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Dear Readers,

Thank you so much for picking up this issue of the Binghamton Law Quarterly!

In collaboration with Professor Alexandra Moore and her Human Rights Course HMRT-276, we present to you our Spring 2023 publication. The articles we've compiled dissect a range of human rights issues, from bodily autonomy and abortion, to the treatment of detainees at Guantanamo Bay, to environmental justice for poor communites. It's been an honor to serve as the Law Quarterly's Secretary for two years, and as President and Chief Editor for my final semester of my undergraduate career at Binghamton University.

As an organization, our mission is to serve as an outlet for students to write passionately while bringing pertinent legal issues into focus. Our mission extends as we aim to provide an opportunity for students to enhance their reading and writing skills across a multi-disciplinary sphere—we welcome students from all majors and areas of academic interest. Further, the mission of this publication specifically is to discuss the ever-increasing violations of human rights in our world and advocate for those whose voices are often minimized and excluded. Professor Moore's commitment to the defense of human rights and extensive advocacy with Guatanamo Bay detainees encouraged all of our writers to think critically and boldly in their articles.

To students, we are excited for what the coming year may bring, and we always encourage new writers and editors to join our team. If you would like to get involved, please contact quarterly@binghamtonsa.org and let us know how you'd like to contribute.

We would also like to thank the Philosophy, Politics, and Law deparrtment at Binghamton University, who has supported our publishing efforts through every publication cycle. A special thanks to the Pre-Law office and the Harpur Law Council for helping us with student outreach and recruitment since the beginning formations of the Quarterly.

Finally, we must thank our dedicated writers and editors who worked to produce the content within this publication. For those pursuing a career in law and for those simply interested in legal topics that are relevant in our world today, we proudly present to you the first issue for Spring 2023 of the Binghamton Law Quarterly.

Sincerely,
Gracie Henderson
President and Chief Editor

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The Importance of Triage AND Holistic Defense for Public Defenders

Abby Rothleder

In June of 1961, Clarence Earl Gideon was arrested for a burglary in Panama City, Florida. As an indigent defendant, Gideon could not afford a private attorney and requested a court-appointed defender. At the time, the Floridian government only provided counsel in death penalty cases, so Gideon's request was denied. He was therefore forced to defend himself and was subsequently convicted (Gideon v. Wainwright 1963, 372 U.S. 335). While in jail, Gideon hand-wrote a petition to the Supreme Court of the United States asking them to hear his case. In Gideon v. Wainwright, the Supreme Court found that the right to effective counsel is essential to a fair trial and that the Sixth Amendment must be applied to state and federal courts (Gideon v. Wainwright 1963, 372 U.S. 336-345).

Recently, scholars have argued that public defender offices have violated the Gideon precedent through their use of triage, or a system of prioritizing which clients receive comprehensive representation (Joe 2016, 389). These scholars argue that such methods are unsuccessful for certain cases because they increase "the potential for bias to affect arbitrary decisions," as it is up to the public defenders to determine which cases are most "serious" and thus, these attorneys may not offer a comprehensive defense to a client who requires one (397). However, triage systems are not inherently unjust; instead, they can actually be a helpful tool to help offices prioritize cases accordingly. As such, public defenders must see the value in both triage systems and other methods of defense—such as the holistic approach, a client-centered model of defense that "addresses both the circumstances driving people into the justice systems as well as the devastating consequences of that court involvement"—in order to properly determine when to use different systems ("The Center for Holistic Defense", 2015).

Many scholars see triage and holistic defense as opposing methods of representation for public defender offices to use; however, the two are far from mutually exclusive. Triage is a tool that allows scarce resources to go far in an office, as each office has a certain number of attorneys that can handle a certain number of cases. For example, triage is justified for parole hearings, as laws including New York's Less Is More Act of 2021 mandate faster turnaround times—30 days, in fact—for parole hearings and trials (New York State Senate Bill S1144A 2021, 15). Naturally, attorneys must focus on their clients who only have one month to appear in court before working on trials that are not held for months. Triage can also be useful in cases where a client is currently incarcerated or is facing more serious charges, as felony cases are rightfully prioritized over misde-

meanor cases. With all of their experience and expertise, public defenders are likely able to predict the outcome of a case; for instance, an attorney would know that winning a case where a parolee has a technical violation, such as missing an appointment with their parole officer, is not probable. As a result, they are able to devote their time and energy to the cases that need it most—or in other words, have the most at stake.

On the other hand, triage systems can be extremely detrimental to individuals seeking resentencing under acts such as the Domestic Violence Survivors Justice Act (DVSJA). The DVSJA offers resentencing to survivors of domestic violence who suffered "physical, sexual, or psychological abuse" that contributed to their criminal conviction (CPL no. 440, § 440.47 2019, 1). Therefore, an applicant must have been the victim of domestic abuse, have an abuser who has been a family or household member, and the abuse must have been a significant factor to the crime; the abuser does not have to be the alleged victim of the applicant's crime (CPL no. 440, § 440.47 2019, 1). Holistic defense would prove to be more helpful than triage for survivors of domestic abuse because these individuals are often in need of more resources to handle the

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the stress and workload from the attorneys at the office, allowing them to focus on crafting the proper defense and evaluating relevant laws and statutes for resentencing.

A comparative review of systems of defense reveals that when public defenders end the competition between triage and holistic approaches, the public defense system will be strengthened as a whole. In the public sector of the law, there are already so many institutional limitations that stand in the way of indigent defendants receiving the help they need. For example, many individuals in need of long-term care are referred to anger management or drug and alcohol treatment—where they can participate in ongoing sessions—instead of the less adequate mental health systems, which feature "many barriers to care, such as complicated phone access and inflexible rescheduling policies" (Venters et al. 2008, 1954). By implementing forms of triage and holistic defense that complement each other, public defenders can ensure that their clients with the most pressing issues—those currently in jail, facing felony charges, or who have upcoming court dates—have proper access to housing, counseling, and other health services. Working with both triage and holistic defense hand-in-hand offers public defenders the best chance to combat the systematic limitations in place for indigent defendants.

CITATIONS

Anderson James M., Maya Buenaventura, Paul Heaton, “The Effects of Holistic Defense onCriminal Justice Outcomes,” Harvard Law Review 132, no. 3 (January 2019), pp. 825.

Gideon v. Wainwright, 372 U.S. 335-345 (1963).

Joe, Irene Oriteseweyinmi. “Systemizing Public Defender Rationing.” Denver Law Review 93,no. 2 (2016): 389-397.

Motion for Resentence; Domestic Violence Cases. CPL no. 440, § 440.47, 16 August 2019.https://www.ils.ny.gov/files/CPL%20440.47.pdf

New York State Senate Bill S1144A. The Less Is More: Community Supervision Revocation Act(2021). https://legislation.nysenate.gov/pdf/bills/2021/S1144A

“The Center for Holistic Defense.” The Bronx Defenders, 2015.https://www.bronxdefenders.org/holistic-defense/center-for-holistic-defense/.

Venters, Homer, Jesse Lainer-Vos, Asiya Razvi, Jennifer Crawford, Porsha Shaf’on Venable, and Ernest Drucker. “Bringing Health Care Advocacy to a Public Defender’s Office.”American Journal of Public Health (1971) 98, no. 11 (2008) 1953-1955.

Racism Within the United States Death Penalty

Ethan Moskovitz

Four short years after declaring capital punishment unconstitutional in Furman v. Georgia (1972), the United States (US) Supreme Court revived the death penalty, affirming its constitutionality in Gregg v. Georgia (1976). Debates over capital punishment typically revolve around its usefulness as a deterrent. However, these debates ignore the human rights violations intrinsic to capital cases in the U.S. This article focuses on the violations that take place in the ways capital punishment convictions are obtained and how they are disproportionately sought for defendants of color, inhibiting the right to life, the right to due process, and the prohibition against cruel and unusual treatment.

Beyond mere convictions, race affects entire legal processes, spanning from childhood racial profiling to after sentences are completed. Undemocratic court practices such as coercion and hidden exculpatory evidence, in addition to other extralegal prejudices, are pervasive within capital cases, resulting in false convictions and miscarriages of justice more prevalent in cases involving defendants of color (DPIC, 2020). As a result of disproportionate punitive sentencing towards defendants of color and the overwhelming number of capital punishment exonerees, many have been led to oppose the practice in its entirety. Research presented by the Death Penalty Information Center (DPIC) has shown that, especially in cases where the defendant is a person of color, prosecutors seek victory despite their obligation to pursue justice, raising the question of how just the justice system truly is and whether it seeks justice for the people or solely for white people (DPIC Special Report, 2021).

One of the most pertinent legal applications to race in capital punishment is how numerous aspects of the process violate rights guaranteed under the Eighth Amendment. The most widely known aspect of the Eighth Amendment states that "cruel and unusual punishments [may not be] inflicted" (U.S. Const. amend. 8). Solitary confinement, overcrowding, unsanitary cells, neglect, and inadequate medical care have been cited as violations of the Eighth Amendment. The Eighth Amendment's implications in capital punishment are widely disputed, where activists oppose the US Supreme Court decision that the death penalty is not cruel and unusual punishment. As a result, opponents of capital punishment have tailored their argument to how racial discrimination influences capital punishment processes and convictions. The most critical implication of the cruel and unusual punishment clause is that cruel punishment is subjective, where what is cruel to one person may be just to another. This ambiguity "invites rhetorical slippage in defining the limits of torture, and, at its extreme, allows the complete evasion of

actual harm done," allowing torture and indecent practices in courts and jails to slip through the cracks (Dayan, 2022). Due to this, courts are tasked with evaluating current decency standards to determine what is cruel and unusual, but even then there remains controversy. In addition, this ambiguity opens the door for racial biases to heavily influence the way in which "justice" is served. Though the Eighth Amendment is important in preventing extreme practices, its ambiguity leaves it subjective and therefore fallible.

Even after conviction, racial discrimination widens the gap in sentences between white and black defendants. Over the past few decades, capital punishment inmates have spent more and more years on death row, with current inmates spending roughly 20 years on death row, over double the average time spent during the 1990s (DPIC Time on Death Row). Black inmates also spend, on average, more time on death row than white inmates (DPIC, 2020). Unlike most prisoners, death row inmates are usually not afforded social programs and sit in solitary confinement for the majority of their time. The DPIC and other legal experts in the U.S. argue that this extensive isolation constitutes cruel and unusual punishment, thus violating the Eighth Amendment. As a result, death row inmates often suffer from physical effects and psychological illnesses, with black inmates being disproportionately affected due to their lengthier sentences (DPIC Conditions on Death Row). Those determined to stop capital punishment's perpetual human rights violations, such as the DPIC, contend that lengthy death row sentences constitute another punishment in and of themselves. In this, those with capital sentences that sit on death row for 20 or more years bear two distinct punishments: extensive, cruel imprisonment and execution.

18 U.S. Code § 3593, which focuses on determining whether a sentence of death is justified, states that "the jury by unanimous vote, or if there is no jury, the court, shall recommend whether the defendant should be sentenced to death" (Steiker et. al, 2018). While this law states a jury recommendation for death must be unanimous, it does not acknowledge that a jury recommendation is just that—a recommendation. Whether the jury agrees on a sentence of death or not, the judge ultimately sentences the defendant, therefore undermining the "unanimous" aspect of capital trials. The purpose of numerous jurors in a court is to prevent the biases of one juror from affecting the decision of the court. Therefore, as shown through sentencing in Texas' Harris County, leaving sentencing to the discretion of one person heightens the potential influence of one's own racial biases, where the beliefs of one judge would determine the sentence of the defendant (Ibid.).

One of the most important aspects of 18 U.S. Code § 3593 is part C, which allows judges to decide what evidence is admissible "regardless of its admissibility under

the rules governing admission of evidence at criminal trials" (Ibid.). The Admissibility Clause effectively deprives capital punishment defendants of fully enjoying the Confrontation Clause of the Sixth Amendment, which outlines that all defendants are guaranteed the right to be confronted by the accusations, witnesses, and evidence against them. However, through 18 U.S. Code § 3593(c), judges are given full discretion over what evidence is admissible. This then creates the possibility for speculative testimony or hearsay – that cannot be substantiated – from a declarant not present in the courtroom to influence conviction and sentencing. If the judge were to find evidence such as this admissible, the prosecution would then be presenting evidence that cannot be cross-examined, which deprives the defense of the opportunity to challenge the testimony. The Admissibility Clause, like other aspects of the code, enables the racial biases of judges to affect the legal processes of defendants. 18 U.S. Code § 3593(c) abandons the rights previously guaranteed to defendants and creates a new legal process specifically for capital defendants. Because it infringes upon constitutional rights and creates ambiguity in capital trials through its lax evidentiary measures, 18 U.S. Code § 3593(c) is open to abuse (Ibid.).

Similarly, the race of the victim affects court verdicts and sentences: "the odds of getting a death sentence increased three and a half times if the victim was white rather than black" (ACLU Race and the Death Penalty). David Baldus, a law professor at the University of Iowa, found that "during the 1980s prosecutors in Georgia sought the death penalty for 70% of black defendants with white victims, but for only 15% of white defendants with black victims" (Ibid.). These disparities are still evident in the US justice system today where, in 2019, nearly 80% of new death sentences were imposed in cases involving white victims, despite half of all murder victims being black (DPIC, 2020).

CITATIONS

"Conditions on Death Row." Death Penalty Information Center. Accessed February 16, 2023. https://deathpenaltyinfo.org/death-row/conditions-on-death-row.

Dayan, Colin. "Cruel and Unusual." Boston Review, November 14, 2022. https://www.bostonreview.net/articles/dayan-cruel-and-unusual/.

"DPIC Analysis: Racial Disparities Persisted in U.S. Death Sentences and Executions in 2019." Death Penalty Information Center, Jan 21, 2020. Accessed February 16, 2023. https://deathpenaltyinfo.org/news/dpic-analysis-racial-disparities-persisted-in-the-u-s-death-sentences-and-executions-in-2019

"DPIC Special Report: The Innocence Epidemic." Washington, DC: Death Penalty Information Center, 2021.

"Race and the Death Penalty." American Civil Liberties Union. Accessed February 16, 2023. https://www.aclu.org/other/race-and-death-penalty.

Steiker, Jordan M, James W Marcus, and Thea J Posel. "THE PROBLEM OF 'RUBBER-STAMPING' IN STATE CAPITAL HABEAS PROCEEDINGS: A HARRIS COUNTY CASE STUDY." Houston law review 55, no. 4, 2018.

"Time on Death Row." Death Penalty Information Center. Accessed February 16, 2023. https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row.

U.S. Constitution, amen. 8.

RESTRICTING THE PRACTICE OF SOLITARY CONFINEMENT

Harper Sanders

"There was no end and no beginning; there's only one's own mind, which can begin to play tricks"- Nelson Mandela on his experience in solitary confinement (Gilmour, n.d.a).

Solitary confinement is a commonly used practice of punishment across the United States federal prison system. According to the 2019 records from the Correctional Leaders Association, an estimated 55,00 to 62,500 inmates were held in prolonged isolation. Of these inmates, 46 percent were held in isolation for three months, or fewer. Further, 11 percent of this population (about 3,000 inmates) had been held in confinement for longer than three years (Yale Law School, 2020). Prolonged isolation is defined by the United Nations (UN) as complete confinement for at least twenty two hours a day for fifteen consecutive days, as stated by Rule 44 of the Mandela Rules (United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015). The Mandela Rules, named after Nelson Mandela - possibly the 20th century's most honored prisoner - is a document of international law aiming to ensure the humane treatment of incarcerated peoples. The Rules are considered "soft law," which means that they are not legally binding the same way national law is. Importantly, however, it has been adopted by the General Assembly as the universal minimum standard for the treatment of prisoners (UNODC, n.d.a).

The Mandela Rules lay out the conditions under which solitary confinement can be carried out. Rule 43 recognizes that the use of solitary confinement can become cruel or unusual punishment if administered indefinitely or passed the 'allowed' fifteen days. While this is certainly a step in the right direction, any amount of complete and total isolation can have long-lasting effects; "even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium" (Grassian, 2006). The EEG pattern is the pattern of electrical activity in the brain, unusual patterns can expose the presence of a psychiatric disorder. Complete separation from everything and everyone around you is unnatural. The Mandela Rules deem it torture, inhumane, and/or degrading after fifteen days, yet acceptable at fourteen. Fifteen days has been deemed the universal time frame for which the effects of solitary become irreversible, this lacks consideration for the individual- their mental capacity, past experiences, etc. A rule before this, rule 38, demands that the prison administration "take the necessary measures to alleviate the potential detrimental effects of their confinement on [prisoners]" (United Nations Standard Minimum Rules for the Treatment of Pris-

oners, 2015).
Rule 45 also stresses the danger of severe isolation; the rule reads "solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible…" (United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015). Contrary to the commands of this rule, solitary is used for a wide range of reasons. These include, minor misbehaviors/conflicts, being in possession of prohibited items, protection, and other small nonviolent infractions. None of the cases mentioned here can be considered exceptional or require a last resort. The Mandela Rules aim to protect people from the dangers of solitary confinement. Instead, solitary confinement is said to be used as a way of 'protecting' inmates while it's really just exposing them to mental harm.

According to Harvard psychiatrist Dr. Stuart Grassian, solitary "confinement almost inevitably imposed significant psychological pain during the period of isolated confinement and often significantly impaired the inmate's capacity to adapt successfully to the broader prison environment" (Grassian, 2006). It is important to note the effect that isolation has on a human's social capabilities. Confinement has been commonly used to punish inmates for misbehaving in prison, yet the punishment can and will amplify poor behavior. The Mandela Rules aim to protect inmates from this contradictory relationship. Rule 38, in addition to what has already been stated, requires "the prison administration to alleviate the possible detrimental effects… on [the affected inmates'] community following their release from prison" (United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015). It is important that the rules acknowledge the side-effects from confinement that are experienced by the inmate and those around them after isolation. It is questionable, however, whether the rules serve as adequate protection for preventing this from happening.

In addition to the limitations to the scope of the Mandela Rules, the biggest question when it comes to international law is if they are actually being enforced. While international law may serve as a guideline to define human rights violations, the anarchical nature of international politics prohibits any solid way of enforcing said law, and therefore does not truly prevent such human rights violations. Fortunately, the number of incarcerated people held in isolation in the U.S has decreased from an estimated 100,000 people in 2014 to around 62,000 in 2019 (Yale Law School, 2020). However, in 2020, this pattern had been reversed with the rise of COVID-19 when confinement rates spiked. The U.S continuously falls back on isolation to solve problems instead of recognizing it as a problem within itself. Despite international efforts to limit the practice of solitary confinement, the United States has continued to isolate inmates beyond the prescribed amount and in turn, has and will

continue to violate human rights.

CITATIONS

Gilmour, Andrew. “The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty.” Accessed February 12, 2023.https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty#:~:text=The%20Rules%20are%20based%20on,agency%20leading%20the%20revision%20process.

“Linman Center Releases Updated Report on Solitary Confinement.” 2020. Accessed February 15, 2023. https://law.yale.edu/yls-today/news/liman-center-releases-updated-report-solitary-confinement#:~:text=As%20of%20the%20summer%20of,provided%20data%20on%20825%2C473%20prisoners.

“United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).” 2015. Accessed February 12, 2023. https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement

UNODC. “Nelson Mandela Rules History.” United Nations : Office on Drugs and Crime. Accessed February 21, 2023. https://www.unodc.org/unodc/en/justice-and-prison-reform/nelsonmandelaruleshistory.html.

Grassian, Stuart. “Psychiatric Effects of Solitary Confinement.” 2006. Accessed February 12, 2023. https://1-next-westlaw-com.proxy.binghamton.edu/Document/Ia9c00a91ab9a11dba2eba69ce80078b6/View/FullText.html?navigationPath=-Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad74035000001862d55365f70a6e553%3Fppcid%3Dd71c02d4fa334c868201cbfbb3688211%26fragmentIdentifier%3DIa9c00a91ab9a11dba2eba69ce80078b6%26startIndex-%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DRecommendedDocumentItem&listSource=-Search&listPageSource=7b772ae-88fe3109a20c92f22032ddb37&list=ANALYTICAL&rank=2&sessionScopeId=61a3280419be0c1fbd0320d3f5b-8b8225451acfbb-d197a415920a49de5d88372&ppcid=d-71c02d4fa334c868201cbfbb3688211&-originationContext=recommended%2-CRRA2&transitionType=Recommended-DocumentItem&contextData=%28sc.Search%29

Healthcare in Correctional Facilities: The Lack of Practicing Law

Julianna Raimonda

"It takes me two months to see a doctor. I guess he just doesn't like me very much," a Broome County Jail inmate related recently. In New York State prisons, it can take up to a month to see a physician, and even then, the inmate is not guaranteed to receive any medical attention or be brought to a specialist. As stated in the 2022 "Monitoring Visit to Albion Correctional Facility," by the Correctional Association of New York (CANY), of the incarcerated people surveyed who did not receive a response from their requested medical needs, "70.8% reported having waited longer than a month," and of the incarcerated people who did receive a response from their requested medical need, "57.6% reported having waited longer than a month" (CANY, 2022). According to the Eighth Amendment, citizens are protected from "cruel and unusual punishment," which inherently protects the right to healthcare for incarcerated people (U.S. Const. amend. 8, sec. 1). Therefore, not providing necessary, timely, and adequate medical treatment in correctional facilities is a form of punishment to inmates, which directly violates the Constitution.

