

Anne Coughlin (she/her/hers): Good afternoon, everyone and welcome to our second panel in this very exciting enlivening an important event.

Anne Coughlin (she/her/hers): I want to start by thanking the Center for the study of racing law and the law review for creating this forum and for inviting me really honoring me by asking me to participate.

Anne Coughlin (she/her/hers): And I especially want to congratulate our students who I know spent many months shaping reshaping and then reshaping again the content of the panel.

Anne Coughlin (she/her/hers): And the discussion so that they could be sure that we that we were well poised to address the issues that matter most at this very dangerous yet exciting time in our history, so those of you who were able to attend the morning panel are well aware, our focus is on.

Anne Coughlin (she/her/hers): Thinking through insights and a whole range of voices voices from the past.

Anne Coughlin (she/her/hers): voices from the present and, as our students are particularly adept at identifying voices from and for the future of voices that will help us to understand what the content of our Constitution should be.

Anne Coughlin (she/her/hers): What kinds of litigation and legal practices, we should be pursuing what we should be studying in our courses on feminism and other forms of critical social justice.

Anne Coughlin (she/her/hers): What our Community activism should look like a whole range of issues that we must confront and we must, I hope, address together.

Anne Coughlin (she/her/hers): So i'm going to go ahead and get out of the way immediately and give you a brief introduction to our speakers.

Anne Coughlin (she/her/hers): Again we're just so grateful to have you here to help us think through these tough issues at this moment when we most need your help.

Anne Coughlin (she/her/hers): Each of our speakers has an enormously interesting personal narrative we call them autobiographies or biographies and i'm going to just share scratch the surface, with with you.

Anne Coughlin (she/her/hers): Our first speaker audrey and Davis comes to us from the Washington University in St Louis school of law where she is Vice provost the William and Van cleave professor of law, she also serves as the director for the Center.

Anne Coughlin (she/her/hers): For the study of race, ethnicity and equity and she also is the founder and co director of their law and Culture initiative.

Anne Coughlin (she/her/hers): She will be speaking to us about explaining the power of black lives matter and the split gender politics of today.

Anne Coughlin (she/her/hers): On next step will be Professor Melissa Murray of nyu school of law where she is the Frederick.

Anne Coughlin (she/her/hers): I and grace stokes professor of law, she is the director of the birnbaum women's leadership network and she will be talking to us about justice thomas's concurrence in box versus planned parenthood of indiana and Kentucky.

Anne Coughlin (she/her/hers): Next, on our roster is Rachel silk boy who is a member of the class of 22 here at the University of Virginia school of law Rachel is a graduate of swarthmore college, where she obtained a degree in music here at uva she is a leader in a range of important.

Anne Coughlin (she/her/hers): professional activities, she is the programming chair for the Lambda law alliance, a member of the Virginia law review and she is carrying out research on title nine and other interesting issues related to discrimination.

Anne Coughlin (she/her/hers): Finally, we will have with us Camille gear rich, who comes to us from the ghoul school of law at usc.

Anne Coughlin (she/her/hers): There, she is the associate provost of diversity and inclusion, she is professor of law and sociology and Professor ritual be speaking to us about the.

Anne Coughlin (she/her/hers): Paper titled color blind patriotism so i'm going to turn it over to our panelists.

Anne Coughlin (she/her/hers): As I do I would please remind the audience to be thinking of questions and sending them my way, please type your questions in the Q amp a box and we hope that we will have time to get to most of them so first of all, Professor Davis welcome, and we look forward to hearing from you.

Adrienne Davis: Thank you so much, and it's it's Adrian.

Adrienne Davis: Sorry, no it's Okay, as in as an world enough to remember rocky as an yo Adrian, and so the title of what i'm going to talk about is actually called feminism without women provocatively titled feminism without women.

Adrienne Davis: So you know many of us many people were confounded by the stark racial fractures.

Adrienne Davis: That were revealed between white women and black women in national politics during the last election, and while we won't have the verified data for a while.

Adrienne Davis: The exit polls primarily indicate that last fall's election only 8% of black women voted for Donald trump well 55% of white women voted.

Adrienne Davis: To reelect him, and not only did black women almost uniformly vote against reelecting Donald trump.

Adrienne Davis: But some believe that the powerful coalition's forged by political operatives and strategist like Stacy abrams and other black women.

Adrienne Davis: Are the strategic Future of the Democratic Party, and certainly of progressive movements in contrast white women split almost down the middle.

Adrienne Davis: In their voting, even as more and more white women emerge as formidable conservative political actors, I really cannot stop following Marjorie green on Twitter following not her but following following her as a hashtag.

Adrienne Davis: So desegregating the 2020 voting preferences by race and gender reveals myriad diabetic curiosities and the racial split among black and white women is arguably the most striking.

Adrienne Davis: But additionally much notice is that the powerful racial juggernaut of black Americans voting democratic is more complex, when we account for gender.

Adrienne Davis: 18% of black men voted to reelect Donald trump compared to black women's 8% less discussed then either i'm sorry, let me turn off my I forgot to turn off my email it's going to keep pinging and drive all of us mad I apologize.

Adrienne Davis: i'm less discussed that either the black woman or black women white women or the black women black man voting gaps, is the division between black men and white women's voting preferences.

Adrienne Davis: Both voted for trump and statistically significant more numbers than black women but less noted, is that white women outstripped black men and voting to reelect him over a majority of compared to 18%.

Adrienne Davis: So why do racial and gender justice appear to have different balances for black men black women respectively.

Adrienne Davis: Oh, excuse me for black men and white women respectively or put differently, why did Donald trump's manifest racism and sexism seem to differentially affect their support for him.

Adrienne Davis: intersection ality is one of the most powerful analytic frameworks to emerging feminist and anti racist thought.

Adrienne Davis: Initially articulated by legal scholar Kimberly Crenshaw and to pathbreaking articles rightfully among the most cited.

Adrienne Davis: Of all time intersectionality long ago transcended legal theory to become a methodological staple in humanistic social scientific.

Adrienne Davis: academic work creative practice and even in medical scholarship.

Adrienne Davis: At the same time, it has exceeded its scholarly and legal origins, to become a guiding organizing principle of politics, social justice movements and cultural work.

Adrienne Davis: Perhaps provocatively I contend that we have not yet harnessed the full analytic power inherent in Crenshaw's framework.

Adrienne Davis: Part of the extraordinary scholarly and political impact of intersectionality lies in its intuitive math.

Adrienne Davis: That of racism and sexism reach subordinating structural forces than Black women who suffer from both are doubly marginalized.

Adrienne Davis: Indeed, this has emerged as a common scholarly and political wisdom, yet I argue.

Adrienne Davis: That this double marginalization math is appealing, as it is, and I call it additive intersectionality actually limits the analytic power of its insights.

Adrienne Davis: As I will show additive intersectionality cannot fully comprehend the complexity of the 2020 election.

Adrienne Davis: Intersectionality is complex and its like math is less predictive than the additive model model suggests.

Adrienne Davis: For instance, the additive intersectionality cannot explain the gap between white women in Black men and voting for Trump it explains the difference between.

Adrienne Davis: Black women and white women and explains the difference between Black women and Black men, but does not explain the gap between white women and Black men in voting for to reelect Donald Trump.

Adrienne Davis: I argue that return to Crenshaw's initial powerful articulation reminds us that intersectionality is better characterized as algorithmic.

Adrienne Davis: That is as a complex formula for understanding the interplay of identities across time place and politics.

Adrienne Davis: And of course I think when push we all would say yes, that is exactly what we mean, and yet we so frequently default to the doubly marginalized which always will always portray black women as the most victimized or the most subordinated.

