

Sexual Justice, Student Scholarship and the So-Called Seven Sins

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Encouraging creativity and risk is an important—and underappreciated—dimension of the mentor-student process in student scholarly writing. This Article models an imaginative reflection on collaborative supervision that produces student scholarship. The organizational motif of “sins” connects to extra-legal cultural constructions that permeate everyday life, including the life of writing, and more specifically confronts the conflation of “sin” and “sex” that persists in legal and nonlegal discourse. The boundaries of legal academic writing, like the limitations of sexual freedom, are sites of anxiety for both mentors and students; this Article suggests that these borders also can be places of adventure.

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I. INTRODUCTION

“Everyone knows that New York City is sexy. It captivates people because, just like sex, it can be exhilarating, exhausting, and dirty.”¹

“What a pansensual jurisprudence could do, that a bisexual jurisprudence cannot, is push the current legal and cultural boundaries imposed on sexuality by the dominant culture.”²

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I am indebted to the students with whom I have worked on sexual justice issues as well as other issues, including those who have not published their pieces.

1. Jennifer Cook, Comment, *Shaken from Her Pedestal: A Decade of New York City’s Sex Industry Under Siege*, 9 N.Y. CITY L. REV. 121, 124 (2005).

2. Rachel Haynes, Book Note, *Bisexual Jurisprudence: A Tripolar Approach to Law and Society*, 5 MICH. J. GENDER & L. 229, 251 (1999).

“[Sarah] Jones is not a mainstream pop artist, and in her case, the labeling of her song [“Your Revolution”] as indecent and the accompanying controversy did not have the same positive impact on her career as it did on Eminem’s.”³

“Pornography invites people to get in touch with their secret fantasies.”⁴

“One way to think about the effects of regulation of pornography on our culture would be to compare it to another activity cherished by some and abhorred by others: boxing.”⁵

“Government, as a funding agency, could also sponsor artistic innovation in pornography or fund small businesses owned by pornographers who are women, people of color, gay, lesbian, and transgender.”⁶

“New York’s ordinance is specific about gender identity being ‘actual or perceived.’ This language indicates that the law protects people who are gender ambiguous”⁷

“It is important that readers understand who an author is and is not. I am not transgendered and therefore I apologize in advance for any misunderstanding or mischaracterization of the transgender movement and struggle for recognition that is central to this [Article]. As a queer, white male, I have been both privileged and the target of discrimination.”⁸

“[C]onversion therapy is the consummate embodiment of anti-gay sentiment because its implicit primary goal is to eradicate homosexuality.”⁹

“[I]mmigration attorneys for LGBT asylum applicants are classic Davids, taking on the Goliath anti-immigrant, antigay U.S. government, in

3. Nasoan Sheftel-Gomes, *Your Revolution: The Federal Communications Commission, Obscenity and the Chilling of Artistic Expression on Radio Airwaves*, 24 CARDOZO ARTS & ENT. L. J. 191, 220 (2006) (comparing the FCC enforcement procedure against an airing of Eminem’s song “The Real Slim Shady” which took approximately six months, during which it received no radio play but sold millions of copies and won three Grammy awards).

4. Mark S. Silver, Note, *Rethinking Harm and Pornography: Conflicting Personal and Community Views*, 23 WOMEN’S RTS. L. REP. 171, 188 (2002).

5. Margaret McIntyre, Review Essay, *Sex Panic or False Alarm? The Latest Round in the Feminist Debate over Pornography*, 6 UCLA WOMEN’S L.J. 189, 213 n.94 (1995).

6. Sienna Baskin, Comment, *Deviant Dreams: Extreme Associates and the Case for Porn*, 10 N.Y. CITY L. REV. 155, 196 (2006).

7. Carolyn E. Coffey, *Battling Gender Orthodoxy: Prohibiting Discrimination on the Basis of Gender Identity and Expression in the Courts and in the Legislatures*, 7 N.Y. CITY L. REV. 161, 191-92 (2004).

8. Justin L. Haines, *Fear of the Queer Marriage: The Nexus of Transsexual Marriages and U.S. Immigration Law*, 9 N.Y. CITY L. REV. 209, 209 n* (2005).

9. Laura A. Gans, *Inverts, Perverts, and Converts: Sexual Orientation Conversion Therapy and Liability*, 8 B.U. PUB. INT. L.J. 219, 220 (1999).

a last-ditch effort for a client who will likely be tortured and killed if deported.”¹⁰

“The current insistence on genital ‘normalizing’ surgery can be explained by our society’s obsession with physical appearance and our fear of people who are ‘different.’”¹¹

“Based on the framework provided by the existing statutes that regulate forced sterilization, the removal of bodily organs, and the guardianship of incompetent or incapacitated persons, the Model Statute [I am proposing] aims to reinforce the concept that the parents’ psychological trauma at the birth of an intersex child is not an acceptable emergency that justifies genital surgery or hormone treatment, and that the children, as they mature, will be the better decision-makers as to the gender with which they best identify, and as to whether steps should be taken to change their physical appearance.”¹²

“From a theoretical perspective, mandatory HIV partner notification weighs the value of public health over the individual personal liberties of HIV infected persons.”¹³

“There are two things you don’t want to be in this [juvenile justice] system—gay and an arsonist; they can’t protect them.”¹⁴

“Devastating are the implications of the decision to deny parental rights to the lesbian mother who is not only genetically related to the children but has been their caretaker for the first six years of their lives.”¹⁵

“The majority of workers, whether they work in the sex industry or not, are exploited [W]ork, particularly for women, is always problematic.”¹⁶

“The concept of decriminalizing prostitution therefore threatens to subvert the binary structures on which dichotomies—such as active versus

10. Hollis V. Pfitsch, *Homosexuality in Asylum and Constitutional Law: Rhetoric of Acts and Identity*, 15 TUL. J.L. & SEXUALITY 59, 73 (2006).

11. Kate Haas, *Who Will Make Room for the Intersexed?*, 30 AM. J. L. & MED. 41, 67 (2004).

12. Erin Lloyd, *From the Hospital to the Courtroom: A Statutory Proposal for Recognizing and Protecting the Legal Rights of Intersex Children*, 12 CARDOZO J. L. & GENDER 155, 190 (2005) (footnotes omitted).

13. Matthew Carmody, *Mandatory HIV Partner Notification: Efficacy, Legality, and Notions of Traditional Public Health*, 4 TEX. F. ON C.L. & C.R. 107, 135 (1999).

14. Colleen A. Sullivan, *Kids, Courts and Queers: Lesbian and Gay Youth in the Juvenile Justice and Foster Care Systems*, 6 TUL. J.L. & SEXUALITY 31, 46 (1996) (quoting Telephone Interview with Samuel Dulberg, Deputy Attorney in Charge at the Juvenile Rights Div. of the Legal Aid Society in Bronx, N.Y. (Dec. 28, 1995)).

15. Sanja Zgonjanin, Note, *What Does It Take to Be a (Lesbian) Parent? On Intent and Genetics*, 16 HASTINGS WOMEN’S L.J. 251, 278 (2005).

16. Nicole Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J.L. & FEMINISM 69, 96 (1998).

passive, public versus private, and virgin versus whore—rely. Within this structure, women who sell sex occupy the disempowered social status of prostitutes, while men who seek sex with prostitutes remain temporal actors separate from their fixed social status in society.”¹⁷

“Orgasms, autonomous or not, ‘artificial’ or ‘real,’ are worth protecting.”¹⁸

“I was five when I had my first orgasm.”¹⁹

“[T]he case leaves one to wonder: *What next?*”²⁰

As might be surmised, the above quotes are from published pieces of student scholarship that I supervised in my role as a law professor. These articles originated as papers submitted for either a Law and Sexuality elective course or a First Amendment elective course, generally open to second- and third-year law students. While other papers I supervised also have led to publications,²¹ I here want to concentrate on student writing about sexual justices issues. As an especially fraught area of legal doctrine and theory—as well as life—sexuality highlights some of the issues common to all supervised student scholarship.

Most of the time, my students are theorizing and writing from an experiential base that is opaque to me. Moreover, even if I momentarily think I understand a student’s experience—even if I may be so presumptuous as to believe I share important elements of a student’s experience—I am soon chagrined by my own ignorance. This is as true about the student’s sexual life as it is about her or his writing life.

Nevertheless, in this Article I share some of my own observations about student scholarship and sexual justice. In doing so, I make three assumptions. First, I assume advanced student scholarship leading to publication is a vital opportunity for law students. Second, I assume that student scholarship is one type of writing among many and that it should

17. Belkys Garcia, Note, *Reimagining the Right to Commercial Sex: The Impact of Lawrence v. Texas on Prostitution Statutes*, 9 N.Y. CITY L. REV. 161, 162-63 (2005).

18. Jota Borgmann, Book Note, *Hunting Expeditions: Perverting Substantive Due Process and Undermining Sexual Privacy in the Pursuit of Moral Trophy Game*, 15 UCLA WOMEN’S L.J. 171, 210 (2006).

19. Dana M. Northcraft, Book Note, *A Nation Scared: Children, Sex, and the Denial of Humanity*, 12 AM. U. J. GENDER SOC. POL’Y & L. 483, 483 (2004) (reviewing JUDITH LEVINE, HARMFUL TO MINORS: THE PERILS OF PROTECTING CHILDREN FROM SEX (2002)).

20. Caitlin Daniel-McCarter, Comment, *Homophobia Through the First Amendment: A Critique of FAIR v. Rumsfeld*, 10 N.Y. CITY L. REV. 199, 244 (2006).

21. See generally Heather Cook, *Service Before Self? Evangelists Flying High at the U.S. Air Force Academy*, 36 J.L. & EDUC. 1 (2007); Sanja Zgonjanin, Comment, *No Child Left (Behind) Unrecruited*, 5 CONN. PUB. INT. L.J. 167 (2006).

not be a law school requirement.²² Third, I assume that my students and I always share a commitment to sexual justice, even if we do not agree precisely on its contours, and realize that such a shared commitment is often not the case at other law schools.

The so-called seven deadly sins provide a rich tableau for interrogating student scholarship on sexual justice. In the next part of this Article, I examine this organizational motif.

In the seven following parts of this Article, I briefly discuss each so-called sin before using it as a lens through which to view sexual justice. In each section, I focus on particular pieces of student scholarship and the writing challenges they posed. I begin with lust, for obvious reasons, then continue through sloth, anger, greed, envy, gluttony, and finally, pride.

Instead of a conclusion, I indulge in a confession, describing some of my own so-called sins as a supervisor of student scholarship on sexual justice.

II. THE SEVEN DEADLY SINS

I invoke my organizational motif with much trepidation. As one of my students has written: “Using religious references in judicial opinions is an impermissible exercise of a privilege that coerces the minority to accept the norms of the majority. Whether disguised as morals, proverbs, principles, tradition, or history, religious references undermine judicial integrity and impartiality.”²³ That this Article is not a judicial opinion is no excuse. Instead, I find my justification in a distinction the student author draws regarding the use of what has become an “independent lexical unit”:

A usage has to have achieved some degree of linguistic autonomy; it must be capable of being meaningful outside of its original biblical context, usable by English speakers who do not read (or even know) the Bible as well as those who do. (The same point applies to expressions derived from Shakespeare or any other author.) . . . A usage that does not meet this criterion is really only a quotation.²⁴

22. Section 302(a)(2), ABA Standards for Approval of Law Schools, mandates a law school curriculum requiring substantial instruction in “writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year.” Completion of publishable legal scholarship certainly meets the requirement of a “rigorous writing experience,” but advocacy and policy writing experiences are no less rigorous.

