# WOMEN'S ANNOTATED LEGAL BIBLIOGRAPHY



## ABORTION

Martin Guggenheim, *Minor Rights: The Adolescent Abortion Cases*, 30 HOFSTRA L. REV. 589-646 (2002).

This Article discusses *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976) and *Bellotti v. Baird*, 443 U.S. 622 (1979). In these cases, the court redefined children's rights to privacy and permitted minors to have abortions without parental consent. However, the court did not provide a thorough constitutional analysis. The Author argues that the current law does not permit minors to terminate pregnancy even though *Danforth* and *Baird* have not been overruled, resulting in the deprivation of the constitutional right to privacy. The Author states that abortion cases shift power from children to parents, and from parents to judges, for reasons linked more to politics than children's rights.

BATTERED WOMEN & DOMESTIC VIOLENCE

Shelly Kintzel, *The Effects of Domestic Violence on Welfare Reform: An Assessment of the Personal Responsibility and Work Opportunity Reconciliation Act as Applied to Battered Women,* 50 U. Kan. L. Rev. 591-627 (2002).

The Author discusses several problems with social welfare programs' treatment of battered women, specifically with regard to work requirements. The Article calls for a welfare system that is tuned to the needs of battered women, who constitute a large percentage of welfare recipients. The problems addressed by the Author include too few work exemptions for battered women and a lack of funds to provide financial bonuses for battered women who are leaving welfare. The Author analyzes the Right Start Act of 2001 and the Family Medical Leave Act and notes the inabilities of each to provide specifically for the needs of battered women. The Author proposes the creation of a program specifically designed to solve all of the shortcomings of the current programs designed to help battered women.

Laurie S. Kohn, *Why Doesn't She Leave? The Collision of First Amendment Rights and Effective Remedies For Victims of Domestic Violence,* 29 HASTINGS CONST. L.Q. 1-60 (2001).

The Article addresses the importance of upholding the constitutionality of speech restriction in cases involving domestic violence. The individuals who need such protection are those involved in relationships with batterers who threaten to reveal their victim's HIV status, sexual orientation, or immigrant status when the victim attempts to leave the relationship. Although there may be First Amendment challenges to such speech restrictions, courts often impose liability when protecting these victims' interests outweighs the defendant's speech rights. The constitutionality of speech restrictions depends on the particular circumstances of the relationship. For an injunction to be imposed, there must be a strong state interest in doing so, as well as a standard that clearly defines what can and cannot be spoken.

Peter Margulies, *Battered Bargaining: Domestic Violence and Plea Negotiation in the Criminal Justice System,* 11 S. CAL. REV. L. & WOMEN'S STUD. 153-85 (2001).

The Article suggests that survivors of domestic abuse face special risks related to the violation of autonomy and equity in the plea bargaining process. The Author encourages a multilateral approach to plea-bargaining that would make the system more fair for survivors of domestic abuse. This approach should consider sentencing departures for victims of domestic abuse, prosecutorial policies on domestic violence, an expansion of prosecutors' disclosure obligations and the withdrawal and collateral attack of guilty pleas.

## CHILD ABUSE

Kristi Baldwin, *Battered Child Syndrome As A Sword and A Shield*, 29 AM. J. CRIM. L. 59-80 (2001).

The graphic phrase "battered child syndrome," introduced in 1962, describes circumstances of grave physical abuse. Both prosecutors and defense attorney have raised claims of "battered child syndrome" with varying degrees of success. Prosecutors use the phrase to assert that past abuse provides the necessary criminal intent to overcome evidentiary obstacles that do not directly link the defendant to the final act. Defense attorneys, however, argue that victims of abuse lack the criminal intent when seeking vengeance on their attackers. The Author illustrates that the unique facts of each case make it difficult to establish any concrete precedent and judges must therefore use discretion in permitting its use.

Kate Hollenbeck, Note, *Between a Rock and a Hard Place: Child Abuse Registries at the Intersection of Child Protection, Due Process, and Equal Protection*, 11 TEX. J. WOMEN & L. 1-50 (2001).

This Article examines whether using registers to track suspected child abusers is a violation of constitutional due process and equal protection rights. The Author also considers whether not having such registers can be considered a violation of the constitutional rights of children. Because child-protection workers can be held liable for both over-cautiousness and negligent reporting, there has been a call to reform to the registry system. The Author concludes that such reform is needed in order to protect both children from abuse and adults from violations of privacy.

Shannon O'Malley, *At All Costs: Mandatory Child Abuse Reporting Statutes and the Clergy-Communicant Privilege*, 21 REV. LITIG. 701-25 (2002).

Some states have created exceptions to privileged relationships, i.e. clergy-communicant, in order to further the goals of child abuse reporting statutes. This Note examines the conflict in Texas between mandatory child abuse reporting statutes and federal and state constitutions that protect the freedom of religion. The Author suggests that adding civil liability damages to criminal liability for those who fail to report abuse, would be an effective way to encourage reluctant clergy members to report any suspected child abuse immediately.

CHILD CUSTODY

Mary Beck, *Toward a National Putative Father Registry Database*, 25 HARV. J.L. & PUB. POL'Y 1031-80 (2002).

This Article discusses the evolution of the Constitutional right to equal protection that unmarried fathers have to their children. The Author cites case law on state's obligations to treat unmarried mothers and fathers similarly. Putative father registries were designed to give notice of adoption to unwed fathers who file notice of intent to claim paternity. Outlining the mechanics of the registry as well as its problems, the Author contends that it works well within a state, but not between states. The Author recommends implementing Federal legislation to enhance communication between all state registries.

Allison DeCoste Bancroft, *John v. Baker & Child Custody: A Battle Between Parents and Courts*, 36 NEW ENG. L. REV. 422-58 (2002).

This Comment argues that there is an imbalance between tribal and state government in Alaska. The Comment explores the relevant history and legal Authority of tribes in Alaska that led up to the monumental case of *John v. Baker*. In *John v. Baker*, the Supreme Court of Alaska recognized the right of a tribe to adjudicate child custody cases as an inherent sovereign power. The Author argues that this determination was in fact not an extension of jurisdiction, but rather, it was a return to the original idea of independence as was evidenced by the decisions in the 1800's. This decision is significant because the court created a concurrent jurisdiction with the state leaving a place for native people in the American courts.

