTICE, & SOCIETY (2018).

# URBAN LAW AT NIGHT: NIGHT MAYORS AND NIGHTTIME URBAN GOVERNANCE STRATEGIES FOR SUSTAINABLE URBAN NIGHT SPACES AND SPATIOTEMPORAL EQUALITY

Sara Gwendolyn Ross\*

## I. INTRODUCTION

Activities and spaces that are more heavily associated with the night do not tend to be regulated in a manner designed to encourage their flourishing. Rather, spaces coded primarily as nighttime-

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associated and which provide space for use, activities, culture, and art at night tend to be regulated and governed in a prohibitory manner that ultimately affects their sustainability. As cities work towards Goal 10 (Reducing Inequality) and Goal 11 (Developing Sustainable Cities and Communities) of the 2015-2030 UN Sustainable Development Goals—alongside the principles, policies, and standards contained within the UN-Habitat’s *New Urban Agenda* that call for a better inclusion of marginalized groups and communities<sup>1</sup>—a shift in spatiotemporal understandings of the law and governance of the use of space is needed. Spatiotemporal inequality within the urban law of densifying urban cityscapes is a layer where everyday marginalization and injustice persist.

While a wide array of spaces, activities, and people characterize what goes on during the night in our cities, this is frequently overlooked within

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<sup>1</sup> *New Urban Agenda*, GA Res , UN-HABITAT, 71st Sess., 86th Mtg., 216, UN Doc A/RES/71/256 (adopted at Habitat III in Quito, Ecuador on 20 October 2016); *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, UNGAOR, 70th Sess, 2015, UN Doc A/70/L.1 [Sustainable Development Goals].

regulation and governance that is ill-equipped to effectively engage with the nighttime context. From the many individuals who work non-traditional hours, whether employees cleaning and preparing office spaces for the weekday 9-5 workday or emergency room doctors saving lives, or students rushing to study for an exam or finish a paper, to arts and culture workers, to those who work in restaurants, bars, and cafes, to transportation providers, to those whose careers are centered on nighttime cultural industries—the nighttime economy, loosely defined as “the social, cultural and economic activities that take place between 6 p.m. and 6 a.m. in the city,” is brimming with diversity.<sup>2</sup>

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<sup>2</sup> See, e.g., Toronto, Report for Action EC6.8 “Strengthening Toronto’s Nighttime Economy” from General Manager, Economic Development and Culture to Economic and Community Development Committee (19 June 2019) at 1, online (pdf): *City of Toronto* <<http://www.toronto.ca/legdocs/mmis/2019/ec/bgnd/backgroundfile-134446.pdf>> [“Strengthening Toronto’s Nighttime Economy”]; Toronto, “Toronto Nightlife Action Plan”, Attachment 1 to EC6.8 Report for Action EC6.8 “Strengthening Toronto’s Nighttime Economy” from General Manager, Economic Development and Culture to Economic and Community Development Committee (19 June 2019) at 3, online (pdf): *City of Toronto* <<http://www.toronto.ca/legdocs/mmis/2019/ec/bgnd/backgroundfile-134955.pdf>> [“Toronto Nightlife Action Plan”]. See also Erika

Nighttime spaces and activities, and the nighttime economy, are accompanied by a unique set of barriers for which the spatiotemporal design of existing urban governance structures are not suited due to their spatiotemporal focus on the experience, spaces, and realities of a city during its daytime hours.<sup>3</sup> As cities become increasingly aware of their cultural assets, the economic potential of the night in

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Beras, “Millions of Workers Don’t do 9 to 5. So Where’s the Child Care?”, *Marketplace* (14 January 2019), online: <[www.marketplace.org](http://www.marketplace.org)>.

<sup>3</sup> See generally, MARIANA VALVERDE, CHRONOTOPES OF LAW: JURISDICTION, SCALE AND GOVERNANCE (2015), at 19-21, for a discussion of the social and political exclusions that arise within local processes of law and its orientation towards hegemonic spatiotemporal (Mariana Valverde’s discussion of the political and social exclusions that take place as a result of processes of local law and its imposition of hegemonic spatiotemporal narratives [Valverde, Chronotopes]. See also MARIANA VALVERDE, EVERYDAY LAW ON THE STREET: CITY GOVERNANCE IN AN AGE OF DIVERSITY (2012), at 49 [Valverde, Everyday]. Jessica Reia, *Can We Play Here? The Regulation of Street Music, Noise and Public Spaces After Dark*, in Giacomo Botta & Geoff Stahl, eds., NOCTURNES: POPULAR MUSIC AND THE NIGHT (2019), 163 at 542; Davina Cooper, *Far Beyond ‘The Early Morning Crowding of a Farmyard Cock’: Revisiting the Place of Nuisance Within Legal and Political Discourse*, 11:1 SOC. & LEG. STUD. 5 at 24 (2002). See also Guy Bordin, “La nuit chez les Inuit canadiens du haut Arctique : une nuit véritable, mais en trompe-l’œil” (2018) 1:2. See also Bollettino della Società Geografica Italiana (14) 33 for a discussion of daytime versus nighttime and daylight and darkness in the context of 24-hour daylight (i.e. the “midnight sun”) and 24-hour darkness (i.e. the “arctic night”) and where the production and definition of night and “nighttime hours” is not reliant on darkness.

the city, and international guidelines for equitable and sustainable urban development, such as UN-Habitat's *New Urban Agenda*,<sup>4</sup> municipal governments are simultaneously turning to the need for and the benefits of alternative governance structures that are designed to address the full 24-hours of life in the city, including the nighttime spaces and industries of their city. In particular, a rapidly expanding list of cities—such as Sydney, Amsterdam, London, Paris, Calí (Colombia), Austin, Toronto, Vancouver, and others—are considering introducing or have already introduced 24-hour municipal governance mechanisms that include the development of positions such as “Nightlife Councils/Commissions,” or “Night Mayors/Night Czars/Nightlife Ambassadors/Night Manager,” in order to deal with nighttime life and culture in a

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<sup>4</sup> *New Urban Agenda*, GA Res , UN-HABITAT, 71st Sess., 86th Mtg, 216, UN Doc A/RES/71/256 (adopted at Habitat III in Quito, Ecuador on 20 October 2016). *See also*, Giacomo Botta & Geoff Stahl, “Introduction: Because the Night...” in Giacomo Botta & Geoff Stahl, eds, *NOCTURNES: POPULAR MUSIC AND THE NIGHT* (2019), 1 at 10; LAAM HAE, *THE GENTRIFICATION OF NIGHTLIFE AND THE RIGHT TO THE CITY: REGULATING SPACES OF SOCIAL DANCING IN NEW YORK* (2012), at 4-5, 19-20.



context-sensitive manner that addresses needs that are distinct from the laws necessary to govern the city during the daytime.

This Article explores the concept of the “night mayor” and nighttime governance structures by tracing their development; potential and utility; reviewing applicable examples; and situating this within spatiotemporal (in)equality, marginalization, and international guiding documents for equitable and sustainable urban development that require cities to think through their management of the night and its spaces and activities. Finally, this Article centers the discussion on the experience of Vancouver, Canada as it begins to implement its newly-adopted cultural plan for the city and respond to existing challenges for the existence of nighttime-coded art, culture, and community, as well as its ongoing exploration and interest in developing a role that captures the essence of what a night mayor brings to a city.

## II. THE VANCOUVER INITIATIVE

Held at Vancouver’s Beaumont Studios—an art space and venue that provides the arts community with creative and versatile spaces for events and houses an art gallery, store, as well as over thirty artist studios—the “Save Space: the Future of Vancouver Nightlife” panel took place on March 28, 2018. Organized in response to the increasing pressure and displacement felt by Vancouver’s arts community and those involved with Vancouver’s nighttime cultural spaces,<sup>5</sup> the event was open to the public and, as the official mandate of the event explained:

In the face of ever increasing costs to be an artist and ever decreasing access to creative spaces in Vancouver, we gather for an open discussion about the future of our city’s cultural spaces, the complexities of legislating nightlife, and lessons to be learned from cities

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<sup>5</sup> See also, John Kurucz, *Speculation Weeding out Vancouver’s Grassroots Arts Spaces at Alarming Pace*, VANCOUVER COURIER (21 June 2019), online: <[vancourier.com](http://vancourier.com)>.

around the world grappling with the same issues.

Hosted by Malcolm Levy, the Executive Director of the New Forms Festival, a Vancouver audio-visual festival that focuses on interactive events that promote local talent alongside international innovative artists and musicians,<sup>6</sup> the “Nightlife Advisory Panel” was populated by some key local and international figures in nighttime art and culture, including: Ana Rose Carrico, the Co-Director of Vancouver’s Red Gate Arts Society, a space for do-it-yourself (DIY) experimental art, music, and culture that, at the time, was facing displacement through renoviction;<sup>7</sup> Stacey Forrester, the co-

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<sup>6</sup> See, *New Forms Festival* <newformsfestival.com>; *New Forms Media Society* <newformsmediasociety>.

<sup>7</sup> See, *Red Gate Arts Society* <redgate.at.org>. Note that the term renoviction, which is in popular use in British Columbia, Canada, refers to the unwilling displacement of the tenants of a building due to a large-scale renovation. As the term conveys, a renoviction entails that tenants have been evicted due to a purported large-scale renovation where the landlord will then be able to raise the rent of the new space, whether or not a large-scale renovation has in fact taken place. See, e.g., *Baumann v Aarti Investments Ltd*, 2018 BCSC 636 at para 40 for the following definition: “[M]aking an unusually long list of repairs after earlier failing to secure an increase in the rent by consent.” See also, *Residential Tenancy Act*, SBC 2002, c 78, s

founder of Vancouver's chapter of Good Night Out, a grassroots initiative for awareness-raising regarding sexual harassment and sexual assault that takes place during time spent out at night within a city's nighttime cultural spaces;<sup>8</sup> and Loren Granich, the co-founder of Los Angeles' A Club Called Rhonda, a Los Angeles-based pansexual dance party crew that now hosts Rhonda events and collaborations in cities all over the world.<sup>9</sup> The star of the event, and the speaker that most people were there to hear, was the keynote Mirik Milan, the former and first *Nachtburgemeester* (Night Mayor) of Amsterdam.

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49(6)(b) for the relevant legislation through which renovations occur:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

...

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant

<sup>8</sup> See, *Good Night Out Vancouver* <goodnightoutvancouver.com>.

<sup>9</sup> See, e.g., Ariana Marsh, "A Club Called Rhonda' is a Pansexual Dance Party and Everyone's Invited", *i-D* (13 July 2018), online: <i-d.vice.com>; Jose D Duran, "Rhondavous Brings an LA Nightlife Institution to Space", *Miami New Times* (8 February 2018), online: <miaminewtimes.com>.

Chatting voices filled the room as more and more attendees filtered into the Beaumont Studios waiting for the slightly-behind-schedule event to begin. As is customary in Vancouver, the event began with a land acknowledgment noting that the event was taking place on the traditional, unceded, ancestral, and occupied lands of the Coast Salish peoples, including, Squamish, Stó:lō and Tsleil-Waututh, and Musqueam Nations. The host of the panel explained some of the house rules for the panel and audience engagement, emphasizing the importance of mutual respect in communication, and also informed the crowd that the bar would be open throughout the event, but that, if they chose to order drinks, they should ensure to do so quietly in a manner that would not disturb the other attendees. As the event progressed, the host situated Vancouver within a transitional period as a dynamic and unique cultural center currently positioned to make choices and changes in managing this transitional point.

