ANNOTATED LEGAL BIBLIOGRAPHY ON GENDER

ABORTION AND REPRODUCTIVE RIGHTS 212
BIOETHICS 214
CHILDREN AND IMMIGRATION 214
CHILDREN AND TEENAGERS 215
DOMESTIC VIOLENCE 221
EDUCATION 223
FAMILY 226
FATHERHOOD 231
FEMINISM 233
GENDER AND VIOLENCE 234
GENDER BIAS 235
HEALTH 238
HUMAN RIGHTS 241
LGBT RIGHTS 243
MARRIAGE 248
PARENTING 250
RACE AND GENDER 254
RELIGION 255
SAME SEX MARRIAGE 256
SEX DISCRIMINATION 257
SEX INDUSTRY 261
SEX OFFENDERS 262
SEXUAL ABUSE 263
SOCIAL CLASS 264

ABORTION AND REPRODUCTIVE RIGHTS

Kerwin Kofi Charles & Melvin Stephens, *Abortion Legalization and Adolescent Substance Use*, 49 J.L. & ECON. 481 (2006).

Studies of the wide-ranging affects of abortion legalization on later-life outcomes have achieved mixed results. This article therefore takes a narrower inquiry by analyzing whether the legalization of abortion in the early part of the 1970's, and the heightened possibility of pregnancy termination, affected adolescent-age use of controlled substances among the children born during that time. The authors compared substance use among adolescents born in states where abortion was legalized previous to nationwide legalization and those born in states where abortion was later legalized, and found that substance use among 12th grade adolescents was less among the states that legalized abortion early. The authors also analyzed the change in birth rates among early legalization states and its association to adolescent substance use. The article concludes that the lower birth rates resulted in lowered adolescent substance use specifically in states with legalized abortion, and posit that the difference in substance use among states that legalized early and those that legalized later are ascribed specifically to abortion's effect on fertility behavior.

Elinor Ament, *Anti-Abortion Protesting*, 7 GEO. J.GENDER & L. 663 (2006).

In the aftermath of *Roe v. Wade*, anti-abortion activists engaged in intrusive and often violent activities, protesting the legality of abortion and interfering with the operation of and access to abortion clinics. In response, the legislature enacted The Freedom to Access Clinic Entrances Act of 1994 (FACE) to provide for a statutory remedy to the alleged victims of the anti-abortion protests. Withstanding the Commerce Clause and First Amendment challenges, FACE expanded remedies to abortion clinics beyond the limited remedy available under RICO's criminal provisions. Based on the framework of the federal common law, state legislatures also enacted statutes that are narrowly-tailored and content-neutral to restrict no more speech than is necessary to protect abortion clinics within a buffer zone without undermining the First Amendment right of the protestors. The author concludes that the current law strikes a steady balance between the speech right of the anti-abortion protestors and the continued access to abortion clinics.

Laura E. Back, *Improperly Performed Abortion as Fetal Homicide: An Uneasy Coexistence Becomes More Difficult*, 18 HASTINGS WOMEN'S L.J. 117 (2007).

Roe v. Wade established a woman's right to terminate her pregnancy, but difficulties such as money, opposition from parents, and access to abortion clinics may lead some women to seek help from a third party to induce miscarriage, instead of having a lawful abortion. Many states' fetal homicide laws equate killing a fetus with killing a live human and thus convict and impose harsh sentences for individuals that assist women in causing miscarriages, even if the pregnant woman asked the third party for such assistance. These fetal homicide laws exempt licensed physicians and pregnant women who induce miscarriage without assistance. However, the author challenges the constitutionality of state fetal homicide laws under the Eighth Amendment proportionality analysis, by claiming that the punishment for an unlicensed abortion is grossly disproportionate to the crime. The article suggests that an individual should not be convicted of fetal homicide when the death of the fetus was solicited by a pregnant woman in an attempt to terminate her pregnancy.

Sue Thomas et al., *The Meaning, Status, and Future of Reproductive Autonomy: The Case of Alcohol Use During Pregnancy*, 15 UCLA WOMEN'S L.J. 1 (2006).

Eisenstadt v. Baird and *Roe v. Wade* together established an unmarried woman's right to obtain birth control and a woman's right to an abortion. Although these landmark decisions gave women unprecedented reproductive rights, many restrictions have been enacted as obstacles to reproductive autonomy. The authors feel that similar to abortion legislation, general policy towards women's freedom to bear children has moved towards restriction. Specifically, in exploring the legislative history of alcohol abuse by pregnant women, the authors find that despite the fact that states have enacted a greater number of facilitation provisions than inhibition provisions, the facilitation enactments do not provide intervention or treatment for women in need; and the small numbers of inhibition enactments are overly severe. The authors note that a correlation exists between legislatures composed of over 15% women and legislatures that support reproductive autonomy. Thus, the authors suggest increasing the proportion of women in the legislatures to promote reproductive autonomy.

BIOETHICS

Brooke McConnell, *Quality Control: the Implications of Negative Genetic Selection and Pre-Birth Genetic Enhancement*, 15 UCLA WOMEN'S L.J. 47 (2006).

As scientific advances open greater possibilities for altering the human genome, the law must also evolve to address sensitive ethical questions raised by negative genetic selection and genetic enhancement. The Human Genome Project has accelerated the development of biotechnology, creating new tests and therapies that generate substantial dilemmas outside the current legal framework. To predict how the Supreme Court will react to these issues, the article examines two lines of Court precedent, the right to avoid procreation and the right to procreate. While the Court has traditionally emphasized personal liberty and the autonomy of the family unit, it is not clear from the existing precedents how the Court will deal with the coming wave of procreative issues. In order to ensure that the developing technology is not abused for non-therapeutic or eugenic purposes, the author believes that society must police the application of genetic technology in prenatal medicine through individual and professional regulation, federal and state government regulation, and judicial oversight that balances procreative liberty with ethical concerns.

CHILDREN AND IMMIGRATION

Angela Lloyd, *Regulating Consent: Protecting Undocumented Immigrant Children From Their (Evil) Step-Uncle Sam, or How to Ameliorate the Impact of the 1997 Amendments to the SIJ Law*, B.U. PUB. INT. L.J. 237 (2006).

Special Immigration Juvenile ("SIJ") status was created in 1990 to give undocumented, state dependent minors hope for immigration status if returning to their country was contrary to their interests. In 1997, SIJ status was amended to specify that the minor's dependency with regard to abuse, neglect, or abandonment be determined by the state. However, the minor must obtain express consent from the Attorney General to allow the dependency order if not in custody or obtain specific consent from the Attorney General to allow the state juvenile court to have jurisdiction if the minor is within custody. The existence of both state and federal jurisdictions caused confusion as to how they were to work together. The author argues that the consent clauses should be clarified in two ways: (1) the express consent provision should allow the Attorney General to rely on the state's finding of fact and merely determine if those facts qualify as express consent; and (2) specific consent should include more standards, such that there should be implied

specific consent for a state juvenile court to hear the dependency order if there has been a showing of abuse, neglect, or abandonment.

Linda A. Piwowarczyk, *Our Responsibility to Unaccompanied and Separated Children in the United States: a Helping Hand*, 15 B.U. PUB. INT. L.J. 263 (2006).

This article highlights the importance of taking into account development and mental health factors in the treatment of minors in the immigration system. Studies conducted in Australia and Europe, as well as U.S. case evidence, illustrate that children suffer serious mental, emotional, and physical harm from immigration detention. An analysis of the developmental barriers faced by many juvenile aliens indicates that the best way for the government to satisfy both immigration policy and their duty to care for these children is to offer a "continuum of care" that makes the mental health and well being of the children its main focus. The program should approach children holistically and take into account their development, culture, and level of trauma exposure, while attempting to keep them with their parents whenever possible through the medical and psychiatric evaluations. The author advocates for replacing the current detention system with foster care and group homes, and believes that guardians *ad litem* should be appointed to protect the children since they may not have the capacity to make legal decisions.

Christopher Nugent, *Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*, 15 B.U. PUB. INT. L.J. 219 (2006).

In 2005, more than seven thousand children sought asylum in the United States without parents or guardians. The author provides a startling glance at what awaits unaccompanied immigrant children once they arrive on U.S. soil. After being seized by the Department of Homeland Security, the children are placed in the custody of the Office of Refugee Resettlement (ORR), an agency with a paucity of resources. The children then appear before an immigration judge in complex removal proceedings, in which only about ten percent are lucky enough to receive pro-bono legal representation.

CHILDREN AND TEENAGERS

Jennifer Hunt, *Do Teen Births Keep American Crime High?*, 49 J. LAW & ECON. 533 (2006).

The United States has higher levels of crime and higher teen birth rates than other developed countries. The author uses a quantitative analysis to determine

whether there is a link between increases in crime and increases in births to teen mothers, and to assess what the cause of this connection might be. The author's analysis reveals that teen births may have some impact on increases in assault, especially assaults by attackers known to the victim, but there is no link between teen births and larceny or burglary. Since assault is not generally an economically motivated crime, the author concludes that the link between teen births and crime is one caused by the teen mother's child rearing practices, rather than one caused by the poverty that teen mothers are likely to experience. Thus, an increase in teen births does in some ways contribute to an increase in the American crime rate.

Martha June Rossiter, Comment, *Transferring Children to Adult Criminal Court: How to Best Protect Our Children and Society*, 27 J. Juv. L. 123 (2006).

The author here advocates a more in-depth look into whether a juvenile should be tried as an adult. While the federal courts require prosecutors to make a motion to have an underage defendant tried as an adult, states differ between prosecutorial, statutory, and mandatory waivers. States which use mandatory waivers often cause increased harm to juveniles imprisoned with adult inmates. These mandatory waivers simply do not take into account factors such as the nature of the offense and psychological maturity. Instead, a judicial waiver system that takes a close look at each individual case will better protect the interests of minor defendants and minimize overcrowding problems in prisons.

Merril Sobie, *The Child Client: Representing Children in Child Protective Proceedings*, 22 TOURO L. REV. 745 (2006).

While most states now require that children be represented by counsel in child protective proceedings, there is ongoing debate to how this should be executed. The author theorizes that a traditional attorney-client relationship would serve the interests of the children better than either a "best interests method", which focuses on the child's best interests, or the "best wishes method", which focuses on what the child wants. The "best interests" method is inherently flawed because it is so subjective. However, the "best wishes" method may be unrealistic, as defendants often do not wind up doing what they had originally "wished" to do. A shift toward a more traditional attorney-client method would alleviate these concerns while emphasizing the child's status as a party to the litigation.

Morgan J. Lynn, *Indecency, Pornography, and the Protection of Children*, 7 GEO. J. GENDER & L. 701 (2006).

The First Amendment guarantee of free speech is not absolute, particularly when it comes to sexual speech. In the United States, local governments have been given a significant amount of leeway in determining which speech will be protected in their communities. The author examines the evolution of the Supreme Court's stance on free speech limitations over the last several decades and the ways in which statutes have been crafted to adapt to shifting constitutional standards. The author explores the categories of constitutionally limited speech and explains the contours of those categories as defined by tests promulgated by the Court. She concludes by anticipating that the next few years will likely bring more decisions in this area due to an increase in the enforcement of indecency laws under the Bush administration.

Hillary J. Massey, Note, *Disposing of Children: The Eighth Amendment and Juvenile Life Without Parole After* Roper, 47 B.C. L. REV. 1083 (2006).

The article starts with discussion of the 2005 case *Roper v. Simmons*, in which the Supreme Court held that sentencing juveniles to death is a violation of the Eighth Amendment's prohibition of "cruel and unusual punishment." The holding relied on evolving standards of decency, including those in other countries, as well as on psychological literature about the differences between adolescents and adults. Recent research by psychologists and neurologists has shown in greater detail differences between the brain of an adolescent and that of an adult, amounting to a scientific basis for holding juveniles less culpable than adults and supporting the author's view that juveniles should never be punished with life in prison without parole, a sentence that is generally shunned elsewhere in the world and is either on its face a violation of the Eighth Amendment or, alternatively, a violation as applied in certain cases where the punishment is too harsh for the nature of the offense committed. The author briefly surveys the history of juvenile justice, starting in early times when children were tried and punished as adults, noting early twentieth-century reforms emphasizing rehabilitation and describing the pendulum swing back in recent years to a get-tough approach punishing children as adults, in response to higher levels of juvenile violent crime in the 1980s and '90s. Current lower levels of juvenile crime are cited to justify renewed reform, as well as research showing adolescents' vulnerability to peer influence, different attitudes toward risk, weaker self-management abilities and short-term focus.

H. Naci Mocan and Erdal Tekin, *Guns, Drugs and Juvenile Crime: Evidence from a Panel of Siblings and Twins*, GA. J.L. & ECON. (2006).

This article investigates the correlation between the availability of guns in the home and juveniles' propensity to commit crimes. The authors address an array of fixed-effect models that examine the relationship of siblings and twins over time, and assess the correlation between gun availability in a juvenile's home and his or her propensity to commit crimes, including robbery, burglary, and theft. The authors found that gun availability at a juvenile's home is likely to increase certain types of crimes, such as robbery, but not other forms of risky behavior, such as drinking and fighting. Also, the studies show that drug use, especially cocaine use, increases a juvenile's propensity to commit a crime.

David R. Katner, *The Mental Health Paradigm and the MacArthur Study: Emerging Issues Challenging the Competence of Juveniles in Delinquency Systems*, 34 AM. J.L. & MED. 503 (2006).

