ANNOTATED LEGAL BIBLIOGRAPHY

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LGBTQ+ RIGHTS

Andrew Perry, Comment, Pico*, LGBTQ+ Book Bans, and the Battle for Students' First Amendment Rights*, 32 TUL. J.L. & SEXUALITY 197 (2023).

To protect students' First Amendment rights and prevent the removal of books from school libraries, anti-censorship advocates should shift away from the narrow guidance in *Island Trees Board of Education v. Pico* and towards broader protections requiring concrete and neutral justifications for book removal. A recent wave of legislation aims to ban LGBTQ+ literature from school libraries. *Pico* held that a book may be removed from a school library for being educationally unsustainable or because of excessive vulgarity, but not solely because a school board disagrees with ideas in the book. The federal courts followed *Pico* until the Eleventh Circuit ruled that *Pico* did not set a precedent. To combat this book ban legislation and move away from the *Pico* standard, Andrew Perry recommends arguing that the removal of LGBTQ+ books from libraries lacks a rational connection to legitimate government interests, perpetuates viewpoint discrimination, triggers strict scrutiny, and raises void for vagueness claims.

Annotated by: Emily Hall

Allyson Crays, Article, *Limitations of Current Menstrual Equity Advocacy and a Path Towards Justice*, 30 UCLA WOMEN'S L.J. 107 (2023).

The current discourse surrounding reproductive rights excludes menstrual periods and the challenges faced by individuals who menstruate. Those who menstruate face financial, educational, and health-related challenges because of a lack of decision-making autonomy in managing their periods. Efforts to secure the rights of menstruating people through litigation, legislation, and policy center around claims of cisgender women, thereby excluding other menstruating groups such as transgender men, non-binary and intersex people, and gender non-conforming individuals. Sex-based discrimination claims can reinforce harmful gender binaries and exclude marginalized menstruators. Therefore, activists and lawyers should adopt an intersectional reproductive justice framework, including: (1) a government benefits program to assist low-income menstruators in purchasing menstrual products; (2) policies that ensure menstrual products are accessible in state and federal corrections facilities; (3) private and safe areas for unhoused menstruators to change their products; (4) funding for shelters to provide menstrual products to unhoused individuals; (5) labor laws that allow for workday flexibility; (6) Food and Drug Administration regulations mandating menstrual product manufacturers to disclose ingredients used in their products; and (7) quality education to teach menstruators how to manage their periods and use menstrual products effectively.

Annotated by: Katherine Alonzo

Rose Holden Vacanti Gilroy, Note, *The Law of Assisted Reproductive Technologies for LGBTQ+ Parents: A Recognition Regime of Family Law Built in Opposition to the Regulatory Regime*, 38 BERKELEY J. GENDER L. & JUST. 109 (2023).

Separate family law systems in the United States result in varying treatment and determinations of worthiness for parents and their children. According to Rose Holden Vacanti Gilroy, the solution lies in a unitary system that prioritizes the welfare of parents and their children. The creation of separate family law systems, which leads to disparate treatment, stems from the states' focus on wealthy nuclear families which function as private welfare systems. This approach can result in punishments, often racially motivated, and invasive practices that harm parents who did not intend to have a child, live outside of the confines of heteronormative structures such as marriage, or cannot afford to support their child financially. The author focuses on comparing the regulatory and recognition regimes of family law. The regulatory regime penalizes parents receiving public benefits by creating a carceral system through the Personal Responsibility and Work Reconciliation Act. In contrast, the recognition regime legitimizes parentage for LGBTQ+ couples who use expensive assisted reproductive technologies ("ART"). The government views ART as an outward manifestation of the intention to have and financially provide for a child. In conclusion, regulating ART has given rise to a new family law regime that opposes and exacerbates disparities for parents subjected to the regulatory regime.

Annotated by: Jacklyn Hadzicki

HOUSING RIGHTS

Michelle Y. Ewert, Article, *The Dangers of Facial Recognition Technology in Subsidized Housing*, 25 N.Y.U. J. LEGIS. & PUB. POL'Y 665 (2023).