Vancouver is not alone in this transitional period highlighted by the Save Space panel as cities

around the world are turning to culture, and nighttime culture and cultural spaces for what these spaces, events, and communities might provide a city in crafting an effective cultural strategic plan, but also due to growing recognition that the night comprises an important piece of urban fabric for urban citizens, artists, and those whose work hours do not fit into the traditional 9-5 pm spatiotemporal mold that urban legislation, such as by-laws, sound and noise regulation, licensing, zoning, and transportation, are primarily designed to govern.<sup>10</sup>

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<sup>10</sup> See, e.g., in Canada, Music Canada, “Keys to a Music City: Examining the Merits of Music Offices, Boards, and Night Mayors” (2018), online (pdf): *Music Canada* <musiccanada.com> [Music Canada, “Keys to a Music City”]; Feargus O’Sullivan, “The Night Mayor Goes Global”, *City Lab* (27 December 2017), online: <www.citylab.com>. See also Sound Diplomacy & Andreina Seijas, “A Guide to Managing Your Night Time Economy” (2018), online (pdf): *Sound Diplomacy* <www.sounddiplomacy.com>. See also Toronto’s recently revised noise bylaw that came into effect on October 1, 2019 that includes an attempt to balance amplified sound made at night by venues that is within allowable time and decibel thresholds, a former subject of noise complaints under “General noise” that was “unreasonable and persistent,” as well as the inclusion of a framework for measuring noise that engages the site and context of a noise complaint rather than remaining reliant on the report of a complainant (City of Toronto, *By-law 878-2019* (16-17 April 2019), amending *Toronto Municipal Code*, c 591, *Noise*, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A) [Toronto Noise By-law Amendment]; Toronto Music Advisory Council’s (TMAC) “Noise Bylaw Recommendations” (2015), online

Vancouver is also not alone in its growing interest in what nighttime governance models and positions such as a night mayor might provide for both the sustainability of its arts communities and the power of the nighttime economy, nighttime arts and culture spaces, and in further growing these for tourism and economic potential.<sup>11</sup>

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(pdf): *City of Toronto* <[www.toronto.ca](http://www.toronto.ca)> regarding the application of the agent of change principle to safeguard “culturally rich or significant districts from development and gentrification, especially heritage properties and other special use properties such as entertainment establishments and concert halls”; Sara Ross, *Protecting Urban Spaces of Intangible Cultural Heritage and Nighttime Community Subcultural Wealth: A Comparison of International and National Strategies, The Agent of Change Principle, and Creative Placekeeping*, 7:1 WESTERN J. LEG. STUDIES 5 (2017) <[ir.lib.uwo.ca/uwojls/](http://ir.lib.uwo.ca/uwojls/)>.

<sup>11</sup> There is a long list of examples of small to large urban centers around the world like New York, Sydney, Dublin, Paris, California, Austin, Iowa City, Pittsburgh, Edmonton, and others, but Toronto is an example of another Canadian city that has been particularly interested in harnessing the night mayor position over the years, and this appears in a number of Toronto’s reports, strategic development reports, cultural reports, motions to City Council, and staff instructions over the years. See most recently the November 6, 2019 announcement of the appointment of Deputy Mayor Michael Thompson, the Chair of Toronto’s Economic and Community Development Committee, to the position of “Night Economy Ambassador” for the purpose of strengthening Toronto’s nighttime economy. See also, Lauren Pelley, “City Officials, Business Owners Want to Beef Up Toronto’s Overnight Economy”, *CBC* (10 November 2019), online: <[www.cbc.ca/](http://www.cbc.ca/)>; “Strengthening Toronto’s Nighttime Economy,” *supra* note 2; Responsible Hospitality Institute, “Toronto Sociable City at Night: Hospitality Zone Assessment” EC6.8 Attachment 3 to Toronto, Report for Action EC6.8

As the Save Space event continued into the night, a few concerns were central to the many issues discussed that evening regarding problems related to a lack of context-sensitive governance and law designed for the night and for those for whom nighttime in the city defines a significant portion of their time using and engaging with city space and the legal complexes that comprise the city.<sup>12</sup> As the name of the event indicated, the increasing lack of available and affordable cultural space was a key concern introduced by the host of the event and readily discussed by the panelists. The overarching sentiment throughout the room was that the City of Vancouver had not yet taken any steps towards

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“Strengthening Toronto’s Nighttime Economy” from General Manager, Economic Development and Culture to Economic and Community Development Committee (2019), online (pdf): City of Toronto, *Tabia* <Toronto-bia.com>; “Toronto Nightlife Action Plan”, *supra* note 2. *See also* Music Canada, “Keys to a Music City,” *supra* note 10. *See also*, O’Sullivan, *supra* note 10; Sound Diplomacy & Seijas, *supra* note 10; Sound Diplomacy, “The Music Cities Manual: Your Comprehensive Guide to Building Music Cities” (2019), online (pdf): *Sound Diplomacy* www.sounddiplomacy.com.

<sup>12</sup> As Nikolas Rose & Mariana Valverde, *Governed by Law?*, 7:4 SOC. & LEGAL STUD. 541, 542 (1998) describe: “Legal complexes” include “the assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms, and forms of judgement.”



addressing this concern or the contributing factors that exacerbate the situation, such as ill-suited zoning categories, licensing difficulties, misinformed building code development and enforcement, property tax assessment, and so on.

Safety also formed a central concern expressed at the event, especially safety for women, and the reduction of sexual assault and gendered sexual harassment on nights out in Vancouver and within arts, culture, and nightlife spaces where nights out in the city tend to take place. This safety concern is not only a common theme that arose during the Vancouver panel with Milan, but also something that has contributed to the development of iterations of the night mayor position and nighttime governance models in other cities as well as discussions surrounding the creation of nighttime governance frameworks, strategies, or night mayor roles where these do not yet exist.<sup>13</sup> Under the larger context of

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<sup>13</sup> See, e.g., Marissa J. Lang, *From Rats to Noise Complaints, City's New Nightlife Director Takes on DC After Dark*, THE WASHINGTON POST (29 December 2018), online: <[www.washingtonpost.com](http://www.washingtonpost.com)> [Lang, *From Rats to Noise Complaints*]; Marissa J. Lang, *Want to*

guiding international frameworks and guidelines for sustainable and equitable urban development, safety is also a key factor that appears within, for example, UN-Habitat's *New Urban Agenda*, which highlights the importance of preventing and eliminating violence and harassment experienced by women and girls in both public and private spaces,<sup>14</sup> as well as more generally within the UN's Sustainable Development Goal 11 to "[m]ake cities and human settlements inclusive, safe, resilient and sustainable."<sup>15</sup> Concerns regarding safety are also engaged where traditional arts and culture venues are becoming less and less available, and where nighttime and marginal arts and culture events are

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*Deal with DC's After-Hours Noise? The District is Looking for its First 'Night Mayor,'* THE WASHINGTON POST (18 October 2018), online: <washingtonpost.com> [Lang, *Want to Deal With DC's After-Hours Noise?*]; "Toronto Nightlife Action Plan," *supra* note 2; Responsible Hospitality Institute, *supra* note 11; Jeff Weiner, *Orlando Hires 'Night Manager' to Oversee Nightlife Scene*, ORLANDO SENTINEL (28 July 2017), online: <www.orlandosentinel.com>; Natanael Rother & Jenesa Jeram, "Living After Midnight: For a Better Night-Time Environment," (2019), online (pdf): *The New Zealand Initiative* <www.nzinitiative.org.nz>.

<sup>14</sup> *New Urban Agenda*, *supra* note 1 at para 13(c).

<sup>15</sup> *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, UNGAOR, 70th Sess, 2015, UN Doc A/70/L.1 [Sustainable Development Goals].

increasingly turning to unconventional spaces, which remain available and affordable for use.<sup>16</sup>

Related to the use of unconventional spaces to ease the difficulties of lack of availability and affordability, the importance of having and facilitating the existence of diverse spaces at night, such as all-ages venues, non-liquor primary establishments, and DIY-friendly venues, arose as another common theme for establishing greater inclusivity at night akin to that which is encouraged during daytime hours.<sup>17</sup> Also highlighted here was

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<sup>16</sup> See also, Kurucz, *supra* note 5; City of Vancouver, “Vancouver Music Strategy - Draft Final Report” (2019), online (pdf): *City of Vancouver* <[vancouver.ca](http://vancouver.ca)> [City of Vancouver, “Vancouver Music Strategy”]; City of Vancouver, “Culture|Shift – Draft: Blanketing the City in Arts & Culture—Vancouver Culture Plan 2019-2029” (2019), online (pdf): *City of Vancouver* <[vancouver.ca](http://vancouver.ca)> [City of Vancouver, “Culture|Shift Draft Plan”]; City of Vancouver, “Making Space for Arts and Culture – Draft Vancouver Cultural Infrastructure Plan” (3 September 2019), online (pdf): *City of Vancouver* <[vancouver.ca](http://vancouver.ca)> [City of Vancouver, “Making Space”]. See also Melody Ma, “Vancouver Should Stop Subsidizing Developers’ Artwashing and Protect Creative Spaces”, *The Tyee* (27 August 2019), online: <[thetyee.ca](http://thetyee.ca)>; Jessica Kerr, “Artists ‘Rave Against Renovictions’ Outside Chip Wilson’s Vancouver Mansion,” *Vancouver is Awesome* (10 August 2019), online: <[vancouverisawesome.com](http://vancouverisawesome.com)>.

<sup>17</sup> This concern for these types of available spaces is echoed in many cities in the context of a push for a better nighttime governance structure as well as roles similar to that of a night mayor, see, e.g., Lauren Levy, “Can a ‘Nightlife Mayor’ Rescue New York’s DIY Music Venues?,” *Vulture* (15 November 2017), online:

the demand for more effective 24-hour use of available city space where there is a noted demand from individuals, groups, and communities beyond what might be commonly perceived as vibrant use of city space at night via nightclubs or venues serving alcohol.<sup>18</sup>

Concern with adequate public transportation and alternative transportation options formed another focus discussed during the Save Space panel, which echoes similar concerns within many other cities investigating the development of nighttime

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<vulture.com>; Neena Sethi, “DIY Events in Toronto: Understanding Challenges to Access and Space” (Report to the City of Toronto Economic Development and Culture Division) (August 2018), Attachment 2 for EC6.8 Report for Action EC6.8 “Strengthening Toronto’s Nighttime Economy” from General Manager, Economic Development and Culture to Economic and Community Development Committee (19 June 2019) at 3, online (pdf): *City of Toronto* <toronto.ca>; Responsible Hospitality Institute, *supra* note 11; “Toronto Nightlife Action Plan”, *supra* note 2; Dan Fumano, *Nighttime Economy—Vancouver Looks at ‘The Other 9 to 5’*, VANCOUVER SUN (24 May 2019), online: <vancouver.sun.com> [Fumano, “Nighttime Economy”]; Toronto Music Advisory Committee, “City-Owned Spaces for Do-it-Yourself Events” (Motion) (8 November 2019), online: *City of Toronto* <app.toronto.ca>.

<sup>18</sup> See also, BC, *From Dusk ‘til Dawn: Arbitration, Cultivating Culture and the Other Stuff of Night Mayors*, THE ECONOMIST (24 October 2016), online: <www.economist.com>; Beras, *supra* note 2.

governance.<sup>19</sup> As attendees expressed, the availability of late night public transportation for those participating in nighttime activities occurring within Vancouver, as well as those working within the night sector, not only poses problems for those living within Vancouver, but is an even greater challenge for those living in the surrounding Metro Vancouver area; this concern is not dissimilar to challenges experienced within many other large centers that have a significant commuting population.

While the vibrancy of nighttime spaces, cultures, and activities is affected by limited access, access to transportation options is further connected to the concerns expressed in relation to safety. Not only does being stranded in the middle of the night pose a safety risk, but a lack of viable transportation options leads to a lack of municipal support and

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<sup>19</sup> See, Kenneth Chan, *City Council to Consider New Ways to Improve Vancouver's Nightlife*, DAILY HIVE (24 May 2019), online: <[dailyhive.com/Vancouver](http://dailyhive.com/Vancouver)>; Fumano, "Nighttime Economy", *supra* note 17; BC, *supra* note 18; Weiner, *supra* note 13; Aengus O'Hanlon, "Club Closures Fuel Calls for Dublin to Appoint 'Night Mayor' to Ensure the City's After-Dark Economy Thrives", *Dublin Live* (12 January 2019), online: <[www.dublinlive.ie](http://www.dublinlive.ie)>.

infrastructure for discouraging impaired driving. Those attending also hoped an advocate for the night, such as a night mayor or nighttime commission, could encourage City Hall to introduce ride-hailing services, such as Uber or Lyft, especially where the availability and reliability of taxi services in Vancouver was identified as particularly problematic.<sup>20</sup> Even though British Columbia (the Canadian province within which Vancouver is located), had introduced ride-hailing legislation in November 2018, as of Summer 2019 ride-hailing had yet to become legal in the province, although its arrival was projected for Fall 2019.<sup>21</sup> While at that time Vancouver remained the last major city in Canada and United States without access to ride-

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<sup>20</sup> See also, Fumano, “Nighttime Economy”, *supra* note 17; Motion submitted by Councillor Dominato to Vancouver City Council: “A Comprehensive Strategy for Realizing the Full Potential of the Nighttime Economy in the City of Vancouver” (26 June 2019), online: *City of Vancouver* <[vancouver.ca](http://vancouver.ca)> [Motion Re: Vancouver Nighttime Economy Strategy].

<sup>21</sup> See also, *ibid*; Bethany Lindsay, “Ride-Hailing Legislation Introduced by BC Government”, *CBC News* (19 November 2018), online: <[www.cbcnews.ca](http://www.cbcnews.ca)>.

hailing services,<sup>22</sup> these services eventually did arrive in Winter 2020.