This article explores new competency to stand trial issues that have arisen as a result of current social science research on children's mental health problems. Challenges to the competency of a juvenile awaiting trial have been made by identifying factors such as mental illness, mental retardation, and more recently, developmental immaturity. The author addresses current studies elucidating the fact that many juveniles awaiting trial suffer some sort of mental health problem. The MacArthur Study on juvenile adjudicative competence, examining juveniles' competency to stand trial issues, brings to light the issue of how many children in actuality are unable to proceed to trial on the basis of competency. The author posits that this emerging trend of challenging a juvenile's competency based on developmental immaturity has created serious concerns the state delinquency system will need to address.

Deborah Paruch, *The Orphaning of Underprivileged Children: America's Failed Child Welfare Law & Policy*, 8 J. L. & FAM. STUD. 119 (2006).

The Michigan Supreme Court in *In re Trejo* terminated the parental rights of a mother of three, which raised serious questions about state and federal policies concerning parents and children. This article examines the procedural history of *In re Trejo*, looks at social services' failure to provide aid to the family, and discuses the probate court's failure to remedy the situation. The author criticizes the legislatures' fixation on parental fault and its disregard of children's needs and best interests. Furthermore, the author looks at how most states fail to consider the effect a termination of parental rights will have on a child when applying the "best interest of the child" standard in parental termination hearings. In conclusion, the

author promotes a new, child-centered approach to be taken along with an increase of funding and a reallocation of funds to housing assistance rather than state-supported foster care for maintaining and strengthening the family unit and more effectively protecting children.

George S. Yacoubian, Jr., *The Coalescence of Law and Science in an Era of School Drug Testing: Beyond Vernonia, Earls, and Joye*, 27 J. JUV. L. 1 (2006).

In the *Earls* decision, the United States Supreme Court expanded its holding in *Vernonia*, which allowed random drug testing of public school students participating in athletic activities, to include students participating in competitive extracurricular activities. Given this broadening trend, the author proposes that New Jersey public schools should test all students for drugs using oral fluid testing, which he argues is the least invasive method for doing so. The incidence of drug use in schools is sufficiently severe to outweigh the reasonableness requirement of search and seizure under the Fourth Amendment. The author concludes that random drug testing of all public school students and punitive measures for those testing positive should reduce the incidence of drug use.

Maribel Morey, *The Civil Commitment of State-Dependent Minors Resonating Discourse that Leaver Her Heterosexuality and His Homosexuality Vulnerable to Scrutiny*, 81 N.Y.U. L. REV. 2129 (2006).

State dependant minors who are involuntarily committed to psychiatric institutionalization are frequently diagnosed with Conduct Disorder. The mental health evaluators, in determining the fitness of the minors, frequently focus on girls' heightened sexual activities and boys' homosexuality. In making their fitness determinations, evaluators appear to be responding to the state's interest of promoting heterosexuality in boys and preventing teenage pregnancies for girls. However, the evaluators often neglect to demonstrate how the minors' behaviors, which they characterize as requiring institutionalization, reflect mental disturbance. The author argues that the state should be barred from considering the state dependant minors' consensual sexual behaviors, unless the behaviors can be proven relevant to the minors' diagnosis.

Christopher Dean, *Returning the Pig to its Pen: A Pragmatic Approach to Regulating Minors" Access to Violent Video Games*, 75 GEO. WASH. L. REV. 136 (2006).

This article discusses effective regulations of minors' access to violent video games. Although statutes have been enacted in order to restrict minors' access to

such games, the courts have consistently challenged them on constitutional grounds. The author attributes this phenomenon to a number of factors, including the fact that lawmakers have correlated violence with obscenity, an area of law that on its own has provided a number of constitutional concerns, and dependence upon unreliable studies correlating video game use and violence in minors. The author suggests that lawmakers abandon their previous tactics, and adopt a compulsory rating system for video games akin to the rating system provided for movies. The new rating system would continue to use the Entertainment Software Rating Board standards, which would provide retailers and consumers with a clear indication of the video games' contents, and would curb minors' access to violent video games.

Heather Hruby, *That's Show Business Kid: an Overview of Contract Law in the Entertainment Industry*, 27 J. JUV. L. 47 (2006).

This note discusses the contractual pitfalls that await minors in the entertainment industry and the lack of protection under existing state and federal legislation for child entertainers. While contract law and federal child labor laws should combine to provide added protection for child entertainers, the opposite has traditionally been true. In the 1980s and 1990s, California, New York, and Florida enacted legislation regarding the contractual rights of minors in entertainment industries, generally limiting the right of a minor to disaffirm contracts only when the contract has been approved by a court. The author believes that while these statutes are "on the right track," to truly protect the interests of minors, contracts should be subject to mandatory court approval, guardians *ad litem* should be appointed to act on every minor's behalf, and there should be federal legislation setting forth minimum uniform standards for the states.

Jacqueline Bhabha, *"Not a Sack of Potatoes": Moving and Removing Children Across Borders*, 15 B.U. PUB. INT. L.J. 197 (2006).

The United States immigration system overlooks the problems faced by unaccompanied immigrant children who come to the county seeking asylum. The author argues that our immigration system is largely designed for adults. As a result, child asylum seekers do not receive adequate legal representation, do not have access to organizations designed to aid adult asylum seekers, and often fall through the cracks by being forced to navigate the system alone. Some of the current immigration procedures, such as interviewing techniques and the standards used to evaluate asylum seekers' claims, are unsuitable for children. Our lawmakers must recognize the important differences between migrant children and adults, so that changes can be made to the immigration system to accommodate for such differences.

Tracy Westen, *Government Regulation of Food Marketing to Children: The Federal Trade Commission and the Kid-Vid Controversy*, 39 LOY. L.A. L. REV. 79 (2006).

In 1978, the Federal Trade Commission (FTC) sought to regulate television advertisements for sugared products directed at children who are too young to understand the commercials' intent and the products' adverse health affects. The author headed this rule-making proceeding. Her article outlines the Commission's ideas, but notes that ultimately it was unable to create a viable solution. The Commission was shut down for mainly political reasons, but the author argues that the problem still exists today and encourages continued discussion of possible solutions.

DOMESTIC VIOLENCE

Nancy K.D. Lemmon, *Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?*, 21 BERKELEY J. GENDER L. & JUST. 38 (2006).

A large segment of non-English speaking domestic violence victims do not have access to a certified or specialized court interpreter. The shortage of qualified interpreters results in these women abandoning their claims of abuse, continuing with their claims with an impaired ability to understand and participate in the proceedings, or simply losing faith in the court system. Despite state legislation to combat this problem, many domestic violence victims are still not being provided with interpreters because of their financial situations and the courts' fee waiver determinations. The author advocates that the creation of civil courts that specialize in domestic violence cases will improve Non-English speaking victims' access to interpreters by streamlining victims' access to all available resources. In the author's opinion, increased training programs for court interpreters and making interpretation available to all victims who require such services will ultimately lead to more effective use of court resources.

Jessica Savage, *Battered Woman Syndrome*, 7 GEO. J. GENDER & L. 761 (2006).

Battered Woman Syndrome (BWS) is legally recognized as a psychological condition that causes sufferers to kill their batterer rather than abandon them. Expert testimony on BWS has continually increased since it was first invoked as a defense in cases in the 1970s and 1980s. Now BWS is being applied to duress claims, among others. By addressing the shortcoming of BWS, the author provides

an overview of its definition, evolution and application. Lastly, it is noted that that the frequency of BWS testimony in domestic violence cases imposes unfavorable stereotypes on women and oversimplifies the nature of abusive relationships.

Karen Morao, *Domestic Violence and the State*, 7 GEO. J. GENDER & L. (2006).

In the past, domestic violence was not only unpunished, it was a part of cultures around the world. However, this trend changed in the late nineteenth century. Significant advances in state law, both criminal and civil, arose in order to punish offenders, and to protect and allow for restitution of victims. These advances include criminal law statutes for assault, battery, sexual abuse, and stalking, as well as many state legislatures enacting provisions such as warrantless arrests, mandatory arrests, and no-drop prosecutions. While there have been such advances, persons in same-sex relationship are still under-protected with states lagging behind in enacting legislation to protect victims of domestic abuse in homosexual relationships. The author believes that there is still much to be improved, but it is important for states to respect the rights and needs of the victims while still effectively targeting and punishing abusers.

Carl Jacobsen, Kammy Mizga, & Lynn D'Orio, *Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency*, 18 HASTINGS WOMEN'S L. J. 31 (2007).

While governments across the globe have condemned violence against women, almost all have failed to show the political will to address the situation, or the financial support to end the epidemic. This article argues that while the majority of female murder victims are killed by their spouse, women who have suffered domestic abuse and are tried in self defense cases, face harsher penalties and a higher conviction rate then women not involved in domestic violence. The author argues that law enforcement and the court's failure to protect battered women, along with their unwillingness to acknowledge the problems in the system, lead to battered women being killed or being forced to kill. These women are then penalized harshly for their failure to take the abusive situation into their own hands, even though violence against women is so often facilitated by gender and race based inequalities in our social and political systems. The author believes that the only hope for justice for these battered women is clemency, otherwise the cycle of abuse and unfair penalties will continue.

John M. Leventhal, *Spousal Rights or Spousal Crimes: Where and When Are the Lines to Be Drawn?*, 2006 UTAH L. REV. 351 (2006).

Under the common law, courts did not recognize crimes committed by one spouse against another, or crimes against jointly owned property. Modern laws have largely rejected the marital defense to burglary, arson, and malicious mischief, since the crimes are often committed by perpetrators of domestic violence in an attempt to terrorize their spouses. Courts have been most reluctant to extend criminal liability in the context of larceny, however, since civil remedies may be provided to make the victim whole. Recognition of the criminality of these acts serves as a means for fighting domestic violence. Because victims are directly targeted by their spouses, the law should afford the victimized spouses greater protections than that for strangers, and not allow for exceptions to criminal liability.

Laura Jontz, *Eighth Circuit to Battered Kenyan: Take a Safari—Battered Immigrants Face New Barrier When Reporting Domestic Violence*, 55 DRAKE L. REV. 195 (2006).

As the illegal immigrant population in the United States increases, so does the amount of immigrants in abusive relationships. Because battered immigrants often depend on their abusive spouse for support, battered immigrants are reluctant to report incidents of abuse. While Congress has enacted statutes that offer support to battered immigrants, the Eighth Circuit, in *United States v. Masawai* held that evidence from an abusive spouse could be used to convict a battered immigrant who violated 18 U.S.C. §1546, allowing an abusive spouse to retain control over a battered immigrant's residency status. The author posits that other circuits should not follow this decision and Congress should enact more statutes designed to maintain current legislative intent, which supports protecting and supporting battered immigrants. If battered immigrants' fear of deportation is alleviated, more cases of domestic abuse will be reported and more battered immigrants will be protected under the law.

EDUCATION

Nicole Liguori, Note, *Leaving No Child Behind (Except in States That Don't Do as We Say): Connecticut's Challenge to the Federal Government's Power to Control State Education Policy Through the Spending Clause*, 46 B.C. L. REV. 1033 (2006).

The No Child Left Behind Act ("NCLB") of 2001 was created within the ambit of Congress's power under the Spending Clause and established a federal regulatory framework over education, despite the traditional belief that education

policy has been reserved to the states' power. In order to receive federal education funds under NCLB, states must comply with certain mandates, including the development and implementation of annual student tests, and posting of the results. Connecticut has filed the first lawsuit to challenge the constitutionality of NCLB, contending that Congress has provided insufficient funding to comply with the Act, and that the United States Secretary of Education ("Secretary") is coercing the states into implementing federal policy. The author argues that Connecticut should prevail on its claims because the manner in which the Secretary currently administers the NCLB places Connecticut at risk of violating its students' rights under the Equal Protection Clause, and that the Fourteenth Amendment therefore serves as an independent constitutional bar to the Act. In the author's opinion, the Secretary should provide more funding and more freely waive provisions of the NCLB to afford states greater policy discretion in complying with the Act.

Edward Rubin, et al., *A Conversation Among Deans from "Results: Legal Education, Institutional Change, and a Decade of Gender Studies,"* 29 HARV. J.L. & GENDER 465 (2006).

At a conference hosted by the *Harvard Journal of Law & Gender*, law school deans addressed the need to incorporate gender and diversity perspectives into legal education and presented the experiences of their respective schools in dealing with educating future women and minority lawyers. Dean Edward Rubin from Vanderbilt Law School criticized the traditional law school curriculum for being heavily gender-biased, and advocated an inter-disciplinary learning of law to mirror the nature of the modern legal practice. Dean W.H. Knight from University of Washington School of Law noted the continued under-representation of women in today's legal profession and stressed that law schools' diversity initiatives must stem from "Vision, Perspective, Leadership and Persistence." Dean Katherine Bartlett from Duke Law School spoke on the school's efforts to foster a sense of community culture and its innovative use of video materials to aid case law studies in the classroom. Celebrating the success stories of law schools that have already taken visible initiatives, the conference highlighted future challenges that legal institutions face, and urged schools to craft creative solutions to make legal education more responsive to the needs of women and minority students.

Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 HARV. J.L. & GENDER 247 (2006).

This article identifies reasons as to why there is structural inequality in the workplace, one of which may stem from discrimination in places of higher education, and possible solutions to ameliorate those diversity-based inequalities. The author posits that through institutional transformation, men and women of

color will have a greater ability to participate in the workplace. The author identifies three central ideas to her workplace equality paradigm: institutional citizens, which combine the hopes of citizens to be included in the institutional environment and the institution's relationship with the morals and values of society, "organizational catalysts," which play an integral role in bridging the gap between women and people of color and institutions, and the role of institutional intermediaries, which not only foster change in their communities, but also have a level of accountability for changes in institutions. Lawyers have also become involved in this process by assisting universities develop programs which include women in academic science. The article's model for institutional inclusiveness and methods by which inclusiveness can be practiced provide an analysis of current mechanisms to encourage such change and the importance of accountability.

