WOMEN'S ANNOTATED LEGAL BIBLIOGRAPHY

ABORTION

Janeen F. Berkowitz, Note, Stenberg v. Carhart*: Women Retain Their Right To Choose,* 91 J. CRIM. L. & CRIMINOLOGY 337-383 (2001).

This Note discusses the U.S. Supreme Court's holding in *Stenberg v. Carhart,* that a Nebraska statute banning partial-birth abortions was unconstitutional. The Court held that the statute failed to consider the mother's health, and its vague language could be read to allow for a de facto cancellation of the right to choose, placing an undue burden on women who want partial-birth abortions. The author justifies the Court's holding by referring to the evolutions of the right to privacy and abortion and by exploring the statute's legislative history. Nevertheless, the author expresses concern over the Court's failure to decide whether prohibiting even a single method of abortion is itself an undue burden on the right to choose, which she argues is unconstitutional.

Mandy Joersz, *Abortion & Birth Control – Right To Abortion & Regulation Thereof: The United States Supreme Court Invalidates a Statute Banning Partial Birth Abortions* Stenberg v. Carhart, *530 U.S. 914 (2000),* 77 N.D. L. REV. 345-373 (2001).

Under an old Nebraska statute, doctors who performed partial birth abortions were considered felons and were required to forfeit their medical licenses, serve prison terms, and pay fines. Dr.

Leroy Carhart was the only doctor in Nebraska willing to abort babies after the sixteenth week of gestation when the statute was in effect. He challenged the constitutionality of the statute, arguing that it forced women seeking partial birth abortions to face an "undue burden." The district court and the Eighth Circuit found the statute unconstitutional. The U.S. Supreme Court agreed, noting that (1) the statute placed an "undue burden" on a woman who wanted a partial birth abortion and (2) the statute did not provide an exception for the protection of the mother's health.

Kevin Yamamoto & Shelby A.D. Moore, *A Trust Analysis of a Gestational Carrier's Right To Abortion*, 70 FORDHAM L. REV. 93-186 (2001).

Gestational surrogacy, a method that allows a gestational carrier to carry a fetus for an intended parent, has led to an intense debate due to conflicts among the gestational carrier, the fetus, and the intended parents. This Article notes that a gestational carrier's responsibility to give birth to a child conflicts with her fundamental right to abortion. However, the authors argue that the right to abortion is not an absolute right, though it is a fundamental right. Hence, the gestational carrier should be treated as a trustee of the fetus, and she should be required to fulfill her fiduciary obligation, which is to carry the fetus to term for the intended parents.

ADOPTION AND VISITATION RIGHTS

Charles P. Archer, Troxel v. Granville*: The End of Grandparent Visitation?*, 3 J.L. & FAM. STUD. 179-188 (2001).

This Article addresses the effect of the U.S. Supreme Court's ruling in *Troxel v. Granville* on statutes regulating the visitation rights of grandparents. *Troxel* appears to deny grandparents visitation rights, since it declared unconstitutional the Washington statute which granted such rights. However, a more careful reading of *Troxel* reveals that the U.S. Supreme Court only reaffirmed the long standing established rights of parents to determine how their children should be cared for and who should be involved in their children's lives.

Mollie Burks-Thomas, *A Closer Look at the Cross-Examination Rights Bestowed in* In re Matthew P.*: Are All Parents Created Equal?*, 28 W. ST. U. L. REV. 159-175 (2001).

This Article criticizes the California decision of *In re Matthew* which grants de facto parents cross-examination rights in child dependency proceedings. According to the author, these rights are legally illogical. De facto parents are a legal fiction, which was developed by courts to grant caretakers, other than the child's biological parents, legal standing to participate in child dependency proceedings. The author argues that it is absurd to grant de facto parents cross-examination rights when biological parents are not entitled to such rights. She argues that such rights also obstruct the goal of these proceedings which is to reunite children with their biological parents. Furthermore, she argues that California courts should return to the standard set forth in *Keisha E.* regarding de facto parent participation in these types of proceedings.

Shane Fenton Krauser, In re Adoption of B.B.D. *An Unwed Father's Constitutional Right: Existence of Paternal Rights in the Face of Inconvenient Duty,* 3 J.L. & FAM. STUD. 219-232 (2001).

This Article discusses the recent Utah Supreme Court decision in *In re Adoption of B.B.D.* as well as recent federal and state limits (which have been constitutionally sanctioned) on establishing paternity. In *B.B.D.*, the court denied an unmarried father the right to contest an adoption when he failed to follow Utah's statutory scheme for establishing paternity. The author argues that although the result in this case might seem harsh, various interests including the rights of the mother and the best interests of the child are at stake. Thus, despite a father's biological connection and the fact that the state statutory scheme is inconvenient, a father is obligated to follow such scheme's in establishing paternity.

Sally F. Goldfarb, *Visitation for Nonparents After* Troxel v. Granville*: Where Should States Draw the Line?*, 32 RUTGERS L.J. 783-823 (2001).

This Article discusses the future of non-parents' visitation rights in the wake of the recent U.S. Supreme Court case *Troxel v. Granville.* In *Troxel,* a plurality of the Court decided that a Washington statute regarding non-family visitation was overbroad, and that it violated parents' fundamental right to make decisions for their children based on the children's best interests. The author argues that states should use three criteria when drafting visitation statutes: (1)

the child's relationship to the non-parent; (2) the legal parent's consent to the visitation; and (3) whether the child is a member of a household which features domestic violence. The author also believes that states should not distinguish between grandparents and other non-parents, between "intact" and "non-intact" families, and between homosexuals and heterosexuals. The Article concludes that due to the Constitution's ambiguity on this subject, the future of non-family visitation rights rests with state legislatures.

Stephanie Kuuipo Miya, In re Adoption of A.B. *The Best Interests of the Child?*, 3 J.L. & FAM. STUD. 233-241 (2001).

The author criticizes courts' tendencies to ignore the "best interests of the child" when making custody determinations. In *Petition of Doe*, a child was removed from his adoptive parents' home after living with them for three years. Utah courts did not prove any more attentive to the "best interests of the child" in *In re Adoption of A.B.*, where a woman lost her right to adopt her grandchildren because of a filing glitch; her right to visitation also terminated when the parents' parental rights ended. The author argues that courts should employ an approach more attuned to children's "best interests," an approach like the one set forth in *Brown v. Kittle.*

J. Thomas Oldham, *Limitations Imposed by Family Law on a Separated Parent's Ability To Make Significant Life Decisions: A Comparison of Relocation and Income Imputation*, 8 DUKE J. GENDER L. & POL'Y 333-341 (2001).