The use of facial recognition technology ("FRT") in subsidized housing strips low-income tenants of fundamental privacy and property rights, stifles tenant organization and facilitates the hyper-surveillance and over-policing of people of color and other vulnerable communities. While technological advancements may address problems related to FRT inaccuracies and false matches, the inherent infringement on fundamental rights persists in subsidized housing. Michelle Y. Ewert proposes abolishing FRT in subsidized housing outright or, at a minimum, heavily regulating it. Legislative measures, agency actions, or discrimination claims under the Fair Housing Act could address this issue. The Department of Housing and Urban Development ("HUD") could implement rules or regulation changes, issue agency guidance on best practices, or revise housing assistance payment contracts to include protections regarding unwarranted surveillance and building access. Strengthening Resident Advisory Boards ("RABs") and tenant councils is another avenue for HUD to explore. Drawing inspiration from the City of Oakland's Privacy Advisory Commission, RABs could scrutinize proposed uses of surveillance technology, plans for data retention and protection, and potential discriminatory uses before approving modern technology.

Annotated by: Ezra Littlewood

CIVIL RIGHTS

Gabrielle Ramos, Note, *Sex Work Is Real Work: Why Decriminalization Protects Every Body*, 32 TUL. J.L. & SEXUALITY 221 (2023).

To fully protect the rights, health, and safety of vulnerable groups such as members of the LGBTQ+ community, the United States should consider decriminalizing prostitution. Recent legislation criminalizing sex work under the guise of preventing human tracking aligns with a long history of enforcing conservative social morality in statutes. Constitutional efforts to recognize sex work have remained unsuccessful. Gabrielle Ramos identifies five compelling reasons for national decriminalization of sex work: (1) reducing violence from law enforcement; (2) mitigating violence from clients; (3) enhancing access to health care; (4) promoting equal rights for LGBTQ+ people; and (5) decreasing rates of mass incarceration. By comparing and analyzing case studies from the Netherlands—a country that legally recognizes and regulates prostitution—and select American jurisdictions that have decriminalized prostitution, the author determines that decriminalizing sex work would be both practical and valuable for American society, with intersectionality at the forefront of this issue. The decriminalization of prostitution holds a far-reaching positive impact on American society, respecting and safeguarding the livelihoods of all its members.

Annotated by: Olivia Handelman

Amanda Siegrist & Justin Lovich, Article, *Racing for Equity in Professional and Collegiate Sport*, 91 UMKC L. REV. 807 (2023).

The history of racial minority representation in sports in the United States has been fraught and marked with considerable tension and conflict, especially as it pertains to Black athletes. With the recent emphasis on diversity initiatives and increasing minority representation within corporations and organizations, the spotlight has naturally expanded to include diversity in sports. Amanda Siegrist and Justin Lovich discuss racial representation and inequity in athletic opportunities at the collegiate level and its potential connection to the exposure of minority youth to mainstream and fringe sports. The demographic of players, cost of play, access to sporting facilities, and player/coach representation all influence the opportunities to which young athletes are exposed and how these experiences may affect their athletic endeavors or lack thereof. The authors argue that the underrepresentation of minorities in less mainstream sports, such as golf, perpetuates the lack of racially diverse athletes participating in these sports. Some contend there are legal avenues to address this problem, including leveraging the National Labor Relations Act to oversee racial inequity investigations and complaints by minority players and coaches. Despite racial minorities constituting a sizable portion of professional athletes in sports like football and basketball, the sports industry remains behind in diversity initiatives for leadership, coaching, and team ownership.

Annotated by: Skylar Corby

Hope Elizabeth Barnes, Note, *Removing White Hoods from the Blue Line: A Legislative Solution to White Supremacy in Law Enforcement*, 29 WASH. & LEE J. C.R. & SOC. JUST. 223 (2022).

Current United States legislation falls short in identifying and disciplining law enforcement officers and agencies engaged in racist speech and conduct. The law enforcement system was built on white supremacy and grants officers considerable discretion in their interactions with the public, which contributes to police misconduct, including excessive force and racial profiling. While agencies discipline their employees when such misconduct occurs, the entrenched racism within the system often allows officers to evade the consequences of their wrongdoing. Existing federal regulation does not provide a remedy for this issue. Instead, the Hatch Act and judicial codes of conduct prohibit inappropriate speech, conduct, and associations by other actors within the criminal justice system. Therefore, Hope Elizabeth Barnes argues that adding a provision to the Justice in Policing Act of 2021 is the appropriate federal legislative solution to ensure accountability and uniformity. This provision should impose a heightened standard for conduct and speech, incorporating successful elements from the Hatch Act and judicial codes of conduct. Enforcement of this provision should include: (1) requiring the adoption of the standard for agency accreditation, and (2) revoking grant funding for agencies failing to comply with the heightened standard. Regulating the political activity of law enforcement officers is essential to protect marginalized communities.

