ANNOTATED LEGAL BIBLIOGRAPHY

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I. HUMAN RIGHTS

Jacob Z. Bolton, Note, *Health in All or Profit for Some: Health and Racial Equity in All Policy for a Just Transition*, 20 J.L. SOC'Y 315 (2020).

Climate destabilization poses a significant harm to not only humans' physical and mental health, but to many communities by creating an inequality "climate apartheid." Some communities are less equipped to deal with the effects of climate change and some are the first communities to even experience these effects. This inequity creates the "climate apartheid". This "climate apartheid" therefore burdens some communities more than others. Where the federal government should be trying to solve these climate destabilization issues, the Trump administration has cut back on counteracting climate destabilization efforts. Yet, other government entities still acknowledge this issue: 24 governors have joined the U.S. Climate Alliance, committing to lead on climate destabilization and trying to reduce greenhouse gas emissions by at least 26-28% below 2005 levels by 2025. The author proposes that we need a policy that takes both health and racial equity into account and positively impacts historically and presently oppressed groups. The author suggests that we support wealth distribution, cuts to military spending, and temporary upheaval to our ideas about jobs and the economy to support long-term success.

Annotated by: Morgan Berenbaum

Barrie Sanders, Article, *Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation*, 43 FORDHAM INT'L L.J. 939 (2020).

The digital sphere's increased concentration of influence has resulted in the need to realign corporate governance with international human rights and public interest, as demonstrated by the use of these platforms to wage global disturbance through geopolitical and genocidal fashions. Issues such as Russia's cyber influence over the 2016 United States presidential elections and the Myanmar military using platforms for governmental campaigns of mass violence against Rohingya are examples of incidents which have awakened the public to realize the dangerous potential of online platforms. The author discusses a human rights-based approach to platform moderation to highlight the choices and challenges that online platforms are likely to face while adhering to corporate responsibility and respecting human rights, such as, challenges of enforcement, translation, legality. A human rights-based approach must be applied in the center of platform moderation policies, while shifting to a more structured and principled approach to content moderation by providing platforms with a framework and conceptual tools to holistically assess and address the adverse human rights impacts of moderation rules, processes and procedures. The discussed framework will also require minimizing the adverse human rights impact through diversified response option which will work to ensure the preservation of freedom of expression through the least intrusive means required. Noted processes in this context include the revision of terms of service and community standards, the management of systems of community and algorithmic flagging, the governance of human and algorithmic decision-making, the transparency of user-generated and advertising content, and the response of platforms to regulatory pressures. Therefore, this approach to content moderation is not simple, and will raise complex issues related to the diversified landscapes under which these platforms operate without any guarantee that implementation of such a detailed and multi-faceted framework will prove to be successful.

Annotated by: Rajan Kambo

Lolita Buckner Inniss, Response, *Race, Space, and Surveillance: A Response to #LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. F. 213 (2020).

In *#LivingWhileBlack: Blackness as Nuisance*, Taja-Nia Henderson and Jamila Jefferson-Jones examine why white people believe and perceive Black people and Blackness as occupying space they should not be, such that their presence amounts to a nuisance or trespass to land. Despite being similar, nuisance and trespass to land differ slightly when looked at what the injury is: nuisance is an interference with the enjoyment of public or private property while trespass to land or chattels is an intentional and willful harm to private property. When applied to scenarios where white people call the police on Black people for "living while Black" – doing some activity they are legally allowed to be doing – white people first report a nuisance, an interference with public enjoyment of land, and then shift to a trespass to land, a private action. In other words, white people call the police to report Black people for a legal activity that "interferes with the public enjoyment of land" and in the same breath claim private rights in the property to exclude Black people from it. This makes no logical sense – one cannot claim both a public interest and private interest in land; this shows that Black people and Blackness are interpreted by white people as enough to amount to a nuisance or trespass to land by itself. Henderson and Jefferson-Jones state that society can raise awareness of this issue by implementing training for 911 dispatchers to flag white callers' baseless claims or outsourcing police work. The author agrees, but notes that this alone is not enough because racial norms and their connection to space must be radically redefined so the class of people determining who may legally occupy space is broadened beyond just white people. Ultimately, the author believes Henderson and Jefferson-Jones meaningfully and successfully add to normative ideas about race by explaining how Blackness is sometimes perversely used as a property tort.