Elizabeth Warren, *Fourth Annual Lecture: Families Alone: The Changing Economics of Rearing Children*, 58 OKLA. L. REV. 551 (2006).

The cost of educating children has risen, shifting the financial burden for a basic education from an equal application to all taxpayers to an uneven application that creates a disparity in education and financially overburdens parents. The author attributes the shift to two factors: (1) a failing public school system, which encourages parents to move to more expensive districts with better public schools; and (2) a changed definition of basic education, which encompasses privately funded education. The author concludes that these two factors prove America's trend of moving away from a free basic education for all.

Goodwin Liu, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. REV. 2044 (2006).

This article examines the empirical and policy dimensions of interstate educational disparities, showing that the burden of such disparities fall disproportionately upon poor, minority, or limited English proficiency children. While focus has traditionally been on interdistrict or intrastate inequality, interstate disparities due to differences in state fiscal capacity are the "most significant component of educational inequality." Even with sporadic federal interest, federal policy has facilitated the continued existence of interstate educational inequalities. The author suggests a three part solution to fiscal inequality among the states: (1) establishing national education standards; (2) reform of Title I federal aid, and (3) creation of a federal foundation to ensure basic education standards in all states. Since inequalities are caused by the varying resources of individual states, the author concludes that an expanded federal role in national education is essential to realizing the constitutional imperative of guaranteeing all children the basic tools to serve as equal citizens.

FAMILY

Joanna L. Grossman, *Family Boundaries: Third-Party Rights and Obligations With Respect to Children*, 40 FAM. L.Q. 1 (2006).

This article provides an overview of the themes and main ideas presented in a symposium, exploring the legal rights afforded to third-parties in children's lives. As social trends including same-sex marriage, divorce, and nonmarital parenting change the traditional family structure, the law governing the relationship between children, parents, and third-parties is unsettled. Third-parties, defined by the author as the group of adults, "other than legal parents, that have some tie to children," include same-sex co-parents, nonbiological fathers, stepparents, and even the state. The articles in this symposium highlight three themes in the legal treatment of third-parties: first, whether the law should acknowledge third-parties' rights to a child by examining their particular relationship to that child; second, how to distinguish between third-parties with different interests in children, and the consequences of labeling parties in this way; and third, the range of third-party rights compared to legal parents. The author concludes that this symposium should be of interest to both family law scholars and practitioners, as it provides practical guidance for third-party claims, as well as consideration of the policy implications of these claims.

Deborah L. Forman, *Fathers, Gender Conflict, and Family Law: A Multidisciplinary Perspective*, 40 FAM. L.Q. 149 (2006).

This article summarizes a symposium centered around two themes: first, the distinctive legal issues that fathers face, and second, the ways in which many family law issues affect men and women differently. The first theme is addressed in two articles about the problems unwed fathers face in the adoption context, and the ways in which incarceration leads to paternal disengagement and detrimentally affects children. The second theme is addressed in several multi-disciplinary articles that explore issues which embody gender bias and affect men and women differently. These articles concern an examination of the historical and social context of the joint custody movement; evolving ideas about the effect of divorce on the family structure; an analysis of the use of social science research to restrict parental relocation with children; and the debate about the use of Parental Alienation Syndrome (PAS) in custody disputes. The author suggests that the family law issues fathers face will be an ongoing battle, and that this symposium may prove helpful in understanding these challenges.

David E. Meyer, *A Privacy Right to Public Recognition of Family Relationships? The Cases of Marriage and Adoption*, 51 VILL. L. REV. 891 (2006).

The Constitution is traditionally seen as bestowing negative rights, including the right of privacy from state intrusion into certain domains of family life. The author poses the question of whether this right to privacy includes a constitutional right to state recognition of same-sex marriage and adoptive relationships. In analyzing this issue, the author frames the debate as an issue of negative rights: he theorizes that by denying formal recognition of these family relationships, while affording recognition of others, the state is intruding into protected family relationships. The author argues that all individuals in family-like relationships are constitutionally entitled to privacy protection since the Supreme Court's decision in *Lawrence v. Texas* struck down Texas sodomy laws, and implied that even non-traditional intimate relationships are entitled to privacy protection. The author also points to social science research suggesting that legal recognition of family relationships is critical to strengthening family ties, and concludes that denial of such recognition may threaten family stability and constitutes intervention in the traditional realm of family privacy.

Naomi Cahn, *State Representation of Children's Interests*, 40 FAM. L.Q. 109 (2006).

This article examines whose interests are actually benefited when the state acts on behalf of children's interests. The author asserts that the actual benefit to minors' interests is context-dependent. There are contexts where the state promotes children's interests and others where an alternate agenda is advanced. The state has a great deal of power to mold the dynamic of family rights and relationships through its powers to represent children, and in the United States, there are certain contexts where parental authority is advanced and others where child advancement is furthered. In contrast, the author asserts that in dysfunctional states, it is most often non-governmental organizations, rather than states, that are in fact advancing children's interests.

Linda C. McClain, *A New Constitutional Order? Panel VI: Subnational Norms in the New Constitutional Order: Civil Society and Families: Family Constitutions and the (New) Constitution of the Family,* 75 FORDHAM L. REV. 833 (2006).

Because the social institutions that create goals and values for all family units have become increasingly weak, many families have turned to writing their own constitutions in order to ensure that their values remain strong. Creating these constitutions allows families to discuss and evolve their goals and values, rather

than to simply pass on the same set goals and values over many generations. Attempts have been made to compare families and their constitutions to larger institutions and their constitutions, and to place the family constitution within a new constitutional order. The author believes that families and their constitutions can indeed be viewed as microcosms to gain a better understanding of larger organizations and the development of a new constitutional order. The author also raises a number of questions about how much responsibility the family unit should bear in comparison the government in terms of forming this new constitutional order.

Marsha B. Freeman, *Lions Among Us: How Our Child Protective Agencies Harm the Children and Destroy the Families They Aim to Help,* 8 J. L. & FAM. STUD. 39 (2006).

Child protective agencies fail to protect children by taking them out of safe homes, placing them in unsafe foster homes, and not following up on them. The death and disappearance of children under the care of child protective agencies have led to a cyclic reactionary reform instead of a preventive one; if a child is killed by his/her parents, the agencies respond by removing other children from their homes regardless of the severity of circumstances, while if a child dies in foster care, agencies are hesitant to remove other children from even unsafe foster homes. The author discounts the idea of privatizing this industry as a solution to the problems caused by understaffed agencies with underpaid workers, as it will only serve to "shift the blame." Although Florida has accepted that reform is necessary, it has yet to undertake any preventative measures. The author believes that there is no singular solution and points to recent state reforms which include a reduction of case loads, training for caseworkers to assess the severity of a child's situation, and a legal defense organization that protects parental rights, as steps that will reform the child protection agencies.

Margaret M. Mahoney, *Stepparents as Third Parties in Relation to Their Stepchildren*, 40 FAM L. Q. 81 (2006).

This article examines the legal relationships between stepparents and stepchildren and the rights that stepparents are accorded. Many courts have been hesitant to depart from the traditional biological model due in part to a reluctance to diminish the rights of the noncustodial parent. The author demonstrates the ongoing struggle that stepparents have endured by showing just how diverse judicial reactions to these sorts of problems have been. While progress in many areas has been slow for stepparents, there are examples of courts adjusting to a different view of the modern family, such as the minority of cases where the stepparent legally adopts the child. While the legal system continues to protect the

biological family, rights of stepparents should grow as this area of law continues to evolve.

Mary Eschelbach Hansen & Daniel Pollock, *The Regulation of Intercountry Adoption*, 45 BRANDEIS L.J. 105 (2006).

While the United States has finally passed regulations to enforce the Hague Convention on intercountry adoption, the regulations are not sufficient to carry out the goals that the Convention intended. These regulations will make the process more costly without an accompanying increase in quality. The U.S. does not require strict compliance with the performance regulations for adoption service providers, the quality of these services will suffer. Furthermore, our government fosters widespread competition between those who accredit service providers, which increases costs. The authors contend that a centralized regulation system would be more efficient in effecting the goals of the Hague Convention and ensuring that the public gains from these programs.

Jeff LeBlanc, Comment, *My Two Moms: An Analysis of the Status of Homosexual Adoption and the Challenges to Its Acceptance*, 27 J. JUV. L. 95 (2006).

There are more children in need of loving homes than there are loving homes available, a context that provides an overarching reason to expand tolerance for adoption by homosexual couples. In some states tolerance takes the form of gender-neutral interpretation of adoption statutes, some states still view homosexual parents as harmful or detrimental to the child, and in still others a "best interests" analysis increasingly shows homosexual parents to be fully capable of responsible parenting. The author examines an Eleventh Circuit decision upholding a Florida state statute that is the only one in the country that still forbids adoption by any homosexual. In that case, *Lofton v. Secretary of the Dept. of Children and Family Services*, the court used a rational basis standard of review, citing the state's view that the child's interests would be better served in a heterosexual home, and the state's strong interest in protecting public morality. The author calls the Florida statute a "bad law" that "[hides] behind the shield of rational basis review," and maintains that the child in the case "does not care" what his parents do in the bedroom.

Nina Wasow, *Planned Failure: California's Denial of Reunification Services to Parents with Mental Disabilities*, 31 N.Y.U. REV. L. & SOC. CHANGE 183 (2006).

This article examines the functioning of California's "reunification bypass" law, which allows the government to permanently foreclose any future possibility of family life after children have been removed following an incident of abuse or neglect, by canceling the twelve months of social services usually accorded such families if two experts are of the opinion that the parent has a mental disability. Such opinions are interpreted to mean the parent would not be able to benefit from social services, and thus decree the end of the family without giving the parents any chance to reunify and rehabilitate. The author, believing that courts are often motivated simply by a desire to dispose of caseloads quickly, argues that the courts' unquestioning reliance on psychologists' diagnostic and predictive powers is grossly misplaced and creates tragically unjust thwarting of parental hopes. The author reviews research showing that eligibility for the bypass is only weakly correlated with inability to reunify, and analyzes the courts' tendency to confuse disability with inability to benefit from services. Constitutional aspects of stigmatizing people with mental disabilities and of depriving people of the right to raise families are examined, and lawyers are exhorted to question experts more effectively about their diagnoses and to present evidence to the court of their clients' ability to benefit from services and reunify their families.

Ronald J. Scalise Jr., *Honor Thy Father and Mother?: How Intestacy Law Goes Too Far in Protecting Parents*, 37 SETON HALL L. REV. 171 (2006).

The author discusses the inadequacy of current intestacy laws with respect to inheritances by surviving parents from a deceased child. This issue is discussed in three contexts: a deceased child survived by parents and a spouse, a deceased child survived by parents and siblings, and a deceased child survived by "bad parents." Most intestate statutes in these three contexts follow the "duty" theory, which tends to impose social or moral duties through the intestacy laws as opposed to the "presumed will" theory, which attempts to distribute the estate as the deceased presumably would have wanted. Research shows that people's preferences regarding how they would want their estate distributed differ greatly from most intestacy statutes. Therefore, the author argues, the intestacy laws should be changed to reflect the modern views of our society.

Jessica Ansley Bodger, *Taking the Sting Out of Reporting Requirements: Reproductive Health Clinics and the Constitutional Right to Informational Privacy*, 56 DUKE L.J. 583 (2006).

In an alleged endeavor to prosecute child abuse and statutory rape, state attorney generals have attempted to subpoena patient medical records from abortion clinics across the country. Bodger argues that these subpoenas violate patients' rights to privacy, and that the loss of such privacy creates a disincentive for women to seek abortions. Although the Constitution makes no explicit reference to privacy, the Court, beginning with *Griswold v. Connecticut*, has long recognized a "zone of privacy created by several fundamental constitutional guarantees," including the Fourth and Fifth Amendments. Bodger argues that the interest of reproductive health providers, such as Planned Parenthood, in protecting this right outweighs the state's interest in obtaining medical records, which Bodger suggests are unlikely to contain the information state attorney generals seek anyway.

FATHERHOOD

Robert K. Henry, *The Innocent Third Party: Victims of Paternity Fraud*, 40 FAM. L.Q. 51 (2006).

This article focuses on the unfair legal treatment of victims of paternity fraud, with a disproportionate number of victims being minority males with low social-economic status. The main causes of false paternity establishments include the high rate of default judgment issued in child support cases, pro se defendants, and hospitals utilizing improper paternity acknowledgments. The author examines two popular cases, *In re Paternity of Cheryl* and *Godin v. Godin*, in an attempt to disprove the common rationale given for not vacating false paternity establishments. According to the author, the courts have mistakenly equated "the best interests of the child" with monetary contributions instead of focusing on the realistic consequences of forcing a male non-parent to provide financial support to a child for at least 18 years. In the author's opinion, paternity fraud can be prevented by implementing measures such as a requirement that paternity only be established when confirmed by a DNA test.

Solangel Maldonado, *Recidivism and Paternal Engagement*, 40 FAM. L.Q. 191 (2006).

This article examines the adverse effects of loss of parental relationships between incarcerated fathers and their children. The author focuses on the link between paternal absence and children's increased risk of involvement in criminal

activity. In comparison to other nonresidential fathers, incarcerated fathers are more likely to receive less favorable outcomes in visitation determinations because of the prevailing social norm that fathers are the economic providers of the family. Many courts have denied incarcerated fathers visitation with their children without the existence of evidence that such visitation would endanger the child's health. The author concludes that programs that provide incarcerated fathers with more contact with their children, requiring fathers to take a more active role in their children's life, will be successful in developing close parent-child relationships that benefit society.