When a child's parents are going through the separation process, a constant issue is the ability of the custodial parent to move wherever he/she wishes. It may seem fair to allow the custodial parent to relocate. But, one must consider the effects of the move on the non-custodial parent who usually desires to continue a relationship with the child and to fulfill his/her duties as a parent. Many different approaches and model rules have been formulated by various jurisdictions in an attempt to resolve this dilemma. Some of these approaches include imposing restrictions on when the custodial parent may move, making determinations on a case-by-case basis, or simply not allowing the move. The author concludes that courts lack uniformity as to which approach is best.

Rachel Sims, Note, *Can My Daddy Hug Me?: Deciding Whether Visiting Dad in a Prison Facility Is in the Best Interest of the Child,* 66 BROOK. L. REV. 933-970 (2001).

Trial courts are routinely urged to determine incarcerated fathers' visitation rights based on the "best interests of the child" standard. However, appellate courts provide little guidance regarding the factors to be weighed in reaching such determinations. This Note examines this issue by analyzing the constitutional underpinnings of fathers' rights, the unique issues inherent in allowing incarcerated fathers visitation rights, and the manner in which several state appellate courts have dealt with the issue. The author concludes by offering a proposed set of guidelines, which aim to preserve as paramount the interests of the child while enabling the courts to more adequately weigh the various factors involved in making such determinations.

BATTERED WOMEN & DOMESTIC VIOLENCE

Linda L. Ammons, *Dealing with the Nastiness: Mixing Feminism and Criminal Law in the Review of Cases of Battered Incarcerated Women – A Tenth-Year Reflection,* 4 BUFF. CRIM. L. REV. 891-916 (2001).

This Article recounts an experience the author had in 1989 while serving as the gubernatorial liaison to Ohio's Department of Rehabilitation and Correction. The author was assigned to review cases of incarcerated battered women who petitioned for clemency at a time when domestic violence was considered a private problem not suited for public remedy. This Article then argues that battered women should not be unjustly penalized for defending themselves against serious bodily harm or death. Unlike a decade ago, society is now better equipped to intervene and assist domestic violence victims. However, there is still the need to change domestic violence theories and practices, and society must recognize that women are equal citizens and that domestic violence poses a great harm to them.

Margaret F. Brown, *Domestic Violence Advocates' Exposure To Liability for Engaging in the Unauthorized Practice of Law,* 34 COLUM. J.L. & SOC. PROBS. 279-299 (2001).

Domestic violence advocates provide valuable legal assistance to domestic violence victims, greatly increasing victims' chances of obtaining court-ordered protection from domestic abuse. Since, however, many domestic violence advocates are not licensed lawyers,

abusive spouses often take retaliatory legal action against these advocates, arguing that they are engaging in the unauthorized practice of law. To recognize domestic violence advocates' legitimacy, states should exempt them from the unauthorized practice prohibition, or they should develop special state licensing procedures for them. In addition, the justice system should remedy its inability to address the needs of domestic violent victims.

Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. Rev. 801-860 (2001).

In recent years, domestic violence laws have been reformed a great deal. Two new mandatory policies include: (1) arrest when there is probable cause to believe that domestic violence is taking place and (2) no drop prosecutions which state that the victim cannot stop the criminal case against her abuser from going forward. This Article analyzes these recently enacted policies and examines why poor woman are at an even greater risk of abuse due to them. She concludes that arrests do not deter low-income abusers, and she suggests other strategies to deal with the dual vulnerabilities poor women face.

Jennifer R. Hagan, Note, *Can We Lose the Battle and Still Win the War?: The Fight Against Domestic Violence After the Death of Title III of the Violence Against Women Act*, 50 DEPAUL L. REV. 919-991 (2001).

This Note proposes that Title III of the Violence Against Women Act (VAWA), which the U.S. Supreme Court found to exceed Congress' Commerce Clause power in *United States v. Morrison*, is necessary to prevent violence against women. The author therefore argues that Congress should reenact Title III pursuant to the Thirteenth Amendment rather than the Commerce Clause or the Fourteenth Amendment. According to the author, domestic violence fits within the purviews of the prohibition against slavery.

Alberto B. Lopez, *Forty Yeas and Five Nays - The Nays Have It:* Morrison's *Blurred Political Accountability and the Defeat of the Civil Rights Provision of the Violence Against Woman Act*, 69 GEO. WASH. L. REV. 251-292 (2001).

This Article begins by giving a brief history of the federalism debate, concentrating on the Commerce Clause and state rights. The author then reviews the Violence Against Women Act (VAWA),

which Congress enacted to remedy states' failures to handle the problem of gender-based violence. Relying on numerous U.S. Supreme Court cases, the author next critiques the political safeguards of federalism and the precedents the Court relied on in *United States v. Morrison* to invalidate the VAWA. The author concludes that by invalidating the VAWA, the Court hindered women by taking away any viable remedies they had for gender-based discrimination or attacks.

Hannah R. Shapiro, *The Future of Spousal Abuse as a Gender-Based Asylum Claim: The Implications of the Recent Case of* Matter of R-A-, 14 TEMP. INT'L & COMP. L.J. 463-491 (2000).

According to this author, women have always been the victims of mistreatment. In support of this argument, she points to *Matter of R-A-*, where the Board of Immigration Appeals denied asylum to a woman because her abuse did not occur as a result of political opinion. She also points to today's asylum law framework which does not recognize gender as a basis for allowing a female to flee her country of origin. However, the author argues that although the immediate result of *Matter of R-A-* was negative, this decision was important because it brought to the Board's attention the fact that mistreatment of women also occurs in the private realm. Unfortunately, future victims of domestic violence will find it difficult to advance their claims if they cannot distinguish their case from this one.

Anita Sinha, Note, *Domestic Violence and U.S. Asylum Law: Eliminating the "Cultural Hook" for Claims Involving Gender-Related Persecution*, 76 N.Y.U. L. REV. 1562-1598 (2001).

Typical asylum laws do not mention gender as a basis for persecution or as a fear of persecution. In an effort to fill this void, the Immigration and Naturalization Services has established Guidelines which expedite gender-based asylum claims. Domestic violence claims safely fit into the framework of these laws. Unfortunately, however, these Guidelines are not binding on the Board of Immigration, and they have rarely been used to decide cases such as *Matter of R-A-*. After evaluating the above in the context of three gender-based asylum cases, the author concludes that the entire asylum system needs to be reworked so that asylum adjudicators can make informed decisions on the basis of the violence incurred rather than based on the woman's cultural status.

Jacqueline St. Joan & Nancy Ehrenreich, *Putting Theory into Practice: A Battered Women's Clemency Clinic*, 8 CLINICAL L. REV 171-245 (2001).

This Article discusses a University of Denver law school course which permitted law students to advocate for three battered women who were convicted of murdering their batterers. The author, hoping to benefit others who wish to start similar projects, describes the course itself and discusses the issues and problems that arose when the students petitioned the governor of Colorado for clemency on behalf of these women. The students who participated in the course concluded that due to procedural obstacles to clemency for battered women in Colorado, reform is needed to provide these women with fair access to the law.