Annotated by: Marie Simpson

Martinez, George A., Article, *Law, Race, and the Epistemology of Ignorance*, 17 HASTINGS RACE & POVERTY L.J. 507 (2020)

This article is focused on applying an epistemological framework to the study of ignorance, race, racial prejudice, and systemic racism and their effects on the legal system. The major contentions of the article are that the dominant white social group has constructed and maintained an "epistemology of ignorance" in race and law with respect to Native Americans; Mexican-Americans; in employment law; the Trump administration's immigration policy; in the area of Federalism in Supreme Court cases dealing with voting rights and Medicaid expansion; and finally in legal scholarship and the outlawing of ethnic studies courses in Arizona schools. The author proposes that "white ignorance" is the product of an epistemic agreement of sorts among whites to create and sustain a system of false beliefs, thus allowing them to maintain white supremacy and their socially-dominant position. The author frequently references Charles Mill's theory of a "racial fantasyland" wherein whites can willfully construe a lack of racial discrimination despite evidence to the contrary, and justify actions to promote white racial supremacy via employment of misrepresentations and misapplication of legal principles. The author contends that the epistemology of ignorance abets white hegemony through mischaracterization of legal assessments of racial discrimination. Discriminatory intent is misrepresented as neutral in several contexts: in employment cases; in assessing racially-motivated discriminatory policies by the Executive Branch such as the "Muslim Ban"; the striking down as discriminatory of the Medicaid expansion of the Affordable Care Act, and the purported neutrality of a state policy preventing the teaching of materials critical to white racial hegemony. In concluding, the author promotes a broader discussion of how the epistemology functions at every level of the court system to cement and maintain racial discrimination and white racial hegemony.

Annotated by: Alexander Toke

II. IMMIGRATION

Anna S. Faber, Note, *A Vessel for Discrimination: The Public Charge Standard of Inadmissibility and Deportation*, 108 GEO. L.J. 1364 (2020).

The term "public charge" has numerous definitions, but the commonly accepted definition is one who is partially or wholly dependent on the government, usually because of an inability to work through age or disability. Since the 1800s, immigration officials have labeled prospective immigrants as a *public charge* to deny admission or to deport an immigrant from the United States. Two ways of understanding a *public charge* are through "interpretation" and "application." The *interpretation* method has been used to see a public charge as the previously mentioned accepted definition while the *application* approach is rooted in an inherently discriminatory use. From 1875-1950s, immigration officials rejected immigrants mostly for eugenics reasons whereas the 1950s-now, a loose definition of public charge has been used to increase immigration restrictions and limit immigrants access to public benefits. The Trump Administration has adopted the latter approach by proposing the elimination of public benefits to disincentive immigration and increasing the sponsor ratio (US citizens who guarantee money to immigrants) from 140%-200% above the poverty line to lower the pool of potential sponsors. While conservation members of Congress underscore a principle of a prospective immigrant being self-sufficient, not dependent on public benefits (their own families resources) as a way to mitigate the tax burden on American citizens, the author sees this strategy as aimed at hurting minorities. The author analogizes, just how the literacy test enacted by the Immigration Act of 1924 served to discriminate against non-English speaking immigrants, similarly, restrictive public benefits discriminate rather than promote self-sufficiency.

Annotated by: Jacob Diamond

Wendy E. Parmet, Essay, *Center for Public Health Law Research at Temple University Beasley School of Law: Immigration Law as a Social Determinant of Health*, 92 TEMP. L. REV. 931 (2020).

Public health research has revealed that population health is shaped by a variety of social factors known as the social determinant of health (SDOH). These factors include conditions that shape individual's daily life such as how they are born, grow, work, live, age, their socioeconomic status, education, neighborhood, employment, social support networks, access to health care which all affects population health by creating fear and trauma, restricting access to critical social goods, such as health care, food, and housing, and influencing social understandings of health. The author explores three sets of regulatory initiatives passed by the Trump administration such as family separation and detention, the public charge rules, the attempted ban on medical deportation, and the President's health insurance proclamation to show how these initiatives have harmed the health of both immigrants and the broader community. In addition, the author sheds light on the response to these initiatives, such as legal mobilization that has developed, seen from court orders to cease family separation, which has also affected the health of immigrants and the broader community. Throughout this article the author examines the outcomes of various regulatory initiative's and reveals how immigration law acts as a social determinant of health that affects the health of both noncitizens and citizens.

Annotated by: Laurenne Ferber-Kaufman

Catherine Y. Kim & Amy Semet, Article, *Presidential Ideology and Immigrant Detention*, 69 DUKE L. J. 1855 (2020).

