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ABORTION

Donald Hope, *The Hand as Emblem of Human Identity: A Solution to the Abortion Controversy Based on Science and Reason*, 32 U. TOL. L. REV. 205-228 (2001).

This Article examines the abortion controversy, which is characterized by two principal approaches: the embryo-fetus distinction and the viability standard established in *Roe v. Wade*. The author recommends overruling the *Roe* viability standard because it is vague and because it is not readily observable. The author advocates the embryo-fetus approach because it is a reasonable, observable, and morally defensible standard. The author also proposes an alternative biological dividing line based on the development of the human hand as a solution to the abortion controversy. He argues that the hand, and more specifically the finger-thumb opposition, is the structural characteristic that makes us uniquely human and distinguishes us from primates.

BATTERED WOMEN & DOMESTIC VIOLENCE

Amanda Blanck, Note, *Domestic Violence as a Basis for Asylum Status: A Human Rights Based Approach*, 22 WOMEN'S RTS. L. REP. 47-75 (2000).

Asylum has come to be associated with universally recognized human rights norms. However, the current asylum definition fails

to protect victims of domestic violence even though their human rights are violated and their lives are at risk. The author uses the case of *In re R-A-* to illustrate how asylum has not proved to be a consistent remedy for victims of domestic violence because it does not fit well within the existent enumerated categories of asylum law. This Note advocates the adoption of a humanitarian approach to the right of asylum based on the violation of fundamental human rights. This approach would formally recognize the fact that violence against women violates the norms of civilized nations.

Diana J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence,* 13 YALE J.L. & FEMINISM 97-116 (2001).

This Article addresses the link between violent anti-social behavior towards women and children and the abuse of animals. Many victims of domestic violence will not leave abusive situations without their companion animals. The author contends that state legislatures must amend current statutes that provide assistance to domestic violence victims to include naming companion animals in protective orders. The Article also provides an Oregon statute as a model to achieve this objective.

Julie Goldscheid, *The Second Circuit Addresses Gender-Based Violence: A Review of Violence Against Women Act Cases,* 66 BROOK. L. REV. 457-471 (2000).

The United States Supreme Court found the Violence Against Women Act ("VAWA") unconstitutional in the case of *United States v. Morrison.* However, *Morrison* did not disturb the vitality of federal felony statutes enacted as part of the act, and it did not end the adjudication of gender-motivated crimes by federal courts. This Article reviews VAWA's statutory provisions which address gender-biased violence, and it analyzes the Second Circuit's application of these provisions. More specifically, it analyzes the decisions of district courts within the Second Circuit which integrate the VAWA policies. The author concludes that the Second Circuit's decisions have made important contributions to the analysis of the act's statutory elements.

Erin Meehan Richmond, Note, *The Interface of Poverty and Violence Against Women: How Federal and State Welfare Reform Can Best Respond,* 35 NEW ENG. L. REV. 569 (2001).

Violence against women has reached tragic levels in the United States, and a large percentage of domestic violence victims are desperately in need of public assistance. Recent reforms to federal and state welfare laws have severely impacted domestic violence victims who are financially dependent on government aid. The author argues that the government must address more than the criminal aspects of domestic violence. She also argues that Congress must undertake a more thorough and committed effort to end domestic violence. It must also offer assistance to those victims in financial need.

CHILDREN'S RIGHTS

Christina M. Alderfer, Troxel v. Granville*: A Missed Opportunity to Elucidate Children's Rights,* 32 LOY. U. CHI. L.J. 963-1010 (2001).

A parent's right to raise his/her children without interference from the government is a fundamental liberty interest strongly protected by the United States Constitution and the United States Supreme Court. However, the Court has been unable to clearly define grandparents' visitation rights. As a result, state courts continue to come to conflicting conclusions concerning the constitutionality of grandparent visitation statutes. This Article reviews the Supreme Court case of *Troxel v. Granville,* which recently addressed this issue. The author criticizes the Court's decision in that case, arguing that it failed to clear up the confusion regarding the requirements for grandparent visitation. According to the author, the Court should have made clear in *Troxel* that a finding of harm should not be required in grandparent visitation cases.

Alessia Bell, Note, *Public and Private Child:* Troxel v. Granville *and the Constitutional Rights of Family Members,* 36 HARV. C.R.-C.L. L. REV. 225-278 (2001).

The Supreme Court's decision in *Troxel v. Granville* requires courts to balance the State's power to enforce third-party visitation rights against parental rights, while simultaneously applying the constitutionally mandated presumption that parents act in the best interests of their children. In *Troxel,* the Court noted that the concept of family should be more expansive. However, as a result of this decision, lower courts must continue to grapple with questions like who

is a parent and what is the scope of parental rights in the context of visitation. The author argues that the Court should adopt the psychosocial doctrine, which proposes that physical and emotional nurturing along with psychological bonds form the basis of parenting, in meting out the modern parent-child-state relationship.

Lindsay E. Cohen, Note, *Daddy, Will You Buy Me a College Education? Children of Divorce and the Constitutional Implications of Noncustodial Parents Providing for Higher Education: In re* Marriage of Kohring, 66 MO. L. REV. 187-203 (2001).

A Missouri statute holds noncustodial parents liable for expenses associated with their children's college education. The Missouri Supreme Court has declared this statute constitutional. However, state common law has always tended to require such financial contributions. Nationwide decisions mirror this trend. The author argues that policy considerations such as the general tendency of noncustodial parents to provide children with skimpy financial support bolsters the Missouri court's decision. Nevertheless, the author criticizes the court's decision for being conclusory and for ignoring both policy and legislative considerations.

Sara Elizabeth Culley, *Legislative Reform:* Troxel v. Granville *and Its Effects on the Future of Grandparent Visitation Statutes*, 27 J. LEGIS. 237-250 (2001).