According to the Journal of Health and Social Behavior, incarcerated people are much more likely to have a chronic health condition, an infectious disease, or some other illness compared to the general population due to the large number of people living in close proximity, new diseases that come from a new environment, and the unsanitary prison conditions (Massoglia, 2008). For example, according to CANY, 34.1% of New York State prison admits have respiratory diseases compared to the 19.2% of the general public (CANY, 2019). Additionally, the drastic increase in stress after adjusting to a completely new environment takes a major toll on an individual's overall health and has been proven to worsen or prolong inmates' illnesses (Massoglia, 2019).

With a large percentage of the prison population suffering from an illness or injury, the healthcare system in correctional facilities, specifically in New York State, must meet or exceed the minimum requirements of standardized healthcare. The lack of healthcare infringes on the rights of health guaranteed to every citizen, which includes the right to control their own bodies, the right to privacy, and the right to an equal opportunity to receive the highest attainable level of care that is accessible in the community.

In Estelle v. Gamble (1976), the U.S. Supreme Court found that "deliberate indifference" to an inmate's "serious medical needs" violated the Eighth Amendment. Lack of medical attention, delay of or interference with treatment, unauthorized medical judgments and decisions, and failure to provide treatment for previous-

ly diagnosed conditions show "deliberate indifference" to the inmates' rights to medical care. However, there are no clear guidelines regarding what is "serious" or not, and there exists a moral dilemma as to how a court can deem one's suffering as more important compared to another's suffering. If the nurse, physician, specialist, or a prison guard does not deem the inmate's condition as crucial or life-threatening, they are not obliged to provide medical treatment to the inmate. This case exemplifies the importance of ensuring that the law is in accordance with human rights. Without legal backing from the U.S. Constitution and Supreme Court, prisoners could potentially not receive any medical care because of the broadness of the rhetoric of the case's ruling.

More specifically, in New York State's Consolidated Correction Law § 505, "Subject to the regulations of the Department of Health" inmates are guaranteed "routine medical, dental, and mental health services and treatment is defined for the purposes of this section to mean any routine diagnosis or treatment, including without limitation the administration of medications or nutrition, the extraction of bodily fluids for analysis, and dental care performed with a local anesthetic" (NY Corr L § 14, 2022). However, New York State, and many other states, have not effectively enforced these laws because there is no regulatory authority ensuring that they are followed. For example, in 2019, CANY visited four New York State facilities and surveyed the healthcare individuals received in a one-year period. Of the 227 individuals surveyed, 73.7% were unable to see a medical professional, and in another survey, 66.1% of the 230 individuals surveyed were left with untreated medical concerns (CANY, 2019).

Although New York's Consolidated Correction Law § 505 requires correctional facilities to abide by the regulations set in place or recommended by the Department of Health (DOH), there is no law or process requiring DOH inspections or oversight. Currently, the only law set in place involving evaluation is Senate Bill S3842, which states that the DOH directly assesses all aspects of inmates suffering explicitly from HIV, AIDS, or Hepatitis C (Senate Bill S3842). However, there is still not any assessment or regulations set in place for other infectious diseases, chronic conditions, injuries, etc. Assembly Bill A6386A written in 2019 was passed by both chambers of the legislature to expand the oversight of the health department over correctional facilities, however, it has not been made law and therefore is not being enforced due to difficulties with the state budget (Assembly Bill A6386A).

Similarly, according to the New York State Department of Corrections and Community Supervision (NYS DOCCS), clinical physicians in New York State correctional facilities must "possess a license and current registration to practice medicine in New York State, and have two years of post-licensure medical experience"

(NYS DOCCS, 2023). However, medical staff are not required to take criminal justice courses or any additional training that provides clinicians with the proper skills or knowledge that is necessary to care for inmates who are facing uncommon psychosocial factors. Without professional oversight and proper training, correctional facilities having the final decision regarding inmates' health not only removes inmates' right to control their own bodies and privacy but also puts their lives at greater risk.

Under the New York State Regulations, Chapter 9 Part 7651 of the Minimum Standards and Regulations for Management of State Correctional Facilities states that the correctional healthcare system must be just as proper and available as the healthcare available for people in the community (N.Y. Comp. Codes R. & Regs. Tit. 9 § 7651.1). However, in 2019, according to CANY, only 32 percent of incarcerated inmates were satisfied with their healthcare experience, over half of whom were completely untreated. CANY also visited eight state prisons between 2020 and 2021, and found that "four out of ten incarcerated people reported being unable to access medical care" (Law, 2022).

Although the NYS DOCCS acknowledges that the inability to receive standard care partially stems from the staffing shortage that began in January of 2018 across New York State correctional facilities, CANY also stated how many inmates across four different NYS correctional facilities mentioned a "distrust of healthcare providers and reports of mistreatment by staff" (CANY, 2019). As CANY reports, "[n]ine out of ten incarcerated people said they didn't trust prison medical staff..." (Law, 2022). Inmates do not believe that medical staff have their best interest at heart due to their concerns over their health not being taken seriously and the lack of proper medicine or equipment available to them. The quality and accessibility of healthcare available in New York State correctional facilities compared to the healthcare available in the community are incomparable and unequal, which violates the inalienable right of equal opportunity of healthcare that is expected to be protected by the Constitution and guaranteed to each inmate. The laws and regulations put into place by both the federal and the New York State governments do not achieve their intended effect when put into practice. Neglecting the minimum standards of medical treatment required for all inmates is cruel and unusual punishment and specifically targets inmates with health concerns, steering them away from rehabilitation and leading them down a path toward recidivism.

Massoglia, Michael. “Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses.” Journal of Health and Social Behavior 49, no. 1 (2008): 56–71. https://doi.org/10.1177/002214650804900105.

Correlation of Association of New York. “Key Health Needs and Challenges in New York Prisons.” static1.squarespace.com, 2019. https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c5af9f14785d3908902aa12/1549466098009/CANY+Fact+Sheet+-+Health.pdf.

Estelle v. Gamble, 429 US 97 (1976).

N.Y. Comp. Codes R. & Regs. tit. 9, §§ 7651.1–7651.33.

Provision for routine medical, dental and mental health services and treatment. COR. Chapter 43, Article 6, Management of Correctional Facilities 140, § 505. 2021.

https://www.nysenate.gov/legislation/laws/COR/140 State of New York. Senate. An act to amend the public health law, in relation to department of health review of policies and practices in facilities operated by the department of correctional services, and in local correctional facilities regarding human immunodeficiency virus, acquired immunodeficiency syndrome and hepatitis C. S3842, Section 206, Subdivision 26. Amd §206, Pub Health L. Introduced in the Senate on April 2, 2009. https://legislation.nysenate.gov/pdf/bills/2009/S3842

Law, Victoria. “Delayed Treatment and Denied Services: Health Care in New York Prisons Is a ‘Joke.’” New York Focus, March 24, 2022. https://www.nysfocus.com/2022/03/17/prison-health-care-oversight/.

Correctional Association of New York. 2022. “Monitoring Visit to Albion Correctional Facility.” no. 22-08 (June 22-23). https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/63b4d1b1abb180210 e46a28d/1672794549742/CANY_Briefing-Albion-01032023.pdf

U.S. Constitution, amend. 8, sec. 1.

Correctional Association of New York. “Connection With The Outside World: Prison Monitoring Findings And Recommendations.” 2019. https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5e65f1009369fa095333ef23/1583739189727/connection-to-the-outside-world_canyreport-03092020.pdf.

New York State Department of Corrections and Community Supervision. n.d. “Professional Medical Titles.” Accessed March 6, 2023. https://doccs.ny.gov/professional-medical-titles

The Influence of Youth on False Confessions

Michel Nocera

In the realm of criminal justice, young people accused of a crime are more likely to succumb to pressures applied during interrogation and confess, likely due to inexperience and lack of situational awareness. One study by the Innocence Project even found that roughly twenty five percent of juvenile DNA exonerees admitted to giving a false confession during interrogation (Malloy 2014, 181).

Some scholars even argue that police are more likely to be aggressive in interrogations with younger offenders, as one 2010 national study reported that 23 percent of police said they presented false evidence to such suspects, 32 percent said they used deceit, and a majority of 58 percent said they used extensively repeated questioning (Malloy 2014, 182). In one case, where a young girl had been viciously killed and had her underpants stuffed into her mouth, local police officers charged a seven and an eight year old, alleging that while in custody, they gave information that "only the killer could know" (Drizin 2001, 351). Ultimately, the two young boys weren't charged with a sex crime but were in fact charged in a delinquency petition for first degree murder. In another case, a 17 year-old mentally deficient boy, who worked as a school janitor, was charged with the murder of one of the students. During questioning, the accused asked for things such as coloring books, while eventually saying that he indeed was the one who killed the young boy. In fact, he was held for over a year in custody before his innocence was realized, only due to the fact that another man had been charged with killing children while he was being held in custody (Drizin 2001, 353).

Cases like these help illustrate how naive some younger offenders are in interrogations. Other characteristics like ostracism or living on social margins, cognitive impairment, disadvantages of race and class, lack of sophistication, hope of benefit or leniency, and drug or alcohol dependency are common links in cases where the suspect has falsely confessed (Strang 2020, 94). Ultimately, this pattern suggests that one's youth can be seen as a weakness to police looking for convictions. The naïveté of young suspects is problematic and can open up a greater possibility of false confessions.

One of the largest reasons that this is a problem in the US specifically is because of the usage of the Reid technique for interrogation, which is designed to make suspects feel trapped and as if there is nowhere else to turn (Katz 1967, 192). Leading psychologists assert that the Reid Technique practices are overly aggressive, inaccurate, and encourage wrongful convictions. One such practice is minimization, in which interrogators deliberately downplay the possible consequences of the

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crime, in order to make a confession seem much less substantial than it actually is in most cases (Kassin 2015, 35). One case study even directly compared the percentage of minimization-related false confessions in youth offenders to the percentage of minimization-related false confessions in individuals with mental illness, implying that one's youth is as easily taken advantage of in interrogations as poor mental health is. In other words, mental immaturity is easily exploited by these promises of reduced sentences (Malloy 2014, 190).

CITATIONS

Drizin, Steven A., and Beth A. Colgan. "Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions." Loyola University of Chicago Law Journal 32, no. 2 (January 1, 2001): 337–424. https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1356&context=luclj.

Malloy, Lindsay C., Elizabeth P. Shulman, and Elizabeth Cauffman. "Interrogations, Confessions, and Guilty Pleas among Serious Adolescent Offenders." Law And Human Behavior 38, no. 2 (April 1, 2014): 181–93. https://doi.org/10.1037/lhb0000065.

Kassin, Saul. "The Social Psychology of False Confessions." John Jay College of Criminal Justice, 2015. https://spssi-onlinelibrary-wiley-com.proxy.binghamton.edu/doi/pdfdirect/10.1111/sipr.12009?download=true

Strang, Dean A. "Inaccuracy and the Involuntary Confession: Understanding Rogers v. Richmond Rightly." Journal of Criminal Law & Criminology 110, no. 1 (January 1, 2020): 69–97. https://dialnet.unirioja.es/servlet/articulo?codigo=7258729.

Katz, Lewis R. "Criminal Interrogation and Confession, by Fred E. Inbau & John E. Reid." Case Western Reserve Law Review 19, no. 1 (January 1, 1967): 188. https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4585&context=caselrev.

How do Communities get Justice for Environmental Contamination?

Jason Glinski

On February 3rd, 2023, a Norfolk Southern train carrying hazardous chemicals, notably vinyl chloride, derailed in East Palestine, Ohio. The crash caused a large fire, and several substances carried in the train spilled into the surrounding environment. To reduce further contamination, officials conducted controlled burns, sending large black clouds into the atmosphere. Within a week of the derailment, approximately 3,500 fish died in local streams, and a later estimate stated that chemical spills from the crash killed 43,000 aquatic water life (Cohen, 2023). Chemical fires, both accidental and intentional, may have also released residual chemicals and dioxins into the air. While the extent of the contamination is still unknown, residents of East Palestine are looking for legal recourse. There are currently 19 federal lawsuits against Norfolk Southern (Duer, 2023). Many other communities have experienced environmental contamination, and legal action that results is often long and complicated. What action can be taken by those seeking compensation for damage to their community's health and environment?

One of the main barriers to compensation for environmental contamination is the question of liability. In cases where the government is responsible for the contamination, the doctrine of sovereign immunity protects it. Sovereign immunity means that citizens cannot sue the government without its consent (Wex, n.d.a). One exception to this doctrine is if the government violates a person's constitutional rights. Lawyers representing residents of Flint, Michigan successfully argued that the state of Michigan violated the residents' 14th Amendment right to bodily integrity when their water policy led to lead contamination, which was upheld by the 6th Circuit Court of Appeals and the Supreme Court (Chung, 2020). In cases where contamination comes from private companies, on the other hand, determining liability can be challenging since multiple parties may be at fault. For example, Niagara Falls, New York, bought polluted land from Hooker Chemical, developed it into a neighborhood, and even built a school. Occidental Petroleum, who acquired Hooker Chemical, argued in court that they were not responsible for the health effects of their pollution because the city's construction released the contaminants. However, the court ruled that they were still liable because their improper disposal of toxic waste was at least partially responsible for the contamination (Weiskopf, 1988).

There are two common types of lawsuits brought against parties that contaminate the environment. First are class action lawsuits. Class action suits are common in environmental cases because contamination affects the health and environment of an entire community. Success

safer.

CITATIONS

Breen, Kerry. “Train derailments are common, but few reach the level of East Palestine crisis.” CBS News, March 10, 2023. https://www.cbsnews.com/news/train-derailments-are-common-but-few-reach-the-level-of-east-palestine-crisis/.

Chung, Andrew. “U.S. Supreme Court lets Flint, Michigan residents sue over water contamination.” Reuters, January 21, 2020. https://www.reuters.com/article/us-usa-court-flint-idUSKBN1ZK1S5.

Cohen, Li. “Thousands of Dead Fish and Contamination in Waterways: How the Ohio Train Derailment Is Affecting the Environment.” CBS News, February 15, 2023. https://www.cbsnews.com/news/east-palestine-ohio-train-derailment-dead-fish-vinyl-chloride-hazardous-materials-affecting-pets-wildlife/.

Duer, Benjamin. “Ohio train derailment lawsuits target Norfolk Southern, government.” Canton Repository, March 3, 2023. https://www.cantonrep.com/story/news/courts/2023/03/02/a-breakdown-of-lawsuits-filed-over-east-palestine-ohio-train-derailment/69944457007/.

Held, Kevin S. “Times Beach: From resort town to environmental disaster.” FOX 2, June 18, 2022. https://fox2now.com/news/missouri/st-louis-county-town-goes-from-resort-to-environmental-disaster/.

Law.Cornell.Edu. “class action | Wex | US Law | LII / Legal Information Institute.” Accessed March 13, 2023. https://www.law.cornell.edu/wex/class_action.

“Sovereign immunity | Wex | US Law | LII / Legal Information Institute.” Law.Cornell.Edu. Accessed March 13, 2023. https://www.law.cornell.edu/wex/sovereign_immunity.

Udasin, Sharon. “Erin Brockovich and the people’s agenda.” The Hill, October 13, 2021. https://thehill.com/business-a-lobbying/576449-erin-brockovich-and-the-peoples-agenda/.

Weisskopf, Michael. “COMPANY RULED LIABLE FOR LOVE CANAL COSTS.” The Washington Post, February 24, 1988. https://www.washingtonpost.com/archive/politics/1988/02/24/company-ruled-liable-for-love-canal-costs/0256ece3-82db-4867-b750-ef901bd0a98a/.

“What is Superfund? | US EPA.” EPA, n.d.a. https://www.epa.gov/superfund/what-superfund.

The Legality of "Enhanced Interrogation Techniques" at Guantanamo

Emma DeOlivera

A number of national and international frameworks specifically prohibit the use of torture and deem it a crime against humanity. However, the United States (U.S.) government authorized the use of torture under the guise of "enhanced interrogation techniques" at Guantanamo Bay detention facility from 2002 to 2009 (Mitchell and Harlow, 2016). The authorization of the use of these techniques is especially problematic as the U.S. government was aware that such techniques were in direct violation of the United States Army Field Manual on Intelligence Interrogation. The "enhanced interrogation techniques" had been reverse engineered from the Survival, Evasion, Resistance, and Escape (SERE) program which was used to train U.S. military personnel in the event that they were captured and tortured by a foreign government (Mitchell and Harlow, 2016). These techniques were practiced by the "special teams" despite their being in clear violation of the Torture Statute and the Detainee Treatment Act (DTA) as well as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Geneva Conventions, and the Convention against Torture (CAT).

The UDHR, the ICCPR, and the CAT all expressly prohibited torture. Article 5 of the UDHR states that "no one should be subjected to torture or to cruel, inhuman or degrading punishment" (United Nations, 1948). This statement is then repeated almost word for word in the ICCPR while the Convention against Torture is more detailed. The CAT specifically defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" (United Nations, 1984). This portion of the definition alone evokes the question of what constitutes "severe" pain or suffering, especially since pain is subjective, and how one can determine whether an act was committed "intentionally". Hypothetically, if an incident were ever to be investigated after the fact Guantanamo staff could then simply use the excuse that the interrogation techniques they employed were for the purpose of obtaining information from the detainee and not for the purpose of torture. The CAT's definition states that the pain or suffering had to have been inflicted "for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed…" (Ibid.). This implies that if pain or suffering were not used for the purpose of obtaining such information it would not constitute torture.

The four Geneva Conventions of 1949 are similar to the aforementioned documents, most specifically Common Article 3 which states that the prohibition of torture is one

of the certain basic rules that no matter what the nature of a war or conflict cannot be revoked. Common Article 3 is most similar to the CAT whose second article nearly identically states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability or any other public emergency, may be invoked as a justification for torture" (International Committee of the Red Cross, 2010). However, the CAT then goes on to add that "an order from a superior officer or a public authority may [also] not be invoked as a justification of torture" (United Nations, 1984). Both of these conventions further add to the idea that the excuse that the United States was in a "state of war" does not justify the use of torture. This is relevant to the Guantanamo detentions as both of these statements have been used to justify torture and abuse. For example, in order to justify the use of the CIA interrogation program President Bush formally stated that the implementation of the program "saved innocent lives" (Pitter et al., 2021.) By making this statement to the public, Bush implied that Guantanamo detainees posed some type of threat to the U.S. and that the program needed to continue in order to get "lifesaving information" which would prevent a future attack (Ibid.).

The Federal Torture Statute and the DTA also both specifically prohibit the use of torture. The Federal Torture Statute "prohibit[s] torture committed by public officials under color of law against persons within the public official's custody or control…[and] applies only to acts of torture committed outside the United States" (U.S. Department of Justice, 2020). This definition thereby explicitly concerns the violations occurring at Guantanamo and differs from the definition of torture given by the CAT. The government purposely chose Guantanamo as the location for detainees because the U.S. Naval Base located there was not technically a part of U.S. sovereign soil which would thereby minimize judicial scrutiny. The DTA states that "no person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation" (U.S. Department of Defense, 2005). This is applicable to the detentions at Guantanamo Bay as the "enhanced interrogation techniques" used at the detention facility were beyond the scope of those authorized by the United States Army Field Manual on Intelligence Interrogation.

It is made evident through both the national and international legal frameworks that the abuses committed at Guantanamo Bay constituted torture and thereby violated human rights law. However, no member of the U.S. government has yet to take accountability for those who have been tortured at the detention facility, and despite the closure of the CIA black site located there thirty-five detainees still remain there today.

CITATIONS

International Committee of the Red Cross. "The Geneva Conventions of 1949 and Their Additional Protocols." ICRC, October 29, 2010. https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm.

Pitter, Laura, and Leslie Haskell. "No More Excuses." Human Rights Watch. Human Rights Watch, September 6, 2021. https://www.hrw.org/report/2015/12/01/no-more-excuses/roadmap-justice-cia-torture.

U.S. Department of Defense. "Title X—Matters Relating to Detainees." govinfo.gov, 2005. https://www.govinfo.gov/content/pkg/COMPS-489/pdf/COMPS-489.pdf.

U.S. Department of Justice. "20. Torture (18 U.S.C. 2340a)." The United States Department of Justice, January 16, 2020. https://www.justice.gov/archives/jm/criminal-resource-manual-20-torture-18-usc-2340a

United Nations. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." OHCHR, December 10, 1984. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

United Nations. "International Covenant on Civil and Political Rights." OHCHR, December 16, 1966. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

United Nations. "Universal Declaration of Human Rights." United Nations, December 10, 1948. https://www.un.org/en/about-us/universal-declaration-of-human-rights.

Mitchell, James E, and Bill Harlow . Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America. New York, NY: Crown Forum, Crown Publishing Group, Penguin Random House LLC, 2016.

The U.S. Government and the Denial of Torture in Guantanamo Bay

Emma Quenneville

Former United States (U.S.) President George Bush and his cabinet spearheaded the creation of Guantanamo Bay prison and personally kept up to date on the cases against the detainees. Bush and his administration gave many speeches and interviews during his presidency addressing what was happening in Guantanamo and blatantly denied any illegal interrogation practices, or torture, in all of them. However, that is simply not true, and there is an overwhelming amount of evidence to prove him wrong. When these speeches and memos are examined under the law, whether it be US law or international law, it becomes very clear that there are blatant denials and contradictions being given, which gives the assumption that there is something to be hidden. As Dean Wilson et al. puts it in their article "Media, Secrecy, and Guantanamo Bay," the "public facade of legitimacy to incarceration without due process" actively negates the real problems that lie in Guantanamo (2004, 79).

