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CHILDREN AND TEENAGERS

Megan Mason, *Judges' Role in Correcting the Overrepresentation of Minority Youth in the Juvenile System*, 28 GEO. J. LEGAL ETHICS 719 (2015).

The juvenile justice system is plagued with racial bias; judges have an ethical obligation to combat this bias through their disposition of juvenile cases. The decisions made in the early stages of a juvenile proceeding may not have direct effects on judicial decisions, but their effects are "masked" in the dispositions. Local and national efforts to keep students from entering the juvenile justice system have been successful, but there is also a need for policies to help the youth that are already in the system. A judge's unique position as the final arbitrator in determining what contact a juvenile has with the juvenile justice system demands that the judge performs his or her duties without bias or prejudice. With over two-thirds of African Americans perceiving the criminal justice system as biased against blacks, the author suggests that it is highly important that judges use their position to check implicit racial biases to ensure impartiality.

Sophia K. Niazi, Comment, *The Resurgence of Forced Labor: How the Sixth Circuit's Decision in* United States v. Toviave *Endorses the Exploitation of Children*, 23 AM. U. J. GENDER SOC. POL'Y & L. 685 (2014).

The Sixth Circuit's decision in *United States v. Toviave* failed to recognize that using physical abuse to compel performance of household chores may constitute forced labor under the Federal Labor Statute. Jean Claude Kodjo Toviave was previously convicted of forced labor for abusing four children in his care and forcing them to complete domestic work. The court reversed, reasoning that: (1) the federal statute lacks the specificity to protect even the "most responsible American parents and guardians" from wrongful conviction; (2) the presence of physical abuse does not change the nature of the work performed; and (3) convicting Mr. Toviave under the statute would force the federalization of state child abuse statutes. The author responds by identifying specific standards in the statute illustrating that severe circumstances are required to elevate the imposition of afterschool chores to the level of a federal crime. However, by assessing child abuse and the nature of work performed as two separate issues, the court obscured the coercive role abuse may play in precipitating forced labor. The author argues that the court's reliance on the Federal Involuntary Servitude Statute, and related case law, is inappropriate in light of the Federal Forced Labor Statute, and insufficient to address the psychological effects and feelings of isolation caused by physical abuse. The author's comment implores reexamination of the issue of child abuse in the context of federal forced labor.

EDUCATION

Rebecca Redwood French, *What Is Buddhist Law? Opening Ideas*, 63 BUFF. L. REV. 833 (2015).

Academics often overlook Buddhist Law within the tradition of studying and contextualizing religious law. The author attempts to provide a descriptive and explanatory narrative of Buddhist Law and its unique history, structure, and objectives. Unlike other religious legal systems, Buddhist Law centralizes the idea of socializing the individual to operate within a community to reduce conflict, and ultimately legal rules. Rather than emphasizing corrective behavior, the Buddhist Law Code (*Vinaya)* aims to cultivate good behavior such as etiquette, manners, and speech interactions to create space for the individual to pursue meditation, enlightenment, and true goals as a Buddhist. The article provides a glimpse at the history of Buddhist Law, the structure of *Vinaya*, and the evolution of Buddhist Law in various geographical regions. This is the first article in a series of a law review articles introducing Buddhist Law and its influence in Asia and the rest of the world to Western academic legal literature, eventually establishing *Vinaya* as an important and relevant religious text.

Elizabeth Sepper, *Free Exercise Lochnerism*, 115 COLUM. L. REV. 1453 (2015).

In this article, the author identifies the resurgence of libertarian principles of freedom of contract in opposition to economic regulation in the U.S. Supreme Court's recent decision, *Burwell v. Hobby Lobby*. The author explicates that the Court in *Burwell* welcomes, for the first time, religious objections from for-profit entities to a government mandated benefit under the Religious Freedom Restoration Act, bringing forward a new phenomenon, known as Free Exercise Lochnerism. This phenomenon blends market libertarian values with individuals' rights to religious freedom, arguing for individuals' rights not to comply with governmental goals that do not fall within the religious persuasion. The author cautions that the Court's acceptance of an exemption of this kind opens the door of deregulation, which can undermine important governmental goals such as protecting individuals from being discriminated against based on their sexual orientation.