Grandparent visitation statutes create a tension between parental rights and grandparent visitation rights. This Article addresses the effect the Supreme Court's decision in *Troxel v. Granville,* which held that state courts should examine grandparent visitation statutes on a case by case basis, will have on grandparent visitation statutes. It also discusses what state legislatures should do to reform current statutes. The Article also criticizes *Troxel* for not creating a uniform standard for grandparent visitation statues and for the due process rights of parents. Finally, the author concludes that state courts and judges must work together to determine what parental rights exist and to determine how grandparent visitation rights fit into the scope of these rights.

Leticia M. Diaz, Esq., *Regulating the Administration of Mood Altering Drugs to Juveniles: Are We Legally Drugging Our Children?*, 25 SETON HALL LEGIS. J. 83-106 (2001).

This Article addresses the heavy prescription of psychotropic and mood-altering drugs in America. It questions whether these drugs

are being prescribed because of children's behavior or whether children are behaving the way they do because of the effect of these drugs. The author claims that in our culture parents are often quick to medicate their children in order to flush out any perceived shortcomings in their behavior. The author analogizes the increase in the prescription of mood-altering drugs to "legal drug pushing." She also addresses the fact that recent shootings by teenagers, including the Columbine High School shootings, had one commonality: all of the shooters were taking some form of psychiatric drug. The author concludes that stricter regulations are in order and that doctors should not prescribe these drugs to the pediatric population without specific FDA approval for this use.

Ruth Farrugia, *Parental Responsibility and State Intervention*, 31 CAL. W. INT'L L.J. 127-40 (2000).

This Article examines the boundary between parental responsibility and state intervention in the area of child-raising from the perspective of Maltese and international law. According to the author, parents, the State, the judiciary, supra-national contributions, and children all play a role in the maintenance and education of children, which enables them to realize their abilities, natural inclinations, and aspirations. The author points out the difficulties in trying to balance the interests of each of these individual constituencies with acting in the best interests of children.

Troy Fuhriman, State v. Foster*: Washington State Undermines Confrontation Rights to Protect Child Witnesses*, 36 GONZ. L. REV. 7-47 (2000).

In *State v. Foster*, the Washington Supreme Court held that even though the wording of Washington's confrontation clause and the Sixth Amendment are not identical, their meanings are substantially the same. Based on this reasoning, the *Foster* court permitted an alleged child abuse victim to testify via a one-way, closed circuit television. This Article argues that the Washington Supreme Court improperly held that Washington's confrontation clause does not guarantee more protection to defendants than the Sixth Amendment. The author concludes that the proper way to protect child abuse victims is not to dispense with established modes of confrontation but to either afford the people of Washington the opportunity to amend the state's confrontation clause or to institute policies that would alleviate the anxiety of child witnesses.

M. Lee Huffaker, *A Parent's Addiction: The Judicial Disposition of Children to Drug Abusing Parents*, LAW & PSYCHOL. REV. 145-160 (2001).

Courts balance difficult issues of child protection with the importance of the familial bond when they are faced with parental drug abuse. To deal with this problem, most courts issue pendente lite orders. These orders allow parents who have successfully completed rehabilitation programs to regain custody of their children without having to prove that returning their children to them would be in their children's best interests. The author argues that these orders ignore the future best interests of the child, given drug abusers' high rate of relapse. The author prefers the Alabama Supreme Court's model set forth in *Ex Parte McLendon.* Courts following *McLendon* issue orders of temporary custody on a finding of drug abuse. These orders more thoroughly scrutinize parents' rehabilitative success before children can return home.

Janice H. Kang, Comment, *Barbie Banished from the Small Screen: The Proposed European Ban on Children's Television Advertising*, 21 NW. J. INT'L L. & BUS. 543-564 (2001).

Sweden currently acts as the president of the European Union. It is expected to press the EU for a ban on television ads which target children. This Comment compares current regulations against such ads which have been implemented by the Member States of the EU with the proposed ban. This Comment also considers the arguments in support of the ban, including the view that these ads exploit young children and that they foster "pester power" which leads parents to overspend on advertised products. The author concludes that the EU should not permit advertisers to have free rein; however, it also concludes that an absolute ban is not the solution.

Christine A. Martin, Note, *Murder by Child Abuse – Who's Responsible After* State v. Jackson*?*, 24 SEATTLE U. L. REV. 663-89 (2000).

According to this Note, Washington legislators and courts fail to punish passive parents who do not report child abuse rendered by active parents. Specifically, in *State v. Jackson* the Washington State Supreme Court refused to hold that a passive foster mother whose child died as a result of her foster father's beatings was criminally liable as an accomplice. This decision hinged on the language of Washington's accomplice liability statute. The court ruled that the legislature purposely excluded from accomplice liability parents

who fail to act. The author suggests that Washington should adopt a new statute to address this issue and to fill in the gaps of the current law.

DISCRIMINATION

April L. Cherry, *Nurturing in the Service of White Culture: Racial Subordination, Gestational Surrogacy, and the Ideology of Motherhood*, 10 TEX. J. WOMEN & L. 83-128 (2001).

This Article addresses the institution of motherhood in the United States. The American cultural norm of the nuclear family denies legitimacy to the African American familial structure that includes and promotes kinship networks. African American women are often regarded by White America as poor mothers because of the age-old racial stereotype that they are sexually immoral individuals and because of the social deviancy associated with their unmarried marital status. The author concludes that as a result of these factors American legal and social systems fail to recognize the contributions of African American women to the nurturing of White children in the contexts of gestational surrogacy and affective labor.

Wendy N. Duong, Note, *Gender Equality and Women's Issues in Vietnam: The Vietnamese Woman-Warrior and Poet*, 10 PAC. RIM. L. & POL'Y J. 191-326 (2001).

Due to a variety of ideologies behind Vietnamese laws, the Vietnamese culture contains no framework for the doctrine of feminism. This Note approaches "Vietnamese feminism" as a search for Vietnamese women to form a unified positive image, regardless of locale, generation, or ideology. The Note suggests that within the Vietnamese heritage, Vietnamese women are encouraged to take the lead in society and to resist gender and social injustice. The author concludes that Vietnamese women have the cultural and historical resources to undertake the challenging feat of advocating gender equality in their country, but they must carefully balance their quest for equality with the developing economy and the paradoxical values within their culture.