Following this public community-oriented and -organized panel, interest in Milan's experience continued within the Vancouver as he later spoke to Vancouver City Council on May 2, 2018, having been brought in for the occasion by the Hospitality Vancouver Association.<sup>23</sup>

### III. THE NIGHT, NIGHTTIME GOVERNANCE, AND NIGHT MAYORS: FITTING INTO A CITY'S CULTURAL AND CREATIVE DEVELOPMENT PLANS

Later, in June 26, 2019, interest in better nighttime governance strategies continued to grow among the arts and cultures communities, participants, and stakeholders in Vancouver, along with further alarm at even more lost space for arts

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<sup>22</sup> See, Fumano, "Nighttime Economy", *supra* note 17.

<sup>23</sup> Hospitality Vancouver Association is an advocacy association for nightclubs, pubs and other businesses located along Granville Street and nearby Davie Village in Vancouver. See also, Kevin Griffin, *Amsterdam's 'Night Mayor' Aims to Improve Vancouver Nightlife*, VANCOUVER SUN (1 May 2018), online: <vancouver.sun.com>.

and culture in the city.<sup>24</sup> Within this setting, Vancouver City Councillor Lisa Dominato presented her long-awaited motion, “A Comprehensive Strategy for Realizing the Full Potential Nighttime Economy in the City of Vancouver”, to Vancouver City Council. Originally scheduled to be presented at the end of May, the motion was bumped a number of times over the month.

Nevertheless, some members of the public were still in attendance in order to speak to the motion despite having to either reschedule their ability to attend the daytime meeting or return after the motion was moved from one scheduled day to another. Here again, the need for the availability of nighttime art and culture space, and a diversity within the kinds of spaces and events that can be accessed by individuals and groups participating in either the production or consumption (or both) of the nighttime economy, was not only highlighted by a number of those who

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<sup>24</sup> See, e.g., “Opinion: Vancouver Needs a Nightlife Mayor”, *604 Now* (8 January 2019), online: <604Now.com>; Kurucz, *supra* note 5; Kerr, *supra* note 16; Fumano, “Nighttime Economy”, *supra* note 17.



were able to speak to the motion, but further emphasized by Councillor Dominato.<sup>25</sup> The need for better nighttime governance, planning, and leadership formed a recurring theme that echoed the discussions from the prior year's Save Space event.

Safety, both generally as well as specifically for women and the LGBTQ2S+ community, along with accessibility and inclusivity for a range of groups, individuals, and communities including those with disabilities and youth, also formed a central concern that appeared both within the motion and in the debates and public intervention surrounding the discussion of the motion.<sup>26</sup> Notably, the motion also emphasized the importance of diversity, accessibility, and inclusion in formulating a comprehensive Nighttime Economy Strategy and spaces that “foster social connectedness” for the broad spectrum of Vancouver's citizens, and acknowledged that the “Nighttime Economy is more than just entertainment, leisure, and social events, it

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<sup>25</sup> Motion Re: Vancouver Nighttime Economy Strategy, *supra* note 20.

<sup>26</sup> *Ibid.*

encompasses cultural, retail, tourism, and various corporate sectors, as well as nighttime workers who do not work in nightlife venues (e.g., health care workers, first responders, and police).”<sup>27</sup>

Prior to its final revisions and adoption, City Councillor Jean Swanson spearheaded the introduction of an amendment to ensure the inclusion of homeless and low-income individuals in the design of the future strategy. This amendment extended upon the potential that more context-sensitive nighttime governance carries for a diverse range of individuals and communities in the city beyond a focus on the benefits a nighttime economy might bring a city, where the support of establishments open late into the night and early morning provide additional indoor places at night for those who do not have anywhere else they can go.

The amendment, as City Councillor Jean Swanson emphasized in the lively discussion surrounding its inclusion, also specifically acknowledged the gentrifying role that vibrant night

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<sup>27</sup> *Ibid.*

spaces and nightlife can have, and the resulting displacement of businesses and cultural spaces serving lower income communities and individuals in a city. This responsiveness is a key component of more context-sensitive awareness of the various overlapping uses and interests bound up in a city's spaces and neighborhoods.<sup>28</sup> For example, attention to and engagement with nightlife trends and increases in the amount of night-primary venues in an area can provide a useful way to understand and track displacement, which can in turn lead to better recognition and management of the early stages of gentrification. Earlier recognition and balancing of displacement processes provides a route towards a more equitable balancing of divergent, yet spatially overlapping, stakeholder interests within contested spaces of a city.<sup>29</sup>

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<sup>28</sup> See, Hae, *supra* notes 4 at 32, 34.

<sup>29</sup> See, Sharon Zukin, Scarlett Lindeman & Laurie Hudson, *The Omnivore's Neighborhood? Online Restaurant Reviews, Race, and Gentrification*, J. CONSUMER CULTURE 1 (2015), DOI: <10.1177/1469540515611203>; Zachary Hyde, *Omnivorous Gentrification: Restaurant Reviews and Neighborhood Change in The Downtown Eastside of Vancouver*, 13:4 CITY & COMMUNITY 341 (2014); Lei Dong, Carlo Ratti, & Siqi Zhen, *Predicting*

Finally, citing a variety of recent reports demonstrating the value of the nighttime economy for Vancouver as well as challenges that exist in realizing its full potential, the motion passed—meaning that, among other elements:

Vancouver City Council direct[s] staff to work with the Vancouver Economic Commission to develop recommendations for a comprehensive citywide Nighttime Economy Strategy, one that encompasses all aspects of the Nighttime Economy and serves to focus the range of necessary actions required by Council and the City to remove obstacles and impediments to realizing the economic and other potentials of Vancouver’s Nighttime Economy, in consultation with all appropriate stakeholders, with work to begin in 2020, and for a draft strategy to be presented to Council for its consideration on or before June 2021.<sup>30</sup>

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*Neighborhoods’ Socioeconomic Attributes Using Restaurant Data*, 116:31 PNAS 15447 (2019).

<sup>30</sup> Motion Re: Vancouver Nighttime Economy Strategy, *supra* note 20.

Following Councillor Dominato's motion in early Summer 2019, and picking up on many of these same themes, Vancouver's new ten-year cultural plan for 2019-2029 "Culture|Shift – Blanketing the City in Arts and Culture" and its associated documents, "Making Space for Arts and Culture", "Vancouver Music Strategy", and the Staff Report on a new special events policy framework, were revealed on September 10, 2019 during the presentation of these documents to City Council by city staff.<sup>31</sup>

Before the vote was successfully passed to approve the new cultural plan, the time allotted to approving the plan stretched into the following day in order to accommodate the plan's presentation, those from the public who wished to speak to the plan, the process leading up to the development of the plan, the plan's future implementation, and

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<sup>31</sup> City of Vancouver, "Culture|Shift Draft Plan", *supra* note 16; City of Vancouver, "Making Space", *supra* note 16; City of Vancouver, "Vancouver Music Strategy", *supra* note 16; General Manager of Engineering Services, Policy Report to Vancouver City Council, "Special Event Policy Framework" (20 August 2019), online: City of Vancouver <[vancouver.ca](http://vancouver.ca)>.

further questions from Council in response to the contributions (largely favorable and supportive) from the public. Notably, in addition to the plan's prioritization of affordable and accessible spaces for culture and art with significant attention afforded to the availability of these spaces within the "6 p.m. to 6 a.m." period,<sup>32</sup> a visible focus of the documents is that of developing more equitable and context-sensitive nighttime governance and attention to the nighttime economy, such as that provided through the role of a night mayor.<sup>33</sup>

#### IV. A NIGHT MAYOR: DEFINITION, LOGISTICS, AND JURISDICTION

While the title "night mayor" is perhaps the most straightforward or catchy title that encapsulates the position, other terms are preferred by different cities for a variety of reasons. Some cities, for example,

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<sup>32</sup> See, e.g., City of Vancouver, "Making Space," *supra* note 16; City of Vancouver, "Culture|Shift Draft Plan", *supra* note 16 at 8 (Strategic Directions & Goals), 60-67; City of Vancouver, "Vancouver Music Strategy," *supra* note 16 at 11 (Priorities), 36-39.

<sup>33</sup> See, e.g., "Collaboration & Capacity" in City of Vancouver, "Culture|Shift Draft Plan", *supra* note 16 at 68ff; "Music Ecosystem & Nightlife Profile", *ibid* at 23.

instead elect to use the term Night Czar, Nightlife Ambassador, and Night or Nightlife Manager. Some preferences are based on the potentially misleading notion that the mayor of the night might have the same level of decision-making power or influence to that of the official mayor, while other terminology preferences are based on the similarity in sound between “Night Mayor” and “nightmare.”<sup>34</sup> As Mirik Milan had explained to the audience at the Save Space panel discussed previously, the position of night mayor is not simply the nighttime equivalent of the “daytime” (or primary) mayor of a city. Rather, the position functions in an independent manner, funded by city hall, and acts primarily as a liaison point between the nightlife industry, attendees,

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<sup>34</sup> See e.g., Lisa Power, “Toronto Flirts with Idea of a Night Mayor and Extended Drinking Hours,” *BlogTO* (13 April 2018), online <[www.blogto.com](http://www.blogto.com)>. See also Music Canada, “Keys to a Music City”, *supra* note 9 at 21 (“Once again, nomenclature varies with other possible terms including Night Czar, Nightlife Mayor, Nightlife Ambassador. For the purposes of this report, we’ll use Night Mayor.”).

organizations, and spaces, and municipal officials, governance mechanisms, and city residents.<sup>35</sup>

As Milan alluded to in his initial contribution to Vancouver's Save Space panel describing his experience as Amsterdam's first night mayor, the first step towards creating such a position, or governance orientation, is to begin to understand the differences in how daytime and nighttime spaces and events are currently treated by government officials and existing urban governance mechanisms. This step, in addition to the night mayor's role as an intermediary, works towards a better balancing of divergent urban stakeholder interests that conflict, compete, or overlap within the same spaces of a city—such as, for example, the daytime use of buildings, streets, transportation, licensing, permits, and sound, and the nighttime use and experience of these same elements of a city.<sup>36</sup>

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<sup>35</sup> See BC, *supra* note 18; Fumano, "Nighttime Economy", *supra* note 17; Natalie Delgadillo, "Latin America is Getting its First Night Mayor" *Citylab* (6 July 2016), online: <[www.citylab.com](http://www.citylab.com)>.

<sup>36</sup> See Botta & Stahl, *supra* note 3 at 10; Reia, *supra* note 3; BC, *supra* note 17; Lang, *From Rats to Noise Complaints*, *supra* note 12; Natanael Rother & Jenesa Jeram, "Living After Midnight: For a



While the development of nighttime governance mechanisms may at first appear to primarily address those whose work, leisure, and lives are associated with the nighttime hours, it is also applicable to those who do not wish to engage with the nighttime hours in this way and who may have concerns or nuisances that arise as a result of nighttime activity. These concerns might be, for example, effects on the ability to sleep due to additional noise generated by new or altered public transportation provisions, sound restrictions or lack of sound restrictions; litter and litter management strategies; shifts in parking provision and management; and so on. As Milan and others serving in similar positions have highlighted regarding their engagement with nighttime spaces, activities, culture, and economy, serving as intermediary for an array of urban stakeholders is a central characteristic of their role, which is required in developing workable solutions and stakeholder appeasement related to conflicting but overlapping

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Better Night-Time Environment” (2019) (pdf), online: *The New Zealand Initiative* <[www.nzinitiative.org.nz](http://www.nzinitiative.org.nz)>; Delgadillo, *supra* note 33.

uses and desires for urban spaces city.<sup>37</sup> Diverse resident groups, businesses, and others can bring their concerns with nighttime activities and spaces that affect them in different ways to a central and context-informed hub. This access to a central hub, or person, set up specifically for this purpose addresses frequently expressed frustration by these same urban stakeholders with past gaps in context-sensitive acknowledgment of their concerns.<sup>38</sup>

Where there is currently a focus on developing structures for nighttime governance to respond to the economic and growth potential of the nighttime economy, the use of urban space at night is not necessarily synonymous with the nighttime

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<sup>37</sup> See, Botta & Stahl, *supra* note 4 at 10; Lang, *From Rats to Noise Complaints*, *supra* note 13; Lang, *Want to Deal With DC's After-Hours Noise?*, *supra* note 13; Music Canada, "Keys to a Music City," *supra* note 10 at 21; Reia, *supra* note 3; BC, *supra* note 17; Rother & Jeram, *supra* note 12; Delgadillo, *supra* note 33; Alan Feuer, *New York City Appoints Its First Nightlife Mayor*, THE NEW YORK TIMES (7 March 2018), online: <nytimes.com>.

