ANNOTATED LEGAL BIBLIOGRAPHY

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LGBTQ+ RIGHTS

Bradley A. MacDonald, Article, *What's in a Name?: The Constitutionality of Using Personal Pronouns in Public Schools*, 56 UIC L. REV. 477 (2023).

Recent societal shifts recognizing concepts of gender fluidity and non-binary individuals have brought the debate over personal pronoun usage to the forefront. Courts remain divided on the First Amendment issue surrounding the use of one's personal pronouns in public schools. The conflict between students' free speech and association rights and teachers' free speech and religious rights complicates this issue. Proponents argue that the Supreme Court should recognize an implied fundamental constitutional right to personal pronouns. Opponents contend that decisions regarding personal pronoun usage should be left to the states and elected public school boards, allowing them to tailor policies to their respective communities. Bradley MacDonald proposes that the legislative branch, rather than the Supreme Court, should be the institution creating and enacting change for personal pronoun usage in public schools. For instance, Congress could pass statutory protections for students or create federal grants incentivizing the states to implement inclusive policies. Alternatively, state legislatures could enact laws protecting personal pronoun usage, should their constituents support such measures. Both legislative bodies are best situated to address the moral and controversial aspects of personal pronoun usage in public schools.

Annotated by: Emily K. Abrams

Parker Rose Wingate, Article, *Trans Bodies, Trans Speech*, 41 MINN. J.L. & INEQ. 331 (2023).

In the context of a recent increase in anti-trans legislation encroaching on access to gender-affirming healthcare, Parker Rose Wingate advocates for protecting this access under the First Amendment's symbolic speech doctrine, a legal theory that has already been articulated in V*uz v. DCSS III, Inc.*, a decision from a California court. Based on rulings from courts nationwide protecting gender expression through clothing and accessories, physicians' free speech rights, and body modification, gender-affirming healthcare should be considered symbolic speech. Courts apply the *Spence-Hurley* test to assess the protection of symbolic speech, requiring the speaker to have the intent to convey a specific message likely to be understood by the audience. Because gender-affirming care conveys a message about a person's internal sense of gender or lack of connection to the gender binary, and that message is understood, gender-affirming care passes the *Spence-Hurley* test. Once a court has determined that the symbolic speech merits protection, it determines the constitutionality of the regulating law using the *O'Brien* test. This test establishes that, in the case of an incidental regulation, the regulating law is valid only if it furthers an important or substantial government interest. The proffered interests in safety concerns and avoiding regret are not legitimate governmental interests. Therefore, gender-affirming care should be identified as symbolic speech and protected under the First Amendment, making the laws seeking to ban it unconstitutional.

Annotated by: Tess Bedingfield

Nakota G. Wood, Article, *The Gay Panic Defense: A Rainbow of Reasons Calling for Abolishment and Protections in Tennessee*, 32 TUL. J.L. & SEXUALITY 112 (2023).

The legal strategy of the gay panic defense justifies violence against LGBT individuals by allowing evidence of sexual orientation to be admitted at trial to support other defenses like adequate provocation. Tennessee's continual use of gay panic defenses—violating both the state and nation's constitutions—discriminates against LGBT individuals, promotes homophobia, and draws on antiquated ideas. Tennessee should abolish the gay panic defense and implement gay shield laws to wholistically protect its LGBT population from discrimination. Nakota Wood suggests the gay panic defense violates the Fourteenth Amendment and its corresponding state law because Tennessee singles out queer individuals, places them on trial instead of the aggressor, and effectively prohibits fairness. Despite progress, sexual orientation discrimination increased in 2020, making it the second-most common form of discrimination. In cases similar to gay panic defense but involving heterosexual parties, there are no equivalent heterosexual panic defenses, and aggressors do not receive lesser sentences like they would if the victim were queer. The author proposes Tennessee should follow California's lead in abolishing the gay panic defense and enacting gay shield laws, mirroring rape shield laws to prevent discriminatory practices and limit the admissibility of sexual orientation evidence unless relevant to a hate crime.

Annotated by: Gerald Dryden

HOUSING RIGHTS & GENTRIFICATION

Dianisbeth Acquie, Article, *"Sunset Park is Not for Sale": Gentrification, Rezoning, and Displacement in Brooklyn's Sunset Park*, 38 CHICANO-LATINO L. REV. 53 (2022).