Samuel E. Joyner, Comment, *Pregnant? Congratulations . . . You're Fired! Extending the* Burk *Public Policy Tort to Pregnancy Discrimination After* Collier v. Insignia Financial Group?, 36 TULSA L.J. 677-702 (2001).

Since the late nineteenth century, the employer-employee relationship has been subject to the at-will rule, i.e. the rule that an employer may terminate an employee for any reason, good or bad. This Comment discusses the public policy tort exception to that rule, which "which provides the employee with a cause of action when his or her discharge is contrary to public policy." The author examines Oklahoma cases such as *Burk v. K-Mart Corp.* and *Collier v. Insignia Financial* which clarified this exception and applied it to pregnant women. According to the author, pregnant women face greater discrimination because they are not protected by Oklahoma's Anti-Discrimination Act. The author criticizes Oklahoma courts for leaving open many unanswered questions in the aftermath of *Collier*, and he argues that these courts should rule that *Collier* does not extend the *Burk* public policy tort exception to pregnant women. Rather, pregnant women should look to preexisting federal remedies under Title VII.

Susan A. Kidwell, Note, *Pregnancy Discrimination in Educational Institutions: A Proposal to Amend the Family Medical Leave Act of 1993*, 79 TEX. L. REV. 1287-1320 (2001).

The purpose of the Pregnancy Discrimination Act of 1978 and the Family Medical Leave Act of 1993 is to protect a women from pregnancy-related employment discrimination. These acts enable pregnant women to take twelve weeks of family leave after their children are born. However, this is not the case with university faculty members. This Note suggests that to provide equal opportunities for college faculty members who wish to pursue their careers and have families, the Family Medical Leave Act should be amended. More specifically, college and university employers should be required to lengthen the existing twelve week leave of absence to one full semester.

Julia Lamber, *Gender and Intercollegiate Athletics: Data and Myths*, 34 U. MICH. J.L. REFORM 151-229 (2000).

Title IX of the Education Amendments prohibits discrimination and exclusion from federally funded education programs on the basis of sex. This Article suggests that it is inappropriate to analogize discrimination in athletics under Title IX with workplace dis-

crimination under Title VII because Title IX demands more than equal treatment. The author argues that Title IX challenges our perceptions regarding women in intercollegiate athletics. It questions whether differences in men's and women's sports are based on real differences or mere stereotypes, and whether men are inherently more interested in sports and are thereby deserving of competition in greater numbers. This Article concludes that Title IX and intercollegiate athletics are not only an important way to define equality but also an important way to transform perceptions about women and their supposed limitations.

Iman R. Soliman, *Male Officers in Women's Prisons: The Need for Segregation of Officers in Certain Positions,* 10 TEX. J. WOMEN & L. 45-68 (2000).

This Article analyzes the bona fide occupational qualification defense (BFOQ) to Title VII sex discrimination actions as it applies to Michigan's Corrections Department's exclusion of male officers from certain positions in prisons. The author argues that in a women's prison, a custodial setting where the potential for an abuse of power by prison guards is great, excluding men from certain positions is necessary for the protection of the inmates. In support of this proposition, the author analyzes the successful use of the BFOQ defense in other custodial settings where there is an increased risk of custodial misconduct. The author suggests that should litigation arise from the Michigan Department of Corrections' policy of barring male guards from direct-contact positions in women's prisons, the court should uphold the BFOQ defense.

Leland B. Ware, *Setting the Stage for* Brown*: The Development and Implementation of NAACP's School Desegregation Campaign, 1930-1950,* 52 MERCER L. REV. 631-673 (2001).

Charles Houston, an African-American Civil Rights lawyer, helped coordinate a seven year campaign which resulted in the elimination of segregation laws. This campaign demanded that African-American students be given the same educational resources that were available to whites. This Author argues that it is impossible to fully appreciate the *Brown* decision without analyzing the work that Houston did in the southern states. According to the author, the federal courts standpoint on civil rights has shifted from receptive and open, to one which is growing increasingly hostile and unconcerned, eliminating much of the success of previous years. The Article suggests that the current color-blind approach to equal pro-

tection will lead to the prolonged existence of the current racial hierarchy.

David Woodcock, Note, *Too Young to Understand? Extending Equal Access to All Children in Public Schools Regardless of Age*, 13 ST. THOMAS L. REV. 491-522 (2001).

Determining the appropriate mix of church and state is a difficult task especially in public schools. Religious organizations are denied access to school facilities because their main focus is religion, even though these organizations share the same goals of morality and character as after-school programs like the Girl Scouts which are allowed access. This Note suggests that simple precautionary measures should be taken to ensure that the constitutional right to equal access be extended to all children in public schools irrespective of their age. An equal access policy would allow schools to monitor student religious groups in the same way the state provides police and fire protection to churches. This policy could also ensure that religious organizations do nothing in their official capacity that either endorses or disparages religion.

HOMOSEXUAL RIGHTS

Jodi L. Bell, *Prohibiting Adoption by Same Sex Couples: Is It in the "Best Interest of the Child"?*, 49 DRAKE L. REV. 345-365 (2001).

Social stereotypes, state statutory prohibitions, and a lack of objective judicial standards make adoption a difficult and sometimes impossible option for gay and lesbian couples wishing to raise children. This Article focuses on the obstacles faced by same-sex couples attempting to adopt children. It first surveys the goals of the adoption process, and it then examines how the various states treat this issue. The Article next considers the "best interests of the child" standard, which is the court's predominant consideration in adoption cases. Finally, it analyzes the constitutionality of the statutory prohibition of adoption by same-sex couples.

Kirsten Lea Doolittle, Note, *Don't Ask, You May Not Want to Know: Custody Preferences of Children of Gay and Lesbian Parents*, 73 S. CAL. L. REV. 677-703 (2000).