Annotated by: Emily Glazier

Emma Guida, Note, *Terms and Conditions Matter: Marriage Equality in Birthright Citizenship*, 32 TUL. J.L. & SEXUALITY 245 (2023).

Mize, a United States citizen, and Gregg, originally from the United Kingdom, but living in the United States since 2014, were married. The couple used Gregg's sperm, an anonymously donated egg, and a gestational surrogate to have a child When they applied for a Consular Report of Birth Abroad and a United States passport for their newborn at the United States Embassy, the Embassy, under sections 309(a) and 301(g) of the Immigration and Nationality Act ("INA"), determined that since their child was only biologically related to Gregg, she did not qualify for United States citizenship. According to the INA, the child's biological father must have lived in the United States for at least five years before her birth. The State Department's interpretation of the language in these sections unconstitutionally barred children of same-sex male couples from acquiring United States citizenship at birth. In *Mize-Gregg v. Pompeo*, the Supreme Court determined that the State Department's biological reading of the INA violated the principle of equal constitutional protection for same-sex couples established in *Obergefell v. Hodges*. A biological reading of sections 301 and 309 of the INA would result in a statute that provides a benefit conditioned on marriage that is unavailable to married same-sex couples, rendering such an interpretation unconstitutional. The right to marry is incomplete without access to accompanying benefits, which should ensure equal treatment under the INA for all married couples.

Annotated by: Mitchell Kevett

RACIAL EQUALITY

René Reyes, Article, *Critical Remembering: Amplifying, Analyzing, and Understanding the Legacy of Anti-Mexican Violence in the United States*, 26 HARV. LATIN AM. L. REV. 15 (2023).

Systemic violence against Mexicans in Texas remains under-examined. Between 1910 and 1920, several thousand Mexicans were murdered by vigilantes, police, and military personnel. Politicians and historians of this era actively suppressed and erased these stories. Mexican Americans in the South faced episodes of racial terror fueled by conflict over the Mexican-American border. The Texan Rangers engaged in the indiscriminate killing of Mexicans, regardless of guilt, merely for being in the approximate location of a crime. Many victims remain nameless today, and the legacy of loss is continued by the descendants of those who experienced it firsthand. These narratives challenge the sentiment that Texas Rangers are heroic figures to be admired. As the movement for racial equality progressed, Mexican Americans found themselves engaging in strategies to align with the white race to alter their position as oppressed minorities. These divisions are perpetuated by suppressing critical narratives and erasing shared histories of racialized violence. However, the experiences of Mexicans in the early twentieth century mirror the experiences of Black people today. The portrayal of the menacing Mexican criminal is comparable to that of the racial profiling of Black people as a defining feature of policing in the United States.

Annotated by: Katie Negroni

GENDER & RACE

Logan K. Jackson, Article, *Willful Disregard: How Ignoring Structural Racism in Maternal Mortality Has Led Black Women to Become Invisible in Their Own Crisis*, 38 BERKELEY J. GENDER L. & JUST. 131 (2023).

To deal with its high maternal mortality rates ("MMR")—about 22.8 deaths per 100,000 live births—the United States must address structural racism within its healthcare system. Black women make up three times more of the MMR than their white counterparts. The disparity began with the historical and systematized abuse of enslaved Black women, who were exploited for child rearing and subjected to medical experimentation. The implicit biases born out of slavery created a lack of culturally competent care and justified substandard treatment; Black women were stripped of their reproductive autonomy and classified as females with higher pain capacities. This perpetuated poverty and imputed related chronic conditions, which continue to affect Black women's reproductive health disparagingly. As a result, Black women do not have access to affordable healthcare today. While the Affordable Care Act ("ACA") granted access to Medicaid, the Supreme Court's ruling in *National Federation of Independent Business v. Sebelius* found the ACA unduly coercive, rendered it optional, and allowed twelve non-expansion states to exclude over 500,000 women of color from healthcare. Acts like H.R. 1318 and H.B. 1381 tried to close the gap, but they do not adequately address race. To solve the MMR problem, Logan K. Jackson suggests the United States strongly emphasize race, fully expand Medicaid, and enact legislation with achievable goals.