BREASTFEEDING

Shana M. Christrup, *Breastfeeding in the American Workplace*, 9 AM. U. J. GENDER SOC. POL'Y & L. 471-503 (2001).

This Article contends that since more women are entering the workforce and since there has been an increased interest in breastfeeding, legislative measures that would facilitate the dual role of mother and employee should be passed. According to the author, there are various benefits to allowing mothers to breastfeed at work. These benefits include increased productivity, higher job satisfaction, and reduction in staff turnover. The author therefore advocates a new breastfeeding policy, which would require employers to accommodate breast-pumping.

CHILDREN'S RIGHTS

Richard R. Fields, Book Note, 3 J.L. & FAM. STUD. 243-249 (2001) (reviewing JANE WALDFOGEL, THE FUTURE OF CHILD PROTECTION: HOW TO BREAK THE CYCLES OF ABUSE AND NEGLECT (1998)).

The author reviews Jane Waldfogel's book on the child protective system. First, relying on case histories, Waldfogel shows that the child protective system fails to protect children. She then questions why the system has failed, and she concludes that the system's failure is due to its adversarial nature toward parents and the fact that it is reactive rather than preventive. She also blames the system's failure on its twin goals: protecting children and punishing their perpetrators, who are their parents or caretakers. Waldfogel

then proposes that states abandon the current "one size fits all" approach to case handling and that they reform child protective reporting, screening, and investigation procedures by making them more local and discretionary and by involving community partners.

Theresa Glennon, *Expendable Children: Defining Belonging in a Broken World*, 8 DUKE J. GENDER L. & POL'Y 269-283 (2001).

The term "parent" has traditionally been defined by state law. However, the American Law Institute's (ALI) Principle of the Law of Family Dissolution is seeking to provide their own definition of "parent" to establish uniformity and fairness in child support cases. The author focuses on the ALI's category of "parent by estoppel," and on its approach of distinguishing between a stepfather and a presumed father, for purposes of imposing different child support obligations. The author suggests that a parent-child relationship is akin to a fiduciary responsibility, which extends to both presumed fathers and stepfathers. She also suggests that the focus should be placed on the relationship between the parent and the child, which the author concludes will result in greater protection and security for children.

David Greene, Book Review, 10 B.U. PUB. INT. L.J. 360-365 (2001) (reviewing MARJORIE HEINS, NOT IN FRONT OF THE CHILDREN: "INDECENCY," CENSORSHIP, AND THE INNOCENCE OF YOUTH (2001)).

This book review critiques Majorie Heins' work, *Not in Front of the Children: "Indecency," Censorship, and the Innocence of Youth.* This work examines the development of the assumptions that sexual and other culturally-deemed-offensive materials are harmful to children and that they should therefore be censored. In doing so, she studies ancient philosophers such as Plato as well as contemporary actors. She concludes that society should promote children's First Amendment rights because censored materials can have a strong educational value. Greene concludes that Heins' book provides an excellent discussion of the harm-to-minors legal concept and its hampering of children's intellectual development.

Matthew R. Hall, Gonzalez v. Reno: *A Boy Caught in a Political Maelstrom*, 3 J.L. & FAM. STUD. 197-205 (2001).

In the highly publicized case of *Gonzalez v. Reno*, the Eleventh Circuit held that the former Attorney General Janet Reno had rightly

determined that Juan Miguel Gonzalez had the sole authority to act on behalf of his son Elian's application for asylum in the U.S. The author agrees with the court's decision, arguing that there were no grounds for granting asylum and that the decision reaffirmed public policy regarding minors. He points to the fact that the INS normally does not accept asylum applications from minors under the age of fourteen without their parents' consent. He also argues that asylum petitions should be decided based on the law, not based on the disapproval of foreign governments.

Lisa M. Hewitt, *A (Children): Conjoined Twins and Their Medical Treatment,* 3 J.L. & FAM. STUD. 207-233 (2001).

This Article discusses an English case in which the judges ruled against the parents' wishes and allowed doctors to operate on a set of conjoined twin daughters to separate them. One of the twins Mary relied on her sister Jodie's healthier body to survive. The judges understood that separating the twins would essentially sentence Mary to death. Nevertheless, in determining the "best interests" of each baby, the court placed a higher regard on Jodie's interests; she would die shortly if Mary remained attached to her, and it was only because of her that Mary survived this long. The court dismissed the issue of criminal liability, noting that the doctrine of necessity required saving Jodie's life. The author argues that this case will serve as a standard to undermine family choice and autonomy.

EDUCATION

Alicia C. Insley, Comment, *Suspending and Expelling Children from Educational Opportunity: Time To Reevaluate Zero Tolerance Policies,* 50 AM. U. L. REV. 1039-1074 (2001).

The zero tolerance approach to discipline that is employed by public schools evolved from the Gun-Free Schools Act of 1994. Since its inception, states have expanded its provisions to include offenses that are punishable by both suspension or expulsion. This Comment argues that these harsh punishments have been ineffective in reducing violence in schools and that they have negatively affected children. The author also points out that the courts can offer little recourse in resolving the severe consequences of these policies because disciplinary matters are usually deferred to local school boards and because due process challenges are rarely successful. This Comment concludes by suggesting that state policy

makers and school officials reevaluate and reform policies that exceed the scope of the federal act.

Laura Ketterman, Comment, *Does the Individuals with Disabilities Education Act Exclude Gifted and Talented Children with Emotional Disabilities? An Analysis of* J.D. v. Pawlet, 32 ST. MARY'S L.J. 913-942 (2001).

Federal legislation such as the Individuals with Disabilities Education Act (IDEA) guarantees free and individualized education for disabled children. Under these laws, the federal government also awards schools grants to support and encourage gifted and talented children. However, children who are both gifted/talented and who have emotional and/or learning disabilities face unique obstacles. First, it is difficult to identify a disability in a gifted child (or to find exceptional talent in a disabled child). In addition, Congress has refused to provide appropriate education for disabled, gifted children whose grades are at or above average. The author therefore suggests that IDEA's definition of "education" be expanded to provide for gifted children with disabilities.

Lisa A. Wilson & David H. Taylor, *Surveying Gender Bias at One Midwestern Law School*, 9 AM. U. J. GENDER SOC. POL'Y & L. 251-281 (2001).

Although the graduating class at Northern Illinois University College of Law (NIUCOL) was 51% women in 1997, the number of graduating women decreased drastically over the next three years, dropping to 33% in 2000. As a result, the NIUCOL faculty began to look for new methods to attract women to the school. This initiative led to a questionnaire, which had been designed to informally question female students about the classroom environment at NIUCOL and, more importantly, aimed at determining whether there was a "chilly" atmosphere at NIUCOL. The results of the questionnaire showed that women at NIUCOL experienced greater levels of sexual harassment and hostility and less overall satisfaction from their law school experience, and they reported lower levels of participation. The author states that these findings show that programs are needed at NIUCOL to prevent harassing behaviors.