Adrienne Davis: The second argument that.

Adrienne Davis: That my Paper makes is that the identity axes that undergird the intersection of metaphor, do not have stable, predictable weights.

Adrienne Davis: And again, while this may sound obvious the math behind the double marginalization metaphor suggests that racism and sexism have equal stable weights, hence the doubling.

Adrienne Davis: And instead of arguing that in order to understand this political moment, we need to explicitly understand and engage identities is having shifting variable balances.

Adrienne Davis: Or what we might call weighted intersection ality and this algorithmic way to approach can better, first of all, I think that it is inherent in crunch us framework.

Adrienne Davis: And I think it can better account for the complexity of voting preferences that we encountered among the various race, gender diets i'm looking at the black white diets, but of course there are myriad diets Hispanic Latino attend latinx Asian as well.

Adrienne Davis: And also i'm not going to talk a little bit my paper, but they also I think shed really intriguing light on on white men's health by white men splitting preferences shifted between 2016 and 2020 as well.

Adrienne Davis: We did intersection ality I think also brings additional power in terms of how different groups developed forms of.

Adrienne Davis: What sociologists would call the oppositional consciousness that underlies voting voting preferences, and so this is something I.

Adrienne Davis: think I can get into it in this in this paper but i'm very much intrigued by how different groups develop anti racist and and feminist or gender justice gender equity anti sexist ideologies and why why.

Adrienne Davis: Families of color and black families in particular can be so counted on to produce children who identify who believe in racial justice and I and anti racism, but that.

Adrienne Davis: Families, especially white families cannot be counted on to produce children and girls who embrace feminism and anti sexism, in the same way i'm finally able to argue that the algorithmic weighted approach also cast out on the common wisdom.

Adrienne Davis: That race and gender will always combine or double to make black women, the most subordinated triad and we all know that in many cases, we find that the black men.

Adrienne Davis: suffer far worse outcomes, whether they are medical disparities educational disparities economic disparities than than black women.

Adrienne Davis: So there's a mathematical structure.

Adrienne Davis: To intersection ality, but I think that the intuitive and additive math is getting in the way of fully harnessing the power.

Adrienne Davis: Of what Kimberly gave us and arguing that if we returned to her initial articulation, especially in her first to pathbreaking articles.

Adrienne Davis: that this will yield the explanatory power that we need to understand this political moment and our political future, so I want to end with a provocative claim.

Adrienne Davis: Many white feminists were appalled and bewildered by a perceived portrayal of solidarity politics from their fellow white women who voted to re elect the President.

Adrienne Davis: And, in contrast, many black feminist and black women more broadly, who did not identify as feminists but who did vote for Joe Biden, and many saw ourselves as voting against Donald trump.

Adrienne Davis: Many black women are more cynical maybe a bit discussed it, but not surprised.

Adrienne Davis: And implicit in the sense of betrayal from I think many white feminists is the understanding that feminism should be like we anticipate that all social movements are social justice movements, is a progress narrative.

Adrienne Davis: That not only will we continue to make progress in gaining rights and pursuing and claiming gender equity but it's also a theological progress narrative.

Adrienne Davis: That is that this progress will itself normalize gender equity as more and more people, including more and more women.

Adrienne Davis: will embrace it and identify as feminists or, at least as anti sexist and believing in gender equity and gender justice.

Adrienne Davis: And yet I think part of what was so demoralizing, as we saw the opposite and the last last election.

Adrienne Davis: And, as somebody at the speakers this morning I think powerfully and profoundly explained, using a really, really, I think, wonderful historical investigation, you know white women's political and social conservatism is nothing new.

Adrienne Davis: So, hence, even as we continue to drive feminism and gender equity forward we may actually be doing so with fewer women.

Adrienne Davis: And so to in provocative provocatively we may be tackling a feminism without women, thank you.

Anne Coughlin (she/her/hers): Thank you so much, Professor Davis Adrian was great to hear from you next Professor Murray, we look forward to hearing your comments.

Melissa Murray: Thank you and thank you so much for inviting me to participate in this terrific symposium and thank you to the law review and the Center for sponsoring it and.

Melissa Murray: As a proud graduate of Uta it is always great to be back in charlottesville, even if only virtually.

Melissa Murray: So that's far the symposium has really positive the idea of intersection ality as a critical method in the struggle for a more equitable society and in this talk, I want to suggest that, like anything else.

Melissa Murray: intersection ality as a methodology can be deployed to multiple ends, including to support efforts that we might understand this inconsistent with efforts to secure race and gender equality, and so, with that in mind.

Melissa Murray: i'm going to talk a little bit about a paper that I have written that's forthcoming in the Harvard law review and the paper focuses.

Melissa Murray: On justice thomas's 2019 concurrence and blocks versus planned parenthood of indiana and Kentucky.

Melissa Murray: The case was a challenge to to indiana abortion restrictions, one of which was a trait selection law that prohibits abortion if intended for purposes of race or sex selection or upon the diagnosis of a fetal anomaly.

Melissa Murray: Now, although the PR curium opinion from the Court granted certiorari and upheld, one of the challenge restrictions.

Melissa Murray: It denied certiorari as to the traits selection law which project justice Thomas to write a separate opinion, in which he chided the majority for denying CERT.

Melissa Murray: But, more importantly, in that separate opinion, just as Thomas began crafting a narrative, in which he conflated the history of eugenics and the birth control movement.

Melissa Murray: With the history of abortion as he explained Margaret sanger, who is the founder of what we now know as planned parenthood.

Melissa Murray: worked hand in glove with the eugenics movement to spearhead efforts to expand the use of birth control and family planning.

Melissa Murray: Within the black Community ostensibly for the purpose of targeting and stamping out black reproduction.

Melissa Murray: And as evidence of this joint enterprise, just as Thomas noted the disproportionate rates of abortion in the black Community today the contemporary residue of this earlier effort to market family planning measures to the black community.

Melissa Murray: He then circled back to the challenge traits election law observing that such restrictions on abortion were merely the state's modest attempt to ensure that agenda eugenic that abortion did not fulfill.

Melissa Murray: Its eugenic potential to eliminate unwanted traits or characteristics.

Melissa Murray: So, to be clear about it, justice, Thomas in that concurrence is engaging in a kind of inner sectional thinking bringing to bear issues of race and disability to a social phenomenon that has traditionally been discussed in terms of gender.

Melissa Murray: And so, with that in mind in the paper I argue that we should understand the concurrence as an effort to transform the social meaning of abortion.

Melissa Murray: From a practice justified on grounds of women's equality and autonomy to one that is actually about racism, racial injustice and the prospect of eugenic deracination.

Melissa Murray: and critically this effort to transform the social meaning of abortion is I argue part of a longer range strategy to destabilize and eventually overrule roe vs Wade on the alleged ground.

Melissa Murray: That the abortion right is rooted in and tainted by racial injustice.



Melissa Murray: Because of sorry decisions past decisions like Roe vs Wade cannot simply be overruled because a majority of the current court disagrees with it.

Melissa Murray: Instead, under our doctrine special justification is required Justice Thomas's association of abortion with eugenics begins to construct the case that racial injustice is the special justification that warrants overruling Roe.

Melissa Murray: And this is not unprecedented the idea of race and remedying past racial injustices.

Melissa Murray: serving as a special justification for reconsidering and potentially overruling past precedents, is well established in our constitutional history.

Melissa Murray: So in Brown versus Board of Education, for example.

Melissa Murray: The Court famously revisited Plessy versus Ferguson, concluding that the Plessy court had failed to appreciate the psychological damage of segregation on Black children and noting the changed understanding of public education in our society.

