

AMERICAN JOURNAL
of LAW and EQUALITY

INTRODUCING THE AMERICAN JOURNAL OF LAW AND EQUALITY

Randall Kennedy, Martha Minow, and Cass Sunstein

Academic legal work at its best deepens understanding and improves practice. In the shadow of the disturbing response to the COVID-19 pandemic, glaring evidence of ongoing inequities tied to race, gender, sexual orientation, disability, and other demarcations of difference, widespread anxieties about fundamental habits and norms of American democracy, and uncertainties about how best to proceed in a social landscape transformed by various technologies, we feel an urgent need to create a new forum for conversations about equality and its challenges. How should “equality” be understood? What are its requirements and indicia? How can legal institutions advance equalitarian policy? When are legal institutions or practices themselves causes of inequality? How can egalitarianism be accommodated in a polity that also seeks to advance other, sometimes conflicting, commitments: freedom, individuality, wealth-creation, privacy? What critiques, insights, proposals, and imaginings can make measurable differences in realizing the promise of equality embedded in constitutions, statutes, regulations, customs, and social movements?

It is in the spirit of these questions that we launch this new journal with the generous support of Dean John Manning and the Harvard Law School. We see our venture as an outgrowth from and supplement to work that is produced throughout legal academia: the posing and addressing of questions related to interpretations of the Equal Protection Clause of the United States Constitution, civil rights laws, policies governing the administration of criminal law, income distribution, the operation of employment and consumer markets, the management of the environment, and regulations of safety and health, tax, insurance, voting rights, and education. Law has been a tool for some progress in realizing more equality in American institutions and life. But law itself has flaws that have compounded inequalities. We seek to publish writings that identify those flaws and suggest alternatives that can lead us to a more equal, just, decent society.

By devoting a journal to “equality,” we hope to inspire more attention to and debate about this slippery, contentious, multifarious subject. By establishing a faculty-led journal, we seek to spotlight the importance we attach to the subject personally and institutionally. By inviting exchanges and responses, we hope to stimulate and model vigorous and constructive debates that reflect a wide variety of ideological, philosophical, and methodological perspectives. We appreciate all of the writings that colleagues have sent to us—those that we have not published as well as those that fill the pages below. We are especially grateful for the contribution to this first volume by Professor Deborah Rhode. Her commentary was among the final acts of her admirable career. We are honored to publish her work posthumously.

We welcome contributions from any and all academic disciplines. We also welcome interventions from those who are not professional academics. We aspire to be attentive to insight from any source. We hope to cultivate a cosmopolitan community in which searching thought is provoked and encouraged, debated and refined.

The editors dedicate this first issue of the American Journal of Law and Equality to Justice Thurgood Marshall.

Let’s get cracking!