23. Sanja Zgonjanin, *Quoting the Bible: The Use of Religious References in Judicial Decision-Making*, 9 N.Y. CITY L. REV. 31, 66 (2005).

24. *Id.* at 65 (quoting DAVID CRYSTAL, *THE STORIES OF ENGLISH* 276 (2004)).

The seven deadly sins do not appear in the Bible as such, and are therefore not a Biblical “quotation,” yet the provenance of the phrase is thought to be specifically Christian.²⁵ The current construction is attributed to the Sixth Century Pope Gregory I.²⁶ Gregory trimmed and edited earlier Christian categorizations by Fourth Century theologians Evagrius of Pontus and John of Cassius who listed eight sins: gluttony, fornication, avarice, dejection, sloth, vainglory, and pride.²⁷ Augustine (354-430) is the Christian theologian of sin par excellence, without rival until Thomas Aquinas (1225-1275).²⁸ Both Augustine and Aquinas devoted considerable energies to discussing and delineating sin in general and specific sins with great particularity.²⁹ Dante (1265-1321), in *The Divine Comedy*, dedicated the middle canticle—*Purgatoria*—to the seven deadly sins and their respective purifications: the sin of lust, for example, is purged through fire; the sin of envy requires the sewing shut of the eyes.³⁰ In medieval visual art, Hieronymus Bosch (1450-1561), in *The Seven Deadly Sins and the Four Last Things*, encircles an image of Christ and the Latin words “*Cave Cave Deus Videt*” (“Beware, Beware, God is Watching”) with fantastical depictions of the seven sins.³¹

While the concept of sin may be extraordinarily associated with Christianity, it is not exclusive to it.³² Judaism employs the term “sin”

25. See 7 Deadly Sins: A Brief History of Sin, <http://www.deadlysins.com/sins/history.html> (last visited Nov. 21, 2009).

26. *Id.*

27. See *id.*; see also PHYLLIS A. TICKLE, GREED: THE SEVEN DEADLY SINS (2004).

28. See generally Alexander Broadie, *Aquinas, St. Thomas*, in THE OXFORD COMPANION TO PHILOSOPHY (Ted Honderich ed., Oxford University Press 2005) (1995), available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?entry=t116.e124&srn=9&ssid=367914658#FIRSTHIT> (subscription required); Christopher Kirwan, *Augustine, St.*, in THE OXFORD COMPANION TO PHILOSOPHY, *supra*, available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?entry=t116.e175&srn=3&ssid=1005072490#FIRSTHIT> (subscription required).

29. Augustine is well known for his treatment of lust, especially in *The Confessions of St. Augustine*, in which he discusses his own “failings” before his conversion to Christianity and famously recites his prayer, “Grant me chastity and continence, but not yet.” SAINT AUGUSTINE’S CONFESIONS bk. VIII sec. 17, at 145 (Henry Chadwick trans., Oxford Univ. Press, 1998) (1991); THOMAS AQUINAS, SUMMA THEOLOGICA, Secunda Secundae Partis, Q. 154 (Fathers of the English Dominican Province trans., Benziger Bros. 1948) (1911), available at <http://www.newadvent.org/summa/3154.htm> (last visited Nov. 21, 2009).

30. See DANTE, THE DIVINE COMEDY, at 251-56, 306-10 (C.H. Sisson trans., Oxford Univ. Press 1998) (1980).

31. Bosch’s painting is now located in the Museo del Prado, in Madrid, Spain. Hieronymus Bosch, *Table of the Mortal Sins*, image available at <http://www.museodelprado.es/en/the-collection/online-gallery/on-line-gallery/obra/table-of-the-mortal-sins/> (last visited Nov. 21, 2009).

32. TICKLE, *supra* note 27, at 10 (“All of that is to say that while the world’s faiths may be persuaded of the spiritual ramifications of vice’s presence in human life . . . [n]o other of the world’s religions has ever so completely embodied or embroidered sin as has the Christian one.”).

(the usual English translation of the Hebrew “averva”); the holiest day of the religion is Yom Kippur, the Day of Atonement.³³ Islam also uses “sin” as the English word to describe transgressions against Allah; Sharia (Islamic law) prescribes specific punishments for specific sins.³⁴ Nonmonotheistic religions are less preoccupied with sin, although Hinduism’s notion of dharma as an ethical code of conduct that, if violated, results in negative karma, might be analogous.³⁵ In Buddhism, suffering (samsara) results from addictions or poisons such as anger and greed; the Noble Eight-fold Path and Buddhist precepts (numbering five and eight) set out guidelines for reaching Nirvana.³⁶

In a nonreligious context, ancient Greek philosophers analyzed various vices, ethical failings, wrongdoing, and character flaws. The Stoics, the Cynics, and the Epicureans were all concerned with human desires.³⁷ Plato, in numerous dialogues featuring his teacher Socrates, focuses on achievement of the “good.”³⁸ Plato’s student, Aristotle, is known for his works on ethics.³⁹ And where would Greek drama be without “sins” such as “hubris” and “lust”?⁴⁰ Modern philosophers have

33. See generally *Sin*, in THE CONCISE OXFORD DICTIONARY OF WORLD RELIGIONS (John Bowler ed., 2005) (1997), available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t101.e6823> (subscription required); see also Louis Jacobs, *Sin and Repentance*, in THE JEWISH RELIGION: A COMPANION (Louis Jacobs ed., 1995), available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t96.e628> (subscription required).

34. See generally *Sin*, *supra* note 33 (“Islam recognizes major and minor sins; holding someone or something equal to God (shirk) is the most serious and unforgivable sin.”).

35. *Id.*; see also *Dharma*, in A DICTIONARY OF HINDUISM (W.J. Johnson ed., 2009), available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t272.e756> (subscription required).

36. See generally *Sin*, *supra* note 33; see also *Nirvana*, in A DICTIONARY OF BUDDHISM 194 (Damien Keown ed., 2003) (“The summum bonum of Buddhism and goal of the Eightfold Path. The attainment of nirvana marks the end of cyclic existence in samsara, the condition to which it forms the antithesis, and in the context of which nirvana has to be understood. samsara is thus the problem to which nirvana is the solution.”).

37. See, e.g., Stephen Clark, *Cynics*, in THE OXFORD COMPANION TO PHILOSOPHY, *supra* note 28, available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t116.e553> (subscription required); J.C.A. Gaskin, *Epicurus*, in THE OXFORD COMPANION TO PHILOSOPHY, *supra* note 28, available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t116.e756>; R.W. Sharples, *Stoicism*, in THE OXFORD COMPANION TO PHILOSOPHY, available at <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t116.e2421> (subscription required).

38. See generally PLATO: THE COLLECTED DIALOGUES (Edith Hamilton & Huntington Cairns eds., 1961).

39. See generally ARISTOTLE, *Nicomachean Ethics*, in 2 THE COMPLETE WORKS OF ARISTOTLE 1776 (Jonathan Barnes ed., 1984).

40. For example, *The Iliad*, as well as *The Odyssey*, attributed to Homer, is not only the story of the Trojan War, but a story of lust and hubris. See generally HOMER, THE ILIAD (Robert Fagles trans., Penguin Classics 1998); HOMER, THE ODYSSEY (Robert Fagles trans., Penguin Classics 1999). Classic Greek drama draws on *The Iliad*, *The Odyssey*, and ancient Greek myths,

also taken up the subject of secularized sin: Thomas Hobbes, Immanuel Kant, David Hume, Friedrich Nietzsche, and many others have theorized in the realm of moral philosophy.⁴¹

In contemporary discourse, the so-called seven sins continue to have currency. In 1962, Ian Fleming, the creator of James Bond, planned a series of essays by prominent writers on each of the sins for the *London Sunday Times*. W.H. Auden writes on anger, Evelyn Waugh on sloth, and Edith Sitwell on pride.⁴² Forty years later, the New York Public Library organized a similar endeavor, with the stellar results published by Oxford University Press as individual books,⁴³ a series not to be confused with the cycle of young adult novels by Robin Wasserman.⁴⁴ Single volumes encompassing all of the seven sins have been penned by a journalist⁴⁵ and by a professor of Jewish Education and Psychology.⁴⁶

In the performance arts, the sins are also on offer. For the highbrow, there is the 1933 Kurt Weill opera/ballet, *Seven Deadly Sins*, based on a Bertolt Brecht libretto with choreography by George Balanchine, most recently performed in London in 2007.⁴⁷ In the middlebrow range, *Seven Women-Seven Sins* is an international anthology of women directors,

and further develops concepts of lust and hubris. Euripides' *Medea* revolves around the shifting desires for each other and others between Jason and Medea. See EURIPIDES, *CYCLOPS, ALCESTIS, MEDEA* (David Kovacs ed. & trans., Harvard Univ. Press 1994). Further, Sophocles' *Antigone* is a conflict between the hubris of Antigone and that of Creon. See 2 SOPHOCLES, *ANTIGONE ET AL.* (Hugh Lloyd-Jones ed. & trans., 1994).

41. See generally Lara Denis, *Kant and Hume on Morality*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2009), available at <http://plato.stanford.edu/archives/sum2009/entries/kant-hume-morality>; Brian Leiter, *Nietzsche's Moral and Political Philosophy*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2008), available at <http://plato.stanford.edu/archives/win2008/entries/nietzsche-moral-political>; Sharon Lloyd & Susan Sreedhar, *Hobbes's Moral and Political Philosophy*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2009), available at <http://plato.stanford.edu/archives/spr2009/entries/hobbes-moral>.

42. See generally ANGUS WILSON ET AL., *THE SEVEN DEADLY SINS* (Akadine Press 2002) (1962).

43. See generally SIMON BLACKBURN, *LUST: THE SEVEN DEADLY SINS* (2004); MICHAEL ERIC DYSON, *PRIDE: THE SEVEN DEADLY SINS* (2006); JOSEPH EPSTEIN, *ENVY: THE SEVEN DEADLY SINS* (2003); FRANCINE PROSE, *GLUTTONY: THE SEVEN DEADLY SINS* (2003); ROBERT A.F. THURMAN, *ANGER: THE SEVEN DEADLY SINS* (2005); TICKLE, *supra* note 27; WENDY WASSERSTEIN, *SLOTH: THE SEVEN DEADLY SINS* (2005).

44. See generally ROBIN WASSERMAN, *GREED* (2007). For plot synopsis of each of the books, see Robin Wasserman, *Seven Deadly Sins: Seven Sins, Seven Books, Seven Teens*, <http://www.robinwasserman.com/seven-deadly-sins.html> (last visited June 27, 2009).

45. See HENRY FAIRLIE, *THE SEVEN DEADLY SINS TODAY* (1978).

46. See SOLOMON SCHIMMEL, *THE SEVEN DEADLY SINS: JEWISH, CHRISTIAN, AND CLASSICAL REFLECTIONS ON HUMAN PSYCHOLOGY* (1992).