The United States is a member of the United Nations (UN), a governmental body consisting of the world's strongest allied powers. There are documents that all members of the UN are presented with to codify into law, in order to keep the legal standards throughout each country relatively similar. While not every country has codified these documents, most follow them as general practices. One of the main documents in this situation is the "Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," otherwise known as the CAT. The CAT solely focuses on protecting victims of torture and preventing future torture, more specifically, torture committed by government agencies (United Nations, 1984). Article 1 of the CAT states that "the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person" (Ibid.) The men detained at Guantanamo Bay have undoubtedly endured physical and mental suffering. The US is a country that has ratified the CAT, which means they are breaking international law by committing these heinous acts. Yet, there has been no prosecution against anyone responsible. Part 3 of Article 2 of the CAT also states that "an order from a superior officer or a public authority may not be invoked as a justification of torture" (Ibid.). The most common 'justification' for what happened in Guantanamo has been that the guards and interrogators were just following orders, but by word of the CAT, that is not a legal exception.

Not only has the government kept what happens at Guantanamo Bay a large, interdepartmental secret, but the information they have released is false. In a 2008 interview for ABC News, Vice President Dick Cheney spoke to Jonathan Karl and discussed the back-and-forth topic of torture. Defending the administration, Cheney said "[o]n the question of so-called 'torture,' we don't do torture, we never have. It's not something that this administration subscribes to. Again, we proceeded very cautiously; we checked, and we had the Justice Department issue the requisite opinions in order to know where the bright lines were that you could not cross…And any suggestion to the contrary is just wrong" (Cheney, 2008). Cheney's vague answer is used to sway the public to think that the American government is following national and international law when it comes to the mysterious treatment and conditions of these prisoners.

In reality, the U.S. Code has a clear written manual on how to deal with prisons and prisoners, and it lies within Section 2340A. Called the "Justice Manual," there are clear written laws that maintain the illegality of "enhanced interrogation," or torture. Section 2340A of the U.S. Code states that the "United States Code prohibits torture committed by public officials under color of law against persons within the public official's custody or control. Torture is defined to include acts specifically intended to inflict severe physical or mental pain or suffering" (U.S. Code § 2340A). The definition of this law is extremely vague, which actually works towards the benefit of detainees in Guantanamo Bay. Given multiple first-hand accounts, legal documents, and testimonies, it can be argued that detainees in Guantanamo Bay were under "physical or mental pain or suffering". The law itself prohibits torture regardless of the circumstance or case against the prisoner. Bush soon sought legal counsel to justify his imminent decision to give the orders authorizing "enhanced interrogation techniques," and went to the Office of Legal Counsel (OLC) for advice (U.S. Dept. of Justice, 2002).

The OLC, part of the Department of Justice, wrote back with their "justification," saying "Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering, whether mental or physical. Those acts must be of an extreme nature to rise to the level of torture…We further conclude that certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture" (Ibid.). This memorandum, produced by attorney John Yoo, yanks on the already loose words of Section 2340A, and twists them to protect Bush and his administration, so as to clear them of any wrongdoing.

The purposeful misinterpretation of the law and the blatant disregard for the lives of these imprisoned men came to light during the Bush administration, and cannot be ig-

nored any further by the American people. There are countless laws, not limited to those mentioned above, that could be used to prosecute the Bush administration on grounds of torture.

CITATIONS

Burgers, J. Herman, 1926-. The United Nations Convention against Torture : a Handbook on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Dordrecht ; Boston : Norwell, MA, U.S.A. :M. Nijhoff ; Sold and distributed in the U.S.A. and Canada by Kluwer Academic Publishers, 1988.

Cheney, Dick. "Interview of the Vice President by Jonathan Karl." Interview by Jonathan Karl. ABC News, December 17, 2008. https://georgewbush-whitehouse.archives.gov/news/releases/2008/12/20081217-1.html

Office of the High Commissioner for Human Rights. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." United Nations Treaty Collection. December 10, 1984. Accessed April 2, 2023. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

Torture, U.S. Code 20 (1994) §§ 2340A et seq.

U.S. Department of Justice, Office of Legal Counsel. Office of Legal Counsel to Office of Assistant Attorney General, memorandum, "Memorandum for Alberto R. Gonzales Counsel to the President" August 1, 2002 https://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug1.pdf

Wilson, Dean, Amanda Third, and Sharon Pickering. "Media, Secrecy and Guantanamo Bay." "Current issues in criminal justice" 16, no. 1 (2004): 79–84.

Guantanamo Bay Hunger Strikers Should not be tried in US Courts

Isabela Fraguada

In its disreputable 20-year history, the Guantanamo Bay naval detention center has indefinitely held 779 Muslim men, only some of whom have ever faced charges (Shamsi, 2022). These men face humiliation, torture, and are stripped of their rights and property. Detainees have taken to a self-destructive form of protest—hunger striking— to try and improve their deplorable conditions. Though hunger striking is recognized internationally as freedom of expression, detainees are subjected to "enteral feeding"— known colloquially as "force feeding" due to the cruel nature of the procedure. The World Medical Association (1991) and United Nations (1966) have drafted conventions recognizing force feeding as torture and a violation of human rights. While United States (US) courts recognize a person's right to refuse medical treatment in the Code of Regulations (2003), they continue to infringe upon the right to hunger strike. Thus, a hunger striker would receive fairer treatment under international law than US law and should not face prosecution in the US judicial system.

The most noteworthy hunger strikes in Guantanamo occurred in June and July of 2005, in which 200 detainees participated from all five camps on the base, and the "Seven-Month Strike" of February 2013, with at least 106 of 168 detainees participating (Savage, 2013). While these strikes did result in improved behavior from guards, they failed to result in long lasting changes in prisoner conditions. Mansoor Adayfi (2021), a Yemeni detainee who participated in and led various hunger strikes, said about the protests: "What they didn't understand was that the hunger strike wasn't about art or contraband or even living conditions—it was about life. Our lives". The strikes would last weeks, if not months, and take a dramatic toll on the striker's body. Adayfi called them "a slow journey towards death" (Ibid.). To prevent detainee mortality, Guantanamo began enteral feeding using the "emergency restraint chair," which restricted movement in detainees' limbs, necks, and torso to feed them liquid food through tubes inserted in the nose (Gregory, 2005).

During one of the countless inmate attempts to end force feeding in Guantanamo, Washington D.C. District Court Judge Gladys Kessler publicly acknowledged force feeding as an act of torture by claiming the practice violates Article 7 of the International Covenant on Civil and Political Rights (ICCPR) (Worthington, 2013). Article 7 of the ICCPR creates a broad spectrum of prevention against all cruel, inhuman, or degrading treatment or punishment (ICCPR, 1966). At Guantanamo, a striker experiences cruel and inhumane treatment from the guards and prison doctors during the traumatic force feeding

procedure. Being forced into this procedure causes a patient to struggle and results in a more painful experience, as guards will restrain a detainee with force. Though Judge Kessler recognized forced enteral feeding as a violation of human rights and as an act of torture, she concluded that only the president could take further action on the matter, and prisoners in Guantanamo continue to be force fed (Worthington, 2013).

The American Medical Code of Ethics holds its physicians to a standard of care in which they are "dedicated to providing competent medical care, with compassion and respect for human dignity and rights." (The Code of Medical Ethics, 2018). American military physicians at Guantanamo violate this code and disrespect human dignity by practicing forced enteral feeding on cognizant and self determined detainees. The World Medical Association recognizes force feeding as unethical, as declared in the 1991 WMA Declaration of Malta on Hunger Strikers. Principle 4 clarifies that a physician must respect a hunger striker's autonomy, and that "assisting forced feeding contrary to an informed and voluntary refusal is unjustifiable." (Declaration of Malta on Hunger Strikers, 1991). Hunger strikers exercise bodily autonomy by refusing food of any kind, whether on a tray or in a bottle of Ensure. Under this definition, Guantanamo physicians violate international standards by force feeding detainees after receiving their refusal to eat implied by a hunger strike. The procedure disrespects a patient's bodily autonomy and violates the American medical code of ethics.

Whether or not a detainee in Guantanamo should receive the same treatment as a US prisoner in court has long been debated. As detainees are held in US custody, one could argue that they deserve treatment on par with what a US prisoner would experience. However, Guantanamo's detention center is situated on Cuban land, separating it from the physical jurisdiction of the United States. It is beneficial for a Guantanamo hunger striker to be defended with international law rather than with US law, as US legislation is unclear about the rights a striker has.

The right to protest is generally protected under the first amendment of the US constitution, which recognizes the "right of the people peaceably to assemble, (and) petition the government for a redress of grievances" (US const., amend. 1). However, US judges have long debated whether or not hunger striking is protected by this amendment. Some cases decided hunger striking is a right: in Arredondo vs. Drager (2016), a Californian prisoner (Arredondo) went on hunger strike in Pelican Bay State Prison and sued a guard (Drager) for damages while in custody. The courts denied the defendants' attempt to dismiss the case and stated that Arredondo's claim was "cognizable." Other courts have argued against protecting hunger strikes, as in Khaldun vs. Daugherty (2009). Khaldun, a prisoner in the Wabash Valley Correctional facility, argued the defendant denied his

right to practice his religion. The discussion states that Khaldun's hunger strike was not protected by the First Amendment and that the defendant's placement of the plaintiff in a monitored cell was reasonable.

Force feeding is also permissible under the US Code of Regulations. The US argues that the procedure is necessary to save prisoners' lives, and the Code places importance on "pursuing procedures to ensure preservation of life" (Code of Federal Regulations, 1994). This decision was based on a 1998 ruling from New York District Court Judge Barbara Jones that stated ("A force-feeding order does not violate a hunger-striking prisoner's constitutional rights" (Dhiab v. Obama, 2014). Therefore, the US justifies a physician's use of enteral feeding to prevent detainee mortality and rejects hunger striking as a constitutional right. However, the Code does grant a person the right of self-determination, "including the right to accept or refuse medical or surgical treatment" (Code of Federal Regulation, 2003). Force feeding may not violate a person's constitutional rights, but it does invalidate a detainee's right to refuse a medical procedure. With these conflicting opinions on the validity of a brutal procedure like force feeding, using US legislation to determine Guantanamo prisoners rights would be detrimental to their well-being and violate their rights under international law.

While the US may not consider force feeding in Guantanamo Bay a human rights violation, the procedure does violate the rights of imprisoned people under international law. Therefore, as Guantanamo detainees are in US custody but not under its jurisdiction, they have the right to protest and advocate for freedom from force feeding. These protests support a detainee's right to bodily autonomy as well as release from the indefinite detention that has held most prisoners in Guantanamo for decades. Detainees are struggling not only to have their basic rights respected, but to liberate themselves from their unjust imprisonment. The procedure of enteral feeding must be put to an end so detainees can advocate for their conditions as well as their freedom, even if they are risking their lives.

CITATIONS

Adayfi, Mansoor. Don't Forget Us Here: Lost and Found at Guantánamo, 279. New York, New York: Hachette Books, 2021.

American Medical Association, The Code of Medical Ethics: Current Opinions with Annotations, 2018 ed., app. C.

Annas, George J. "Hunger Strikes at Guantanamo - Medical Ethics and Human Rights in a 'Legal Black Hole.'" The Center for the Study of Human Rights in the Americas (CSHRA). New England Journal of Medicine, August 18, 2007. https://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimony-of-military-physicians/hunger-strikes-at-guantanamo-2014-medical-ethics-and-human-rights-in-a-legal-black-hole.

Arredondo v. Drager, No. 14-CV-04687-HSG, 2016 WL 3755958 (N.D. Cal. 2016).

Code of Federal Regulations. "Purpose and Scope." 59 FR 31883, 28 C.F.R. § 549.60. (1994).

Code of Federal Regulations. "Requirements for providers." 68 FR 66720, 42 C.F.R. § 489.102. (2003).

Dhiab v. Obama, No. 14-5028, 2014 WL 1347603 (D.C. Cir. 2014).

Gregory, Bernadette. "Hunger Striking Prisoners: The Doctors' Dilemma." BMJ: British Medical Journal 331, no. 7521 (October 13, 2005): 913. https://doi.org/10.1136/bmj.331.7521.913

International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

Khaldun v. Daughtery, No. 1:09–cv–350–SEB–TAB, 2009 WL 5170039 (S.D. Indiana. 2009).

"Protest Is an Invaluable Way to Speak Truth to Power." Amnesty International, February 21, 2023. https://www.amnesty.org/en/what-we-do/freedom-of-expression/protest/#isprotestahumanright

Post Executive Order 13491 Treatment of Detainees at Guantanamo Bay

Riya Mohan

As a result of the war against terror, the United States (US) built and opened a prison in Cuba where suspects of terrorism could be detained and interrogated without limitation. Guantanamo Bay became infamous for its brutal and torturous treatment of prisoners, and for its unlawful detention practices. This detention center and legislative mess set a precedent of locations that exist outside the scope of international law, and has allowed countless detainees to have their rights constantly abused in a place referred to as a legal black hole (Steyn, 2004). Despite the many instruments passed codifying the rights of prisoners, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and The Universal Declaration of Human Rights, Guantanamo Bay detainees continuously have theirs violated. Former US President George W. Bush's administration passed executive orders to encourage this torture, while his successor President Barack Obama's administration passed executive orders in an attempt to close the center as a whole. This analysis will explore how international and national legislation concerning these detainees has changed over time, and whether or not the treatment of detainees can still be considered torturous.

Obama passed Executive Order (EO) 13491, Ensuring Lawful Interrogations, on January 22nd of 2009. The order repealed Bush's EO-13440, which stated that the treatment of Guantanamo detainees may not comply with the Geneva Conventions for various reasons (Exec. Order 13491, 2009). The Geneva Conventions are four treaties and additional protocols that outline humanitarian standards for the treatment of prisoners of war during wartime (United Nations, 1984) Although Guantanamo detainees can reasonably be labeled as prisoners of war, the Bush administration gave them the title of "enemy combatants" so that they did not have to treat them with the standards expected for prisoners of war. EO-13440 also allowed for "enhanced interrogation techniques" to be used against these same detainees. These techniques included waterboarding, stress positions, and sleep deprivation, all of which were repealed by EO-13491 (Roth, 2015). EO-13491 also repealed two Presidential Memorandums that allowed detainees to be tortured through various interpretations of the Geneva Conventions and a third Presidential Memorandum that delegated authority to the Secretary of Defense to approve interrogation techniques for use on detainees in US custody. EO-13491 similarly established a framework for the treatment of detainees in US custody that was much more consistent with the principles outlined in the Geneva Conventions. This order explicitly prohib-

ited the use of torture or cruel, inhuman, or degrading treatment or punishment by US personnel. Lastly, this order demanded the closure of the detention facility at Guantanamo Bay within a year (Exec. Order, 13491). This EO clearly marks a positive shift in US policy regarding the treatment of Guantanamo Detainees. Still, the US continues to interrogate detainees with torturous methods.

The US ratified the United Nations' Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) in 1994. The CAT is a document passed by the General Assembly of the United Nations in 1984 that defines torture and attempts to prevent, investigate, and prosecute instances of it (United Nations, 1984). The General Assembly passed an optional protocol alongside the CAT in December 2002, though the US has not ratified this (United Nations, 2002). The optional protocol concerns how countries should implement the methods of CAT. It does not include any new significant obligations for any countries that choose to ratify. Still, the Bush administration deemed the protocol too intrusive and chose not to ratify. The administration reasoned that the outlined procedures infringe upon the existing rights of the states within the US, though this isn't supported by Supreme Court case law (Human Rights Watch, 2009). The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the CAT all explicitly state that torture is prohibited, and define it as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or planned to commit" (United Nations, 1984). The detailed definitions of this document allow for a critical analysis of which international laws the US continues to break by running Guantanamo Bay, even considering post-EO-13491 treatment. The CAT's language is very firm, although signatory countries continue to violate its articles.

According to the CAT's definitions, some torturous methods of interrogation continue at Guantanomo Bay despite EO-13491. These methods include indefinite detention without charge and the use of forced feeding (Harris, 2013). Indefinite detention without charge can be considered a long-standing issue within Guantanamo Bay. Detainees are not told when they will be released, and the overwhelming majority are never charged. They are held without due process of law, and that in itself is considered torture as per the definition stated in the CAT. As of today, 31 detainees remain in Guantanamo Bay, and most of these individuals are being held there without charge. One example is Toffiq al-Bihani, a Yemeni citizen and detainee since 2003. He was never charged with

a crime, and has been cleared for release since 2010. Despite that, he remains held at Guantanamo Bay (Amnesty International, 2022).

The use of forced feeding is another remaining interrogation technique that can be considered torturous. In 2013, after EO-13491, Guantanamo Detainees decided to go on a hunger strike to protest their mistreatment. The US military responded by increasing the use of force-feeding, which is the insertion of a tube through a person's nose into the stomach for the purpose of delivering nutrients to the body. This practice is highly controversial as it goes against the detainees' human rights and medical ethics (Harris, 2013). The UDHR and the CAT also outlaw force-feeding.

While there has been some effort to improve the treatment of Guantanamo Bay detainees, torture and other forms of mistreatment continue. The use of techniques such as indefinite detention and forced feeding have been criticized by human rights organizations and medical professionals as cruel, inhumane, and degrading (United Nations, 2014). International law clearly prohibits the use of these practices, yet they persist in the treatment of detainees at Guantanamo Bay. As such, there is still much work to be done to ensure that the fundamental human rights of all detainees are respected and protected.

CITATIONS

Executive Order 13491, 74 Fed. Reg. 4893 (January 27, 2009). Accessed March 28, 2023. https://obamawhitehouse.archives.gov/the-press-office/ensuring-lawful-interrogations.

Harris, Paul. "Guantánamo Bay hunger strike: quarter of inmates now being force-fed." The Guardian, June 6, 2013. Accessed April 2, 2023. https://www.theguardian.com/world/2013/jun/06/guantanamo-bay-hunger-strike-quarter-force-fed.

Office of the High Commissioner for Human Rights. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." United Nations Treaty Collection. December 10, 1984. Accessed April 2, 2023. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

———. "Force-feeding is cruel and inhuman – UN experts urge Israel not to make it legal." United Nations Human Rights Office of the High Commissioner, June 25, 2014. Accessed April 2, 2023. https://www.ohchr.org/en/press-releases/2014/06/force-feeding-cruel-and-inhuman-un-experts-urge-israel-not-make-it-legal.

———. "Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment." United Nations Treaty Collection. December 18, 2002. Accessed April 2, 2023. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-a&chapter=4&lang=en.

Roth, Kenneth. "Obama & Counterterror: The Ignored Record." Human Rights Watch, February 5, 2015. Accessed April 2, 2023. https://www.hrw.org/news/2015/02/05/obama-counterterror-ignored-record.

Steyn, Johan. "Guantanamo Bay: The Legal Black Hole." The International and Comparative Law Quarterly 53, no. 1 (January 2004): 1-17. Accessed April 2, 2023. https://www.jstor.org/stable/3663134.

Amnesty International. "USA: Release cleared men from Guantánamo." Amnesty International Publications, August 3, 2022. Accessed April 2, 2023. https://www.amnesty.org/en/documents/amr51/5824/2022/en/.

Human Rights Watch. "United States Ratification of International Human Rights Treaties." Human Rights Watch, July 24, 2009. Accessed April 3, 2023. https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties#_Optional_Protocol_to.

Social Media Giants and Section 230 of the Communications Decency Act

Emily King

In January 2021, social media giants Twitter and Facebook suspended former President Donald Trump's accounts for his incitations of violence that culminated in a mob attack on the U.S. Capitol (Myers, 2023). Immediately, questions arose as to whether this ban was justified. Legal debates about political censorship, first amendment rights, and obligations to take down potentially harmful content online flared up around the country (Feiner, 2023). These types of questions have come up frequently in recent years as social media has become a massive influence in people's daily lives, particularly as a way to receive and share news ("The Communications Decency Act," 1996). From COVID-19 to the 2020 Presidential election, social media giants have come under scrutiny for not effectively cracking down on the rampant misinformation and disinformation that spreads through their platforms. The former president's account was just one of many users that was taken down initially, only for Twitter and Facebook to restore their pages and posts months later (Myers, 2023). What does this mean for the regular American user that is the target of manipulation by influential figures, and the pawn that boosts their statements through resharing? Can the law and the people advocate for more transparency and accountability by social media companies whose platforms have become conduits for real-world violence?

To begin with, the bedrock of legal immunity that social media companies have from prosecution lies in subsection (c) from Section 230 of the Communications Act, which was enacted as part of the 1996 Communications Decency Act. As stated in the 47 U.S.C. § 230(c)(2)(A) "No provider or user of an interactive computer service shall be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." Thus, social media companies, which fall under the category of interactive computer service (ICS) providers, have the authority to decide what content to allow or take down in order to protect the public on their sites, independent of the law, and particularly the First Amendment. In theory, based on this reasoning, ICS providers like Twitter and Facebook would have been within their own rights to take down COVID-19 and January 6 misinformation if they deemed them a violation of their guidelines. Health officials pressingly warned the two companies about preventable deaths from COVID-19 linked to misinformation, while glaring statistics and analyses came out on the exploitation of their algorithms to pro-

mote election conspiracies and falsehoods fueling the January 6th attack (Allyn, 2021). However, there was nothing either of them could be charged with because of the blanket immunity Section 230 gives to ICS providers for choosing to keep up any content, besides the exceptions outlined in subsection (e).