Robert M. Elardo, *Equal Protection Denied in New York to Some Family Law Litigants in Supreme Court: An Assigned Counsel Dilemma for the Courts*, 29 FORDHAM URB. L.J. 1125- 44 (2002).

There is a lack of assigned counsel provided in custody cases adjudicated in the Supreme Court of New York. Although the New York Family Court Act ("FCA") gives parents a constitutional right to receive counsel in child custody cases brought before the family courts, no similar statute exists in connection with custody battles brought before the Supreme Court. Moreover, the court rules vary in each department and county, and can even be dependant upon the individual judge assigned to the case. This causes some poor litigants to suffer because the ultimate outcome can depend on the forum. Although the goal should be to put the child's interest first, this will not be possible until everyone is given an equal opportunity, and the Supreme Court adopts the FCA statute.

Christina Ortega, Book Note, 4 J.L. FAM. STUD. 217-27 (2002) (reviewing THE CUSTODY WARS: WHY CHILDREN ARE LOSING THE BATTLE AND WHAT WE CAN DO ABOUT IT (2000)).

The Author believes that Mary Ann Mason's book, THE CUSTODY WARS: WHY CHILDREN ARE LOSING THE BATTLE AND WHAT WE CAN DO ABOUT IT, provides insightful and realistic solutions to the dilemmas faced by children in child custody disputes. According to the Author, Mason argues children should not be treated as property, as was done under the "best interest of the child" standard. Instead, the courts should focus more on the psychological and developmental needs of children. The Author believes that this book provides useful guidelines for courts adjudicating custody issues.

## CHILDREN'S RIGHTS

Jill M. Acklin, *Choosing Life: Proposing Immunity for Mothers Who Abandon Their Newborns*, 35 IND. L. REV. 569-92 (2002).

This Article proposes to change Indiana's child abandonment statute. Indiana's statute currently provides a defense for mothers who abandon their babies, who are less than thirty-days-old, at an emergency medical facility. The Author suggests this statute should be amended to provide mothers with immunity if they abandon a child that is forty-five-days old or less with an emergency medical service provider. The Note suggests that mothers with few options would be less likely to harm their children if they were guaranteed immunity from prosecution. The Author goes further to say that immunity for these mothers would be helping to achieve the Indiana legislatures' goal of lowering the number of babies who die when they are abandoned.

Kathleen Caswell, *Opening the Door to the Past: Recognizing the Privacy Rights of Adult Adoptees and Birthparents in California's Sealed Adoption Records While Facilitating the Quest for Personal Origin and Belonging*, 32 GOLDEN GATE UNIV. L. REV. 271-310 (2002).

Despite the growing trend of openness in the adoption process, California seals adoption records, consisting of both court adoption files and original birth certificates. Conflicts arise between the privacy interest of the birth parent to maintain confidentiality of her identity and that of the adoptee to access information about her origins. The Author argues for a presumption of openness in adoptions and that the burden of persuasion should be upon the objecting party to show why the records should remain sealed.

The Honorable Sandy E. Karlan, *The Florida Bar Commission On The Legal Needs Of Children*, 31 STETSON L. REV. 193-201 (2002).

This Article examines the needs of children involved in legal proceedings. The Author discusses the Florida Bar's creation of a commission addressing these needs in 1999 and highlights the continuing need to assess and resolve the problems and legal dilemmas that face children in the court. Specifically, the Author believes the commission should designate a committee to evaluate the status of children involved in the legal system and work to propose new programs to redress the current problem areas. Although the purpose of the commission is to identify and remedy the legal needs of children, the Author believes that even after the commission's work is concluded, some of the existing problems will be left unsolved.

Julie F. Mead, *Determining Charter Schools' Responsibilities for Children with Disabilities: A Guide through the Legal Labyrinth*, 31 J.L. & EDUC. 305 –26 (2002).

Charter schools must comply with many requirements in the admission of students with disabilities and the impartation of services to them. Section 504 of the Rehabilitation Act of 1973 ("504") and the Americans with Disabilities Act ("ADA") provide some guidance, but admission must be more than good intentioned, implementation must be beyond granting access, and non-discrimination must be procedural and substantive. The Individuals with Disabilities Education Act must be understood and abided by along with ADA and 504 in order for the charter schools to fully comprehend the issue and provide the children with the services they need.

Stacy A. Scaldo, *The Born-Alive Infants Protection Act: Baby Steps Toward the Recognition of Life After Birth*, 26 NOVA L. REV. 485-510 (2002).

Courts and lawmakers have extended a woman's right to choose an abortion to a point after birth so that infants are allowed to die after abortions go wrong. This Article addresses the concern that these infants are not receiving the full protection of the law. The Born-Alive Infants Protection Act of 2000 defines an infant who survives an abortion as a person with rights separate from those of the mother beginning at the moment of birth. The Author argues that this legislation is necessary in order to protect the rights of infants that are born alive but unwanted.

DISCRIMINATION

Douglas E. Abrams, Note, *The Challenge Facing Parents and Coaches in Youth Sports: Assuring Children Fun and Equal Opportunity*, 2002 VILL. SPORTS & ENT. L.J., 253-292 (2002).

This Article focuses on organized sports as a means for preventing youth deviancy. The Author asserts that organized sports must be kept fun for children, must not drive children to quit prematurely and must guarantee equal opportunity for all children who wish to participate. The Author suggests that sports can be a positive influence is if a child's four basic emotional needs are met: 1) child athletes must play without pressure to win from adults; 2) they must be treated like children, not miniature professionals; 3) they need adult role models whose positive behavior helps make participation fun; and 4) they need to play without pressure inspired by thoughts of qualifying for a college scholarship or entrance into professional sports. Many children do not enjoy the benefits of organized sports because youth sports programs often deny equal athletic opportunity. He asserts that every child has a right to have full and fair participation within youth sports programs.