<sup>38</sup> See Botta & Stahl, *supra* note 4 at 10; Lang, *From Rats to Noise Complaints*, *supra* note 13; Lang, *Want to Deal With DC's After-Hours Noise*, *supra* note 13; Music Canada, "Keys to a Music City", *supra* note 10 at 21; Reia, *supra* note 34; BC, *supra* note 18; Rother & Jeram, *supra* note 13; Delgadillo, *supra* note 35; Feuer, *supra* note 37.

economy.<sup>39</sup> Even though the economic aspects of a nighttime economy tend to figure prominently within the consideration and debates surrounding developing nighttime governance structures, the nighttime economy comprises just one part of the larger nighttime ecosystem, and is also “just one aspect of any city’s nocturnal economic activity and form[s] just one of the social, political, economic and cultural prompts that collectively shape contemporary urban night-time leisure spaces.”<sup>40</sup> It is thus useful to conceptualize a night mayor or nighttime commission’s jurisdiction to be “life at night” in a city.<sup>41</sup> In order to fully include a city’s life at night, there are a variety of ways in which the role or jurisdiction of a night mayor can be structured, focused, or balanced. Some existing models have

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<sup>39</sup> Sound Diplomacy & Seijas, *supra* note 10. Cf Robert Shaw, *Beyond Night-Time Economy: Affective Atmospheres of the Urban Night*, 51 GEOFORUM 87 (2014) (for a further discussion of the distinction between the nighttime economy and the nighttime city). See also Bottà & Stahl, *supra* note 4 at 4.

<sup>40</sup> ROBERT SHAW, *THE NOCTURNAL CITY* (2018) at 70.

<sup>41</sup> See, e.g., Responsible Hospitality Institute, *supra* note 11; “Toronto Nightlife Action Plan”, *supra* note 2 at 3; Interview of Allison Harnden by Linda Poon in Linda Poon, “So You Want to be a Night Mayor”, *City Lab* (14 December 2018), online: <citylab.com>”.

loosely divided the focus of the position into three domains: (1) Nighttime Culture, Art, and Nightlife; (2) Safety and Policing; and (3) Nighttime Infrastructure and the Nighttime Economy.<sup>42</sup> Engaging fully with life at night in a city would ideally combine all three domains and see them effectively embedded within a city's nighttime governance structure.

In addition to serving as an advocate, intermediary, and mediator of the urban night, a key distinction between the design of a night mayor's position and a city's "daytime" mayor is the night mayor's lack of legislative or regulatory authority. This lessened level of authority, or "power", can sometimes generate community stakeholder frustration with the night mayor or nighttime council's ability to rapidly effect change. This frustration can in turn lead to a loss of trust in the

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<sup>42</sup> Shane Homan, "International Contexts, Victorian Conditions: Music and the Night Time Economy" (2018) at 23, online (pdf): *Music Victoria* <[musicvictoria.com.au](http://musicvictoria.com.au)>.

position and skepticism pertaining to the role's effectiveness.<sup>43</sup>

Again, mirroring the concerns or challenges that have arisen in other cities, during the discussions at City Hall surrounding the adoption of Vancouver's new cultural plan, concern with the city's jurisdictional constraints arose regarding realistically implementing the proposed nighttime governance design and cultural strategy.<sup>44</sup> However, another rationale behind establishing positions like a night mayor or entities like a nighttime council is that they address areas of urban governance well within a municipality's jurisdiction that cities are *already* engaging with but in an ineffective or less effective manner—such as the regulation of noise,

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<sup>43</sup> As night mayor positions are still relatively new developments, long-term reactions have yet to be fully canvased; *but see* Interview of Mirik Milan by Linda Poon in Linda Poon, "So You Want to be a Night Mayor", *City Lab* (14 December 2018), online: <citylab.com>".

<sup>44</sup> City of Vancouver, "Culture|Shift Draft Plan", *supra* note 16; City of Vancouver, "Making Space", *supra* note 16; City of Vancouver, "Vancouver Music Strategy", *supra* note 16; General Manager of Engineering Services, Policy Report to Vancouver City Council, "Special Event Policy Framework" (20 August 2019), online: City of Vancouver <vancouver.ca>. *See also*, Motion Re: Vancouver Nighttime Economy Strategy, *supra* note 20.

transportation, licensing, parking, and other matters. Further, the shift towards equitable 24-hour governance and sustainable urban development is not limited to municipal governments. This approach is equally relevant to other levels of government as well, as noted by UN-Habitat's *New Urban Agenda* regarding the importance of "[r]ecogniz[ing] the leading role of national Governments, as appropriate, in the definition and implementation of inclusive and effective urban policies and legislation for sustainable urban development" as well as "the equally important contributions of subnational and local governments, as well as civil society and other relevant stakeholders, in a transparent and accountable manner."<sup>45</sup>

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<sup>45</sup> *New Urban Agenda*, *supra* note 1 at para 15(b).

## V. WHY CITIES ARE TURNING TO NIGHTTIME GOVERNANCE AND NIGHT MAYOR POSITIONS

### A. Localizing International Frameworks for Equitable and Sustainable Urban Development: Revising Approaches to Nighttime Governance

As City of Melbourne's "Policy for the 24 Hour City: A Framework for Action" describes the changing urban fabric as a city shifts between day to night and back again, and the need to balance competing needs:

A 24 hour city policy for Melbourne does not seek to create an environment that supports continuous, high level activities throughout the entire day and night. The policy recognises that the city progresses through different rhythms over the course of the day and night. For example the rhythm of the city between 8am and 6pm is dominated by the hustle and bustle of commerce, people coming and going from 9-5 jobs, going to meetings, having lunch, attending university, and visiting tourist sites. As people finish work the city develops more relaxed

atmosphere, people meet for dinner, gather to see a show or visit a gallery. Around 11pm or midnight the city's vibe changes. Many visitors and workers have left the city, while others gather to celebrate and engage in live entertainment, drink at the bars or socialise in clubs. The Policy also recognises that the city is home to residents, many of whom need to sleep during this time, even while activity takes place. As the entertainment venues close and the city drains of people, it is time for the city to rest and recuperate for the new day. Late-night shift workers are completing their work, and the city cleaners work to enable the new day to commence afresh.

The City of Melbourne's Policy for the 24 Hour City is written to support these rhythms and in doing so promotes the positive aspects they bring as well as attempts to address some of their challenges and to balance competing needs.<sup>46</sup>

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<sup>46</sup> Community Services Committee Report, "City of Melbourne's Policy for the 24 Hour City" (9 September 2008) at 3-4, online (pdf): *City of Melbourne* <[www.melbourne.vic.gov.au](http://www.melbourne.vic.gov.au)>.



Or, as Toronto's most recent engagement with refining its nighttime governance capacity notes with a view to balancing divergent stakeholder concerns and interests:

It is important to keep Toronto's nightlife safe and find ways to improve, as expanding the range of people who participate in nighttime activities increases safety at night. Being safe is connected with health, including getting a good night's sleep. Ensuring that local residents are not disturbed by unreasonable late-night activity is an important part of a balanced plan.<sup>47</sup>

These descriptions of balancing divergent interests between inhabitants and stakeholders in a city speak to a number of the pillars of sustainable and equitable urban development that appear within guiding international legal frameworks for sustainable development, such as UN-Habitat's *New Urban Agenda*<sup>48</sup>—the local implementation of which plays a role in localizing the 2015-2030 Agenda for

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<sup>47</sup> "Toronto Nightlife Action Plan", *supra* note 2 at 6.

<sup>48</sup> See, e.g., *New Urban Agenda*, *supra* note 1 at paras 13(b)-(c), 14(a)-(b), 26, 40, 45, 48, 97.

Sustainable Development and, notably, Goal 11 of the UN Sustainable Development Goals (“Make cities and human settlements inclusive, safe, resilient and sustainable”).<sup>49</sup> The *New Urban Agenda*’s approach to balancing the interests of inhabitants and urban stakeholders is further supplemented by its reference to the “right to the city” and the right to culture within urban space.<sup>50</sup> The *New Urban Agenda* further includes a commitment to culture, cultural diversity, and cultural and creative industries as an important part of sustainable development for cities,<sup>51</sup> and outlines an “urban paradigm shift” that

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<sup>49</sup> Sustainable Development Goals, *supra* note 1; *New Urban Agenda*, *supra* note 1 at para 9.

<sup>50</sup> *See, e.g., ibid* at paras 11, 38. *See e.g.*, HENRI LEFEBVRE, WRITINGS ON CITIES, selected, translated and introduced by Eleonore Kofman & Elizabeth Lebas (1996); HENRI LEFEBVRE, THE PRODUCTION OF SPACE, translated by Donald Nicholson-Smith (1991); HENRI LEFEBVRE, LE DROIT À LA VILLE (1968); HENRI LEFEBVRE, LA REVOLUTION URBAINE (1970). *See also*, DAVID HARVEY, SOCIAL JUSTICE AND THE CITY, revised ed (2009); Mark Purcell, *Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant*, 58 GEOJOURNAL 99 (2002); Hae, *supra* note 4 at 6-7.

<sup>51</sup> *See, e.g., New Urban Agenda, supra* note 1 at paras 60. *See also ibid* at paras 10, 14(a), 26, 40, 48, 124; the *International Guidelines on Urban and Territorial Planning*, Principle 6(k) “Encourage cultural activities, both indoor (museums, theatres, cinemas, concert halls, etc.) and outdoor (street arts, musical parades, etc.) recognizing that the development of urban cultures and respect for social diversity are part of social development and have important spatial

includes developing empowering and inclusive urban governance mechanisms and structures for urban stakeholders.<sup>52</sup>

As Milan noted of his role as a mediator and intermediary between the interests of nightlife communities, art, culture, and performance communities, and resident communities in their interaction with the “regulatory world”: “You need to speak the same languages to get something done. . . . A person who can only speak the nightlife language will have a difficult time getting their voice heard in city hall.”<sup>53</sup> Amplifying the access of marginal voices within urban governance structures and urban planning is again a component of the equality and sustainable diversity in urban development envisioned within international standard setting documents like the *New Urban Agenda*.<sup>54</sup> For city planning, as Milan has described

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dimensions” (UN-HABITAT, Res 25/6, UN Doc HS/059/15R (2015)).

<sup>52</sup> New Urban Agenda, *supra* note 1 at paras 15(c)(ii), 41, 48, 97.

<sup>53</sup> Interview of Mirik Milan, *supra* note 43; Music Canada, “Keys to a Music City”, *supra* note 10 at 21-23. *See also* BC, *supra* note 18.

<sup>54</sup> *New Urban Agenda*, *supra* note 1.

of his role in the past, in addition to a mediator of stakeholder concerns, a night mayor's job is dedicated to city planning "after dark" for a city's "off hours".<sup>55</sup> This kind of a spatiotemporal shift to effective city planning specifically for the night carries an increased awareness that these "off hours" are the "on hours" for the many individuals who move through and use urban space at night, and not only those within the growing nighttime arts, culture, and leisure industry that has grown much of the initial interest in the potential of night mayor positions.<sup>56</sup>

### B. Spatiotemporal Equality and the Counterhegemonic Harnessing of Urban Legal Tools

Marginalization of groups, individuals, and communities in a city occurs in a variety of ways and through a variety of layers within urban laws and policies. One of these ways can be understood

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<sup>55</sup> Interview of Mirik Milan, *supra* note 43; Music Canada, "Keys to a Music City", *supra* note 10 at 21-23.

<sup>56</sup> Beras, *supra* note 2.

through the lens of spatiotemporal patterns in a city and the marginalization and unequal treatment of diversity in terms of how the non-dominant spatiotemporal use of city space is currently governed.<sup>57</sup> An important element of increased efforts in designing and implementing nighttime governance and the notion of the 24-hour city is better acceptance and acknowledgment of the spatiotemporal diversity of a city. In particular, a position designed specifically for nighttime governance is useful in that it begins to acknowledge governance needs that are not necessarily engaged in the same way during the daytime hours. Where, for example, approaches to governing the financial industry would not effectively apply to the context of transportation needs or healthcare, the same is true of the need for context-relevant approaches to urban governance and infrastructure for the use of urban space at night. Acknowledging the different

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<sup>57</sup> See also, MARIANA VALVERDE, CHRONOTOPES OF LAW: JURISDICTION, SCALE AND GOVERNANCE (2015) at 21 [VALVERDE, CHRONOTOPES]; MARIANA VALVERDE, EVERYDAY LAW ON THE STREET: CITY GOVERNANCE IN AN AGE OF DIVERSITY (2012) at 49 [VALVERDE, EVERYDAY].

requirements for equitable spatiotemporal governance facilitates an unseating of the dominance of daytime governance where the fit of daytime governance approaches to, for example, the use of space, sound, or transportation, is less context-appropriate to the night.