GAY RIGHTS

Shana Brown, Comment, *Sex Changes and "Opposite-Sex" Marriage: Applying the Full Faith and Credit Clause To Compel Interstate Recognition of Transgendered Persons' Amended Legal Sex for Marital Purposes*, 38 SAN DIEGO L. REV. 1113-1157 (2001).

Every American has the right to marry, but this right is limited to marrying a member of the opposite sex. However, since the government has failed to define basic gender terms, an intersexual or transsexual can be declared a woman in one state and a man in another. As a result, many intersexuals and transsexuals live in a state of uncertainty as to whether they may marry and whether their marriages will be valid if they travel across state lines. The author advocates the application of the Full Faith and Credit Clause to this situation in order to reign in this uncertainty; states should be obligated to recognize sex designations made under the laws of sister states.

Darren Bush, *Moving To the Left by Moving To the Right: A Law & Economics Defense of Same-Sex Marriage*, 22 WOMEN'S RTS. L. REP. 115-138 (2001).

Law and Economics theory ("L&E") traditionally frowns upon government interference with transactions which are considered economic, since it believes that such intervention inherently leads to inefficiency. However, followers of L&E, who normally view marriage as a contract, are relatively silent regarding restrictions placed on same-sex marriages. This Article undertakes to determine whether a marriage should be viewed as a contract in the traditional sense and whether same-sex marriages impose upon society any greater inefficiency than heterosexual marriages. The author concludes that same-sex marriages do not impose such an inefficiency, and he also posits that L&E may prove to be a strong vehicle by which homosexuals can obtain equal rights.

Eileen P. Huff, *The Children of Homosexual Parents: The Voices the Courts Have Yet To Hear*, 9 AM. U. J. GENDER SOC. POL'Y & L. 695-716 (2001).

This Article analyzes court orders in child custody cases that involve one heterosexual and one homosexual parent, and the author argues that courts and legislatures should treat homosexual and heterosexual parents the same. The author also argues that courts have too much discretion in determining whether lesbian or

gay parents should be awarded custody. According to the author, judges often allow their personal stereotypes to interfere in their decisions, and they fail to take the children's points of view into consideration. The author therefore concludes that the "best interests of the child" standard be amended, so as to prevent courts from giving credence to evidence that a parent's homosexuality has been or could be detrimental to his/her child.

Nancy D. Polikoff, *The Impact of* Troxel v. Granville *on Lesbian and Gay Parents*, 32 RUTGERS L.J. 825-855 (2001).

This Article analyzes the probable impact of the U.S. Supreme Court's decision in *Troxel v. Granville*, a case concerning third-party child visitation rights, on custody disputes involving lesbian mothers. In doing so, the author first examines two recent court cases pertaining to claims for visitation by non-biological lesbian mothers. She then argues that a legally unrecognized lesbian mother should be characterized as a parent and not as a third party. She explains that *Troxel* does not define parenthood or limit states' ability to do so. As a result, states can and should define parent to include non-biological lesbian mothers. If states fail to do so, custody claims by lesbian and gay parents will be outweighed by strong parental preferences and third party challenges to gays and lesbians' right to raise children.

Kif Skidmore, Note, *A Family Affair: Constitutional and Prudential Interests Implicated When Homosexuals Seek To Preserve or Create Parent-Child Relationships*, 89 KY. L.J. 1227-1264 (2000).

The author argues that states must protect parents' constitutional rights and that they must uphold these rights when making determinations in custody, adoption, and visitation matters. He also argues, however, that to protect parental rights, courts should consider a parent's homosexual lifestyle in custody and visitation cases only insofar as it affects the child in question. He also urges citizens to force legislatures to carve out adoption rights for homosexuals. Finally, he argues that child-parent bonds that have already been established should be legally protected in adoption cases.

Eric K.M. Yatar, Note, V.C v. M.J.B.: *The New Jersey Supreme Court Recognizes the Parental Role of a Nonbiological Lesbian "Mother" But Grants Her Only Visitation Rights,* 10 LAW & SEXUALITY 299-311 (2001).

This Note expresses concern over inconsistencies in the recent decision of *V.C. v. M.J.B.*, an action brought by a woman against her former lesbian "spouse" to obtain joint custody over the latter's biological children. The Note explains that in New Jersey, third parties have standing if they can prove that they qualify as a "psychological parent." Whether a third parent is a psychological parent depends on the role he/she has played in raising the children, but this standard varies across states. Here, in qualifying V.C. as such a figure, the court explained that V.C. was on legal par with M.J.B. Nevertheless, after applying a "best interests" analysis, the court ultimately denied V.C. custody rights. The court appeared to assign M.J.B. "greater weight" by default and for reasons it failed to explain.

HUMAN RIGHTS

Purva Desphande, Note, *The Role of Women in Two Islamic Fundamentalist Countries: Afghanistan and Saudi Arabia,* 22 WOMEN'S RTS. L. REP. 193-204 (2001).

This Note discusses the disparate treatment of women in the extremist Islamic nations of Afghanistan and Saudi Arabia. The author argues that although Islam is not an anti-equality or anti-woman religion, leaders in these nations manipulate the Koran to severely limit women's rights. Afghan and Saudi women are forced to abide by stringent societal laws out of fear of severe punishment for noncompliance. This Note further discusses how to change this unfair treatment of women, from minute attempts by some women in these countries to fight against their oppressors to an international component. Both of these countries are interested in joining international organizations that require compliance with human rights standards—standards that would require improved treatment of women.

James A. Gross, *A Human Rights Perspective on U.S. Education: Only Some Children Matter,* 50 CATH. U. L. REV. 919-956 (2001).

Despite the ongoing debate regarding the quality and availability of public education, there is an enormous gap in the quality of education provided to "advantaged" compared with "disadvan-

taged" children in the U.S. The author argues that fundamental issues of human rights are at the heart of this educational dilemma. He also argues that education is largely ignored as a human rights concept in the U.S. He then explains why education is a human right, identifies the concepts of rights and justice, and explains why applying human rights standards to education issues in the U.S. would require a fundamental redefinition of the issues involved in U.S. educational policy. Finally, he advocates several solutions to this problem, one of which requires "problem solvers" to put themselves in the shoes of children who have been rejected by the dominant society and to feel the resulting effect it has had on them.

Laboni Amena Hoq, Note, *The Women's Convention and Its Optional Protocol: Empowering Women To Claim Their Internationally Protected Rights*, 32 COLUM. HUM. RTS. L. REV. 677-726 (2001).