Rachel K. Alexander, Note, Nguyen v. INS: *The Supreme Court Rationalizes Gender-Based Distinctions in Upholding an Equal Protection Challenge*, 35 CREIGHTON L. REV. 789- 56 (2002).

Rachel Alexander uses the case of *Nguyen v. INS* to facilitate her critique of the Supreme Court's rationalization of gender-based distinctions in upholding equal protection challenges. The Author argues that in this case, the Court's analysis of 8 U.S.C. §1409 amounted to a misapplication of the intermediate scrutiny test because it upheld the constitutionality of a statute that required fathers of non-marital children born abroad to take more affirmative steps to confer citizenship on their children while requiring no such affirmative steps from citizen mothers. While the Court held that it based its decision on legislative intent and a rational disconnect between the statute's means and ends, what they actually did was revert back to the days when gender was not considered a suspect classification.

Elisabeth Schussler Fiorenza, *Public Discourse, Religion, and Wo/Men's Struggles for Justice*, 51 DEPAUL L. REV. 1077-1101 (2002).

The Article notes that feminists have perceived religion as oppressive and patriarchal and, in turn, have given little recognition to religious feminist scholars and activists. Consequently, feminists in religion face an "either/or" feminist binary where they are expected to choose between feminism and

religion. The Author argues that feminists need to engage in an interdisciplinary study of religion because of the key role it plays in women's oppression and liberation efforts and its potential as a significant resource of empowerment.

Robert J. Franklin, Note, *Jefferson's Daughters: America's Ambiguity Towards equal Pay for Women*, 11 S. CAL. REV. L. & WOMEN'S STUD. 233-280 (2001)

This Note evaluates proposed measures to alleviate unequal pay discrimination against women caused by market forces and employers' risk aversion. The most common legislative response is the adoption of regulations aimed at shifting costs of equality from the public sector to the private. The Author criticizes this response because the burden actually falls on job-seeking women. He suggests that a more effective solution involves a revision of the income tax code that ensures equalization of take-home wages, corresponding to productivity not gender. The Author speculates that this solution involves costs that many taxpayers are unwilling to bear and concludes that the remaining option is to abandon the goal of workplace equality altogether.

Elizabeth A. Hueben, Note, *Domestic Violence and Asylum Law: The United States Takes Several Remedial Steps in Recognizing Gender-Based Persecution*, 70 UMKC L. REV. 453-69 (2001).

The United States asylum laws have inadequately addressed the persecution of women in domestic relationships as a distinct ground for asylum. While women make up a significant share of the millions who seek shelter annually, they represent a minority of those whose asylum claims are successful. The Author criticizes the statute's failure to address the needs of women and presents adding gender as a distinct ground for persecution, as a remedy, in an attempt to amend the law to recognize the violence women face globally.

Lisa Powell, Note, *Eugenics and Equality: Does the Constitution Allow Policies Designed To Discourage Reproduction Among Disfavored Groups?*, 201 YALE L. & POL'Y REV. 481-512 (2002).

This Note examines how eugenic policy deals with disadvantaged groups in the United States. The Note first examines the eugenics movement in the early Twentieth Century, focusing on disadvantaged groups. The Author explains that this issue is not merely a theoretical one, but also a practical one that affects United States policy. The Author also examines specific laws that seem to discourage disadvantaged groups from having children and discusses the constitutionality of these laws as they relate to the Equal Protection Clause and the Right to Privacy. While the Author suggests that

most Americans agree that eugenic policies should be unacceptable, he still believes that they are prevalent in United States policy today.

Deborah L. Rhode, Note, *Gender and the Professions: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001-13 (2002).

Although there is a wide spread assumption in the legal realm that gender equality is evolving, the Author urges otherwise and identifies it the "no-problem problem." The Note points out how woman's opportunities are limited by: (1) traditional gender stereotypes: women are demeaned for acting like women and chastised for acting like men; (2) inadequate access to mentors: men are afraid of appearing indecent and women concerned with appearing whiney; and (3) inflexible workplace structures: leaving working mothers in a predicament when companies care only about billable hours. The Author suggests that those who teach and write about the legal profession should address equal opportunity as part of their agenda.

Kimberly A. Smith, *Conceivable Sterilization: A Constitutional Analysis of Norplant/Depo-Provera Welfare Condition*, 77 IND. L.J. 389-418 (2002).

Avoiding any religious implications, the Note proposes use of the new birth control drugs Norplant and Depo-Provera in optional welfare condition programs to achieve the goals of family cap laws in an effective and direct manner. The Note suggests that the temporary effectiveness and minimal side effects of the drugs establish that the new drugs differ from traditional forms of sterilization. The Note compares early case law that led to both the rise and decline of sterilization to the variability and inconsistency in the privacy/reproductive rights cases of present day. Exploring the right not to be sterilized and the right to procreate, the Author concludes that the new drugs warrant a fresh analysis of the Unconstitutional Conditions Doctrine.

Victor L. Streib, *Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary*, 63 OHIO ST. L.J. 433-72 (2002).

How can we modify our capital punishment policies and practices in order to reduce gender bias in the fundamental choice of who lives or dies? Using quantitative data, Victor Streib, attempts to answer this daunting question by documenting the disparities between death penalty trials, sentencing and execution patterns that inevitably lead to the uneven application of a gender-biased death penalty system. In applying a sex bias analysis to death penalty proceedings, Professor Streib uncovers a capital system that is underpinned by a deep seeded macho culture that masculinizes punishment. The Author concludes by suggesting both procedural and substantive means, which, if implemented, should reduce sex bias in death penalty administration.

Geoffrey S. Trottier, *Dude Looks Like a Lady: Protection Based on Gender Stereotyping Discrimination as Developed in* Nichols v. Azteca Restaurant Enterprises, 20 LAW & INEQ. 237-73 (2002).