The issue discussed in this article is that Immigration Judges during the Trump administration's presidential period often follow the policy preferences of the current President causing an increase in detainment, as well as an increase in the bond amount, thus resulting in a lack of proper Due Process. Noncitizen immigrants can be detained in the United States while their removal hearing is not yet resolved. Immigration Judges, who are entitled to use independent judgement, decide whether an individual will be detained pending a removal hearing. The author discusses the likelihood of an Immigration Judge to follow the policy preferences of the current President by comparing Immigration Judges' decisions in removal hearings and bond hearings with the decisions made by Immigration Judges under prior administrations. The author concludes that the decision to detain non-citizen immigrants should not be determined by a Presidents political agenda and suggests that to remedy this issue, rather than applying the high level of judicial discretion in place now, there needs to be more uniform guidelines such as a specific factors that each Judge must weigh when determining detention, bond decisions and amounts, and flight risk.

Annotated by: Dana Gambardella

Nora Hui-Jung Kim & Hyemee Kim, Article, *From a Spouse to a Citizen: The Gendered and Sexualized Path to Citizenship for Marriage Migrants in South Korea*, 54 LAW & SOC'Y REV. 423 (2020).

Morality is almost universally considered as a factor for immigration courts in making decisions for those seeking naturalization. However, the lack of a clear definition of good moral character has led to some nations, such as South Korea, to use certain moral issues to make claims of fraudulent marriage and disqualify migrants from citizenship. Here, the authors describe a number of ways South Korea's societal views on sexual morality have toughened the path to citizenship. These include: not being chaste enough, such as any sexual or intimate relationship outside of marriage, displays of affection towards ex-spouses, and participation in sexual labor; and being too sexually reserved, i.e. no sexual contact between husband and wife. Thus, the author's research found that the migrant spouses of Korean citizens were subjected to harsher moral baselines in citizen determinations. Here, the authors argue that the inconsistency evident in reviewed cases could be cured through a greater dedication by judges to better understand immigration law. In conclusion, the authors state that the establishment of independent immigration courts could lead to more consistent court rulings on immigration cases in South Korea, with less of a focus on the vague and subjective idea of good morality.

Annotated by: Evan Garfinkel

Ingrid V. Eagly, Article, *The Movement to Decriminalize Border Crossing*, 61 B.C. L. REV 1967 (2020).

The Trump administration's unprecedented expansion of mass migrant prosecutions along the US-Mexico border has sparked national public concern and the first serious challenges to the use of the criminal justice system to punish border crossing. Criminalization of "unauthorized entry" by migrants into the United States has been part of an overt strategy of racial exclusion seeking to bar Mexican migrants from the country since the laws were first enacted in 1929. Since then, reliance on criminal law has increasingly burdened federal dockets, detracted from the prosecution of more serious offenses like drug trafficking and gun crimes, and racialized immigration by equating people of color with crime and characterizing them as undeserving of relief. An increasing number of decriminalization proponents now advocate for the repeal of criminal immigration laws as an illegitimate and excessive use of criminal power, particularly because civil law and the civil deportation system are already used as punishment for unauthorized border crossing. In reimagining the changes necessary for immigration law reform through decriminalization, the author focuses on: (1) bolstering the existing system of graduated civil sanctions and removal processes to include sanctions short of deportation, and (2) restoring judicial discretion in weighing the individual circumstances of every case. Suggested measures include delays in citizenship eligibility in lieu of deportation, a five-year statute of limitations for pursuing deportation against migrants, "temporary deportation" sanctions to allow noncitizens reentry after a set period of time, and incorporation of the concept of mercy by allowing judges to weigh individualized factors before determining whether someone is subject to civil removal procedures. By varying the severity of sanctions pursuant to individualized contexts, these reforms capitalize on the flexibility of the civil system's sanctions of fines and deportation to make civil immigration law more equitable while safeguarding against replication of the issues affecting the criminal law system in the absence of criminal penalties.

Annotated by: Maegan Gorman

Bill Ong Hing, Article, *Mistreating Central American Refugees: Repeating History in Response to Humanitarian Challenges*, 17 HASTINGS RACE & POVERTY L.J. 359 (2020).