47. See Zoe Anderson, *Dance: Seven Deadly Sins, Royal Opera House, London*, INDEPENDENT, Apr. 30, 2007, <http://www.independent.co.uk/arts-entertainment/theatre-dance/reviews/dance-seven-deadly-sins-royal-opera-house-london-446757.html>.

each of whom produces her version of a particular sin.⁴⁸ For the lowbrow, there is the 1995 popular movie, *Se7en*, with its serial killer who selects and tortures victims according to each one's sin (greed: a lawyer).⁴⁹ Those looking for things to do one recent summer in the nation's capitol could turn for advice to the *Washington Post* (anger: Paintball in Bowie; lust: People-Watching at Ibiza).⁵⁰ Christians, too, use popular culture in Bible study and Sunday sermons, specifically the 1960s television show *Gilligan's Island* (pride: the professor; envy: Mary Ann; sloth varies: is it Mrs. Howell? The Skipper? Or even Gilligan himself?).⁵¹

Not everyone is content with the traditional articulation of the seven deadly sins. Ian Fleming posited a list of the "seven deadlier sins": avarice, cruelty, snobbery, hypocrisy, self-righteousness, moral cowardice, and malice.⁵² A 2005 BBC poll produced a new list for modern morality: cruelty, adultery, bigotry, dishonesty, hypocrisy, greed, and selfishness.⁵³ A proffered Gandhian interpretation uses a qualified rather than absolutist approach: wealth without work, pleasure without conscience, science without humanity, knowledge without character, politics without principle, commerce without morality, and worship without sacrifice.⁵⁴

More drastic remodeling of the seven deadly sins occurs in contexts only tangentially related to morality. Writers might be interested in the various iterations of the seven deadly sins of writing,⁵⁵ including the temptations of "incorrect punctuation of two independent clauses" and "misuse of the apostrophe."⁵⁶ There are also versions of the seven deadly

48. SEVEN WOMEN-SEVEN SINS (Women Make Movies 1987).

49. SE7EN (New Line Cinema 1995).

50. See Dan Zak, *Seven Deadly Sins: How To Commit Them (Without, You Know, Doing Anything Wrong)*, WASH. POST, July 22, 2007, at M01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/19/AR2007071902191.html>.

51. See Entertainment Ministry and Primetime Parable Ministries, *Gilligan's Island & The Seven Deadly Sins Bible Study*, http://www.entmin.com/htm/gi_biblestudy.htm (last visited June 17, 2009).

52. WILSON ET AL., *supra* note 42.

53. *Id.* at 2.

54. Mani Bhavan Museum & Research Ctr. on Gandhi, *Seven Social Sins by Mahatma Gandhi*, <http://www.gandhi-manibhavan.org/main/q7.htm> (last visited July 17, 2009) (citing Mahatma Gandhi, *Untitled*, YOUNG INDIA, Oct. 22, 1925).

55. See, e.g., Inspiration for Writers, *Elements of Craft: Seven Deadly Sins of Writing*, <http://www.inspirationforwriters.com/tip19.html> (last visited June 17, 2009).

56. Hamilton Coll. Writing Ctr., *The Seven Deadly Sins of Writing*, <http://www.hamilton.edu/writing/sins.html> (last visited June 17, 2009).

sins of business writing,⁵⁷ copyediting,⁵⁸ Web writing,⁵⁹ proposal writing,⁶⁰ Web design,⁶¹ resume writing,⁶² and e-mail.⁶³

In legal practice, there are seven deadly sins to be avoided in law firms mergers (“Sin Five: Filibusters Left and Right”),⁶⁴ in bank statements of work (contractor assumptions),⁶⁵ in billing clients (to avoid indecipherable entries),⁶⁶ in asset sales under the Bankruptcy Code (including “inadvertently chilling bidding through selection of a stalking horse”),⁶⁷ and in the formation and management of family partnerships (eschew those interest-free loans to family members).⁶⁸ In the legal academy, there are the seven deadly sins of legal scholarship (do not be tempted to substitute quotations for analysis),⁶⁹ and the seven deadly sins that will “rot” a law school deanship: deception, revenge, narcissism, pessimism, taciturnity, disloyalty, and aimlessness.⁷⁰

Sins in the realms of writing, law, and legal writing do not replicate Biblical or other religious understandings. Thus, the use of the “seven deadly sins” as an organizational theme is innocent—or at least not

57. See Empire State Coll. Writing Ctr., Seven Deadly Sins Of Business Writing, http://www1.esc.edu/personalfac/hshapiro/writing_program/students/reference/main/sins.htm (last visited June 17, 2009).

58. See Anne Glover, The Seven Deadly Copy Editing Sins (Jan. 2, 1996), http://www.poynter.org/content/content_view.asp?id=5441.

59. See Gerry McGovern, Seven Deadly Sins of Web Writing (July 28, 2003), http://www.gerrymcgovern.com/nt/2003/nt_2003_07_28_sins.htm.

60. See Guerilla Consulting, The “Seven Deadly Sins” of Proposal Writing (May 13, 2005), http://guerrillaconsulting.typepad.com/guerrilla_marketing_for_c/2005/05/the_seven_deadl.html.

61. See Webcredible, The Seven Deadly Sins of Web Design (Nov. 2005), <http://www.webcredible.co.uk/user-friendly-resources/web-usability/web-design-sins.shtml>.

62. See Peter Newfield, Cal. Alumni Ass’n at UC Berkeley, The Seven Deadly Sins of Resume Writing, <http://alumni.berkeley.edu/services/career-services/resources/articles/resumes/seven-deadly-sins-resume-writing> (last visited June 17, 2009).

63. See Sharon Gaudin, Avoiding the Seven Deadly Sins of Email (Mar. 16, 2006), <http://itmanagement.earthweb.com/career/article.php/3592046>.

64. See John S. Smock, *The Seven Deadly Sins of Law Firm Mergers and Combination*, 27 OF COUNSEL 9 (2008).

65. See Michael Overly & Mike Dettorre, *The Seven Deadly Sins of Statements of Work*, 124 BANKING L.J. 431 (2007).

66. See Michael J. Ford, *Billing Your Clients: Seven Deadly Sins*, 63 BENCH & B. MINN. 28 (Oct. 2006).

67. See Robert E. Steinberg, *The Seven Deadly Sins in § 363 Sales*, 24 AM. BANKR. INST. J. 22 (2005).

68. See Brett R. Bissonnette, *Getting It Right: Avoiding the Seven Deadly Sins in the Formation and Management of the Family Limited Partnership*, 30 OHIO N.U. L. REV. 59 (2004).

69. See Richard L. Aynes, Book Review, *The Bill of Rights, the Fourteenth Amendment, and the Seven Deadly Sins of Legal Scholarship*, 8 WM. & MARY BILL RTS. J. 407 (2000).

70. See Steven R. Smith, *Deaning’s Seven Deadly Sins and Seven Deany Virtues*, 36 U. TOL. L. REV. 173 (2004).

entirely guilty—of being a mere Biblical “quotation.” Yet perhaps it suffers from a far more deadly sin: cliché.

Apropos of cliché, the next and longest section confronts the sin of lust in sexual texts.

III. LUST

Any writing about sex—even student scholarship about sexual justice—risks the cliché of lust. An excellent definition of lust is an “enthusiastic desire” infusing the body for “sexual activity and its pleasures for their own sake.”⁷¹ The plural of pleasures is vital in this context, for the sinfulness of lust is generally directed at particular pluralities. For example, according to one commentator on the sins, “tradition teaches that to avoid the sin of lust we should seek legitimate means of satisfying our sexual needs, which traditionally meant marriage.”⁷² Casting aside the more intractable notions that sexual desires should be negated rather than satisfied,⁷³ the taxonomy of “legitimate” is precisely the issue. The regulation of sexuality by governments (as well as by religions and cultures) is a system of classifications in a hierarchal arrangement.⁷⁴ Legal scholarship devoted to sexual justice challenges the established categories and interrogates the meanings of “legitimate” sexual expression.

One obvious focus of sexual justice scholarship is equality for lesbians, gay men, and bisexuals. A pillar of this inequality is the construction of homosexual sex as lustful, illegitimate, and indeed, sinful. Writing in the late 1970s on the subject of the seven sins, the journalist Henry Fairlie waxed eloquent on the rationales for disapproving of same-sex relations: “One does not have to agree with the Church in condemning homosexuality as a sin” to recognize that homosexual relationships are impermanent, undemanding, “bring into play fewer expressions of our personalities,” and carry with them the “symptoms of

71. BLACKBURN, *supra* note 43, at 19.

72. SCHIMMEL, *supra* note 46, at 130-31 (“Today, more options are acceptable to many, such as living together in a monogamous but nonmarital relationship or self-stimulation through masturbation and fantasy.”).

73. For example, Augustine of Hippo (St. Augustine) argued in his tract, *On the Good of Marriage*, paragraph 10, that “even they who wish to contract marriage only for the sake of children, are to be admonished, that they use rather the larger good of continence.” St. Augustin, *On the Good of Marriage [De Bono Conjugali]*, in 3 A SELECT LIBRARY OF THE NICENE AND POST-NICENE FATHERS OF THE CHRISTIAN CHURCH 403 (Philip Schaff ed., C.L. Cornish trans., 1887).

74. See Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY 267 (Carole S. Vance ed., 1984).

Lust.”⁷⁵ Yet according to an obituary in the *American Spectator*, “like many public moralists [Fairlie’s] standards were strictly in principle.”⁷⁶ A British national, Fairlie had been jailed in Great Britain for failing to pay alimony, and “his children and grandchildren were strangers at best.”⁷⁷ He left the country to avoid the libel laws after a television appearance in which he called his former lover, the writer Antonia Fraser, a “whore,” and came to the United States where he referred to himself as “England’s greatest lover” and engaged in affairs with an array of American women.⁷⁸ By his own definition of “gay”—as celebrating a “general lack of involvement” in “sharing the task of raising a family”⁷⁹—Fairlie might be classified as a gay man, despite his seemingly heterosexual orientation.

Given such operations of the intellectual and popular contours of lust, students who choose to engage in sexual justice scholarship focusing on equality for lesbians, gay men, and bisexuals have several choices. One choice is to confront the inequality in a direct manner by analyzing a single negative court decision. There are, regrettably, still many disapproving court decisions from which to choose. There is, more happily, an established format for this type of scholarship, the student case note or comment.⁸⁰ Writing guides can be especially helpful in assisting students with articulating their objections to the court’s decision.⁸¹ Yet often the specific critiques are in service of a larger criticism: the court’s failure to accord gay men, lesbians, and bisexuals equal consideration.

For example, one student uses the term “homophobia” in the title of her piece,⁸² and opens with an epigraph asserting that a just society does

75. FAIRLIE, *supra* note 45, at 183.

76. Phillip Terzian, *Eminentoes/Fairlie Tales*, 23 AM. SPECTATOR 27, 29 (1990).

77. *Id.*

78. *Id.*

79. Fairlie, *supra* note 45, at 183-84.

80. See ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS 66-67, 86-87, 175-85 (3d ed. 2005).

81. See *id.*; see also EUGENE VOLOKH, ACADEMIC LEGAL WRITING (2d ed. 2005). For a discussion of the relative merits of these volumes, see Ruthann Robson, *Law Students as Legal Scholars: An Essay/Review of Scholarly Writing for Law Students and Academic Legal Writing*, 7 N.Y. CITY L. REV. 195 (2004).