Annotated by: Gerald Dryden

Simone Lieban Levine, Note, *Not a Girl, Not Yet a Woman: The Legal Limbo of Being a Parent Before Becoming an Adult*, 37 BERKELEY J. GENDER L. & JUST. 75 (2022).

Due to societal and structural biases against minor pregnancy, the American legal system has overlooked the rights and protections of minor parents. Stigma against premarital sex has led to a prevention-based approach that cannot address the realities minor parents face. Sociologist Kristin Luker indicates that there is a common misconception that minor pregnancy results in societal limitations, while most teenagers who become pregnant already face those limitations. Dr. Luker adds that the misidentification of early pregnancy as a cause of poverty is rooted in society's failure to acknowledge the roles of privilege and racism in economic success, which, according to Simone Lieban Levine, contributes to racial disparities in infant mortality rates. Many states place minor parents in legal limbo, as minors often cannot make medical decisions for themselves without parental consent but are required to decide for their children. This illustrates the core struggle in the law between the best interests of the child-parent and their child, which is inconsistent between states and under-addressed by the federal government. The author suggests that federal and state governments remove legal barriers to autonomous decision-making, offer structural support for pregnant and parenting minors, and shift the commonly used family law legal standard of best interests of the child to one that more holistically supports the child's autonomy.

Annotated by: Ariella Fetman

Marcy L. Karin, Naomi Cahn, Elizabeth B. Cooper, Bridget J. Crawford, Margaret E. Johnson & Emily Gold Waldman, Article, *Title IX and "Menstruation or Related Conditions"*, 30 MICH. J. GENDER & L. 25 (2023).

The examination of individuals who menstruate in educational settings reveals pervasive harassment and discrimination based on menstruation, menopause, and related conditions. The historical stigmatization of menstruation has led to belittlement, shaming, and unjust restrictions imposed by school officials, reinforcing menstrual stigma. The lack of education about menstruation underlies much of this harassment, with courts acknowledging that harassment based on menopause constitutes sex-based harassment. One solution is to urge the Department of Education ("DOE") to amend Title IX regulations in three ways. First, that it demands the explicit inclusion of menstruation or related conditions in the definition of sex-based discrimination. Second, that it recommends reasonable modifications to accommodate menstruation and related conditions. Lastly, that it stresses the importance of mandatory education on menstruation and related conditions for students and employees to counteract discrimination. The recommendations request the DOE to specify obligations for reasonable modifications, encompassing items such as menstruation-friendly facilities and menstrual products. These changes are vital to preventing dignitary harm, stigmatization, harassment, discrimination, and the risks stemming from the absence of such provisions.

Annotated by: Jenna Rosenstein

CRIMINAL LAW

Cissy Morgan, Note, *The Fundamental Right to Be Parented and the Implications for Children with Incarcerated Mothers*, 37 BERKELEY J. GENDER L. & JUST. 111 (2022).

Women make up the fastest-growing segment of the United States prison population, with two-thirds of incarcerated women being mothers. Typically, newborns face separation from their incarcerated mothers, who are returned to prison within forty-eight hours of giving birth. To address these issues, prison nurseries allow young children to remain in their mother's care during incarceration. The duration of a child's participation in a prison nursery program depends on the specific facility, typically ranging from twelve to twenty-four months. Presently, only ten states operate prison nurseries and eligibility is restricted to women convicted of non-violent offenses. The Supreme Court has avoided addressing whether children have a fundamental right to be parented. Cissy Morgan contends that a liberal approach to protecting fundamental rights, involving a dynamic interpretation of "liberty" that empowers the Court to identify unenumerated rights based on reasoned judgment and societal interests, suggests that children possess a fundamental right to be parented. Recognition of this right necessitates awareness of the harm caused by the separation of newborns from their mothers.

Annotated by: Hani Fish-Bieler

EDUCATION

Jishian Ravinthiran, Article, *What Constitutes Fair Treatment of Asian American Applicants?*, 26 UCLA ASIAN PAC. AM. L.J. 1 (2023).