The United States' mistreatment of Central American immigrants and refugees today largely reflects that of in the 1980s. In the 1980s, when tens of thousands of Central Americans fled their countries due to civil unrest, the Reagan Administration detained them. Now, as Central Americans attempt to escape unsafe conditions including gang violence and drug cartels, the Trump Administration is severely limiting migrant entry, separating children from their families, and detaining people for long periods of time in poor conditions. The author contrasts the experiences of Central American migrants in the 1980s and present day by exposing the similar reactions they were met with in the United States, such as having limited access to legal representation and being forced to wait for asylum in dangerous conditions in Mexico. He argues that we should acknowledge and learn from our mistreatment of those seeking asylum, and respond in a way that both recognizes the cause of why migrants are fleeing, and solves the problem humanely and effectively. Continuing to repeat history will not be what finally puts an end to the decades of unsafe conditions Central American migrants have been putting themselves at risk for to gain freedom in the United States; instead, to sustainably respond to current challenges, we must recognize the mistakes of the past and implement updated, targeted policies and procedures.

Annotated by: Gabriella Javaheri

III. ENVIRONMENTAL LAW

Carolina Arlota, Article, *Does the United States' Withdrawal From the Paris Agreement on Climate Change Pass the Cost-Benefit Analysis Test?*, 41 U. PA. J. INT'L L. 881 (2020).

When the Trump Administration pulled the U.S. out of the Paris Agreement on June 1, 2017, some questioned whether the cost-benefit analysis of the withdrawal was taken into consideration from a domestic or international perspective. The author addresses withdrawing from the Paris Agreement through two different through two different perspectives—the procedural and the substantive methods—to determine whether there was any merit in the withdrawal. Procedurally, there was evidence that the Trump Administration did not have a director of the Office of Science and Technology policy, neglected to weigh the costs and benefits from any sound scientific studies, and overall lacked transparency in making the decision to withdrawal. Consequentially, disregarding the procedure of the cost-benefit analysis effects both international and domestic legal certainty; recent litigation domestically related to the Paris Agreement has arisen, and courts have no clear path on how to decide. Substantively, while hard to qualify the impact of climate change, estimations of market damages (i.e. infrastructure, tourism, and increased energy demand) and non-market damages (i.e. ecological impact, measured in terms of "willingness to pay"), the author found that the withdrawal allows China and Europe to impose retaliatory tariffs, and carbon-tariffs, on the U.S. The author notes that no environmental costs were accounted for, and the costs of implementing the withdrawal were not even publicized; a top financial regulator noted that the financial risks from climate change are comparable to those posed by the mortgage meltdown that triggered the 2008 financial crisis. The author argues through this assessment, or lack of assessment given to the cost-benefit analysis of the withdrawal from the Paris Agreement, the United States should remain in the Agreement and be a "leading force" in reducing carbon emissions and trying to mitigate the effects of climate change.

Annotated by: Jessica Friedman

Andrew Harvey, Article, *Climate Change & Greenhouse Gases: Keeping Our Vehicle Emissions Standards Safe*, 49 U. BALT. L. REV. 383 (2020).

Climate change is one of the most pressing political topics around the world today. The United States is currently one of the world's largest contributors to the emissions of greenhouse gases, one of the most critical components of climate change. As such, the Obama Administration's Environmental Protection Agency (EPA) created the Clean Car Standards (CSS) as an effort to mitigate production of harmful greenhouse gases. The CSS laid out a comprehensive plan to improve fuel economies in light duty vehicles over the next decade, a solution that would lead to dramatic decreases in vehicle greenhouse gas emissions. However, almost five years later, the Trump Administration's EPA determined that the CSS model was no longer appropriate, reasoning that key assumptions it had relied on had significantly changed. Shortly after, the EPA released a proposal for the SAFE Vehicles Rules, a less comprehensive plan that will severely undermine the progress made under the CSS. If enacted, SAFE will stunt the decrease in greenhouse gas emission rates, which will then cause both health and economic issues such as increases in natural disasters, reduction of safe drinking water availability, and elimination of jobs in the agriculture industry. The author addresses two potential solutions to the stopping of SAFE, the citizen suit provision of the Clean Air Act and the call for state legislatures to implement stricter programs. The citizen suit provision allows a citizen to file a claim against any person or entity that violates the CAA. Favorable judgment would result in enforcement of CAA provisions. The most promising state initiative would involve adopting the comprehensive regulations passed by California through a CAA waiver. The author stresses the importance of these two courses of action and the detrimental impact that will result from SAFE if it does go into effect as presently written.

Annotated by: Rachel Gold

Romany Webb, Lauren Kurtz, & Susan Rosenthal, Comment, *When Politics Trump Science: The Erosion of Science-Based Regulation*, 50 ENV'T L. REP. 10708 (2020).