Melissa Murray: And just last term we saw the same impulse in Ramos versus Louisiana which overruled a 1972 decision permitting state level criminal convictions that proceeded from a non-unanimous jury verdict.

Melissa Murray: On the ground, that the earlier court had not grappled with the racialized underpinnings of a non-unanimous jury rule.

Melissa Murray: With this in mind, Justice Thomas's racialized fatigue of abortion furnishes new justifications for reconsidering and overruling Roe.

Melissa Murray: Specifically, it provides new factual circumstances steeped in race and racial animus that may suffice to render what the Court is called Roe a remnant of an abandoned doctrine.

Melissa Murray: So, to the extent the dissent provides a path toward overruling Roe.

Melissa Murray: Its logic depends entirely on Justice Thomas's effort to graph the history of Margaret Sanger and the birth control movement and eugenics to abortion itself.

Melissa Murray: But as historians and commentators have noted the history that Justice Thomas deploys for this purpose is both selective and incomplete.

Melissa Murray: With that in mind, the paper that I provide offers a corrective by furnishing a more complete account of the historic relationship between race reproduction and reproductive rights.

Melissa Murray: As I explained the idea of the Association of race and reproductive rights, and the idea that it emerged with Margaret Sanger and the eugenics movement in the 1920s, is completely wrong.

Melissa Murray: The entire history of the regulation of reproduction has been shot through with questions of race, since the days of slavery and indeed.

Melissa Murray: Concerns about race shadowed efforts to regulate reproduction after the civil war, through the 1920s and well into the 1960s and the civil rights movement.

Melissa Murray: But to be sure, the notion that broader access to birth control and abortion were part and parcel of a broader effort to curb black reproduction and limit the political power of the black community.

Melissa Murray: was articulated by pan africanist like Marcus Garvey in the 1930s and was later reprised by both the Nation of Islam in the black power movement in the 1960s and 70s.

Melissa Murray: In this regard, Justice Thomas is not necessarily wrong he's tapping into a vein of discourse that was in circulation in the black community and has been for some time.

Melissa Murray: The trouble, though, is that the view that family planning was part of a racist conspiracy to marginalize and subordinate the black community was not shared by all within the community.

Melissa Murray: Civil Rights leaders of the 1960s, including Malcolm X and the Reverend Martin Luther King Jr were supportive of family planning measures on the view that, being able to control the size of one's family.

Melissa Murray: was an important element and stabilizing the black communities economic circumstances and air go its political fortunes.

Melissa Murray: And as importantly for our purposes black women in the nutritional civil rights movement and in the black power movement vehemently voiced their objections to what they saw as the masculine association.

Melissa Murray: Between abortion contraception and genocide, so these were women like Shirley Chisholm and Tonya Cade, Barbara Angela Davis and flow Kennedy we heard about in the last panel.

Melissa Murray: All of these women were making clear that if the issue was racial genocide, the problem wasn't widened access to abortion and contraception.

Melissa Murray: But rather state sponsored sterilization abuse and the injuries that were caused by unsafe and illegal abortions or more particularly the challenging circumstances in which black women were forced to raise their children.

Melissa Murray: Providing this kind of history, this counterpoint to justice thomas's history is critically important for a number of reasons.

Melissa Murray: First, from a litigation standpoint, it provides reproductive rights advocates and members of the judiciary.

Melissa Murray: With a more robust historical account with which to challenge the box concurrence and its effort to reshape abortion doctrine and its social meaning.

Melissa Murray: To the extent that justice thomas's history is the account that is percolating in the lower federal courts.

Melissa Murray: This counter history makes clear to reviewing lower courts that this history is at very the very least more complex and contest it than justice Thomas would have us believe.

Melissa Murray: But, more importantly, the counter history doesn't simply serve a litigation or doctrinal function, it also serves a really important political function.

Melissa Murray: in framing abortion as an effort to suppress black reproduction and, by extension, the black community.

Melissa Murray: The box concurrence makes black women unwitting dupes in a eugenic plot, or worse, willing co conspirators.

Melissa Murray: By contrast, the counter history actually surfaces the voices of black women themselves.

Melissa Murray: and makes clear that they did understand the claim of black genocide, they just didn't agree with it and they forcefully contested it and rejected it with a counter argument about what genocide actually look like.

Melissa Murray: And that kind of representation, I think, is vitally important in the politics of judicial deliberation.

Melissa Murray: As I suggest in the paper when justice Thomas speaks on the Court about issues of racial justice, he does so with a kind of epidemic authority that comes from being the only African American on the Court.

Melissa Murray: Likewise, the addition of justice Barrett to the Court serves a similar function when the question of row or abortion, more generally, comes before the Court.

Melissa Murray: Justice Barrett will likely be skeptical but because she is a woman her skepticism of abortion as a means of promoting women's equality and autonomy.

Melissa Murray: will likely be imbued with the kind of epistemic authority that may resonate if not with her colleagues and certainly with facets of the public.

Melissa Murray: In a similar vein justice Barrett, who is the mother of two adopted black children and a child, with down syndrome.

Melissa Murray: Maybe, especially well situated with a kind of epidemic authority on questions of traits election abortion restrictions functioning as anti discrimination measures.

Melissa Murray: So, given that within the Court certain views and constituencies will be well represented in the deliberations on the question of abortion and its future and its intersection with issues of race and inequality.

Melissa Murray: It is worth thinking about what constituencies will go on represented.

Melissa Murray: In this regard, the history that I provide in this paper gives voice to the concerns of black women at a time when they are absolutely unrepresented among members of the Court.

Melissa Murray: And in that way there's a means of using intersection ality to contest justice thomas's effort to perhaps manipulate intertek sexuality methodologies.

Melissa Murray: In order to change the social meaning of abortion, so I will stop there, and i'm happy to discuss other aspects of the paper and this argument in the Q amp a thank you.

Anne Coughlin (she/her/hers): Thank you, Professor Maria is an honor to have you back with us you're welcome certainly by zoom but we'd love to see you in person at any time i'm now going to turn over the reins to Rachel slip hoy who is going to be talking to us about her paper boss stocks inclusive queer frame.

Rachel Slepoy: Thank you so first of all thank you to uva for inviting me to the Virginia law review for publishing me to end coffin for moderating this panel and to all of the other wonderful legal scholars here.

Rachel Slepoy: Before, whom I am as nothing but I am here to talk about a boss duck versus clayton county and about law um.

Rachel Slepoy: I think our killer says that fox is no many things, but hedgehogs know one big things so i'm here to talk about gay hedgehogs and about justice gorsuch and as the white woman on the panel, I also have to talk about myself a little bit of what I mean by that is, I want to make.

Rachel Slepoy: Broadly speaking, three points, the first one is doctrinal and theoretical the second one's about rhetoric and the third one is about me so, first I want to talk about the discrimination theory of Boston.

Rachel Slepoy: My argument in this essay is very much the boss supersedes the reasoning of Price Waterhouse versus Hopkins, and that is good actually.

Rachel Slepoy: And that bostic is laudable, not just because of its textual analysis which beside aside from everything else, I think, is sound, but because it properly understands the actual function and motivation of.

Rachel Slepoy: Anti queer subordination, and that even more broadly speaking, we talked about anti clearness when we talk about anti trans this movie talk about misogyny when we talk about.

Rachel Slepoy: That discriminatory logic, rather than the identity underpinning it that we are talking about more or less one big thing.

Rachel Slepoy: There has been a movement in.

Rachel Slepoy: A minor movement, I would say in scholarship see seeking to kind of.

Rachel Slepoy: distinguish between the so called gender non conforming.