Cynthia C. Siebel, *Fathers and Their Children: Legal and Psychological Issues of Joint Custody*, 40 FAM. L.Q. 213 (2006).

Fathers in divorce cases have often times not been accorded the same rights as mothers. However, the interests of fathers and their importance to their children have been accorded greater significance as of late. Due to such factors as the Industrial Revolution, the last several centuries have seen the household roles of fathers shrink from a dominant figure in the family structure to a smaller presence within the home. The Indiana Civil Rights Council has recently implemented a plan to launch federal class action suits across the country to obtain equal rights for noncustodial parents. The author concludes that while the psychological and legal issues surrounding fathers will be or have been taken care of, it is important educate parents as to how to take care of their children's psychological needs.

Laura Oren, *Thwarted Fathers or Pop-Up Pops? How to Determine When Putative Fathers Can Block the Adoption of Their Newborn Children*, 40 FAM. L.Q. 153 (2006).

While the government needs only biological proof of paternity to hold the unmarried father of a child to parental obligations, when such a father seeks to assert parental rights, the Supreme Court has held that a "biology plus" standard applies, according rights only to putative fathers who have come forward, developed a relationship with, and helped rear their children. However, this standard has never been clarified with respect to fathers of newborns, where hardly any time has elapsed for establishing a relationship with the child. The author explores a distinction between "thwarted" fathers, who have tried to develop a relationship with the child but have been improperly prevented from doing so by the estranged mother, and those the author calls "pop-up pops," who try to disturb adoption proceedings even though they have had notice but have done little and waited too long to develop a relationship. Courts often examine a father's actions both before and after the birth of the child, including help given to the pregnant mother or registration in a state's registry of putative fathers; however, standards as

to how soon after a baby's birth a father must register vary widely, and with no national registry, failure to register in the right state may be fatal. The author also notes the situation of fathers of anonymously abandoned babies, automatically excluded through no fault of their own – only one of a somewhat confused panoply of outcomes ranging from the automatic recognition of the parental rights of a married father, whether biologically related or not, to the rush to cut off parental rights of a putative father soon after the birth of his child.

FEMINISM

Ann Bartow, *Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law*, 14 AM. U.J. GENDER SOC. POL'Y & L. 551 (2006).

Since the enactment of the Copyright Act of 1976, the increasingly aggressive enforcement of copyrights has uniquely impacted women creators of creative works. Legal scholarship on copyright law has not approached the subject using a feminist perspective, which the author advocates would give insight into the how and why current copyright law affects men and women markedly different. Compared to their male counterparts, women authors of creative works are more likely to have a harder time with balancing the need to maintain control of their works with the need to maximize economic profit, mostly due to the fact that women dominate the creative spheres that are generally considered noncommercial. The author advocates that a "low barriers" approach to copyright law, which would drastically reduce the number of enforceable copyrights, would be beneficial to women authors, customers, and intermediaries.

Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism,* 29 HARV. J.L. & GENDER 335 (2006).

Recent feminist triumphs in international humanitarian law (IHL) in the field of sexual rights leads the author to conclude that the feminist movement can be considered governance feminism (GF). GF is the entry of feminist ideas into the general legal field. In an attempt to determine some common themes of GF, the author compares recent advances in sexual rights in the fields of wartime sexual violence and sex trafficking. The author concludes that in the field of sexual rights, feminists are rapidly gaining power and respect in IHL and that this increase in power has positive effects on feminist power nationally as well. Despite these positive strides, many feminists continue to feel that they wield no power in the legal community, and the author posits that if this mentality is not rectified, it could lead to severe ramifications for the ultimate progress of GF.

Michèle Alexandre, *Big Love: Is Feminist Polygamy an Oxymoron or a True Possibility?*, 18 HASTINGS WOMEN'S L.J. 3 (2007).

Islamic polygamy is an institution that is generally considered by western Feminists to be antiquated and cruel to women. The justifications for polygamy presented by some Muslim supporters tend to enforce a male-centric view of the institution. However, the author suggests that polygamy and traditional feminist values can coexist if the institution is reformed so that women have the power to make their own lifestyle choices. She urges that discourse on polygamy should be sensitive to Islamic tradition and female-centric so that women who prefer polygamy may be afforded rights.

GENDER AND VIOLENCE

Brent Teasdale, Eric Silver, & John Monahan, *Gender, Threat/Control-Override Delusions and Violence*, 30 LAW & HUM. BEHAV. 649 (2006).

Recent literature suggests that men and women cope with stress in different manners: whereas men tend to respond to a threat with a fight or flight reaction, women tend to seek nurturance and emotional support in the face of stress. Building on this theory, the authors explore gender differentials in people's responses to threat delusions—when a person believes that someone is spying and trying to harm him—and control-override delusions—when a person believes that someone controls his thoughts and mind. Consistent with the current literature, this study shows that men are more likely to engage in violent behavior than women in response to the aforementioned delusions. Moreover, women experiencing the delusions are more likely to exhibit violence than women without the delusional experience, when men under the delusions are no more likely to be violent than men free from the delusions. The authors caution that the effects on violent behavior differ not only by gender but also by the type of delusion that men and women experience, and call for future practitioners to consider studying other status characteristics, such as race and social class, as possible modifiers of the effect of stress factors on violent behavior.

Alice Farmer, *Refugee Responses, State-like Behavior, and Accountability for Human Rights Violations: A Case Study of Sexual Violence in Guinea's Refugee Camps*, 9 YALE H.R. & DEV. L.J. 44 (2006).

Women refugees in Guinea suffer from sexual violence and exploitation perpetrated by both the local population and refugee aid workers. Although some measures have been taken to reduce the sexual violence and exploitation, a

comprehensive response system, which would allow women access to justice, is currently lacking. Refugee women are often prevented from going to court due to language barriers, financial difficulty, or a general lack of awareness of the right to go to court. As a result, refugees who suffer from sexual violence exploitation are left with virtually no protection or legal recourse. Without the inclusion of accountability and access to the judicial system, the human rights of these refugees will continue to suffer, and rights-based refuge will remain incomplete.

GENDER BIAS

Aubra Fletcher, *The REAL ID Act: Furthering Gender Bias in U.S. Asylum Law*, 21 BERKELEY J. GENDER, L. & JUST. 111 (2006).

Refugees seeking asylum in the US based on gender-related persecution have traditionally faced obstacles to gaining entry due in large part to biased interpretation and application of asylum law that tend to classify gender-related persecution as a personal and private matter. While jurisprudence had led to a modified interpretation that encourages the viewing of gender-related persecution as something that extends beyond the personal realm, the author argues that the REAL ID Act of 2005 usurps case law and has the potential to augment the hardships traditionally faced by those seeking asylum based on gender-related persecution claims. The REAL ID Act adds procedural difficulties, along with an increased burden on the asylum seeker to prove motive and a nexus between the persecution and state or societal action to decision makers who have broader discretion and less judicial oversight. The interpretation and implementation of the REAL ID Act will determine the extent of any impact on asylum seekers claiming gender persecution. The author recommends greater advocacy for such asylum seekers and tactical representation to stem the tide of possible negative consequences that could result from the implementation of the REAL ID Act.

Jayne W. Barnard, *At the Top of the Pyramid: Lessons from the Alpha Women and the Elite Eight*, 65 MD. L. REV. 315 (2006).

This article analyzes the effect that top-level female executives have on their corporations. To do so, companies with and without top-level female executives are compared using three factors, namely a takeholder sensitivity index, corporate governance quality, and corporate performance. The author also discusses preconceived notions about companies with top-level female executives, such as whether these companies are more family friendly or more open to diversity issues. While the author's statistical analysis shows that corporations with top-level female executives are distinct, many of these distinctions are difficult to quantify and may be due to other factors. The author states that it is impossible to analyze whether

women have specific skills that impact their corporations and how they perform. However, she urges further research in this area and highlights the need for an in-depth analysis of other factors such as education, peer influence, mentors, and socialization.

Cindy A. Schipani et al., *Women and the New Corporate Governance: Pathways for Obtaining Positions of Corporate Leadership*, 65 MD. L. REV. 504 (2006).

Despite significant changes that took place in the latter half of the 20th century with respect to women in the workforce, the number of women holding corporate leadership positions remains very low, women are paid less than their male counterparts, and they get promoted less often. This trend is largely persistent throughout the world. This article summarizes current data and research regarding this issue and provides a historical background and a global outlook of the gender issues in the workforce, specifically in business. It discusses possible reasons why there are fewer women in corporate leadership positions and proposes mentoring as one possible way for women to get ahead. The article concludes by stating that more research focusing on sociological, economic, legal, and demographic factors is needed in this area.

Marleen A. O'Connor, *Women and the "New" Corporate Governance: Women Executives in Gladiator Corporate Cultures: The Behavioral Dynamics of Gender, Ego, and Power*, 65 MD. L. REV. 465 (2006).

The amount of female CEOs and directors in large businesses is minimal in comparison to men in similar positions because women face several gender difficulties that hold back their performance in corporate tournament structures for possible promotion. It is important to examine the reasons why women do not perform well in corporate tournament structures. The author rejects the argument that there are not enough women to promote to senior level executive positions in the corporate "pipeline." The article examines gender dynamics such as how women deal with conflict, and how these dynamics might impede a women's potential to climb the corporate ladder. Lastly, the author argues that women executives should not be encouraged to succeed just because they will bring a level of ethical care to the workplace and increase productivity, but so corporations can function legitimately in society.

Lisa M. Fairfax, *Clogs in the Pipeline: The Mixed Data on Women Directors and Continued Barriers to their Advancement*, 65 MD. L. REV. 579 (2006).

Although the number of women sitting on corporate executive boards has increased substantially within the last decade, the number appears disproportionately low when one takes into account the fact that women now make up roughly half the U.S. work force. The author posits that there is a "clog" in the corporate pipeline that prevents women—particularly those most likely to encourage further change—from advancing past a certain level on the corporate ladder. Antidiscrimination and employment laws have done little to ameliorate the problem, which often encompasses subtle forms of discrimination in hiring and promotion practices. Fairfax suggests that the best solutions depend upon women themselves—creation of better networking and mentoring opportunities, entrepreneurship, and pressure on corporations to re-think their hiring and promotion criteria.

Bruce Ackerman, *Interpreting the Women's Movement*, 94 CAL. L. REV. 1421 (2006).

The author challenges the position taken by author Reva Siegel in her article, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA* that the Supreme Court, in adjudicating issues of women's rights, was influenced by the public debate surrounding the attempted ratification of the Equal Rights Amendment (ERA). The author also rejects Siegel's suggestion that the Supreme Court's response to social movements, such as the women's movement, eliminates the distinction between higher lawmaking and adjudication. Although there are situations in which the Court responds favorably to social movements, they are inconsistent, since the Court often ignores or reacts against such movements. Therefore, the distinction between higher lawmaking and adjudication was maintained throughout the Court's acceptance of women's rights.

Cheryl B. Preston, *Subordinated Stills: an Empirical Study of Sexist Print Advertising and its Implications for Law*, 15 TEX. J. WOMEN & L. 229 (2006).

Although women have become active in public life and entered powerful professions, the underlying culture of our society still broadcasts that women should meet the subordinate women-child ideal. The author believes that since advertisers generally try to present a comfortable and idealized version of society, the contents of advertisements both reflect and help shape our cultural values. Using this "imitative and generative" property of advertising, the author's study attempts to use representations of women in popular magazine advertisements to shed light on the hidden gender attitudes that persist in the legal profession. The

study shows that print advertisements demonstrate gender stereotypes consistent with the biases that plague women in the legal profession, reinforcing the narrow path that women must walk between the "woman-child ideal" and a status quo-breaking powerful professional.

HEALTH

Julie Neal, *Childhood Obesity Prevention: Is Recent Litigation Enough?*, 27 J. JUV. L. 108 (2006).

The national epidemic of childhood obesity in the United States not only has long-term adverse effects on these overweight children, but on society as a whole. The author examines the child malnutrition crisis of the early twentieth century and the recent tobacco crisis among children to demonstrate that federal, state and local involvement has been instrumental in combating prior health crises concerning American youth. California's recent legislation regulating the food and beverages available in California's public school systems, illustrates the type of action being taken at the state level. In contrast, the federal government has not yet enacted legislation that focuses on childhood obesity. The author posits that federal legislation aimed at preventing childhood obesity must provide for active involvement with schools, parents and local organizations in order to be truly successful.

Jamie Staples King & Benjamin W. Moulton, *Rethinking Informed Consent: The Case for Shared Medical Decision-Making*, 32 AM. J.L. & MED. 429 (2006).

Currently, the states are split between the physician-based and patient-based informed consent standards, and this article examines the deficiencies of these standards and recommends broad overhauls of the informed consent system. The authors argue that the physician-based standard leaves discretion to the physician in instances where the patient would not benefit from such discretion, and that the method and quality of the information they provide varies widely. Likewise, they argue that the patient-based standard could deprive a number of patients of information they need to make an informed determination based on their personal needs, preferences, and lifestyle. The authors recommend implementing a system of shared medical decision-making and uniform, credentialed information. Although difficult to put in place, the authors argue that shared decision-making would strengthen the patient-physician relationship, guarantee that a mutually satisfactory decision could be reached by the patient and physician, and ultimately improve medical care.

Dov Apfel, *Using a Differential Diagnosis to Prove that Intrapartum Asphyxia is a Significant Cause of Cerebral Palsy*, 30 AM. J. TRIAL ADVOC. 89 (2006).