Defenders of affirmative action err when rejecting claims of discrimination against Asian Americans based on differences in facially neutral characteristics. Such a rejection ignores the actual cause of these differences: legacies of racial injustice. Using data and statistics from *SFFA v. Harvard*, which are often closely guarded by universities and, as a result, inaccessible, allows us to scrutinize the fairness of facially neutral admission criteria that inevitably result in unfair outcomes for Asian Americans. Jishian Ravinthiran examines the Asian American admissions controversy within its historical and legal context. This analysis emphasizes the importance of recognizing the unequal treatment of Asian American applicants compared to white applicants to acquire a comprehensive understanding of this issue. Using data from *SFFA v. Harvard*, unfair admission disparities can be explained by examining criteria such as parental occupation, declared career interests, and preference for legacy applicants. To combat these disparities, it is imperative to establish fair metrics that consider the historical legacy of racial injustice. With the guidance of a public deliberative process for assessing the fairness of facially neutral criteria, universities can implement reforms to their admissions process.

Annotated by: Tess Bedingfield

John Taschner, Note, *Native Hawaiians: The Forgotten in Legal Education*, 25 UCLA ASIAN PAC. AM. L.J. 1, 145 (2021).

Native Hawaiians are grossly underrepresented both in the legal profession and in legal education, with a stark disparity at top-tier schools. Despite a population of 1.3 million, only three Native Hawaiian students were enrolled in the top twenty law schools. This underrepresentation is disproportional when compared to Native Americans and Native Alaskans, who have achieved greater parity with white and Asian students relative to their population size. As a group, Native Hawaiians face elevated poverty rates, mass incarceration, and poor health outcomes. Although Native Hawaiians are taking action to improve these issues and are recognized by state and federal authorities, the legal profession cannot wait. These structural disadvantages hinder individuals of Native Hawaiian descent from competing on an equal footing for law school admission. In particular, the costs associated with standardized testing and test preparation may be a barrier for Native Hawaiian students. Despite the American Bar Association and top law schools' commitments to diversity, data suggests that Native Hawaiian students remain behind. Even in California, the University of California law schools have an overall admission rate for Native Hawaiian students that is below one-thousandth of a percent, despite hundreds of thousands of Native Hawaiians in the state. Schools should continue de-emphasizing standardized test scores and focus on holistic admissions standards to combat this trend.

Annotated by: Charles Bachmann

Laquala C. Dixon, Article, *Understanding the Interlocking Oppressive Systems Within Higher Education Restricting the Professional Progression of Black Women*, 34 HASTINGS J. GENDER & L. 135 (2023).

Historically, colleges and universities were not designed to accommodate Black women. Over time, Black women succeeded in gaining admission to Historically Black Colleges and Universities and predominantly white institutions. Laquala C. Dixon, drawing on over fifteen years of experience as a higher-education administrator, shares her perspective on being a Black woman within this system. In higher education, a noticeable absence of women of color in leadership roles persists, attributed to the perpetuation of traditional white male values for leadership positions. For Black women, the challenge extends beyond race or gender; it is the intersection of both. Overlooking this intersection forces Black women to choose which category to identify with. Stereotypes further complicate educational progress, such as the portrayal of the angry Black woman or the reinforcement of the mammy stereotype, suggesting that Black women are expected to care for white men. The author focuses on the role of white women within the white supremacist patriarchy, noting their dual position as both the oppressed and the oppressors. This duality often leads to a reluctance among white women to examine issues of race. A potential solution lies in a commitment to diversity and inclusion efforts, ensuring educational leaders reflect the demographics of the institutions they serve.

Annotated by: Yeniliz Peguero

Thalia González & Rebecca Epstein, Article, *Critical Race Feminism, Health, and Restorative Practices in Schools: Centering the Experiences of Black and Latina Girls*, 29 MICH. J. GENDER & L. 409 (2022).

Restorative practices, frameworks designed to counteract racially discriminatory discipline and policing in schools, prove more effective in dismantling structural discrimination in education through a lens of critical race feminism. The current implemented reactive model falls short in addressing gendered racial oppression as it focuses solely on students' behavior, contributes to intersectional invisibility, and overlooks other benefits of restorative practices. Proactive restorative practices shift focus to social-determinant systems, navigate gendered social constructs, and encourage beneficial health decisions. In response to the lack of intersectionality in current policies and literature, Thalia González and Rebecca Epstein delve into how Black and Latina girls perceive non-disciplinary restorative practices in schools and how these practices impact health equity. The study demonstrates that non-disciplinary restorative practices can improve girls' connectedness, social and emotional learning, skills, mental health, and overall well-being. These factors also serve as protective health measures, as girls are less likely to engage in risky health behaviors when cultivating strong relationships, learning resiliency, and feeling safe and self-efficacious. To empower girls of color and equip them with the tools to counteract oppressive systems, restorative practices must be proactive, non-disciplinary, and intersectional.