Gentrification displaces low-income and middle-class families from their communities through development rezoning. Dianisbeth Acquie focuses on the redevelopment plan of Sunset Park's Industry City, a sixteen-building complex of residential and commercial units. Although the redevelopment plan was stopped due to community concerns, residents fear that gentrification will eventually occur as it has in surrounding neighborhoods. To fight gentrification, the author presents multiple steps, first emphasizing the importance of tenant community efforts. Sunset Park's strong community support halted the project; however, the threat persists. Second, Sunset Park can file a lawsuit to challenge the Environmental Impact Statements required to begin the gentrification process. Third, focusing on state constitutions to assess gentrification's racial and economic impacts could be more effective than examining the Fair Housing Act, given different judicial interpretations. Fourth, an influential elected official, like Sunset Park's Council Member Menchaca, can advocate for the community's interest. Lastly, UPROSE, a grassroots organization, proposes an environmental approach to rebuilding Industry City in order to improve health conditions and job production in Sunset Park; all aspects of gentrification must be weighed to ensure that the benefits support the community residents.

Annotated by: Olivia Cohen

CIVIL RIGHTS & RACIAL JUSTICE

Charelle Lett, Article, *Black Women Victims of Police Brutality and the Silencing of Their Stories*, 30 UCLA WOMEN'S L.J. 131 (2023).

In the United States, the intersectionality of gender and race subjects Black women to disproportionate police brutality. The structure of policing in America perpetuates and builds upon the century-spanning injustices endured by Black women. The current form of policing, founded on white supremacy, continues to obstruct Black liberation in the modern era. Charelle Lett argues that American history demonstrates the criminalization of Black activism, detailing key moments from the Civil Rights Movement to the present-day Black Lives Matter movement. Black feminist theory provides the best context for understanding these issues. This theory aims to articulate how Black women experience and resist oppression through change-making ideas. Black feminist theory rests on five core concepts: (1) interlocking oppressions; (2) standpoint epistemology; (3) everyday knowledge; (4) dialectic images; and (5) social justice praxis. Finally, the author highlights how society actively silences Black women who are victims of police brutality and presents demands and policy recommendations to reshape the public perception of police brutality against Black women. A critical aspect of promoting awareness and change involves creating spaces in mainstream media where Black women can share their experiences and amplify the voices of police brutality victims.

Annotated by: Matthew Donelian

Regina Margarita Castillo, Note, *Title IX Protection: On the Basis of Privilege*, 26 HARV. LATIN AM. L. REV. 501 (2023).

The exclusion of victim intersectionality factors from implementing Title IX regulations in educational institutions has limited its efficacy. The Supreme Court in *Gebser v. Lago Vista Independent School District* and *Davis v. Monroe County School Board* set too-high liability standards in cases brought by private parties against institutions, which did not incentivize schools to effectively prevent or remedy violations. In 2011, the Department of Education's Office of Civil Rights ("OCR") promulgated the Dear Colleague Letter, changing Title IX from being response-focused to including proactive measures like prevention education and training programs for faculty and students. Regina Margarita Castillo highlights the lack of women's support, citing schools with continuing sexual assault problems post- and pre-regulation review, such as the University of Colorado's athletic department, which, despite OCR guidance, did not sufficiently enhance its response system. Further, the lack of prevention by addressing either rape myths or pervasive assault culture presents a disproportionately higher risk to minority women. This harms Latinas due to (1) cultural norms that influence how they perceive sexual violence; (2) the likelihood that any preventive or responsive education programs are offered exclusively in English; and (3) their tendency not to seek help from personal or institutional support systems, making them more vulnerable. Title IX standard changes since the 2011 Dear Colleague Letter have not improved outcomes, and the author endorses a more holistic approach.

Annotated by: Ariella Fetman

Neena Albarus, Article, *An overview of the ongoing legacies of colonialism in contemporary legal systems in the Black Diaspora*, 23 BERKELY J. OF AFR. AM. L. & POL'Y 15 (2023).

During the fifteenth century, European colonizers imposed their legal systems and policies in colonized regions. These systems emphasized racial and ethnic hierarchies and entrenched white European colonizers at the top. They implemented systems through which they enslaved and governed Black populations to maintain social control. Even after the abolition of slavery, the colonizing powers established prisons and judicial systems, which continued to oppress Black populations. In this article, Neena Albarus describes how colonial legal systems and policies have historically shaped Black communities in the diaspora and how their continued influence impacts these communities today through the disproportionate punishment and incarceration of Black people, in addition to dispossessing Black people of land ownership. The author reviews existing efforts to protect marginalized groups through constitutional and legal system reforms. The author also proposes a need to critically examine colonial legal systems, their specific histories, and their continued impacts today. Ultimately, the author suggests a multifaceted, intersectional approach to addressing these issues, including promoting diversity and inclusion in the legal profession, advocating for less punitive laws, adopting restorative justice models, and prioritizing collective safety and equity in law.