Rachel Slepoy: And the transgender plaintiffs, for instance.

Rachel Slepoy: Kimberly Kimberly raco, for instance, does this in the in her book gender nonconformity and the law, and there is a.

Rachel Slepoy: A push to maintain this rigid distinction between gender and sex between the thing that we do, and the things we are I on the other hand, rather than rather than.

Rachel Slepoy: Inter rather than seeing these forces is intersection I take after ido khatri who has talked about these simulations is kind of interest sectional because at the end of the day, they are necessarily and consecutively bound together now i'm not.

Rachel Slepoy: Trying to suggest that Neil gorsuch was reading gender theory or that.

Rachel Slepoy: The Court is particularly caught up on the.

Rachel Slepoy: Various queer rights movements that have arisen in the 60s and how they've interacted.

Rachel Slepoy: With the push and pull of the broader feminist movement but boss Doc was the perfect vehicle to prompt this kind of inclusive conceptual leap.

Rachel Slepoy: to a significant degree, I think, part of that is the courts choice to consolidate in two cases about the homosexual men and one case about a transgender woman and.

Rachel Slepoy: That allow that allows the decision to generalize to talk about sex as a motivating force and to refocus or at least to emphasize the refocusing of Title seven jurisprudence.

Rachel Slepoy: On the reasoning process of the discriminate or instead of the identity of the person that is being discriminated against.

Rachel Slepoy: What what I do, to some extent of what I attempt to do is to draw out that process and the mechanics of that discrimination.

Rachel Slepoy: um.

Rachel Slepoy: That what is basically happening when somebody sees a transgender woman and understands her as a transgender woman and discriminates against her as a transgender woman is the perception of the wrong wrong body essentially.

Rachel Slepoy: The that there is a person whose body is interested just supposed to be doing one thing and then he or she is doing something completely different.

Rachel Slepoy: To some extent, that is, like the classic case of.

Rachel Slepoy: That is the classic case of nonconformity and other people, you know for decades have talked about.

Rachel Slepoy: You know the the special phenomenon of trans misogyny that there is something particularly you know.

Rachel Slepoy: heinous about seeing somebody who the identifies is you know supposed to be doing masculinity choosing to adopt femininity, instead of femininity, after all, is something that nobody is supposed to.

Rachel Slepoy: Choose because a it is supposed to be subordinated be perhaps it is supposed to be constructed or that it's.

Rachel Slepoy: or even if you're a particular kind of second wave feminists it's something which ought to be discarded all together as being.

Rachel Slepoy: emergent from a sexual subordination.

Rachel Slepoy: that's where you get people like Janice Raymond that's where you get people like Raymond Bellamy who talked about trans woman is.

Rachel Slepoy: impersonators is fetishists as rapists even metaphysical rapists.

Rachel Slepoy: Because they are.

Rachel Slepoy: invading because I'm a conception of the feminine which, if you're that kind of radical feminist really shouldn't exist.

Rachel Slepoy: To some extent, the case of trans misogyny is an case of intersect intersectionality in that you can kind of take that additive approach and say that you have discrimination against a woman and be a transgender person that these interact to form a special kind of.

Rachel Slepoy: Trends aggression, plus.

Rachel Slepoy: But I think it is.

Rachel Slepoy: I think it is better and more fruitful and more conceptually useful to talk about this kind of discrimination as a discrimination against the.

Rachel Slepoy: A lesser class of woman.

Rachel Slepoy: That these forces which seem, which seek to subordinate the feminine and who seek to subordinate transgender people are reacting against the same thing against the notion of doing the wrong kind of doing the wrong kind of thing with your body of.

Rachel Slepoy: enacting the wrong kind of the wrong kind of performance of loving the wrong person of dressing in the wrong way um.

Rachel Slepoy: These of these forces they come together they form a complex and they manifest themselves on different kinds of identities in different ways, but I think that rather on seeking to distinguish to slice up and to.

Rachel Slepoy: Separate these various classes of identity which is basically a philosophical question one that I'm not sure that any of anybody is in a good position to answer necessarily certainly one that the courts are not in a good position to answer um.

Rachel Slepoy: and one which may be in general fuzzier and less distinct than we would like it to be, we can focus on the discrimination and the thought of the discriminated logic of the discriminate or which is in a more meaningful sense unified.

Rachel Slepoy: So that's the theory.

Rachel Slepoy: That comes that comes through in boss Doc that's that's great and good, and I think that the expansiveness of the but for test that's articulated there is is.

Rachel Slepoy: is useful and it's language of a kind of a inclusive conception of sex discrimination is.

Rachel Slepoy: is laudable.

Rachel Slepoy: Next, the rhetoric.

Rachel Slepoy: Or rather seconds.

Rachel Slepoy: What are we doing as lawyers, when we talk about rewrites, how do we talk about them how the courts talk about them and how did they talk about transgender plaintiffs.

Rachel Slepoy: What I find.

Rachel Slepoy: What what I find them what I found meaningful in Boston is the.

Rachel Slepoy: The degree to which it's whether consciously or necessarily or not i'm sees transgender identity as unproblematic.

Rachel Slepoy: Even.

Rachel Slepoy: Even courts, which are more amenable.

Rachel Slepoy: more explicitly in favor of transgender rights more aware of you know, the kind of historic more willing to speak about the historic nature of what they're doing i'm thinking, for example.

Rachel Slepoy: Green versus Gloucester county which was resolved in August here in our here in our backyard a couple of hours East and Virginia.

Rachel Slepoy: But.

Rachel Slepoy: While judge floyd writing bad majority opinion is conscious of.

Rachel Slepoy: You know, doing something important for civil rights, he also takes the time to to explain.



Rachel Slepoy: And to explain the transgender plaintiff to explain the transgender body.

Rachel Slepoy: And so you get these pages after pages of what does it mean to have this thing to be this thing called a transgender to have this.

Rachel Slepoy: condition, called the gender dysphoria, why does Gavin grim have to use a men's bathroom because he has a doctor's note, and he has a disease that's catalogued in the DSM five but boss Doc his boss like doesn't see the need to go into all of these things and.

Rachel Slepoy: To that extent it's a model of a of a radical of a rhetoric of transgender equality which.

Rachel Slepoy: doesn't seek to justify equality by justifying our existence.

Rachel Slepoy: You don't really need to.

Rachel Slepoy: Provide trans one on one you don't need to talk about medicine and.

Rachel Slepoy: That is because you don't actually need to decide who this person is because you're not articulating a transgender right in Boston.

Rachel Slepoy: you're you're articulating a general right which is accessible to the entire population title sevens rights are for everyone, and that means that it doesn't matter which disease amy Stevens has what she seeks to do with her body, what matters is what she was faced with.

Rachel Slepoy: In other courts and even in the field of scholarship the emphasis on the medical and on the language of identifying as rather than simply being which is.

Rachel Slepoy: More than one person is remark, but I kind of repeat that you know transgender people are forced identify and nobody else's asked to do that.

Rachel Slepoy: won't even says gender woman identify as a woman, but they get to simply be women, the language of identifying as the language of gender dysphoria and the ignorance and deconstruction of identity as.

Rachel Slepoy: Something that's inherent rather than constructed through acts all those things come together to allow.

Rachel Slepoy: Particularly I think dissenting judges to infantilize to ostracizing to humanize and basically misunderstand what it means to be a person navigating gender in the world, and particularly what it what it means to be trans so.

Rachel Slepoy: That finally bring that finally gets us to me because, to some extent with motivated me to write about this was the experience of.

Rachel Slepoy: Reading boss stock last June and.

Rachel Slepoy: i'm having a deeply emotional experience, that was not necessarily mirrored by.