Annotated by: Hope Peraria

EMPLOYMENT LAW & WORKPLACE DISCRIMINATION

Rimsha Syeda, Note, *An Intelligent Path for Improving Diversity at Law Firms (Un)artificially*, 29 MICH. TECH. L. REV. 307 (2023).

A law firm's lack of diversity often arises from implicit biases and preconceptions often related to race and gender. These biases can significantly impact the outcomes of the employee recruitment and retention processes. For instance, while men are stereotyped as having a solid work ethic, women may encounter the maternal wall bias, where employers perceive them as less passionate because they are, or may become, pregnant. Additionally, implicit bias impacts attorney retention. Rimsha Syeda emphasizes that women of color experience lower retention rates due to a lack of support and adequate mentorship in the workplace. The author underscores the critical role that Artificial Intelligence ("AI") can play in addressing these issues, from resume screening to structured interviewing. Moreover, AI can aid in employee retention and minimize bias in performance evaluations, which often disadvantage members of the LGBTQ+ community and pregnant women. AI's potential expands to bridging the pay gap by determining employee promotions and analyzing pay equity discrepancies. However, it is essential to program AI systems to avoid replicating bias. To reduce this risk, state legislatures have passed laws prohibiting New York employers from using AI to discriminate against employees in hiring and promotion decisions.

Annotated by: Olivia Cohen

CONSTITUTIONAL LAW

Harshita K. Ganesh, Note, *The Dawn After* Dobbs*: Life, Liberty, and Pursuit of Happiness for Women Are No Longer Natural Rights*, 60 AM. CRIM. L. REV. ONLINE 1 (2023).

The *Dobbs* decision was erroneously decided based on a misguided historical analysis rooted in white supremacist and patriarchal ideologies. Throughout history, religious advocates and conservative politicians have consistently pursued their goal of restricting women's bodily autonomy, often under the guise of protecting the interests of the unborn. The lack of access to abortions disproportionately affects minority groups and marginalized communities, resulting in significant hardships that impact individuals' financial stability, health, and safety. Harshita Ganesh primarily examines the *Dobbs* decision through the lens of civil rights, highlighting the stark inequalities that have been perpetuated and exacerbated in its aftermath. The modern surveillance of women's pregnancies can be traced back to the historical concept of the Panopticon, in which a sense of constant surveillance is imposed upon a subject to correct behavior. In the post-*Dobbs* era, digital surveillance, specifically targeted at marginalized groups, coupled with the over-criminalization of abortion, has created a quasi-big brother state for women.

Annotated by: Matthew Donelian

Lauren J. Hall, Article, *Sweeping Away Survival: How Anti-Homeless Laws & Practices Infringe on the Fundamental Right to Survive*, 24 LOY. J. PUB. INT. L. 1 (2023).

City ordinances that restrict and criminalize homelessness in public spaces are enforced by law enforcement through sweeping, forced disbandment of homeless encampments on public property. These ordinances prohibit acts essential for the basic survival of homeless individuals: sleeping, sitting, loitering, and placing personal property in public areas. Sweeps violently remove homeless individuals from public spaces, destroy their private property without justification, threaten them with arrest, and disrupt their access to social services. As a result, homeless populations suffer emotional trauma and distress, loss of essential health necessities, and an increased risk of violence and death. Far from solving homelessness, sweeps jeopardize the survival of society's most vulnerable members. Survival is a fundamental right the Supreme Court recognizes through constitutional, historical, and precedential analysis. The Court has interpreted the Fourteenth and Second Amendments as protecting the right to survival and the ability to sustain life. The Ninth Circuit ruled that a law prohibiting sleeping and camping in public spaces without providing reasonable alternative shelter is unconstitutional under the Eighth Amendment's Cruel and Unusual Punishment Clause as it effectively criminalized survival. It is imperative to urge public officials to end the criminalization of homelessness.

Annotated by: Avi Kiel

HUMAN RIGHTS & INTERNATIONAL JUSTICE

Charles P. Trumbull IV, Article, *Proportionality, Double Effects, and the Innocent Bystander Problem in War*, 59 STAN. J. INT'L L. 35 (2023).