Annotated by: Hani Fish-Bieler

Lily Verbeck, Article, *A Class Left Behind: An Assessment of State Voter Competency Laws and the Disenfranchisement of People with Mental Disabilities*, 32 Geo. Mason U. Civ. Rts. L.J. 149 (2022).

The majority of American states have voter competency laws, following one of two models. In most states with voter competency laws, people with mental disabilities are disenfranchised under general prohibition statutes. The remaining states require case-by-case judicial determinations of incompetence. General prohibition statutes are vulnerable to constitutional challenges, per *Doe v. Rowe*, which held that categorically disenfranchising citizens under guardianship for mental illness violates the Due Process and Equal Protection Clauses. Lily Verbeck argues that all such general prohibition statutes violate the Due Process Clause and the vagueness and overbreadth doctrines. While some states' judicial determination laws may lack sufficiently clear, rigorous, and voting-specific criteria for judges to assess voting capacity, the case-by-case model can efficiently protect the right to vote and account for the wide-ranging circumstances of people with mental disabilities. The author suggests that other states adopt California's judicial determination model, which is based on the American Bar Association's recommendations. California's model begins with a presumption of voting competency, provides voting-specific criteria to evaluate competency, and requires findings of incompetence to meet the clear and convincing evidence standard. These qualities meet constitutional mandates and provide stronger voting protections than the competency laws of other states.

Annotated by: Ezra Littlewood

INDIGENOUS RIGHTS

Leonardo Figueroa Helland, Note, *Indigenous Pathways Beyond the "Anthropocene": Biocultural Climate Justice Through Decolonization and Land Rematriation*, 30 N.Y.U. ENV'T L.J. 347 (2022).

Modern societies driven by Eurocentric ideals, including capitalism, racism, and colonialism, have reduced biodiversity and cultural diversity. This phenomenon has pushed the planet towards an irreversible Hothouse Earth state. Indigenous people's enduring commitment to the environment is essential to restoring biodiversity and fighting climate change. Leonardo Figueroa Helland analyzes indigenous world views that value non-human relationships and the interconnectedness of people and land. These values contrast the dominant powers that currently commodify and exploit nature. The author explains that international green projects perpetuating Eurocentric ideals and merely including indigenous voices are insufficient solutions. Instead, the world needs a rematriation approach to decolonization that recognizes indigenous communities' sovereignty and traditions. Rematriation approaches uproot the systems responsible for damaging indigenous communities and the environment. Increasing the diversity of indigenous cultures and dismantling harmful existing structures will, in turn, increase biodiversity and promote climate justice.

Annotated by: Jacklyn Hadzicki

GENDER & RACE

Kira Eidson, Note, *Addressing the Black Mortality Crisis in the Wake of Dobbs: A Reproductive Justice Policy Framework*, 24 GEO. J. GENDER & L. 929 (2023).

The maternal mortality rate for Black women was more than double the national average prior to the *Dobbs v. Jackson Women's Health* decision. Access to safe abortion has proven to be one of the most successful and cost-effective remedies to lower maternal death rates. Estimates indicate that a nationwide abortion ban would lead to a thirty-nine percent increase in maternal deaths among Black people. This disparity results from structural racism, evident in implicit bias, disparities in healthcare quality, and social determinants of health. Black women face greater obstacles in accessing health care due to decades of redlining and are less likely to receive quality care. Consequently, Black people giving birth are less likely to receive epidurals and more likely to undergo medically unnecessary cesarean sections. *Dobbs* increases the risk of maternal death by denying medically necessary abortions and underscores the need for expanded healthcare coverage. A reproductive justice framework is necessary to address maternal mortality, as it goes beyond merely expanding the right to abortion, but also emphasizes facilitating access. Implementing this framework to address maternal mortality requires: (1) expanding access to abortion; (2) acknowledging racial disparities in health care; (3) implementing racial bias training for health care providers; (4) abolishing the Hyde Amendment; and (5) expanding Medicare to cover twelve months of postpartum care.