Rachel Slepoy: Other commentators because.

Rachel Slepoy: You you can't help but be an optimist when you see the Supreme Court.

Rachel Slepoy: not treating you as a puzzle to be solved.

Rachel Slepoy: or as a mystery to be explained.

Rachel Slepoy: As something which needs as a person who needs justification, but as a.

Rachel Slepoy: person with move with I guess equal standing So when I wrote this in August and September basak was fresh it was clean, it was new it and it was exciting but circuits had delivered a several.

Rachel Slepoy: Encouraging wins for transgender rights and thinking of.

Rachel Slepoy: Greenwich I mentioned them thinking of Adams versus.

Rachel Slepoy: St Johns county out of the 11th circuit which reiterated the kind of message of a.

Rachel Slepoy: Which held along with grim that's a school, which denies a transgender child access to the restroom of their choice violates title nine and i'm also thinking of.

Rachel Slepoy: hickox versus little which is now on appeal of a preliminary injunction to the ninth circuit, but which enjoined a.

Rachel Slepoy: which enjoyed an Idaho law targeting transgender woman and forbidding their inclusion in.

Rachel Slepoy: school sports.

Rachel Slepoy: So when I was reading this in September in early September, I felt quite good.

Rachel Slepoy: i'm not sure that I would read it the same way, today, the laws developing quickly, and there are a number of bills, which are pending in.

Rachel Slepoy: State houses all over the country which would restrict the equal standing of transgender people I feel like I don't have time to get into specifics so I'll just gloss over this I can't not mention.

Rachel Slepoy: auto versus city of boca raton which it came out of the 11th circuit and.

Rachel Slepoy: struck down a local ordinance banning conversion therapy.

Rachel Slepoy: for minors, what I want to what I want to end on is that the things move back and forth, and we can go through the courts, but at the end of the day, the law is not going to save us.

Rachel Slepoy: And nothing in Title seven is actually going to help the girl, whose parents have thrown her into the street, but.

Rachel Slepoy: At the end of the but maybe just maybe the expressive power of law and its ability to speak to a common humanity can work in favor of those who are being targeted because, as I say, in the very last sentence, the Supreme Court can still tell us that trans rights are human rights.

Anne Coughlin (she/her/hers): So thank you Rachel for that paper and your description of the paper I'll just offer one reflection that's a thread that I'll pull from this morning's panel.

Anne Coughlin (she/her/hers): But it was also a thought that was firmly in my mind when I read your essay, which is that I predict with a great deal of certainty that your essay will be included in.

Anne Coughlin (she/her/hers): The canon of writings on Boston Of course you will revise it we all have the occasion to do that in our careers that's a sign of growth, but this is a very significant contribution and I bet the rent that it appears on silla by.

Anne Coughlin (she/her/hers): Very soon.

Anne Coughlin (she/her/hers): Next up, we are absolutely delighted to welcome Professor Camille rich and she will now take it away.

Camille Rich: Thank you and and it's just such an honor to be on this panel there's so many.

Camille Rich: interesting insights that have been presented already I'm going to try to stay within my 10 minute timeframe, so we have enough.

Camille Rich: Time to really explore all the issues that have been raised so I'm going to be probably a little bit briefer than some of our other presentations.

Camille Rich: I'll start off by thinking Professor Kim Ford Missouri for including me and this celebration, and also the University of Virginia law review, as well as the Center for the study of recent a lot.

Camille Rich: My paper is called color blind patriotism recognizing the role intersection of politics plan framing first amendment conversations and it structured around a series of images, because I think that sometimes.

Camille Rich: Especially because i'm a scholar of performative at some of the expressions of gender performance.

Camille Rich: really help us to understand some of the stakes in the legal doctrine and even in the late understandings that accompany the doctrine.

Camille Rich: or shape right judicial actors responses once they're presented with technical legal questions so i'm going to go ahead and share my slides if the technology works with me.

Camille Rich: Okay, are the slides visible my good good okay great.

Camille Rich: Okay i'm wanted to start off with this iconic.

Camille Rich: image of Asia.

Camille Rich: Evans, and this has been you know so often we see this picture without reference to her name and it's one of the ways in which are black women's identities get erased and they become symbols for other things.

Camille Rich: So I thought it was important, just to the start of our presentation to recognize this young woman for her, she is.

Camille Rich: And the great risk that she took took walking forward to face police officers in this moment in baton rouge Louisiana and the context of this black lives matter protest.

Camille Rich: It really crystallized for me the stakes of what our themes are.

Camille Rich: In this current moment thinking about the relationship between equal rights amendment and black lives matter.

Camille Rich: And what her position as an intersection will player right sort of para dogmatic representation of intersection ality theory and its first iteration can teach us about the articulation of background legal norms and doctrine, in particular.

Camille Rich: So the event that is on everyone's mind right now, no one can deny it right is to stop the steel storm the capital insurrection on January six.

Camille Rich: I'm including just some basic facts of how seismic this event was because there seems to be this kind of creep.

Camille Rich: away from a recognition of the truly awful nature of what that insurrection was about five dead.

Camille Rich: For writers one police officer actually I think it's now two police officers, I think another one committed suicide and 56 officers injured right 200 files open.

Camille Rich: After all, the dust is settled after the smoke is cleared, what does the event teach us about race, gender and free speech in the United States.

Camille Rich: And in addressing this question, it was an eerie moment for me because about God, it must be you know, three or four years ago now, I wrote a paper called.

Camille Rich: Is it a man's world reframing the right to protest, up to the Charlottesville controversy.

Camille Rich: And I went back and looked at a couple of contracts and first amendment doctrine to think about some of the default cultural norms that inform those standards.

Camille Rich: And how they affect our understanding of what our free speech rights are in the United States that, is there a certain background understandings of gender.

Camille Rich: That inform some of the seminal cases they don't get serviced or talked about in a typical way.

Camille Rich: And they come to shape our Lee understandings of what it means to participate in protest what it means to exercise one's free speech rights, what counts is excess.

Camille Rich: And this is the important part, what counts as expected and unavoidable access in the expression of passionate views.

Camille Rich: So, for some people, the violence at the Capitol right is the side effect of people getting really fired up and you should expect this kind of outburst.

Camille Rich: The more that that sense gets naturalize in the context of these discussions right, it has tremendous implications for what first amendment expression looks like in the United States.

Camille Rich: The layer that I've added for the purposes of this discussion is to think about it, more specifically, from an intersection perspective right so.

Camille Rich: Historically intersectionality has been talked about as a way of surfacing how discrimination regimes fail to capture particular aspects of discrimination phenomenon.

Camille Rich: And that's the way in which black women's discussion of how anti discrimination laws are shut down the articulation of their injuries I provided some insights into the limitation of how title seven works.

Camille Rich: They created new space and in the process created opportunities for other folks who live at different intersections who wouldn't have been caught by traditional expression of doctrine.

Camille Rich: So can we do that, in the context of first amendment law that is used the intersection of perspective of black women and the ways in which they engage in political protest to proselytize existing first amendment constructs.

Camille Rich: So I won't be talking within the confines of a particular case right or a particular decision at any particular moment.

Camille Rich: What i'm trying to orient you to is the ways in which first amendment doctrine is taught right writ large classes across the United States.

Camille Rich: And the implications that has for the naturalization of certain approaches to the first amendment to the expression of one's free speech, interests and the ways in which excess gets out of naturalized or treated as a criminal problem.

Camille Rich: i'm going to be to doing two different kinds of inner sectional analyses, so one is looking at the experiences of black women and particular forms of political protests.