While courts have traditionally applied Title VII in cases of sexual discrimination, courts are now also extending Title VII to prohibit sexual orientation discrimination. The Author argues that the Ninth Circuit Court's decision in *Nichols v. Azteca Restaurant Enterprises*, holding that Title VII allows for a discrimination action to exist when someone is abused for not conforming to gender stereotypes, should be universally adopted. If more jurisdictions follow the holding in *Nichols*, gender protections would exist extensively and safeguard more people than they do now. Thus, people in the gay, lesbian, bisexual, and trans-gendered communities would be protected against sexual orientation discrimination under Title VII.

## HEALTH, HIV, AND AIDS

Leslie Ayers, Note, *Is Mama a Criminal?—An Analysis of Potential Criminal Liability of HIV Infected Pregnant Women in the Context of Mandated Drug Therapy*, 50 DRAKE L REV. 293-314 (2002).

From 1988 to 1993, 1000 to 2000 children contracted Human Immunodeficiency Virus ("HIV") through perinatal transmission. AZT drug therapy has decreased the perinatal transmission of HIV in children. The Note suggests that HIV-infected pregnant women could be held criminally liable for failing to comply with a mandated drug therapy regimen. The Author argues that testing HIV-infected pregnant women for compliance with the drug therapy program in the absence of their consent, probable cause, or a warrant, may be considered a "special need" as defined by the United States Supreme Court and thereby overcome the invasion of the pregnant woman's privacy interest.

Melissa A. Prentice, Note, *Prosecuting Mothers Who Maim and Kill: The Profile of Munchausen Syndrome by Proxy Litigation in the Late 1990's*, 28 AM. J. CRIM. L. 373-411 (2001).

This Note compares thirty-three cases throughout the United States that involved a mother charged with the death or injury of her young child. In all the cases, the mother needed to demonstrate that she was a caring emotional figure by spending large amounts of time in the hospital, with repeated trips to the emergency room to reinforce the gravity of both the child's and her own situation. The mothers all came from either broken homes or broken marriages, and many had both medical training and a desire to be the center of attention. Munchausen Syndrome by Proxy ("MSBP") is difficult to

diagnose, because it is a personality disorder and a recent phenomena. Despite the evidentiary problems involved, more courts are permitting prosecutions based upon MSBP and the convictions are being affirmed.

### HOMOSEXUAL RIGHTS

Ryiah Lilith, *Caring for the Ten Percent's 2.4: Lesbian and Gay Parents' Access to Parental Benefits,* 16 Wisc. Women's L.J. 125-159 (2001)

This Article examines the obstacles faced by gay and lesbian couples in the United States who have chosen to raise children as their own. States such as Vermont have removed the technical barriers to the adoption, allowing same-sex couples to build families through recognition of their civil unions. However, family leave, children's health insurance, and other "parental benefits" are still often denied them by both private employers and by state and federal laws that fail to recognize these unions. The Author cites certain accommodations that can expedite the building of these families, such as adoption, access to "assisted reproductive technologies"—surrogacy and artificial insemination—as well as family medical leave, tax benefits and civil union legislation.

Melanie B. Jacobs, *Micah Has One Mommy and One Legal Stranger: Adjudication Maternity for Nonbiological Lesbian Coparents,* 50 BUFF. L. REV. 341-89 (2002).

The Article addresses the problems that lesbian coparents have had over the years in gaining legal recognition as parents. They are treated like third parties even though they have taken on all the responsibilities and obligations of a parent and have a parent-like relationship with their child. The Author asserts that the Uniform Parentage Act ("UPA") should provide the same financial and emotional protection to children born to unmarried lesbian parents as it does to children born to other parents. Furthermore. the UPA should also adjudicate lesbian co-parent maternity to enable co-parents to pursue their custody and visitation rights. These measures should be taken so that the children of lesbian co-parents will be protected, and not punished by being denied the financial security other children receive.

### JUVENILE DELINQUENCY

Annika K. Carlsten, *Young Enough to Die? Executing Juvenile Offenders in Violation of International Law,* 2001 DENV. J. INT'L. L. & POL'Y. 181-208 (2001).

While eighteen is the minimum age for imposing the death sentence in federal cases, states may determine the minimum age of eligibility for death

for capital crimes tried by the states. The Author argues that allowing the states to decide this issue, the federal government has violated the Supremacy Clause of the United States Constitution and has balked its responsibility to abide by international laws and uphold international treaties. The Author argues for further challenges to the law, economic boycotts, and advertisements aimed at educating the public and legislators about the United States' obligation under these international laws in order to discourage the practice of executing juvenile offenders.

Jane Rutherford, *Juvenile Justice Caught Between The Exorcist and A Clockwork Orange*, 51 DEPAUL L. REV. 715-42 (2002).

Currently, juvenile justice treats adolescent offenders as adults, based primarily upon the punitive model in which delinquents are perceived as inherently "bad" children. However, recent neuroscience research suggests that the biochemistry and immature anatomy of an adolescent brain, in conjunction with psychosocial factors and environmental influences, cause adolescents to lack impulse control and to commit violence. Because increased punishments will not deter teen violence, the Author proposes that only empirically proven, effective techniques should be used .

Barbara Bennett Woodhouse, *The End of Adolescence: Youthful Indiscretions: Culture, Class, Status, and the Passage to Adulthood*, 2002 DEPAUL L. REV. 743-68 (2002).

Historically, when a youth was guilty of bad conduct, he or she was given a second, and sometimes third, chance to correct his or her behavior and conform to society's expectations. This is no longer true for poor children and children of color. Woodhouse emphasizes the effect of socioeconomic factors on the transition from youth transition to adulthood, and how adolescents are treated within the justice system. So often, class is used to explain how children of privilege are excused as naïve and immature late into their twenties, while poor children are forced to grow up faster and "do adult time for adult crimes." The Author criticizes the recent approaches to juvenile crime that push for mandatory sentences and transfers to adult court when there is such a disparity in treatment between the privileged and the impoverished.

MATRIMONIAL

Paul R. Amato, *Good Enough Marriages: Parental Discord, Divorce, and Children's Long-Term Well-Being*, 2001 VA. J. SOC. POL'Y & L. 71-94 (2001).