Annotated by: Katie Negroni

Madeline Terlap, Note, *Reworking Women's Work: Legal and Policy Solutions for Alleviating Poverty Among Working Women*, 30 GEO. J. ON POVERTY L. & POL'Y 639 (2023).

Women, particularly women of color, constitute the majority of individuals living in poverty in the United States. Additionally, most low-paid workers are women. Despite participation in the workforce, women are confronted with obstacles that exacerbate these numbers, including poor job quality, insufficient access to education, and an absence of childcare support. Poor job quality reinforces poverty rates among women due to historical gender-based occupational segregation, which contributes to wage gaps, discriminatory hiring practices, and hostile work environments. Madeline Terlap addresses these issues by analyzing the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (the "Act"), labor statistics, and a case study. The 1996 welfare program intended for recipients to exit poverty by requiring employment. However, the Act increased the number of women living in poverty by placing women in poor-quality jobs. Remedying decades of the Act's consequences requires state and federal legislature solutions that aim to improve women's financial independence. These solutions include: (1) implementing labor regulations, such as raising the minimum wage and establishing anti-harassment policies; (2) increasing government funding for educational opportunities; and (3) providing comprehensive familial support, including childcare and mandated paid time off.

Annotated by: George Galan

ENVIRONMENTAL JUSTICE

Helen Sprainer, Note, *Air Quality Equity: Why the Clean Air Act Failed to Protect Low-Income Communities and Communities of Color from COVID-19*, 30 N.Y.U. ENV'T L.J. 123 (2022).

The Clean Air Act of 1970 (the "Act") fails to protect marginalized communities from environmental harm, which is correlated to higher COVID-19 infection and mortality rates. The Act requires the Environmental Protection Agency ("EPA") to set the maximum acceptable concentration of fine particulate matter pollution ("NAAQS"). Additionally, the Act authorizes the EPA to review and update the NAAQS to protect minority populations from historic, disproportionate exposure to such pollution. The EPA believes that the existing standard is sufficient to eliminate environmental and health disparities. However, Helen Sprainer argues that compliance with the current NAAQS does not protect low-income communities and communities of color from particulate matter-related mortality. Therefore, the EPA must incorporate environmental justice concerns into the existing framework of the Act. To protect vulnerable communities, the EPA should: (1) revise the current fine particulate matter pollution NAAQS to make these standards more precise; (2) create a regulatory review process that promotes equity; and (3) add requirements to the State Implementation Plans that focus on localized environmental justice concerns. The COVID-19 pandemic has exacerbated environmental and health disparities in the United States. Thus, this is a critical time for reform to ensure equitable access to healthy and safe communities.

Annotated by: Emily Glazier

Randall S. Abate, Article, *"Fool Me Once, Shame on You": Promoting Corporate Accountability for the Human Rights Impacts of Climate Washing*, 18 INTERCULTURAL HUM. RTS. L. REV. 1 (2022).

Carbon majors are frequently alleged to engage in climate washing of their economic activities. These companies, the very largest emitters of greenhouse gasses, attempt to launder their contributions to climate change by overstating to consumers the extent of their efforts to minimize their climate impact through carbon capture and other means. This kind of misrepresentation is potentially amenable to suit based on classical tort principles, but they also present human rights concerns, ranging from the destruction of indigenous ways of life as global temperatures shift all the way to loss of territory as sea levels rise. Following the inclusion of a statement on the impact of climate change on human rights in the Paris Agreement in 2015, a variety of national tribunals, commissions, and United Nations ("UN") bodies have begun to create a web of precedent that further enmeshes human rights into considerations of climate change. Of particular note, the UN Guiding Principles on Business and Human Rights recognizes that businesses have an obligation to respect and promote human rights regardless of inaction by government entities on climate change. Leveraging these principles, the Federal Trade Commission should take action both by revising its *Green Guides* and by promulgating new regulations. In addition to making the guidance mandatory, it should include harsher civil penalties and criminal liability for egregious violations.

Annotated by: Charles Bachmann

EDUCATION

Samuel Vincent Jones, Article, *Law Schools, Cultural Competency, and Anti-Black Racism: The Liberty of Discrimination*, 21 BERKELEY J. OF AFR. AM. L. & POL'Y 84 (2021).