82. See Daniel-McCarter, *supra* note 20, at 199; see also Kathryn Ann Barry, *Striking Back Against Homophobia: Prohibiting Peremptory Strikes Based on Sexual Orientation*, 16 BERKELEY WOMEN’S L.J. 157 (2001); Ruth Colker, *Homophobia, AIDS Hysteria, and the Americans with Disabilities Act*, 8 J. GENDER RACE & JUST. 33 (2004); Kris Franklin, *Homophobia and the “Matthew Shepard Effect” in Lawrence v. Texas*, 48 N.Y.L. SCH. L. REV. 657 (2004); Anne Gregory, *Rethinking Homophobia in Sports: Legal Protections for Gay and Lesbian Athletes and Coaches*, 1 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 264 (2004); Elisabeth McDonald, *No Straight Answer: Homophobia as Both an Aggravating and Mitigating Factor in*

not discriminate or tolerate discrimination on the basis of sexual orientation.⁸³ The student criticizes the Court's use of "strong words"⁸⁴ in its unanimous 2006 opinion in *Rumsfeld v. FAIR* upholding the so-called Solomon Amendment,⁸⁵ the congressional statute conditioning federal funding to universities on the provision of nondiscriminatory conditions to military recruiters, despite the military's discrimination on the basis of sexual orientation.⁸⁶ The student resorts to equally strong words: the Court was "nothing less than misleading,"⁸⁷ "disingenuous,"⁸⁸ and "insincere";⁸⁹ the Court employed a "ruse"⁹⁰ and "painted a distorted picture";⁹¹ the Court "quietly brushed aside important precedent and relied instead on irrelevant and dormant cases."⁹² The student asks readers to "wonder why not even one single judge dissented in indignation."⁹³ While the student points to "an increasingly militarized America" in her conclusion,⁹⁴ her ultimate explanation for the Court's failure to protect the equality rights of gay men, lesbians, and bisexuals is declared in her title: homophobia.⁹⁵ Yet because of the demands of legal scholarship, it is insufficient merely to label the Court's opinion as "homophobic" or disrespectful of the equal status of gay men, lesbians, and bisexuals. Instead, the student scholar must argue within the conventional analytic and theoretical rubrics to support such a value-based conclusion.⁹⁶

New Zealand Homicide Cases, 37 VICT. U. WELLINGTON L. REV. 223 (2006); Joey L. Mogul, *The Dykier, The Butcher, The Better: The State's Use of Homophobia and Sexism To Execute Women in the United States*, 8 N.Y. CITY L. REV. 473 (2005); Jeremy Patrick, *A Merit Badge for Homophobia? The Boy Scouts Earn the Right To Exclude Gays in Boy Scouts of America v. Dale*, 10 TUL. J. L. & SEXUALITY 93 (2001) (including the word homophobia in their titles).

83. See Daniel-McCarter, *supra* note 20, at 199 (citing Memorandum from Robert C. Clark, Dean, Harvard Law School, to the Harvard Law Community on Changes to the School's Military Recruiting Policy (Aug. 26, 2002), available at http://www.law.harvard.edu/news/2002/08/26_military.php).

84. Daniel-McCarter, *supra* note 20, at 224.

85. 547 U.S. 47 (2006). Justice Samuel Alito took no part in the consideration or decision of the case.

86. 10 U.S.C. § 983 (2006).

87. Daniel-McCarter, *supra* note 20, at 232.

88. *Id.* at 233.

89. *Id.* at 235.

90. *Id.*

91. *Id.* at 224.

92. *Id.* at 231.

93. *Id.*

94. *Id.* at 244.

95. *Id.* at 199.

96. *Id.* at 241 ("The Supreme Court addresses both *Hurley* and *Dale* minimally in *FAIR* presumably because, in both cases, gays were the group being excluded."). This is supported by a footnote:

“Homophobia” is supported by a belief that homosexual sex is lustful, illegitimate, and indeed, sinful. Excavating this pillar can be a difficult task for a student scholar.⁹⁷ In a forthcoming article, one student argues that the secularization of Christian ideology in legal culture has rendered both faith-based government funding and discrimination against homosexuality permissible.⁹⁸ In supporting this argument, the student author relied upon his previous religious training to use Biblical sources to support the claim that homosexuality is subject to disapproval in Christianity, and then relied upon other scholars to demonstrate how these sources influence legal history and current doctrine.

Yet again, the legal scholarship genre demands more. In this student’s article, the implicit invocations of “sin” and “lust” connect to the argument linking faith-based government funding with “homophobic” results. Much of the focus of this student work is the recent United States Supreme Court case of *Hein v. Freedom from Religion Foundation, Inc.*, in which the Court found that the plaintiffs lacked standing to challenge President George W. Bush’s Faith-Based and Community Initiatives program.⁹⁹ On the surface, *Hein* is not a case involving sexual justice. However, the student author argues that because many faiths (and therefore their respective organizations) presume the sin of lust/homosexuality, these faith-based organizations deserve sexual minorities.¹⁰⁰ The student author’s argument is aided by an example of such a situation described in *Lown v. Salvation Army, Inc.*¹⁰¹ In *Lown*, the Salvation Army allegedly discriminated against both its employees and its putative recipients on the basis of religious tenets and sexual beliefs

The contrast of the facts in *Dale, Hurley*, and *FAIR* is ironic to say the least. Both *Hurley* and *Dale* make room for the exclusion of LGBT people from a parade and the Boy Scouts, respectively, because of the First Amendment rights of those seeking to exclude LGBTs from their spaces of expression. On the other hand, the Court’s holding in *FAIR* finds it impermissible for law schools to exclude the military from physically entering their campuses for recruiting purposes, and thus, from entering their spaces of expression. Of course, the reason *FAIR* seeks to exclude the military is not because they disagree with the military per se; but rather because of the military’s policy that discriminates against LGBTs.

Id. at 241 n.292. If memory serves, there was much debate regarding this argument as suitable textual or footnote material.

97. See Ruthann Robson, *Lifting Belly: Privacy, Sexuality, and Lesbianism*, 12 WOMEN’S RTS. REP. 177, 182-83 nn.39-44 (1990) (noting, however, that significant student scholarship identifying homophobic opinions emanated from *Bowers v. Harwick*, 478 U.S. 186 (1986)).

98. Anthony Lise, Comment, *Bringing Down the Establishment: Faith-Based and Community Initiative Funding and Queer Rights*, 12 N.Y. CITY L. REV. 129 (2008).

99. 551 U.S. 587, 614-15 (2007).

100. Lise, *supra* note 98.

101. 393 F. Supp. 2d 223 (S.D.N.Y. 2005).

and practices.¹⁰² The district court found that although the Salvation Army program received over ninety percent of its funding from government sources, it was not a state actor and thus not bound by constitutional doctrine.¹⁰³ The possibility of an Establishment Clause claim was foreclosed by *Hein*, thus leaving the former employees of the social services program, as well as the recipients, no recourse against the Salvation Army's mandate of Christian principles in its delivery of services.¹⁰⁴

A student scholar interested in sexual justice can reveal the role of the courts in maintaining the construction of homosexual sex as lustful, illegitimate, and indeed, sinful, by focusing on judicial opinions. A focus on individual actors is more challenging. As demonstrated by the example of sin-author and journalist Henry Fairlie, who found homosexual relations lustful because of a lack of attachment but was himself seemingly not prone to human attachments, hypocrisy, and inconsistency is discoverable.¹⁰⁵ Transforming such a discovery into legal scholarship requires moving beyond a simple recitation of the discovery.

When one student proposed to write a paper "on Larry Craig," the Republican and conservative United States Senator from Idaho arrested for disorderly conduct and interference with privacy for his "toe-tapping" in a Minneapolis airport men's room, the proposal seemed more appropriate for a journalism class than a First Amendment law school course. Yet by looking at the "tapping" as a form of sexual and symbolic speech, and linking it to the history of entrapment and sociological work on sexual solicitation, the student scholar effectively argues that the high profile arrest of Craig served to maintain the stigma of homophobia in

102. *Id.* at 242-43.

103. *Id.* at 243.

104. As the court quoted from the complaint, the employee plaintiffs alleged that they cannot, as a matter of conscience and professional responsibility, sign a form stating that they would acknowledge and support the Salvation Army's Evangelical Christian teachings, and fear that the new religious requirements will require them to provide mandated, government-funded social services to children in a manner that conflicts with their legal and professional obligations. For example, the children assigned to receive foster care and other services from The Salvation Army include sexually active teenagers who are at risk for HIV, sexually transmitted infections and unintended pregnancy. However, The Salvation Army condemns, among other things, non-marital sexual relationships, contraceptive use outside of marriage, homosexuality, abortion, social drinking, gambling, smoking and drug use as "unacceptable according to the teaching of Scripture." Consequently, Plaintiffs claim that their legal and professional obligation to provide these teenagers with services conflicts with the religious principles of The Salvation Army.

Id. at 233.

105. *See supra* notes 75-79 and accompanying text.

the United States.¹⁰⁶ She sustains her argument despite the decriminalization of sodomy laws mandated by *Lawrence v. Texas*,¹⁰⁷ and despite Larry Craig's notoriety as a proponent of a view that gay men, lesbians, and bisexuals are lustful sinners.

As one of the seven sins, lust does not attach solely to sexual minorities. In legal discourse, the term "lust" often is found in conjunction with pornography and obscenity. Indeed, in determining the constitutionality of an obscenity statute, the United States Supreme Court struggled to determine whether "lust" does or does not refer to a normal and healthy sexual appetite.¹⁰⁸ As one student author argues it, it is this distinction between "lust" as a "base animal urge centered in unmentionable organs" and "love as a noble affair of the heart and mind," that is reflected both in an individual's unconscious psychology and external legal regulation.¹⁰⁹

However, whether one is concerned with a "base animal urge" or a "noble affair of the heart," scholarship is a diversion from both pursuits.¹¹⁰ Footnotes may be pleasurable,¹¹¹ but they generally do not provoke an "enthusiastic desire" infusing the body for "sexual activity and its pleasures for their own sake."¹¹² As the poet Marge Piercy has written,

The real writer is one
who really writes. . . .
Work is its own cure. You have to
like it better than being loved.¹¹³

However, rather than risk an excessive discussion of lust in which the sin of "lust" is replaced with the sin of "luxuria,"¹¹⁴ the next section examines what may be lust's opposite, sloth.

106. Alana Chazan, *A Boy of Boise: In Defense of Idaho's Most Famous Toe-Tapper*, 11 N.Y. CITY L. REV. 441 (2008).

107. 539 U.S. 558, 578 (2003) (overruling *Bowers v. Hardwick*, 478 U.S. 186, 195-96, which held that state sodomy laws were not unconstitutional).

108. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501-05 (1985).

109. Silver, *supra* note 4, at 189 (quoting Ellen Willis, *Feminism, Moralism, and Pornography*, 38 N.Y.L. SCH. L. REV. 351, 352 (1993)).

110. *Id.* (quoting Willis, *supra* note 109, at 352).

111. See Ruthann Robson, *Footnotes: A Story of Seduction*, 75 UMKC L. REV. 1181 (2007).

112. BLACKBURN, *supra* note 43, at 19.

113. MARGE PIERCY, *For the Young Who Want To*, in *THE MOON IS ALWAYS FEMALE* 84-85 (1980) (1977).

114. BLACKBURN, *supra* note 43, at 22 ("In many lists of the Seven Deadly Sins, lust is replaced by *luxuria*, or luxury. This is not an innocent mistake or confusion. . . . If we associate lust with excess and surfeit, then its case is already lost. But it is a cheap victory: excessive desire is bad just because it is excessive, not because it is desire.").