FAMILY

Amy A. Liberty, Note, *Defending the Black Sheep of the Forensic DNA Family: The Case for Implementing Familial DNA Searching in Minnesota*, 38 HAMLINE L. REV. 467 (2015).

A familial DNA search is an intentional search of pre-existing, state-maintained DNA databases for potential biological relatives of unidentified suspects whose DNA samples are recovered at crime scenes. Using Minnesota as a case study, the author posits that states can, and should, use familial DNA searching to locate criminals through family members that are already identified in the State's DNA database. To support this conclusion, the author argues that familial DNA searching is a powerful tool that is both scientifically valid and legally sound. Although some states already use versions of familial DNA searching, the government can use familial DNA searching systems most effectively at the state level, implemented through statutes. Once the systems are established, administrative bodies, utilizing the expertise of both scientific and legal communities, should regulate them to ensure that they comply with relevant scientific and legal standards. For example, a legally sound statute that authorizes familial DNA searching simply to identify an individual does not infringe on that individual's privacy and would not violate the Fourth Amendment rights to be free of unreasonable searches. However, the success of familial DNA searching depends on the cooperation of the legal and scientific communities.

Philomila Tsoukala, *Household Regulation and European Integration: The Family Portrait of a Crisis*, 63 AM. J. COMP. L. 747 (2014).

In 2010, Greece was undergoing a financial crisis that led the country to the brink of bankruptcy. In discussions of what happened in Greece and why, the Greek family structure, despite its preeminent role in the economy, was wrongfully omitted from the conversation. The author suggests that although the Greek family structure was widely disregarded and overlooked, it was central to the country's financial woes and was an integral part of solving the problem. In addition to providing the main means of welfare to dependents, the Greek family heavily contributed to public sector employment. To understand the role of the household in the overall economy, a proper analysis of the underlying legal regimes that affect bargaining power and the interplay between individual households, the market, and the state is vital. Drawing from a wide array of fields, including feminist theory, legal realism, and world systems' theory, the author concludes that the Greek family structure became one of the main sources of welfare distribution in post-war Greece, and that this social dynamic was mistakenly overlooked by politicians, pundits, and policy makers alike.

GENDER BIAS AND DISCRIMINATION

Julie Goldscheid & Debra J. Liebowitz, *Due Diligence and Gender Violence: Parsing Its Power and Its Perils*, 48 CORNELL INT'L L.J. 301 (2015).

The due diligence obligation holds states accountable to prevent, as well as to respond to, violations of human rights, and is increasingly being applied to cases of gender violence. The authors of this article discuss the development, jurisprudence, and role of due diligence, and provide a detailed analysis of the attributes of the model of state responsiveness. This detailed analysis covers an over-emphasis on criminal justice systems and their failure to respond to cases of gender violence. However, states exercising power can be detrimental, and gender violence can be more effectively addressed by alternative community services and resources. Therefore, the context, interpretation, and type of state response must be considered carefully to ensure that the autonomy and dignity of individuals is not breached, especially with respect to racial, sexual, or ethnic minority populations.

HUMAN RIGHTS

Jed Odermatt, *A Giant Step Backwards? Opinion 2/13 on the EU's Accession to the European Convention on Human Rights*, 47 N.Y.U. J. INT'L L. & POL. 783 (2015).