Accepted scientific research on both humans and animals indicates that asphyxiation is one of the leading causes of brain damage, including cerebral palsy, in infants. However, to minimize medical malpractice suits, the obstetric community has tried to argue against this extensive data and has instead come up with its own set of criteria for determining whether an infant's cerebral palsy was caused by asphyxiation. The author argues that there is little if any scientific basis for relying exclusively on the criteria put forth by the obstetric community to determine whether cerebral palsy developed while giving birth as opposed to during gestation. As a result, the author feels that trial judges must control the flow of information to jurors by excluding testimony from expert witnesses who rely solely on the information distributed by the obstetric community to determine when an infant's brain damage was caused. As an alternative, the author encourages the use of a differential diagnosis which would permit an expert witness to go through all of the possible scenarios that could lead to cerebral palsy and the likelihood that each one was a leading factor in any given case.

Edward L. Palmer & Lisa Sofio, *Food and Beverage Marketing to Children in School*, 39 LOY. L.A. L. REV. 33 (2006).

Although companies have marketed in schools since the 1920s, partnerships between schools and corporation grew drastically in the late 1970s. These partnerships enabled companies to foster product recognition and loyalty by inundating students with advertisements on bulletin boards, textbooks, and during school announcements. While corporations provide schools with money necessary to bridge the gap between schools' expenditures and what they are allocated through taxes, this benefit does not outweigh the byproduct: the diabetes and obesity epidemic plaguing the young. Past attempts to control marketing strategies have failed as they limit the scope of prohibition; a bill only allowing sale of milk, water and juice was extended to allow diet-soda and sports drinks while bill prohibiting all advertisements in schools was limited to elementary schools. The author proposes a multi-step solution, the crux of which would allow corporations and schools to continue their partnerships only if the companies promote healthy lifestyles on a "non-commercializing basis."

Anne Tamar-Mattis, *Exceptions to the Rule: Curing the Law's Failure to Protect Intersex Infants*, 21 BERKELEY J. GENDER L. & JUST. 59 (2006).

While concealment surgery for intersex infants has been the norm, it appears that forcing these infants to undergo genital-normalizing surgery is an affront to their rights. While courts generally take care to protect the child's interests, this may not be enough. The author first outlines the various arguments against such procedures with an eye towards improving the decision-making process that leads up to these surgeries. She then goes on to question whether informed consent laws do their job of making sure that parents are as informed as they need to be about the repercussions of such procedures, and whether or not parental consent can ever be sufficient to authorize the procedures. The author advocates a shift in the decision-making process to a method known as the categorical exception model.

Susan Linn & Josh Golin, *Beyond Commercials: How Food Marketers Target Children*, 39 LOY. L.A. L. REV. 13 (2006).

This article argues that the recent rise in childhood obesity is directly related to an increase in the marketing of junk food to children. The authors explain that since 1980, obesity rates have risen dramatically for children of all ages, and that at the same time, the amount of money spent on marketing food to children has increased by a factor of one hundred. They show how junk food marketing has expanded from its traditional medium of television and now appears in product tie-ins, product placement, and even in educational materials. During this time, the junk food industry has been purportedly engaged in a scheme of self-regulation. The authors conclude that this industry self-regulation has failed, and that regulation by an independent body is necessary to improve child health.

Matthew D. Adler, *Welfare Polls: A Synthesis*, 81 N.Y.U. L. REV. 1875 (2006).

Currently, there are three types of welfare polls that seek to quantify the determinants of human well-being: the Contingent Valuation surveys ("CV"), which employ a monetary scale; Quality Adjusted Life-Year surveys ("QALY"), which measure health effects on a 0-1 scale; and Happiness Surveys, which characterize an individual from "not too happy" to "pretty happy" to "very happy". These welfare polls are generally used in cost-benefit determinations for policy analysis, to quantify obligations and entitlements in terms of welfare impact, and to phrase government communications in terms of welfare states. The author suggests that welfare surveys may be improved by restructuring polls to be multidimensional characterizations of welfare and by creating group welfare polls, which will ask respondents to answer the survey from alternate perspectives.

HUMAN RIGHTS

Uche U. Ewelukwa, *Litigating the Rights of Street Children in Regional or International Fora: Trends, Options, Barriers, and Breakthroughs*, 9 YALE H.R. & DEV. L.J. 85 (2006).

The 1999 Inter-American Court of Human Rights' decision in *Villagran Morales v. Guatemala* was pivotal in that it was the first case involving street children to be adjudicated in front of an international human rights tribunal, and was the first case in that Court's history in which children were victims of human rights violations. Given the limited resources available to advocate for street children worldwide suffering from violence, sickness, and poverty, the author considers the benefits and limitations of human rights litigation, in light of the *Villagran Morales* decision, as a strategy to defend the rights of street children. The author posits that *Villagran Morales* demonstrates how litigation has the potential to effect positive change in the lives of street children: by providing redress for victims, catalyzing changes in domestic law in the short-term, and hastening development of human rights jurisprudence and increased public awareness of human rights issues in the long-term. However, the author warns that the possibility of change through litigation is limited by three main factors: litigation's tendency to focus on civil and political rights rather than economic and social rights; the international tribunals' lack of jurisdiction over non-state actors; and the difficulty of enforcing children's human rights claims given the lack of a permanent human rights court, and the scarcity of fora in which such claims may be brought. In conclusion, the author argues that litigation should be utilized as a last resort, and that it should be viewed as one strategy, along with combating poverty, reforming international human rights laws, and addressing the three limiting factors outlined in this article, to improve the lives of street children worldwide.

Beth Stephens, *Filartiga v. Pena-Irala: From Family Tragedy to Human Rights Accountability*, 37 RUTGERS L.J. 623 (2006).

The decision in *Filartiga v. Pena-Irula* transformed the Alien Torts Statute from an obscure statute into a tool used to make international human rights violators accountable for their actions in U.S. courts. The author details how the Filartiga precedent has not been limitedly applied to only those individuals who are directly responsible for international human rights violations, but has been applied to various foreign and U.S. officials involved in decision-making which contributed to these violations. The author addresses the challenges to the expansive use of the Alien Tort Statute, including claims that the statute is only jurisdictional and the current use of the statute infringes on the power of the executive branch, and the

Supreme Court's rejection of these two claims. The author concludes with a synopsis of law articles in this Symposium issue of the Rutgers Law Journal on Alien Tort Statute litigation. The author posits that these diverse article topics illustrate the significant impact the Filartiga's legal battle has had on the international human rights movement.

Mark F. Massoud, *Rights in a Failed State: Internally Displaced Women in Sudan and Their Lawyers*, 21 BERKELEY J. GENDER L. & JUST. 2 (2006).

The author traveled to the Sudanese desert to see how and to what extent impoverished internally displaced persons (IDPs) uprooted from their homes by the violence in Darfur and imprisoned by the Sudanese government – and their lawyers – were aware of and were utilizing internationally guaranteed human rights laws. He found a highly motivated, well-informed, organized community of human rights lawyers, impoverished but dedicated to working closely with IDPs. They often think of human rights in local survival terms – as the right to safe water and electricity; thus one legal aid organization gained the trust of the inmates and the tolerance of the warden of a major women's prison by feeding the children of the inmates, and then held human rights training workshops promoting legal awareness. Those involved have no sense of human rights as something natural and inherent in human life or involving individual autonomy, but think of them as having a source outside themselves, whether political or religious. Thus they hope that the peace agreement signed in January of 2005, and the unity government that has followed, will bring enhanced enforcement of universally recognized human rights principles.

Deborah K. Dunn and Gary Chartier, *Pursuing the Millennium Goals at the Grassroots: Selecting Development Projects Serving Rural Women in Sub-Saharan Africa*, 15 UCLA WOMEN'S L. J. 71 (2006).

The Millennium Development Goals (MDGs), an internationally agreed upon framework created for the improvement of living conditions for people globally, may be best executed through the use of grassroots organizations. Grassroots projects, led by and provided for Sub-Saharan African women, play a significant role in furthering the MDGs. These projects are most successful when they are independently sustainable and provide women with increased free time, realistic opportunities for learning, increased income, and a sense of empowerment. By using grassroots projects that are led by local women and that respond to local needs, the grassroots organizations provide both development and human rights. Moreover, the improvement in the lives of women in Sub-Saharan Africa extends to the women's families and their communities as a whole.

LGBT RIGHTS

Daniel Redman, *"Where All Belong:" Religion and the Fight for LGBT Equality in Alabama,* 21 BERKELEY J. GENDER L. & JUST. 195 (2006).

Despite recent national improvements in the field of LGBT rights, Alabama remains resistant to change in this area. Law-makers in the state, clinging to conservative Christian values, have recently proposed legislation that further restricts the rights of LGBT Alabama residents. Although religion has been used to suppress gay rights in Alabama, LGBT Alabamians tend to be as religious as their straight counterparts, and find comfort, friendship and support in the LGBT churches they have created. The author argues that it is through these religious channels that LGBT Alabamians will make the largest strides toward equality. Emphasizing what LGBT Alabamians have in common with their straight counterparts will help lay the groundwork for a peaceful dialogue that will hopefully pave the way for greater equality in Alabama.

Jane S. Schacter, *Sexual Orientation, Social Change, and the Courts,* 54 DRAKE L. REV. 861 (2006).

There has been much debate over whether courts can act as primary vehicles for social change, particularly in the field of gay rights. Two poles have developed in this debate: one argues that if there is to be progress in this area, it will have to come from the courts; the other argues that legislators, and not the courts, have the primary role in creating social change. The author looks at social change from several angles and concludes that a middle-of-the-road stance is most appropriate, and that it is unwise to rely either on courts as the single answer to this problem or to completely discard them as a potential solution. The author urges that instead of focusing on which of these two opposing poles is correct, we should take a more narrow view, looking to the public response to each act of attempted social change by the courts and the legislature, to determine what factors cause the public to either embrace or reject these changes. Only once we understand what causes the public to respond favorably to a particular judicial or legislative action will we truly be able to bring about meaningful social change.

Jer Welter, *Sexual Privacy After Lawrence,* 7 GEO. J. GENDER & L. 723 (2006).

Lawrence v. Texas, a 2003 Supreme Court case that invalidated a Texas anti-sodomy law, was limited by the inclusion of the "*what-Lawrence-isn't*" paragraph, which enumerated the ways in which future cases may be factually distinguished. Although *Lawrence* held that private consensual sex between adults was protected

against criminal charges by the due process clause, courts have restricted this decision using the "*what-Lawrence-isn't*" paragraph, so that statutes prohibiting non-consensual sex, public sex or sex with a minor would not be invalidated. Lower courts have systematically rejected the notion that *Lawrence* protects all sexual acts from criminal charges, as the "*what- Lawrence- isn't*" paragraph directly contradicts this perception. Furthermore, the decision in *Lawrence* was not based on granting equal protection to homosexuals but was instead based on the idea that certain gay sexual acts are worthy of protection. The author concludes that the best way to extend the decision in *Lawrence* to protect not just "the dignity" of relationships but also sexual privacy would be to focus on the part of the majority decision which emphasizes that a sexual act cannot be criminalized solely based on the morality of the majority.

Sonia K. Katyal, *Performance, Property, and the Slashing of Gender in Fan Fiction,* 14 AM. U. J. GENDER SOC. POL'Y & L. 461 (2006).

This article explores new trends, fostered by the Internet, in the relationship between the creators of artistic content and their fans. Particular focus is on "slash fan fiction," the burgeoning world of fiction produced by mainly heterosexual females who creatively adapt characters and other elements from well-known media productions to suit their own whimsical, parodic, or satiric purposes, specifically entertaining the notion of famous ostensibly heterosexual, usually male, characters engaging in varying degrees of homoerotic relations with each other. The author sees this syndrome as a positive, authentic, and real pressure on traditional gender norms, and tracks various copyright cases that reflect the tension experienced by media companies that want to protect the characters in their productions from being treated in this way, and yet do not want to alienate their passionate fans who produce the fiction. The author believes this kind of fictional exploration has the potential to expand, enrich, and vivify the rigid and limited nature of conventional, unerotic, officially approved male-to-male relating, in which traditional masculinity "blocks the possibility of true male friendship." On an even more abstract level, the author argues that gender has no fixed or core essence, but is socially conditioned and can be "recoded" or reinvented with the creative participation of the variegated cyberaudience of today.

Paula Roach, *Parent-Child Relationship Trumps Biology: California's Definition of Parent in the Context of Same-Sex Relationships*, 43 CAL. W. L. REV. 235 (2006).

This article analyzes California Supreme Court's recent rulings on the definition of parent in same sex relationships. Specifically, the author looks at three recent rulings, *Kristine H. v. Lisa R.*, *K.M. v. E.G.*, and *Elisa B. v. Superior*

Court, and discusses how the courts have taken a more progressive view of what constitutes a parent. In the past, courts looked to the Uniform Parentage Act and the California Family Code to find that non-biological parents may attain the status of de facto parents, but not without limitations on the parent's rights. The California Supreme Court's progressive view impacts not only the non-biological parent's rights, but also the interests of the children as the parent-child relationship is preserved, thereby providing both economic and emotional support. In conclusion, the author states that the California Supreme Court has used a gender neutral analysis of the Family Code to find that parental rights are based on a relationship to the child instead of on a biological connection and this new interpretation will affect both male and female same sex unions by granting them a greater chance at obtaining parental rights in the future.

J. Harvie Wilkinson III, *Gay Rights and American Constitutionalism: What's a Constitution For?*, 56 DUKE L.J. 545 (2006).