IV. SLOTH

Sloth is generally defined as laziness, idleness, and indolence. In her humorous contribution to the University of Oxford series on the seven sins, the late Wendy Wasserstein, feminist playwright,¹¹⁵ reimagines sloth from the perspective of a self-help manual.¹¹⁶ In advocating for her Sloth plan, she writes, “Sloth gives us the courage to give up searching for self-improvement regimes,”¹¹⁷ and “Sloth won’t create great civilizations, but it won’t destroy them either.”¹¹⁸ In addition to the religious contexts of sloth, Wasserstein identifies sloth as a “sin against capitalism.”¹¹⁹

The relationship between capitalism and sexual justice is most apparent in prostitution and sex-work. Attempting legal scholarship about prostitution and other forms of sex-work can be vexing; the legal issues seem well-settled and the theoretical issues seem at an impasse. When a student proposes to write about prostitution, the struggle is to find a focus for the paper.

Two student authors have been especially successful in concentrating their interests in writing about sex-work. The first chose to analyze the regulation of prostitution in Nevada,¹²⁰ a subject that had not appeared in legal scholarship or been treated extensively in nonlegal scholarship—much to my surprise—at that time.¹²¹ While there was no current legal issue because the regulatory scheme was settled, the question became the relationship of regulated legalization to the feminist jurisprudential debates regarding prostitution. This guided the student author to her ultimate position that the “majority of workers, whether they work in the sex industry or not, are exploited [W]ork, particularly for women, is always problematic.”¹²²

A second student began with a thesis that was not a thesis: that the United States Supreme Court’s 2003 decision in *Lawrence v. Texas*

115. See Charles Isherwood, *Wendy Wasserstein Dies at 55; Her Plays Spoke to a Generation*, N.Y. TIMES, Jan. 30, 2006, available at <http://www.nytimes.com/2006/01/30/theater/30cnd-wasserstein.html>.

116. Wasserstein, *supra* note 43.

117. *Id.* at xix.

118. *Id.* at 109.

119. *Id.* at 30.

120. Bingham, *supra* note 16.

121. See ALEXA ALBERT, BROTHEL: MUSTANG RANCH AND ITS WOMEN (2002); C. MELISSA FARLEY, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS (2007) (serving as subsequent studies and accounts that have been published since the student author’s article appeared in 1998).

122. Bingham, *supra* note 16, at 96.

declaring sodomy statutes unconstitutional¹²³ leaves prostitution statutes intact.¹²⁴ This nonthesis thesis is derived from the caveat paragraph of *Lawrence* itself that specifically excludes prostitution.¹²⁵ Yet the student uses other, more generalized language in *Lawrence* to argue that the opinion is “ambig[uous]” and provides an “opportunity to reinvigorate and unify movements of sexual liberation,” including the decriminalization of voluntary prostitution.¹²⁶ She considers both the feminist jurisprudential debates on prostitution and a brief opinion from an appellate state court that rejects a challenge to a prostitution conviction based upon *Lawrence*.¹²⁷ While she assesses the prospects of judicial application of *Lawrence* to protect commercial sex as “unrealistic,” she argues nevertheless that the “promise of Lawrence lies in its introduction of an evolving norm” recognizing an “emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.”¹²⁸

Both of these students considered the role of work in general and sex-work in particular in capitalist legal regimes. Work is opposed to the sin of sloth, but as it turns out, some work is sinful. Indeed, it is the very fact that sex becomes work that makes it sinful and subject to criminalization.

In some ways, the students’ scholarship is sex-work. Certainly it is the opposite of sloth, for it takes a tremendous amount of effort to write a publishable piece of legal scholarship: it is not, as Wendy Wasserstein would acerbically advise, a “permanent vacation.”¹²⁹ Yet as Wasserstein’s work also reveals, the sin of sloth was not originally that of laziness.¹³⁰ Instead, it is derived from sadness.¹³¹ This sin, sometimes known by its Latin name *tristitia*, is the sin of depression, anomie, apathy, despair, and alienation.¹³² In Wasserstein’s prickly phrasing, it denies the belief in

123. 539 U.S. 558 (2003).

124. Garcia, *supra* note 17, at 162.

125. *Lawrence*, 539 U.S. at 578 (“The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter. The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle.”).

126. Garcia, *supra* note 17, at 161.

127. *Id.* at 161-62 (citing *People v. Williams*, 811 N.E.2d 1197 (Ill. App. Ct. 2004)).

128. Garcia, *supra* note 17, at 179-80 (citing *Lawrence*, 539 U.S. at 572).

129. Wasserstein, *supra* note 43, at 33.

130. *See id.* at 27.

131. *See id.*

132. *See generally* Schimmel, *supra* note 47, at 191-97 (discussing the sin of sloth).

“possibilities, whether political or personal” as delusional: “Civil rights may come and go, great art may come and go, even religious saviors may come and go, but the limitations of human life remain.”¹³³

Student scholarship on sexual justice is an assault on human limitation, a testament to the belief in human possibilities (even if seemingly “unrealistic”) and an argument that civil rights should not be receding, but always advancing. It is the antithesis to the sin of sloth, the sin of *tristitia*. Yet given realities, it courts the sin of anger.

V. ANGER

The emotion of anger may be a realistic reaction to the perception of injustice. As Aristotle phrased it, “The man who is angry at the right things and with the right people, and, further, as he ought, when he ought, and as long as he ought, is praised.”¹³⁴ As a sin, it is “deadly” because it is “fatal” to a connection with “divine bliss.”¹³⁵ Yet divinities themselves express anger: “In the Jewish Bible, the angriest person around seems to be God himself.”¹³⁶

As Americans, anger is arguably inherent in our militaristic, imperialistic culture.¹³⁷ Whether anger should, or could, be eradicated, or even controlled, is subject to debate in Western cultures, despite the appellation of “sin.”¹³⁸ Perhaps this depends in large part on the interplay between reason and anger. Often, the definition of anger, both as a Western sin and as an Eastern mental addiction, essentially includes the notion that one’s rationality is demolished.¹³⁹

For women, however, the sinfulness, or at least impropriety, of anger is less arguable. If anger in men is “rather respected as a male prerogative and a privilege of authority,” in women it is “thought of as shrewish and hysterical.”¹⁴⁰ For the Latin Stoic philosopher Seneca, writing against anger in all forms, the “anger of children and women is more vehement than serious.”¹⁴¹ For a more contemporary writer on the

133. Wasserstein, *supra* note 43, at 109.

134. ARISTOTLE, *supra* note 39, at 1776.

135. THURMAN, *supra* note 43, at 15.

136. *Id.* at 32.

137. *Id.* at 21.

138. *Id.* at 17-18.

139. *Id.* at 62-63.

140. *Id.* at 17-18. Despite this recognition, Thurman describes “modern liberated women” who are “particularly determined to reclaim their own rightful access to anger, to make use of it to help them throw off male chauvinist intimidation, domination and oppression.” *Id.* at 18.

141. Seneca, *On Anger*, II. Xix. 4-xx 2, in *Seneca: Moral and Political Essays* (John M. Cooper & J.F. Procopé ed. & trans., 1995).

sin of anger, women's claims of a right to control one's body or "abortion on demand" are based in "Wrath."¹⁴²

In some cases, hysteria and anger in women are not only sins and improper reactions, but medically treatable conditions.¹⁴³ One method of treatment has been so-called "sexual devices." Although at one time such health aids were available in mail-order catalogs of mainstream retailers such as Sears,¹⁴⁴ more recently a few states have passed statutes criminalizing the distribution of sexual devices.¹⁴⁵ In considering a challenge to the Alabama criminal statute, a majority panel of the United States Court of Appeals for the Eleventh Circuit concluded that there was no right to engage in commercial activity involving vibrators,¹⁴⁶ even after it reconsidered the case in light of the newly decided *Lawrence v. Texas*.¹⁴⁷ In addition, the panel opinion failed even to recognize the

142. FAIRLIE, *supra* note 45, at 93-94 ("Most unwanted pregnancies are themselves a result of a woman having lost control of her own body—to impulse, whim, passion, or lust—and the demand for nontherapeutic abortions is a demand only to remove the consequences of having previously forfeited control over her own body, which she now imagines she may reassert with surgical assistance from someone else. The Wrath with which the demand for non-therapeutic abortions is sometimes made—a Wrath that is inevitably directed, even if not intentionally, at an innocent object, the conceived child—is the result of conferring on merely felt wants the character of rights. If one wants (or feels that one needs) to get rid of a fetus, then one apparently has the indefeasible right to get rid of it. There may or may not be a case for allowing women to have nontherapeutic abortions on demand. That is not the question that is being argued here. One is merely saying that to translate a women's wish to have an abortion into her right to have it is merely another example—and an extreme one—of the absurdly distorted concept of individual and human rights by which our societies are now confused, and we are in this way set against each other in an endless combat for the rights we claim. Anger comes.").

143. *See* Borgmann, *supra* note 18, at 177.

144. *See id.*

145. *See id.* at 172 (citing statutes of Alabama, Texas, Georgia, and Mississippi); *see also* *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 742-43 (5th Cir. 2008) (declaring the Texas statute that criminalized the sale of sexual devices unconstitutional).

146. *Williams v. Att'y Gen. of Ala.*, 378 F.3d 1232, 1250 (11th Cir. 2004).

147. *See* Borgmann, *supra* note 18, at 174—75 (footnotes omitted).

In *Williams I*, the district court found that while there was no fundamental right to use sex toys the statute failed rational basis review. On appeal ("Williams II"), the Eleventh Circuit agreed with the district court's conclusion that there was no fundamental right involved, but found that the statute should be upheld under rational basis review. It remanded to the district court to consider the plaintiffs' as-applied challenge. In light of the Supreme Court's decision in *Lawrence v. Texas*, the district court in *Williams III* found that there was a fundamental right to sexual privacy, that the statute burdened that right, and again invalidated the statute because the state failed to provide any state interest to justify that burden. In July 2004, the Eleventh Circuit Court of Appeals held that there was no fundamental right to sexual privacy among consenting adults. It remanded the case to the district court to consider the as-applied challenge to the statute consistent with that holding. The Supreme Court has since denied certiorari.

Id.; *see also* *Lawrence v. Texas*, 539 U.S. 558 (2003).

female plaintiffs in the litigation, instead essentially reducing them to “pawns of the ACLU.”¹⁴⁸

The court opinion exhibits a snide, hostile, and indeed, angry tone.¹⁴⁹ When I assign the case, it typically provokes wrath as well as disbelief. A student author confronting such a case can become caught up in emotional rather than analytical reactions. Yet passion—in the form of anger—also can fuel a student author’s commitment not only to complete a first draft, but to make subsequent revisions. It can energize a student author’s painstaking efforts to understand, confront, and refute legal doctrines and theories. For female student authors confronting arguably misogynist legal texts, anger may not be sinful but necessary.