In 2013, representatives of the European Union drafted an Accession Agreement under which the European Union ("EU") would accede to the European Convention of Human Rights. However, the Court of Justice of the EU ("CJEU") ruled that the Agreement was not compatible with EU law and would threaten the EU's autonomy by granting the European Court of Human Rights—the Strasbourg Court—jurisdiction over the EU's Common Foreign and Security Policy ("CFSP"). Although CJEU has limited jurisdiction over CFSP acts, the limitations have not been clearly defined. As a result, a number of experts attempted to determine the limitations, thereby either supporting or condemning the CJEU's opinion. The author is disappointed with the CJEU's ruling and reasoned that the interest of the EU submitting to the Strasbourg Court's jurisdiction for human rights violations reviews outweighs its autonomy concerns. The author suggests some options to move forward with the adoption of the Accession agreement, such as amending the Accession Agreement to take account of the CJEU's concerns, revisiting the issue when the situation is more mature, or amending the EU treaties to allow the EU to adopt the Agreement despite CJEU's ruling.

Eunice Hyunhe Cho et al., *A New Understanding of Substantial Abuse: Evaluating Harm in U Visa Petitions for Immigrant Victims of Workplace Crime*, 29 GEO. IMMIGR. L.J. 1 (2015).

Although immigrant workers in the U.S. are covered by the same legal protections that are afforded to native-born workers, they face higher risks of abuse and exploitation in the workplace. As a result, law enforcement agencies have viewed U non-immigrant status ("U visa") as a helpful tool to strengthen civil rights protections and the enforcement of labor standards. The U visa allows non-citizen victims of certain crimes, who are helpful during investigation and prosecution of those crimes and have suffered substantial abuse as a result of the crime, to remain in the United States and adjust their status to that of a legal permanent resident. However, confusion has grown surrounding the concept of "substantial physical or mental abuse," which is the precondition for receipt of a U visa. The article seeks to provide a comprehensive framework for evaluating abuse against immigrant workers in the context of the U visa's "substantial physical or mental abuse" standard. The article provides useful examples that may help policy makers and practitioners identify and assess abuse experienced by immigrant victims of workplace crime.

LGBTQ RIGHTS

Keith Cunningham-Parmeter, *Marriage Equality, Workplace Inequality: The Next Gay Rights Battle*, 67 FLA. L. REV. 1099 (2015).

Though monumental strides have been made in recent years, the gay community is still facing many civil rights battles. While *Obergefell v. Hodges* was a historic victory for marriage equality, federal employment law still neglects to protect against workplace discrimination based on sexual orientation, an issue that affects all gay people, not just those seeking a marriage recognized by the government. Rather than advocating for a change in employment law, the author suggests that protection from sexual orientation discrimination is covered by the current legal framework. When sexual orientation discrimination occurs, it is often based on sex discrimination, as traditional gender roles typically include heterosexuality. For instance, when a woman is discharged because she is in a relationship with another woman, she is being discriminated against based on her sex. Because sex discrimination at work is covered under Title VII, the statute provides a basis for relief, while embracing the diversity within the gay community and advocating for social reform.

MARRIAGE

Serena Mayeri, Essay, *Marital Supremacy and the Constitution of the Nonmarital Family*, 103 CAL. L. REV. 1277 (2015).

This essay looks at the story of constitutional challenges to "illegitimacy"-based classifications, which have affected individuals who are born to parents that are not married. The author surveys the harms of illegitimacy penalties, and explores why these harms have seemingly taken a back seat to other social issues. Further, the history of illegitimacy-based penalties is explained, with the focus of the essay on the 1960s and 1970s. The author discusses several major cases that have been considered key developments of this issue. She also discusses the heavy burden that these court decisions have placed upon the mothers of "illegitimate" children, while giving varying insight into how this issue has seemingly lost importance. There is a problem in the way that innocent children are penalized because their parents are not legally married. This ongoing battle must be addressed in order to help these children.

PARENTING

Dorit R. Reiss & Lois A. Weithorn, *Responding to the Childhood Vaccination Crisis: Legal Frameworks and Tools in the Context of Parental Vaccine Refusals*, 63 BUFF. L. REV. 881 (2015).