The proportionality principle in international humanitarian law ("IHL") presents a troubling dilemma. IHL recognizes that killing in war, even of innocent civilians, can be justified by self-defense. These civilian deaths are often considered collateral damage, an unfortunate consequence of war. The proportionality principle permits the unintentional killing of innocent civilians in self-defense as long as these deaths are not excessive in relation to the military advantage. The proportionality principle aligns with the Doctrine of Double Effect ("DDE"), which allows certain acts with unintended consequences, provided that the expected benefits outweigh the unintentional harm. Charles P. Trumbull IV reconciles the proportionality principle with the moral prohibition against killing innocent bystanders. It diverges from the DDE as a moral justification for the proportionality principle. The author argues that the permissibility of such harm should not depend on the attacker's subjective intention but on the enemy's conduct. The author proposes an innocent/non-innocent distinction to assess the morality of harm to civilians. Only the killing of non-innocent individuals can be morally justified, with civilians transitioning to the non-innocent category by their contribution to an unjust war. Despite its flaws, the proportionality principle is essential in limiting warfare's scope and should not be completely disavowed.

Annotated by: Kathleen S.F. Leuty

Scott J. Shackelford, Article, *Should Cybersecurity Be a Human Right? Exploring the 'Shared Responsibility' of Cyber Peace*, 55 STAN. J. INT'L L. 155 (2019).

The 2017 WannaCry ransomware attack affected computers across multiple countries. This incident underscored the global ramifications of cybersecurity threats, emphasizing that no entity operates in isolation within the digital realm. Cyberspace is inherently interconnected, and ensuring internet access for all people is becoming increasingly vital, with significant economic and social implications. While various countries acknowledge the importance of internet access as a human right, some United States states still need to recognize internet access and cybersecurity as fundamental human rights. Thus, it is essential to enforce and clarify these rights in cyberspace. More companies are adopting a perspective on cybersecurity that aligns with business ethics and corporate social responsibility. They consider stakeholders' interests, including the communities and environments in which they operate. Cybersecurity practices are strengthened through a comprehensive review of governance, processes, and controls for securing information assets. Developing a polycentric approach to cyber peace enhances governance mechanisms. The private sector, regulators, and consumers must collaborate to advance global privacy and cybersecurity standards. Aligning these standards with human rights principles, expanding cybersecurity certification schemes, and providing training resources for cybersecurity professionals are crucial steps in addressing global cyber insecurity.

Annotated by: Joon Young Lim

PUBLIC POLICY

Sumra Wahid, Article, *How to Get Away with Discrimination: The Use of Algorithms to Discriminate in the Internet Entertainment Industry*, 31 AM. U. J. GENDER & SOC. POL'Y & L. 107 (2023).

Minority content creators often face discrimination by social media and content platforms that suppress their content using algorithms with inherent gender and racial bias. Thus, these platforms should be held liable when they employ algorithms that discriminate between content users. Several traditional methods for combating discrimination can address this issue. The case of *Newman v. Google*, centered on algorithmic bias, serves as a valuable test for these federal frameworks. First, the legal system will eventually recognize that algorithmic bias by content platforms treats certain groups disparately. Second, under 42 U.S.C. §1981, plaintiff Newman, like other minority content creators, can prevail using the *Comcast* but-for test to demonstrate that minority users would receive the same contracting opportunities but for the content platform limiting who can see the creators' content. Third, social media platforms should be classified as common carriers, enabling regulation through anti-discrimination laws, much like digital media platforms. Lastly, under the Commerce Clause, individuals like Newman and other minority content creators could prevail under a Fourteenth Amendment claim by establishing that content platforms must comply as participants in interstate commerce.

Annotated by: Jack Gatcliffe

Lindsey Joost, Note, *The Place for Illusions: Deepfake Technology and the Challenges of Regulating Unreality*, 33 U. FLA. J.L. & PUB. POL'Y 309 (2023).

Deepfakes are images, videos, or audio recordings generated by artificial intelligence that interchange one person's likeness with another's, intending to create a deceptive representation. These deceptive creations can appear alarmingly real, challenging casual observers to discern their falseness and presenting significant threats to individual privacy. The majority of deepfake videos are pornographic, often featuring public figures such as musicians and actors. According to Lindsey Joost, ordinary civilians have also become victims of nonconsensual deepfake pornography. Beyond privacy concerns, deepfakes also present risks to national security and politics. The technology's potential use by malicious actors to disrupt democracy or destabilize the political process is a legitimate concern. Existing legal frameworks, including tort law, copyright law, nonconsensual pornography laws, section 230 of the Communications Decency Act, and the DEEP FAKES Accountability Act, fail to provide adequate redress for victims. To address these gaps, the author proposes that the federal government define deepfakes and amend the Violence Against Women Reauthorization Act to include nonconsensual deepfake pornography. However, the most effective tool in combating harmful deepfakes might be an informed public capable of critically assessing the media they consume.