Camille Rich: To say why are we not talking about this, these are some of the most important things in terms of first amendment conversations when we continue to focus on the actions of the rioters at the Capitol and don't i'm not minimizing.

Camille Rich: Right what happened there, but when we continue to place our focus on them.

Camille Rich: We lose our ability to identify the ways in which black women who had been central to so many protests in the United States are injured are targeted and are subordinated those things should be brought into the first amendment candle.

Camille Rich: And we won't do that as long as we focus on these particular actors in this particular way.

Camille Rich: The second thing i'm proposing is that we do need to look at how first amendment is structured in ways that accommodate this particular perspective of right a white male writer at the store in the steel insurrection.

Camille Rich: What understandings of anger and of expression or naturalized in the way we talk about first amendment interest now can we disentangle them and what would be the consequences of doing so.

Camille Rich: Okay, one thing you perpetually heard from the protesters is we are patriots, we are patriots the battlements and how law enforcement treated them, they could not wrap their heads around it.

Camille Rich: There was a reason for that right and the intersection of frame helps us understand why this happens.

Camille Rich: So, again intersectionality although it's been traditionally understood is identifying these kinds of discrimination dynamics and the way in which doctrine tends not to fully capture them.

Camille Rich: should also be understood is bringing our attention to multiple socially subordinating forces that converge a particular moments in time to create unique moments of marginalization.

Camille Rich: It can also be understood to create unique moments of privilege temporary privilege at these intersections and that's one of the things that I suggest that is happening in first amendment doctrine.

Camille Rich: For a lot of these will call them folks who were participated in this event, and they were looking back at a particular historical moment where their particular.

Camille Rich: activity at this intersection was treated as a moment of patriotism, so they were drawing on that narrative as they move through space thinking, there was this continuous story is continuing history.

Camille Rich: But they were enacting a particular form of masculinity right that we should not attribute to all people who claim a masculine gender a masculine focus.

Camille Rich: That is, they were acting what we call protest masculinity, which is a particularly destructive form of masculinity and is associated with people who are either on the economic margins, or who fear political power.

Camille Rich: And this particular version of masculinity is not specific to the United States it's arisen across the world in various different kinds of political context it's the kind of masculinity that particularly right takes hold and groups that are identified as terroristic and.

Camille Rich: So my provocative question for you today is how much a first amendment doctrine is based on this version of protest masculinity.

Camille Rich: Which naturalize a certain forms of excess and protect speech just up to the line when it constitutes what first million calls a true threat.

Camille Rich: or constitutes a classic moment of true incitement and how much time we heard people debating this right on news programs across the country is did we get to the exact technical moment of incitement.

Camille Rich: Did we get to the exact technical technical moment of threat, the reason they're having so much trouble with that is because those doctrines as they come together right are designed to protect a certain kind of activity.

Camille Rich: That does tend to burden first amendment interests.

Camille Rich: i'm not going to get into it today, because we don't have enough time and i'm a little worried i've already gone over my time, but my point here is this when you look at the seminal first amendment case on threats.

Camille Rich: it's Virginia D block that's about terroristic violence it's about the Klu Klux Klan.

Camille Rich: When we look at Brandenburg, which is our classic case on incitement that's about terroristic threats and the Ku Klux Klan and white supremacy.

Camille Rich: Is it any mystery why these doctrines or not well prepared to deal with the kind of white terroristic violence that we're experiencing now.

Camille Rich: I submit that it's not and that it's drawn from particular version of masculinity which people recognized as a problem today.

Camille Rich: But we don't have first amendment constructs yet that fully capture our concerns Okay, and if we had more time, I would go into the male pageantry.

Camille Rich: Maybe people have questions about this and i'm teaching an online class at uva.

Camille Rich: I buried the lead there so i'm teaching an online class at uva right now called racial ambiguity blues.

Camille Rich: In that class we explored the ways in which the storming the capital insurrection is actually about the reconstruction of whiteness and fights about the construction of whiteness that are occurring right now.

Camille Rich: When you look at the pictures with that frame of mind some of the discontinuities How can someone who's wearing an I switch sweatshirt march next to someone who's an Orthodox Jew.



Camille Rich: It explains, a lot of what's happening there and it brings up a really important issues for understanding contemporary politics, the United States, right now, and the politics of whiteness itself as a political phenomena.

Camille Rich: here today, I really want to focus on this intersection ality question and the first amendment issues.

Camille Rich: One of the things we saw on all this meal pat pageantry aside from the Viking costumes and Uncle Sam you know, in the sort of cartoonish hat and the caveman costume.

Camille Rich: Was the deployment of government symbols in a campaign of intimidation, it was a claiming of those symbols now typically you would worry about that kind of claiming.

Camille Rich: That kind of association, I should say force association and a kind of compelled speech doctrine that worries about the government.

Camille Rich: voicing its messages on private actors and forcing them to communicate the government's message, this is the opposite dynamic in which government is being implicated in their particular speech activity, it wants no part of.

Camille Rich: We don't have a construct yet to deal with the deployment of government symbols in the context of intimidation would that be considered a kind of content based discrimination if we attempted to regulate that particular activity.

Camille Rich: These are the kinds of questions right that bubble up through an intersection all analysis.

Camille Rich: Like I said I want to keep it moving so that we can get to the questions.

Camille Rich: So three questions that I would post, the people who maybe want to do additional work in this area i'm going to lay these out in the paper, but again, this.

Camille Rich: Particular piece that i'm going to submit to the journal is really an invitation for other people to do different kinds of intersection ality work.

Camille Rich: there's no way I could go through all these so what I want to do is just invite more people into the big ten's of intersection ality and really celebrate as as Professor data said, you know really celebrate its promise realized that we haven't fully captured all it has to offer.

Camille Rich: So one question that I find people tend to focus on which is an intersection ality question is right are black women being treated differently, under existing first amendment standards that seems to occupy a lot of people's attention it's a totally valid.

Camille Rich: thing to be concerned about the picture of the young black women taking a knee.

Camille Rich: In front of these officers right, it is a question about why they perceive her as a threat, why she's seen as a source of incitement.

Camille Rich: not trying to disrupt the doctrine with that particular question it's totally valid, especially when you see white women being escorted down the steps, after having stormed a government building that's fair.

Camille Rich: The second question is, do default norms these protests masculinity norms that would protect you right up until the point where you were actually and some people would say.

Camille Rich: The protesters certainly exceeded this prayer protection, right up until the point into you punch someone in the face, or by someone else right go ahead and punch someone in the face.

Camille Rich: Whether or not they're exposing this woman to danger.

Camille Rich: So if we know they're going to be disproportionately applied and folks with brown bodies right are going to be exposed to more danger.

Camille Rich: Do those arguments about treating everybody freely under the existing standards get us to where we need to go.

Camille Rich: And then the last question I sort of teased at this in the beginning, right does the focus on these standards really get us to some of the more interesting first amendment questions.

Camille Rich: I mentioned this here with these images, because the bree newsome bass example where she climbed a flagpole and took down the confederate flag or she was celebrated as an incredibly powerful political actor, who had the seminal moment in American culture.

Camille Rich: And it absolutely was a seminal moment but I worried that she would be shot right for trespass destruction of property any any number of things.

Camille Rich: protest masculinity teaches us and some of the general sociological literature on the nature of protesting United States.

Camille Rich: suggest us that more violent trespass right excess kinds of speech associated with masculinity are treated as more serious moments of political protest than ones that look more feminine.

Camille Rich: So again, are these standards, putting brianna position where she feels like in order to be relevant in order to truly show her power she's got to climb that flag pole.