In the past, the "Protection for 'Good Samaritans'," as 230(c) is officially called, has been routinely cited by ICS companies to avoid responsibility when they do not remove objectionable material and said material negatively impacts people in the real world (Sevanian, 2014). For instance, in the notable 1997 case Zeran v. America Online, Inc. the ICS provider AOL faced no "distributor liability" for the continuous harassing advertisements and posts on its site that targeted plaintiff Zeran after he had asked the company to remove them from the site. In summary, "Zeran brought negligence claims against AOL on the theory that once Zeran notified AOL of the ads, AOL had a duty to remove the ads, notify users that the ads were deceptive, and screen for similar postings" (Brannon and Holmes, 2021). The Fourth Circuit rejected his argument and set a precedent for "unconditional ICS immunity" that would always protect ICS providers' content regulation choices, or lack thereof (Sevanian, 2014).

Although passing laws that would force ICS providers to take down posts based on specific types of content is arguably unrealistic and potentially dangerous, often the root of the problem lies in the engagement-based algorithms their sites run on (Jacoby, 2018). For instance, despite Meta CEO Mark Zuckerberg's attempts to downplay the role Facebook had in allowing election conspiracies and falsehoods to spread, it is undeniable that the platform was a hotspot for polarizing media that could influence the millions of Americans that use it. In Frontline's The Facebook Dilemma, a 2018 documentary compiling interviews with former and current company employees, Facebook has proven to have a track record of ignoring warning signs and issues about their engagement-based algorithm. It centers upon a breakdown of how the Russian government exploited this algorithm by creating numerous fake accounts to post and promote links to unfactual and inflammatory news articles related to the then-upcoming 2016 US presidential election (Jacoby, 2018). Simply put, Facebook's design rewards interaction, whether likes, comments, or even just lingering on a post, and proceeds to promote similar content to a user's never-ending news feed (Jacoby, 2018). Posts that perform well are also then promoted to that user's "friends" and to users on a wider scale due to its popularity (Jacoby, 2018). All in all, this vicious cycle breeds ideological echo chambers and exposes people to more and more radical content in an astonishingly short amount of time.

For years now, the United States has been facing not only a viral pandemic, but a misinformation and disinformation pan-

demic that held real-world consequences and owed much of its power to the ICS providers' algorithms that blindly promote anything that gets a user's attention ("Reps. Eshoo and Malinowski…," 2021). Though it is impossible to screen for every malicious post among countless harmless ones, modifying the algorithms that present "trending" topics to users may help reduce the exposure they get and stop them from materializing into real-world threats. The "Protecting Americans from Dangerous Algorithms Act" could be the change to Section 230 that will make ICS providers like Facebook and Twitter liable when content promoted online with their algorithms translates into offline violence ("Reps. Eshoo and Malinowski…," 2021). As stated by Representative Tom Malinowski (D-NJ), a key proponent, "This legislation puts into place the first legal incentive these huge companies have ever felt to fix the underlying architecture of their services — something they've shown they are capable of doing but are consciously choosing not to." If this bill is passed, then when an ICS provider's algorithm is found culpable in promoting violence, disinformation, or other threats to the public on a great scale, they can be legally required to revise their algorithms to prevent further abuse of their system. In conclusion, for future elections, public health emergencies, and other nationwide issues, Americans must be protected from online disinformation campaigns and misinformation trends boosted by opaque, exploitative ICS algorithms.

CITATIONS

Allyn, Bobby. “Here are 4 key points from the Facebook whistleblower’s testimony on Capitol Hill.” National Public Radio. October 5, 2021. https://www.npr.org/2021/10/05/1043377310/facebook-whistleblower-frances-haugen-congress.

Brannon, Valerie and Holmes, Eric. “Section 230: An Overview.” Congressional Research Service. April 7, 2021. https://crsreports.congress.gov/product/pdf/R/R46751.

“The Communications Decency Act,” 47 U.S.C. § 230 (1996). https://www.law.cornell.edu/uscode/text/47/230.

Feiner, Lauren. “How the Supreme Court could soon change free speech on the internet.” Consumer News and Business Channel. January 30, 2023. https://www.cnbc.com/2023/01/30/the-supreme-court-could-change-free-speech-on-the-internet.html.

Jacoby, James, dir. Frontline. “The Facebook Dilemma.” Aired October 28, 2018 on Public Broadcasting Service. https://www.pbs.org/wgbh/frontline/interview-collection/facebook-dilemma/.

Myers, Steven. “Free Speech vs. Disinformation Comes to a Head.” The New York Times. February 9, 2023. https://www.nytimes.com/2023/02/09/business/free-speech-social-media-lawsuit.html.

“Reps. Eshoo and Malinowski Reintroduce Bill to Hold Tech Platforms Accountable for Algorithmic Promotion of Extremism” Congresswoman Anna G. Eshoo. March 24, 2021. https://eshoo.house.gov/media/press-releases/reps-eshoo-and-malinowski-reintroduce-bill-hold-tech-platforms-accountable

Sevanian, Andrew M. Section 230 of the Communications Decency Act: A Good Samaritan Law without the Requirement of Acting as a Good Samaritan, 21 UCLA ENT. L. REV. 121 (2014). https://doi.org/10.5070/LR8211027178

To Remedy or Not to Remedy: The Future of the Bivens Claim in American Jurisprudence

Jospeh Brugellis

The United States Constitution's Bill of Rights prohibits the federal government from encroaching upon certain individual liberties possessed by all citizens. Without a mechanism to hold federal officials accountable for violating these constitutional liberties, the Bill of Rights is reduced to empty promises. The federal judiciary provides a venue for assigning appropriate compensation to victims of certain constitutional violations perpetrated by federal officials. The groundbreaking decision in this area of jurisprudence is Bivens v. Six Unknown Named Agents (1971).

Mindful of the importance of "grant[ing] the necessary relief" owed to individuals whose "federally protected rights have been invaded", the Bivens Court ruled that the Constitution contains an implied cause of action whereby litigants may sue for monetary damages as remedy for Fourth Amendment violations committed by federal agents (Bell v. Hood, 1946; Orozco, 2019). Despite extending this doctrine twice, the Supreme Court since 1980 has declined further extension of the Bivens claim and has proceeded instead to significantly narrow its scope (Wasserman, 2022). Absent express action by Congress, this erosion of the Bivens claim threatens to leave those whose constitutional rights were violated by federal agents without recourse.

The Bivens case stems from a search and arrest carried out by the then-Federal Bureau of Narcotics (FBN). On November 26, 1965, several FBN agents entered the apartment of Webster Bivens and arrested him on account of suspected narcotics violations (Bivens v. Six Unknown Named Agents, 1971). The federally authorized agents subsequently conducted an extensive search of the apartment. Two years later, Bivens filed suit in a federal district court seeking $15,000 in damage from each agent involved. His suit claimed that the search of his apartment was conducted without a warrant and that the arrest made by the FBN agents was performed without probable cause and marked by excessive force. Both the district court and the court of appeals dismissed Bivens's claim for failing to identify a cause of action enabling his suit to proceed. The Supreme Court reversed (Ibid.).

The Court acknowledged in Bivens that the Fourth Amendment does not contain express language authorizing a cause of action which allows individuals to sue for damages as compensation for unconstitutional actions committed by federal agents (Ibid.). Nevertheless, with the general principle that "for every violation of a right there is a remedy" in the background, the Court allowed Bivens's lawsuit to proceed under the Constitution (Pereyra, 2019). Chief Justice Warren Burger protested in dissent and accused the Bivens majority of

usurping the role of the legislative branch by creating a new cause of action despite no congressional statute expressing such interest (Bivens v. Six Unknown Named Agents, 1971).

Since Bivens was decided in 1971, the Supreme Court has extended this doctrine twice. The first extension came in 1979, where the Court held that a congressional staffer could proceed with her sex discrimination lawsuit against a congressman under an implied cause of action contained within the Due Process Clause of the Fifth Amendment (Davis v. Passman, 1979). The following year, the Court extended the Bivens claim and allowed the estate of a deceased federal prisoner to proceed in a suit for damages as a result of alleged Eighth Amendment violations related to improper medical care (Carlson v. Green, 1980).

The rush to recognize novel Bivens claims involving different parts of the Constitution came to a halt after 1980. The Court instead ushered in an "era of reluctance or even downright hostility" to the application of Bivens to new circumstances (Pereyra 2019, 401). Bivens claims and their pre-1980 extensions began to be viewed as relics of a bygone era where courts found it appropriate to fashion legal avenues to obtain remedial damages when doing so advances the law's purpose (Hernandez v. Mesa, 2020). Believing that Congress is best suited to create a cause of action to effectuate statutory or constitutional intent, the Supreme Court in recent years has expressly stated that it is "doubtful" that Bivens would be decided in the same manner today (Ashcroft v. Iqbal, 2009). By 2017, federal courts could permit a novel Bivens claim only after such courts determine whether a different remedial pathway exists as an alternative to the Bivens route, and whether any "special" substantive factors exist that would caution against applying Bivens (Langsam 2020, 1405-1406). Even with these strict guidelines, however, federal courts were not handcuffed from extending Bivens.

The situation drastically changed after Ziglar v. Abbasi was decided in 2017. Here, the Supreme Court rejected the Bivens suit of several Muslim immigrants allegedly subjected to abysmal treatment by federal officials while detained following the aftermath of the September 11th attacks. Justice Kennedy's majority opinion singled out the extension of Bivens claims as being "a disfavored judicial activity" and significantly narrowed the two-step framework to determine whether Bivens claims may proceed. Under the revised test, courts must first look to whether a claim is meaningfully different from the original Bivens case and its two extensions. If so, courts must then determine whether "special factors"– like whether the judicial branch is "well-suited" to determine whether permitting a new damages claim is beneficial or not– caution against extending Bivens in a particular instance (Lindvall 2020, 75-76). The Abbasi Court's new factor test significantly raised the bar for new Bivens claims to be accepted.

In Egbert v. Boule, the Supreme Court narrowed the scope of the Bivens claim even further (2022). The Court rejected Robert Boule's request to recognize a Bivens action stemming from alleged excessive use of force by a Border Patrol agent resulting in a Fourth Amendment violation. Boule's claim was foreclosed despite the fact that his case presented facts "substantially identical to those in Bivens itself" (Ibid.). Justice Clarence Thomas' majority opinion recognized the existence of the two-factor Abbasi test, but asserted the two factors ultimately boiled down to one fundamental question: "whether there is any reason to think that Congress might be better equipped to create a damages remedy" (Ibid.). Believing that courts lack the proper capacity to "independently assess the costs and benefits" of creating a new Bivens action, the majority left it to Congress to determine whether Boule's and other similar damages suits should proceed. In a forceful dissent, Justice Sotomayor accused the majority of "refashion[ing] the [Bivens] standard" and departing from prior precedent in order to significantly "foreclose [Bivens] remedies" (Ibid.).

If Congress wishes to allow individuals to affirm their constitutional rights against improper actions committed by federal agents, it has the power to do so. Congress already allows for damage suits to proceed against state officials who violate federal constitutional rights. Originally enacted in 1871, 42 U.S.C. §1983 affords individuals the ability to sue in federal court for damages resulting from constitutional violations committed by state and local officials (Gans, 2021). No such cause of action statutorily exists for individuals to obtain damages from violations by federal officials. By permitting such federal lawsuits to occur via a statute modeled largely on Section 1983, Congress may open the door for those wronged by the unconstitutional actions of federal agents to potentially receive appropriate compensation and prevent the Nation's Constitution from becoming dead letter law.

CITATIONS

Ashcroft v. Iqbal, 556 U. S. 662 (2009).

Bell v. Hood, 327 U.S. 678 (1946).

Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

Carlson v. Green, 446 U.S. 14 (1980)

Davis v. Passman, 442 U.S. 228 (1979).

Egbert v. Boule, 596 U.S.___(2022).

Gans, David H. "Repairing Our System of Constitutional Accountability: Reflections on the 150th Anniversary of Section 1983." 22. Cardozo L. Rev. De Novo (2021): 91-117. https://deliverypdf.ssrn.com/delivery.php?ID=181125084069127091077082077074005102058072042046063057112097124078113110076115001120122000107031046015105123071113101125096000042046087039083097124118102072018007110031008085027027121025106074013101002083126101113110118119071000015068095067019115083104&EXT=pdf&INDEX=TRUE

Hernández v. Mesa, 589 U. S. ___ (2020).

Langsam, Alex. "Breaking Bivens?: Falsification Claims After Ziglar v. Abbasi and Reframing
the Modern Bivens Doctrine." 88 Fordham L. Rev. 1395 (2020): 1405-1406. https://ir.lawnet.fordham.edu/flr/vol88/iss4/5

Lindvall, Alexander J. "New Contexts and Special Factors: The Court's New Bivens Framework." 43 U. Ark. Little Rock L. Rev. 63 (2020): 75-76. https://lawrepository.ualr.edu/lawreview/vol43/iss1/2

Orozco, Gabriella A. "Bivens and Constitutional Integrity at the Border: Hernandez v. Mesa &
Rodriguez v. Swartz." 51 Loy. U. Chi. L. J. 245, 2019. https://lawecommons.luc.edu/luclj/vol51/iss1/8

Pereyra, Julio. "Ziglar v. Abassi and its Effect on the Constitutional Rights of Federal Prisoners.", 109 J. Crim. L. & Criminology 395 (2019): at 399. https://scholarlycommons.law.northwestern.edu/jclc/vol109/iss2/6

Wasserman, Howard M. "Court constricts, even if it does not quite eliminate, damages actions
under Bivens." SCOTUSblog, Jun. 8, 2022. https://www.scotusblog.com/2022/06/court-constricts-even-if-it-does-not-quite-eliminate-damages-actions-under-bivens/

How Large Corporations Circumvent Laws Prohibiting the Importation of Child and Forced Labor-Produced Products

Justin Simon

Contemporary international mega-corporations have perfected systematic importation systems that allow them to generate billions of dollars of profit every year. However, a largely unknown and unregulated fact about those imports is that often, a significant percentage of the manufacturing of these products includes dangerous forced or child labor. 25 million adults and children worldwide are forced to work under threat or coercion (U.S. Government Accountability Office, 2023). Child or forced labor occurs for many reasons, all of which are related to maximizing profits. Utilizing child or forced labor allows companies to get a large quantity of labor for a fraction of the cost. For this reason, forced labor generates around 150 billion dollars annually (U.S. Government Accountability Office, 2023). Both the obscene profits available to companies utilizing child and forced labor and the current lack of prevention within the borders of child and forced labor-producing nations mean there is currently an incentive to use these labor forms. The incentive to maximize profits has encouraged dangerous and inexcusable amounts of human rights violations across the globe. World leaders need to flip the circumstances and make using child and forced labor a disadvantage instead of an advantage. While there is legislation such as section 307 of the Tariff Act of 1930 and the Trade Facilitation and Trade Enforcement Act, United States (US) courts cannot utilize these laws because foreign nations do not cooperate in providing evidence of human rights violations (Congressional Research Service, 2022). Hence, corporations continue to make large profits from unethical business practices.

Section 307 of the US Tariff Act of 1930 aims to prevent the use of child and forced labor in imported products, stating the prohibition of "importing any product that was mined, produced, or manufactured wholly or in part by forced labor, including forced or indentured child labor" (Congressional Research Service, 2022). The act was originally solely concerned with protecting domestic manufacturers. As such, it included the "consumptive demand clause," which allowed for importation when the product did not have any comparable product being made in the United States (Congressional Research Service, 2022). However, this clause was removed in 2015 as part of the Trade Facilitation and Trade Enforcement Act due to rising concerns over human trafficking. The removal of the clause means that today, importing products made in any way through forced labor is illegal.

With the removal of this clause came other US efforts to fight the use of child and forced labor. One such effort is the inclusion of free trade agreements (FTAs) which

commit US trade partners to "maintain laws on core ILO rights/principles" such as the "elimination of forced or compulsory labor " (Congressional Research Service, 2022). Another effort is the commitment to issue reports with the primary purpose of increasing awareness of the issue and the products that are associated with it. These reports include the Department of Labor's Findings on the Worst Forms of Child Labor and the List of Goods Produced by Child Labor or Forced Labor (Bureau of International Labor Affairs, n.d.a).

Section 307 of the US Tariff Act of 1930, FTAs, and government reports prove that the United States possesses the necessary legal tools to prevent the importation of products made from forced and child labor. Still, many products currently circulating in the US economy are made from child or forced labor. For example, lithium-ion batteries are on the list because of the human rights violations that occur in the Cobalt mines of the Democratic Republic of the Congo [DRC] (Bureau of International Labor Affairs, n.d.a). Regarding mines in the DRC, Siddharth Kara, a modern slavery researcher, stated in his book Cobalt Red that "the severity and scale of human degradation and exploitation at the bottom of global supply chains, it just really shook me" (Beaule, 2023). Kara's report is among others that signal that the human rights violations occurring in foreign nations in relation to the production of commodities for US consumption completely violate US law. Companies continue to evade repercussions, however, due to the US government's lack of ability to investigate.

Apple, Microsoft, Dell, Tesla, and Google are among the major technology companies that utilize cobalt sourced from Congolese mines that use forced and child labor. Despite the existing US legislation that prohibits the importation of these products, they cannot be prosecuted because presenting concrete evidence of these human rights violations is incredibly difficult, if not impossible. When labor occurs in foreign nations, the companies committing the acts deny that the violations occur. Many of the violations occur in secret, and the people working need the jobs to survive (International Labor Organization, 2019) (Congressional Research Service, 2022). The US cannot raid a labor site in the DRC or perform periodical inspections. Consequently, the US cannot initiate any legal action, and companies continue to include products that were in part manufactured using child or forced labor.

An international initiative must be implemented to prevent labor rights violations. While the US can prosecute child and forced labor within its borders, it cannot do spot checks or trace a product back to the facility it was produced in, so it cannot provide the necessary evidence for prosecution. If forced and child labor are going to be stopped, it will have to be the country of origin that prosecutes the companies committing the act. While the US can lead international discussions and

support this initiative, global mega-corporations are too big and evidence is too difficult to secure for imports of products made with child and forced labor to be stopped by US courts. For now, it is up to journalists and independent investigators to uncover the human rights violations that produce the products Americans and those in other developed countries use on a daily basis. Until concrete and undeniable evidence is presented in large quantities, child and forced labor will continue to be a horror that devastates millions of lives around the world.

CITATIONS

Beaule, Victoria. “Artisanal Cobalt Mining Swallowing City in Democratic Republic of the
Congo, Satellite Imagery Shows.” ABC News. ABC News Network. Accessed March 12, 2023. https://abcnews.go.com/International/cobalt-mining-transforms-city-democratic-republic-congo-satellite/story?id=96795773#:~:text=The%20Democratic%20Republic%20of%20the%20Congo%20produces%20an%20estimated%2070,those%20more%20in%2Ddemand%20minerals.

“Findings on the Worst Forms of Child Labor.” DOL. Accessed March 12, 2023. https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings.

“List of Goods Produced by Child Labor or Forced Labor.” DOL. Accessed March 12, 2023.
https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods?combine=&field_exp_exploitation_type_target_id_1=All&tid=All&field_exp_good_target_id=All&items_per_page=10&page=6.

“Poor Working Conditions Are Main Global Employment Challenge.” International Labour
Organization, February 13, 2019. https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_670171/lang--en/index.htm.

“Products Made by Child Labor - with Alternative Options.” End Slavery Now. Accessed March
12, 2023. https://www.endslaverynow.org/blog/articles/products-made-by-child-labor-with-alternative-options.

“Section 307 and Imports Produced by Forced Labor - Congress.” Accessed March 12, 2023. crsreports.congress.gov/product/pdf/IF/IF11360.

“The DRC Mining Industry: Child Labor and Formalization of Small-Scale Mining.” Wilson
Center. Accessed March 12, 2023. https://www.wilsoncenter.org/blog-post/drc-mining-industry-child-labor-and-formalization-small-scale-mining#:~:text=Of%20the%20255%2C000%20Congolese%20mining,own%20tools%2C%20primarily%20their%20hands.

U.S. Government Accountability Office. “Federal Efforts to Prevent Imports Produced Using
Forced Labor from Entering the U.S.” U.S. GAO, January 3, 2023. https://www.gao.gov/blog/federal-efforts-prevent-imports-produced-using-forced-labor-entering-u.s.

Human Rights Granted to Children of Incarcerated Parents

Lili Pitkowsky

As the percentage of incarcerated women in the United States (U.S.) continues to rise at exceeding rates, the population of pregnant women and parents in jail rises rapidly as well. It can be more explicitly explained – " Over half (58%) of all women in U.S. prisons are mothers, as are 80% of women in jails, including many who are incarcerated awaiting trial" (Sawyer, 2022). For incarcerated pregnant women, many issues arise regarding their receipt of proper prenatal healthcare, nutritional deprivation, and shackling procedures. When we take a closer look at these issues, we see that international and federal law both describe the human rights that are given to mothers, primarily as rights granted to prisoners, particularly rights related to healthcare and rights granted to women who are incarcerated. However, once incarcerated women give birth, the rights granted to their children are less clear. Though it may be agreed upon that children born to incarcerated mothers deserve basic human rights, the reality of incarcerated parents poses issues in both allowing mothers and their children the opportunity to form a relationship, without raising children as prisoners in jail.