In custodial litigation, courts typically ask children about their living arrangement preferences. Such situations become complicated when they involve the disclosure of parents' sexual orientation. Children sometimes express preferences that reflect

their emotional reactions to their parents' sexual orientation rather than to their parent's care giving abilities. The author argues that courts should delay inquiries into children's custodial preferences until they have processed the parents' sexual orientations, so as to protect gay and lesbian parents from discrimination and disadvantages in custodial litigation.

Montree McNeill Ransom, *The Boy's Club: How "Don't Ask, Don't Tell" Creates a Double-Bind for Military Women*, 25 LAW & PSYCHOL. REV. 161-177 (2001).

This Article addresses the disparate impact of the 1993 "Don't Ask, Don't Tell policy" on women in the military. In response to the military's ban on homosexual activity, this policy prohibits new recruits from being asked about their sexual orientation, and it also prohibits investigations conducted solely to obtain that information. The author argues that this policy reinforces traditional gender stereotypes of women. It also places women in a double bind. If they demonstrate the desired traits of male soldiers, i.e. strength and aggression, they risk investigations into their sexual orientation. However, if they fail to demonstrate these traits, they forfeit promotions and adversely affect their careers.

HEALTH

Robin Appleberry, *Breaking the Camel's Back: Bringing Women's Human Rights to Bear on Tobacco Control*, 13 YALE J.L. & FEMINISM 71-96 (2001).

In the United States, more women now die annually from lung cancer than from breast cancer, and women face increased risks for a host of other tobacco-related cancers, reproductive disorders, and debilitations. The Article argues that the current situation calls for a new collaboration among women's advocates and tobacco control policy-makers and for reliance on the human rights paradigm. Specifically, the author suggests that just as tobacco control needs women in order to succeed, women need effective tobacco control if they are to progress toward health, power, and equality.

Leigh A. Trueblood, *Female Genital Mutilation: A Discussion of International Human Rights Instruments, Cultural Sovereignty and Dominance Theory*, 28 DENV. J. INT'L L. & POL'Y 437-67 (2000).

This Article examines how to balance a respect for the recognition of cultural sovereignty while simultaneously upholding interna-

tional human rights in addressing issues surrounding Female Genital Mutilation ("FGM"). The author examines the cultural, social, and political implications that surround FGM. The analysis addresses international human rights documents including the U.N. Charter, the Universal Declaration of Human Rights, and the Convention of the Rights of the Child. It also examines feminist theory and the meaning of culture as it applies to the debate about FGM. The author concludes by stating that as the world consciousness of this issue is raised, international law can serve as a powerful tool to combat the practice of FGM.

Allen E. White, *Female Genital Mutilation in America: The Federal Dilemma,* 10 TEX. J. WOMEN & L. 129-208 (2001).

In recent years, the ancient custom of female genital mutilation ("FGM"), practiced by both Islamic and non-Islamic societies, has taken on a new international importance as a human rights issue because of its due practice by immigrants in Europe and the United States. To combat this activity, Congress enacted the federal FGM statute. This Article examines the rationale for federal intervention in what is essentially a local, non-economic crime. Particularly, it explores support for the statute in the form of state action limitations inherent in the Fourteenth Amendment and in the prohibition of slavery embodied in Section 2 of the Thirteenth Amendment. Ultimately, the author concludes that the Thirteenth Amendment might best defend the FGM statute against the inevitable constitutional challenges that await it.

JUVENILE DELINQUENCY

Linda S. Beres & Thomas D. Griffith, *The Rampart Scandal: Policing the Criminal Justice System: Demonizing Youth,* 34 LOY. L.A. L. REV. 747-766 (2001).

This Article examines several "get tough" punitive provisions of California's Gang Violence and Juvenile Crime Prevention Act of 1998, which was passed as part of referendum entitled "Prop. 21." The authors contend that Prop. 21 legislation, which is based in part on dubious statistics predicting a coming spike in crime based on the growth of the youth population age 12-21, will fail to serve the legislative purpose for which the people of California enacted it. The authors argue that this perception creates an undue burden on Blacks and Latinos that cannot be outweighed by the benefits of crime reduction. As a remedy to this dilemma, the authors

propose shifting the legislative focus from criminal sanctions to non-punitive approaches such as economic incentives for disadvantaged high school students, parental training, and therapy for families with young children who have begun to act out in school.

Christine Chamberlin, *Not Kids Anymore: A Need for Punishment and Deterrence in the Juvenile Justice System*, 42 B.C. L. REV. 391-419 (2001).

This Article analyzes the current debate over the most effective and the most efficient way to handle juvenile offenders. On one side are state legislators who have enacted laws making it easier to try juveniles as adults due to the violent crimes they have committed. On the other side are those who feel that juvenile offenders can be rehabilitated if they are treated as juveniles rather than as adults. The author argues that states should adhere to the goal of rehabilitation but that they should also increase the focus of the juvenile justice system to include punishment and deterrence so as to assist in the reduction of violent juvenile crime. The author advocates a system in which certain juvenile defendants would be automatically transferred to an adult court but in which others who meet certain requirements would receive blended juvenile and adult sentences.

Cynthia M. Conward, *Where Have All the Children Gone?: A Look at Incarcerated Youth in America*, 27 WM. MITCHELL L. REV. 2435-2464 (2001).

This Article discusses the increasing trend towards punishing offending youths with sentences in adult prisons and with life sentences. Adult prisons often lack trained staff members and programming suited for jailed youths. They are also often especially dangerous and violent places for youths, with risks of rape, exploitation, drugs, disease, and suicide. The author also suggests that incarcerating juveniles with adults makes rehabilitation increasingly unlikely. The author therefore suggests instead that resources be spent on early intervention and aftercare programs and on improving confinement conditions. She argues that these policies would be more effective at preventing, treating, and rehabilitating juvenile offenders.

Janet Gilbert, Richard Grimm & John Parnham, *Applying Therapeutic Principles to a Family Focused Juvenile Justice Model (Delinquency)*, 52 ALA. L. REV. 1153-1212 (2001).