Camille Rich: I would prefer rightly understanding, so the first amendment that actually provided her with more protection and i'm contracting what she did with something else that's equally.

Camille Rich: Dangerous but more of a feminine cast that maybe wouldn't be taken seriously and that's starting to frazier who took the video of George floyd right that active bearing witness.

Camille Rich: of standing her ground standing her ground is the masculine construct again right but bearing witness and making that film, it became one of the most seminal moments for race relations in the United States in the past year, and probably the past decade.

Camille Rich: Again, really not framed in the same way as the brief moment was in that particular moment I was happy to see she was getting some awards.

Camille Rich: If you step back from the intersection of frame to think about the larger issues there's a young man of color who's in the position that she is he filmed the Eric garner protest.

Camille Rich: he's been subject to retaliation he's currently sitting in prison there been all sorts of false questionable charges lodged against him.

Camille Rich: If we were going to really take that interest in filming seriously and make that central to our first amendment conversations.

Camille Rich: I submit that might do more for black women and for people like the margins, who are witnessing and recording and discussing the events, then focusing on incitement threat and hecklers vetoes and I want to check in with and i'm over my time I should stop.

Camille Rich: Yes, i'm over my time okay um there's a little more detail on what you know, this might look like if we really interrogated the.

Camille Rich: hecklers vetoes its relationship to trust class privilege and the entitlement to space just a couple more images to get us thinking about that.

Camille Rich: My main point is, we need to rethink our lay understandings consider the ways in which gender and particularly your race version of gender informed them and.

Camille Rich: And Center black woman's experiences and thinking about the legal questions that preoccupy us, so thank you again, I hope this was interesting and helpful and I look forward to your questions.

Anne Coughlin (she/her/hers): So thank you so much, Professor rich, to say the least, your themes are very important to everyone in the nation, but I know others in the audience.

Anne Coughlin (she/her/hers): take a particular interest in it, because of the events that we live here here in charlottesville.

Anne Coughlin (she/her/hers): And the ways in which the university and our local law enforcement seems to have proceeded based on deeply misguided understandings of how to.

Anne Coughlin (she/her/hers): Protect free speech in that moment, so, so thank you so much for spending time with us today, but also for teaching the course to our students.

Anne Coughlin (she/her/hers): you'll be you'll be doing us a huge favor you are doing a huge favor so we have a number of questions and i'm going to go ahead and get started asking them and thanks so much if there are more questions, please put them in the of the Q amp a box.

Anne Coughlin (she/her/hers): But our first question goes to Professor Murray.

Anne Coughlin (she/her/hers): So people today often consume literature and media that comports with their political views of the world i'm sure you've heard this.

Anne Coughlin (she/her/hers): On your paper gives us a counter narrative to justice thomas's interpretation and box and what the question or wonders, is whether, in your view, this is enough to combat narratives and perspectives to the contrary, and if not, what else is needed.

Melissa Murray: it's a terrific question um, let me just say that justice thomas's narrative has only been circulating for.

Melissa Murray: A little over a year, at this point.

Melissa Murray: But it's actually made incredible inroads in the lower federal courts, and it was cited a number of times in the advocacy briefs for June medical services.

Melissa Murray: which was a challenge to admitting privileges long Louisiana that the corporate last year it wasn't even.

Melissa Murray: A law that was about trade selection, it was about admitting privileges, yet this narrative of abortion as racial genocide threaded its way into that case so.

Melissa Murray: it's actually had legs and again if that's the only narrative circulating, you can imagine that it has incredible power so it's important to, I think, have a counter narrative out there.

Melissa Murray: Even if the courts don't accept the counter narrative The fact of the counter narrative shows that the history is actually contested.

Melissa Murray: But what can we do to sort of dispel this idea of misinformation or incomplete information, even in places like the federal courts i'm.

Melissa Murray: You know it's a terrific question, it is one that the University of Virginia law review has actually had a hand in addressing a couple of years ago, the lobby published a paper by Allison Larson about the trouble of abacus facts and.

Melissa Murray: In that paper Professor Larson discuss the fact that there is really no way of verifying the information that is provided to the court in amicus briefs, and this is sort of a classic example of that.

Melissa Murray: This history is being surfaced in lots of advocacy groups and there's no way to actually verify those facts and so.

Melissa Murray: One way would be sort of institutional mechanisms for courts to check back or to perhaps a limit.

Melissa Murray: Who actually submits an abacus brief and you know that may be more cumbersome and require more coordination among the federal courts and more initiative.

Melissa Murray: From the federal judicial Center itself but, at the very least, offering counter narratives gives the core of an opportunity to sift through different narratives and perhaps determine which one they find to be most compelling and convincing.

Anne Coughlin (she/her/hers): Thank you, if we were present together the panelists would get to ask each other questions so i'm going to have the opportunity to sort of reproduce that moment and Professor Murray, has a question for Rachel and i'm sorry Rachel I should call you miss Rachel or miss laboy.

Anne Coughlin (she/her/hers): i'm trying to do the right thing formally so here's here's.

Anne Coughlin (she/her/hers): melissa's question for Rachel.

Anne Coughlin (she/her/hers): What do you make of the final paragraphs in the boss talk majority in which justice Gorsuch refers to refer as a super statute.

Anne Coughlin (she/her/hers): And he goes on to suggest that nothing in the opinion diminished diminishes protections for religious liberty and as Melissa points out the funeral home that Amy Stevens was working for raised religious liberty as a Defense but that question was then not presented to the course thoughts.

Rachel Slepoy: My thoughts on that are twofold which is.

Rachel Slepoy: I think that.

Rachel Slepoy: I think that Gorsuch being kind of who he is.

Rachel Slepoy: is trying to at least rhetorically narrow the scope of what he's doing in this opinion, I think that it.

Rachel Slepoy: I think that its logic goes much farther than title seven, but I think that by doing this he's also signaling that perhaps he's not going to be as favorable to.

Rachel Slepoy: say this logic being played out in the equal protection clause context which is where we're, which is where we are heading next.

Rachel Slepoy: um and if I, and of course we are going to face this kind of perennial question which I know that.

Rachel Slepoy: Professor Mary has addressed in the past of the conflict between religious freedom and LGBT rights and, in general, the right to the constitutional right to discriminate um i'm not sure how the Court deals with any of this um and I regret to say that I haven't i'm not a.

Rachel Slepoy: A reframe nowhere, or even a free exercise clause nowhere.

Rachel Slepoy: And I think that this will definitely encourage some of.

Rachel Slepoy: Some of the cases which are now being worked up to pursue that kind of an angle, for instance, there are.

Rachel Slepoy: I think I mentioned the auto versus city of boca raton, which is a free speech challenge to and to a conversion therapy ban there's another case, but just pending resolution in the fourth circuits.

Rachel Slepoy: I think it's called Doyle, I think it's Doyle versus hogan make it came out of Maryland which brings a similar sort of challenge but.

Rachel Slepoy: If I were trying to pursue this thread, I think that the Court is signaling that first first rule free exercise as applied challenges to these kinds of statutes, are going to be treated more favorably.

Rachel Slepoy: it's going to be a fun few years.

Anne Coughlin (she/her/hers): fun, is a good word.

Anne Coughlin (she/her/hers): So our next question goes to Professor Davis.

Anne Coughlin (she/her/hers): So here here goes where else outside of voting trends do you see the limitations of additive intersection ality and the streets of algorithmic intersection ality play out so, can you give us examples outside of voting trends.

Adrienne Davis: yeah i'm I can give to you real quick, so one is it historical one that I know that my my fellow legal history it's like serena Mary and others are going to be very familiar with there's a very quick.

Adrienne Davis: analogy it's a long standing analogy that gets made even today by very smart people between marriage and slavery.