Prioritizing the needs of the child is a recurring theme in international law addressing children's rights. In the Convention on the Elimination of All Forms of Discrimination, article 16 states, "The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount" (CEDAW article 16). Though the CEDAW doesn't explicitly mention the rights of children born to incarcerated parents, it raises the idea that in all cases of parental rights, the needs of the child are supreme. Another key foundational text of international law, the UN's Standard Minimum Rules for the Treatment of Prisoners, declares that a "decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned … Children in prison with a parent shall never be treated as prisoners" (UN SMRTP Rule 29). The Mandela Principles make two important points here. First, consistent with the CEDAW, the priority of the child is made clear, which suggests to lawmakers that decisions on where the child will reside needs to be made on a case by case basis. Therefore, deciding based on the specific circumstances of the child at play, rather than a uniform decision on the protocol because the best interests of the child will differ across different situations. The second main takeaway is that by stating that children will not be treated as prisoners, the principle of children guaranteed basic human rights, separate from

that of their incarcerated parents is made clear. It is the child's fundamental human right to be treated differently from their parents – in order to provide them a chance to succeed, they are given the opportunity to thrive underneath the burden of their parents' incarceration.

Immediately following the birth of a child by an incarcerated woman, the issue of custody arises. As long as the state's jurisdiction does not view the incarcerated parent as "unwilling or unable to care for her child," (Halter, 2018) their parental rights remain. Although the Supreme Court case of Prince v Massachusetts of 1944 mainly dealt with issues regarding parenting responsibility in cases of religious practice, through the Due Process Clause of the 14th amendment, the case rules that custody of children fundamentally belongs to the parent, not the state. However, although incarcerated parents do retain their fundamental right to custody of their children, maintaining custody is an ongoing challenge. This is specifically true for mothers with no other parental support system, relative or friend for their child to live with, ultimately leading to huge numbers of children with incarcerated parents in the foster care system. In situations where incarcerated mothers do not reside in jail with their infants, even with visitation opportunities, a proper psychological attachment between mother and infant, and a stable nursing routine loses all possibility. This hinders both the physical and psychological growth and wellbeing of the child. Therefore, incarcerated nursery programs were created in order to provide maximum developmental opportunity for both mother and child who would be able to live together.

New York is one of eight states which houses nursery programs for incarcerated mothers and their infants. The New York State Senates Correction Bill of 2022 states that, "A child so born may be returned with its mother to the correctional institution in which the mother is confined unless the chief medical officer of the correctional institution shall certify that the mother is physically unfit to care for the child, in which case the statement of the said medical officer shall be final" (Chapter 43, Article 22, Section 11). Although there are some restrictions, New York law permits mothers who are incarcerated while nursing their infants to keep their kid with them in custody for up to a year. New York City Rikers Island Jail's Rose M. Singer center is an example of a jail based nursery facility. In addition to the facility's prenatal clinic, which allows for incarcerated women to live with their infants for up to a year, the facility offers classes to improve parenting skills, intending to give a chance for mothers to form a bond with their infant. This in turn gives both mothers and children a better chance at success. A study conducted on New York City Rikers Island Jail's Rose M. Singer center found that the jail based nursery facility was not only beneficial to children, but that it led to a desire from mothers for a new start at

motherhood. However, although nursery based programs for incarcerated mothers have proven to be successful for both mothers and their children, “fewer than a dozen states have such programs,” (Riley, 2023) which denies women the opportunity to benefit from the chance to bond with their children. In states which do not offer nursery based incarceration facilities, twenty four hours after birth, mothers are separated from their children, hindering all possibility of forming an attachment. In order to abide by the international law’s standard of prioritizing the child’s needs, it is necessary for both federal and state law to provide options for children born to incarcerated parents, rather than solely enforcing separation hours after birth to give the opportunity for a mother to have a relationship with her child.

CITATIONS

Initiative, Prison Policy. “Prisons and Jails Will Separate Millions of Mothers from Their Children in 2022.” Prison Policy Initiative. Accessed May 21, 2023. https://www.prisonpolicy.org/blog/2022/05/04/mothers_day/.

“Convention on the Elimination of All Forms of Discrimination ... - OHCHR.” Accessed March 7, 2023. https://cambodia.ohchr.org/sites/default/files/Treaty/CEDAW_EN.pdf.

“Mandela Rules - United Nations Office on Drugs and Crime.” Accessed February 16, 2023. https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

HALTER, EMILY. “Parental Prisoners: The Incarcerated Mother’s Constitutional Right to Parents.” Journal of Criminal Law & Criminology 108, no. 3 (Summer 2018): 539–67. https://search-ebscohost-com.proxy.binghamton.edu/login.aspx?direct=true&db=sxi&AN=133572611&site=ehost-live.
“Legislation.” NY State Senate. Accessed February 16, 2023. https://www.nysenate.gov/legislation/laws/COR/611.

“The Significance of Breastfeeding to ... - Wiley Online Library.” Accessed December 12, 2022. https://onlinelibrary.wiley.com/doi/10.1111/j.1523-536X.2012.00528.x.

Riley, Naomi Schaefer, Naomi Schaefer Riley is a visiting fellow at the American Enterprise Institute focusing on child welfare., Mark A. R. Kleiman, and Jonathan Butcher. “On Prison Nurseries.” National Affairs. Accessed March 7, 2023. https://www.nationalaffairs.com/publications/detail/on-prison-nurseries.

Kelsey, C. M., Nickole Medel, Carson Mullins, Danielle Dallaire, and Catherine Forestell. “An Examination of Care Practices of Pregnant Women Incarcerated in Jail Facilities in the United States - Maternal and Child Health Journal.” SpringerLink. Springer US, February 24, 2017. https://link.springer.com/article/10.1007/s10995-016-2224-5.

“Prince v. Massachusetts - 321 U.S. 158, 64 S. Ct. 438 (1944).” Community. Accessed March 7, 2023. https://www.lexisnexis.com/community/casebrief/p/casebrief-prince-v-massachusetts.

“House of Cards” - The Precarious Relationship Between the Human Rights Recognized in the Constitution and the Laws Put in Place to Protect Them

Robert Rose

“[N]or shall any State deprive any person of life, liberty, or property, without due process of law” (U.S. Const. amend. XIV). The Due Process Clause of the 14th Amendment of the United States (US) Constitution establishes that all persons within the US have the right to life, liberty, property, and to the due process of law. These rights are human rights. The only way these rights can be deprived is by “due process of law”, making it imperative that the indigent defense systems, that responsible for providing support to those who cannot afford to do so on their own, are functioning properly. The indigent defense systems in New York are failing, thus jeopardizing the human rights of all who live in the state.

In 1966 following the rulings in Gideon v. Wainwright (1963), which established the right of all people to be represented by counsel at any stage in the felony process, and People v. Witenski (NY, 1965), which requires people be notified of that right in the State of New York, County Law Article 18-B was implemented. This New York law carried the purpose of providing representation to indigent clients across the state through a county-based system. Each county would create and manage its own Public Defender office in order to comply with the Gideon and Witenski precedents. In 2004, the New York’s Chief Judge, Judith Kaye, commissioned a report on the condition of the indigent defense systems created under County Law. The conclusion was alarming: New York State’s indigent defense systems were failing to provide the defense required by both the Constitution, and the Supreme Court. Problems ranged from excessive caseloads and a lack of training to the inability to hire “full-time defenders” and a lack of support staff (William E. Hellerstein and Hon. Burton B. Roberts, 2006). According to this report, New York State is inadvertently suppressing human rights due to a disconnect between its written law and their implementation.

Article 18-b of the County Law implements a county-based system for indigent defense. Each county has its own Public Defender’s Office, and–until 2018–was entirely responsible for funding them (Leahy 2018, 148). The Kaye Commission’s report was released in 2006 and detailed numerous problems with the indigent defense systems which Albany refused to provide solutions to. In 2018, then-Governor Andrew Cuomo issued an executive order with an intent to improve funding for the indigent defense systems in the state (NYS Exec. Law Art. 30 § 832(3f)). Executive Law Article 30 § 832(3f) institutes statewide funding of indigent defense systems. In fiscal year 2020, the funding for all 62 counties in New York State totalled over $210 million (NYS Div. of Budget, Office

of Indigent Legal Services). The Executive Order also devised a board with the goal of improving the quality of indigent defense (NYS Indigent Legal Services). While this additional avenue of funding is greatly beneficial, it does not fix the core problem facing New York's indigent defense systems.

The core issue is the legal responsibility placed by the Supreme Court. The standard for representation was set when Strickland v. Washington (1984) decided an attorney's assistance is "effective" unless an outcome of a case occurs, presumably a negative one for the defendant, because of the attorney's deficient performance. Effective assistance of counsel therefore applies only to the courtroom. But the courtroom is not the only place where effectiveness matters. Without access to proper treatment and programs for mental health illnesses and/or addiction and susbtance abuse, individuals cannot access the rehabilitation that the State claims to offer. When the State sentences someone, it ought to provide them with adequate means of completing the sentence.

As a result of the legal standard set in Strickland, laws–such as County Law 18-B–are not focused on helping offenders obtain the treatment and tools necessary for them to complete their sentences and reenter society. Because attorneys are not legally required to help their clients outside of court, there is no incentive for the State to do so either.

While New York does provide rehabilitation programs, they are not available in all jurisdictions (NY OPC, FAQ section 22; NY OASAS Criminal Justice Section; NY OPC, FAQ section 22). Furthermore, while the State partners with the federal government to provide some of these programs, many are further limited by external factors (NYS Div. of CJS, Justice and Mental Health Collaboration Program). In Broome County, New York, for example, a judge can choose to release an inmate with the condition that they attend a mental health program. However, the judge will not release the inmate without them having housing. Amidst a housing crisis in Broome County, this is a difficult task. (Soriano, 2022). As a result, the inmate stays in jail, and without access to those additional mental health services. The law needs to be adjusted to ensure that external circumstances outside of the offender's control do not impede their ability to be rehabilitated and reenter society.

New York State is attempting to solve this issue. New York State's Office of Addiction Services and Supports (OASAS) program is making great strides towards helping all New Yorkers struggling with addiction and substance abuse. In fact, 47% of the patients treated by OASAS are "persons with criminal justice involvement" (NYS OASAS, Criminal Justice Section). Additionally, OASAS received over $800 million in state funding in fiscal year 2021, and has received a further $104 million in grants from the federal government (NYS Div. of Budget, OASAS; NYS OASAS,

Supp. Block grant funding Initiatives). The problem is no longer a funding issue. What was once an issue of non-existent programs and inadequate funding has morphed into a problem of accessibility. OASAS only directly controls 12 facilities across the entire state (NYS OASAS, About Us). External factors, such as the housing crisis mentioned earlier and the inability of offenders to gain access to the rehabilitation programs, are prohibiting offenders from being rehabilitated, and are by proxy infringing upon their right to reenter society.

Although laws such as County Law Article 18-b and Executive Law Article 832 assist the state in fulfilling its duty under Gideon and Witenski, they are restricted by the legal definition of "effective assistance of counsel" under Strickland. As a result, New York State laws are not focused on sustaining the human rights of "life, liberty, and property" protected under the 14th Amendment. The law requires alteration that considers external factors when mandating treatment to offenders. This would ensure that the criminal justice system effectively protects offenders' rights and affords those incarcerated with the rehabilitation the state purports to offer.

CITATIONS

Leahy, William J. "The Right To Counsel In The State Of New York: How Reform Was Achieved After Decades Of Failure." Indiana Law Review 51, no. 1 (2018): 145–.

N.Y. State Commission on the Future of Indigent Defense Services. Final Report to the Chief Judge of the State of New York. by. William E. Hellerstein and Hon. Burton B. Roberts. 2006. www.ils.ny.gov/files/Kaye%20Commission%20Report%202006.pdf.

New York State Division of the Budget, Office of Addiction Services and Supports, Accessed 3/5/2023, https://www.budget.ny.gov/pubs/archive/fy21/exec/agencies/appropdata/AddictionServicesandSupportsOfficeof.html#:~:text=The%20FY%202021%20Executive%20Budget,90%20million%20for%20Capital%20Projects.

New York State Division of the Budget, Office of Indigent Legal Services, Accessed 3/5/2023, https://www.budget.ny.gov/pubs/archive/fy20/exec/agencies/appropData/IndigentLegalServicesOfficeof.html.

New York State Division of Criminal Justice Services, Justice and Mental Health Collaboration Program, Accessed 3/5/2023, https://www.criminaljustice.ny.gov/opca/justice-mental-health.htm.

New York State Executive Law Article § 832, Office of Indigent Legal Services, http://24.97.153.110/files/Executive%20Law%20832-833.pdf.

New York State Office of Addiction Services and Supports, About Us, Accessed 3/5/2023, https://oasas.ny.gov/about

New York State Office of Addiction Services and Supports, Criminal Justice Treatment, Accessed 3/5/2023, https://oasas.ny.gov/treatment/criminal-justice

New York State Office of Addiction Services and Supports, Supplemental Block Grant Funding Initiatives, Accessed 3/5/2023, https://oasas.ny.gov/sapt-supplemental-funding-opportunities.

New York State Office of Indigent Legal Services, Accessed 3/5/2023 https://www.ils.ny.gov/.

New York State Office of Probation and Correctional Alternatives, Frequently Asked Questions, Accessed 3/5/2023, Section 22, https://www.criminaljustice.ny.gov/opca/general_faq.htm#5.

Soriano, Ashley. "Residents voice concerns over housing crisis at Binghamton City Hall." WBNG Binghamton. September 7, 2022. https://www.wbng.com/2022/09/08/residents-voice-concerns-over-housing-crisis-binghamton-city-hall/.

The Lack of Awareness of Sexual Assault in Uyghur Camps and Ukraine

Annette Resk

Russian history is no stranger to the concept of sexual violence as a weapon of war. Since the collapse of the Soviet Union in 1991, Russia has seen a culture increasingly normalizing sexual violence and hostility toward women. The ongoing Russian invasion of Ukraine is no exception to this trend. In fact, in October 2022, a United Nations (U.N.) representative confirmed that rape is a deliberate tactic being utilized by the Russian military to dehumanize victims (Ochab, 2021). Specifically, they have targeted women and children as an attempt to force them into submission. It is impossible to argue the lack of intention with these crimes, which not only include the rape and captivity of women, men, and children, but genital mutilation as well. Additionally, Russian soldiers are supplied with Viagra, another sign that the rape is clearly a sanctioned military tactic (Ibid.). Sexual wars crimes are considered more heinous and inhumane because of the physical and mental harm, violations of human dignity, and the long lasting effects (Human Rights Watch, 2021). As a military strategy, sexual violence is used as an extreme intimidation tactic, intended not only to inflict individual harm but also send a message of dominance and terror to the oppressed. This can be seen in the allegations against the Chinese government of sexual crimes during their detainment of Uyghur Muslims, where sexual violence is being used systematically to terrorize women (Ibid.).

China's internment camps for Uyghurs are pervaded by a culture similar to Russia's; one of regular and systematized sexual abuse, as well as a patriarchial view of women as inferior to men. Since the establishment of these internment camps in 2016 by Chinese Communist Party (CCP) General Secretary Xi Jinping, the camps have culminated in an environment of rampant abuse of detainees. In 2019, a Kazakh woman from Xinjiang who was detained for 18 months reported to the BBC that she was forced to strip Uyghur women naked and handcuff them in a room alone for a Chinese officer (Hill, 2021).

It is well known that rape is one of the most consistently underreported crimes. In America, studies have shown that less than twenty percent of rapes of adult women are reported, and only 11 percent of children's assaults (Binder, 1981). This reflects a global culture that does not support victims and provides governments with ineffective systems for preventing sexual violence. This culture normalizes sexual assaultive behavior, to the degree that it becomes incredibly inhumane and cruel when employed as a sanctioned tactic by governments.

This is especially true in Russia and China, authoritarian countries that cultivate the regular dissemination of propaganda, and

a general ideology of silence and fear. The Chinese government has denied all allegations of sexual crimes and defended their actions in Xinjiang (Hill, 2021). In the Uyghur concentration camps, the scarce interviews that have been able to be conducted have confirmed that detainees fear speaking out because of the repercussions they may face. Tursunay Ziawudun, who fled Xinjiang, reported that she had been gang raped and tortured on multiple occasions in the internment camp. Ziawudun said she feared speaking out about her experience because she thought that, should she be forced to return to the camp, she would be more harshly punished and because she felt ashamed (Ibid.).

Ukrainian victims have echoed similar sentiments. A U.N. commission tasked with investigating Russian war crimes reported that a significant amount of rape victims declined to be interviewed out of fear and shame, with some even considering suicide following their abuse (Ochab, 2022). In fact, a Ukrainian psychologist claimed that "all victims with whom I am working are blaming themselves for being spotted by perpetrators and being raped" (Macias, 2022).

The scarce anecdotal evidence that has been acquired from both Ukrainian and Uyghurs victims is telling. News media outlets have failed to successfully raise awareness of these atrocities in ways that can hold the guilty parties accountable. The victims of these crimes fail to receive any support to deal with the long lasting effects of sexual war crimes, and their human rights are at risk to be violated continuously. Despite having the most grave consequences, awareness of sexual assault crimes receives the least amount of attention, and therefore can continue to occur. Greater efforts are needed from the media to support victims by exposing what exactly is being experienced daily for those who fear speaking out for themselves. In doing so, better recommendations can be made to prevent sexual assault war crimes in the future.

CITATIONS

Binder, Renee L. “Why women don’t report sexual assault.” The Journal of clinical psychiatry (1981).

“‘Break Their Lineage, Break Their Roots’ China’s Crimes against Humanity Targeting Uyghurs and Other Turkic Muslims.” Human Rights Watch, April 20, 2021. https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting.

“Independent International Commission of Inquiry on Ukraine.” OHCHR, October 18, 2022. https://www.ohchr.org/en/hr-bodies/hrc/iicihr-ukraine/index.

Kimble, Cameron. “Sexual Assault Remains Dramatically Underreported.” Brennan Center for Justice. Accessed March 12, 2023. https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported.

Klein, Shayla. “Rape Is One of the Most Underreported Crimes-Here’s Why.” WVNS. WVNS, August 3, 2022. https://www.wvnstv.com/news/rape-is-one-of-the-most-underreported-crimes-heres-why/.

Macias, Amanda. “UN Report Details Horrifying Ukrainian Accounts of Rape, Torture and Executions by Russian Troops.” CNBC. CNBC, October 29, 2022. https://www.cnbc.com/2022/10/28/russia-ukraine-war-un-report-details-accounts-of-rape-torture-and-executions.html.

Matthew Hill, David Campanale and Joel Gunter. “‘Their Goal Is to Destroy Everyone’: Uighur Camp Detainees Allege Systematic Rape.” BBC News. BBC, February 2, 2021. https://www.bbc.com/news/world-asia-china-55794071.

Ochab, Dr. Ewelina U. “United Nations: Rape Is Part of Russia’s Military Strategy.” Forbes. Forbes Magazine, October 14, 2022. https://www.forbes.com/sites/ewelinaochab/2022/10/14/united-nations-rape-is-part-of-russias-military-strategy/.

Effects of Legal Actors in Water Governance of the Philippines

Ashleigh Requijo

Approaching water accessibility-related issues in the Philippines in order to resolve them is difficult. It requires critical assessment of current initiatives, and a need to center community needs on behalf of the affected residents. This evaluation often exposes ineffective measures that must be counteracted through reforming, or even repealing, previous laws. Contemporary water initiatives taken on by the Philippine government and its effects on marine life as well as women and girls will be discussed and presented through three specific dimensions: water law, water policy, and water administration.

The global installation of proper water and sanitation services could transform the environment as well as the lives of billions of people, particularly women and girls. Having access to water within or nearby the home would reduce health risks, alleviate the time burden of water fetching, and help to relinquish harassment and sexual violence. Those responsible for determining the resources that should be implemented, as well as their location and maintenance, should consider the perspectives and opinions of local women within the community. The highlight of their voices within these conversations would not only benefit their households and community but create an environment prone to women's empowerment (Kayser et al. 2019, 439).

Women are also looked to for guidance and management over sanitation or hygiene practices, agriculture, and household chores (Ibid.). This emphasizes the importance of women's responsibility in terms of gender roles. Yet, categorizing such efforts as to whether a male or female should be performing them reflects certain social attitudes in the Philippines. This may be adverse to how we consider the significance of women as human beings. Proper, cohesive, and inclusive water governance policies and practices can transform women's inferiority in providing healthcare into one of empowerment and respect.

From an environmental approach, water policies in the Philippines have understated the importance of marine life throughout history. Recently, more legal documents have advocated for the protection of ocean life like coral reefs and regulating fisheries. According to the International Union for Conservation of Nature (IUCN), a marine protected area (MPA) is defined as "any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical, and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment" (Kelleher 1999, xi). Therefore, more MPAs are needed to promote ocean and coastal health for conservation and sustainability efforts. Recent studies have actually shown that Philippine-based MPAs are "generally

more effective when implemented within the context of an integrated coastal management (ICM) regime through the local government system in the country (Balgos, 2005; White et al., 2002; IUCN-WCPA 2008, 275). z

Conflicting data states varying numbers of MPAs in the Philippines, but there is consensus that this archipelago is home to the most MPAs in Southeast Asia (FPE, "Biodiversity Conservation Strategies"). One study approximates 1,100 MPAs are established in the Philippines, yet not all are as effective in aligning water law with sustainability efforts to protect fish, coral reef, and other forms of marine life (White et al., 2002; PhilReefs, 2008). In order to encapsulate conservation and sustainability efforts through other forms of water governance, the initiatives and opinions of local communities must be prioritized.

In the Philippines, access to water is prevented in various ways on multiple avenues. Locally, women and girls struggle with water-fetching responsibilities due to far distances as well as the physical impact on their bodies. They are also forced to resort to primitive, demeaning means for sanitation services, which place them at increased vulnerability to gendered violence. For women and girls, the struggle to access water or privacy becomes much more detrimental to their health. Lack of access to potable water places women at the forefront of gendered violence and unsafe, uninhabitable living conditions. Additionally, women who are pregnant struggle the most to reach facilities for water and sanitation practices (Sommer et al. 2015, 111).