This Note addresses the adoption of the Optional Protocol (the "Protocol") to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). More specifically, the author presents two of the new mechanisms of the Protocol which provide opportunities for women around the world to have a direct hand in the enforcement of their convention rights. The first mechanism is a communications procedure which provides individuals and groups with the right to lodge complaints with the CEDAW. The second mechanism is an inquiry procedure which enables CEDAW to conduct inquiries into serious and systematic abuses of women's human rights within state parties. The author concludes that the Protocol empowers women and enables them to raise issues that have for too long limited their internationally protected human rights.

Ryiah Lilith, *Buying a Wife But Saving a Child: A Deconstruction of Popular Rhetoric and Legal Analysis of Mail-Order Brides and Intercountry Adoptions*, 9 BUFF. WOMEN'S L.J. 225-262 (2000/2001).

This Article compares two industries that operate on the peripheries of immigration law: the mail-order bride business and adoption of Chinese children by U.S. parents. According to the author, both practices stem from the Vietnam War. In addition, American attitudes regarding these industries are largely based on nineteenth century stereotypes of Asian women. These attitudes have prevented a genuine understanding of mail-order brides and adop-

tion. The author brings the legal and personal drama of these industries into a critical focus by exploring immigration case law and other source material. Finally, the author links the two industries through a theory of colonialism and orientalism, by comparing the ontology of husbands and adoptive parents with birth mothers and brides.

Shannon A. Middleton, Note, *Women's Rights Unveiled: Taliban's Treatment of Women in Afghanistan*, 11 IND. INT'L & COMP. L. REV. 421-468 (2001).

This Note analyzes the rights of Afghan women under Islamic law and under international treaties to which Afghanistan is a signatory, and it compares the roles of women in Afghanistan before and during the Taliban regime. The author argues that women's rights have been diminished under Taliban control, due to the Taliban's reading of Islamic law. The author concludes that the Taliban has violated the international human rights doctrines Afghanistan has agreed to abide by, that Taliban rules restricting women's rights are not based on Islamic laws, and that Taliban rules actually violate some of the basic tenets of Islam.

Karina Michael Waller, *Intrastate Ethnic Conflicts and International Law: How the Rise of Intrastate Ethnic Conflicts Has Rendered International Human Rights Laws Ineffective, Especially Regarding Sex-Based Crimes*, 9 AM. U. J. GENDER SOC. POL'Y & L. 621-661 (2001).

This Article explores the ineffectiveness of the United Nations Charter and other international human rights laws and treaties in the current international community, which proliferate due to intrastate ethnic conflict. The author focuses her analysis on the failure of these laws and treaties to prevent recent, violent intrastate ethnic conflicts in Yugoslavia. She identifies sovereignty, non-intervention, reservations, and geopolitical circumstances as the factors that have contributed to the failure of the success of these laws. She also suggests that human rights laws and treaties should be implemented to deter and punish the states that violate them, and she points to the United Nations as the best hope of preventing another tragedy. The author concludes that to prevent the recurrence of ethnic violence, the international community must consider human rights law violations as potential threats to global peace and security, rather than as problems in a particular state's sovereign territory.

INTERNET

Alisdair A. Gillespie, *Children, Chat Rooms, and the Law*, CRIM. L. REV. 435-446 (2001).

Child pornography is a growing problem, especially since the development of the Internet where pedophiles are now able to contact children from all over the world through chat rooms. This Article discusses England's criminal statutes under which a person who attempts to lure a child for a sexual encounter after meeting him/her on the Internet may be held criminally liable. According to the author, since an actual act of abuse must occur to violate the law, England's laws are insufficient. The author notes that though the United States has the most advanced laws, jurisdictional problems exist in regulating the Internet because of its global access. The author concludes by recommending that England draft a statute, which would hold a person criminally liable for any communication over the Internet which is intended to result in a meeting between a child and a perpetrator.

Melanie L. Hersh, Note, *Is COPPA a Cop Out? The Child Online Privacy Protection Act as Proof That Parents, Not Government, Should Be Protecting Children's Interests on the Internet*, 28 FORDHAM URB. L. J. 1831-78 (2001).

Major attempts to protect children from being lured over the Internet by dangerous individuals have failed. Following the failure of two government regulations aimed at protecting children from obscene materials on the Internet, the Child Online Privacy Protection Act of 1998 (COPPA) was enacted to give parents control over the sites their children access. According to the author, neither COPPA nor any other form of government legislation is the appropriate means of regulating children's Internet access. The author maintains that since the government is too far removed to police children's Internet usage, regulation should be within the sole purview of parents who are best able to achieve the goals behind COPPA.

Jason Hitt, Note, *Child Pornography and Technology: The Troubling Analysis of* United States v. Mohrbacher, 34 U.C. DAVIS L. REV. 1129-1171 (2001).

In *U.S. v. Mohrbacher*, the Ninth Circuit decided whether downloading child pornography constitutes both receiving and transporting child pornography under § 2252 of the Protection of Children

Against Sexual Exploitation Act (the "Act"). The court held that downloading child pornography constituted receiving but not transporting it. The author asserts that while the court's decision was consistent with the Act's language and legislative history as well as the public policy behind its enactment, the precedent *Mohrbacher* set is problematic. According to the author, *Mohrbacher* suggests that a person is criminally liable for transporting child pornography if he emails it or posts it up on a bulletin board or web page. But, the case does not consider that such activities can occur unintentionally. The author therefore concludes that § 2252 should be amended by adding a new section relating to Internet activities such as downloading.

Melanie Pearl Persellin, Comment, *Sticks and Stones May Break My Bones, But Your Words Are Sure To Kill Me: A Case Note on* United States v. Alkhabaz, 50 DEPAUL L. REV. 993-1055 (2001).

The Internet allows for anonymity and social freedom, but because it is largely unregulated it provides a forum for the distribution of obscenity and other forms of hate speech. Although the regulation of obscenity has traditionally been in the domain of state authorities, the author stipulates that there is an urgent need for federal regulation. She examines the case of *United States v. Alkhabaz* and uses it as evidence of the need for a federal statute containing a national standard of review for regulating obscenity on the Internet. In the author's view, the only way to achieve equality is to enact a constitutional federal statute which will define obscenity, mandate a national standard of review, and list the acts that constitute violations of this statute.

JUVENILE DELINQUENCY

James Garbarino, *Lost Boys: Pathways from Childhood Aggression and Sadness To Youth Violence,* 8 VA. J. SOC. POL'Y & L. 129-153 (2000).

No community is immune to the problem of youth violence, which has been growing over the past twenty years. Contrary to popular belief, white, suburban boys' intimate relationships are parallel to poor, minority boys' relationships. However, the elements leading to lethal violence is often hidden beneath the surface in white, middle class communities. This Article explores the many theories behind why boys turn violent including child abuse, gangs, substance abuse, neurological problems, and difficulties in school.