In response to *Goodridge v. Department of Public Health*, Congress has increased its efforts to pass the Federal Marriage Amendment to ban gay marriage. A constitutional amendment however, is not an appropriate vehicle to deal with this issue. The author argues that such an amendment would inevitably allow room for interpretation by judges, which proponents of the amendment are trying to avoid, that the Constitution should not reflect current political views, and that statutes and not constitutional amendments have been historically used to deal with issues in family law. Given the consistent interpretation of the Full Faith and Credit Clause by the courts which allows the states to disregard certain marriages as well as the passage of the Defense of Marriage Act, the states are fully equipped to deal with the issue without further interference from the federal government. While a constitutional amendment even on a state level is inappropriate according to the author, the issue of same-sex marriage should be a matter of state law.

Jose Gabilondo, *Asking The Straight Question: How to Come to Speech in Spite of Conceptual Liquidation as a Homosexual*, 21 WIS. WOMEN'S L.J. 1 (2006).

This article begins with an anecdote detailing the life of a straight man in a world dominated by gay supremacy, quite the converse of today's reality. The story serves to introduce a conversation about heterosexual interpellation or how heterosexuals view gays through legal and social disabilities. The author argues that straight supremacy is prevalent in the academic and social world through gay insults that would not be allowed against any other minority. The author posits that heterosexual interpellation can be conquered through simple rhetoric coined as "interpellative advocacy." The author suggests that legal academic environment is

a good place to identify sources of "heteronormativity" and to adopt a critical approach which would discontinue biases against the gay minority.

Damon Martichuski, *Employment Law Chapter: Sexuality and Transgender Issues in Employment*, 7 GEO. J. GENDER & L. 953 (2006).

Employment discrimination based on sexual orientation continues despite several state and local laws which prohibit this offensive practice. The federal courts have made some progress by expanding the traditional definition of "sex" under Title VII of the Civil Rights Act of 1964 to encompass discrimination based on sexual orientation with the case of *Price Waterhouse v. Hopkins*. Seventeen states and Washington D.C. currently have laws that prohibit private employers from discriminating against individuals because of sexual orientation and alternative causes of action exist, such as the intentional infliction of emotional distress and violation of public policy, for individuals who are the victims of sexual orientation discrimination. However, alternative causes of action are difficult cases to prove and the Supreme Court's support of the Solomon Amendment in *Rumsfeld v. FAIR*, does not indicate support for a federal cause of action for individuals who are the victims of employment discrimination because of sexual orientation. The fate of employment discrimination based on sexual orientation must ultimately be decided by the Supreme Court, nevertheless states and localities should continue to enact prohibitions on such an odious "employment tradition."

Justin L. Haines, *Fear of the Queer Marriage: The Nexus of Transsexual Marriages and U.S. Immigration Law*, 9 N.Y. CITY L. REV. 209 (2005).

Recognized as neither men nor women, transsexuals are denied many of the rights and benefits available to hetero-normative society. This article focuses on recent challenges to the validity of transsexual marriages within the context of U.S. immigration. In 2004, the Department of Homeland Security stated that it would not recognize transsexual marriages for the purposes of immigration, pursuant to the Defense of Marriage Act (DOMA), which defines marriage as the union of a man and a woman. Conversely, the Board of Immigration Appeals later held that DOMA does not exclude transsexual marriages, and validated them for the purposes of immigration. Until a definitive ruling by the federal courts of appeal, this issue hangs in the balance.

Nancy J. Knauer, *The Recognition of Same-Sex Relationships: Comparative Institutional Analysis, Contested Social Goals, and Strategic Institutional Choice*, 28 U. HAW. L. REV. 23 (2005).

Using the movement for the equal recognition of same-sex relationships to examine social goal articulation and social change, this article seeks to expand the comparative institutional analysis ("CIA") framework by incorporating social goal analysis. The debate between pro-gay advocates and traditional value proponents over same-sex relationships offers an ideal backdrop for the examination of the "atomistic forces" that shape alternative decision-making processes and determine institutional behavior. The author examines the failures of CIA and uses the struggles over same-sex relationships to illustrate how the "conceit of single institutionalism" practiced by social movement theory impairs its ability to understand the nature of strategic institutional choice. The author challenges CIA to tailor its application to contested social goals in order to enrich social movement theory and confirms that individuals with strong beliefs working for social change understand and practice comparative analysis instinctively.

Susie Lorden, *The Law of Unintended Consequences: The Far-Reaching Effects of Same-Sex Marriage Ban Amendments*, 25 QUINNIPIAC L. REV. 211 (2006).

Same-sex marriage amendments do more than just prohibit same-sex couples from marrying, they have unintended consequences, such as the elimination of rights of unmarried victims of domestic violence. Starting with the federal Defense of Marriage Act (DOMA) in 1996, states have enacted their own version of the DOMA to prohibit same-sex marriage. Ohio's same-sex marriage ban amendment, passed without proponents revealing the statute's intent to the voters, has effectively allowed domestic abusers to have their cases dismissed because courts have found Ohio's domestic violence law unconstitutional as it applies to same-sex couples. Fortunately most appellate courts in Ohio have resolved the constitutionality issue by considering legislative intent that domestic violence protection extends to all cohabitants, behind the domestic violence statute. The author notes that Ohio's same-sex marriage amendment is an example of voters being misled by conservative supporters of prohibition of same-sex marriage and homosexuality altogether, which results in removing civil liberties that are supposed to be guaranteed by the Constitution.

MARRIAGE

Sarah C. Acker, Comment, *All's Fair in Love and Divorce: Why Divorce Attorney's Fees Should Constitute a Dissipation of Marital Assets in Order to Retain Equity in Marital Property Distributions*, 15 AM. U. J. GENDER SOC. POL'Y & L. 147 (2006).

This comment focuses on why divorce attorney's fees should constitute dissipation of marital property and why dissipation is the best available remedy for this type of expenditure. Expenditure is considered to be a dissipation of marital assets if one party uses the assets "for his or her sole benefit for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown." Courts have found that divorce attorney's fees are not dissipation of assets as the purpose of the action is directly related to the marriage. The author rejects this notion and asserts that this expenditure directly contradicts the interest of the other party and its purpose is not related to the marriage but is used for the sole purpose of terminating the marriage. Alternative remedies, including preliminary injunctions, fraud and constructive trust, are too cumbersome as it unjustly increases the burden of proof for the non-spending party.

Karine Belair, *Unearthing the Customary Law Foundations of "Forced Marriages" During Sierra Leone's Civil War: An Analysis of the Possible Impact of International Criminal Law on Customary Marriage and Women's Rights in Post-Conflict Sierra Leone*, 15 COLUM. J. GENDER & L. 551 (2006).

Describing the relationships between women who were abducted during the civil war in Sierra Leone and their captors as "forced marriages" is a misnomer. During the war, thousands of women were captured and forced to perform many sexual and domestic acts for their "husbands". The author first describes the problem, goes on to explain why terms like "forced marriages" were used in the first place, and finally proposes a change that she believes would prevent a recurrence of this problem. Under customary law, most women did not choose their sexual partners and were forced to perform as their husbands wished. The author believes that if Sierra Leone were to adopt the concept of female sexual autonomy and specifically delineate several sexual crimes, it would prevent such problems from recurring in the future.

Kenneth Rigby, *Matrimonial Regimes: Recent Developments*, 67 LA. L. REV. 73 (2006).

According to Louisiana law, a matrimonial regime is a set of rules regulating the property of married people. A matrimonial agreement is a contract between

spouses establishing, ending, or modifying such a regime. In his overview of case law on matrimonial agreements, the author notes that these concepts and the lexicon that accompanies them are often used inconsistently in the Louisiana Civil Code. Because these inconsistencies lead to jurisprudential confusion, particularly with the varying applications of the word "community," the author calls for a revision of the Matrimonial Regimes Act to include more precise language.

Elizabeth M. Cooper, *Who Needs Marriage?: Equality and the Role of the State*, 8 J. L. & FAM. STUD. 325 (2006).

The question of who needs marriage cannot be answered without first looking at the reasons why marriage is held so highly in the United States. While many of the reasons are social in nature, others are economic since employer, federal, and state benefits are often available only to those who are married. The author explains how gay and lesbian couples can gain access to some of these rights and benefits by engaging in civil unions, domestic partnerships, marriages in Massachusetts, or even private contracts between the couple. In addition, she discusses four cases brought under the Equal Protection and Due Process clauses in particular, and their effect on future marriage cases. The author concludes that marriage is needed by all people, whether heterosexual or not because of the benefits and rights which accompany marriage.

Joseph A. Pull, *Questioning the Fundamental Right to Marry*, 90 MARQ. L. REV. 21 (2006).

The author contemplates the idea of a federal marriage amendment and its effect upon the United States Constitution. The Constitution currently does not have any provision regarding the regulation of domestic relations and constitutional policy of leaving domestic relations law to state legislatures has long been in effect, but the Supreme Court has recently enforced non-textual constitutional protection for marriage under the doctrine of the fundamental right to marry. The author finds that the doctrine of fundamental right to marry has multiple flaws. It does not explain why marriage is a fundamental right, there is no definition of the boundaries of marriage as a fundamental right, the Court has occasionally treated marriage as if it were not a fundamental right, and the long tradition of states having broad powers to regulate marriage. The author concludes that the Supreme Court should reinterpret the fundamental right to marry to be a fundamental right to personal-marriage.

PARENTING

Joseph Brick, Note, *Non-Custodial Parents Liability for a Delinquent Child*, 27 J. JUV. L. 153 (2006).

In the case of *In re J.L.M.*, the Oklahoma Supreme Court held that the Oklahoma Juvenile Delinquent Restitution Statute permits a trial court to hold a non-custodial parent liable for restitution for harm caused by the delinquent act of a child who was not living in his/her home when the act occurred. The non-custodial father in this case appealed the trial court's decision that forced him to pay one-half of the restitution damages caused by his fourteen-year-old son's delinquency. The author walks through the court's statutory analysis, explaining how the majority analyzed the statutory language, relevant precedent, and the public policy rationale contained therein to find that either a custodial parent alone, or both parents, could be liable for restitution, and that the word "parents" in the statute encompasses non-custodial parents. In contrast, the author highlights the dissent's argument, which contends that the statute should be read consistently with other Oklahoma laws denying vicarious parent liability, and that the use of the words "parent or non-custodial parent" in the statute unambiguously imply that non-custodial parents should not be held liable. The author concludes that the Oklahoma Supreme Court was correct in affirming the lower court's decision that the legislative intent of the Juvenile Delinquent Restitution Statute is to hold non-custodial parents liable.

Jeffrey A. Parness, *New Federal Paternity Laws: Securing More Fathers at Birth for the Children of Unwed Mothers*, 45 BRANDEIS L.J. 59 (2006).

As the number of children born in the United States to unwed mothers steadily increases, so does the number of children who have no legal father designated on their birth certificate. Under the Social Security Act, states that participate in the federal Temporary Assistance for Needy Families program must require that unwed mothers receiving assistance cooperate "in good faith" in establishing paternity and provide resources to facilitate such paternity establishments. The author examines the various methods of establishing voluntary paternity acknowledgments and calls for a more uniformed standard among states. The author surveys cases regarding rescission of voluntary acknowledgments from seven states to demonstrate that no one standard is used in these actions. The author proposes legislation aimed at providing more parenting and legal information to expectant parents and creating uniformed standards for paternity acknowledgments that include all unwed mothers, not just those receiving public assistance.

Michele A. Adams, *Framing Contests in Child Custody Disputes: Parental Alienation Syndrome, Child Abuse, Gender, and Fathers' Rights,* 40 FAM. L.Q. 315 (2006).

When parents separate, the parent who has custody of the child, generally the mother, often chooses to alienate the other parent. Mothers often justify this choice by alleging that they or their children are victims of abuse by the father. In an attempt to defend themselves from these accusations, fathers have labeled this phenomenon as parental alienation syndrome (PAS). The author explores how the development of PAS has affected gender stereotypes and forced women who choose to alienate the child's father into the role of vindictive parents, rather than allowing them to be viewed as the potential victims of domestic abuse. The author concludes that the creation of PAS is detrimental to both mothers and children, and that it merely detracts from the ultimate goal of trying to find the safest living situation for a child by polarizing the situation and attempting to blame all problems on the mother.

David D. Meyer, *The Constitutional Rights of Non-Custodial Parents*, 34 HOFSTRA L. REV. 1461 (2006).

Non-custodial parents are fighting to have constitutional rights equal to custodial parents after a divorce or separation. Until the late 1970s, a divorce resulted in one parent gaining sole custody of the child with little protection for the rights of the non-custodial parent. Joint custody and shared parenting, alternatives to sole custody, provided better rights to both parents, though the courts were adamant in pointing out that neither parent has a constitutional right to equal custody. However, parents who either wish to remain non-custodial or are denied joint custody are not guaranteed any rights other than basic visitation rights. The author supports a solution whereby the non-custodial parents are not entitled to the same rights as custodial parents, but each situation is taken on a case by case basis to determine the presence of any exceptional circumstances.

Nina G. Golden, *Pregnancy and Maternity Leave: Taking Baby Steps Toward Effective Policies*, 8 J.L. & FAM. STUD. 1 (2006).

The United States lags far behind most of the industrialized world in providing benefits and job protection to women who want or need to take leaves of absence from their jobs due to pregnancy and childbirth. Congress has attempted several times since the 1970s to give protection to women who are or may become pregnant, but these efforts have had many shortcomings. The author argues that federal legislation up to this point has been ineffective, and that few states have made any progress in improving on the federal model. While the California Family

Rights Act is more effective and aggressive than other legislation in this country, it is still inadequate as compared to other industrialized nations. The author argues that improvement in coverage is needed across the country, and that the California model should serve as a minimal requirement rather than a ceiling for family leave benefits.

Deborah L. Forman, *Same-Sex Partners: Strangers, Third Parties, or Parents? The Changing Legal Landscape and the Struggle for Parental Equality,* 40 FAM. L.Q. 23 (2006).