A range of challenges are prevalent within various levels of water governance in the Philippines. At the core level, a large number of water agencies exist without cohesion nor connection; they do not connect vertically or horizontally (Rola et al., 2015). Having too many agencies in the system hurts the bureaucratic structure. What results are numerous legal documents to maintain that end up being a large source of confusion. The last obstacle would be the inadequate water data collection to assist in future infrastructure planning (Ibid.). Without accurate, centralized information on the placement and installation of water pumps or sanitation facilities, there cannot be any progression in sufficient water governance, much less internal development.

For middle-income countries like the Philippines, having separate agencies focused on providing different types of water services convolutes the entire system. Studies showcase a slower growth rate in improving water governance due to "broader national economic, social and political reforms happening in these countries" (Araral and Yu 2013, 5313). Whereas developed countries have the time and resources dedicated to refining such water systems, the Philippines is still an emergent nation. Results suggest that improved water governance in the Philippines comes from "more effective water apex bodies and decentralization to river basin organi-

zations" (5314).
This would look like collaborating with indigenous groups to spread access to water points even despite the intervention of ancestral lands for water being a controversial issue (Rola et al. 2015). Many local indigenous communities feel that their right to water is being infringed upon when authoritative governmental figures do not listen to their opinions or disregard their input. Water in these areas is typically used by women for ritual or sacred ceremoniesand is considered a precious resource (Table 1) . Yet, some solutions suggest that "there has to be a local initiative to clarify the water allocation in the area" (201). When there are multiple parties with clear disconnect between and within each individual entity, implementing action-oriented resolutions tends to take a backseat. Creating a policy that actively works toward dismantling structures that block access to basic resources is simply the first step in governmental service. Moreover, this policy can only be written when locals, indigenous peoples, religious groups and all other identity groups in the Philippines have been heard and acknowledged by policymakers. Implementing policy in a sustainable and equitable fashion commences the next half of this journey. Legal actors at both the national and local levels must function efficiently, effectively, and in cohesion so that the basic human right of access to water can be put into practice.

CITATIONS

Araral, Eduardo, and David J. Yu. "Comparative Water Law, Policies, and Administration in Asia: Evidence from 17 Countries." Water Resources Research 49, no. 9 (2013): 5307–16. https://doi.org/10.1002/wrcr.20414.

Coral Reef Information Network of the Philippines, University of the Philippines. Marine Science Institute, Samuel S. Mamauag, and Rhia Odessa M. Gonzales. Reefs Through Time: 2008 Initiating the State of the Coasts Reports. Diliman, Quezon City: Coral Reef Information Network of the Philippines (PhilReefs) and the Marine Science Institute, University of the Philippines, 2008.

Foundation for the Philippine Environment. "Biodiversity Conservation Strategies." Foundation for the Philippine Environment - Researches - Biodiversity Conservation Strategies - Marine Protected Areas. Accessed March 13, 2023. https://fpe.ph/biodiversity-conservation-strategies.html/view/marine-protected-areas/all/0#:~:text=MPAs%20in%20the%20Philippines,established%20by%20the%20local%20government.

Kayser, Georgia L, Namratha Rao, Rupa Jose, and Anita Raj. "Water, Sanitation and Hygiene: Measuring Gender Equality and Empowerment." Bulletin of the World Health Organization. U.S. National Library of Medicine, June 1, 2019. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6560376/pdf/BLT.18.223305.pdf/.

Kelleher, Graeme. "Guidelines for Marine Protected Areas." World Commission on Protected Areas (WCPA), 1999. https://doi.org/10.2305/iucn.ch.1999.pag.3.en.

Lowry, G. K., A. T. White, and P. Christie. "Scaling up to Networks of Marine Protected Areas in the Philippines: Biophysical, Legal, Institutional, and Social Considerations." Coastal Management 37, no. 3-4 (2009): 274–90. https://doi.org/10.1080/08920750902851146.

Salamanca, Albert, Alan T White, and Catherine A Courtney. "Experience with Marine Protected Area Planning and Management in the Philippines," January 2002. https://www.researchgate.net/publication/248988030_Experience_with_Marine_Protected_Area_Planning_and_Management_in_the_Philippines.

Government Propaganda in Military Films

Olivia Caldwell

The United States (US) military film Zero Dark Thirty begins with an interrogation room located at a Central Intelligence Agency (CIA) black site: a secret prison used to interrogate subjects for the purpose of obtaining intelligence. A prisoner named Ammar is tied up by his wrists, beaten, pushed to the ground, and waterboarded. He is tortured and humiliated for the extraction of information surrounding the September 11 attacks, and subjected to inhumane treatment under intense interrogation techniques. The film is supposed to represent a connection between the torture of one person and the locating and capturing of Osama Bin Laden. The information presented about the prisoner Ammar is based on the real story of detainee Ammar Al-Baluchi, one of five men facing the death penalty for plotting the 2001 terror attacks in the US. He was captured in 2003 and spent more than three years in CIA custody, moving between multiple black sites and enduring many forms of torture: human experimentation, standing sleep deprivation, waterboarding, sexual mistreatment, and physical abuse which led to brain damage (Ackerman, 2022). He was transferred to Guantanamo Bay in 2006 and has been held in a pretrial process since 2012 (NYTimes, 2021). To accurately portray the torture scene, the filmmakers worked closely with the CIA and were provided classified information about Ammar's treatment. The CIA released information about Ammar's case to these filmmakers while denying the same information to Ammar's defense team under the state's secret privilege. Established by United States v. Reynolds (1953), it gives the executive department power to withhold any documents from judicial view but release the same information to the public through their involvement in films if they deem it to be in the public interest. This involvement in turn acts as propaganda by allowing the government to shape the conversation to fit its narrative. By denying lawyers the same classified information that is released to the public, the government tries to avoid legal accountability and block certain procedural actions for lawyers.

Ammar Al-Baluchi's case is an example of this abuse of power. The government is abusing the discovery process at Guantanamo by limiting defense teams' right to certain evidence on their clients while releasing classified information to the public. Releasing this information to filmmakers and then the public takes away Ammar's chance to obtain a fair trial and get off death row. His lawyers argue that they cannot adequately represent their client if the government will not disclose what happened to him in the black sites before he was transferred to Guantanamo. Since he was tortured, the death penalty would be

nullified if the information was brought to his case.

The state's secrets privilege is afforded to the executive department by the use of "Rule 34", which compels production only of matters "not privileged". The term "not privileged" refers to "privileges" as that term is understood in the law of evidence (U.S. Supreme Court, 1953). Privileges established in the law of evidence are, for example, the revealing of military secrets. The release of privileged information is determined by the courts, deciding whether "invoking the privilege is appropriate, and yet if the release can be done without jeopardizing the security which the privilege was meant to protect" (U.S. Supreme Court, 1953). According to US v Reynolds, the government has the right to withhold information that would cause harm to national security and the opinions of the public even if the defense team deems the information as vital to the plaintiff's case. This leaves the defense team with a limited course of action without the necessary information. However, If the information is already released to the public, then the argument for secrecy to protect national security has no traction. The government's involvement in films is inconsistent with the rationale for their denial of certain information from the defense, demonstrating the CIA's abuse of power over the legal process.

Ammar Al-Baluchi continues to be denied a fair trial as the CIA claims states' secret privilege and blocks vital information regarding his torture from his defense team. But the CIA did cooperate with Kathryn Bigelow and Mark Boal, the directors and producers of Zero Dark Thirty. The CIA gave classified information about Ammar's torture to the filmmakers, hinging the film on the idea that torture produced the information that led to Osama Bin Laden. That logic, that torture of certain individuals produced Bin Laden's location, seems to legitimate the treatment in the opening scene by reducing torture as a means to an end. The Convention Against Torture specifically prohibits torture in any circumstance whatsoever. By giving away the classified information about Ammar's treatment to filmmakers, the CIA proved their involvement in torture and thus disregard for the law.

The US federal government uses both legal and cultural tools to promote its aims and to manipulate the public. Legally, the government uses procedural abuses of the military commissions and constantly changes the rules of the discovery process during pre-trial preparation. Culturally, the government influences films to impact public opinion about what they refuse to admit, and what they block procedurally from defense lawyers. The documentary Theaters of War exposes the US military's editorial control over thousands of Hollywood films and television programs (Stahl, 2010). The film details how the CIA has pushed official narratives while "systematically scrubbing scripts of war crimes, corruption, racism, sexual assault, coups,

assassinations, and torture" (Idib.). In order to tailor the film industry to serve the narratives of the US military, the CIA deploys major input, including pervasive censorship and rewriting, in every film made with their cooperation (Idib.). The government's propaganda efforts are so extensive that any film requesting military cooperation must be rescripted and fit the official CIA-approved course of events. The state's secrets privilege grants the CIA unlimited power to abuse and manipulate defense teams and the public. By claiming state's secrets privilege the government abuses its responsibility for fair trials and corrupts the public's opinion on controversial topics. As a final observation, propaganda is being spread with the use of this law, ultimately using a principle of protection for gain of control.

CITATIONS

Ackerman, Spencer. “Report of the CIA Inspector General Regarding Allegations of Torture Made by Ammar Al-Baluchi.” Report of the CIA Inspector General Regarding Allegations of Torture Made by Ammar al-Baluchi. Forever Wars, Forever Wars. March 14, 2022. https://foreverwars.substack.com/p/cia-inspector-general-torture-report?s=r.

Congress.gov. “Treaty Document 100-20 - CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.” February 26, 2023. https://www.congress.gov/treaty-document/100th-congress/20.

Hamilton, Johanna, Charlotte Cook, Jacqueline Edenbrow, Laura Poitras, and Charlie Phillips. “The Trial: Inside Guantánamo with 9/11 Suspect Ammar Al-Baluchi – Video.” The Guardian. Guardian News and Media, February 22, 2019. https://www.theguardian.com/law/video/2019/feb/22/the-trial-inside-guantanamo-with-911-suspect-ammar-al-baluchi-video.

Human Rights Council, Working Group on Arbitrary Detention, Opinions Adopted by the Working Group on Arbitrary Detention at its Eighteenth Session, 20-24 November 2017, United Nations General Assembly, United Nations, January 24, 2018 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/85/PDF/G1801785.pdf?OpenElement

Pradhan, Alka. “Thread: We Recently Filed a Motion to Compel a Medical Panel Eval for @Baluchigitmo. Ammar Was Horrifically Tortured at @CIA Black Sites for 3.5 Years,

Including Human Experimentation. in Support, We Filed @CIA’s 2008 Internal Audit on Ammar’s Torture:Https://T.co/LKvYxYhp8e.” Twitter. Twitter, March 15, 2022. https://twitter.com/PradhanAlka/status/1503752509684342790?s=20&t=VyCeoDE5XiDTrna7ZzZz0g.

The New York Times. “The Guantánamo Docket.” The New York Times. The New York Times, May 18, 2021. https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html.

Stahl, Roger. “Theaters of War: How the Pentagon and CIA Took Hollywood.” n.d. Go.mediaed.org. March 2, 2010. https://go.mediaed.org/theaters-of-war.

U.S. Supreme Court, “United States V. Reynolds, 345 U.S. 1 (1953).” Justia Law. Justia US Supreme Court, Decided March 9, 1953. https://supreme.justia.com/cases/federal/us/345/1/#tab-opinion-1940549.

PROUD BOYS COMMIT SEDITIOUS CONSPIRACY IN THE NAME OF PATRIOTISM AT THE JANUARY 6 CAPITOL RIOT

Alex Moon

On January 6, 2021, several thousand Americans congregated to riot on Capitol Hill in an attempt to prevent the certification of Electoral College vote. This event is regarded among the most large-scale cases of domestic civil violence in the history of the United States. The majority of participants were white, male, and politically right or far-right followers of former President Donald Trump, who, despite committing legal violations against democracy, have largely stated they were motivated by "patriotic duty"; they believed that their actions were to "preserve [democratic institutions] in the face of imminent threat" (Pape, 2022). On June 6, 2022, the court of the District of Columbia returned an indictment charging Proud Boy members Ethan Nordean, Joseph Biggs, Zachary Rehl, Enrique Tarrio, and Dominic Pezzola with a total of nine counts each (ten in Pezzola's case) for their actions on or shortly before January 6, 2021. Trump played an instrumental role in the development and spread of election mis- and disinformation leading up to Janaury 6, 2021. The legal implications of Trump's statements will be explained in conjunction with the indictment of the five Proud Boys.

The most significant and severe charge the defendants face is a count of seditious conspiracy, or a violation of 18 U.S. Code §2384, which prohibits the intentional act of planning to "oppose by force the authority of the Government of the United States" and to "prevent, hinder, and delay the execution of any law of the United States". This code was originally passed on June 25, 1948, as a finalized version of the conspiracy acts that were enacted during the Civil War to prevent anti-government resistance by Southern citizens (Richer and Whitehurst, 2023). The code was amended in 1956 and 1994 to increase the severity of punishment for violation–the maximum fine was raised $5,000 to $20,000, and the maximum sentencing years was raised from six to twenty (18 U.S.C. §2384).

The Capitol insurrection interfered with the execution of 3 U.S. Code §15, the process of counting electoral votes in Congress to declare the victor of the presidential election (U.S.A. v. Nordean et. al, 2022). Yet, the participants' stated purpose, in consensus, was to serve their duty as patriots by preventing what they believed was a stolen election (Pape, 2022). Their belief in this false notion was heavily influenced by former President Donald Trump's proclamations following the results of the 2020 presidential election. On November 13, 2020, Trump posted a Tweet stating that the "Election was rigged, from Dominion all the way up & down!" among other tweets encouraging and praising the political gatherings of his followers in Washington D.C. prior to January 6 (Sanderson et. al, 2021). Trump's allusion to the "Domin-

ion," which is defined as the sovereign or controlling power and presumably refers to the U.S federal government, created a scapegoat for his supporters to direct their frustration.

Trump gave a speech at the "Stop the Steal" protest on January 6, 2021, in which he repeatedly emphasized the election "theft" and effectively catalyzed the subsequent riot at the Capitol. At the conclusion of his speech he declared, "We fight like hell. And if you don't fight like hell, you're not going to have a country anymore" (Naylor, 2021). Prosecutors have compiled evidence against Trump which indicates that he committed multiple violations, including the obstruction of an official proceeding, or a violation of 18 U.S.C. §1512 (Alschuler, 2022). The code states, "[w] hoever corruptly [...] obstructs, influences, or impedes any official proceeding," shall be fined and/or imprisoned up to 20 years (18 U.S.C. §1512).

The Proud Boys, a far-right militia group founded by Gavin McInnes in 2016, are self-proclaimed "Western chauvinists who refuse to apologize for creating the modern world" (U.S.A. v. Nordean et. al, 2022). They have demonstrated unwavering support for Donald Trump since their inception, and Trump has recognized their loyalty. During the first presidential candidate debate of 2020, when asked to denounce white supremacist and militia groups, Trump told the Proud Boys to "stand back and stand by" (Obeidallah, 2020). Jeremy Bertino, leader of a North Carolina chapter of the Proud Boys, testified in a public hearing by the Jan. 6 select committee. When asked if membership increased after Trump's statement he responded, "Exponentially. I'd say tripled probably" (Jan. 6 Committee Hearing, 2022).

The "Stop the Steal" narrative became central to their mobilization leading up to January 6, 2021 (Kriner and Lewis 33, 2021). On December 20, 2020, Enrique Tarrio, who was the national chairman of the Proud Boys, created an encrypted message group known as the Ministry of Self Defense, or MOSD, in order for Proud Boy leaders to communicate plans regarding January 6. Nine days later, Tarrio posted a message relaying the Proud Boys' intent to "turn out in record numbers on Jan 6th" not wearing their "traditional Black and Yellow" colors to be "incognito" (U.S.A. v. Nordean et. al, 2022). Ethan Nordean and Zachary Rehl, who were both presidents of their respective local chapters, created crowdfunding campaigns to cover expenses for "protective gear and communications" and traveling to participate in the riot on January 6 (U.S.A. v. Nordean et. al, 2022). These methods and means, among others, contributed to their indictment of seditious conspiracy.

The Proud Boy defendants' use of patriotic language and rhetoric contradicted the implications of their crimes, which included one of the most heinous acts a citizen can commit against their country. This discrepancy can be attributed to Donald Trump's intentional misconstruction of facts sur-

rounding the 2020 presidential elections results and his encouragement of the Proud Boys, who have openly demonstrated hateful ideologies.

CITATIONS

"18 U.S. Code § 1512 - Tampering with a witness, victim, or an informant. Legal Information Institute, October 12, 1982. https://www.law.cornell.edu/uscode/text/18/1512

"18 U.S. Code § 2384 - Seditious Conspiracy." Legal Information Institute, June 25, 1948. https://www.law.cornell.edu/uscode/text/18/2384.

Alschuler, Albert W. "Trump and the Insurrection Act: The Legal Framework." Just Security, August 16, 2022. https://www.justsecurity.org/82696/trump-and-the-insurrection-act-the-true-legal-framework/.

"Here's Every Word of the First Jan. 6 Committee Hearing on Its Investigation." NPR, June 10, 2022. https://www.npr.org/2022/06/10/1104156949/jan-6-committee-hearing-transcript.

Grigoriadis, Vanessa. "The Edge of Hip: Vice, the Brand." The New York Times, September 28, 2003. https://www.nytimes.com/2003/09/28/style/the-edge-of-hip-vice-the-brand.html.

Kriner, Matthew, and Jon Lewis. "Pride & Prejudice: The Violent Evolution of the Proud Boys." Combating Terrorism Center at West Point 14, no. 6 (2021): 26–38. https://ctc.westpoint.edu/pride-prejudice-the-violent-evolution-of-the-proud-boys/.

Naylor, Brian. "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial." NPR, February 10, 2021. https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial.

Obeidallah, Dean. "Trump's Proud Boys 'Stand Back and Stand by' Debate Moment Was More than a Dog Whistle." NBCNews, September 30, 2020. https://www.nbcnews.com/think/opinion/trump-s-proud-boys-stand-back-stand-debate-moment-was-ncna1241570.

Pape, Robert. "Patriotic Counter-Revolution": The Political Mindset That Stormed The Capitol." Chicago, Chicago Project on Security & Threats, 2022. https://cpost.uchicago.edu/publications/patriotic_counter_revolution_the_political_mindset_that_stormed_the_capitol/.

Richer, Alana Durkin, and Lindsay Whitehurst. "Explainer: The Seditious-Conspiracy Charges in Jan. 6 Trial." EXPLAINER: The seditious-conspiracy charges in Jan. 6 trial. The Associated Press, January 20, 2023. https://www.mtsu.edu/first-amendment/post/3753/explainer-the-seditious-conspiracy-charges-in-jan-6-trial#:~:text=The%20seditious%2Dconspiracy%20law%20was,an%20alleged%20plot%20is%20unsuccessful.

Sanderson, Zeve, Megan A. Brown, Richard Bonneau, Jonathan Nagler, and Josh-

ua A. Tucker. “Twitter Flagged Donald Trump’s Tweets with Election Misinformation: They Continued to Spread Both on and off the Platform.”: HKS Misinformation Review, August 24, 2021. https://misinforeview.hks.harvard.edu/article/twitter-flagged-donald-trumps-tweets-with-election-misinformation-they-continued-to-spread-both-on-and-off-the-platform/.

United States of America v. Ethan Nordean, Joseph Biggs, Zachary Rehl, Enrique Tarrio, Dominic Pezzola. Court for the District of Columbia, June 6, 2022. https://www.justice.gov/usao-dc/press-release/file/1510791/download

Should The Capitol Hill Rioters Receive Harsher Sentences?

Rhu Zheng

On January 6, 2021, over two thousand people stormed Capitol Hill in an attempt to obstruct the certification of the Electoral College votes by the United States (US) Congress. Commonly referred to as "the insurrection," political figures and media outlets have labeled this event a threat to American democracy. As of March 25, 2023, 1,000 insurrectionists have been charged with crimes (Anderson and McMillan, 2023). Out of these, approximately half were charged with misdemeanors with an average jail time of 48 days (Jackman and Hsu, 2023). These light charges and sentences significantly contrast with the severity of the event, which had the collective goal of obstructing Congress from certifying the Electoral College vote for the 2020 Presidential Election.

18 U.S.C.A. § 2384 criminalizes conspiracy by two or more persons to "overthrow, put down, or to destroy by force the Government of the United States" or "to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States" (U.S. Congress, 2000). This code was first established in 1948, with amendments made in 1956 and 1994 regarding the intensity of the punishments for the crime. Originally, the punishment by law was a fine of $5,000 or imprisonment for six years. This was later substituted for "fined under this title" and twenty years imprisonment with the amendments. Additionally, 18 U.S.C.A. § 2384 prohibits the seizure of U.S. property without permission. By this, government property cannot be seized by people with the intent to overthrow the U.S. government. This law is straightforward in its language, outlining the specific actions that pertain to seditious conspiracy.

The January 6th insurrection contained actions that were in violation of 18 U.S.C.A. §2384. The event was planned on a large scale by members of the far right, which included former US president Donald Trump, primarily on social media. Prior to the insurrection itself, Trump and his supporters delegitimized the U.S. electoral system through misinformation about the 2020 election (Anderson and McMillan, 2023). On January 6th, the insurrectionists stormed Capitol Hill and broke into the building. These actions violated the portion of the code prohibiting the seizure of U.S. property by people. However, out of the 970 insurrectionists charged in federal court, only ten were charged with seditious conspiracy. Although the insurrection as a whole violated this code, the sedition charge appears to be applied more specifically in practice.