Annotated by: Laura Tierney

CRIMINAL JUSTICE

Caitlyn Coffey, Essay, *Smoke and Seizure: Holding Law Enforcement Accountable for the Use of Chemical Irritants on Lawful Protesters by Means of the Fourth Amendment in the Age of* Torres v. Madrid, 60 AM. CRIM. L. REV. ONLINE 1 (2023).

During the nationwide Black Lives Matter protests in 2020, police used chemical irritants to control crowds and disperse unarmed protesters. While protesters have sought to end this lawful practice through civil litigation, courts have been inconsistent in granting relief. However, the recent Supreme Court decision in *Torres v. Madrid* may serve as a basis for bringing unlawful seizure claims against the police. Specifically, protesters suing under 42 U.S.C. § 1983 can argue under *Torres* that they were effectively seized by the chemical irritants that touched their bodies. Courts applying the *Torres* standard must now determine whether an officer's use of chemical irritants and the officer's objective intent to restrain constitutes a seizure under the Fourth Amendment. Courts make this determination by considering the totality of the circumstances. Because chemical irritants come into direct contact with a person's body and an officer's objective intent to seize may be assumed from the surrounding circumstances of the incident, courts may conclude that an officer violated a protester's Fourth Amendment rights. These section 1983 claims argued under a *Torres* framework could hold the police accountable and compel procedural changes to police practices at public protests.

Annotated by: Emily Abrams

FAMILY LAW & IMMIGRATION

Catherine Kannam, Note, *You're on Your Own, Kid: The Plight of Unaccompanied Minors Without Representation in Immigration Court*, 32 B.U. PUB. INT. L.J. 207 (2023).

Noncitizen unaccompanied minors in United States immigration courts lack legal representation, often representing themselves. These minors are separated from their families by the Department of Justice and subjected to the complex process of immigration courts without the ability to exercise their rights. The absence of legal counsel increases the risk of deportation. Although the Supreme Court has upheld the right of United States citizen minors to representation in civil cases, it has not extended these protections to the immigration courts, which operate under the executive branch's authority. Catherine Kannam addresses these critical issues by reviewing the immigration system, highlighting the disparity in treating citizen and noncitizen minors, and examining executive administration policies. While non-immigration courts have acknowledged that noncitizens have due process rights, they have avoided addressing the lack of representation of noncitizen minors. A solution to this issue includes: (1) recognizing public support for policies that provide representation for noncitizen minors; (2) instituting juvenile dockets; (3) pursuing action through Congress and ensuring implementation of the Biden Administration's Counsel for Children Initiative. The immigration system requires substantial reform, and providing legal representation to noncitizen minors is a necessary start.

Annotated by: George Galan

Michael Duchesne, Article, *Keeping Children with Their Parents: How U.S. Immigration Law Fails to Uphold the International Right to Family Unity*, 32 MINN. J. INT'L L. 197 (2023).

The United States is failing to protect the fundamental right to family unity as guaranteed by international law. Existing United States immigration laws lead to the unnecessary and prolonged separation of children from their parents. Unlawful presence ("ULP") bars exacerbate this issue by preventing noncitizens from reentering the United States for at least three years if they have been unlawfully present for over one-hundred-eighty days. This forces many immigrants to live indefinitely as undocumented individuals or exit the United States, enduring family separation while awaiting the expiration of the reentry bar. The surge in deportations further disrupts family unity. To uphold the child's right to family unity, Congress should consider exempting immediate relatives of United States citizens and lawful permanent residents ("LPRs") from ULP bars. This exemption would allow them to adjust their status without leaving the United States. Alternatively, amending the ULP bar waiver to consider hardship to United States or LPR children of immigrants and lowering the extreme hardship bar presents a more realistic policy change. Moreover, child separation resulting from deportation should be reserved for dire circumstances and be applicable only in cases involving serious crimes. To align with international standards, United States immigration law must undergo amendments to safeguard children's rights to family unity.

Annotated by: Andrea Shahrabani