Drawing again on the need for effective balancing of divergent concerns, while some cities such as Melbourne, Calif, Washington, D.C., and Toronto have begun to develop policies shifting towards governance that addresses the full 24-hour life of a city and incorporates policies that are welcoming to a vibrant use of night and nighttime spaces, provisions nonetheless remain for sensitivity to daytime interests. Though these provisions align with the *New Urban Agenda*'s approach to balancing the diverse interests of inhabitants and urban stakeholders and a diversity of rights to and within the city space,<sup>58</sup> a gap remains in the equitable treatment of nighttime-oriented urban

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<sup>58</sup> See, e.g., *New Urban Agenda*, *supra* note 1 at paras 11, 13(b)-(c), 14(a)-(b), 26, 38, 40, 45, 48, 97. See also *ibid*, at paras 11, 38.

spatiotemporal patterns, which fails to reflect of the aspirations expressed by new cultural, music, and nighttime economy strategies being developed or implemented by cities like Vancouver, Toronto, and others.<sup>59</sup> As Mariana Valverde notes of existing assumptions behind laws and regulations that govern and shape cities: “That young people who go out late at night, and tenants of any age who spend money on beer rather than on house renovations, are not entitled to have their cultural preferences imposed on the city as a whole is such a basic assumption of local law that it goes without saying.”<sup>60</sup> As Valverde also notes, the legal complexes of most cities tend to “presuppose and reproduce” specific “normalized cyclical temporalities,” such as,

the daily routine of breadwinners going to work and children going and returning home from school; the weekly family outings to sports

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<sup>59</sup> See, e.g., City of Vancouver, “Culture|Shift Draft Plan”, *supra* note 16. See also generally, SARA ROSS, LAW AND INTANGIBLE CULTURAL HERITAGE IN THE CITY (2019), ch 3 [ROSS, LAW AND INTANGIBLE CULTURAL HERITAGE IN THE CITY]; Botta & Stahl, *supra* note 4 at 10, 12.

<sup>60</sup> VALVERDE, EVERYDAY, *supra* note 57 at 49. See also, Hae, *supra* note 4 at 6-7; Cooper, *supra* note 3 at 24.

events or Sunday extended family dinners; the occasional but predictable neighbourhood gatherings at which men play a key role, often by cooking outdoors; . . . and of course the all-important yearly extended-family holiday celebrations, such as Thanksgiving and Christmas or Passover for Jewish families.<sup>61</sup>

These laws and regulations that affect the daily (and nightly) operation and use of cities “include not only official state holiday days but also an array of sub-state regulatory practices, from school calendars to store opening times and public transportation schedules,” and the acceptability (or lack of acceptability) of the indirect effects of permitting or supporting deviations from existing dominant spatiotemporal routines, such as increased activity or noise during the 6 p.m. to 6 a.m. portion of the day/night continuum in a 24-hour city structure.<sup>62</sup> In the interests of balancing divergent interests in the

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<sup>61</sup> VALVERDE, CHRONOTOPES, *supra* note 57 at 21. *See also*, Rose & Valverde, *supra* note 12.

<sup>62</sup> VALVERDE, CHRONOTOPES, *supra* note 57 at 21. *See also*, Reia, *supra* note 3 at 542.



day/night spatiotemporal spectrum, revising the urban governance of the nighttime use of urban space speaks to urban law's counterhegemonic potential (or, "non-hegemonic use of hegemonic legal tools") in developing inclusive strategies for the use of city space by marginalized communities that may take place in a transgressive or marginal manner.<sup>63</sup>

This potential is especially relevant where urban legal frameworks can often result in the indirect or secondary governance of people, personhood, and group identity through the municipal laws and regulations developed for the use and activity of urban spaces and things by people or groups.<sup>64</sup> As Boaventura de Sousa Santos suggests, one way of counteracting legal frameworks lacking inclusivity is through a non-hegemonic use of existing hegemonic

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<sup>63</sup> BOAVENTURA DE SOUSA SANTOS, *Beyond Neoliberal Governance: The World Social Forum on Subaltern Cosmopolitan Politics and Legality*, in Boaventura de Sousa Santos & Cesar A Rodriguez-Garavito, eds, *LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY* (2005) 29 at 29-30 [Santos, "Beyond Neoliberal Governance"].

<sup>64</sup> MARIANA VALVERDE, *TAKING 'LAND USE' SERIOUSLY: TOWARD AN ONTOLOGY OF MUNICIPAL LAW* (2005) 9:1 *Law, Text, Culture* 34 at 36-37; Hae, *supra* note 4 at 6.

legal tools.<sup>65</sup> This counterhegemonic approach may be represented through a harnessing of existing structures of urban legal governance for the use of space and activity in the city—even where their existing design may appear to be technically or facially neutral<sup>66</sup>—and shifting their character such that they function more responsively for relationally marginalized or excluded portions of a city’s populace and divergences in their urban spatiotemporal patterns. This shift, or counterhegemonic use of existing legal structures,

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<sup>65</sup> BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW LEGAL COMMON SENSE, 2nd ed (2002) at 467. *See also* BOAVENTURA DE SOUSA SANTOS, EPISTEMOLOGIES OF THE SOUTH: JUSTICE AGAINST EPISTEMICIDE (2014) at 42-43; Santos, *Beyond Neoliberal Governance*, *supra* note 63 at 60; BOAVENTURA DE SOUSA SANTOS & CESAR A RODRIGUEZ-GARAVITO, *Law, Politics, and the Subaltern in Counter-Hegemonic Globalization*, in Boaventura de Sousa Santos & Cesar A Rodriguez-Garavito, eds, LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY (2005) 1 at 6, 14-15; Rosemary Coombe, *Contingent Articulations: A Critical Cultural Studies of Law*, in A Sarat & T Kearns, eds, LAW IN THE DOMAINS OF CULTURE (1998) 21 at 35; Cooper, *supra* note 3 at 25; Sara Ross, *Buen Vivir and Subaltern Cosmopolitan Legality in Urban Cultural Governance and Redevelopment Frameworks: The Equitable Right to Diverse Iterations of Culture in the City and a New Urban Legal Anthropological Approach*, 5:1 CITY UNIVERSITY OF HONG KONG L. REV. 55 (2015).

<sup>66</sup> John G Chipman, A LAW UNTO ITSELF: HOW THE ONTARIO MUNICIPAL BOARD HAS DEVELOPED AND APPLIED LAND USE POLICY (2002) at 6; UN-Habitat, Habitat III Issue Paper #6, “Urban Rules and Legislation” (31 May 2015) at 2.

further aligns with the *New Urban Agenda's* international sustainable development principles, policies, and standards for better attention to balancing divergent stakeholder interests for equitable sustainable urban development that better responds to the interests of relationally marginalized communities, groups, and individuals.<sup>67</sup>

### C. Strategies for 24-Hour Urban Space, Nighttime Music, Art, and Performance

In response to data demonstrating the benefits that art, culture, performance, and life at night can bring to a city—from liquor primary establishments to age-inclusive and family inclusive venues—the cultural strategies of many cities are beginning to include the groundwork necessary for responding to the need for better nighttime governance. This groundwork includes an understanding that the effective, inclusive, and vibrant 24-hour use of urban space includes more than 24-hour nightclubs or nightlife and instead involves a diverse range of

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<sup>67</sup> *New Urban Agenda*, *supra* note 1.

actors and spaces active or in use during the “6 p.m. to 6 a.m.” period.<sup>68</sup> As cities are paying greater attention to their nighttime resources and nighttime-coded communities and spaces, the musical resources and spaces of a city are a pertinent example of a linked area also receiving increased attention and interest within urban and cultural development strategies.<sup>69</sup> Here, the intimate connection between the night and music venues, music rehearsal, recording, and production spaces, the physical space needed for these activities, and the hours chosen for musicians and live music consumers to engage with music for these activities, is becoming apparent to cities, and attention to this frequently accompanies their policy developments regarding the night, as displayed with the presentation in Vancouver of its new Music Strategy that accompanied the presentation and approval of its new strategic

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<sup>68</sup> Sound Diplomacy & Seijas, *supra* note 10; Sound Diplomacy, *supra* note 11. *See also* Beras, *supra* note 2; BC, *supra* note 18.

<sup>69</sup> *See generally* Botta & Stahl, *supra* note 4; Giacomo Botta & Geoff Stahl, eds, *NOCTURNES: POPULAR MUSIC AND THE NIGHT* (2019); Ross, *LAW AND INTANGIBLE CULTURAL HERITAGE IN THE CITY*, *supra* note 59, ch 3.

cultural plan.<sup>70</sup> This connection between the nighttime music spaces of a city and nascent nighttime urban governance can also be seen within the background and music and/or nighttime cultural industry experience of many individuals currently holding night mayor-type roles in these cities.<sup>71</sup>

Drawing further on the Canadian context, one of the leading guiding documents in Canada for growing and sustaining music assets within a city, and which has also served as a significant resource outside of Canada, was the 2015 Mastering of a

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<sup>70</sup> City of Vancouver, “Vancouver Music Strategy,” *supra* note 16; City of Vancouver, “Culture|Shift Draft Plan”, *supra* note 16. *See also* Will Straw, *Afterword*, in Giacomo Botta & Geoff Stahl, eds, *NOCTURNES: POPULAR MUSIC AND THE NIGHT* (2019) 257; Sethi, *supra* note 17 (for an in-depth look at the interconnectedness between the nighttime economy in Toronto and the challenges faced by do-it-yourself (DIY) pop-up music venues in the city). *See also*, Kenneth Chan, “City Council to Consider New Ways to Improve Vancouver's Nightlife,” *Daily Hive* (24 May 2019), online: <[dailyhive.com/Vancouver](http://dailyhive.com/Vancouver)>; Kurucz, *supra* note 5. *See also*, the Toronto Noise By-law Amendment, *supra* note 10.

<sup>71</sup> Amsterdam’s former Night Mayor Mirik Milan is a former club promoter; London’s Night Tsar Amy Lamé has long been involved with London’s queer cabaret culture; New York City’s Nightlife Mayor Ariel Palitz is a former nightclub owner and has spent years in the hospitality industry; Orlando’s Night Manager describes how she has worked nearly every position imaginable at bars, restaurants as well as nightclubs (Weiner, *supra* note 13). *See also*, Botta & Stahl, *supra* note 4 at 10.

Music City document.<sup>72</sup> One of the reasons that Music Canada created its new 2018 guiding document “Keys to a Music City: Examining the Merits of Music Offices, Boards, and Night Mayors” was the need for a follow-up document addressing the increased interest in the notion of a night mayor and the proliferation of these positions in various cities, particularly bigger urban centers.<sup>73</sup> As the document describes the frequently converging issues for vibrant music culture in a city and the night,

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<sup>72</sup> International Federation of the Phonographic Industry & Music Canada, “The Mastering of a Music City: Key Elements, Effective Strategies and Why It’s Worth Pursuing,” *Music Canada* (5 June 2015), online: <musiccanada.com>. For the reach of this document beyond Canada’s borders, see e.g. “The Mastering of a Music City Music Cities Summit” (Canadian Music Week at the Sheraton Centre Toronto, 21 April 2017); Michael Rancic, “Music Cities’ Are for Sale But Who’s Buying”, *NOWToronto* (24 April 2017), online: <nowtoronto.com>. See also London’s Music Industry Task Force, “London Music Strategy” (27 August 2014); Amy Terrill, “How Cities Benefit from Helping the Music Industry Grow”, *WIPO Magazine* (September 2015), online: <www.wipo.int/wipo\_magazine>; Music Canada, “Keys to a Music City”, *supra* note 10, “Introduction”. “Mastering of a Music City” was the fourth of a series of documents relating to “Music Cities” published by Music Canada that began with the 2012 “Accelerating Toronto’s Music Industry Growth - Leveraging Best Practices from Austin Texas” and the “Music Cities Tool Kit”, created in partnership with the Canadian Chamber of Commerce and was intended to show how the music assets of a city can be harnessed by a chamber of commerce (*ibid*).

<sup>73</sup> *Ibid* at 21.