The pervasive anti-science attitude of the Trump Administration, specifically in regards to climate change, hinders the performance of many federal agencies in respect to their scientific research. Fostering an anti-science attitude justifies a weaker reliance on science and subsequently decreases its use as a basis in drafting governmental regulations. The author cites to the Silencing Science Tracker, a project spearheaded by the Climate Science Legal Defense Fund and Columbia Law School's Sabin Center for Climate Change Law, which tracks all publicly reported occurrences of the federal government restricting scientific research or prohibiting scientific publication. Anti-science actions taken under the Trump Administration include scientific censorship by government agencies and individual researchers, personnel changes reducing the amount of scientific researchers, budget cuts, limiting access to data, and engaging in bias against unpopular scientific findings. The negative impacts of these actions have been identified in twenty-two federal organizations, including the Environmental Protection Agency and the U.S. Department of the Interior. The author urges that continued attacks on science under the Trump Administration, thus limiting the public understanding of current science-based issues and therefore casting doubt on its relevance, will have the impact of decreasing reliance on science in prospective governmental regulations.

Annotated by: Sara Gruber

Jaclyn Lopez, Note, *From Bail Out To Righting The Course: The Commonsense Action The United States Must Take To Address Its Flood Crisis*, 33 TUL. ENVTL. L.J. 1 (2020)

The current programs which Congress set in place to mitigate the harms and consequences of flooding are flawed and insufficient [AGP1] [RL2] [RL3]. Congress must adopt and implement common sense measures and end fossil fuel leasing which leads to the rising of sea levels and worsening climate change. Furthermore, Congress can no longer overlook the National Flood Insurance Program (NFIP) and how it subsidizes developments in increasingly vulnerable floodplains. The NFIP assisted floodplain development by furnishing insurance policies that provide discounted coverage and obscure risk, essentially subsidizing development in areas which are vulnerable to flooding. Concurrently, by contributing 15% of annual global[AGP4] greenhouse gas emissions annually, the United States is accelerating the climate crisis and aggravating flooding. Furthermore, the Federal Emergency Management Agency, which was tasked by Congress, refuses to use climate change and sea level rise science when mapping areas in the United States which are vulnerable to special flood risks, as tasked by the NFIP. The author argues that the United States must require its agencies who fund, authorize or permit fossil fuel activities to analyze the greenhouse gas emissions and the impact they have on the environment. The current climate crisis is making flooding worse and will continue to do so unless the United States ends fossil fuel leases. Furthermore, it is imperative that Congress require the Federal Insurance Emergency Agency (FEMA) to employ the best and most recent sea level rise mapping and climate change to reflect actual flood risk, examine the impacts to wildlife habitats, and furnish a nationwide strategy for flood disclosure and threats. Ultimately, the current policies and programs are insufficient, and for a national program for tackling climate change to be successful in the age of climate change it must include significant restrictions on the leases of fossil fuels.

Annotated by: Raquel A. Levy

Brigham Daniels, Andrew P. Follett, & Joshua Davis, Article, *The Making of the Clean Air Act*, 71 HASTINGS L.J. 901

The *1970 Clean Air Act* (the *Act*) has made one of the biggest impacts on environmental law since its enactment, but there is little scholarship discussing the background and history that formed the *Act* as most of the literature focuses on the effect of the legislation. The authors aim to expand the current understanding of the history of the *Act* by detailing the political environment in which it was created, the legislative process, its key players, and the enforcement of the *Act*. The authors note that the political environment was characterized by failed attempts at legislation providing uniform national air pollution standards; however, Congress began to cooperate more fully under the pressure of "social unrest and public cynicism" as a bipartisan concern for air pollution grew. In exploring the history of the *Act*, the authors highlight the tension between President Nixon and Senator Muskie (the "primary mover of the bill") as Senator Muskie struggled to convince President Nixon to sign the bill. After the *Act* was eventually signed into law, enforcement was still an uphill battle as "efforts to undermine the [*Act*] grew" and the Environmental Protection Agency attempted to assert enforcement as its primary function. As the *Act* celebrates its golden anniversary, the authors emphasize it is more important than ever to recognize the history and people who made the *Act* come to fruition as it has paved the way for many other environmentally protective laws and allowed for the "first step of the modern federalization of environmental law."

Annotated by: Annslee Renee Perego

Brandon Hasbrouck, Note, *Undoing the Inheritance: Building A Legal Response to Water Insecurity in Africa*, 68 UCLA L. REV. DISCOURSE 200 (2020).