Since the 1970's, the public's views about children and divorce have evolved from the belief that divorce was catastrophic to children to the current

perspectives that divorce is the root cause of most social problems as well as a way for women and children to escape abusive relationships. Based upon evidence culled from his longitudinal study of divorced couples and their children, the Author concludes that when marital discord is high prior to the separation, divorce seems to benefit the children on many levels. However, in cases where marital discord was mild or hidden from the children, divorce can be devastating to their later development. The Author labels these "good enough marriages" and suggests that children in these situations are better off when the parents forego divorce and reconcile their differences.

Laurence Drew Borten, Note, *Sex, Procreation, and the State Interest in Marriage,* 2002 COLUM. L. REV. 1089- 128 (2002).

The courts have traditionally viewed marriage as a way to protect the societal interest in preventing out-of-wedlock births. This Note argues that, due to contemporary social attitudes, such concerns are no longer persuasive. The society is now more concerned about privacy issues and laws that enforce the stabilization of families than illegitimate children. The Author argues that sex, as an indicator of marriage, confuses the debate of what should be considered a marriage in today's world.

William R. Corbert, *A Somewhat Modest Proposal to Prevent Adultery and Save Families: Two Old Torts Looking for a New Career,* 33 ARIZ. ST. L.J. 985-1055 (2001).

The torts alienation of affections and criminal conversion are no longer recognized as claims in most courts although there has been an expansion of tort liability in general. The Author argues that the reasons for eliminating these types of torts are unconvincing. The Author also suggests that the courts should recognize a modified form of the tort theory of intentional interference with marriage. The elements of this new form of intentional interference with marriage tort should include the existence of a valid marriage, knowledge by the defendant of the marriage, and sexual relations between the defendant and the plaintiff's spouse.

Zanita E. Fenton, *Foster Care: The Border of Family Identity Maintaining, (Re)creating, Destroying,* 36 NEW ENG. L. REV. 59-68 (2001).

The Article addresses the future directions for policy in foster care by examining sample case studies. The Author illustrates two policy approaches to foster care: the "child rescue orientation" and the "family support approach." Through the case studies the Author reasons that the two policy approaches may simultaneously or independently recreate and perpetuate the problems they address. The Author believes, acknowledging this is

critical in moving forward and constructing an appropriate policy to assist the child welfare system and each child within.

Elizabeth Regosin, *Man and Wife in America: A History*, 20 LAW & HIST. REV. 409-10 (2002).

Elizabeth Regosin highly recommends the book *Man and Wife in America* written by Hendrik Hartog. The book examines the nineteenth-century marriage in America. Hartog explores the evolution of the meaning of a marriage, and how the law has influenced this meaning. Regosin praises Hartog's use of case studies to illustrate his propositions regarding the change in the legal power within a marriage. Regosin suggests that overall Hartog discusses not only the legal changes, but the necessities, which created the present day concept of marriage.

Todd Stevens, *Tender Ties: Husband's Rights and Racial Exclusion in Chinese Marriage Cases*, 1882-1924, 27 LAW & SOC. INQUIRY 271-305 (2002).

This Article examines cases involving the hierarchy of Chinese identity at the turn of the century and the Exclusionary Act. The standard to define the status of Chinese immigrants, particularly women was vague and varied. Gender, marriage laws, race, careers and family ties were taken into consideration by the inconsistent courts. People determined to be illegal immigrants were deported. This Author concludes that when the commissioners and judges were faced with a couple that gave a convincing performance as citizen and wife, racial immigration restrictions were more flexible.

MISCELLANEOUS

Bette L. Bottoms et al., *Understanding Children's Use of Secrecy in the Context of Eyewitness Reports*, 26 LAW & HUM. BEHAV. 285-307 (2002).

This Article uses a series of statistical findings to evaluate children's eyewitness accuracy. The Authors conducted field research in order to investigate how socio-economical influences play a role in a child's eyewitness testimony. The Authors suggest ways to comprehend the development of a child's knowledge and use of secrecy and propose ways this research can be applied to the issues that arise when child witnesses give reports in legal contexts. One of the Authors' most important findings from the research is that threats from loved, trusted adults will tend to overpower a child's willingness to disclose evidence in forensic contexts.

Andrew C. Gratz, *Increasing the Price of Parenthood: When Should Parents be Held Civilly Liable for the Torts of Their Children?*, 39 HOUS. L. REV. 169- 200 (2002).

The Article addresses the dilemma of whether parents should be held civilly responsible for the torts of their minor children, such as the murderous Columbine rampage. There are three possibilities: 1) the traditional common law view that parents should not be civilly responsible for the torts of their children; 2) the Second Restatement of Torts' view that parents' responsibility should be dependant on the circumstances; and 3) the view that parents are responsible for all acts of their children as per state statutes. The Author examines the different degrees to which the Restatement is applied in Alaska, Illinois, North Carolina, New York, California, and Kansas. He ends with a thorough examination of Texas case law and concludes that the Texas legislature should fully compensate victims' parents by adopting the Restatement.

Nausheen Hassan, Note, *U.S. Involvement in the Sanctions Against Iraq: A Potential Basis for a Legal Claim by Iraqi Women?*, 11 S. CAL. REV. L. & WOMEN'S STUD. 189- 232 (2001).

This Note assesses the viability of a legal claim against the United States ("U.S.") for its role in the imposition of economic and military sanctions against Iraq, a policy that has failed to achieve demilitarization, but has, according to the Author, inflicted injury on Iraqi citizens, particularly women. The Note argues that Iraqi women have a legal claim against the U. S. under the Alien Tort Claims Act, which gives Iraqi women standing to sue the U.S. government in U.S. federal courts for the consequences of sanctions, and supports this claim by examining legal precedent that held governments liable for "crimes against humanity." Although skeptical of the likelihood of success, the Author concludes that a legal claim would prompt a much needed, international reevaluation of the U.S. policy in Iraq.

Nicole I. Khoury, Note, *United States v. Playboy: Children and Sexually Explicit Material: Whose Problem is it?*, 33 U. TOL. L. REV. 432- 456 (2002).