The author believes that once people understand that all boys, regardless of their race or class, are subject to societal pressures that lead to engaging in lethal violence, society can begin to prevent school violence.

Joseph Mack, Comment, *Street Fights, Air Rifles, Shotguns, Minors & Their Parents: A New York Perspective on Parental Liability for the Torts of Their Minors,* 21 PACE L. REV. 441-479 (2001).

This Comment explores the hypothetical, legal consequences the parents of the Columbine perpetrators would have faced under New York laws had that tragedy occurred here. In exploring this topic, the author explores the policy reasons behind the enactment of General Obligations Law § 3-112 and the criticism of that statute. He examines the landmark decision in *Holodook v. Spencer,* its holding of non-liability for parents, and the cases cited therein. He also examines the exceptions to New York's general doctrine of parental immunity. Finally, the author concludes that the parents of Eric Harris, one of the two attackers in the Littleton, Colorado tragedy, would have been liable for their son's acts.

MATRIMONIAL

Brian H. Bix, *Premarital Agreements in the ALI Principles of Family Dissolution,* 8 DUKE J. GENDER L. & POL'Y 231-244 (2001).

This Article predicts that procedural fairness would increase and judicial enforcement of premarital agreements would decrease if the American Law Institute (ALI) Principles of Family Dissolution (the "Principles") regarding premarital agreements were legislatively adopted. The Principles adopt a refutable presumption of consent and no duress. The author argues that this more flexible standard would allow courts to evaluate the procedural aspects of prenuptial agreements and would provide greater protection for both parties. However, the author notes that such a flexible standard might also lead courts to refuse to enforce certain agreements under the ALI, though they would be enforced under the earlier state law.

Tonya L. Brito, *Spousal Support Takes on the Mommy Track: Why the ALI Proposal Is Good for Working Mothers,* 8 DUKE J. GENDER L. & POL'Y 151-156 (2001).

This Article evaluates § 5.06 of the American Law Institute's (ALI) draft on compensatory spousal support payments and their effect

on working mothers. This section compensates spouses whose earning capacity upon divorce is less than what it would have been had he/she not been the primary caretaker of the couple's children during the marriage. It is based on two principles: (1) that caretaking is the responsibility of both parents and (2) that the spouse who assumes a greater portion of caretaking during marriage should not bear the full cost of any resultant career damage. The author concludes that the adoption of this ALI proposal would have a broad and positive impact on divorce law.

Cynthia Lee Starnes, *Victims, Breeders, Joy, and Math: First Thoughts on Compensatory Spousal Payments Under the Principles*, 8 DUKE J. GENDER L. & POL'Y 137-49 (2001).

In "Principles of the Law of Family Dissolution" (the "Principles"), the American Law Institute (ALI) has proposed various alimony rules which attempt to secure more even-handed divorce settlements in cases where one spouse has been the primary breadwinner and the other has shouldered all of the homemaking responsibilities. The author warns against state adoption of these proposals, claiming that these proposals portray women as victims instead of partners in a marriage. The author also suggests that the rationale behind the remarriage penalty, the Principles rule that spousal payments end upon an ex-spouse's remarriage, is flawed, and it should therefore be rejected by the states. The author recommends, as an alternative, the more equitable Principles sections that are based upon a basic income-sharing model.

Adrien Katherine Wing, *Polygamy from Southern Africa To Black Britannia To Black America: Global Critical Race Feminism as Legal Reform for the Twenty-first Century*, 11 J. CONTEMP. LEGAL ISSUES 811-880 (2001).

The Article applies the author's theoretical framework of Global Critical Race Feminism to polygamy in order to de-marginalize the practice and invigorate cross-cultural dialogue. The author examines polygamy through the lens of Global Multiplicative Identity, which holds that each person is defined by many legally and socially constructed identities. She argues that a focus on identities, when applied to social phenomena like polygamy, creates a more egalitarian perspective. She concludes that polygamy can be a creative solution where women have few other options for social and legal support.

MISCELLANEOUS

Nancy Beyer, Note, *The Sex Tourism Industry Spreads To Costa Rica and Honduras: Are These Countries Doing Enough To Protect Their Children from Sexual Exploitation?*, 29 GA. J. INT'L & COMP. L. 301-333 (2001).

Child sex tourism is a growing problem in Central America, particularly in Costa Rica and Honduras. Both countries have an affirmative obligation to protect children from sexual exploitation under the international agreements they have signed, yet their laws offer inadequate protection. According to the author, Costa Rica and Honduras should increase any resources they have available to crack down on this illegal activity, punish its participants, and provide social services to the children affected and their families. In addition, other countries should enact extraterritorial legislation permitting the prosecution of nationals for sexual abuses committed abroad.

Richard R. Carlson, *Romantic Relationships Between Professors and Their Students: Morality, Ethics, and Law*, 42 S. TEX. L. REV. 493-507 (2001).

The Article focuses on the mutually pursued consensual relationships between law professors and law students. The author begins by distinguishing law school from other types of school. He then lays out the law of sexual harassment. Next, he questions whether professor-student relationships are ever truly consensual and whether sexual harassment law is sufficiently broad enough to cover the non-legal questions raised by these relationships. The author argues that some of these relationships are illegal, some are immoral and unethical, and some are not completely consensual. Finally, the author considers this issue from both a university managerial standpoint and a personal standpoint.

Ellen E. Daniels, Note, *The Family and Medical Leave Act of 1993: Does Twelve Weeks Really Mean Twelve Weeks?*, 87 IOWA L. REV. 263-281 (2001).

The Family and Medical Leave Act of 1993 (FMLA) provides employees with a minimum of twelve weeks of unpaid leave to care for a newborn, a newly adopted child, or either their own or an immediate family member's serious medical illness. In many situations, employers are required to extend the leave period due to their failure to comply with the Department of Labor (DOL) regulations.

The author believes that such an extension is excessive and unjustified in situations where the employer has already provided paid leave. The DOL has, in an attempt to solve this problem, proposed an act that would allow an employee to choose between FMLA leave or the employer's own paid leave program. Courts are split on the constitutionality of this issue, but the author insists that the regulations requiring notice are invalid and inconsistent with the FMLA.

Michelle R. Evans, Note, *Women and Mediation: Toward a Formulation of an Interdisciplinary Empirical Model To Determine Equity in Dispute Resolution*, 17 OHIO ST. J. ON DISP. RESOL. 145-83 (2001).

Many presume that litigation is the preferred method of conflict resolution when there is a disparity between the bargaining powers of two mediating parties, as is often the case when the parties are of different genders. The author therefore proposes a research design that analyzes and attempts to remedy unequal bargaining power in the mediation process. The design gauges responses to mediation based on gender, and it can be modified to consider other factors such as race, socioeconomic status, and age. According to the author, mediators can safeguard the mediation process and can effectively advance the interests of all parties to a dispute if they provide remedies for balancing the inequities.