Juvenile courts are still having difficulty in achieving the public's expectations of accountability and enhanced public safety while maintaining the continued interest in rehabilitation. Due to their increase in serious and violent criminal activity, there are those who feel that the adult criminal system will be more efficient for juveniles because it can inflict more severe sentences. Others suggest that an adult system, where juveniles can be afforded due process protections, would be the most effective method. These authors offer another alternative to the abolishment of the juvenile system. They propose a systems approach. This approach would accomplish the public safety goal of the criminal justice system while addressing the rehabilitative and accountability needs of youth and the family.

Cheryl Hanna, *Bad Girls and Good Sports: Some Reflections on Violent Female Juvenile Delinquents, Title IX, & the Promise of Girl Power*, 27 HASTINGS CONST. L.Q. 667-715 (2000).

This Article discusses the increase in violence among girls and attempts to make a connection between promoting healthy, physical competition and reducing violent crimes. It explains that legislatures must develop a better understanding of female juvenile crimes. They must focus on Title IX to provide substantive content to programs for female juvenile delinquents. There is no current model program which includes either physical or athletic components. The author therefore proposes that model programs be more outspoken about the perplexing nature of female relationships. According to the author, they should also include competitive female athletics to assist in funneling female aggression into a more positive arena.

Samuel Marion Davis, *The Criminalization of Juvenile Justice: Legislative Responses to "The Phantom Menace,"* 70 MISS. L.J. 1-33 (2000).

This Article addresses the trend towards more punitive treatment of juveniles in both their sentencing and in their prosecution as adults, and it argues that this trend is unwarranted. The author claims that legislators were pressured, based on a misperception that youth crime has increased, to enact harsh legislation to deal with a "phantom menace," a threat that simply does not exist.

Juveniles are prosecuted as adults via methods like waiver and transfer by the juvenile or criminal courts, concurrent jurisdiction, prosecutorial discretion, and the exclusion of certain offenses from the juvenile courts' jurisdiction. The author maintains that a discretionary decision-making model should be instituted, wherein the decision whether cases ought to be prosecuted in adult court or in juvenile court be made by judges on a case-by-case basis.

Deborah A. Nicholas, Note, *Parental Liability for Youth Violence: The Contrast Between Moral Responsibilities and Legal Obligations*, 53 RUTGERS L. REV. 215-246 (2000).

Throughout the country, people are calling for greater parental liability and responsibility for the violent acts committed by children. This author explains that a legal system holding parents liable for their children's violent acts is based on faulty reasoning and should not be pursued. Rather, a more balanced system that assists parents in child-rearing instead of blaming them for poor parenting skills is more appropriate. The Note explores current parental criminal and tort liability statutes and determines that parental liability statutes have gone too far in imposing liability. The author concludes that the moral liability attached to raising children does not properly lend itself towards tort or criminal liability. Parental liability for a child's civil or criminal act should be restricted to situations in which the child acted at the parent's direction.

MATRIMONIAL

Mary K. Campbell, *Mr. Peay's Horses: The Federal Response to Mormon Polygamy, 1854-1887*, 13 YALE J.L. & FEMINISM 29-70 (2001).

According to this Article, even though polygamy is viewed as repulsive and monogamy is viewed as wholesome, both regimes are supported by the fundamental concept that women are property. Theories that glorify monogamy should recognize that the federal government banned polygamy and mandated monogamy to distribute women equitably among men and to control competition among men for women. The purpose of the ban was not to achieve political equality for women. Congress viewed polygamy as a threat to democracy because it led to an unequal allocation of women among men. Reducing the disruptive forces of sexual competition constitutes the first step towards forming organized and efficient communities.

Lisa Milot, *Restitching the American Quilt: Untangling Marriage from the Nuclear Family*, 87 VA. L. REV. 701-728 (2001).

Because "marriage" defines both the relationship between two people and their relationship to society, it is a dual legal regime comprised of a combination of contract and legal status. Marriage is used as a convenient proxy for the creation and perpetuation of the nuclear family, which are the true objectives of marriage and divorce regulations. This proxy is problematic because there is an inherent conflict between the freedom of the parties of a marriage to negotiate, enter, and exit their own contract, and the need to protect children who are third parties to that contract. The author argues that marriage and family should be conceptually and legally separated, with each governed by a distinct regime. Marriage should be a purely contractual regime wherein two adults can voluntarily structure the terms of their relationship.

Catherine Wimberly, *Deadbeat Dads, Welfare Moms, and Uncle Sam: How the Child Support Recovery Act Punishes Single Mother Families*, 53 STAN. L. REV. 729-766 (2000).

This Article proposes that under the Child Support Recovery Act (CSRA), impoverished mothers do not have the resources to bring CSRA actions even though the statute was intended for their benefit. The author therefore claims that the true legislative intent behind the CSRA was to preserve the nuclear family and as a disincentive to divorce thus reducing the need for government support. Since the CSRA, in its present form, exposes the very class which it purported to assist, to financial risk and political disempowerment, the author recommends eliminating the CSRA. She also recommends replacing it with legislation which would vest child support actions in state courts and redirect the portion of the federal budget used in child support enforcement. These replacements would grant single parents easier access to the courts while simultaneously giving them a financial backbone which would provide support for non-governmental wealth generation.

MISCELLANEOUS

Ann Bartow, *Still Not Behaving Like Gentlemen*, 49 U. KAN. L. REV. 809-845 (2001).

This Article argues that law schools are less welcoming to women than to men. At the University of Kansas Law School, women students were underrepresented in every organization linked to aca-

demic performance. The author suggests that to address this problem, law schools should regularly compile and release accurate gender-keyed grade data so that gender based achievement gaps can be recognized. In addition, schools should release faculty composition data. The availability of such data in standardized form would permit applicants to make informed decisions about their school choices and would help administrators address disparities illustrated by such data.

Kingsley R. Browne, *Women at War: An Evolutionary Perspective*, 49 BUFF. L. REV. 51-247 (2000).