All insurrectionists charged with seditious conspiracy were part of the far-right militia group the Oath Keepers. According to the Department of Justice

Office of Public Affairs, the Oath Keepers members coordinated with each other to travel to the Capitol on January 6, 2021 to forcefully oppose the certification of the electoral college vote (2023). Their plot involved preparation and organization to use violent force on Capitol grounds and within the Capitol building. This extensive preparation and organization seems to be the defining factor in whether a group of people violates 18 U.S.C.A. § 2384. Other insurrectionists also collaborated in plans to storm the Capitol, such as Francis Connor, Antonio Ferrigno, and Anton Lunyk from Brooklyn, New York (United States of America v. Francis Connor, Antonio Ferrigno Jr., 2021). However, they did not receive the seditious conspiracy charge. Instead, their charges relate to trespassing Capitol grounds, and Anton Lunyk had an added charge of violent entry. Their FBI files indicate plans to oppose the electoral college certification and incitements of violence. Notably, Francis Connor texted to a group chat including the other two insurrectionists: "Our end goal was to brutally murder Pence and Pelosi" (Idib.). The three men were not reported to have had weapons on Capitol grounds. In addition, they were not part of a defined organization, unlike the Oath Keepers members.

18 U.S. Code 2384 does not state that conspiracy only applies to organizations — it simply states "two or more persons." So why is it that the January 6th insurrectionists received light charges? The majority of misdemeanor charges were trespassing-related, such as 18 U.S. Code 1752, which criminalizes trespassing and disorderly conduct in restricted buildings. These charges are easy to apply, as insurrectionists can be identified through Capitol security footage. On the other hand, serious charges such as seditious conspiracy are more difficult to prosecute, due to the difficulty to prove wrongdoing and intent. According to criminologists and legal academics, seditious conspiracy is also a difficult concept for juries to grasp, despite its broad definition (Richer and Whitehurst, 2022). Juries, as members of the public, often think of seditious conspiracy as conspiring to overthrow the government itself, and thus less organized and violent plots may not align with their vision. As a result, organizations that showed thorough intent and conspiracy to hinder the certification of the Electoral College votes on January 6, 2021 were charged and sentenced with serious charges such as seditious conspiracy, while less organized efforts, even those with similar intent, were charged and sentenced with less punitive sentences.

CITATIONS

Anderson, Meg, and Nick McMillan. "1,000 People Have Been Charged for the Capitol Riot. Here's Where Their Cases Stand." NPR. NPR, March 25, 2023. https://www.npr.org/2023/03/25/1165022885/1000-defendants-january-6-capitol-riot.

Jackman, Tom, and Spencer S. Hsu. "Review of Jan. 6 Cases Finds Judges Give Harsh Lectures, Lighter Sentences." The Washington Post. WP Company, January 17, 2023. https://www.washingtonpost.com/dc-md-va/2023/01/06/jan6-capitol-riot-sentencings/.

U.S. Congress. "18 USC 2384: Seditious Conspiracy." United States Code. U.S. House of Representatives, January 23, 2000. https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-1999-title18-section2384&num=0&edition=1999.

Office of Public Affairs. "Six Additional Oath Keepers Members and Affiliates Found Guilty of Charges Related to Capitol Breach." The United States Department of Justice. U.S. Department of Justice, March 21, 2023. https://www.justice.gov/opa/pr/six-additional-oath-keepers-members-and-affiliates-found-guilty-charges-related-capitol.

United States of America v. Francis Connor, Antonio Ferrigno Jr. (Justice.gov August 27, 2021).

United States of America v. Francis Connor, Case 1:21-cr-00586-RCThe United States Attorney's Office District of Columbia (United States Department of Justice 2022).

18 U.S. Code, 18 U.S.C.A. § 1752 (West) § (2018).

Richer, Alanna Durkin, and Lindsay Whitehurst. "EXPLAINER: Rare Sedition Charge at Center of Jan. 6 Trial." AP NEWS. Associated Press, September 28, 2022. https://apnews.com/article/what-does-sedition-charge-mean-3aa820dda5f501dd874c4dd6d60ca1ce.

The Shift from Legal to Illegal on January 6th, 2021

Sara Parkhurst

Terrorism is often associated with a foreign threat. However, on January 6th, 2021, the United States (US) witnessed an internal assault, a betrayal by its own citizens on not only the Capitol but democracy as a whole.

Was it a riot, a protest, an attack, or an insurrection? In a speech on January 6th's anniversary, US President Joseph Biden referred to the events as an "armed insurrection" ("Remarks By President Biden", 2022), whereas many of the rioters consider themselves "patriots" fighting for democracy. A review of the legal context of the events of January 6th elucidates that there is a clear divide between a political, peaceful demonstration protected by the Constitution and the rioters' deconstruction of American democratic values.

In order to preserve and protect a democratic society there must be the ability to revolt, and cause upheaval. After analyzing participants' motives and statements, Dr. Robert Pape's research group from the University of Chicago concluded that the majority fell under the mindset of "Patriotic Counter-Revolutionary" where they attacked the government through violent means as a way to preserve the institutions (Pape 2022, 5). However, officials can categorize these actions under anti-government sentiment considering out of the 114 charged individuals Pape's team investigated, only 5% accept Biden as the current and legitimate president, and out of 398 charged individuals with stated motives, 38% announced anti-government action and 41% believed it was their patriotic duty (7, 16). Overall, since the election was not tampered with, they were assaulting democracy and hindering "constitutionally mandated duties" (3).

Both the U.S. Constitution and the federal legal code have provisions that apply to January 6th. The Constitution's First Amendment protects "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (U.S. Const., amend. 1). This Amendment solidifies the right to gather a group for a common cause to protest peaceably. The Amendment does not grant the right to demonstrate on private property, invade governmental facilities, or harm persons or property. The boundary between legal and illegal was quickly crossed that day. Transitioning away from a protest, the rioters opened themselves up to legal consequences. Relevantly, 18 U.S.C 1752 outlines that it is illegal to enter restricted government areas and buildings without permission, specifically with the additional intent to impede government processes, and it is unlawful to engage in violence on the property. Therefore, when rioters, such as Proud Boy Dominic Pezzola, began breaking windows with a police shield to enter the building or Richard Barnett, who

was charged with a federal crime, occupied Nancy Pelosi's office, there became a clear distinction in the illegality of their actions (Jeppesen 145, 149). A significant basis for the consequences they faced was the fact that they were not allowed to be there in the first place.

Additionally, the word "peaceful" in the First Amendment restricts the right to petition. If violence is present or police or militant forces are justifiably deployed to contain aggression, a protest is not peaceful. The terminology regarding protesting and what classifies a demonstration as nonviolent is intentional to allow law enforcement to respond on their own accord. The insurrectionists were not allowed to harass law enforcement to enter the building. The rioters brought blunt objects as weapons, harassed and attacked police officers, and destroyed the Capitol's external and internal property (Jeppesen 2022, 147). Many protestors engaged in physical altercations with police officers for as long as 2-6 hours, injuring around 140 officers, and one even deployed bear spray on Officer Brian Sicknick, leading to his death (Ibid.).

Since the insurrectionists crossed the barrier into an assault on the Capitol, the US had to investigate the preconditions and causes to assess the legal consequences. For instance, relevant sections of United States Code 2385 state that whoever knowingly or willfully advocates or teaches the duty, necessity, or desirability of overthrowing or destroying the government of the United States on printed, written, or distributed media will be fined or imprisoned a maximum of twenty years, or both, and be ineligible for employment by the United States for the five years following conviction (18 U.S.C. § 2385). This code's language demonstrates a complex standard on how to regard Republican leaders and their influence on January 6th. Were they acting within their political scope, or were they advocates for breaking US law?

Considering many were acting due to Donald Trump's promotion of an illegitimate election, the most significant provocateur to evaluate is the former President. Specifically, I highlight the phrase "teaching the duty, necessity… to overthrow" (Ibid.) This code sanctions that the promotion of overthrowing the government is illegal, as well as the act of doing so. If one creates or promotes a narrative in which a group falsely believes there are grounds to overthrow the government, it would be considered a code violation. Furthermore, I draw on "publicly displays any written or printed matter" (Ibid.). This condition embodies public social media. For example, if one were to post something provoking a revolt on their public account on a platform without user restrictions, that would violate this code. The violation consequences are additionally significant: fine or imprisonment and "shall be ineligible for employment by the United States or any department or agency thereof, for the five years next" (Ibid.) Here there is an implication that any politician or government official

who promotes, draws attention to, or rallies a revolt would be removed from their position and prevented from regaining their role until five years. Trump, as president, rallied his supporters to Washington, D.C, on the public social media platform Twitter. He told his audience to gather at the Capitol for the #stopthesteal movement, to which he tweeted it "will be wild" (Dreisbach, 2023). During his "Save America" speech, he told them to show strength at the Capitol and "fight like hell" (Jeppesen 2022, 142). If Trump is held to the standard of this code, since he informed the public about the driving fallacies, promoted the revolutionary ideology, and essentially planned it via Twitter, he would not be allowed to run for re-election in 2024, for it only would have been four years.

Valuing the words of Donald Trump over the integrity of the United States government, rioters demonstrated a historical display of how misinformation can create unintentional criminals. Undoubtedly, January 6th was an illegal act of violence.

CITATIONS

Dreisbach, Tom. "How Trump's 'will be wild!' tweet drew rioters to the Capitol on Jan. 6." NPR. Last modified July 13, 2022. Accessed February 13, 2023. https://www.npr.org/2022/07/13/1111341161/how-trumps-will-be-wild-tweet-drew-rioters-to-the-capitol-on-jan-6.

Crimes and Criminal Procedures, 18 U.S.C. § 2385 (July 24, 1956). https://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter115&edition=prelim#:~:text=%C2%A72385.,Advocating%20overthrow%20of%20Government&text=the%20purposes%20thereof%E2%80%94-,Shall%20be%20fined%20under%20this%20title%20or%20imprisoned%20not%20more,years%20next%20following%20his%20conviction.

Jeppesen, Sandra. Performance Crime and Self-Surveillant Subjects in the Capitol Riots. The Capitol Riots. Routledge, 2022. https://doi.org/10.4324/9781003246862-11.

Pape, Robert A. Patriotic Counter-Revolution: The Political Mindset that Stormed the Capitol. Chicago, IL: Chicago Project on Security and Threats, 2022. Accessed October 18, 2022. https://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/Pape_-_Political_Mindset_that_Stormed_the_Capitol_(2022-04-11).pdf?mtime=1645487.

"Remarks By President Biden To Mark One Year Since The January 6th Deadly Assault On The U.S. Capitol." Speech presented at South Court Auditorium, Eisenhower Executive Office Building, Washington D.C., January 6, 2022. The White House. https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/06/remarks-by-president-biden-to-mark-one-year-since-the-january-6th-deadly-assault-on-the-u-s-capitol/.

Restricting Building or Grounds, 18 U.S. Code § 1752 (January 2, 1971). https://www.law.cornell.edu/uscode/text/18/1752

U.S. Const. amend. I. https://constitution.congress.gov/constitution/amendment-1/.

Abortion Rights: Beyond the US Constitution

Abigail Connors

Texas Federal Judge Matthew Kacsmaryk recently attempted to strip women across the United States (US) of their right to medicated abortions. In the recent case, Alliance for Hippocratic Medicine v US Food and Drug Administration, religious groups sought to outlaw Mifepristone, one of two medications that comprise the most widespread abortion pill available in the US today (Johnson, 2023). Kacsmaryk decided to abrogate the Food and Drug Administration's approval of Mifepristone, almost impeding US women from using the abortion pill to terminate their pregnancies safely and easily. However, as of April 2023, the US Supreme Court has temporarily blocked his motion (Vogue and Sneed, 2023).

The US legal system typically frames abortion rights in relation to the US Constitution, often under the 14th amendment, which protects the right to privacy. The Constitution and several amendments further protect the rights to liberty, equal protection under the law, and freedom from discrimination—rights that abortion restrictions violate (Center for Reproductive Rights 2022, 2). However, these basic rights are not defined explicitly in the Constitution, and thus judges have often ruled that denying abortion does not infringe on them (Dobbs v Jackson). Judges often fail to recognize that barriers to abortion accessibility also constitute violations of women's human rights—their most fundamental rights—internationally. Numerous human rights treaties constructed by the United Nations (UN) and ratified by many diverse countries protect abortion rights (Wnukowska-Mtonga 2021).

In the broadest sense, the UN's most comprehensive human rights document, the Universal Declaration of Human Rights (UDHR), protects the right to an abortion, albeit ambiguously, via the right to privacy. Article 12 states, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence" (UDHR). Essentially, all individuals have the right to reach decisions about their families independent of outside interference. One can rationally infer that this includes interference from governments and court personnel. Family size is a critical decision with financial, domestic labor, and emotional ramifications, and abortion access is necessary to provide complete agency over it.

More specifically, article sixteen of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) expands on the right to private family-related decision-making first identified in the UDHR by supplying further details as to what family decisions entail: they include women deciding "freely and responsibly on the number and spacing of their children and [. . . having] access

to the information, education and means to enable them to exercise these rights" (CEDAW). Access to abortion is a critical component of this right, without which family size could become impossible to regulate.

Like the UDHR, the International Covenant on Civil and Political Rights (ICCPR) is a treaty that rather ambiguously protects the right to safe abortion access, this time through its protection of the right to life, detailed in article six (ICCPR). Forced pregnancies are often fatally dangerous for pregnant women, and they can therefore deny them their right to life. While some may argue that this article's language substantiates banning abortions, or at minimum, severely regulating them to protect the fetus' life, this line of reasoning implies that a fetus' life holds more value than a living woman's. The ICCPR supports the right to life, and in some pregnancies, a choice needs to be made between the life of the mother or the fetus. In these cases, it would be unreasonable to contend that the fetus' life should be prioritized (Blackshaw and Rodger 2021, 6).

Moreover, UN General Comment 36 to the ICCPR, crafted by the UN Human Rights Committee, explains how nations should incorporate Article 6 into their law, and in doing so, affirms that the article's phrasing defends easy abortion access. It specifies that countries "may not regulate pregnancy or abortion [. . .] in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortions [. . . They] should not [apply] criminal sanctions to women and girls who undergo abortion or to medical service providers who assist them." (Human Rights Committee). The UN confirms that in order to protect women's human right to life, abortion must be safely accessible. This is not merely theoretical; the committee has ruled that an Ireland law banning abortion violated article six of the ICCPR (Wnukowska-Mtonga 2021, 16).

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides a foundation for abortion rights through article 12, which, unlike the broad rights discussed under the UDHR and ICCPR, affirms the somewhat narrower right to the highest quality of physical and mental health (ICESCR). General Comment 22, written by the Committee on Economic, Social, and Cultural Rights, interprets this right to health, determining that it unequivocally encompasses the right to safe abortions. The comment explicates what access to reproductive healthcare comprises: "States should aim to ensure universal access without discrimination for all individuals [. . .] to a full range of quality sexual and reproductive health care, including [. . .] safe abortion care" (Committee on Economic, Social, and Cultural Rights). The Committee's interpretation of this article protects abortion access as an integral part of the human right to health.

The Convention on the Rights of the Child and Convention of the Rights of Disabled Persons ensures these same rights to health

for children (URC) and disabled individuals (CRDP), safeguarding abortion rights for them in the process.

Certain human rights treaties take these somewhat-narrow abortion protections and build upon them with more-specific wording, making them more robust. For example, CEDAW upholds abortion rights in article twelve, which asserts that women must have equal access to healthcare services (CEDAW)—a more-specific variation of the ICESCR's protection of high-quality health. Abortion restrictions block equal access to healthcare in that they disproportionately restrict reproductive healthcare access for lower-income and Black women, who often do not have access to the travel necessary to receive abortions in jurisdictions where they are legal, violating CEDAW's provisions. The Committee on the Elimination of Discrimination Against Women, responsible for enforcing CEDAW, confirmed this conclusion that it is discriminatory for a government to refuse women particular reproductive healthcare services (Wnukowska-Mtonga 2021, 7). For these same reasons, the Convention on the Elimination of Racial Discrimination, which prohibits racial discrimination in healthcare services, also conserves abortion access; a lack of abortion access results in unequal, discriminatory access to healthcare (CERD).

In L.C. v. Peru, a thirteen-year-old girl in Peru who was denied an abortion despite the risk that her pregnancy posed to her physical and mental health brought her case to the CEDAW committee, whose ruling required Peru to expand its constrictive abortion laws (Wnukowska-Mtonga 2021, 14). Here again, is a specific ruling that makes the theoretical concrete.

Similarly, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Punishment (CAT) further defends safe abortion access. In their Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN's Human Rights Committee evaluated how the convention's definitions for torture and ill-treatment can apply to events experienced by girls and women. The committee determined that banning safe abortion access can amount to torture or ill-treatment, as it denies women treatment that they must receive in a timely manner to preserve good health. The report expounds, "States have an affirmative obligation to reform restrictive abortion legislation that perpetuates torture and ill-treatment by denying women safe access and care" (Human Rights Council).

As these examples make clear, many international human rights frameworks protect abortion rights, making it abundantly clear that they should not be restricted, denied, or abridged. Through a combination of broad and narrow treaties that build on each other, human rights discourse offers vigorous protection of the right to safe abortion access. Should Judge Kacsmaryk have succeeded in reversing FDA approval of Mifepristone, he would have denied women their most basic, hu-

man, rights—rights all people fundamentally and inherently deserve.

CITATIONS

Blackshaw, Bruce, and Daniel Rodger. “If Fetuses Are Persons, Abortion Is a Public Health
Crisis.” Bioethics 35, no. 1 (April 2, 2021): 465-72.

Center for Reproductive Rights. “The Constitutional Right to Reproductive Autonomy:
Realizing the Promise of the 14th Amendment .” Reproductiverights.org. Center for Reproductive Rights, July 26, 2022. https://reproductiverights.org/wp-content/uploads/2022/07/Final-14th-Amendment-Report-7.26.22.pdf.

Committee on Economic, Social and Cultural Rights, General comment No. 22 on the right to
sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/22 (May 2, 2016).

Human Rights Committee, International Covenant on Civil and Political Rights General
Comment No 36, U.N. Doc. CCPR/C/GC/36 (September 3, 2019).

Human Rights Council, Rep. of the Special Rapporteur on torture and other cruel, inhuman or
degrading treatment or punishment, U.N. Doc. A/HRC/31/57 (5 January 2016).

Johnson, Dana M. “A New Battle in the War on Abortion Pills.” The New York Times. Last
modified March 5, 2023. Accessed March 6, 2023.

U.N. Convention on the Elimination of Discrimination Against Women, Mar. 1, 1980 U.N.T.S
1249

U.N. Convention on the Elimination of Racial Discrimination, Dec. 21, 1965 U.N.T.S 660

U.N. Convention on the Rights of Disabled Persons, Dec. 13, 2006 U.N.T.S. 2515

U.N. Convention on the Rights of the Child, Nov. 20, 1989 U.N.T.S. 1577 993

U.N. International Convention on Civil and Political Rights, Dec. 16, 1966 U.N.T.S. 999

U.N. International Covenant on Economic, Social, and Political Rights, Dec. 19, 1966 U.N.TS.

U.N. Universal Declaration of Human Rights, Dec. 10, 1948 OHCHR

U.S. Supreme Court. 2022. Dobbs v. Jackson Women’s Health Organization. 597 U.S.

Vogue, Ariane, and Tierney Sneed. “Supreme Court Protects Access to Abortion

Pill.” CNN
Politics. Last modified April 21, 2023. Accessed April 27, 2023 https://www.cnn.com/2023/04/21/politics/supreme-court-abortion-pill-mifepristone/index.html.

Wnukowska-Mtonga, Susan. “The Real Impact of Impact Litigation.” Florida Journal of
International Law 31, no. 1 (February 2021).

The Aftermath of the Overturning of Roe v. Wade, and the Effects on the North and South

Christina Basandella

The court case heard around the world, Roe v. Wade, was a lawsuit brought to the United States (US) Supreme Court in 1970 against Henry Wade, the District Attorney of Dallas County, Texas, that challenged a Texas law prohibiting abortion unless it was a doctor's order to save a woman's life. It was decided in 1973 that a woman's right to a safe and legal abortion was protected under the 14th Amendment's Due Process Clause ("Roe v. Wade", n.d). Although there was some conflict about what limits the government could place on abortion, this landmark case set a precedent for women's reproductive rights in the US for the next 49 years.

In 2018, the Mississippi legislature passed a law called the "Gestational Age Act," which banned abortions 15 weeks after gestation, only including a few exceptions. This act was opposed by Jackson Women's Health Organization, the only licensed facility in Mississippi, which brought the case to the district court. The court enjoined Mississippi from enforcing the law on the basis that they did not prove a fetus would be viable at 15 weeks. When brought to the Supreme Court in 2021, however, the Court decided that the Constitution does not confer the right to an abortion or mention abortions at all. In June of 2022, the case Dobbs v. Jackson Women's Health Organization led to the overturning of the ruling made in both Roe v. Wade and Planned Parenthood of Southeastern Pa v. Casey, another Supreme Court case ruling made in support of abortion (Dobbs v. Jackson Women's Health Organization, n.d).