VI. GREED

Greed has been called the “most social and by extension the most political of sins.”¹⁵⁰ It is therefore not surprising that it also exhibits gendered and sexual dimensions. Also labeled avarice and covetousness, greed is the “inordinate love of money and of material possessions.”¹⁵¹ At times, it is identified as the source of all other sins, as in Paul’s statement usually translated as “The love of money is the root of all evil.”¹⁵² Yet in a capitalist society, it seems absurd to argue that wealth is evidence of sin. Indeed, it is the poor who are more often deemed sinful.¹⁵³

Sexual justice scholarship that ignores economic justice is sophomoric. Yet the task of fully integrating questions of class disparities can be daunting. For example, when theorizing dichotomies of choice or exploitation discussions of prostitution or other sex work, a student scholar must confront the actual choices available under advanced capitalism, especially to women in poverty. Further, sex workers are participants in a specific—and lucrative—industry that is integral to the economy.¹⁵⁴ A long-standing question is whether otherwise legal sex

148. See Borgmann, *supra* note 18, at 200.

149. See *Williams*, 378 F.3d 1250 (Barkett, J., dissenting) (characterizing the majority’s analysis as “demeaning and dismissive”).

150. TICKLE, *supra* note 27, at 23.

151. SCHIMMEL, *supra* note 46, at 166.

152. *Timothy* 6:10 (King James); see also TICKLE, *supra* note 27, at 22-23 (noting Paul’s Latin phrase, *radix omnium malorum avaritia*, flourished as a visual image, an acrostic form of a political cartoon and cautionary dictum, especially in the fourth and fifth centuries with the failing of empire).

153. See Larry Catá Backer, *Of Handouts and Worthless Promises: Understanding the Conceptual Limitations of American Systems of Poor Relief*, 34 B.C. L. REV. 997, 1031 (1993) (“Poverty remains the outward mark of inward sin. The poor deserve their fate.”).

154. See Cook, *supra* note 1 (discussing New York City as an example of a city with a flourishing sex industry).

businesses, such as strip clubs, can be regulated in ways that other businesses cannot. As one student scholar argues, although the clear impetus for such regulation is morality, the flimsy rationale for such regulation is economic.¹⁵⁵ In other words, the government denies that it is regulating the sin of lust and insists that it is regulating the sin of greed.

Plaintiffs in any sort of litigation, especially personal injury cases, are often painted with the sin of greed.¹⁵⁶ One student scholar, writing about the Federal Communications Commission's (FCC) Notice of Apparent Liability (NAL) against a radio station for playing singer Sarah Jones' allegedly obscene and indecent song "Your Revolution," specifically confronts notions of greed.¹⁵⁷ Sarah Jones struggled to become a recognized litigant, even though the FCC action (and therefore any fine) was only against the radio station, and after two years, the radio station ultimately was successful when the FCC rescinded the NAL.¹⁵⁸ Yet, as the student scholar argues, the NAL placed Sarah Jones in a more precarious position than the radio station because she had fewer financial resources.¹⁵⁹ Further, "being able to disseminate one's recorded work via the radio is an integral part of artists' ability to support themselves" and the consequences of suppression are damaging to "the creative individuals in our community who are already struggle[ing] to make a living in a world of multimedia conglomerates."¹⁶⁰ Moreover, the student author is clear that not all "struggling artists" are similarly struggling.¹⁶¹ Comparing Sarah Jones' "Your Revolution," which attacks "sexual exploitation and the degrading lyrics in popular music,"¹⁶² and white rap artist Eminem's "The Real Slim Shady," which might be said to encourage sexual exploitation and contain degrading lyrics,¹⁶³ the student author notes that the FCC's enforcement procedure against the radio station for the Eminem song took only six months (as opposed to the two years for the Sarah Jones song), that it sold millions of copies during that

155. *Id.*

156. *See, e.g.,* Martin A. Kotler, *The Myth of Individualism and the Appeal of Tort Reform*, 59 RUTGERS L. REV. 779, 796 (2007) ("[T]he 'greedy plaintiff' theme provides the subtext in a number of different areas of tort law."); Christopher J. Roederer, *Democracy and Tort Law in America: The Counter-Revolution*, 110 W. VA. L. REV. 647, 679 (2008) (referring to the "big lie that the common law has been hijacked by greedy plaintiffs and lawyers, as well as by liberal activist judges").

157. *See* Sheftel-Gomes, *supra* note 3.

158. *Id.* at 198.

159. *See id.* at 214.

160. *Id.* at 214-15.

161. *See id.*

162. *Id.* at 220.

163. *See id.* at 218-19.

time, and won three Grammy awards.¹⁶⁴ Indeed, Eminem's notoriety may benefit rather than harm his career.¹⁶⁵

Student scholars encounter their own dilemmas of greed when making publication and submission decisions. The increased information—and one might even say obsession—regarding rankings of law reviews and journals¹⁶⁶ affects not only law professors but also law students. Additionally, an increasing number of law journals seem to be explicitly closing their submissions to external law students. Scarcity combined with hierarchy inflames greed. The finished draft that once seemed so unattainable can seem insufficient if it does not garner ten acceptances from the most desirable journals. Usually this dissatisfaction passes, although never more slowly than when a student learns of another student's "better" offer.

VII. ENVY

"Of the seven deadly sins, only envy is no fun at all."¹⁶⁷ Metaphors expressing the experience of envy include hissing hot coals, poison spreading through the body, boomeranging arrows, and internal fires raging.¹⁶⁸ It is ubiquitous.¹⁶⁹ It is shameful.¹⁷⁰ It is engrained into us; even as children, we are compared to others.¹⁷¹ It is petty, ugly, and almost always pejorative.¹⁷²

Almost always. Like the other sins, envy has its positive aspects. Aristotle seeks to elucidate these more affirmative features by dissecting envy into negative qualities (always named envy) and positive qualities, called emulation or indignation.¹⁷³ In Aristotle's view, once a person recognizes that another person desires "good things," the person has two choices: he may choose to take steps to secure the good things for himself, to emulate; or he may choose to take steps to stop the other

164. *Id.* at 219.

165. *See id.* at 218-19.

166. *See, e.g.,* Washington & Lee Law School, Law Journals: Submissions and Rankings, <http://lawlib.wlu.edu/LJ> (last visited July 17, 2009).

167. EPSTEIN, *supra* note 43, at 1.

168. SCHIMMEL, *supra* note 47, at 60.

169. *See id.* at 61 ("The ubiquity and danger of envy made it a central sin in all of the moral and religious traditions."); FAIRLIE, *supra* note 45, at 61 ("If we confessed each day how often we had been envious during it, we would be on our knees longer than for any other of the sins.").

170. *See* FAIRLIE, *supra* note 45, at 61 ("Envy is the one deadly sin to which no one readily confesses.").

171. *See* SCHIMMEL, *supra* note 46, at 57.

172. *See* EPSTEIN, *supra* note 43 at 2, 4.

173. *See* ARISTOTLE, *Rhetoric*, in THE COMPLETE WORKS OF ARISTOTLE, *supra* note 39, at 2212.

person from obtaining the good things, to envy.¹⁷⁴ Also in Aristotle's view, indignation is pain at another person's unmerited good fortune, as distinct from envy, which pays little heed to whether or not another person's good fortune is merited.¹⁷⁵ Aristotle's conception of indignation is thus closely related to a perception of unjustness.

Expanded to societal rather than individual concerns, envy becomes integral to notions of justice. In *A Theory of Justice*, scholar John Rawls argues that certain inequalities engender envy and takes pains to distinguish the desire for equality from "hostile outbreaks of envy."¹⁷⁶ Indeed, it is a "recurring suggestion in the history of philosophical and political thought" that "envy supplies the psychological foundations of the concern for justice, and, especially, of egalitarian conceptions of justice."¹⁷⁷

Student scholars writing about sexual justice attract accusations of envy and assumptions about identity. Is the student scholar writing about partner notification for HIV himself HIV positive?¹⁷⁸ Is the student scholar writing about gender orthodoxy a gender nonconformist?¹⁷⁹ Is the student scholar writing about lesbian parenthood herself a lesbian parent?¹⁸⁰ The answers to these questions should be irrelevant. Clearly, however, it is not merely one's own emotional experience of envy that fuels notions of (in)justice, otherwise one would have a very limited conception of justice.¹⁸¹ Student scholars, like other scholars on sexual justice, speak out even when they have no cause to experience the injustice—or envy—themselves.

For example, a gay male student scholar, who chose to make his lack of experience explicit when he wrote about transgender issues, seemed unconcerned with deflecting accusations of merely being envious.¹⁸² Instead, the student scholar's point as stated was to "apologize

174. *See id.* (noting that emulation "is a good feeling felt by good persons, whereas envy is a bad feeling felt by bad persons").

175. *See id.* at 2209.

176. JOHN RAWLS, *A THEORY OF JUSTICE* 469 (Harvard Univ. Press 1999) (1971).

177. Justin D'Arms, *Envy*, in *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta ed., 2002), available at <http://plato.stanford.edu/archives/win2002/entries/envy/>.

178. *See, e.g.*, Carmody, *supra* note 13.

179. *See, e.g.*, Coffey, *supra* note 7.

180. *See, e.g.*, Zgonjanin, *supra* note 15.

181. *See* D'Arms, *supra* note 177 ("Envy does not arise in cases where inequalities favor the subject. So defenders of the charge appear to be committed to the falsifiable (and surely false) thesis that all egalitarians are inconsistent in their commitment to inequality. If the thesis were true, egalitarians should oppose only the inequalities that are unfavorable to their own interests. To the extent that egalitarians are sincere and consistent in the embrace of their principles, this counts against the charge that their occurrent motivation is envy.").

182. *See* Haines, *supra* note 8.

in advance for any misunderstanding or mischaracterization.”¹⁸³ This apology is situated in the broad contexts of identity and identity-politics. However, it is predictable perhaps that it occurs in an article about immigration law, which focuses on national identity.¹⁸⁴ Asylum, as part of immigration law, includes a specific focus on identity in the form of membership in a “social group.”¹⁸⁵

As another student scholar notes, the emphasis in asylum law is on identity, not sexual activity.¹⁸⁶ Nevertheless, sexual minority claimants have had some success in asylum cases.¹⁸⁷ This success has caused at least one commentator some alarm, generating a response from the student scholar.¹⁸⁸ The commentator adopts a pose of (moral) indignation—the asylum seekers do not deserve the good fortune of entry into the United States.¹⁸⁹ The student scholar dismantles this stance by demonstrating that the assumptions on which it is based are not accurate,¹⁹⁰ a recommended strategy for ameliorating the pain of envy.¹⁹¹

Yet just as an argument for rights may not be based in the envy of those who possess such rights in comparison to one’s self, an argument for the denial of rights may not be based in one’s own lack of rights: a United States law professor arguing that sexual minority asylum seekers should not be granted asylum presumably is not in need of asylum himself. Instead, following the usual distinction, the issue might more properly be named jealousy, the fear of losing what one has.¹⁹² What the commentator “has” is an agreeable “social, political, and moral fabric of the country” which is threatened by immigration judges who unwittingly accept “the homosexual lifestyle.”¹⁹³ Again, the student scholar attacks

183. *Id.*

184. *See id.*

185. 8 U.S.C. § 1158(b)(1)(B)(i) (2006).

186. Pfitsch, *supra* note 10, at 70-71.

187. *See id.* at 68 (“From 1996 to 2003, over sixty LGBT asylum seekers were granted asylum.”).

188. *Id.* at 71 (citing Michael A. Scaperlanda, *Kulturkampf in the Backwaters: Homosexuality and Immigration Law*, 11 WIDENER J. PUB. L. 475, 484, 513 (2002)).