Anti-Black racial discrimination represents a constant feature of the law school experience. The American Bar Association ("ABA") fails to implement adequate measures to curtail anti-Black racial harassment on law school campuses, underrepresenting Black law students and faculty, and lowering graduation and bar passage rates among Black law students. This is because the ABA rules lack a reasonable expectation of compliance, essentially granting law schools the freedom to discriminate against Black law students. Samuel Vincent Jones suggests incorporating cultural competency into legal education as an effective and possibly necessary response to combat anti-Black discrimination. This is because racially hostile learning environments reduce the likelihood of equal opportunities and academic success for Black students. Cultural competency instruction provides students with the skills to resolve complex legal issues crucial for serving a diverse clientele. Additionally, it improves students' cultural literacy, enriches their overall campus experience, facilitates learning from professionals beyond the legal profession, and enhances employment opportunities for law students. Cultural competency training offers additional benefits to law schools and law students: it increases the likelihood of compliance with Title VI, respects student autonomy, and promotes racial equality, particularly for Black law students.

Annotated by: Andrea Shahrabani

Christopher Cruz, Note, *From Digital Disparity to Educational Excellence: Closing the Opportunity and Achievement Gaps for Lowincome, Black, and Latinx Students*, 24 HARV. LATINX L. REV. 33 (2021).

School shutdowns and the transition to virtual learning during COVID-19 highlighted educational inequality in marginalized low-income groups compared to their wealthier counterparts, widening broad achievement gaps. Despite litigation efforts framing educational rights as fundamental, further striving to address access to quality education and federal-level policy reforms could narrow achievement gaps. In addition to the insecurities in food, health, jobs, and housing, the home may not be the most desirable place for students to study. At the federal and state levels, increasing internet access in rural areas and providing affordable costs would lessen the homework gap. Additionally, enhancing the quality of the entire PreK-12 education by increasing teacher salaries and funding professional development programs would further reduce educational inequality. Education should encompass a broader range of career pathways, including skill-based education. This may be achieved through a comprehensive review of occupational options. Adding non-traditional courses to the curriculum, concrete pedagogical reforms, and policy reforms outside the school setting, such as the child tax credit, may be impactful. Ultimately, bridging the digital divide, elevating the quality of instruction, and providing economic and social support to students and families would offer significant opportunities to the most marginalized groups.

Annotated by: Joon Young Lim

EMPLOYMENT LAW & WORKPLACE DISCRIMINATION

Anna Maria Sicenica, Student Article, *Increasing Representation: Expanding Intersectional Claims in Employment Discrimination*, 61 DUQ. L. REV. 341 (2023).

While there is much legislation prohibiting employment discrimination, such as Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, individuals who belong to two or more protected groups under the law ("intersectional claimants") may be challenged when attempting to pursue claims in certain court jurisdictions. Even when permitted, intersectional claimants face the potential of two different legal standards, which require a higher standard and place undue emphasis on a single characteristic, thereby ignoring the holistic, real-life experience of the individual. These issues result in the erasure of unique identities and the failure to remediate discrimination. Today, courts are more permissive in allowing intersectional claims, even those arising under different statutes. In addition, courts are interpreting the stricter standard more moderately, which is a positive sign in addressing these issues. Anna Maria Sicenica proposes that Congress or the Equal Employment Opportunity Commission explicitly allow for intersectional claims and provide judicial guidance to that end. The issue of potentially differing standards can be solved if the courts follow a lenient interpretation of the stricter standard. Courts should be educated to holistically understand unique identities by providing historical and contextual information about various identity groups.

Annotated by: Avi Kiel

Shannon Cumberbatch, Article, *When Your Identity Is Inherently "Unprofessional": Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness As Black Women and Gender Non-Conforming Professionals*, 34 J. C.R. & ECON. DEV. 81 (2021).

The legal field's expectations of professional appearances are exclusionary and oppressive to Black women, gender non-conforming people, and other marginalized groups. It is essential to engage in intersectional, anti-oppressive criticism and analysis to combat a policy that originates from the white, cisheteronormative, patriarchal foundation of the American legal system. Notably, the prevailing norms of professional appearance uphold standards that promote masculine portrayals of professionalism, reinforce traditional gender binaries, and conflate professionalism with physical attributes associated with whiteness. Dismantling these norms begins with examining the underlying intent of each provision in professionalism policies, identifying anti-oppressive purposes, and formulating provisions that effectively align with new intentions. An inclusive policy should consider diverse expressions of professionalism and formality, carefully prioritizing human dignity over the dignity of the historically oppressive court and legal field. Such a policy should be equally applicable and accessible to all, devoid of coded, conclusory language regarding professional traits. Despite culturally ingrained perceptions about professional appearances, judges and lawyers must work to systematically address every remaining vestige of white supremacy, cisheteronormativity, and other oppressive ideologies in the legal system.