Adrienne Davis: So I was giving a talk, I think, just last year and talking about you know slavery and American raise is one of the you know roots of American racism.

Adrienne Davis: And a very smart white women the audience said, you know can talk a little bit about the analogy between you know sort of marriage as the the original you know kind of source of oppression of women and.

Adrienne Davis: And and slavery, and so I kind of you know, went through, and you know kind of walk through you know all the reasons why the the analogy does not.

Adrienne Davis: does not hold, but I think it comes again from that sort of additive view right that.

Adrienne Davis: That that race and sex are these sort of you know as, particularly in the double marginalization right that there's sort of these equal weights right racism and sexism.

Adrienne Davis: And i'm not saying racism is more serious or is heavier i'm just saying that in some contexts, people will be searching for the analogy, because if they are if it's a doubling, then what is the analogy to you know sort of slavery right marriage is probably one of the original.

Adrienne Davis: subordination of women and in our country, but that does not mean it is analogous to slavery anyway so that's sort of a sloppy I think.

Adrienne Davis: metaphor that grips many, many very, very, very, very smart people and another one, I think, is that, and this is probably where i'm going to get myself in a little bit of trouble.

Adrienne Davis: But I think sometimes when we see efforts to try to tackle what I think is the manifest vulnerability and oppression of black men and black boys that we see in so many contexts right.

Adrienne Davis: You know, higher rates of incarceration higher rates of unemployment wider wider educational disparities than than black girls.

Adrienne Davis: I think there's there can be this impulse to say it's somehow not true, or like you know we are we're you know we're missing something, because you know.

Adrienne Davis: Black women have to be this sort of double double marginalization, instead, I want to actually look at i'm not gonna do in this paper, but I want to look at Barbara and a lot of his work and she reminds us that.

Adrienne Davis: That that structural slavery structural racism marked, not only will it marked as a break in racialized patriarchy.

Adrienne Davis: Right, so that not only do we know that you know black women were deeply deeply subordinated under slavery in ways that often were specific to black women.

Adrienne Davis: But it also was a break between typical patriarchal solidarity between between white men with black men.

Adrienne Davis: And when we remember that central black feminist insight it shouldn't surprise us at all, then, that there are going to be instances of very specific targeting of black men when they threatened various.

Adrienne Davis: Various power structures right and so again that kind of additive that race and sex will always add up to be to be the manifest in the worst in black women.

Adrienne Davis: Mrs I think the ways in which it's weighted right so depending on the context.

Adrienne Davis: Frequently black women are going to be sort of the most subordinated in many contexts, but, but not always sometimes it's men and so that's why I think we need that more nuance.

Adrienne Davis: weighted attention to context and everything else, rather than understanding race and sex is always operating along these parallel trajectories I don't know if that makes sense.

Anne Coughlin (she/her/hers): It does, and it helps me as i'm prepared to help my students think critically next week about the John Stuart Mill essay, which is one of the prominent places where you see the marriage and slavery analogy, and so I may send you an email.

Anne Coughlin (she/her/hers): So now, I have a question that goes out to all of our panelists so one of the undercurrents of this panel and in our morning panel as well.

Anne Coughlin (she/her/hers): Of the entire symposium the the the ongoing question of whose voices count on why they count and how to make sure that we elevate and support those voices.



Anne Coughlin (she/her/hers): And so, our students were wondering, from the perspective of law students, especially those who have authority as gatekeepers over law journals what can they be doing differently and better to support intersection of voices ideas strategies and so forth.

Adrienne Davis: Can I ask a clarifying question there so just kind of goes back to my my effort to so do by interest sectional because we're all intersection.

Adrienne Davis: Right so i'm not sure if they mean a diversity of voices, you know more more people who are underrepresented in La reviews, or if they mean more people who are tackling these kinds of questions so i'm not sure what what what what they were talking about.

Anne Coughlin (she/her/hers): yeah i'd have to give it back to the questioner, which is difficult to do in zoom once again it's too bad the person isn't standing before you so they can use their own voice i'm.

Anne Coughlin (she/her/hers): My own pod is probably both of those questions are on the table, and you know, one of the threads between the two panels has been this question, what does intersection ality mean.

Anne Coughlin (she/her/hers): You know it's everything from a term that's used very precisely in Kimberly crunch homework right to a mean right, and so I think they probably have in mind both of the kinds of questions that.

Adrienne Davis: i'll take it some really you know quick, you know there's so many things, including this wonderful symposium right is one way of doing it prioritizing these kinds of topics I think another one is to really look at the.

Adrienne Davis: You know the the representation, this is representational diversity, but the.

Adrienne Davis: But the representation of who is on the as on the law review and and not purely representation, but also kind of the experiences that people bring.

Adrienne Davis: And the ways that people will probably then value different kinds of topics and voices and perspectives and everything else so that's that's one place to start yeah.

Melissa Murray: I go to do if the the whole question of what counts is in our exceptionality, as you know, implicit in the question, because you could imagine it, and this is sort of at the heart of my question to Rachel.

Melissa Murray: A white man saying you know I am not just a white SIS man i'm also a Christian evangelical my religious identity gives me sort of inner sectional appeal that should be brought to the table, and I do think there is a way in which.

Melissa Murray: There is perhaps an inversion of anti discrimination law to sort of bring in a group of people that we would not ordinarily expect anti discrimination law to be protecting, but they are making appeals.

Melissa Murray: To anti discrimination law based on a multifaceted character that might be rooted in religion, so I mean again like what do we mean by intersection ality and.

Melissa Murray: You know, as we think about being more intersection Are we aware in which that methodology may also be used by those who may not necessarily have the same ends in mind.

Camille Rich: I can be really quick and and just offer.

Anne Coughlin (she/her/hers): Maybe today this.

Camille Rich: One is have a healthy degree of skepticism when you think something is a small and marginal issue.

Camille Rich: So injuries that occur to people who are at the margins and are experiencing multiple forms of marginalization, at the same time, will often seem unfamiliar to you and inconsequential and they will not match up easily with the literature.

Camille Rich: And they will not be able to stay safe, you know the big folks in the field, they will seem strange and so when you encounter those look for if you if the larger itself is not you know.

Camille Rich: fairly diverse you're gonna have to go outside and look for people who actually know something about that information.

Camille Rich: And then take that same lens and apply it to the sort of big wigs in the field who don't recognize their position ality.

Camille Rich: So I would submit you shouldn't be accepting pieces for people who aren't recognizing the race and gender and class basis of their arguments and learn how to do that work.

Camille Rich: Because as long as they're able to offer their analyses that seemingly objective and divorced from these kinds of considerations, it creates a dynamic holy within the field with an.

Camille Rich: Academic scholarship in with law school in law school classrooms.

Camille Rich: That always forces folks of color people from marginalized places sexual orientation identities gender identities, it always forces them to make the case where their interests are relevant, rather than changing the rules of the game, so that, of course, you ask those questions.

Anne Coughlin (she/her/hers): So we have come to the end of our time and I want to thank our panelists for an absolutely amazing and exciting.

Anne Coughlin (she/her/hers): discussion and instead of papers essays if you will.

Anne Coughlin (she/her/hers): um I also want to thank the audience for participating and for all of your great questions, there are many more questions that came to us in the Q amp a and we just simply didn't have time to explore them all.

Anne Coughlin (she/her/hers): For those of you who want to pursue these questions I predict that the panelists would be happy or willing to give more of their time, so please feel free to email them along.

Anne Coughlin (she/her/hers): we're going to take a short break now, we will reconvene at 130 and I very much hope to see all of you again, as we return.