This article addresses the role the legal system can play in increasing childhood immunization rates. The author argues that the recent measles outbreak is a result of parents electing not to give their children the measles, mumps, and rubella vaccines. Influenced by the alleged risks of vaccination, parents have been seeking exemptions from state vaccination requirements at increasing rates. However, the non-vaccination trend can be harmful to children, as well as other vulnerable members of society. After exploring the use of the legal exemptions, along with the reasons behind parental refusal to vaccinate children, the authors discuss that certain legal tools can be used to address this issue. These methods include criminalizing non-vaccination, imposing costs on non-vaccinators, and providing incentives for vaccination. Applying these legal tools to improve childhood immunization rates can help protect children and society from the burdens of preventable diseases.

SEX DISCRIMINATION

Michele N. Struffolino, *For Men Only: a Gap in the Rules Allows Sex Discrimination to Avoid Ethical Challenge*, 23 AM. U. J. GENDER SOC. POL'Y & L. 487 (2014).

Divorce attorneys are openly discriminating against women through advertising that they will "fight for men's rights" or operating under firm names such as *Divorce for Men*. The article proposes changes to the misconduct rules of the American Bar Association ("ABA") to ban discriminatory advertising and client selection. State laws have followed the increase in women's employment opportunities, income, and equality by mostly abolishing permanent alimony and no longer assuming that the mother should be the default caretaker in child custody; although, women still lag behind men economically. "Men Only" divorce law firms capitalize on the perception, advertising that they will obtain for their male clients fair treatment since women are apparently in an equal economic state. The ABA should alter the anti-discrimination language in its rules, beyond representation of clients and potential clients, to cover all actions of the attorney in professional capacity that might affect the general public, such as facially discriminatory commercial advertising. This speech should not receive the same First Amendment scrutiny as non-commercial speech. The author suggests that the change to the legal profession's rules is necessary because the harm of discrimination occurs before a specific misconduct rule can be violated.

SEX INDUSTRY

Adrienne D. Davis, *Regulating Sex Work: Erotic Assimilationism, Erotic Exceptionalism, and the Challenge of Intimate Labor*, 103 CAL. L. REV. 1195 (2015).

There is a longstanding debate amongst assimilationists and exceptionalists over the regulation of sex work in the event that it is decriminalized. This article details the division between exceptionalists, who advocate for the exemption of sex work from governmental regulation, and assimilationists, who purport that sex work is a marginalized labor that should be incorporated into existing regulatory schemes. The author takes the debate further by asserting that the assimilationists' theories that the legalization and regulation of sex work will lead to employee benefits, protections from workplace hazards, and recourse against discrimination are fanciful. More precisely, the unique characteristics of sex work, such as assault and blurred lines between on and off duty identity, prevent its assimilation into existing regulatory frameworks, and require regulation based on sexual geography or proximity. Thus, the author suggest, jobs that require minimal proximity such as

phone sex operators, should receive little regulation. In contrast, face-to-face services like brothel work and higher risk jobs like prostitution would require more regulation in the form of surveillance, bodyguards, and check in times, to name a few.

WOMEN'S RIGHTS

Deborah Tuerkheimer, *Rape on and off Campus*, 65 EMORY L.J. 1 (2015).

Ongoing efforts to address rape have generally disregarded the criminal statutes that define rape. There is a dichotomy in the definition of rape: one school of thought, which many college disciplinary codes follow, is that non-consent, as opposed to force, defines rape. However, the Model Penal Code and many state statutes provide that absent force, sex without consent does not constitute rape, and thereby rape requires force. In the state statutes, for example, penetration with someone who is intoxicated or sleeping might not be considered rape because there was no applied force (there was merely a lack of consent). Lately, there has been a gradual shift as to the meaning of consent; that is, consent must be affirmative (rather than just not saying "no" or being completely silent) in order to engage in legal sexual activities. The author suggests that rape and consent ought to be defined adequately and universally. More states should adopt the college definition of rape and agency, rather than consent should be the standard.