Annotated by: Hope Peraria

Waleska Suero, Comment, "*We Don't Think of It As Sexual Harassment": The Intersection of Gender & Ethnicity on Latinas' Workplace Sexual Harassment Claims*, 33 CHICANA/O-LATINA/O L. REV. 129 (2015).

The over-sexualization of Latinas in American culture affects their perception of workplace sexual harassment, which diverges from the experiences of other racial minority groups. Initially, the Supreme Court established a subjective standard for harassment claims and later introduced a two-prong test encompassing both subjective and objective elements. Waleska Suero contends that the existing standard fails to account for workplace power dynamics, unfairly burdening women to reject sexual advances outright. The author applies Critical Race Theory to draw parallels between the experiences of Black and Latina women, exploring common aspects of sexuality and socioeconomics. This framework sheds light on how Latinas navigate workplace harassment. Additionally, Latino/Latina Critical Legal Theory addresses the fetishization of Latinas to explain why this group often refrains from filing claims. This analysis underscores factors such as (1) in-group loyalty; (2) limited legal familiarity; and (3) economic vulnerability. Given Latinas' unique experiences, adopting a meaningful consent standard based on a woman's words or actions is the most productive path forward. While this approach has advantages and disadvantages, it seems to be the prevailing option, as it can potentially combat pervasive Latina stereotypes. Overall, this will lead Latinas to make better-informed decisions regarding the filing of harassment lawsuits.

Annotated by: Jenna Rosenstein

CONSTITUTIONAL LAW

David B. Owens, Note, *Violence Everywhere: How the Current Spectacle of Black Suffering, Police Violence, and the Violence of Judicial Interpretation Undermine the Rule of Law*, 17 STAN. J. C.R. & C.L. 475 (2022).

David B. Owens argues that America is currently experiencing a phenomenon known as the Spectacle of Black Suffering, in which the public is exposed to a display of police and judicial violence against the Black community. This includes abuse of power by authoritative figures, intentional and disproportional violence, and the mass consumption of these violent incidents. Additionally, violence through language is a repressive method used to assert political power by both law enforcement and the judicial system. Judicial violence, often carried out through judicial interpretation, is prominently displayed through the doctrine of qualified immunity, which denies remedies to those whose constitutional rights were violated. In so doing, the judiciary blesses police violence while turning its back on plaintiffs with sound constitutional claims who seek redress. The courts also ignore important constitutional questions while promoting violence through the guise of qualified immunity. One solution to address judicial violence is to ensure that juries are granted the opportunity to hear conditional cases involving qualified immunity. According to the author, juries are better equipped to hear qualified immunity cases because they can assess the Spectacle of Black Suffering through their experiences as members of the community.

Annotated by: Jack Gatcliffe

Vaughn Ford-Plotkin, *Climate Change and the Carceral System: How Extreme Weather Threatens Inmates' Eighth Amendment Rights*, 28 BERKELEY J. CRIM. L. 1 (2023).

The exposure of incarcerated individuals to extreme weather conditions violates the Eighth Amendment's prohibition on cruel and unusual punishment. The Prison Litigation Reform Act ("PLRA") stifles the ability of prisoners to protect their constitutional rights by preventing them from effectively establishing standing. There are documented accounts of prisoners being left unprotected in the face of extreme and sometimes deadly heat, cold, flooding, wildfires, and the resulting unacceptable sanitary conditions. However, the PLRA prevents prisoners from suing for relief based on these issues. The language from case law decided by the Supreme Court could be employed to successfully cover climate change under the Eighth Amendment. Repealing the PLRA and weatherizing prison infrastructure are viable solutions to the continued exposure of prisoners to cruel and unusual punishment due to extreme weather conditions. The weatherization of prisons can be achieved by adding prisons to infrastructure bills and creating or expanding federal policy mandating humane living standards in prisons. Time, cost, and the difficulties associated with changing the culture surrounding society's perception of how prisoners should be treated all serve as hurdles to preventing the exposure of prisoners to extreme weather conditions. Mitigating actions and repealing the PLRA are necessary to resolve how climate change and global warming violate prisoners' Eighth Amendment rights.

Annotated by: Mitchell Kevett

CRIMINAL JUSTICE

Inès Zamouri, Article, *Self-Defense, Responsibility, and Punishment: Rethinking the Criminalization of Women Who Kill Their Abusive Intimate Partners*, 30 UCLA WOMEN'S L.J. 203 (2023).