Africa, specifically Sub-Sharan Africa (SSA), should get rid of what it learned through colonial inheritance and craft a creative legal solution to its social problem of water insecurity given its effects on societies and individuals within SSA, and the prevalence of the water insecurity within SSA compared to the rest of the world. The immediate causes of water insecurity in SSA are inadequate infrastructure, poverty, environmental and population factors, and the root causes of water insecurity are directly linked to the continent's experience with colonialism and how that experience forms a part of Africa's colonial inheritance. The water infrastructure cannot keep pace with a rising non-rural population because poverty reduces water security both at a personal and a state level and creates a cycle of water insecurity through untreated wastewater, nutrient loadings from agricultural run-off and other pollutants that can seriously impact water quality. The colonial legacy has led to institutions inheriting and utilizing the "repetitive patterns of behavior" established during colonialism, which includes ineffective political institutions, exploitative trade relationships, and inadequate social services. This note explores how these root and immediate causes in SSA worsen the problem of water insecurity and how recent legal responses from Africa, internationally, and the different states of Africa may help to establish the idea of the importance of the human right to water and adequate sanitization but do not provide a substantive solution and are not legally binding. The author suggests that legal solutions such as the eradication of poverty, use of legal instruments as a tool for social change, good governance, and public participation may help in the reduction of water insecurity in SSA and the recognition of the essential role water plays in the realization of all human rights. However, the problem of water insecurity is such a big problem that no one solution will be feasible, but a combination of state specific approaches which incorporate all of the solutions proposed. SSA should eliminate what it learned through colonial inheritance and craft a creative legal solution that establishes water security as a fundamental right and provides successful water security to everyone.

Annotated by: Abigail Reid

Sue Reid & Jennifer K. Rushlow, Article, *Behind The Curtain: Insiders' View of Developing And Enforcing State Climate Change Laws*, 50 ENVTL. L. REP. 10466 (2020).

The climate crisis is an urgent issue both internationally and in the United States and addressing it requires a syncretic blend of actors, including private individuals and policymakers. In light of the current federal government's rollbacks of climate policy and clean energy acts, the need for individual action as a means to address the climate crisis in an effective and interdisciplinary manner is stronger than ever. A pivotal example of how individuals, policymakers, and the private sector have worked together to create effective change includes the adoption of the Global Warming Solutions Act (GWSA) in the Commonwealth of Massachusetts in 2008. When the Massachusetts Department of Environmental Protection failed to meet GWSA §3(d) and promulgate regulations to reduce greenhouse gas emissions in Massachusetts, a diverse team of plaintiffs (teenage climate advocates, businesses, and a law school environmental law clinic) came together to seek a declaratory judgment, success came through the Massachusetts Supreme Judicial Court. As one of the authors was the attorney on behalf of one plaintiff, the authors note the success of GWSA and the litigation that came afterward and make an argument that statutory mandates and mandatory laws are a crucial part of depoliticizing the climate crisis, as well as providing effective, tangible goals such as mandatory targets for greenhouse gas emissions that constrain state agencies to proper greenhouse gas mitigation efforts. In an effort that best tackles the climate crisis most effectively, the authors recommend the adoption of GWSA-esque policies in other states while improving on GWSA's statutory framework by making it more specific in regards to agency oversight, mandatory emission reduction versus aspirational reduction, and the ultimate responsibility of enforcement.

Annotated by: Miles Taylor

Joy Y. Xiang, Article, *Cleantech Innovation by Developing Countries*, 38 B.U. INT'L L. J. 183 (2020).

The International Energy Agency stated that cleantech innovation must increase between two and ten times current levels to combat climate. Currently, developed countries own, develop, and innovate most cleantech, while developing countries lag well behind because the present economy relies on the voluntary transfer of cleantech. To combat this division, the author proposes a "three-part pathway" for developing nations to attract foreign cleantech and develop domestic cleantech comprising international aid, international cleantech cooperation, and domestic cleantech innovation. Furthermore, the author identifies general innovation inputs and cleantech specific inputs as necessary factors for cleantech innovation to thrive. Analyzing the three case studies led the author to observe that both improvements must be present for increasing domestic cleantech production. The author believes that developing countries can increase these inputs by clearly signaling their intent. A few examples of how a country could signal their intent is through a robust intellectual property regime, creating prizes, and innovation commons for cleantech innovations. The author believes that global cleantech development is essential to combat climate change and their proposed three-part pathway paves the way for developing countries to increase their innovation inputs, leading to a boom in domestic cleantech innovation.