This Note discusses whether the policy behind the government's regulation of sexually explicit material justifies its ability to regulate freedom of speech. In *United States v. Playboy*, 529 U.S. 803 (2000), the controversy arose because of "signal bleeds" in cable television, where children could possibly view portions of sexually explicit cable television material to which their parents did not subscribe. The Author outlines the various legal and philosophical arguments made by each side, concluding that there was no need for government regulation of the sexually explicit material shown via signal

bleeds. The Note concludes that parents are ultimately responsible for protecting children from sexually explicit material.

David D. Meyer, *Self Definition in the Constitution of Faith and Family*, 86 MINN L. REV. 791-845 (2002).

The Author suggests that while courts have adopted numerous definitions of religion as it applies to constitutional protection, their interpretation of what constitutes family privacy is much more traditional. This Article also discusses the Author's belief that if courts implemented a broader definition of family, it would result in increased autonomy for family members and a decreased ability for states to assert their preferences. Finally, the Author explains his perception that courts are currently generous in defining the meaning of religion but less generous in protecting religious privacy. By contrast, they are less generous in defining family but more generous in protecting family privacy rights.

Patricia Padrino, Note, *"Bad" Women Deserve Equal Protection: A Look at the Constitutionality of the Florida Prosecution Statute*, 14 ST. THOMAS L. REV. 641-64 (2002).

Florida's laws against prostitution have led to the victimization of prostitutes. Because the law does not protect them, prostitutes become victims of the degradation and brutality in their profession. The Article suggests decriminalizing prostitution as a remedy and calls on prostitutes' rights advocates to unite and challenge the Florida anti-prostitution laws. Only by demonstrating that the laws violate the Equal Protection rights of prostitutes can some of the legal oppression and social stigma attached to prostitutes be relieved as they would now be legal members of society.

*Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, 10 MICH. ST. U. DCL J. INT'L L 379-91 (2001).

This Article supports tackling the issue of trafficking of persons and is intended as a supplement to the United Nations Convention against Transnational Organized Crime. Trafficking of persons as used in this protocol generally refers to prostitution, sexual exploitations, and slavery. The state supporters of this protocol feel that this supplement is needed in order to protect the victims of such trafficking who are generally women and children. The purposes of this protocol are to not only prevent and combat trafficking in persons, but also to protect and assist the victims of such trafficking with full respect of their human rights.

Deanna Rae Reitman, Note, *The Collision Between the Rights of Women, The Rights of the Fetus And The Rights of the State: A Critical Analysis of the Criminal Prosecution of Drug Addicted Pregnant Women*, 16 ST. JOHN'S J.L. COMM. 267-305 (2002).

The Author examines the constitutional issues of privacy, equality and "personal autonomy" raised by the criminal prosecution of drug-addicted pregnant women, by prioritizing the respective interests of the mother, the fetus and the state. In her analysis, the Author reviews issues examined in *Roe v. Wade*, including the point at which the viability of a child makes it a "person" entitled to the same rights as any other person. The Author believes that mother's privacy rights are more important than the state's interest in protecting the "physical integrity" of a fetus. The Author concludes that such prosecutions unduly infringe on the mother's rights due to their special function in propagating life.

Mary B. Sullivan, Note, *Wrongful Birth and Wrongful Conception: A Parent's Need for a Cause of Action*, 15 J.L. & HEALTH 105-20 (2000-2001).

The Note addresses the issue of whether claims for wrongful birth and wrongful conception should be combined into a single cause of action. According to the Author, the claim of wrongful life should be discarded because it is in violation of public policy. Pointing out the differences in damages, statutes of limitations and different types of harm required for the two respective claims, the Author argues against merging them into one cause of action. The Note concludes that once claims for wrongful birth and wrongful conception are proved damages should be based on the limited-damage theory because it is a reasonable balance of the parents' burden of caring for the abnormal child and the physician's negligence.

Katherine S. Wilson, Comment, *Not Quite A Family: The Second Circuit Decides Against Recognizing Procedural Due Process Rights For a Pre-Adoptive Foster Family in Rodriguez v. McLoughlin*, 67 BROOK. L. REV. 899-938 (2002).

*Rodriguez v. McLoughlin* addressed the issue of the lack of procedural due process rights of foster parents when a foster child is removed from the home and all indications show that the child believes the foster home to be his permanent home and his foster family to be his biological family. The Second Circuit held that existing New York statutory provisions did not give rise to a liberty interest. The Author suggests that the state legislature should create a liberty interest for a limited class of pre-adoptive foster parents that would recognize that the foster parent and child have a strong enough family relationship to qualify for the type of due process protection that biological families enjoy.

RAPE & SEXUAL ASSAULT

Amy Jurgensmeier, Comment, *Promises to Keep: The Continued Denial of Constitutional Rights to Sexually Violent Predators* [Seling v. Young, 531 U.S .250 (2001)], 41 WASHBURN L.J. 667-683 (2002).

This Comment focuses on the constitutionality of the Washington Sexually Violent Predators Act ("WSVPA"). This statute allows for civil commitment of sexually violent predators after an individual has already been in prison. The Author focuses on *Seling v. Young*, where the Court found that the statute was not a violation of constitutional rights. The Author argues that *Seling* is wrongly decided because the Court ignored the punitive nature of the statute and facts surrounding Young's incarceration. Finally, the Author asserts that the problems surrounding the WSVPA is caused by the legislature placing too much responsibility on the members of the task force that created it.

Katherine C. Parker, Comment, *Female Inmates Living in Fear: Sexual Abuse by Correctional Officers in the District of Columbia*, 10 AM. U. J. GENDER SOC. POL'Y & L. 443-77 (2002).

This Comment explores the role of the Washington D.C. Department of Corrections as it facilitates the sexual harassment and abuse of female inmates without any meaningful fear or reprisal from the judicial system. While the standard for federal and constitutional remedies is very high and difficult to meet, the local D.C. standards are broad and provide much more protection. Washington D.C. has one of the strictest and most comprehensive sexual misconduct and abuse laws in the United States, yet these laws are rarely enforced. The Author concludes by arguing that sexual abuse in prison will cease when abusive guards are removed from the prison setting and subjected to strict disciplinary and criminal penalties.