Incarcerated women have become the fastest-growing segment of the carceral population in the United States. A common trait among these women is a history of gender-based violence at the hands of an intimate partner prior to being incarcerated. When survivors who kill their abusers are punished and criminalized for defending themselves, the criminal legal system fails to consider the complexities of intimate partner violence. Survivors of intimate partner violence have a few avenues for relief, such as asserting self-defense, Battered Women's Syndrome, insanity, and provocation. However, due to issues relating to implicit biases or the inadequate assessment of a survivor's mental condition, these avenues are oftentimes unattainable for most survivors. Inès Zamouri advocates for the decriminalization of survivors of intimate partner violence. The author suggests that the state is responsible for creating structural barriers to women leaving abusive relationships and that the moral rationales for punishment, such as retribution, deterrence, and rehabilitation, do not apply to survivors of intimate partner violence. Instead, the United States should embrace alternatives to the existing criminal legal framework, including: (1) reducing sentences or resentencing survivors of intimate partner violence; (2) adopting anticipatory self-defense laws; and (3) establishing a separate criminal defense for survivors of intimate partner violence who kill their abusers.

Annotated by: Katherine Alonzo

Ava Ayers, Article, *The Impossibility of Local Police Reform*, 50 FORDHAM URB. L.J. 609 (2023).

The United States has long had a fraught and difficult relationship with policing, especially in relation to communities of color, who have often been the victims of police brutality and overutilization of violence by law enforcement. In light of recent movements protesting this treatment, there has been a recent proliferation of interest in different forms of police reform, most of which has been at the municipal level. Ava Ayers discusses the various legal and viability issues accompanying this focus on local-only reform, arguing that it is largely ineffective and impracticable without further support from state and federal governments. Municipalities often do not have the power to enact meaningful reform because there is a lack of expertise and leverage that prevents cities from having final say on policing. The issues surrounding criminal justice and law enforcement reform are multidimensional, making it difficult for individual municipalities to make decisions that have meaningful, systematic differences. State and federal governmental institutions are more structurally equipped with expert information and financial resources, making them more qualified to introduce reforms. The unique differences among local governments and the variability of structures within them, coupled with the history of racial discrimination within the institution of law enforcement, suggest that both state and federal governments should implement the adjustments necessary to change policing to see improved outcomes.

Annotated by: Skylar Corby

FAMILY LAW & CHILD WELFARE

Katie Coyle, Article, *The Case for the Prohibition of Corporal Punishment in the U.S.*, 43 CHILD. LEGAL RTS. J. 21 (2023).

In contrast to Europe, where corporal punishment of children is largely prohibited, the United States has yet to fully ban this practice. The United States imported corporal punishment from European educational customs. Today, states have passed legislation limiting and prohibiting corporal punishment in schools. Nevertheless, there is currently no legislation regulating or prohibiting corporal punishment within the home. Research revealing the detrimental effects on children and society, advocacy from human rights organizations, and government initiatives to educate parents and shift societal attitudes prompted European countries to prohibit the use of corporal punishment on children. Katie Coyle argues that now is the time to challenge American legal precedent allowing for corporal punishment in schools because of recent research questioning its effectiveness, advocacy opposing it, and its overall decline at schools. The difficulty of challenging corporal punishment in the home environment is compounded by deeply entrenched beliefs in American culture, which assert that children are parents' property and parents have the right to discipline them.

Annotated by: Emily Hall

Sarah Diaz & Oneida Vargas, Note, *Denormalizing Harm to Migrant Children in the U.S. Immigration System: A Comparative Perspective*, 43 CHILD. LEGAL RTS. J. 1 (2023).

Unlike other facets of American law, which cater to the inherent vulnerabilities of a child-defendant, the United States immigration system harms migrant children by ignoring their mental and emotional needs as minors. The current policies of familial separation and prolonged group care for unaccompanied children neither consider the child's best interest nor are subject to proper judicial review. Furthermore, court practices often inflict trauma upon migrant children due to the absence of defense counsel and trained specialists, the necessity for these children to testify, and the utilization of adult criminal judicial procedures. Sarah Diaz and Oneida Vargas support their claim by: (1) highlighting legislation enacted during the Trump Administration, which exacerbated abusive practices and discriminatory policies; and (2) showcasing studies that provide evidence of the harm suffered by migrant children due to such practices and policies. Immigration reform must reflect the objectives of the United States Child Protective Services–namely, prioritizing family unification and family-based foster care–while also striving to minimize unnecessary court interactions. Implementing these reforms would mitigate harms to migrant children by emphasizing their status as children rather than migrants.