Annotated by: Elliott Williams

IV. POLICE EMPLOYMENT

Matthew Standard, Comment, *The Constitutional Challenges Awaiting Police Reform—and How Congress Can Try to Address Them Preemptively*, 11 CALI. L. REV. 296. (2020)

The author explores possible constitutional challenges to three of the more popular proposals to federal police reform, an imminent need in the wake of the death of George Floyd, and many other innocent Black men and women. The first proposal is the abolition of qualified immunity, which is rooted from sovereign immunity, a common law doctrine that legislation alone may not be able to eliminate it. Thus, even if Congress is willing to intervene, elimination of qualified immunity requires "either a judicial change of heart or constitutional amendment to overcome." The second proposal is to create a nationwide police use-of-force database, which only requires the Congress avoid commandeering challenges. The third approach, establishing national standards for the use-of-force guidelines, touches on the issue of abrogation of the sovereign immunity, which requires the Congress to (1) provide a clear statement of congressional intent to abrogate states' sovereign immunity, and (2) make specific findings that in order to prevent and deter unconstitutional conduct, prophylactic legislation is required. Given the longstanding problem between race and policing and the recent stories like George Floyd, it is at least foreseeable that Congress can prove that federal intervention satisfies the expectations articulated by the Supreme Court. Regardless of which approach Congress will take, Congress has to be mindful of judicial scrutiny because police reforms will face recurrent litigation, and probably try to avoid challenge qualified immunity given the its inherited constitutional quality.

Annotated by: Jianyuan Hua

Monica C. Bell, Article, *Anti-Segregation Policing*, 95 N.Y.U.L. REV. 650 (2020).

Police reform has always been a major topic of discussion in large American cities. Lawmakers and legal scholars usually have a narrow view of the intricate roles that policing plays in society and that view focuses mostly on crime control techniques. The author takes an alternative route and looks to engage in police reform from a view that centers on the role of policing from the daily maintenance of racial residential segregation. The author argues that an anti-segregation approach to policing should be adopted by police leaders and reformers because the opposite has been seen to lead to illegal and brutal police behavior. There are multiple legal frameworks and policy ideas that are presented in the article that could help push through an anti-segregation ethical approach. Some of these are: marshalling fair housing law, harm recognition and reckoning, police redistricting, strategic nonresponse, and structural reform litigation as potential tools and policy approaches. An anti-segregation approach in policing In conclusion, the author argues that the adoption of an anti-segregation approach is an important alternative route police reformers and police leaders should take.

Annotated by: Fatima C. Ouedraogo

Aaron Kupchik, Article, *Police Ambassadors: Student-Police Interactions in School and Legal Socialization*, 54 LAW & SOC'Y REV. 391 (2020).

It is increasingly common for police officers to be placed in schools as School Resource Officers (SROs) where they impact how youth gain knowledge of legal systems (legal socialization). There are unexamined benefits and harms that come from these interactions, particularly for youth of color and low-income youth. The author conducted interviews and focus groups with SROs, school administrators, teachers, students, and parents and found that SROs were likely to (1) teach only positive messages of law enforcement, (2) pin criminal behavior on bad individuals, and (3) invalidate criticism of policing. These biased views negatively impact students of color by (1) increasing the potential of police surveillance, (2) causing conflict with their own communities who view police negatively, and (3) stifling critical views of policing. Importantly, these biased viewpoints spread by SROs may lower self-esteem for marginalized students and inhibit any productive conversation about police reform that would help communities of color. For this reason, the author suggests (1) schools allow parents, students and community leaders input into the use of SROs, (2) more states implement policies requiring legal socialization training for SROs to ensure they properly know the impacts they have, and (3) further research be conducted, focusing on schools with racial and class diversity, to examine the impact SROs have on shaping how students relate to legal systems after legal socialization.

Annotated by: Dario Rabak

K. Sabeel Rahman & Jocelyn Simonson, Article, *The Institutional Design of Community Control*, 108 CALIF. L. REV 679 (June 2020).