REPRODUCTIVE RIGHTS

Annette Ruth Appell, *Virtual Mothers and the Meaning of Parenthood*, 34 U. MICH. J. L .REFORM 683-790 (2001).

Critics claim that the parental rights doctrine, which grants protection to traditional, two parent families, perpetuates discrimination against alternative families. While acknowledging their concerns, the Author argues that critics ignore the virtue of these laws. After a comprehensive evaluation of the privileges granted to traditional, biological families, the Author concludes that the parental rights doctrine actually protects the integrity of disadvantaged, poor, and minority families. The Author argues that the parental rights doctrine offers minority families more autonomy and less

governmental interference defining their values and structure. Thus, the Author suggests that the parental rights doctrine actually safeguards "alternative families" that are most vulnerable to intervention and dissolution.

Sarah L. Dunn, *The "Art" of Procreation: Why Assisted Reproduction Technology Allows For the Preservation of Female Prisoners' Right to Procreate*, 70 FORDHAM L. REV. 2561-2602 (2002).

This Note proposes that the Ninth Circuit should adopt its vacated decision in *Gerber v. Hickman*. The Ninth Circuit originally found that a male prisoner had the right to procreate by donating his semen. The Supreme Court sixty years ago recognized this right to procreate as a basic civil right. The Author also argues that this right to procreate should be extended to include the harvesting of female prisoners' eggs. The Note suggests that whatever the Ninth Circuit's concludes, their decision should equally apply to both sexes.

Elizabeth Price Foley, *Symposium on Manufactured Humanity: The Ethics and Legality of Stem Cell Research, Bioengineering, and Human Cloning Articles*, 65 ALB. L. REV. 625-648 (2002).

While Americans have a constitutional right to reproduce, it is unclear whether this right extends to non-traditional means of conception. Recent court decisions imply that artificial insemination and in-vitro fertilization would be protected, but asexual reproduction that occurs primarily in cloning, would not be protected, even though it should be analyzed in the same manner under the Due Process Clause. Cloning is an ethical debate, and one's success in court will depend on the presentation of the argument. Because reproduction has been historically encouraged by society, the Author believes that proponents of cloning should emphasize this fact in their arguments. The Author also advocates celebrating life rather than focusing on the manner in which it was created.

Erin P. George, Note, *The Stem Cell Debate: The Legal, Political, and EthicalIssues Surrounding Federal Funding of Scientific Research on Human Embryos*, 2002 ALB. L.J. SCI. & TECH. 748-808 (2002).

The Note gives a comprehensive history and explanation of stem cells. The Author explains what stem cells are and how stem cells are important in medical research. The Note then explores the issues surrounding the debate over whether stem cell research should be federally funded. The National Health Institute guidelines may be as a compromise between proponents and opponents of stem cell research. The Author favors federal funding for stem cell research because she believes that society does not have to

compromise its values.

Sheri L. Hazeltine, *Speedy Termination Of Alaska Native Parental Rights: The 1998 Changes to Alaska's Child in Need of Aid Statutes and their Inherent Conflict with the Mandates of the Federal Indian Child Welfare Act*, 2002 ALASKA L. REV. 57- 87 (2002).

The Article seeks to illustrate the problems that have affected Alaskan Native American families as a result of the institution of the new Child in Need of Aid statutes. The Author believes that some of the provisions frustrate the goal of the Indian Child Welfare Act. The Author argues that the special circumstances of Alaskan Natives should excuse them from those measures and suggests possible statutory remedial measures.

Mary E. Hunt, Book Review, Daniel C. Maguire, *Sacred Choices: The Right to Contraception and Abortion in Ten World Religions*, 44 J. CHURCH & STATE 371-72 (2002).

In his book, Maguire recognizes that no faith can properly espouse a single, uniform stance on controversial issues such as abortion and contraception. Consequently, issues of population and development around the world have given several world religions reason to reevaluate their positions on these issues. Citing ideas from Catholicism, Islam and Chinese religions, Maguire's book seeks to show that many of the followers of various world religions take different positions on these issues than the statements of those claiming to speak for the faith as a whole would have many people believe.

Christopher A. Scharman, Note, *Not Without My Father: The Legal Status of the Posthumously Conceived Child*, 55 VAND. L. REV. 1002- 1054(2002).

This Note focuses on the plight of posthumously conceived children. It asserts that as posthumous conception becomes more widespread, the current laws must change or they will cause these children emotional and financial harm. The Author proposes a framework for resolving certain legal issues regarding posthumous conception. This framework focusing on the idea that the determination of the rights of these children should be established from three constitutional doctrines: 1) the constitutional status of the family; 2) the constitutional right of privacy; and 3) the constitutional rights of illegitimate children. Finally, the Author argues that denying the existence of a legal relationship between posthumous children and their deceased parents based solely on the conditions and timing of their birth is incompatible with the principles of equal protection.

Stephanie D. Schmutz, *Infanticide or Civil Rights for Women: Did the Supreme Court go too far in* Stenberg v. Carhart?, 39 HOUS. L. REV. 529-66 (2002).

In *Stanberg v. Carhart* (2000), the Supreme Court declared unconstitutional a Nebraska statute prohibiting partial birth abortions because it lacked an exception for the preservation of the health of the mother and unduly burdened the right to choose abortion. The Author, who believes this case was wrongly decided, supports the dissent's reasoning that the statute does not ban all abortions at that stage of pregnancy, thus not infringing on the mother's health concerns, and that the state has a strong interest in preventing infanticide. The Author describes both the evolution of abortion law and the six most common abortion procedures in an attempt to precisely illustrate the rights and options available to a woman.

Paul Anthony Wilhelm, Note, *Permanency at What Cost? Five Years of Imprudence Under the Adoption and Safe Families Act of 1997*, 16 NOTRE DAME J. OF L., ETHICS, AND PUB. POL. 791-846 (2002).

