

Perez v. Sharp

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Perry v. Schwarzenegger

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Atkins v. Virginia

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legal realism-

- roots in pragmatism
- Florence Kelley- advocate/ legal strategist, put together briefs for SC
- SC Justice Louis Brandeis
 - Brandeis brief- why it is dangerous for women to work for more than 10 hours a day
- progressive reform and legal change
- bramble bush- llewellyn
 - attempted to draft a code of rules that made things more sensible
- looks for pragmatic outcome
 - what will results be- in public interest
- characteristics and method
- social science/real world arguments
- Perez v. Sharp
 - Cali SC 1848
 - 4-3 ruling
 - Justice Roger Traynor
 - Spanish woman trying to marry a black man
 - Perez wins
 - law prohibiting blacks and whites from marrying is struck down in Cali
 - law is invalidated because its based on prejudice- social issue
 - uses scientific evidence
 - demolishes California justifications one by one with factual argument
- Perry v. Schwarzenegger
 - 2010
 - prop 8
 - trying to get state to issue marriage licenses to them
 - it has become a constitutional amendment to the Cali constitution so go to federal court

- Perry won
 - because of social reasons unlike Goodridge which won because of aspirational-ism
 - judge vaughn walker argues against everything cali had to say- "evidence shows"
- BELOW IS JUST FYI
- supporters of prop 8 were unhappy
- 9th circuit sends back to state
- ultimately, back at 9th circuit and it says we don't have jurisdiction then goes to US SC and cali is no longer interested in defending it
- Atkins v. Virginia 2002
 - morality of executing a mentally retarded person
 - abduction, robbery, murder
 - Atkins wins
 - evolving standards of decency
 - looking at why we execute people- to act as a deterrence to people who purposely murder, to act as an example for future murderers
 - can't do that with mentally retarded people because they won't understand it
 - not practical- won't work
 - even if you exempt mentally retarded people from execution- won't affect the mentally capable people
 - practicality- m.r defendants may be less capable of defending themselves
 - advantages-
 - can be used to improve society
 - care about the way the outcome will affect people
 - current/ practical/prevalent trends in society
 - concrete/ straightforward
 - disadvantages
 - what is good or bad for society, who decides
 - can disregard what the law is
 - too much flexibility
 - room for bias
 - disregards the framers
 - focuses on social sciences- social science is not definitive
 - inconsistent
 - outcome not clear/ dependent on quality of argument made for it

Jerome Frank, Fight theory vs. truth theory 13.2

- we are fighters, not truth seekers
- example- witnesses. witnesses are definitely not there to help reveal the truth but rather to fluster someone so much that they get confused and help your side
- lawyer aims at winning the fight, not uncovering truth
- government doesn't enforce private rights

James Mills, I have nothing to do with justice 13.3

- Martin Erdmann- has defended guilty criminals
- feels no moral remorse- just doing his job. if there is a flaw, its not with him but with the legal system as a whole
- plea bargaining- no longer presumed innocent in return for a guaranteed lighter sentence
- guilty always win, innocent always lose
- defendants have the power if they just keep rejecting the plea deals

Menkel-Meadow, Transformations 18.1

- most people don't get what they want because most lawyers focus on winning and procedure

Felstiner, Naming, Blaming

- name, blame, claim

Bonsignore, Law School 12.1

- law students are made to go against each other/compete
- law school is designed to make you think your way of thinking is completely wrong- they break you down and rebuild you
- law school controls admission to the profession- that's way students don't rebel or question their methods

Kennedy, Legal Education and reprod of hierarchy 12.2

- students are forced into the system because of set standards. you may want to become an environmental lawyer but law school bills will send you working for the corporations that are employing from your school
- forced into this cycle that you cannot get out of

Grutman, Big Casino 11.3

- lawyers fight harder for cases that will win them more money
- try to take everything from the enemy
- corporations pay retainer fees to avoid being sued by the attorney they are retaining

Hadfield, Price of Law 11.4

- expensive because we make it expensive
- winner take all

Curtis, Ethics 13.1

- lawyer's loyalty is to the client

Subin BB

- the lawyer didn't need to know the full story because it did not matter