Annotated by: Olivia Handelman

Naomi Cahn, *The Political Language of Parental Rights: Abortion, Gender-Affirming Care, and Critical Race Theory*, 53 SETON HALL L. REV. 1443 (2023).

Political partisanship has invaded the parent-child-state triad regarding minors' rights to reproductive care. State legislatures employ parental-involvement laws to advance partisan policies. Naomi Cahn addresses minors' access to reproductive care and the legal framework either supporting or denying such access, both before and after *Dobbs v. Jackson Women's Health Organization*. Prior to *Dobbs*, decisions regarding a minors' access to abortion were mostly left to doctors; *Dobbs* gave that decision-making power to state legislatures. Further examining parental-involvement laws, the author explores the conflict between ensuring that children are not reduced to mere objects of parental control while safeguarding a parent's right to act in their child's best interest. The critical issue revolves around the instances in which the state or a child can override a parent's decision. The discourse surrounding abortion has complicated matters, as politicians invoke parental authority concerns to impact LGBTQ+ education, Critical Race Theory, and gender-affirming care. The increasing polarization between Democrats and Republicans has led to a similar increase in polarity regarding public perception of abortion rights, and the country is left with two warring factions. The solution entails investing in public welfare programs that guarantee universal access to essentials such as education, nutrition, and healthcare. Inserting partisanship into the parent-child-state triad fails to protect minors' rights and serves as a barrier to accessing reproductive care.

Annotated by: Kathleen Leuty

IMMIGRATION

Yuri Han & Katrina Landeta, Article, *How States Can Play a Role in Abolishing Immigration Prisons*, 38 UCLA CHICANX-LATINX L. REV. 125 (2022).

In response to widespread safety and welfare concerns for detainees in privately-owned prisons, California Governor Gavin Newsom signed Assembly Bill (AB) 32, which is considered the strictest ban on private prisons in the United States. While private prisons–which incentivize companies to reduce costs at the expense of detainee welfare–have long been the subject of criticism and legislative reform, few reforms include immigration prisons within their scope. Immigration detention has increased rapidly since the 1980s, with racially charged views and rhetoric contributing to legislation and court decisions permitting the prolonged detention of many immigrants. AB 32 focuses on ending the private detention of individuals held not just for criminal offenses, but also for immigration-related ones. Despite legal challenges from private prison companies and the Trump Administration, as well as a ruling against AB 32, Yuri Han and Katrina Landeta suggest that the presumption against the preemption doctrine could successfully reframe the legal argument in favor of AB 32. This argument assumes that states have the authority to regulate serious risks to vulnerable populations unless Congress expressly dictates otherwise. AB 32 continues to be influential in the movement to end migrant mistreatment because it has served as a legislative model for states concerned with private immigration prisons, including Washington, Maryland, and Oregon.

Annotated by: Laura Tierney

Cody Uyeda, Note, *Addressing Gendered Trauma, Identity, and the Crime-to-Deportation Pipeline Among Southeast Asian Men*, 25 UCLA ASIAN & PAC. ISLANDER L. REV. 161 (2021).

Under the Trump Administration, there was a drastic increase in deportations of Southeast Asians. Cody Uyeda highlights that many of these deportations stem from old convictions for aggravated felony crimes and non-cooperation of certain Southeast Asian countries in repatriation. These convictions are due to immigration policies significantly expanding the range of deportable offenses. A major issue with this expansion is that it fails to consider the individual or rehabilitation attempts but focuses solely on the offense. While the perpetrators of these crimes have agency, the underlying cause for this criminal behavior is trauma experienced by Southeast Asian immigrants. This trauma is associated with several factors, including post-traumatic stress disorder resulting from escaping war and shifts in immigration status and family dynamics. Factors such as a shift in the status of being breadwinners in their home countries but not in America, and different standards of masculinity, have caused some of these men to resort to violence to assert their masculinity. The author suggests the following solutions: (1) ceasing deportations of convicted immigrants who have been rehabilitated; (2) educating young men about the connections between trauma, crime, and deportation; (3) providing prisoner rehabilitation services; (4) addressing mental health issues; and (4) narrowing the broad aggravated felony categories.

Annotated by: Yeniliz Peguero