Tanya Amber Gee, Comment, *South Carolina's Safe Haven for Abandoned Infants Act: A "Band-Aid" Remedy for the Baby-Dumping "Epidemic,"* 53 S.C. L. REV. 151-165 (2001).

This Comment focuses on South Carolina's enactment of the Safe Haven Act, a statute which allows parents to leave their unharmed babies at a hospital with the hope that they will do so as opposed to abandoning the newborns elsewhere. The author provides the background for this statute, focusing on a number of other states' programs. She states that the purpose of this statute was to permit parents to rid themselves of their newborns in a legal fashion. She then conducts an in-depth examination of South Carolina's statute. The Comment concludes that the act will not reduce the numbers of abandoned infants.

Rachel F. Moran, *Law and Emotion, Love and Hate* 11 J. CONTEMP. LEGAL ISSUES 747-784 (2001).

The Article addresses the "uneasy relationship" between emotion and the law. The law reflects changes in the way society views emo-

tion. The author then examines hate crimes and tort crimes of the heart. In doing so, he discusses the historical transition of emotion from the traditional view of emotion as an involuntary response to the idea that emotion is a social construction with moral significance. The author suggests that the fact that crimes of emotion often occur in intimate as opposed to public settings increases the reluctance of courts and legislatures to treat them seriously as injuries suitable for public redress. The Article concludes that while the resulting sociopolitical economy of emotion strengthens inequality, the power of emotion to bind humanity represents a source of hope.

James W. Paulsen, *Family Law: Parent and Child*, 54 SMU L. REV. 1417-1475 (2001).

In this article, the author condenses a year's worth of family law decisions which have been laid out by the U.S. Supreme Court and the Texas Supreme Court. He discusses issues ranging from grandparents' rights (*Troxel v. Granville*); to abortion bypass rulings (Chapter 33 of the Texas Family Code); to protecting the confidentiality of children's mental health records (*Abrams v. Jones*); to making the paternity of the birth certificate father a rebuttable presumption. The author also discusses significant cases that have been granted petitions for review. The author concludes that significant strides have been made in the area of family law without a legislative session.

Cheryl B. Preston, *Baby Spice: Lost Between Feminine and Feminist*, 9 AM. U. J. GENDER SOC. POL'Y & L. 541-602 (2001).

The author theorizes that women inherently perceive themselves as having, or as attempting to have, "schoolgirl appeal" or the "Baby Spice" syndrome. This syndrome sabotages not only the feminist movement per se, but the modern woman as well. The Article also examines modern feminism and women's ambivalence towards it, and it then points to advertising as a major cause of this ambivalence. According to the author, even those women who are well respected in the professional world fall back on the stereotypical qualities of fourteen-year-old girls. Finally, the author concludes that this woman-child stereotype still exists because of a need to retreat from responsibility and the ever-present need to be accepted by men.

Elizabeth Rapaport, Note, *Staying Alive: Executive Clemency, Equal Protection, and the Politics of Gender in Women's Capital Cases,* 4 BUFF. CRIM. L. REV. 967-1007 (2001).

This Note discusses the politics of granting clemency to female capital prisoners. The authority to grant clemency vests with the governor and is a power that is plenary, free of legislative control and rarely subjected to judicial review. Though a governor will not often be subjected to harsh political ramifications for executing a female capital prisoner, he/she may be subjected to such ramifications for granting clemency. When a contemporary governor grants clemency rights to women, he/she cannot base such grants on gender bias, even when the grants are rectifying an unjustified punishment. The author argues that, ultimately, clemency alone is not sufficient to reform the criminal justice system, and legislation is needed to help correct its existing distortions.

Adam Winkler, *A Revolution Too Soon: Woman Suffragists and the "Living Constitution,"* 76 N.Y.U. L. REV. 1456-1526 (2001).

This Article argues that the Women's Suffragist movement contributed to the U.S. constitutional law landscape by reframing the debate on constitutional interpretation. In support of this argument, the author points to suffragists' lobbying and litigation strategies, their progressive interpretation of the Constitution, and their characterization of the Constitution, which they called the "New Departure," as a living document. According to the author, the suffragists may have influenced the jurists and theorists who later adopted living constitutionalism as a counter-argument to originalism. The author notes that the suffragists' strategy, i.e. gender equality, is the very cornerstone of modern living constitutionalism.

PROSTITUTION

Beverly Balos, *Teaching Prostitution Seriously,* 4 BUFF. CRIM. L. REV. 709-753 (2001).

This Article considers the way in which legal educators address issues of prostitution, by examining three criminal law textbooks. The author asserts that while feminist theory has, over the past ten years, prompted a reexamination of issues of rape and domestic violence in criminal law textbooks, no similar review has occurred regarding prostitution. According to the author, legal educators should address issues surrounding prostitution through the use of

case law and the Model Penal Code. Textbook authors should also specifically acknowledge how prostitution harms women, the dissimilar manner in which the law treats women engaged in prostitution versus the patrons of prostitution, and the way in which stereotypes regarding prostitution impact other areas of criminal law.

April L. Cherry, *Re-Orienting Law and Sexuality: Welfare Reform and the Use of State Power in the Prostitution of Poor Women*, 48 CLEV. ST. L. REV. 67-77 (2000).

The welfare regime established under President William Jefferson Clinton requires all women with children to find paid employment, regardless of pay and availability. The author is concerned that these work requirements will encourage and sanction female prostitution. The author's concern stems from two factors: (1) society's conceptualization of prostitution as work and (2) the lack of a state barrier aimed at preventing states from requiring women to work in the legal sex industry.

RAPE & SEXUAL ASSAULT

Kristen Boon, *Rape and Forced Pregnancy Under the ICC Statute: Human Dignity, Autonomy, and Consent*, 32 COLUM. HUM. RTS. L. REV. 625-675 (2001).

This Article examines the International Criminal Court (ICC) Statute provisions on rape and forced pregnancy, which have expanded the basis upon which sexual and reproductive crimes can be prosecuted under international law. The author suggests that these provisions show a transformation of the concepts of human dignity, autonomy, and consent. She argues, however, that other provisions are needed in the ICC to recognize, deter, and prosecute sexual atrocities during war. In addition, she argues that the ICC needs jurisdiction in cases involving acts of violence which are not committed in the context of war crimes, genocide, or acts against humanity. The ICC provisions must in fact be implemented at the domestic level so that proper prosecution mechanisms will be made available and so that communities can fight the causes of violence against women, not just the effects.

Phyllis L. Crocker, *Is the Death Penalty Good for Women?*, 4 BUFF. CRIM. L. REV. 917-965 (2001).