Most contemporary discussions about sexual equality in almost any sphere including the military make the assumption that there is one human psychology that is shared by both sexes. This author contends that evidence indicates that there are inherent psychological differences between the sexes which should be taken into consideration in examining the integration of the United States military. The idea that frictions created by sexual integration are cultural or that leadership can serve to ameliorate these differences does not provide a full picture. The author urges policymakers to proceed cautiously in assessing the role of women in the military, especially given the potential costs if they are wrong.

Keith Cunningham, Note, *Father Time: Flexible Work Arrangements and the Law Firm's Failure of the Family*, 53 STAN. L. REV. 967-1008 (2001).

The Family Medical Leave Act of 1993 realizes the wide-spread importance of allowing fathers and mothers time off to care for their infant children. In response to a new generation of male lawyers who wish to balance firm time with family needs, firms have recently begun to adopt leave and part-time policies. Apparently, even though these firms are trying to make important policy changes so that fathers can spend more time at home, these compromises are extremely unused by male lawyers. This Note suggests that once the changing role of the father is accepted by the older partners, younger male attorneys will follow their lead. Until then, younger male lawyers will not take advantage of this opportunity to balance their careers with family life.

Mary Ellen Gale, *The Rampart Scandal: Policing the Criminal Justice System: Calling in the Girl Scouts: Feminist Legal Theory and Police Misconduct*, 34 LOY. L.A. L. REV. 691-746 (2001).

Taking the position that police misconduct is tightly linked to stereotypical, aggressive, and rampant masculinity, this Article uses feminist legal theories to guide responses to police misconduct. After examining the history of police misconduct in Los Angeles, each feminist theory's possible justifications for transforming law enforcement is explored and then applied. All of the theories agree that hiring women is a solution to police misconduct. The author therefore concludes that police departments should seek to fill at least half their positions with women. This policy would lessen police violence due to women's abilities to combine human bonds and compassion with law enforcement and due to women's ability to establish trust between police officers and the communities in which they work.

Kelly Guglielmi, Comment, *Virtual Child Pornography as a New Category of Unprotected Speech*, 9 COMMLAW CONSPECTUS 207-223 (2001).

The Child Pornography Protection Act created a new definition of child pornography that included virtual pornography, i.e. computer generated pornographic images. This Comment suggests that virtual pornography should not be protected speech under the First Amendment because the harm it inflicts on children outweighs any of its societal value. The author argues that since both child porn and virtual porn harm children (the former directly and the latter indirectly), virtual pornography must be considered a new category of unprotected speech for First Amendment purposes. According to the author, compelling governmental interests, among them virtual pornography's use in the seduction of children, are advanced in not treating virtual pornography as protected speech.

Liane M. Jarvis, Note, *Women's Rights and the Public Morals Exception of GATT Article 20*, 22 MICH. J. INT'L L. 219-238 (2000).

This Note contends that the World Trade Organization ("WTO"), whose highest body is made up of all males, does not promote women's rights and does not advance women's issues. Thus, it is not the best candidate to address the resolution of trade disputes affecting women. The author argues that human rights concerns of women should be incorporated into the WTO regime through the

public morals exception of Article 20 to the GATT. The author urges that the WTO employ feminist legal thinkers and that it become more deferential to international human rights laws. The author concludes that pursuant to the public morals exception of Article 20, the WTO should take restrictive trade measures against nations that violate women's rights.

Diana Rosenberg, Note & Comment, *Monkey Business and Unnatural Selection: Opening the Schoolhouse Door to Religion by Discrediting the Tenets of Darwinism*, 9 J.L. & POL'Y 611-690 (2001).

According to this author, creationists, in their quest to compromise the theory of evolution and to spread their beliefs, have conceived a plan to invade the public school system. However, the First Amendment's Establishment Clause, which prevents the government from mixing with religion, acts as a barrier to the creationists' plans. Nevertheless, the Kansas State Board of Education has not only dismissed the scientific tenets of evolution as mere theory but has also deleted all references to Darwin's theories from the required science curriculum and state wide science exams. This author explains how Kansas' dismissal of Darwinism is a violation of the Establishment Clause.

Andrea L. Silverstein, *Standardized Tests: The Continuation of Gender Bias in Higher Education*, 29 HOFSTRA L. REV. 669-700 (2000).

Males consistently score higher than females on the SAT. This Article examines whether the use of standardized tests for higher education may be successfully challenged under Title IX of the Education Amendments of 1972. In doing so, the Article first reviews the history of standardized testing as it relates to higher education, focusing on the SAT. Next, the Article examines Title IX and Title VI, explaining the legal theories available to challenge the practices of educational institutions. Finally, the Article describes the disparate impact doctrine and the viability of this doctrine in the education context, providing an overview of the legal challenges that standardized testing has already faced.

Susan L. Thomas, *"Ending Welfare as We Know It," or Farewell to the Rights of Women on Welfare? A Constitutional and Human Rights Analysis of the Personal Responsibility Act*, 78 U. DET. MERCY L. REV. 179-202 (2001).

A common assumption is that poverty is a result of irresponsibility and an unwillingness to work. This assumption underlies Con-

gress's enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRA"), which was passed to end the old welfare system of dependency on governmental benefits. The PRA replaced that system with incentives for economic self-sufficiency. This author criticizes the PRA because it provides little help to those in need of economic assistance and because it puts women, particularly women of color, at a disadvantage. The author also argues that it violates the privacy, reproductive, and association freedom of women.

Lori A. Tribbett-Williams, Note, *Saying Nothing, Talking Loud: Lil' Kim and Foxy Brown, Caricatures of African-American Womanhood*, 10 S. CAL. REV. L. & WOMEN'S STUD. 167-207 (2000).

This Note examines the mainstream success of the new generation of African-American female rappers. The author adopts the historical racist and sexist social image of African-American women as "Jezebels," otherwise known as "sex objects," and traces this image from slavery to today's image of African-American rap artists such as Lil' Kim and Foxy Brown. The author concludes that negative images and myths created during slavery, which justified the exposure of African-American women's bodies in public, still influence the customs, beliefs, and consequently the law's treatment of African-American women today.