189. *See id.*

190. *See id.* at 73 (“Government trial attorneys and immigration judges are not neutral decision-makers, but enforcers of the very brand of morality Scaperlanda discusses. Rather than taking advantage of a one-sided system for political gain, immigration attorneys for LGBT asylum applicants are classic Davids, taking on the Goliath anti-immigrant, antigay U.S. government, in a last-ditch effort for a client who will likely be tortured and killed if deported.” (footnote omitted)).

191. *See* SCHIMMEL, *supra* note 46, at 67-68.

192. *See* Epstein, *supra* note 43, at 4 (“The real distinction is that *one is jealous of what one has, envious of what other people have.*”); *see also* SCHIMMEL, *supra* note 46, at 80.

193. Pfitsch, *supra* note 10, at 71 (quoting Michael A. Scaperlanda, *Kulturkampf in the Backwaters: Homosexuality and Immigration Law*, 11 WIDENER J. PUB. L. 475, 484, 513 (2002)).

an assumption on which this fear is based and argues that the immigration judges (and government immigration attorneys) are not unwitting or neutral, but “enforcers of the very brand of morality” that the commentator seeks to uphold.¹⁹⁴ In making her arguments, the student scholar relies upon “lessons from the field of practice” by interviewing and extensively quoting from a telephone interview with a legal director for an organization devoted to the issue.¹⁹⁵

An interview with an advocate is one of many strategies that student scholars can learn from each other. At times, I have assigned published student pieces to aspiring student authors using a variety of methodologies.¹⁹⁶ The goal is emulation, both positive (“I could do a telephone interview and quote it”) and negative (“I wouldn’t quote from a telephone interview because it seems too informal”). Often this is a solid pedagogical exercise. Occasionally, however, the comments by students with works in progress are overwhelmingly negative. Despite my attempt to emphasize that a published piece is not perfection, that we are reading the piece to discuss both its accomplishments and its shortcomings, that it is not the “teacher’s pet,” the article is subject to unmerciful, and it seems to me, unfair, criticism, which tends to escalate as the discussion ensues. Perhaps this is explicable as a frenzy of envy. Or perhaps it is the demand for perfection.

VIII. GLUTTONY

Gluttony is a sin of excess. As pertaining to food and drink, this sin cannot simply be avoided by refraining from the temptation: one needs to eat and drink to survive. But the type of food and drink (especially alcoholic drinks), the amount, and, perhaps most especially the enjoyment, are reflected in what the writer Francine Prose describes as “a constellation of complex attitudes toward the confluence of necessity and pleasure.”¹⁹⁷ She notes that as a sin, gluttony is objectionable because it replaces the divinity with “the belly,”¹⁹⁸ and because it weakens the moral

194. *Id.*

195. *Id.* at 72-75.

196. At times, the articles are assigned in the context of the substantive area under discussion. At other times, I have assigned specific articles to students for a general class on the paper submission requirement, usually with a specific discussion that includes aspects of emulation and aspects of avoidance. Most often, I use a mixture of these approaches, integrating a discussion of the published article into both the substantive discussion and the paper submission requirement.

197. Prose, *supra* note 43, at 8.

198. *Id.* at 13-14 (quoting *Romans* 16:17 and *Philippians* 3:18-19).

defenses (especially when gluttony is associated with alcohol).¹⁹⁹ Contemporary culture, she argues, “exhibits a schizophrenic attitude toward gluttony,” with advertisements for restaurants, recipes, and snacks vying with warnings that “eating is tantamount to suicide” and “indulgence and enjoyment equals social isolation and self-destruction.”²⁰⁰ Both extremes, Prose observes, are lucrative markets.²⁰¹ These capitalist manifestations rely upon religious and moral judgments. Food is advertised as “sinfully delicious” and overeating is a cause for “guilt.”²⁰²

What is unique about gluttony is that it is the only sin whose effects “are visible, written on the body.”²⁰³ Punishment for seeming a glutton, that is looking overweight, is social disapproval for deviating from a norm of appearance. This norm is often supported by medical rationales.²⁰⁴

In the emphasis on a “prevailing standard of health and beauty”²⁰⁵ and societal opprobrium, the stereotypical effects of gluttony are related to other bodily nonconformities, including genital nonconformities. Although it is generally not theorized that genital nonconformities result from any sin or wrongdoing, the naming of them as deformities (or even nonconformities) that require correction and standardization does manifest a moral, or at least social, judgment.

The legal status of the intersexed, especially intersex children, has been the focus of two student scholars with whom I have worked.²⁰⁶ The label “intersex” is a blanket term used to denote a variety of congenital conditions in which a person does not have “normal” or “standard” male or female genitalia.²⁰⁷ This becomes a potential legal problem when the

199. *Id.*

200. *Id.* at 79.

201. *See id.* at 77-79.

202. *Id.* at 72.

203. *Id.* at 5.

204. As Prose writes:

More recently the caveat that has superseded the threats of eternal hell is the threat of death itself. The idea that overeating presents a health risk is, of course, nothing new. . . . For centuries, it was thought that a single eating binge would prove fatal Now, of course, we understand that this particular road to ruin is a slower and more circuitous one Yet, though we no longer fear the catastrophic effects of a single meal, the concern—and the paranoia—about the health consequences of what and how much we eat has never been so intense. We’re barraged with reminders that overeating is unhealthy

Id. at 56-58.

205. *Id.* at 5.

206. *See* Haas, *supra* note 11; Lloyd, *supra* note 12.

207. Lloyd, *supra* note 12, at 157.

person possessing such a condition is a minor, often a newborn, and the person's parents (or other legal guardians) agree to sexual assignment surgery, usually on the advice of physicians. The surgery may or may not be medically necessary: it may be performed so that "children will not be psychologically harmed when they realize they are different from their peers."²⁰⁸ The emphasis is on surgical "correction" to maintain normalized definitions of genitalia.

Sexual justice scholarship that focuses on the practice of normalizing surgeries to correct a genital condition confronts the dearth of legal development in this area. One student scholar looked to a series of cases decided by the Constitutional Court of Colombia in which the Court qualified the parental right to choose genital surgery for a child.²⁰⁹ Although she criticizes the Colombian Court's opinions for not being sufficiently far-reaching, the student scholar notes that the American courts were more conservative.²¹⁰ She then argues that United States constitutional law and international law should provide at least as much protection as did the Colombian Constitutional Court.²¹¹ Taking a different approach, another student argues that legislatures need to act.²¹² This student proposes a model statute, including a detailed version of one in her article which she entitles The Protection of Intersex Children Act.²¹³ While both students decry the surgical infliction of a certain "standard of health and beauty" upon children who cannot consent, each student takes a distinct legal approach.

Combing the judicial and legislative, another student considers the legal protections for those who do not meet the prevailing standards of gender conformity.²¹⁴ This student scholar concludes that "a combination of strategies will ultimately best serve the transgender movement in the battle to overcome one of the last bastions of civil rights discrimination,"²¹⁵ even as she notes that "transgender activists have achieved greater success on the legislative front than with the judiciary."²¹⁶ Analyzing case law (both state and federal) as well as

208. Haas, *supra* note 11, at 42.

209. *Id.* at 49 n.94 (discussing three cases—Sentencia No. T-477/95—Sentencia No. SU-337/99, and Sentencia No. T-551/99—all of which were available in the original Spanish). The student relied upon her own translations as well as the summaries of the cases available at the Intersex Society of North America Web site).

210. *See id.* at 54.

211. *See id.*

212. *See* Lloyd, *supra* note 12.

213. *See id.* at 191-95.

214. Coffey, *supra* note 7, at 161.

215. *Id.* at 161-62.

216. *Id.* at 185.

legislation, including the then-newly enacted New York City ordinance, while incorporating theoretical perspectives, might risk the sin of excess. Gluttony can be written on the draft not so much as surfeit but as confusion. But almost all legal scholarship involves both judicial and legislative, as well as the administrative and executive. The student scholar navigates what Francine Prose called “a constellation of complex attitudes toward the confluence of necessity and pleasure.”²¹⁷

If there is any matter on which student scholars seek to normalize their appetites, it is footnotes, often but not always reflecting the underlying research. There can be the illusion of importance in knowing that one of these articles has 262 footnotes, one has 249, and one has 220, as if these numbers were on a scale of some sort, or measured some sort of weight. Often students begin by thinking that they will not “have enough” footnotes. Diligent students soon realize that the problem is deciding when “enough is enough.” Footnotes are as necessary to a piece of legal scholarship as food is to survival. Judgments about excess similarly reflect “a constellation of complex attitudes,” and are similarly evident on the article’s “body.” They can also become a point of pride.

IX. PRIDE

In ancient Greek thought, the vice of “hubris”—related to pride—generally provokes some sort of retribution.²¹⁸ In one mythical example, the gods turn the young man Narcissus into a flower because he had been gazing at his own reflection and fell in love with it.²¹⁹ In another example, Daedalus makes a pair of wings for himself and his son, Icarus, warning Icarus that the wax on the wings would melt if he flew too high

217. Prose, *supra* note 43, at 8.

218. See generally *Hubris*, in THE OXFORD DICTIONARY OF LITERARY TERMS 158 (Chris Baldick ed., 2008), available at <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t56.e558> (“The Greek word for ‘insolence’ or ‘affront,’ applied to the arrogance or pride of the protagonist in a tragedy in which he or she defies moral laws or the prohibitions of the gods. The protagonist’s transgression or hamartia leads eventually to his or her downfall, which may be understood as divine retribution or nemesis. Hubris is commonly translated as ‘overweening (i.e. excessively presumptuous) pride.’ In proverbial terms, hubris is thus the pride that comes before a fall.”).

219. See generally *Narcissus*, in THE CONCISE OXFORD COMPANION TO CLASSICAL LITERATURE (M.C. Howatson & Ian Chilvers eds., Oxford Univ. Press, 1996) (1993), available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t9.e1930> (subscription required) (“In Greek myth, a beautiful youth The nymph Echo fell in love with him, but was rejected. Aphrodite punished him for his cruelty by making him fall in love with his own image reflected in water. His fruitless attempts to approach his beautiful reflection led to his despair and he wasted away until he died. The gods changed him into the flower that bears his name.”).

near the sun.²²⁰ Icarus did not heed the warning, the wax melted, and he fell into the sea.²²¹

Jewish and Christian thought similarly stress the negative consequences of pride. “Pride goeth before destruction, and an haughty spirit before a fall,” according to the Bible’s Book of Proverbs.²²² Theologians such as Aquinas and Gregory denominated pride as the font of all the sins—a proud person believes he is entitled to everything he wants without having to work for it and is angered or envious if his desires are thwarted.²²³

Despite these perils, of “all the deadly sins, pride is most likely to stir debate about whether it is a sin at all.”²²⁴ For Aristotle, pride is a virtue, distinguished from being vain or unduly humble,²²⁵ and it is evidenced by a “slow step” and a “deep voice.”²²⁶ Pride can be a “spur to excellence” inspiring one to do one’s best.²²⁷ Promoting self-esteem and avoiding inferiority complexes are seen as goals of a healthy personality.²²⁸

In addition to its individualistic aspects, pride is part of collective identity. Writing in the Oxford series, Scholar Michael Eric Dyson analyzes racial pride.²²⁹ For Dyson, white pride is often imperceptible, it is “smuggled into the national discourse under other labels: citizen, American, individual.”²³⁰ On the contrary, Dyson argues that black pride is an attempt to “tap the healing self-love that any group should take for granted as its birthright.”²³¹ Yet Dyson suggests that black pride does not mean that “racial tribalism” trumps moral truth.²³² Similarly, national

220. See generally *Daedalus*, in A DICTIONARY OF WORLD MYTHOLOGY 152 (Oxford University Press 1997) (1979), available at Oxford Reference Online, <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t73.e200> (subscription required) (“According to legend, Daedulus was imprisoned by Minos for revealing the secret of the labyrinth, but escaped by constructing wings for himself and his son Icarus. Despite his father’s warning the boy flew too close to the sun, the wax holding together his wings melted, and he fell into the sea and was drowned.”).