“[S]ome of the most pressing issues facing the music community may align with other nighttime industries, and hence, there could be value in also working through a nighttime lens. Examples include: Liquor licensing policies, late night transportation policies, sound ordinances or bylaws, and planning and development.”<sup>74</sup>

#### D. Developing Better Infrastructure for Urban Safety at Night and Nighttime Data Collection

While a night mayor’s purview tends to be focused on bars, restaurants, arts and performance venues, theaters, clubs, and similar types of spaces, their larger role as an intermediary between the mayor, city council, businesses, residents, and the nighttime industries, shift workers, and many others who use and work in the city at night provides an ear to the ground for what is needed for a city to operate safely, equitably, and efficiently at night in order to account for the particular kinds of challenges that

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<sup>74</sup> *Ibid* at 23. See also, Lang, *From Rats to Noise Complaints*, *supra* note 13.

arise afterhours, after dark, and into the early hours of the morning.<sup>75</sup> Beyond serving as a “night ambassador”, their presence can also have a “street calming” influence on the activity within the city at night—especially during common patron egress times from nighttime venues when the streets of a city can become particularly populated at certain portions of the night.<sup>76</sup> The function of this calming role is similar to some of the effects of nascent local urban programs in Canadian cities, such as Vancouver’s Good Night Out street team. This initiative, for example, is designed to engage with nighttime entertainment spaces and patrons with a specific focus on safety and security for women, LGBTQ2S+ communities, and other vulnerable communities, and operates during the precise nighttime hours when people are moving back and forth from indoor nighttime spaces operating at night to outdoor public spaces.<sup>77</sup> Operating within

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<sup>75</sup> See, Botta & Stahl, *supra* note 4 at 10

<sup>76</sup> See, e.g., Responsible Hospitality Institute, *supra* note 11 at 17.

<sup>77</sup> Good Night Out Vancouver, “One Year Update” (The Refinery, 30 April 2019); *Good Night Out Vancouver*



Vancouver's Granville Entertainment District,<sup>78</sup> in addition to support for vulnerable individuals within this space at night, Vancouver's Good Night Out street team provides external support for venue security staff and the Vancouver Police Department, and also uses conflict resolution techniques and bystander intervention approaches to work to lessen experiences of harassment and increase patron safety during a night out along the Granville strip.<sup>79</sup> While Good Night Out further acts as a link between victims of assault and the police, the street team provides support for those who have experienced problematic behavior that may not be illegal or easily reportable police but which counteracts the greater

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<goodnightoutvancouver.com>. The Good Night Out street team has also been bluntly described by its co-founder to Vancouver City Council as "the Red Cross for drunk people" (Dan Fumano, *Vancouver Moves Forward with Nightlife Measures, But No CCTV*, VANCOUVER SUN (2 May 2018), online: <vancouver.sun.com>).

<sup>78</sup> The Granville Entertainment District comprises a portion of Granville Street in Vancouver's downtown that shifts from a lively daytime transit thoroughfare with a range of different cafes, restaurants, pubs, shops, boutiques, hotels, and other attractions, to a nighttime strip with dazzling neon signs marking the presence of popular nightclubs, bars, theaters, performance halls, restaurants, and other late night attractions.

<sup>79</sup> Good Night Out Vancouver, "One Year Update", *supra* note 77; *Good Night Out Vancouver* <goodnightoutvancouver.com>.

sense of safety and inclusion the street team works to foster in the particular nighttime space within which they operate.<sup>80</sup> These kinds of grassroots organizations, funded only in part by cities like Vancouver, are currently operating to fill identified gaps in municipal understanding and action towards safety and inclusion at night that strategies for nighttime governance and positions such as that of a night mayor are intended to address. These organizations are in part doing the work called for within international standards like the *New Urban Agenda* for developing more inclusive, safe, and equal cities and eliminating experiences of discrimination, violence, and harassment within the private and public spaces of cities.<sup>81</sup>

Programs like Vancouver's Good Night Out also develop and demonstrate a particular understanding of nuanced matters that arise at night in the work that

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<sup>80</sup> Good Night Out Vancouver, "One Year Update", *supra* note 77; *Good Night Out Vancouver* <goodnightoutvancouver.com>; Kelly Chan, *Shaping Vancouver Culture: GRSJ Student Stacey Forrester Starts Nightlife Street Team*, THE UBYSSEY (26 September 2018), online: <www.ubyssey.ca>.

<sup>81</sup> *New Urban Agenda*, *supra* note 1 at para 13(c).

they do. An example of the kinds of challenges and responses that can occur within a nighttime entertainment district that address situations such as stranded individuals in unsafe conditions, which would be difficult to identify and address without a contextualized understanding of the specific parameters of the situation arose during the street team's 2018-2019 operations when ride-hailing services such as Uber and Lyft were not able to legally operate in Vancouver. The team identified that the frequent refusal of taxi operators to accept intoxicated customers into their vehicle was often due to the heightened likelihood that the customer would vomit or otherwise create a mess in the back seat of the vehicle and result in extra work, time, or money to prepare the vehicle for the following customer.<sup>82</sup> Acknowledging this challenge, the Good Night Out street team was able to serve as an intermediary between taxi patrons and taxi drivers in order to aid those in unsafe situations secure a taxi—sometimes even by providing a simple device to

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<sup>82</sup> Good Night Out Vancouver, "One Year Update", *supra* note 77.

cover the backseat of the taxi based on the team's understanding of what needed to successfully mediate the needs of both patron and driver for a safe ride home.<sup>83</sup>

Further, as cities begin to develop the reports and infrastructure necessary for justifying and implementing nighttime governance structures, the gap in existing data on the night, nighttime space, nighttime culture, and the nighttime economy becomes increasingly apparent. This kind of data is useful to the many moving parts and operations of a city during the nighttime hours as well as, more generally, city planning, street maintenance, lighting and power usage, and more. Understanding the way a city is used at night additionally provides a more complete picture of the future shape of a city, and early gentrification and displacement trends following, for example, shifts in the locations of nightlife and music and cultural venues.<sup>84</sup> Data such as that gathered by grassroots nighttime-oriented

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<sup>83</sup> *Ibid.*

<sup>84</sup> *See also*, Zukin, Lindeman & Hudson, *supra* note 29; Hyde, *supra* note 29; Dong, Ratti & Zhen, *supra* note 29.

support organizations like Good Night Out in Vancouver is sought out for use by, for example, city departments like Vancouver's engineering services department.<sup>85</sup> This data collected at night provides information that traditional city public engagement and data collection strategies do not frequently encounter since data collection techniques via the city or private consulting firms tend to predominantly operate (and be staffed to operate) during daytime hours.<sup>86</sup>

## VI. CONCLUSION

As cities seek to attain sustainable development objectives such as the UN Sustainable Development Goal 11's focus on inclusive, safe, resilient, and sustainable cities, Goal 10's focus on reducing inequality, and the principles, policies, and standards

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<sup>85</sup> Good Night Out Vancouver, "One Year Update", *supra* note 77.

<sup>86</sup> See also, Ross, *Law and Intangible Cultural Heritage in the City*, *supra* note 59 at 128-32; Sara Ross, "Strategies for More Inclusive Municipal Participatory Governance and Implementing UN-Habitat's *New Urban Agenda*: Improving Consultation and Participation in Urban Planning Decision-Making Processes Through Rapid Ethnographic Assessment Procedures" 96:2 CANADIAN BAR REV. 294 (2018).

for urban sustainable development found within UN-Habitat's *New Urban Agenda*, the existing spatiotemporal structure of how cities are currently governed and designed is an aspect of urban inequality that must be addressed. Where existing urban law and governance tend to operate for the full functioning of a city during the daytime hours of the 24-hour cycle, a gap persists in inclusive and context-appropriate urban law and equitable design for the nighttime hours. Cities are beginning to identify this gap as they create or revise urban cultural plans and cultural development strategies and discover that life at night in the city and the nighttime economy bear economic potential. But, inclusive law and governance for a city's nighttime spaces, activities, and citizens as they go about life at night in a city can also be an equalizing factor for relationally marginalized or transgressive groups and communities through their ability to access and use space at night or at non-traditional hours of the day/night spectrum.

Reconfiguring existing structures within a city's jurisdiction for the daytime functioning of a city in order to also include provisions for the city's full functioning at night provides an opportunity for the counterhegemonic harnessing of existing hegemonic legal tools towards a greater equality of diversity within the spatiotemporal spectrum of a city. With cities moving towards greater spatiotemporal equality, whether premised on a desire to maximize the economic potential of their nighttime economy and the 24-hour spectrum of a city or on achieving the more inclusive and sustainable cities called for within international goals and frameworks, part of the success of this endeavor towards an engaged nighttime governance strategy appears to benefit significantly from a central advocacy point or representative position. A night mayor, or nighttime council or office, serves this advocacy role with a context-sensitive understanding of how a city can better operate at night in terms of, for example, transportation, mitigation of overlapping concerns within city spaces, access to and use of property at

night, sound at night, and many other elements currently managed within a city's legal complexes designed for the day. A night mayor also carries further potential as an advocate for that which can often fall within the cracks of equitable urban legal treatment: the less conventional uses of space or time in a city, non-traditional work hours or non-traditional occupations, and the realms of urban art and culture which are frequently coded towards the nighttime hours of the 24-hour spectrum. The goal for inclusive and safe cities for all urban citizens benefits from improved nighttime transportation, better access to unused spaces at night for art and culture, better understanding of the use of different areas of the city at night, the equitable mitigation of citizen conflicts over noise at night, and so on. Finally, as many cities like Vancouver must seek tools for localizing international frameworks for vibrant, inclusive, and sustainable urban development, such as the *New Urban Agenda* and the broader UN Sustainable Development Goals, their demonstrated curiosity is well-placed in the



development of thoughtful strategies for nighttime governance and nighttime urban law, and roles such as that of a night mayor.

# THE THEORY OF EQUALITY: PATRIARCHY DISGUISED AS FEMINISM

Carmen M. Cusack<sup>▼</sup>

## I. INTRODUCTION

Men act as if though all women are equal.<sup>1</sup> They may disguise patriarchy as feminism.<sup>2</sup> They pretend that by employing a woman, they are effectuating feminism.<sup>3</sup> An exceptional woman is not hired, and then is portrayed as rotting.<sup>4</sup> The employed woman

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<sup>▼</sup> Thanks is given to Tiberius Washington for his support.

<sup>1</sup> United States Supreme Court jurisprudence is cited *infra*. The cases document discrimination and quotas. They demonstrate that the Court's power has not prevented the continuing war against women. *Anderson v. City of Bessemer*, 470 U.S. 564 (1985); *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006); *Arizona Governing Comm. for Tax Deferred Annuity and Deferred Comp. Plans v. Norris*, 463 U.S. 1073 (1983); *AT&T Corp. v. Hulteen*, 556 U.S. 701 (2009).

<sup>2</sup> *Hoyt v. Florida*, 368 U.S. 57 (1961); *Rostker v. Goldberg*, 453 U.S. 57 (1981).

<sup>3</sup> *Corning Glass Works v. Brennan*, 417 U.S. 188 (1974); *County of Washington v. Gunther*, 452 U.S. 161 (1981); *Craig v. Boren*, 429 U.S. 190 (1976); *Crawford v. Nashville & Davidson County, TN*, 555 U.S. (2009). *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999); *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003).

<sup>4</sup> *Duren v. Missouri*, 439 U.S. 357 (1979); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Florida v. Long*, 487 U.S. 223 (1988);

perpetrates patriarchy by going along with the plan.<sup>5</sup> The theory of equality is a cover-up notion exemplified by universities employing women, who are less qualified than the exceptional professionals denied deserved accolades, benefits, fraternal and sororal embrace, and employment.<sup>6</sup> This exposition will describe in Section II the misallocation of the theory of equality.<sup>7</sup> The theory is premised in legal arenas on case law developed according to the United States Constitution, Bill of Rights, and Declaration of Independence.<sup>8</sup> Section III chastises women for absorbing the benefits of gender oppression.<sup>9</sup> Universities are reproved in Section IV, particularly because of their ongoing resistance to ending phony

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Ford Motor Company v. Equal Employment Opportunity Commission, 458 U.S. 219 (1982); *Frontiero v. Richardson*, 411 U.S. 677 (1973).

<sup>5</sup> *Babb v. Wilkie*, 589 U.S. \_\_ (2020); *Bd. of Dir., Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987); *Bostock v. Clayton County*, 590 U.S. (2020); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000); *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006).

<sup>6</sup> *Califano v. Goldfarb*, 430 U.S. 199 (1977).

<sup>7</sup> See Section II.

<sup>8</sup> See *e.g.*, U.S. Const. art. II §§ I-III; U.S. Const. amend. V and U.S. Const. amend. XIV; Thomas Jefferson, Declaration of Independence (U.S. 1776).