In light of grassroots movements calling for a shift in power directly into the hands of the community to redress long-standing inequality, the authors of the article provide an in-depth analysis of current approaches to community control with respect to policing and economic development. They propose three key components to consider to determine whether the institutional design of a framework would truly shift power over policing and economic development to traditionally disempowered groups: 1) the scope and nature of authority of the oversight board over local governance, 2) the composition of the governing body, and 3) the moment of authority. The authors apply the components to assess the relative strengths of the models for community control of police in the Chicago CPAC, Chicago COPA, and Oakland Community Police Review Agency, and local economic development in the Detroit CBA Ordinance and Revive Oakland as enacted by Oakland City Counsel with the support of the Rise Together movement. Overall, the authors find that an institutional design is strong when it consists of independent oversight board members, representative of historically disempowered groups who have the power to adopt rules for police conduct and mandatory community benefits requirements, and possesses structural influence. However, if an institutional proposal is weak in one dimension, designers can make up for it by strengthening another dimension. The authors suggest that community control is feasible if organizers keep in mind the authors' proposed three-dimensional framework when designing the plan.

Annotated by: Laura Song

V. REVENGE PORN

C. Thi Nguyen & Bekka Williams, Article, *Moral Outrage Porn*, 18 J. ETHICS & SOC. PHIL. 147 (2020)

In this piece, the authors examine the evolving definition of "porn" and attempt to apply it to a category of presentation that they call "moral outrage porn." Moral outrage porn, like food porn, real estate porn, or sexual pornography, is sought out by the viewer in order to evoke a gratifying reaction—fleeting bursts of pleasure stemming from fantasies about one's culinary ability, living conditions, or sexual experiences. The authors propose a basic theory of generalized porn, drawing from the lineage of aesthetic philosophers going back to the early 19th century, as representations of a field (i.e. food, sex, clean white furniture) that reward the viewer with immediate gratification while avoiding the usual costs (purchasing ingredients, finding a sexual partner) and consequences (gaining weight, dirty furniture, the mortifying ordeal of being known). From there, they proceed to define moral outrage porn as "a representation of moral outrage primarily used for the sake of the resulting gratification, where the user engages with the representation freed from the usual consequences and efforts of engaging with morally outrageous content." They identify moral outrage porn as a uniquely dangerous form of porn, in that it instrumentalizes a fundamental and necessary emotion for the sake of personal gratification. The authors caution that the instrumentalization of moral outrage will lead to aspiring users of moral outrage porn to modify and extremify their beliefs to better access the gratifications of the information, and will lead frequent users of moral outrage porn to be unable to muster appropriate levels of outrage when it is actually necessary. The authors do not suggest a course of action for policymakers, but do suggest further reading as to the dangers of instrumentalization of moral outrage: Zachary K. Rothschild and Lucas A. Keefer's "A Cleansing Fire," and Justin Tosi and Brandon Warmke's "Moral Grandstanding."

Annotated by: Andrew Reisman

Katherine Gabriel, Note, *Feminist Revenge: Seeking Justice For Victims Of Nonconsenual Pornography Through "Revenge Porn" Reform*, 44 VT. L. REV. 849 (2020).

The U.S. legal system fails to adequately provide redress for victims of revenge porn, and a comprehensive system, including an effective statute, is needed to deter offenders, as well as protect potential victims. Revenge porn, interchangeably referred to in the article as nonconsensual porn, has long plagued its victims, but it was only starting in 2013 that states began to enact laws aimed at prohibiting it; such laws, however, which differ drastically from state to state, and are riddled with blind spots. The author examines the shortcomings of the current legal framework, specifically through both the inadequacy of various forms of civil redress, as well as the incoherent discrepancies between states and the ineffectiveness of their respective criminal avenues. The Illinois revenge porn law—which is carefully tailored, appropriately classifies dissemination of nonconsensual pornography as a felony with sufficiently harsh consequences, and utilizes the objective, reasonable person standard—is a leading example of an effective state statute on this topic. Specifically looking at Vermont, the author discusses *State v. VanBuren*, where the Vermont Supreme Court upheld a revenge porn statute as constitutional but nevertheless dismissed the case on the merits. *VanBuren*, from the feminist perspective, illuminates a common theme in these cases, which is that the victims of revenge porn, the majority of whom who are women, are often denied their right to privacy because of their own socially questionable conduct. In response to *VanBuren*, the author proposes and details a reformed version of the Vermont revenge porn statute, while simultaneously emphasizing that this issue transcends beyond just the state of Vermont. Thus, the author proposes a new version of Vermont's statute, one that remedies the current inadequacies at the state level and addresses aspects like victims' rights, the feminist perspective, and all the additional intricacies involved with nonconsensual pornography as a form of cyber harassment; additionally, the author recommends the installation of a comprehensive system to mitigate issues beyond the law's reach, in order to wholly address the full range of complexities involved in these cases.

Annotated by: Taylor Tesher