The Adoption and Safe Families Act of 1997 replaced the Adoption Assistance and Child Welfare Act of 1980 with the intent of finding children a permanent home within twenty-two months of foster care placement. By failing to distinguish between abuse and neglect, the Author argues that the new legislation punishes poor parents who are unable to meet the state's rigorous, and often unattainable, welfare plans within the twenty-two month limitation by permanently removing their children from their care. The Author postulates that the legislation would be improved by distinguishing between abuse and neglect and offering more flexible guidelines in cases of neglect.

Kimberly A. Smith, *Conceivable Sterilization: A Constitutional Analysis of Norplant/Depo-Provera Welfare Condition*, 77 IND. L.J. 389-418 (2002).

Avoiding any religious implications, the Note proposes use of the new birth control drugs Norplant and Depo-Provera in optional welfare condition programs to achieve the goals of family cap laws in an effective and direct manner. The Note suggests that the temporary effectiveness and minimal side effects of the drugs establish that the new drugs differ from traditional forms of sterilization. The Note compares early case law that led to both the rise and decline of sterilization to the variability and inconsistency in the privacy/reproductive rights cases of present day. Exploring the right not to be sterilized and the right to procreate, the Author concludes that the new drugs warrant a fresh analysis of the Unconstitutional Conditions Doctrine.

SEXUAL HARASSMENT

Theresa M. Beiner, *Let the Jury Decide: The Gap Between What Judges and Reasonable People Believe is Sexually Harassing*, 75 S. CA. L. REV. 617-47 (2002).

Public perception of what constitutes sexual harassment is unclear, leading many judges to grant motions for summary judgment or judgment as a matter of law in questionable cases, rather than submitting the issue to a jury. The Author cites numerous social science studies demonstrating public agreement that specific claims judges have thrown out of the courtroom are probably, if not definitely, instances of sexual harassment. By preventing the issues from going to a jury, the courts have hindered the development of a community standard defining sexual harassment. The implications of this problem include the setting of bad precedent in the court system and uncertainty of what behavior creates sexual harassment in the workforce.

Louise Feld, Comment, *Along The Spectrum Of Women's Rights Advocacy: A Cross-Cultural Comparison Of Sexual Harassment Law In The United States And India*, 25 FORDHAM INT'L L.J. 1204-81 (2002).

Taking a global look at gender issues, the Author submits that sexual harassment, as currently defined in the Supreme Courts of the United States and India, does not fully address the concerns of women who are parties to sexual harassment suits. U.S. courts look to the behavior of men in harassment suits and have failed by continuing to approach gender issues with strict, antiquated attitudes regarding the role of women in society. The Indian court defines sexual harassment more favorably than its U.S. counterpart; its definition does not require harassing behavior to persist over time. The Author discusses several seminal U.S. and Indian cases, as well as two major theories in cross-cultural comparisons, universalism and cultural relativism.

David S. Schwartz, Note, *When is Sex because of Sex: the Causation Problem in Sexual Harassment Law*, 2002 U. PA. L. REV. 1699-1794 (2002).

This Note focuses on the "sex per se" rule: the idea that sexual conduct in the workplace, if sufficiently severe or persistent, is discrimination in and of itself. The Author traces the emergence of the rule and contrasts it with the decision in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), which he believes indirectly reinstates the plaintiff's burden to prove discrimination by doing away with the "sex per se" rule. The Author also addresses certain feminists that reject the "sex per se" rule, criticizing their rejection of the rule and stressing that these people under-appreciate the

problems embedded in the causation requirement of anti-discrimination law. He concludes by advocating a reemergence of the "sex per se" rule, which he lauds to be a useful means of avoiding needlessly difficult and intricate inquiries into causation.

Rachel Shachter, Note, *Creating Equitable Outcomes Through Remedies: When Reasonable Employers Must Be Held Liable For Sexual Harassment Under Title VII*, 8 VA. J. SOC. POL'Y & L. 567-95 (2001).

The Note discusses the two-prong affirmative defense used by employers in Title VII sexual harassment actions. The test requires that the employer demonstrate that his own actions were reasonable so as to prevent sexual harassment and that the complainant failed to use avenues that could have prevented the situation. The Author then examines the state of the current law, arguing that the way it is presently applied can cause inequitable outcomes even in cases where the parties acted reasonably. To avoid this result, the Author suggests the use of a new two-prong test that would allow the trier-of-fact to determine the amount of damages first, before limiting that award based upon the specific facts alleged by the parties involved.

## WOMEN AND THE PROFESSION

Nancy J. Reichman & Joyce S. Sterling, *Recasting The Brass Ring: Deconstructing And Reconstructing Workplace Opportunities For Women Lawyers*, 29 CAP. U. L. REV. 923-77 (2002).

Is there gender equality in the private legal sector? The Authors answer this question through statistical analysis. They interviewed one hundred Denver attorneys (52 women, 48 men) over a period of years and found that women changed jobs more often than men, moved earlier in their careers than men, and often did not share the prospects for upward mobility that men enjoyed. Consequently, and partly as a result of stereotypes about women being more "committed" to their families than to their firm, women rarely made partner as early in their careers—if ever—as did their male counterparts, especially at larger firms. The findings indicated that three problem areas for women were: rewarded work, expressions of commitment and mentoring.

Brian M. Holt, *Genetically Defective: The Judicial Interpretation of the Americans with Disabilities Act Fails to Protect Against Genetic Discrimination in the Workplace*, 35 J. MARSHALL L. REV. 457-85 (2002).

As employers recognize the potential increase in workers' compensation and health benefits costs, employers have embraced tests that detect genetic predisposition. The Author points out that, although it would be difficult for an employer to demonstrate how these tests would be relevant to job

qualifications, the current interpretation of the American Disabilities Act makes the point irrelevant because an employer's reasons for rejecting an applicant are only pertinent if the applicant can establish the existence of an impairment. The Author suggests that unless Title VII is amended to include genetic predispositions as a category for protection, genetic discrimination will be a part of the American future.

# PREFACE