<sup>9</sup> See Section III.

quotas and insulting illusions of fairness.<sup>10</sup> A conclusion is reached in Section V.<sup>11</sup> The Conclusion suggests to universities that they should fairly hire women.<sup>12</sup>

## II. MEN ACT AS IF THOUGH ALL WOMEN ARE EQUAL.

Men act as if though all women are equal.<sup>13</sup> Not all men, but many men willingly portray a woman as a unit of gender.<sup>14</sup> A woman is treated as signifying a human who is something not-male.<sup>15</sup> A woman is a widget.<sup>16</sup> Men perpetrating this mentality do not always act this way.<sup>17</sup> However, they form circumstances during which that mentality suits their

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<sup>10</sup> See Section IV.

<sup>11</sup> See Section V.

<sup>12</sup> *Id.*

<sup>13</sup> *Altitude Express v. Zarda*, 470 U.S. 564 (1985).

<sup>14</sup> *Dothard v. Rawlinson*, 433 U.S. 347 (1977).

<sup>15</sup> *Caban v. Mohammed*, 441 U.S. 380 (1979).

<sup>16</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998).

<sup>17</sup> *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993).

plan.<sup>18</sup> Circumstances are not given constraints.<sup>19</sup>  
They are concerted actions.<sup>20</sup>

It occurs in a workplace when men espouse the theory of equality.<sup>21</sup> They propose to hire a woman.<sup>22</sup> They choose a woman, who seems compatible with the group.<sup>23</sup> She is hired for her ability to maintain a cohesive, complacent, or willing attitude.<sup>24</sup> Her credentials are irrelevant.<sup>25</sup> If her credentials seem brilliant, then to the group they attest to her willingness to institute patriarchal control over gender.<sup>26</sup>

They pretend that by fraternizing with and paying one woman, they are effectuating feminism for any woman who could have held the position.<sup>27</sup> They truly expect others to accept that one woman

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<sup>18</sup> *Id.*

<sup>19</sup> *Heckler v. Matthews*, 465 U.S. 728 (1984); *Hishon v. King & Spalding*, 467 U.S. 69 (1984).

<sup>20</sup> *Harlin v. Missouri*, 439 U.S. 459 (1979).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; *Harris*, 510 U.S. 17.

<sup>23</sup> *Mohammed*, 441 U.S. 380.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982).

<sup>27</sup> *Se. Cmty. Coll. v. Davis*, 442 U.S. 397 (1979).

represents all women.<sup>28</sup> They deeply portray the image of equality.<sup>29</sup> Their actions are alleged to signify not only the absence of sexism, but the promotion of a woman.<sup>30</sup> The promotion entices further feminist conduct.<sup>31</sup> Feminism, not seen as an ultimate position taken in demand of dignity, is displayed as having achieved success.<sup>32</sup> Feminism is given a place in ownership.<sup>33</sup> Women, who get along with men, can accept the proximity of patriarchy, boys clubs, old guards, or other quasi-flattering qualifications.<sup>34</sup> They are used as trophies, in their minds, by other women, who no longer have to complain.<sup>35</sup>

They turn away exceptional professionals.<sup>36</sup> Women unrecognized by a field are turned-away.<sup>37</sup> They are portrayed as silently plugging along;

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> CARMEN M. CUSACK, *CRIMINAL JUSTICE HANDBOOK ON MASCULINITY, MALE AGGRESSION, AND SEXUALITY* (2015).

<sup>35</sup> *Id.*

<sup>36</sup> *Davis*, 442 U.S. 397.

<sup>37</sup> *Id.*

exercising independence; being renegades; innovating for a brave new economy; and attempting what has never been done before.<sup>38</sup> They are described as breaking boundaries.<sup>39</sup> The boundaries renewed are not like glass ceilings.<sup>40</sup> Rather, the boundaries are placed at the outer ambits of rejection.<sup>41</sup> As they are pushed from the protection of the center, they are confronted by new and demeaning obstacles.<sup>42</sup> The obstacles announce a new level of failure.<sup>43</sup> Breaking through the boundaries means an ultimate failure suggesting that reentrance to any previously perceived level of accomplishment is unlikely.<sup>44</sup>

The professional woman is left by her profession and to herself.<sup>45</sup> She is revered as a goddess of creativity and eruptive potential.<sup>46</sup> Her horizons are

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<sup>38</sup> *Id.* Accommodations signify evolution. *See* *Edwards v. Aguillard*, 482 U.S. 578 (1987).

<sup>39</sup> *Davis*, 442 U.S. 397.

<sup>40</sup> *Id.*

<sup>41</sup> *Brown*, 347 U.S. 483.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *United States v. Virginia*, 518 U.S. 515 (1996).

<sup>46</sup> *Id.*

clear.<sup>47</sup> She possesses none of the financial benefits deserved by a person of her age.<sup>48</sup> She lacks the defining praise (e.g., bonuses and announcements) bestowed upon a similarly educated, accomplished, and well-behaved member of a civilization, society, culture, craft, and profession—if such a person can be proffered.<sup>49</sup> The younger generations’ gratitude for her work, clean living, and investment does not trickle-up.<sup>50</sup> The forebearers are portrayed as failures and their laborious beneficence is not trickled-down to her.<sup>51</sup>

She is portrayed as rotting.<sup>52</sup> Without money; acceptance from a community; guarantees of protection within her profession (e.g., intellectual ownership and secrecy); a wardrobe that speaks her mind, challenges folly, and rejuvenates a sense of fun; access to enlivenment supplied through the fringe benefits of a career; and comradery during

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<sup>47</sup> *Id.*

<sup>48</sup> *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> U.S. Const. amend. V and U.S. Const. amend. XIV. Jefferson, Declaration of Independence.

<sup>52</sup> *See* Jefferson, Declaration of Independence.



hardship that fights to guide another from difficulty, she seems childlike.<sup>53</sup> This is the goal of patriarchy.<sup>54</sup> Patriarchy destroys the dignity of women, and then children.<sup>55</sup> All are made to seem like rivals.<sup>56</sup> Families dissipate, and men can own everything.<sup>57</sup> The constructed image that she is rotting refreshes those who sought to upheave her innate and cultivated power.<sup>58</sup>

### III. WOMEN PERPETRATE PATRIARCHY.

Women perpetrate patriarchy.<sup>59</sup> Some women have betrayed the cause.<sup>60</sup> The cause is made to seem like it may only work if a group of women were to

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<sup>53</sup> *Califano v. Webster*, 430 U.S. 313 (1977); *California Fed. Sav. & Loan Assn. v. Guerra, Dir., Dep't of Fair Employment & Hous.*, 479 U.S. 272 (1987); *City of Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1978).

<sup>54</sup> *Supra* note.

<sup>55</sup> *Phillips*, 400 U.S. 542.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Schlesinger v. Ballard*, 419 U.S. 498 (1975); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Stanton v. Stanton*, 421 U.S. 7 (1975); *Taylor v. Louisiana*, 419 U.S. 522 (1975); Tuan Anh Nguyen v. Immigration and Naturalization Serv. (INS), 533 U.S. 53 (2001).

<sup>60</sup> *INS*, 533 U.S. 53.

invest in feminism.<sup>61</sup> At times, it is described as being like a team sport.<sup>62</sup> The patriarchy will assume whichever position to disavow the theoretical weight of not hiring a qualified woman.<sup>63</sup> Women in places of employment deny a relationship to other qualified women.<sup>64</sup> This discounts feminism.<sup>65</sup> Their presence demonstrates equality.<sup>66</sup> This also discounts feminism, which suggests that women should be evaluated as individuals free from the badges of gender supremacy.<sup>67</sup>

They go along with the plan.<sup>68</sup> When women who work ask to be treated specially because they have histories of sexual misconduct; poor work performance records; and access to male

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<sup>61</sup> Taylor, 419 U.S. 522.

<sup>62</sup> Mathews v. De Castro, 429 U.S. 181 (1976).

<sup>63</sup> De Castro, 429 U.S. 181; McKennon v. Nashville Banner Publ'g Co., 513 U.S. 352 (1995); Newport News Shipbuilding & Dry Dock Co. v. Equal Employment Opportunity Comm'n, 462 U.S. 669 (1983).

<sup>64</sup> *Id.*

<sup>65</sup> Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

<sup>66</sup> *Id.*

<sup>67</sup> Kahn v. Shevin, 416 U.S. 351 (1974); Kirchberg v. Feenstra, 450 U.S. 455 (1981); Ledbetter v. Goodyear Tire & Rubber Company, 550 U.S. 618 (2007); Lehr v. Robertson, 463 U.S. 248 (1983).

<sup>68</sup> Geduldig v. Aiello, 417 U.S. 484 (1974); General Electric Co. v. Gilbert, 429 U.S. 125 (1976); Great Am. Fed. Sav. & Loan Ass'n v. Novotny, 442 U.S. 366 (1979).

manipulation through the misappropriation of friendship or flirtation; and reveal inklings that their fathers or male relatives could supply fortune, they knowingly and intentionally foist patriarchy into the workplace.<sup>69</sup> When they deny a more credible, developed, and superior woman a job by applying for a job that is or should have been out-of-reach, they knowingly further the oppressors' plan personally to take the value of an institution.<sup>70</sup>

They accept the demise of another woman.<sup>71</sup> These are women who can watch a hero be transformed into a victim.<sup>72</sup> In opposition of feminism they wait, inertly, to be mobilized against another woman.<sup>73</sup> They accept all possible positions

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<sup>69</sup> *Orr v. Orr*, 440 U.S. 268 (1979); *Parham v. Hughes*, 441 U.S. 347 (1979); *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004); *Pers. Adm'r of Massachusetts v. Feeney*, 442 U.S. 256 (1979); *Phillips*, 400 U.S. 542; *Pollard v. E. I. du Pont de Nemours & Co.*, 532 U.S. 843 (2001); *Price Waterhouse*, 490 U.S. 228; *Quilloin v. Walcott*, 434 U.S. 246 (1978); *Stanton v. Stanton*, 429 U.S. 501 (1977).

<sup>70</sup> *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464 (1981); *Nashville Gas Co. v. Satty*, 434 U.S. 136 (1977); *New York State Club Ass'n Inc. v. City of New York*, 487 U.S. 1 (1988).

<sup>71</sup> *Price Waterhouse*, 490 U.S. 228.

<sup>72</sup> *Turner v. Dep't of Employment Sec. of Utah*, 423 U.S. 44 (1975); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

<sup>73</sup> *Virginia*, 518 U.S. 515.

including dating a colleague; demeaning a woman by participating in an unfair hearing or process involving gender discrimination and sexual harassment; pretending to overlook or misunderstand clear expressions of discrimination and dissatisfaction; and willfully believing that life is unfair.<sup>74</sup> These women collect paychecks; and what was once a normal, common, average, and attainable goal for feminists has come to be a tell-tale of foul play.<sup>75</sup> A paycheck is an object of suspicion among women now because of the immense gender discrimination in the workplace.<sup>76</sup>

They further the plan, especially by seeming excited to harm the patriarchy, feminism, or a

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<sup>74</sup> *Oncala v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75 (1998); *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Comm'n*, 590 U.S. \_\_\_ (2020); *Reed v. Reed*, 404 U.S. 71 (1971); *Richmond Unified Sch. Dist. v. Berg*, 434 U.S. 158 (1977).

<sup>75</sup> *Int'l Union, United Auto., Aerospace & Agricultural Implement Workers of Am., UAW*, 499 U.S. 187 (1991); *J.E.B. v. Alabama ex rel T.B.*, 511 U.S. 127 (1994).

<sup>76</sup> *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142 (1980); *Wimberly v. Labor & Indus. Relations Comm'n of Missouri*, 479 U.S. 511 (1987); *Young v. United Parcel Serv., Inc.*, 575 U.S. (2015); *Zipes*, 455 U.S. 385.

diminishing rival.<sup>77</sup> Women may say that they oppose the patriarchy.<sup>78</sup> Some will make claims in order to hurt the patriarchy, so that they can take the lead.<sup>79</sup> They will hire men and women who behave like men in opposition to the true meaning of equality.<sup>80</sup> Their fabricated and immature enthusiasm for corporate nonsense insults professional standards and causes a loss of productivity.<sup>81</sup> They are intent on portraying the changing of rules.<sup>82</sup> Thus, a loser emerges. The self-loving women pretend to achieve a philosophical and psychological balance that accepts the loser without destroying the capable structure that she was hired to complete.<sup>83</sup>

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<sup>77</sup> *Metro Broad., Inc. v. Fed. Comm'n Comm'n*, 497 U.S. 547 (1990); *Minnick v. California Dep't of Corr.*, 452 U.S. 105 (1981); *Morton v. Mancari*, 417 U.S. 535 (1974); *Regents of the Univ. of California v. Bakke*, 438 U.S. 265 (1978).

<sup>78</sup> *Supra* note.

<sup>79</sup> *Implement Workers* 499 U.S. 187.