RAPE & SEXUAL ASSAULT

John B. Corr, *Rape, Sex, and the U.S. Military: Questioning the Conclusions and Methodology of Madeline Morris'* By Force of Arms, 10 TRANSNAT'L L. & CONTEMP. PROBS. 191-218 (2000).

This Article critiques Professor Madeline Morris' article, *By Force of Arms: Rape, War and Military Culture*, in which Morris addresses the relationship between rape and military culture. This Author argues that Morris uses the existence of rape in the military as a vehicle for her own agenda and for her hope to conform the military to her own views. This author accuses Morris of relying on unreliable data, of misinterpreting rates of violent crime among American soldiers and civilians, of misconstruing the "rape differential," and of avoiding the issue of the military service's superior performance in the prevention of violent crimes, all because this data does not fit comfortably in Morris' agenda.

Andrea Giampetro-Meyer, M. Neil Brown & Kathleen Maloy, Note, *Raped at Work: Just Another Slip, Twist, and Fall Case?*, 11 UCLA WOMEN'S L.J. 67-105 (2000).

This Note evaluates current worker's compensation law in relation to rape in the workplace. The authors examine the propensity of the courts to limit a woman's remedy for workplace rape to workers' compensation law, and they also examine the limits the doctrines of exclusivity and respondeat superior place on women in such situations. The Note's main proposition is that the purpose of the Workers' Compensation Act has been subverted when applied to rape cases in the workplace. Thus, women who have been raped at work should be able to choose between a tort remedy and workers' compensation coverage.

Matthew Lippman, *Humanitarian Law: War on Women*, 9 MICH. J. INT'L L. 33-119 (2000).

This author charts the law's historic neglect of crimes against women. In view of the lax prosecution of gender-related crimes and the historical disregard of rape and crimes against women in the humanitarian law of war, the author supports the establishment of an international convention on crimes against women. The convention would stress the fact that the objectification and abuse of women are key components of the tactics of armed conflict and would provide motivation for punishment of such crimes.

REPRODUCTIVE RIGHTS

Erin Lynn Connolly, Note, *Constitutional Issues Raised by States' Exclusion of Fertility Drugs from Medicaid in Light of Mandated Coverage of Viagra*, 54 VAND. L. REV. 451-480 (2000).

Viagra, typically a fertility drug for men, is covered by Medicaid whereas female fertility drugs are not. This Note discusses the disparate treatment women in need of fertility drugs face when dealing with Medicaid. The author argues that female Medicaid recipients should bring constitutional challenges due to this unequal treatment. However, the author dismisses the claim that the right to procreate is included within the fundamental privacy right based on substantive due process because a state actor does not have any constitutional obligation to either provide fertility drugs or to fund them. Nevertheless, the author believes that an equal protection claim based on the possibility of gender inequality may be meritorious. The author proposes that a successful challenge to

states' refusal to cover female fertility drugs may change current policies.

Heather M. Field, *Increasing Access to Emergency Contraceptive Pills Through State Law Enabled Dependent Pharmacist Prescribers*, 11 UCLA WOMEN'S L.J. 141-180 (2001).

Emergency contraceptive pills ("ECPs") used to end a pregnancy must be taken within 72 hours of unprotected intercourse, and they are not currently available over the counter. The author argues that the requirement of a physician's visit to get the ECP severely limits women's access to an effective means of reproductive control. The author recommends instead that states permit physician-supervised pharmacists to prescribe ECPs, thus making the pills more convenient and less expensive. Extensive medical training is not necessary to dispense the ECP, according to the author, because the pill poses very low risks and requires no diagnostic analysis.

Heather Flynn Bell, Comment, *In Utero Endangerment and Public Health: Prosecution vs. Treatment*, 36 TULSA L.J. 649-76 (2001).

An increasing number of infants have been exposed to controlled substances due to pregnant drug use. This Comment discusses the legal precedents concerning drug abuse and pregnancy, including the first case in which a mother was convicted for delivering a controlled substance to a minor via the umbilical cord. The author reviews the public health issues surrounding these cases, arguing that the pregnant mother's lifestyle may be more damaging to the child than the drugs ingested. The author criticizes current substance abuse policies because they deter women from receiving treatment thus further harming the fetus. The author proposes that fostering prevention through treatment is the only way to help these women.

Nancy Kubasek & Melissa Hinds, Note, *The Communitarian Case Against Prosecutions for Prenatal Drug Abuse*, 22 WOMEN'S RTS. L. REP. 1-14 (2000).

According to these authors, prosecuting women for illegal drug use during pregnancy raises constitutional issues. The mere possibility of prosecution may prevent pregnant women from seeking necessary prenatal care or from having children at all. The authors therefore suggest implementing a system in which a balance is struck between the personal rights of the mother and the interests

of society at large. Specifically, they advocate a "communitarian approach," which institutes community sponsored, caring environments that encourage responsible and safe behavior. This approach is not only possible, but more cost efficient than the current system of prosecuting prenatal drug users.

Jennifer L. Medenwald, Note, *A "Frozen Exception" for the Frozen Embryo: The Davis "Reasonable Alternatives Exception,"* 76 IND. L.J. 507-524 (2001).

This Note addresses the problematic nature of the reasonable alternatives exception created by the Tennessee Supreme Court in *Davis v. Davis.* Pursuant to *Davis,* in custody disputes involving preserved embryos and in vitro fertilization, if there are no prior agreements concerning the disposition of the frozen embryo, then "the party wishing to avoid procreation should prevail." However, an exception applies if parenthood cannot be achieved through any other reasonable means. This author argues that this exception is not really an exception at all because it will rarely if ever be applied and because the assumptions upon which it operates are not reasonable in all cases. The author concludes that this exception should be abandoned or rewritten so that it "truly balances the right to procreate and the right to avoid procreation."