221. See SCHIMMEL, *supra* note 46, at 49, 29 (referencing both the Narcissus and Icarus myths in somewhat different forms in the discussion of pride).

222. *Proverbs* 16:18 (King James).

223. See SCHIMMEL, *supra* note 46, at 32-34.

224. DYSON, *supra* note 43, at 1.

225. ARISTOTLE, *supra* note 134, at 1773.

226. *Id.* at 1775.

227. DYSON, *supra* note 43, at 29.

228. See SCHIMMEL, *supra* note 46, at 37.

229. DYSON, *supra* note 43, at 47.

230. *Id.*

231. *Id.* at 62.

232. *Id.* at 67.

pride does not mean “my country right or wrong.”²³³ Again, critical reflection is necessary.

Sexual justice scholarship requires a measure of pride that can serve as an antidote to the silencing shame that often accompanies sexual matters. For law student scholars writing on sexual justice, pride is essential when the subject can veer toward the sensational or ignominious. While slogans such as “gay pride” and “queer pride” make overt political claims, scholarship’s claims are rooted in critical reflection, yet must still assert pride over shame. Writing about sexual conversion therapies—when psychologists attempt to “cure homosexuality”—one student scholar implicitly argues that it is not the sexual minority patients who should be ashamed, but rather the psychologists and psychiatrists who are shameful.²³⁴ What Dyson might call the “moral truth” of the article²³⁵ fuels its legal argument: any psychological professional who purports to convert a person to heterosexuality should be civilly liable.²³⁶

Assertions of pride as retorts to shame may be particularly difficult when one is young, although for one commentator on the sin of pride, such affirmations may be easier then because pride is associated with rebellion, most especially the rebellion of youth.²³⁷ In one of the first pieces in the now-burgeoning scholarship on queer youth,²³⁸ one student scholar begins her article with “scary fairy tales” that illustrate her contention that lesbian and gay youth were suffering rejection because of their assertions of sexuality.²³⁹ Within the article is the tale of “Lori M.,” from one of the few reported cases concerning a sexual minority juvenile and one of the few cases in which the judge credited the minor’s sexual judgment.²⁴⁰ The student author’s recommendations would support a perspective of pride by queer youth.

233. *Id.*

234. See Gans, *supra* note 9, at 249 (noting that conversion therapists’ “well-documented attempts to change homosexuality are little more than thinly-veiled efforts to eliminate it by homophobic zealots who act under the shameless guise of beneficence and flimsy aegis of professionalism”).

235. DYSON, *supra* note 43, at 67.

236. See Gans, *supra* note 9, at 232-49 (arguing that tort theories of negligent malpractice and intentional infliction of emotional distress, as well as a modified intentional infliction of distress claim, are valid causes of action).

237. See FAIRLIE, *supra* note 45, at 47-48.

238. See Sarah Valentine, *Queer Kids: A Comprehensive Annotated Legal Bibliography on Lesbian, Gay, Bisexual, Transgender and Questioning Youth*, 19 YALE J.L. & FEMINISM 449 (2008).

239. Sullivan, *supra* note 14, at 31-34.

240. *Id.* at 42—43 (discussing *In re Lori M.*, 496 N.Y.S.2d 940 (N.Y. Fam. Ct. 1985)).

It is not only sexual minority youth who suffer from feelings of shame rather than pride when the subject is sexuality. In a review-essay of a book by a nonlegal scholar on “the perils of protecting children from sex,” one law student scholar uses her own sexual narrative to support the book’s message that young people should be empowered by sexual knowledge rather than debilitated by fear.²⁴¹ In her review-essay, the student scholar not only discusses the book in light of her own experiences, but is able to bring an explicitly legal perspective on the regulation of minors’ sexuality.²⁴² Most originally, she categorizes these laws as embodying three different perspectives: irrational fears of minors’ sexuality, outmoded gender stereotypes, and angel/devil dichotomizing (and dehumanizing) of minors.²⁴³ In this way, the student author is able to (proudly) apply and extend her own legal education to a nonlegal book.²⁴⁴

The genre of the review-essay can be a demandingly satisfying form; it may also be essentially prideful. It is not simply a restatement of the book under review, but an active engagement and critique requiring a large measure of confidence.²⁴⁵ One method for achieving the necessary confidence is the dual review, in which the student scholar chooses two books with arguably opposing viewpoints and constructs a dialogue. Using two then-recent books both meant for popular audiences and articulating two sides in the feminist pornography debate, one student scholar juxtaposed the books as well as adding her own assessments.²⁴⁶ In another review-essay, another student scholar asserts her own distinct legal perspective of “pansexual” as a critique of the author’s articulation of a bisexual jurisprudence.²⁴⁷

Whether a review-essay, a case note, or an article, pride in the work and pride in the publication seem appropriate responses from a student scholar. While pride can be problematical—causing difficulty with the seemingly endless process of revision²⁴⁸—most law student scholars can be justly proud of their work. It is an individual pride, certainly, but also

241. See Northcraft, *supra* note 19.

242. See *id.*

243. *Id.* at 504-13.

244. See *id.*

245. Confidence also is required to criticize a judicial opinion, but usually by the time students complete their first year of law school they have criticized countless opinions.

246. See McIntyre, *supra* note 5.

247. See Haynes, *supra* note 2.

248. See SCHIMMEL, *supra* note 46, at 32 (“The scholar who thinks too highly of himself is not open to constructive criticism or to learning from the wisdom and experience of others.”).

a pride in advancing legal discourse on behalf of a collective, if not uniform, version of sexual justice.

X. CONFESSIONS: INSTEAD OF A CONCLUSION

Indulge me in a few confessions about my sins, or if you prefer a less religious nomenclature as I do, my unethical vices. Although following Aristotle, as well as others, these vices have their positive, even virtuous aspects.

First, I will admit to a large measure of pride. As a personal and professional matter, I feel proud to foster student accomplishment and success. However, I often resist “proud” as an appellation because it possesses proprietary connotations. Professorial pride in student achievement is fraught. In one way, the essence of being a teacher (as opposed to a lecturer or a scholar) is the satisfaction one derives from promoting student development. Yet the verb itself is problematical: is one fostering or promoting? Teaching? Mentoring? Collaborating? Directing? Whatever description one chooses, it is important to remember that the work is that of the student, not the professor. Pride that crosses into ownership would be a “sin.”

Pride in its more collective dimension is more comfortable. For although I do not share a specific sexual identity with all—or even a majority—of the student scholars with whom I have worked, I do share a collective pride in sexual justice. Again, although the specifics of our interests and our conclusions may be distinct, we share a common goal. Additionally, there is a collective pride in another identity: our law school.

This pride can lead to gluttony, in the sense of the desire for “more and more.” I am always anticipating the next success. However, as I have written previously, I cannot accurately predict which of the many students who begin papers with ambitions of publication will reach their goals of submission.²⁴⁹ Further, the definition of “success” for students must be individualized. A lack of publication is not a failure.

Publication decisions rely on certain judgments: there is a “prevailing standard” of appearance (one might even say “beauty”) of a law review article. If a submission does not meet professional expectations of appearance, the editors will be unlikely to consider it. In this sense, I serve as an enforcer of the normalized conventions. Yet fear of the sin of gluttony as worn on the “body” of the article must not interfere with a student scholar’s passions and particularized insights.

249. See Robson, *supra* note 81.

Envy, therefore, is possible. When a student and I collaborate on ideas through extensive discussions, or when I share ideas that I have had independently, I am tempted into envy when a student actualizes them into an article when I have not done so. It can seem that the student has more of what I so sorely seem to lack: time. And it can seem as if much more of my own time is spent working with students rather than spent working on my own scholarship. One antidote to envious emotions is factual consideration, or what might be called a “reality check.”²⁵⁰ Surely, law students do not have more time than I have (I need only consider their schedules full of classes, internships, and other activities; I need only recall my own exhaustion as a law student). Surely, I do not spend more time supervising student scholarship than other aspects of my profession.²⁵¹ Instead, I strive to translate my envy into emulation: the energies, optimism, engagement, and new ideas of students often infuse my work with them and the work I do independently.

If greed is the “inordinate love of money and of material possessions,”²⁵² then I may be totally innocent of this sin. In the legal academy, law professors often receive monetary compensation in the form of “rewards,” “incentives,” and “stipends” for publishing our own scholarship; I am not aware of any similar direct support for student scholarly production. Likewise, tenure and promotion decisions are largely made on the basis of one’s own scholarly record; supervising student scholarship merits a line or two at best in an extensive report. Thus, if one has an inordinate love of money, and nevertheless chose to be a law professor, supervising student scholarship would compound the frustration.

But among my most prized material possessions are the offprints of their articles that students have given me. I display them in my office, on a special shelf. Although perhaps not obvious to others, they are trophies. Each acknowledgement of my work in the author’s footnote is like a little piece of gold.

That golden acknowledgement played an important role in an incident where I came closest to the sin of anger. It involved not one of my relationships with a student, but one that I observed. Indeed, I observed the aspiring student scholar and the professor in extended conversations over a semester; they often were talking when I left for the day. I saw the professor reading draft after draft of the student’s work.

250. See SCHIMMEL, *supra* note 46.

251. See Ruthann Robson, *The Zen of Grading*, 36 AKRON L. REV. 303 (2003) (reflecting on the inter-relationships between Zen and grading exams).

252. See SCHIMMEL, *supra* note 46.

The student eventually published the piece, which relied heavily on what I knew were the professor's original ideas. In the author's footnote, the student did not acknowledge the professor, but did thank others. That the student was male and the professor female may have contributed to my gendered Wrath.²⁵³ Certainly it seemed an injustice. Certainly it seemed a disrespect of the professor's work.

The real work of both professor and student is the antithesis of sloth, the sin of laziness. Yet as Wendy Wasserstein humorously noted, sloth can be a sin against capitalism.²⁵⁴ In this slothful way, I am loathe to work with a student who wants to write or publish scholarship as a means to a lucrative career path. Work, I think, can be a "slothful" way of sinning against capitalism, when the subject is economic justice. For students eager to explore the links between sexual justice and economic justice under capitalism, I do not feel that lazy slothfulness, even if the possibilities may be judged "unrealistic."²⁵⁵ Indeed, this is one way I dispel the sin of sloth as *tristitia*—depression, anomie, apathy, despair, and alienation—²⁵⁶ arising from feelings of futility and frustration.

For above all, I want to embrace the sin of lust. Lust for a world full of the possibilities of sexual justice. And lust for student scholarship that argues for sexual justice and pursues "pleasure for its own sake."

253. See THURMAN, *supra* note 43; see also Seneca, *supra* note 141; FAIRLEY, *supra* note 45.

254. Wasserstein, *supra* note 43, at 30.

255. See Garcia, *supra* note 17, at 179.

256. See generally Schimmel, *supra* note 47, at 191-97.