As rights for gays and lesbians have expanded across the country, same-sex partners have found new ways to establish legal parental relationships to children they have raised but to whom they are not biologically related. Some jurisdictions treat same-sex partners as third parties to be accorded visitation rights or even custody, some accord same-sex partners full parental status, and some grant none of these. Among the legal approaches to legitimizing the relationship have been a record of caring and taking responsibility for the child ("de facto" parenting) or, where a couple has broken up, the use of estoppel against the natural parent to prevent her from denying previous support for the relationship between the partner and the children. While some courts have rejected these approaches as not authorized by statute, others have used them as a basis to exercise their equitable power to grant a new status, always keeping in mind the Supreme Court's holding in *Troxel v Granville* that the wishes of a biological parent must be given "special weight" and are to be presumed in the best interests of the child. Using the concept of "functional parenthood," courts in Washington and New Jersey have found the "psychological" or "de facto" parent "stands in parity" with the "biological" or "otherwise legal" parent; a few states allow the parental relationship as a result of marriage (Massachusetts), civil unions (Vermont and Connecticut), or domestic partnerships (California), and where this is not possible, adoption itself is often the surest path to parental rights.

Carol S. Bruch, *Sound Research or Wishful Thinking in Child Custody Cases? Lessons from Relocation Law*, 40 FAM. L.Q. 281 (2006).

This article explores the ways in which children's interests are best advanced in the context of relocation disputes. The author examines which principles should lead decision-makers in relocation disputes. The article focuses on the factual and legal background of this issue by looking at various studies. Most child custody studies focus on mother-child relationships, but this article also discusses the effect of child custody disputes in regard to father-child relationships. The author also examines the detrimental effects of flawed research and misstatements of scientific findings in legal articles and the effects they have on relocation disputes.

Susan E. Lawrence, *Substantive Due Process and Parental Rights: From Meyer v. Nebraska to Troxel v. Granville,* 8 J.L. & FAM. STUD. 71 (2006).

The 1923 *Meyer* decision supported a teacher's challenge to Nebraska legislation, which prohibited the teaching of foreign languages in some schools. In subsequent years, the *Meyer* decision was cited in numerous Court opinions in a variety of constitutional contexts. The author emphasizes that these opinions do not apply *Meyer* as a means of delineating parents' power over their children. *Troxel* was the first case to do so. However, the author characterizes *Troxel* as a "dangerous case" because it places too much importance on parents' substantive due process rights, thereby overlooking the rights and opinions of the children.

John E. B. Myers, *Neglect of Children's Health: Too Many Irons in the Fire,* 8 J.L. & FAM. STUD. 317 (2006).

Judges in medical neglect cases currently use a balancing test to determine when to override a parent's decision to deny their child care. In the balance are the interests of the parents, the state, and the child. The author rejects the balancing test because he believes that parents' interests often take unfair precedence over their child's and because the state's interests and the child's interests are equivalent. Instead, the author favors a rebuttable presumption of parents' choices whereby if two or more physicians testify that the parents' choices will cause serious harm to the child, the court will then consider only the child's interests.

Tyler Talbot, *Reparative Therapy for Homosexual Teens: The Choice of the Teen is the Only Choice* Discussed, 27 J. JUV. L. 33 (2006).

Although parental control over minor children is a common assumption, this article takes the position that a parent's ability to force a minor into reparative therapy—therapy designed to "repair" homosexual tendencies—should not be allowed. Exceptions to parental control, including a minor's right to have an abortion, pave the way for other possible exceptions. In addition, courts have held that a state may interfere with a parent's religious beliefs if it endangers the welfare of the child, but not if it interferes with a core foundation or belief of the parent's religion. With such precedent in mind, the author argues that reparative therapy can not only endanger the welfare of a child, but is neither widely agreed upon by Christians nor a core foundation or belief of Christianity. Therefore, the state may interfere with a parent's choice to send a child to reparative therapy. The author concludes that the official stance on reparative therapy should instead mimic the federal government's stance on abortion, by providing homosexual teens with knowledge of the risks of reparative therapy and a choice to attend.

RACE AND GENDER

I. Bennett Capers, *The Trial of Bigger Thomas: Race, Gender, and Trespass*, 31 N.Y.U. REV. L. & SOC. CHANGE 1 (2006).

African-American novelist Richard Wright's classic *Native Son* tells the story of Bigger Thomas, an African-American man who is convicted of, and sentenced to death for the murder of a young white woman, but not prosecuted for the rape and brutal murder of his African-American girlfriend that occurred on the same day. *Native Son* is included in the law-and-literature discipline because it reflects the objectives of that genre by both depicting legal themes and portraying sympathetic characters with the potential to catalyze social change. The author posits that Bigger's prosecution for the murder of the white woman, but not his African-American girlfriend, demonstrates that Bigger is really being prosecuted for trespassing social and legal borders that reinforce racial and gender hierarchies, and thus his crime can be analogized to trespass on a property interest in whiteness. In discussing *Native Son*, the author seeks to address critiques of law-and-literature that claim the movement is fragmented and unfocused, and suggests that the solution to revitalizing this movement lies in developing a broader, less-disciplined view of law-and-literature's limits.

Marie-Amelie George, *The Modern Mulatto: A Comparative Analysis of the Social and Legal Positions of Mulattoes in the Antebellum South and the Intersex in Contemporary America*, 15 COLUM. J. GENDER & L. 665 (2006).

In comparing mulattoes in the antebellum south with modern intersex persons, this article seeks to demonstrate that race and sex are very similar theoretical constructs that have historically been designed to foster a binary system of social and legal categorization. Both mulattoes and intersex individuals defy the neat, polarized categories of black and white, and male and female, respectively. Mulattoes in the antebellum south were in effect legislated as being black to reinforce the binary system of black and white that perpetuated slavery. Similarly, the intersex have been surgically assigned a sex so they may "fit in" and perpetuate the patriarchal society based upon the male and female binary. Race has come to be viewed as a more fluid and flexible category over time, and the author recommends sex be viewed similarly so that the intersex do not become the modern version of the antebellum mulatto.

Iris Halpern, *Increasing Healthcare Coverage For Women of Color in the Workplace: A Proposal for Legislative Change in Labor Law*, 21 BERKELEY J. GENDER, L. & JUST. 132 (2006).

This article examines the relationship between healthcare coverage and national unemployment rates. Certain segments of the population, namely women, have disproportionately low rates of healthcare coverage. The author proposes a solution for that dilemma, which is to introduce a "percent-of-profit" remedy that would reform current labor legislation. This method would increase healthcare coverage. While the author states that this model is not the final solution, she contends that it is a first step to reorganization of the labor system and increasing healthcare coverage for those in the group of the population who are most likely to be uninsured.

Michael J. Songer & Isaac Unah, *The Effect of Race, Gender, and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina,* 58 S.C. L. REV. 161 (2006).

A four-year study by the authors suggests that several factors, although legally irrelevant, increase the likelihood that a capital defendant will receive the death penalty. Some of the factors include the prosecutor's political ideology, the district in which the crime occurred, and the gender and race of the victim. Although the Supreme Court has sought to ensure unbiased enforcement of the death penalty by placing greater emphasis in its decisions on statutory aggravating factors, the authors' data suggests that prosecutors are nonetheless more likely to seek capital punishment if the victim is female or white. The authors conclude that the value our legal system places on some lives may be higher than the value it places on others.

RELIGION

Tom Boellstroff, *Domesticating Islam: Sexuality, Gender, and the Limits of Pluralism*, 31 LAW & SOC. INQUIRY 1035 (2006).

John R. Bowen's *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* and Michael G. Peletz's *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* explore the relationship between Islamic law and everyday life in Malaysia and Indonesia, both of which have a large Muslim population. Although both books conclude that there is an assumption that the population is heterosexual, the author aims to determine the implications of this assumption on familial, social, and legal aspects of life. Contrary to popular

western belief, pluralism is rooted in Islamic culture evidenced by recorded documents which consist, not of decisions, but of legal discussion by scholars who aim to find a balance between Islamic law, secularism and practicality. However, the pluralistic nature is limited to discussions where there is an assumption of "gender normativity and heteronormativity." The belief that marriage is only between a male and female, with the male at the head of the household, is pervasive in Islamic culture and law.

SAME SEX MARRIAGE

Justin Reinheimer, *Same-Sex Marriage Through the Equal Protection Clause: A Gender Conscious Analysis*, 21 BERKELEY J. GENDER L. & JUST. 213 (2006).

This article argues that same-sex marriage is supported under the Fourteenth Amendment's Equal Protection Clause. Although the legality of same-sex marriage has long been litigated as a State constitutional issue, the author finds it appropriate to frame same-sex marriage as a federal law question because to deny same-sex marriage is to discriminate same-sex couple against opposite-sex couple solely because of the sex of one partner in relation to the other partner. Underlying the opposition to same-sex marriage lies society's unwillingness to disturb the male-dominated hierarchy in family formation and the law's role in preserving that order. The author also relies on the Supreme Court's race analogue to the same-sex marriage law to argue that a State's alleged public interest in upholding its facially sex-discriminatory marriage law is bound to embody sex inequality in the same manner that the interracial marriage law operated to enforce supremacy of one race over another. Therefore, same-sex marriage ban is an outright sex classification in violation of the Equal Protection Clause.

Jackie Gardina, *The Perfect Storm: Bankruptcy, Choice of Law, and Same-Sex Marriage*, 86 B.U. L. REV. 881 (2006).

Unlike cases in which federal court jurisdiction is based upon diversity, federal question cases have no black letter rule regarding choice of law. The lack of a clear rule becomes particularly troublesome in the context of bankruptcy, in which federal law is often interpreted by reference to state law. This article explores the ways in which same-sex marriage and civil unions can further complicate the question when considered in conjunction with the Defense of Marriage Act and similar state statutes. The author takes the reader through the current state of the law, while offering a hypothetical and the troubling consequences that may result. Ultimately, the author concludes that the needs of fairness and uniformity would best be served by the adoption of a federal choice of

law rule for bankruptcy cases which seeks to give effect to the public policy aims of the Bankruptcy Code.

SEX DISCRIMINATION

Francine T. Bazluke & Jeffrey J. Nolan, *"Because of Sex": The Evolving Legal Riddle of Sexual vs. Gender Identity*, 32 J.C. & U.L. 361 (2006).

Courts, scholars and activists alike struggle to find the appropriate form and extent of legal protection that should be accorded to individuals whose sexual orientation and gender identity deviate from the traditional societal conventions. Case law survey reveals that a majority of courts recognize sex-stereotyping as a form of sex discrimination prohibited by Title VII but refuse to recognize sexual orientation discrimination as actionable under Title VII. Discrimination claims are also brought under various legal theories, including the Equal Protection clause, freedom of speech, federal disability laws, and the State Fair Employment Practices Acts, but the authors conclude that there is no settled legal principle on the protection of gender identity and expression. Despite the legislative initiatives to extend legal protection to non-conventional forms of gender expression, it is difficult to enact optimal legislation because the community of lesbians, gays and transgender express discord on the form and extent of protection. As pioneers in social activism, colleges and universities are called to revise and expand non-discrimination policy boundaries in a manner that is practical, compassionate, and reconciliatory of the divergent cultural norms and interests.

Sarak Pahnke Reisert, Comment, *Let's Talk About Sex Baby: Lyle v. Waner Brothers Television Productions and the California Court of Appeal's Creative Necessity Defense to Hostile Work Environment Sexual Harassment*, 15 AM. U. J. GENDER SOC. POL'Y & L. 111 (2006).

Both the federal and California state courts recognize sexual harassment as an actionable claim under the disparate treatment theory of sex discrimination. In *Lyle v. Warner Brothers Television Productions*, the California Court of Appeal crafted the creative necessity defense to the sexual harassment doctrine as an extension of the business necessity defense model. The author argues that the new defense is misplaced because the business necessity defense applies only to the disparate impact theory of sex discrimination to justify implementing facially neutral employment practices. Not only are the parameters of the creative necessity defense vague and thus unworkable, the defense defeats the legislative intent behind Title VII and the California Fair Employment and Housing Act. The author urges the California Supreme Court to nullify the defense as unnecessary, and instead instruct the jury to consider the social context of the workplace where the

alleged sexual harassment occurred, following the standard outlined by the U.S. Supreme Court in *Oncale v. Sundowner Offshore Services, Inc.*

Susan K. Hippensteele, *Mediation Ideology: Navigating Space from Myth to Reality in Sexual Harassment Dispute Resolution* 15 AM. U . J. GENDER SOC. POL'Y & L. 43 (2006).

Prior to the 1991 Senate confirmation hearings for Clarence Thomas, the issue of sexual harassment in the workplace was relegated to the background of the public consciousness. In the wake of these hearings, there occurred a significant shift in both awareness of the problem and attitudes toward it. This shift resulted in an increase in the number of sexual harassment complaints filed, and with the added complaints came an increased need for adjudicatory methods. Mediation came to serve as a primary means for sexual harassment dispute resolution. The author traces the rise of mediation in harassment disputes, the rationale behind that rise, and attempts to separate fact from fiction in considering the efficacy of mediation as a form of resolution for victims of sexual harassment.

Nicholas Pedriana & Amanda Abraham, *Now You See Them, Now You Don't: The Legal Field and Newspaper Desegregation of Sex-Segregated Help Wanted Ads* 10965-7, 31 LAW & SOC. INQUIRY 905 (2006).