<sup>80</sup> Jefferson, Declaration of Independence; U.S. Const. amend. V and U.S. Const. amend XIV.

<sup>81</sup> Jefferson, Declaration of Independence.

<sup>82</sup> *Id.*

<sup>83</sup> *Loving v. Virginia*, 388 U.S. 1 (1967).

They achieve success by accepting the plan.<sup>84</sup> They get rewards.<sup>85</sup> The women are advertised as having earned prizes, grants, loans, assets, leadership positions, recommendations, loyal fans, and media attention.<sup>86</sup> Unable to come-up with a better plan, they take all of the goodwill that was bestowed upon them by teachers, ministers, family members, coaches, clerks, and others.<sup>87</sup> They each propel themselves with duplicitous jargon, including the theory of equality; and land in undeserved splendor.<sup>88</sup> The truth of the place cannot be destroyed.<sup>89</sup> It, silently, intimates its spirit and professional benefits to the truly deserving women.<sup>90</sup> It gives her none of itself.<sup>91</sup> Yet, the website bears

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<sup>84</sup> Ricci v. DeStefano, 557 U.S. \_\_\_ (2009); Schuette v. Coalition to Def. Affirmative Action, 572 U.S. 291 (2014); Davis, 442 U.S. 397; Texas v. Lesage, 528 U.S. 18 (1999); United States v. Paradise, 480 U.S. 149 (1987); United Steelworkers of Am., AFL-CIO-CLC v. Weber, 443 U.S. 193 (1979); Weinberger v. Rossi, 456 U.S. 25 (1982); Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1986).

<sup>85</sup> Zipes, 455 U.S. 385.

<sup>86</sup> Virginia, 518 U.S. 515.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Local 28 of the Sheet Metal Workers' Int'l Ass'n v. Equal Employment Opportunity Comm'n, 478 U.S. 421 (1986).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

her picture or a bullet next to her name in a long list of cheaters, has-beens, freeloaders, and scammers.<sup>92</sup>

#### IV. THE UNIVERSITY SYSTEM IS A PRIME EXAMPLE.

The university system is a prime example.<sup>93</sup> Readily, the example of fabricated colleges is available.<sup>94</sup> A fabricated college is an institution that defies all tradition, occupies an office building, and sends students into the world unprepared.<sup>95</sup> It is easy to dismiss the problem by demonstrating that the government attacks for-profit or once for-profit schools.<sup>96</sup> The claim is that those criminal and illegal syndicates are already and obviously headed for demise.<sup>97</sup> They flout nearly every area of the law.<sup>98</sup> Gender discrimination and exploitation are no

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<sup>92</sup> Zipes, 455 U.S. 385.

<sup>93</sup> Gratz v. Bollinger, 539 U.S. 306 (2003); Johnson v. Transp. Agency, Santa Clara Cty., 480 U.S. 616 (1987); Local 28, 478 U.S. 421; Martin v. Wilks, 490 U.S. 755 (1989); Metro Broad., Inc. v. Fed. Commc'n Comm'n, 497 U.S. 547 (1990).

<sup>94</sup> *Supra* note.

<sup>95</sup> Metro Broad., 497 U.S. 547.

<sup>96</sup> CARMEN M. CUSACK, ABORTION IS THE 'A' WORD (2018).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

different.<sup>99</sup> Yet, the problem is obvious to those outside state and otherwise aboveboard private schools.<sup>100</sup> Many universities substitute one failing woman for the presence and leadership of an awesome individual.<sup>101</sup>

They tolerate the 1:1 proposition.<sup>102</sup> This proposition is lethal to academia.<sup>103</sup> It has been criticized in *Mississippi University for Women v. Hogan*, *Brown v. Board of Education of Topeka*, and numerous other cases.<sup>104</sup> The relevance of race and sexuality to this cannot be unheeded.<sup>105</sup> Some

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<sup>99</sup> *Id.*

<sup>100</sup> *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268 (2001); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974); *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009); *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005); *NCAA v. Smith*, 525 U.S. 459 (1999).

<sup>101</sup> *Adarand Constructors, Inc. v. Peña* (1995); *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989); *DeFunis v. Odegaard*, 416 U.S. 312 (1974); *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 (1984); *Firefighters v. City of Cleveland*, 478 U.S. 501 (1986); *Fisher v. Univ. of Texas*, 570 U.S. 297 (2013); *Fisher v. Univ. of Texas*, 579 U.S. \_\_\_ (2016); *Fullilove v. Klutznick*, 448 U.S. 448 (1980).

<sup>102</sup> See CARMEN M. CUSACK, *TWINS AND DEVIANCE* (2016) discussing Plato and soulmates.

<sup>103</sup> *Id.*

<sup>104</sup> *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982). *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>105</sup> *Brown*, 347 U.S. 483.



persons, who may be described by the patriarchy as being Native, Black, White, Latin, Asian, Jewish, Arab, Muslim, and so forth, will be involved.<sup>106</sup> Transsexuals, bisexuals, heterosexuals, homosexuals, pedophiles, the curious, the polyamorous, the autoerotic, and others will accept the university's open door.<sup>107</sup>

They accept the leadership of crooked patriarchs.<sup>108</sup> Crooked patriarchs took the battleground for themselves.<sup>109</sup> Diversity was a goal.<sup>110</sup> Now it is a pretext.<sup>111</sup> Schools inquiring about the meaning of "diversity" from potential hires disclose a capacity for patriarchal revision of theory.<sup>112</sup> The theory of equality is rooted in the

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<sup>106</sup> See Carmen M. Cusack and Matthew E. Waranius, *Visual Detection of Sex Offenders and Consequential Biases among Christians*, 10 J. L. & Soc. 42 (2015).

<sup>107</sup> See Matthew E. Waranius, *What Up with DADT: Addressing Confusion from inside the Military*, 1 J. L. & Soc. 56 (2011).

<sup>108</sup> *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).  
*Gloucester County Sch. Bd. v. G.G.*, 136 S. Ct. 2442 (2016); 2016 U.S. LEXIS 4361; \_\_\_ U.S. \_\_\_ (2017).

<sup>109</sup> *Davis v. Passman*, 42 U.S. 228 (1979).

<sup>110</sup> *Id.*; *Grove City Coll. v. Bell*, 465 U.S. 555 (1984).

<sup>111</sup> *Bell*, 465 U.S. 555.

<sup>112</sup> *Virginia*, 518 U.S. 515, at 525. *Vorchheimer v. Sch. Dist. of Philadelphia*, 430 U.S. 703 (1977); *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982).

Constitution.<sup>113</sup> Those who would infiltrate the sacred place where theories, propositions, and other information is meticulously and carefully passed down, would attempt to dilute and *ad hoc*-revise constitutional interpretation.<sup>114</sup> The people within the university who would lead others to accept the 1:1 proposition would gain positions in government companies, political arenas, and in commissions intending to redetermine the force of rights.<sup>115</sup>

They finance and fund the plan.<sup>116</sup> The university system is perceived as being wealthy.<sup>117</sup> Unfortunately, they have less capital than they are made to seem as possessing.<sup>118</sup> Yet, the money entrusted to them is misallocated to schemes that are both unlawful and unprofitable.<sup>119</sup> Funding of programs substituting qualified female professors for

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<sup>113</sup> Virginia, 518 U.S. 515; Jefferson, Declaration of Independence; U.S. Const. amend. V and U.S. Const. amend. XIV.

<sup>114</sup> Richmond Unified Sch. Dist. v. Berg, 434 U.S. 158 (1977); NCAA v. Smith, 525 U.S. 459 (1999); Virginia, 518 U.S. 515.

<sup>115</sup> CUSACK, TWINS AND DEVIANCE. Mississippi Univ. for Women, 458 U.S. 718.

<sup>116</sup> Price Waterhouse, 490 U.S. 228; Stanton v. Stanton, 429 U.S. 501 (1977).

<sup>117</sup> Price Waterhouse, 490 U.S. 228.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

unqualified and conspiring women are not gaining attendance.<sup>120</sup> Those gaining enrollment are the same as those deceiving students about the value of their educations, degrees, networks, and time.<sup>121</sup> Conspirators fail to preserve economic value.<sup>122</sup> Much of this conduct is intentional.<sup>123</sup> It dissuades investment from rivals and imparts a sense of control or actual control amounting to private dominance over a department, school, or campus.<sup>124</sup> The goal of the patriarchy is to reduce true investors to objects and seize whatever value can be privatized.<sup>125</sup> Privatization discounts the actual value.<sup>126</sup>

They accept the rewards of an inferior woman's achievement.<sup>127</sup> All of the university participants are aware of the system.<sup>128</sup> There is no recourse, and many are without a voice.<sup>129</sup> They are uninvolved.<sup>130</sup>

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Price Waterhouse, 490 U.S. 228.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Price Waterhouse, 490 U.S. 228.

<sup>130</sup> *Id.*

They may complain, discuss, and produce research that demonstrates the problem.<sup>131</sup> Yet, those who assert that they add value to the university by furthering the scheme accept not only the privately held value of the university, they accept the cost of destroying a woman as a positive asset.<sup>132</sup> They are inverted.<sup>133</sup> By accepting the rewards of the inferior woman's accomplishment, they sever ties to the woman who deserves the position.<sup>134</sup> That is a loss.<sup>135</sup>

## V. CONCLUSION

Equality has been portrayed by the patriarchy as feminism.<sup>136</sup> Feminism is a belief and a rich culture.<sup>137</sup> The women and men who fight for it know that women are equal to men.<sup>138</sup> They disclaim

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Brown*, 347 U.S. 483.

<sup>135</sup> *Virginia*, 518 U.S. 515.

<sup>136</sup> *Id.*

<sup>137</sup> *Price Waterhouse*, 490 U.S. 228.

<sup>138</sup> *Virginia*, 518 U.S. 515.

affiliation with people promoting male superiority as a result of having been born male.<sup>139</sup>

The open claim of male supremacy is rare.<sup>140</sup> Instead, it exposes itself in practice.<sup>141</sup> The practice of viewing women as interchangeable and preferring those who signify male control is patriarchy.<sup>142</sup> The education system is supposed to alleviate that problem.<sup>143</sup> Instead, it complies with it.<sup>144</sup> To remedy this dysfunction, universities should only hire the superior candidate.<sup>145</sup> Feminism should regroup and reassert its power so that women who are left to rot and rethink their positions will find reconnection, adhesion, and promotion.<sup>146</sup>

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<sup>139</sup> Davis, 442 U.S. 397; Edwards, 482 U.S. 578.

<sup>140</sup> Boren, 429 U.S. 190.

<sup>141</sup> Carmen M. Cusack, *Boob Laws: An Analysis of Social Deviance within Gender, Family, or the Home (Etudes 2)*, 33 WOMEN'S RTS. L. RPTR. 197 (2012).

<sup>142</sup> Carmen M. Cusack, *Busting Patriarchal Booby Traps: Why Feminists Fear Minor Distinctions in Child Porn Cases, An Analysis of Social Deviance within Gender, Family, or the Home (Etudes 4)*, 39 S. U. L. REV. 43 (2011).

<sup>143</sup> Carmen M. Cusack, *Context: Use of the Word "Fuck" in Pedagogy and Higher Learning*, 8 J. L. & SOC. DEVIANCE 133 (2014).

<sup>144</sup> Carmen M. Cusack, *A Feminist Inquiry into Intimate Partner Violence Law, Policy, Policing, and Possible Prejudices in Alaska*, 5 J. L. & CONFLICT RES. 24 (2013).

<sup>145</sup> Price Waterhouse, 490 U.S. 228.

<sup>146</sup> Mississippi University for Women, 458 U.S. 718.

**BOOK REVIEW: *DECISIONS AND  
DISSENTS OF JUSTICE RUTH BADER  
GINSBURG: A SELECTION*  
BY RUTH BADER GINSBURG AND  
COREY BRETTSCHEIDER**

*LSD Journal* Book Reviewer

United States Supreme Court Justice Ruth Bader Ginsburg was appointed to the Supreme Court in 1993. She served until her death in 2020. Prior to her appointment, Professor Ginsburg argued several cases before the Supreme Court. Her passion was equality. In her final year, she recounted some of her decisions and dissents on the bench. Her new book, *Decisions and Dissents of Justice Ruth Bader Ginsburg: A Selection* demonstrates the exorbitant cost of disobeying the law—litigation. She won several cases and includes her unique experience to present her side, developed in a series by Penguin Liberty. Once determined by her impartial position on the Supreme Court, these decisions and dissents are now used to advocate for women. Throughout her

*LSD Journal* Book Reviewer

career she wished to discard phony pedestals lent to women by sexist laws and rules, and has left her influence for all.