This Article presents a feminist critique on the use of the death penalty in rape-murder cases, utilizing statistics from Oregon, Florida, Ohio and Colorado. According to the author, these statistics show that an abnormally high percentage of the inmates on death row are rape-murder defendants. The author argues that rape-murder death penalty sentences reflect longstanding racial and gender biases. In fact, the death penalty continues to be used to protect the virtues of only white and not black women. In addition, prosecutors in these cases use their longstanding biases to deflect defendants' mitigating circumstances like mental illness and childhood abuse.

Abigail English & Catherine Teare, *Statutory Rape Enforcement and Child Abuse Reporting: Effects on Health Care Access for Adolescents*, 50 DEPAUL L. REV. 827-864 (2001).

This Article addresses the increase in the enforcement of statutory rape laws, and it argues that as a result of this increase young girls may delay or avoid health care out of the fear of the loss of confidentiality; and they may become entangled with child welfare agencies. The authors also argue that from a health care perspective, the age of a young girl's partner should be irrelevant because, regardless of her partner's age, she needs information regarding contraception, prenatal care, and sexually transmitted diseases. Hence, the authors suggest that child abuse reporting statutes should be amended so as to consider age differences and behavioral definitions. There should also be exceptions to reporting under these statutes.

Sandy Nowack, *A Community Prosecution Approach To Statutory Rape: Wisconsin's Pilot Policy Project*, 50 DEPAUL L. REV. 865-895 (2001).

After introducing relevant Wisconsin Law, the author explores the Pilot Prosecution Project on Statutory Rape of Dane County, Wisconsin (the "Project"). The author next examines three cases which have been tried under the Project. The author argues that the Project works to increase the prosecution of statutory rape cases, that it fails to re-victimize children, and that it parallels the community's view regarding criminalizing statutory rape cases. She also argues that the Project has met its objectives including the prosecution of more cases, and its training has helped prosecutors

to better understand adolescent victims of sexual assault. The author concludes that the project is therefore a success.

Michelle Oberman, *Girls in the Master's House: Of Protection, Patriarchy and the Potential for Using the Master's Tools To Reconfigure Statutory Rape Law*, 50 DEPAUL L. REV. 799-826 (2001).

Many appear to be conflicted regarding the topic of statutory rape. This is because statutory rape laws stem from historical ideals (of the common law system) like protecting the young and securing men's control over women. However, it has recently been discovered that statutory rape laws do not stem from these ideals. Rather, such laws stem from contract and tort law, and in particular a minor's ability to consent to an adult activity. Therefore, legislatures must rework these old laws and reconsider the legal system's priorities so as to protect the victims of statutory rape and not reward rape victimizers.

Jennifer Riley, Note, *Statutory Rape as a Crime of Violence for Purposes of Sentence Enhancement Under the United States Sentencing Guidelines: Proposing a Limited Fact-Based Analysis*, 34 IND. L. REV. 1507-1529 (2001).

Congress enacted the United States Sentencing Guidelines (USSG) in response to the unfettered discretion judges are given in sentencing. This Note discusses the strengths and weaknesses of the three approaches courts have taken in making sentencing determinations in statutory rape cases, focusing on the approaches' respective ability to promote efficiency, fairness, uniformity, and certainty in sentencing. The author concludes that none of the approaches lead to results that are fair, accurate, or efficient. She therefore proposes a limited, fact-based approach.

REPRODUCTIVE RIGHTS

Amy Kay Boatright, Comment, *State Control Over the Bodies of Pregnant Women*, 11 J. CONTEMP. LEGAL ISSUES 903-935 (2001).

State decisions that authorize legal action against pregnant women for unintentional fetal endangerment allow states to dominate women's bodies and to violate their fundamental privacy and bodily integrity rights. Oftentimes, these decisions turn on whether a viable fetus is a "child." Some states have adopted the standard definition of "child," which includes an "unborn infant" and "unborn or recently born human being." If a state has adopted this definition,

then its assertion of the right to take control of a woman's body is justified. The author suggests that the U.S. Supreme Court should adopt a bright line rule regarding when a fetus' right to life begins so as to protect the fundamental rights of women.

Khiara M. Bridges, Note, *On the Commodification of the Black Female Body: The Critical Implications of the Alienability of Fetal Tissue*, 102 COLUM. L. REV. 123-167 (2002).

According to this Note, scientific studies have shown that the fetal tissue that remains after an abortion possesses a therapeutic value. As a result, the demand for this newly found resource will soon outweigh its supply. In addition, based on a Critical Race Theory perspective, the author believes that black women will soon be influenced to sell their fetal tissue due to their poor economic situation, higher abortion rate, and internalized oppression, thereby furthering the age-old notion of a black women's worthlessness. Hence, the author concludes that the sale of fetal tissue should be prohibited.

Cynthia B. Cohen, *The Image of God, the Eggs of Women, and Therapeutic Cloning*, 32 U. TOL. L. REV. 367-374 (2001).

Is the creation of an embryo through cloning a violation of the morals that lay at the foundation of society's ethical core? Should the practice of cloning embryos be used in stem cell research? This Article discusses Mark Hanson's views that embryos have been created in the image of God, that they have value in and of themselves, that they should not be cloned for purely research purposes, and that allowing embryos to be used for research purposes will have a negative effect on the women providing the embryos. These women will inevitably be victims of not only pressure and coercion but health risks as well.

Bradley J. Glass, Note, *A Comparative Analysis of the Right of a Pregnant Woman To Refuse Medical Treatment for Herself and Her Viable Fetus: The United States and United Kingdom*, 11 IND. INT'L & COMP. L. REV. 507-541 (2001).

In the United States and the United Kingdom, there is a general rule that a person may refuse medical treatment, even life-saving treatment, for religious, moral, or personal reasons. This Note compares the development of and approaches to a pregnant woman's right to refuse medical treatment in the United States and the United Kingdom. The United States Constitution has ex-

tended a competent individual's right to refuse medical treatment to pregnant women. Therefore, in virtually all cases where an expectant mother is competent, she cannot be forced to obtain medical care for her unborn child's benefit. In contrast, in the United Kingdom, a woman's right to refuse medical treatment stems from traditional tort theory, and it may therefore be overridden if it is deemed incompetent and/or irrational in a particular case.

Cindy L. Steeb, Note, *A Child Conceived After His Father's Death?: Posthumous Reproduction and Inheritance Rights. An Analysis of Ohio Statutes*, 48 CLEV. ST. L. REV. 137-167 (2000).

Courts have extended the constitutional right to reproductive technology to the use of post-mortem insemination. Yet, state artificial insemination statutes do not address the problem of posthumous children and their related inheritance rights. The author argues that courts should acknowledge a wife's desire to honor her love for a recently deceased husband by producing a child through artificial insemination. She recommends a two year limitation rule, which would provide a widow with a reasonable amount of time to complete the insemination procedure.