Judith A.M. Scully, *Maternal Mortality, Population Control, and the War in Women's Wombs: A Bioethical Analysis of Quinacrine Sterilizations,* 19 WIS. INT'L L.J. 103-151 (2001).

This Article addresses the usage of quinacrine hydrochloride to permanently sterilize poor women living in third world countries and the ethical implications of such usage. The proponents of this drug claim that the practice is essential to population control and to the national security of the United States. However, this author argues that the use of quinacrine is not effective because of its low effectiveness rate and because of the health implications associated with it. The Article speculates that the codes governing the ethics of human experimentation are being violated by the use of this drug. Finally, the author concludes that quinacrine should not be tested on human subjects either in the United States or in other countries.

SEXUAL HARASSMENT

Tianna McClure, Note, *Boys Will Be Boys: Peer Sexual Harassment in Schools and the Implications of* Davis v. Monroe County Board of Education, 12 HASTINGS WOMEN'S L.J. 95-121 (2001).

In *Davis v. Monroe County Board of Education,* the Supreme Court held that a school district may be held liable for failing to respond adequately to peer sexual harassment. However, Title IX leaves children without protection against sexual harassment in school because the Supreme Court created such a high standard that it is nearly impossible to find a school board liable under this act. The author considers other ways state courts and legislatures can find such school boards liable. These include holding that schools stand *in loco parentis* and creating state remedies whose standards are lower than the *Davis* standard. However, the author ultimately concludes that Congress must amend Title IX to ensure that American children are protected from peer sexual harassment in schools.

Sara Diane Stevenson, *The Revenge of the Hot Dog Slut: Peer Harassment After* Davis v. Monroe, 10 S. CAL. REV. L. & WOMEN'S STUD. 137-166 (2000).

This author discusses how schools can begin to draw a line between acceptable teasing and peer sexual harassment. In doing so, she examines the current change in the cultural understanding of teen sexuality. School administrators and courts once stated "boys will be boys." However, judicial decisions like *Monroe v. Davis* recognize the grave effects peer harassment has on victims and find schools liable when severe harassment excludes students from educational opportunities. The author proposes that in designing peer sexual harassment policies, schools should encourage students to define harassment themselves, should use a "reasonable student standard" to evaluate complaints, and should design their curricula to address teen sexual harassment.

WOMEN AND THE PROFESSION

Karen Clanton, *Glass Ceilings and Sticky Floors: Minority Women in the Legal Profession,* 49 U. KAN. L. REV. 761-774 (2001).

This Article uses statistics and personal letters to explore the different concerns multicultural female attorneys face, particularly the obligation to keep the door open for those who follow them. Over

the past twenty-five years, the first wave of multicultural women has gained entry into the legal profession and has achieved numerous milestones. However, there is an inaccurate perception that these women have a double advantage because of their race and sex. Ultimately, the author concludes that multicultural women must develop a unique toughness and work ethic which would let them stand alone while simultaneously giving back to the communities that made their successes possible.

Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceiling and Open Doors*, 49 U. KAN. L. REV. 733-753 (2001).

The percentage of women in the profession of law has increased significantly over the last century. However, women in this profession still face many obstacles. Specifically, they face prejudice which impedes professional advancement. They are also subject to the "billable hours" measure of productivity and commitment which places women at a disadvantage because they are also expected to fulfill child care responsibilities. Women's opportunities, both inside and outside the legal profession, will be constrained if these issues are not addressed.

Deborah Jones Merritt, *Are Women Stuck on the Academic Ladder? An Empirical Perspective*, 10 UCLA WOMEN'S L.J. 241-247 (2000).

In the legal academy, sex and race account for professors' success patterns and for their approaches to legal education. White males publish frequently, fill tenure-track and high positions, and become deans more frequently than white women and minorities. In some areas, however, women shine. They flourish in public service positions, and they garner considerable citations to their works. The author posits that three forces contribute to these uneven success patterns: discrimination, heavier family commitments, and different goals. In terms of approaches to the legal profession, white, male professors are more likely to add an economic spin to courses. However, women and minorities are more likely to push students to consider feminist and critical race theories. The author suggests that the academic system be remodeled to keep women and men on the same rung of the academic ladder.

Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775-807 (2001).

The author contends that gender segregation and denigration of feminist legal scholarship have led to the domestication or "taming" of women in the legal academy. The author cites studies showing that female law professors spend a disproportionate percentage of their time teaching low prestige courses and performing labor intensive, service-oriented administrative tasks. This legal academy discourages women from engaging in radical feminist theorizing. To discourage this segregation and denigration, the author argues that law schools should keep closer track of gender divisions in the distribution of administrative tasks and the curriculum. Law schools should also encourage the good faith engagement in feminist legal scholarship and in the empirical testing of radical propositions.

Larry Lovoy, *A Historical Survey of the Glass Ceiling and the Double Bind Faced by Women in the Workplace: Options for Avoidance*, 25 LAW & PSYCHOL. REV. 179-203 (2001).

The "glass ceiling," an invisible barrier prohibited by law, prevents women from rising to senior management levels in corporate settings. It is blamed for the fact that women consistently receive lower pay in nearly every occupation. This Article surveys the history of prejudice against women in the workplace, discussing both the historical basis for bias against women and the evolution of sexual discrimination laws. In addressing modern-day discrimination, the author focuses on the glass ceiling and explains why women are unable to enter its upper level. After examining several aspects of sexual harassment, the Article provides practices it hopes will eliminate the glass ceiling in the workplace.

Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313-353 (2000).

In recent years, the national composition of law school students and producer school students has equalized in terms of gender percentages. However, the number of women in high faculty positions has not increased proportionally. This Article examines a series of statistics and concludes that women do not do as well as men academically in law school. He also concludes that women who pursue careers as members of law school faculty consistently hold lower positions than their male counterparts in terms of both

pay and status. The author also examines the tenure track as well as the ratio of male to female deans. He concludes that although it is subtle, there is a systematic pattern of disadvantage in this country which blocks women from career advancement.