Prior to 1965, employment advertising was routinely divided along gender lines. In this article, the authors discuss the history of newspaper compliance with Title VII of the Civil Rights Act provision prohibiting sex-specific employment advertising, and attempt to pinpoint the reasons behind the sudden rash of compliance that occurred in the early 1970s when the provision had been largely ignored for several years prior. They explore the relationship between ambiguity in statutory language and organizational compliance, and challenge the assumptions of earlier scholarship in the field regarding employers and government regulation. The authors further examine the influence of evolving social norms, state regulatory laws, and related Supreme Court decisions on compliance. Ultimately, this article concludes that while there is a good deal of validity to earlier scholarship, the are further nuances yet to be explored in understanding the ways in which organizations arrive at compliance.

Valerie Knobelsdorf, *Zimbabwe's Magaya Decision Revisited: Women's Rights and Land Succession in the International Context*, 15 COLUM. J.L. GENDER & L. 749 (2006).

In *Magaya v. Magaya*, a Zimbabwe court was faced with an intestate issue concerning which child had the proper claim of heirship. Initially, the estate was granted to the deceased father's daughter, but on appeal, and affirmed by the Supreme Court of Zimbabwe, the decision was reversed and heirship was granted to Ms. Magaya's younger half-brother based on African customary law that a woman cannot be appointed heir when there is a man to claim it. This article explores the relationship between international and customary laws as they relate to human rights, as well as the tension between cultural practices in southern Africa and internationally recognized gender equality rights. First, the author discusses the role of women in a historical and current context and how women have been discriminated in African society. Next, the article addresses the problem from the local context in Zimbabwe to the international context, and suggests an individual-rights based approach the Zimbabwe court should have adopted in that case and in the future.

Erica Williamson, *Moving Past Hippies and Harassment: A Historical Approach to Sex, Appearance, and the Workplace*, 56 DUKE L.J. 681 (2006).

Sexually discriminating grooming policies under Title VII have been analyzed as a general "sex plus" trait, which neglects both the uniqueness of the issue and the chronology of the cases. An examination of employee grooming cases, focusing primarily upon sex-based grooming claims, reveals the strengths and weaknesses of four approaches taken by courts. The Per Se Approach ("PSA") presumes the grooming policy invalid and is thus doctrinally clear, but fails to acknowledge the employer's interest. The Employer Friendly Approach ("EFA") allows grooming regulations that regulate changeable characteristics and thus acknowledges the interests of the employer, but is unclear. The Equity Approach ("EQA") allows grooming regulations that place equal burdens on both sexes and acknowledges both the employer's and employee's interest, but is difficult to apply. The Price Waterhouse Stereotyping Approach ("PWSA") does not allow grooming regulations that perpetuate sexual stereotypes and thus recognizes the employee's interest, but is overly broad and doctrinally unclear. Learning from these strengths and weaknesses, the author concludes that future approaches should be clear, practically applicable, recognize the employee and employer's interests and provide a mechanism for balancing them while placing the large volume of case law within appropriate perspectives.

Alison A. Reuter, *Subtle But Pervasive: Discrimination Against Mothers and Pregnant Women in the Workplace*, 33 FORDHAM URB. L.J. 1369 (2006).

This article examines the discrimination faced by mothers and pregnant women in the workplace, and suggests new legislation designed to remedy the embedded biases which underlie such discrimination. While federal legislation has attempted to address gender-based discrimination, the Equal Employment Opportunity Commission has seen an increase in the number of charges filed in recent years. The author believes that the limited scope of the current statutory scheme, coupled with subsequent narrow interpretation by the courts, have failed to eradicate the more nuanced and pervasive forms of discrimination. After critically evaluating the biases embedded in the current statutory framework and existing case law, the author proposes the Parental Discrimination Act. The proposed legislation clarifies and broadens the current legislative scheme, protects the right of parents to request "reasonable grants of flexibility," and takes aim at the heightened evidentiary standards used by courts to narrow existing legislation.

Ann C. Hodges, *Strategies for Combating Sexual Harassment: The Role of Labor Unions*, 15 TEX. J. WOMEN & L. 183 (2006).

This article discusses the failure of unions to take a stance against sexual harassment as a result of their gendered makeup. The author argues that unions join the fight against sexual harassment for a number of reasons, including growing female membership, harm which may result from internal disagreement, and decreased productivity as a result of such harassment. To better combat sexual harassment, the authors suggest sexual harassment training, the creation of caucuses to provide emotional support for victims, which will protect victims from retaliation, and the implementation of mediation procedures with employers to avoid legal liability. In conclusion, the unions can most effectively deter sexual harassment by creating policies restricting union representation for sexual harassment and using the international unions to strengthen their stance against sexual harassment.

Heather S. Goldman, *Emergency Health Care Services: Disparate Access and Barriers Faced by Women*, 7 GEO. J. GENDER & L. 1165 (2006).

Women in the United States, especially those not covered by health insurance, often face the problem of unequal access to medical care. Though the enactment of Emergency Medical Treatment and Active Labor Act by Congress was an important step towards providing uniform emergency healthcare, the Act is far from perfect in that its broad and uncertain language leaves much room for interpretation by the courts. For instance, the courts disagree whether the Act

should cover newborn children who require emergency medical treatment because of the particular wording of the Act. The author discusses the impact of the Hyde Amendment, which largely disallowed federally funded abortions. The author also brings to light the general lack of availability of information regarding emergency contraceptives to sexual assault victims, arguing that the information and the drug should be more freely available.

SEX INDUSTRY

Belkys Garcia, *Reimagining the Right to Commercial Sex: the Impact of* Lawrence v. Texas *on Prostitution Statutes*, 9 N.Y. CITY L. REV. 161 (2005).

This article addresses the long term implications of *Lawrence v. Texas* on U.S. prostitution laws. The dicta of the *Lawrence* opinion states that the decision does not apply to prostitution. Although Scalia's dissent argued that based on the majority's reasoning many prostitutions statutes may now be held invalid, this paragraph as well as the subsequent decisions by lower courts have essentially limited the decision to its facts, making it inapplicable to the issue of commercial sex. Nevertheless, the author contends that *Lawrence v. Texas* is an important step towards decriminalizing prostitution in that it recognizes that consensual sex between adults is a private individual matter. The author ultimately argues that prostitution should eventually be decriminalized.

Jennifer Cook, *Shaken From Her Pedastal: A Decade of New York City's Sex Industry Under Siege*, 9 N.Y. CITY L. REV. 121 (2005).

Since the 1800's, New York City has been a center for freedom of sexual expression. Beginning in the late 1970's and continuing to the present, however, the New York City government has opposed public sexual expression by heavily regulating adult entertainment businesses. The government blamed the sex industry for its adverse secondary effects on crime, property values and spread of AIDS. The author argues that the protection of the city's residences from the "evils" of the sex industry is just a pretext to shield creative sexual expression, which is protected by the First Amendment. Although some aspects of New York City's "wholesome community" might be sacrificed for the existence of a sex industry, the United States was founded on the belief that individuals could express themselves freely without worrying about a tyrannical government watching over their shoulders.

SEX OFFENDERS

Steven J. Wernick, Note, *In Accordance with a Public Outcry: Zoning Out Sex Offenders Through Residence Restrictions in Florida*, 58 FLA. L. REV. 1147 (2006).

With the popular belief that sex offenders are highly likely to re-offend, numerous state and local governments have enacted residency restrictions for sex offenders. State restrictions such as Florida's have withstood constitutional scrutiny as a legitimate exercise of police powers to protect children; however, additional local statutes, which are often more restrictive, could potentially lead to conflicts of law and enforcement that would not stand up to judicial scrutiny. Additional municipal restrictions that are more severe could result in an overbroad application, ex post facto lawmaking, and varying enforcement that could open up the way for a constitutional challenge. In addition, the author posits that broadened restrictions could lead to unintended consequences such as destabilization of the offender, actually increasing the recidivism risk, and difficulties for the offenders' families. The author suggests that in order to ensure the validity of any new statewide restrictions, Florida legislators should make a clear statute that preempts additional local restrictions legislation, and limit the restrictions to the more dangerous offenders and areas that are not overbroad or mobile.

Moeen H. Cheema, *Cases and Controversies: Pregnancy as Proof of Guilt Under Pakistan's* Hudood *Laws*, 32 BROOK. J. INT'L L. 121 (2006).

The Hudood laws, Pakistan's Islamic criminal laws, were instituted in 1979 and have been a topic of controversy ever since. The author examines a series of cases regarding the conviction of rape victims for prohibited consensual intercourse and the use of pregnancy as proof of rape. The author notes that opposition to the *Hudood* laws has been unsuccessful thus far primarily because it has been unable to ground itself in Islamic doctrines. The author suggests that the opposition should call for amendments to current laws, rather than an outright repeal. The article concludes with a postscript which explains that as of the date of publication, a bill reforming the *Hudood* was passed and that it was consistent with Islamic doctrines.

Marisa L. Mortensen, *GPS Monitoring: An Ingenious Solution to the Threat Pedophiles Pose to California's Children*, 27 J. JUV. L. 17 (2006).

According to the National Incident-Based Reporting System, crimes of a sexual and often violent nature are being committed against children at extremely young ages. The author discusses Congress's attempt to combat these crimes by enacting the Sexual Predator Effective Monitoring Act of 2005. The law provides

federal grant money to states to implement the Global Positioning System (GPS), an electronic monitoring system that allows law enforcement to track local sex offenders. The Supreme Court, in *Hubbart v. Santa Clara,* upheld the constitutionality of GPS, stating that it violates neither due process nor equal protection, and that it does not qualify as ex-post facto law-making.

Kristine Bell, *Pennsylvania's Act 21: The Legal and Social Implications of Allowing the Juvenile System to Commit Sexual Offenders Indefinitely*, 27 J. JUV. L. 56 (2006).

Pennsylvania's Act 21 is designed to keep juveniles who have been committed to an institution for violent and sexual acts from repeating their offenses as adults by involuntarily institutionalizing the juveniles once they have reached age twenty-one. However, Act 21 is problematic because the juvenile may potentially serve an unlimited number of one-year terms for an act that had been committed by the individual as a child. As a result, rather than provide rehabilitation, the Act causes juveniles to be stigmatized by their past behaviors into their adulthoods and prevents the opportunity to fully re-enter society. To avoid this consequence, Act 21 should be modified to provide a more flexible program, including shorter periods of institutionalization and outpatient treatment. Amending Act 21 in this manner will promote rehabilitation and decrease the risk of recidivism.

SEXUAL ABUSE

Elke Geraerts et al., *Symptom Overreporting and Recovered Memories of Childhood Sexual Abuse*, 30 LAW & HUM. BEHAV. 621 (2006).

Much attention has been paid in recent years to "false memories" of sexual abuse, a phenomenon where patients undergoing psychiatric treatment invent, in part or in whole, inaccurate recollections of sexual abuse. While this phenomenon has led, in some instances, to groundless legal actions against family members, teachers, clergy and others, the authors' study suggests that an even more problematic result has been the popular tendency to discredit those whose spontaneous memories of sexual abuse are accurate. The study suggests that, in fact, people who recall being sexually abused after a period of forgetting are no less trustworthy than those who remember the abuse all along.

SOCIAL CLASS

Debra Lyn Bassett, *Distancing Rural Poverty*, 13 GEO. J. ON POVERTY L. & POL'Y 3 (2006).

Race and class-conscious debates ensued in the aftermath of Hurricane Katrina. Noting that urban New Orleans drew more attention than the equally affected rural areas in Mississippi and Louisiana, the author examines the tension in the dichotomy of urban and rural demography as an example of how spatial segregation aggravates discrimination based on class and race. To a large extent, stereotyping the rural minority is the result of a normal cognitive process to classify and organize the surroundings that one perceives. However, such unconscious classification can be overcome by conscious attention and diligence to dissipate place-based discrimination. The author recommends that lawmakers supplement the pre-existing person-based policies such as food stamps and social welfare benefits with a set of place-based, locality-sensitive remedies to cure the structural deficiencies that exist in the poor rural areas of the country.

Lisa A. Gennation et al., *Regional Differences in the Effects of Welfare Reform: Evidence from an Experimental Program in Rural and Urban Minnesota,* 13 GEO. J. ON POVERTY L. & POL'Y 119 (2006).

This article seeks to explain why an experimental welfare reform in Minnesota ("MFIP") did not significantly increase employment rates or earnings of rural welfare recipients as compared to their urban counterparts. The MFIP, implemented in 3 rural counties and 4 urban ones, differed from previous welfare systems by focusing on getting the recipients back to work and decreasing their dependency on the system by having mandatory job training and limiting the reduction of welfare grants when recipients go back to work. Ninety-two percent of the rural recipients were white and the majority were married, high school graduates with prior full time work experience and expressed embarrassment at relying on public assistance. Since employment rates would only increase under MPIP if the recipient would not have gone back to work without the mandatory job training, the difference in socio-economic status explains the disparity in employment rates and earnings. The author concludes that rural recipients, because of family situations, social standing, prior work experience, and attitude towards the welfare system, are more likely to seek and gain employment regardless of their participation in MPIP while those who lack familial motivation, education, job training, and prior work experience would benefit from the incentives provided in the program.

Ezra Rosser, *Rural Housing and Code Enforcement: Navigating between Values and Housing Types*, 13 GEO. J. ON POVERTY L. & POL'Y 33 (2006).

This article focuses on the role that building codes play in sparsely populated, rural areas. The author examines the different health and safety concerns that exist between urban and rural areas, as well as the radically different economics of the two types of regions. The desirability of urban models transplanted to rural settings is considered, as is the difficulty of satisfactorily defining the term "value" as it relates to the disparate models. The author provides concrete empirical analysis of the topic by focusing on two case studies, one in the Navajo Nation and the other in a Colorado subdivision. Ultimately, this article advocates a reassessment of how policy makers dictate building codes in order to better suit the needs of differently situated communities.