A study done by the Guttmacher Institute in January 2023 found that states mostly in the South, the Plains, and the Midwest have mainly banned abortion and limited access (Guarneri and Nash, 2023). As of March 5, 2023, the most restrictive states are Texas, Oklahoma, Arkansas, Missouri, Louisiana, Alabama, Tennessee, Kentucky, Mississippi, West Virginia, South Dakota, and Idaho, alongside 23 other states with varying restrictions (Guttmacher Institute, n.d). All of the most restrictive states, including Wisconsin, have banned abortion, with Georgia banning abortion after 6 weeks of pregnancy. Other than Idaho or Georgia, none of these states had any exceptions for rape or incest (New York Times, 2022).

The state of Texas passed a law prior to the overturning of Roe that banned abortion after 6 weeks of pregnancy, decreasing their numbers beforehand. However, up to about 5 months after the decision made in Dobbs, there were about 10,000 fewer abortions in the country, with Texas accounting for half of this number. A study conducted by the University of Texas also found an increase in requests to Aid Access, a non-profit organization in Austria that mails abortion

pills to the United States. Texas citizens were found to be averaging about six requests per week (Diamante, 2022).

As of December 2022, states mainly in the Northeast and along the West Coast have enacted about 77 protections regarding abortion rights. Protective Abortion Policies mainly fall into these three categories: funding, safe access to clinics and increased confidentiality, and "shield laws'' that protect providers and patients from criminal charges. A few examples of fund laws are New York's allocation of $25 million to abortion services and California committing $200 million to reproductive healthcare. To improve clinic access and confidentiality, New Jersey allocated $5 million for a reproductive health care security program. 14 states have adopted shield laws, like California for instance, which protects from private or public entities intercepting communications for evidence of someone having an abortion. The states of California, Massachusetts, and Vermont have provisions explicitly protecting reproductive rights in their constitutions (Ephross and Nash, 2023).

The overturning of Roe v Wade shocked the nation but has also caused dire consequences for women in abortion-restrictive states. A study done in December of 2022 compared maternal death rates in states with abortion bans or restrictions from the past 3 years and found that in 2020, states with abortion restrictions had 62% more maternal fatalities than abortion-access states. Over the next three years, the mortality rate in abortion-restrictive states increased about twice as fast. Abortion-restrictive states not only have a fatal effect on women, but also had higher perinatal, neonatal, and infant mortality rates in the last 3 years. This is expected to worsen over time with the overturning of Roe (Barnard-Meyers et al., 2022).

Since women who seek abortions are usually below the poverty line, it's predicted that there will be more women suffering financial hardships and health complications due to unaffordable health care. A study conducted by the Brookings Institution found that the states with abortion bans or restrictions are also the states who offer the least support to children after birth. These states include Missouri, Idaho, Florida, South Dakota, Tennessee, Arizona, Oklahoma, Georgia, Nevada, and Texas. On the other hand, Vermont, Massachusetts, Connecticut, Wyoming, New York, Maine, New Jersey, Minnesota, Rhode Island, and Pennsylvania were found to offer the most support to children after birth. (Sawhill and Welch, 2022).

The future of America regarding other rights protected by Supreme Court rulings is unsure, due to a concurring opinion made by Justice Clarence Thomas in the decision to overturn Roe. Thomas urged the court to reconsider Griswold v Connecticut, Lawrence v Texas, and Obergefell v Hodges. The first case protects married couples' rights to contraceptives, the second invalidates anti-sodomy laws, and the third grants gay couples the right to mar-

ry (Stolberg, 2022). Although there have been no updates on those cases, this did cause a nationwide outburst of confusion and anger. At George Washington University, where Justice Thomas used to teach, around 7,000 students started a petition requesting his termination due to his "making life unsafe for thousands of students on our campus (not to mention thousands of campuses across the country)" (Asmelash, 2022).

Preceding the petition was a protest outside the university, and Clarence Thomas shortly after announced that he would not be returning to the university to teach (Ibid.).

The executive branch's response to the overturning was drastically different than that of Clarence Thomas. In July 2022, President Biden stated that Congress must make Roe a law in order to secure a woman's right to a safe abortion. But until then, he has taken action within his own realm. On July 8, 2022, President Biden signed an Executive Order Protecting Access to Reproductive Services, which safeguards access to reproductive health care services, protects a patient's privacy, and ensures the safety of the patient, provider, and clinic. (The White House, 2022).

CITATIONS

Asmelash, Leah. "George Washington University Will Retain Clarence Thomas as a Professor amid Protest." CNN, June 29, 2022. Accessed April 1, 2023. https://www.cnn.com/2022/06/29/us/clarence-thomas-george-washington-university-petition-cec/index.html.

Diamante, Reena. "New Studies Give Insight into Impact of Roe v. Wade Being Overturned." November 3, 2022. Accessed April 1, 2023. https://www.ny1.com/nyc/all-boroughs/politics/2022/11/03/study-shows-texas-women-are-skirting-abortion-ban-to-obtain-pills.

"Dobbs v. Jackson Women's Health Organization." Oyez. Accessed April 1, 2023. https://www.oyez.org/cases/2021/19-1392.

"Fact Sheet: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services." The White House. The United States Government, July 8, 2022. Accessed April 1, 2023. https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-sheet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services/.

"Interactive Map: US Abortion Policies and Access after Roe." Guttmacher Institute. Accessed April 1, 2023. https://states.guttmacher.org/policies/.

Johnson, Kay, Laurie Zephyrin, Ruby Barnard-Mayers, and Eugene Declercq. "The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion Restrictions." U.S. Maternal Health Divide: Limited Services and Worse Outcomes | Commonwealth Fund, December 14, 2022. Accessed April 1, 2023. https://www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes.

Nash, Elizabeth, and Isabel Guarnieri. "Eight Ways State Policymakers Can Protect and Expand Abortion Rights and Access in 2023." Guttmacher Institute, February 8, 2023. Accessed April 1, 2023. https://www.guttmacher.org/2023/01/eight-ways-state-policymakers-can-protect-and-expand-abortion-rights-and-access-2023.
"Roe v. Wade." Oyez. Accessed April 1, 2023.

https://www.oyez.org/cases/1971/70-18.
Sawhill, Isabel V., and Morgan Welch. "The End of Roe Will Create More Inequality of Opportunity for Children." Brookings, July 27, 2022. Accessed April 1, 2023. https://www.brookings.edu/blog/up-front/2022/06/30/the-end-of-roe-will-create-more-inequality-of-opportunity-for-children/.

Stolberg, Sheryl Gay. "Thomas's Concurring Opinion Raises Questions about What Rights Might Be next." The New

York Times, June 24, 2022. Accessed April 1, 2023. https://www.nytimes.com/2022/06/24/us/clarence-thomas-roe-griswold-lawrence-obergefell.html

“Tracking the States Where Abortion Is Now Banned.” The New York Times, May 24, 2022. Accessed April 1, 2023 https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html.

Islamic Law and Women's Rights in Iran

Heera Narang

Iran's 1979 Islamic Revolution sent a shockwave across the world. Where many countries were shifting away from religion toward secular government, the Revolution represented a victory for Islamic fundamentalists and a push against reform - it was touted by supporters as "an example of a religious state led by clerics that was able to resist the decadence of the West" (Htun, 2011).

The biggest impact was felt by those now living under the revolutionary government - one, led by Ayatollah Khomeini, that aimed to run the country on traditional Islamic principles. To Khomeini and the fundamentalists, following Islamic principles required rolling back many of the policies passed under the monarchy, especially concerning family law. After the revolution, "gender inequality was institutionalized" (Kian, 2012). In Khomeini's interpretation of shari'a, more repressive measures were justified for the sake of upholding Islamic principles, and women in Iran saw significant reductions in their legal status.

Iran's religious basis for its family law is not far from the international norm. Even in more secular states, family law often "conforms to religious principles, at least partially, if not entirely" (Htun, 2011). It is an area historically governed by traditional/cultural authorities, rather than governments.

Iran's 1967 Family Protection Law, which granted women more rights with regards to divorce, polygamy, and child custody, as well as raising the minimum age of marriage, passed despite vocal clerical opposition. Khomeini accused it of being "against Islam, and both its originators and implementers are guilty before the shari'a" (Bakhshizadeh, 2018). The law became an early casualty of the Revolution. Its replacement marked one of the first examples of Iran's new government using Islam to justify the repression of women. Khomeini's government also instituted a policy of mandatory veiling for both non-Muslim and Muslim women. In March of 1979, he implemented an edict mandating women to "take up the Islamic dress code (hijab) at their workplaces" (Bakhshizadeh, 2018). It took force the following July despite widespread protests. In 1983, the government went a step further, passing the Islamic Punishment Law that assigned a penalty of 74 lashes for violating Islamic dress code in public spaces. Decades later, a policy regulating women's dress continues to exist. Article 638 of the Iranian Penal code still states that "women, who appear in public places and roads without wearing an Islamic hijab, shall be sentenced to ten days to two months' imprisonment or a fine of fifty thousand to five hundred Rials" (Islamic, 1996). Historically, religious conservatives in

Iran have taken the stance that the state's interpretation of Islam and international standards for women's rights are incompatible. In 2003, a then-reformist Iranian parliament passed a bill ratifying the United Nations' (UN) Convention for the Elimination of all forms of Discrimination Against Women (CEDAW), but it was rejected by the more conservative Guardian Council. The Council holds veto power over all legislation passed by parliament and is half-appointed by the fundamentalist Supreme Leader. Their reasoning for rejection: CEDAW was "incompatible with Islam" (Bakhshizadeh, 2018).

A quick comparison seems to support that view. CEDAW was created specifically to address discrimination against women, however the 1979 constitution of the Islamic Republic of Iran doesn't recognize equal rights based on gender, only "color, race, language, and the like" (IRI, 1979). Instead, it states that "[a]ll citizens of the country, both men and women, equally enjoy the protection of the law [...] in conformity with Islamic criteria" (IRI, 1979). That is, equal rights are conditional on the fact that those rights fit within the state interpretation of Islam. The preamble of CEDAW, by contrast, states that "a change in the traditional role of men as well as the role of women in society" is required for true gender equality (CEDAW, 1979). It recognizes that culture and tradition can lead to gender-based inequality. The difference is that according to CEDAW, tradition is no excuse for discrimination. CEDAW calls for states to guarantee "all economic, social, cultural, civil and political rights" equally for men and women, and the Iranian constitution only discusses women's rights with regard to their role within the family (Ibid.). They are mothers, wives, and widows, and their rights are guaranteed as such, but they're allowed room to be very little else. As such, the two conflict on a fundamental level.

CEDAW is also frequently in conflict with current Iranian laws. Whereas CEDAW calls for equal access to education for men and women, Iran instituted a quota system for the admittance of female university students in 2007. 36 universities later banned female students from more than 70 fields of study (Bakhshizadeh, 2018).

However, certain women's rights activists have taken to criticizing the repressive actions of the state through an Islamic framework. Some, like Ashraf Boroujerdi, challenge the official interpretation of sharia. Boroujerdi is one of many proponents of the modern interpretation that the Quran emphasizes the impossibility of truly equal polygamy and advocates against the practice. Boroujerdi's view aligns more with CEDAW, which calls for gender equality in family relations (CEDAW, 1979). In response to a proposed 2007 bill that would have expanded men's right to polygamy, she argued that "those who prepared the bill and those who support it are not propagating Islamic traditions, but the Arab traditions prevailing

during the era of Arab ignorance" (Kian, 2012).

On the other hand, Abdullahi Ahmed An-Naim, another prominent Islamic scholar, challenges the very idea of an Islamic state. In An-Naim's view, compliance with Islamic principles must be entirely out of personal conviction, not due to coercion, so they cannot be enforced by a government or codified into law. He writes that "if such enactment and enforcement [of sharia principles as state law] is attempted, the outcome will necessarily be the political will of the state and not the religious law of Islam" (An-Naim, 2008).

Despite their differences, both move away from the idea that sharia law is permanent and unchangeable in order to provide an Islamic justification for reform, up to and including women's rights.

It's worth noting that Iran's government has actually made changes to its supposedly unchangeable Islamic laws in the past. Back in the 1980s, during the Iran-Iraq war, Khomeini passed a bill granting widows of soldiers custody of their children, even if they remarried (Bakhshizadeh, 2018). In doing so, he created a precedent: the laws of the new Islamic Republic of Iran were subject to change after all, even to further women's rights.

Still, overall reform efforts have found limited success. They are countered at every turn by religious conservatives in the government. Because gender discrimination

CITATIONS

Ahmadi, Fereshteh. “Islamic Feminism in Iran: Feminism in a New Islamic Context.” Journal of Feminist Studies in Religion 22, no. 2 (2006): 33–53. http://www.jstor.org/stable/20487863 .

An-Naʿim, Abdullahi Ahmed. Islam and the Secular State. Harvard University Press, 2008. http://www.jstor.org/stable/j.ctt13x0hj3.

Bakhshizadeh, Marziyeh. “Women’s Rights in Iran and CEDAW: A Comparison.” In Changing Gender Norms in Islam Between Reason and Revelation, Verlag Barbara Budrich, 1st ed. (2018). 61–100. https://doi.org/10.2307/j.ctv8xnfv0.6.
Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, U.N.G.A https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

Gambrell, John. “Protests Hit Multiple Iran Cities for First Time in Weeks.” Associated Press. Feb. 16, 2023. Protests Hit Multiple Iran Cities for First Time in Weeks (usnews.com).

Htun, Mala, and S. Laurel Weldon. “State Power, Religion, and Women’s Rights: A Comparative Analysis of Family Law.” Indiana Journal of Global Legal Studies 18, no. 1 (2011): 145–65. https://doi.org/10.2979/indjglolegstu.18.1.145.

IRI Const. Art. 19, 20 مي‌هافـم - لوا لصف
كلي حقوق اساسي (shora-gc.ir)

Islamic Penal Code of the Islamic Republic of Iran – Book Five, 22 May 1996, Ar. 638 Islamic Penal Code of the Islamic Republic of Iran – Book Five - Iran Human Rights Documentation Center (iranhrdc.org)

KEDDIE, NIKKI R. “Women in Iran Since 1979.” Social Research 67, no. 2 (2000): 405–38. http://www.jstor.org/stable/40971478 .

Kian, Azadeh, Farideh Farhi, Evaleila Pesaran, and Paola Rivetti. “Gendered Citizenship and the Women’s Movement in Iran.” Edited by Rouzbeh Parsi. IRAN: A REVOLUTIONARY REPUBLIC IN TRANSITION. European Union Institute for Security Studies (EUISS), 2012. http://www.jstor.org/stable/resrep07011.7 .

Women's Reproductive Rights in Poland

Juliana Flores

The Constitutional Tribunal in Poland banned women's access to abortion under almost any circumstance in January 2021. This ruling left many women and their families devastated as it intensified the extremities women would need to face to receive abortion care (Amnesty International, 2022). This ruling has made it impossible for women to safely seek abortions in rape cases or situations where the mother's health is at risk. Due to the political climate surrounding abortions in Poland, many women have left the country to seek proper abortion care in other European countries. Thousands of women have come together and have turned to the European Court of Human Rights to challenge the Constitutional Tribunal's ruling as they feel that this decision violates their human rights to privacy and freedom from torture or other ill-treatment (Ibid.). In addition to the applicants who have turned to the European Court for justice, various leading international human rights organizations have filed third-party interventions to the court to hold Poland accountable for these ongoing human rights violations .

It has been two years since the ruling has been in effect and women in Poland continue to protest against The Constitutional Tribunal's ruling and aim to protect their freedom, health, and self-worth (Ibid.).

In October of 2022, protesters planned a rally that recognized the second anniversary of The Constitutional Tribunal's original ruling that passed the ban on legal abortions. They protested outside of the Constitutional Tribunal and demanded access to safe and legal abortions and called on their government officials to protect these rights. At the anniversary protest, the activists honored several pregnant women who died in Poland after doctors refused to give them abortions due to the tribunal's ruling (Tayler, 2022).

In response to the protesting women, police resorted to violence to break up rallies and disperse protesters. Police used batons, pepper spray, and tear gas on protesters, and detained others. Many protesters have made arguments that they feel targeted by the Polish government which has targeted government critics since the rise of the Law and Justice Party in 2015. Upon the party's rise to power, activists stated that they limited sex education, condemned LGBTQ+ rights, and attacked women's rights activists. Protesters recall being hit in the face, hit with batons, and kicked in the groin by police officers (Ibid.). Violence inflicted on protesters by police officers has made it difficult for women's rights activists to object publicly to these anti-abortion laws and has hindered their right to freely express discontent with the government ruling.

As time has passed since the anti-abortion ruling was enacted, various cases have

emerged regarding young women and their personal experiences with abortion. In February of this year, a case caught the attention of many people and ignited controversy over Poland's highly restrictive legislation surrounding abortion, leading women's rights activists to continue to protest for relief from this ruling. The case caught the attention of the media, as it involves a fourteen-year-old rape victim who sought abortion care from multiple hospitals and had been refused each time. The young girl has mental disabilities and was raped by her uncle resulting in an unwanted pregnancy. The victim had written confirmation from the public prosecutor that stated she was pregnant as the result of a crime that gave her the right to a legal abortion, but two hospitals refused to terminate her pregnancy regardless of the circumstances. The doctors justified their refusal by calling on the conscience clause, which allows doctors to refuse to perform an abortion procedure if it goes against their religious beliefs. Feeling hopeless, the victim resorted to seeking assistance from the Foundation for Women and Family Planning (FEDERA), who successfully arranged the termination of her pregnancy close to twelve weeks (Lepiarz, 2023). Rather than focusing on mental and physical recovery after the procedure, the young girl and her family aimed to protect her identity out of fear of becoming the target of attacks. The executive director of FEDERA called out authorities to address the situation, and situations similar to it in other hospitals in the region, criticizing the fact that medical care had become politicized and that practitioners had lost sight of their role in protecting patients' health by hiding behind the conscience clause (Ibid.). As women's rights activists and political opposition organizations call on government officials to loosen Poland's abortion laws, Polish women continue to live in a country where they do not have the right to safely make decisions regarding their bodies. It has been two years since the enactment of these laws that have made it nearly impossible for women to obtain a safe and proper abortion in almost every circumstance, and women continue to put their lives at risk protesting against these rulings and attempting to terminate their pregnancies in unsafe conditions.

CITATIONS

Lepiarz, Jacek. “Outcry in Poland over abortion law – DW – 02/05/2023.” DW. 2023. https://www.dw.com/en/poland-outcry-over-abortion-law/a-64586531.

“Poland: Regression on abortion access harms women.” Amnesty International. 2022. https://www.amnesty.org/en/latest/news/2022/01/poland-regression-on-abortion-access-harms-women/.

Tayler, Letta. “Two Years On, Poland’s Abortion Crackdowns and the Rule of Law.” Human Rights Watch. 2022. https://www.hrw.org/news/2022/10/22/two-years-polands-abortion-crackdowns-and-rule-law.

EXTRADITION IN NEW YORK STATE IN THE WAKE OF DOBBS v. JACKSON

Michael LoBiondo

The recent United States (U.S) Supreme Court decision of Dobbs v. Jackson Women's Health Organization (2022) overrules the landmark court decisions of Roe v. Wade (1973), which protected abortion as a Constitutional right under the 14th Amendment, and Planned Parenthood v. Casey (1992), which further reaffirmed the decision of Roe. The Court's majority opinion of Dobbs denounced Roe's decision, stating "[t]he Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision" (2022). In accordance with what the Constitution has outlined, the Supreme Court found that "Roe was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences" (Ibid.). Regardless of the reasoning for overturning Roe, this decision denies federal protection for abortion and requires each individual state to determine its own abortion policies. Now that several states have implemented different laws, policies, and restrictions against the right to abortion, and with New York State strengthening its abortion provisions, the concept of an influx of pregnant individuals traveling to New York to obtain a legal abortion has morphed form merely a concept to a reality (Cohen, Donley, & Rebouché, 2023).

Concerning state-crossing laws, the topic of extradition is one of the biggest legal issues with criminal law implications. Extradition refers to the apprehension of an accused person in one state when the defendant has an arrest warrant from another. The issue of extradition related to abortion policies did not exist (or, the need for it did not exist) because everyone in the country shared relatively the same right to abortion, and the states were severely limited as to what they could legislate regarding abortion due to Roe. . But now, in the wake of the Dobbs case, the states have already begun to vastly differ on the extent to which abortion access would be allowed or prohibited. Other states are likely going to enforce the new restrictions with criminal penalties and prosecutions. Now that the issue of extradition is front and center, it is necessary to litigate abortion under extradition state criminal procedure law.

The consequences of the Dobbs ruling have far-reaching implications and touch on many aspects of civil and criminal procedure law. A range of potential realities have risen from this single court decision, with the complete and total bans on abortion in several states being a prime example. As argued herein, the Dobbs decision in terms of abortion at state-crossing levels is far more extreme than previously expected. Conservative states have become increasingly strict on abortion restrictions that took effect almost immediately after

the Dobbs ruling went into effect; meanwhile, other states have begun writing legislation on a variety of abortion protections and New York State leading the charge. Following the legislation of these statutes, the reality of a New York "abortion safe haven" is not just a distant thought, but a reality that has now been fully manifested (Zubrzycki, 2022). An "abortion safe haven" state is where women and pregnant people from anywhere in the United States can obtain a legal abortion.

One of the many examples of New York State abortion protections is Statute § 570.17, entitled "Extradition of abortion providers" (NY CLS CPL § 570.17). This statute states: "No demand for the extradition of a person charged with providing an abortion shall be recognized by the governor unless the executive authority of the demanding state shall allege in writing that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he, she or they fled from that state" (Ibid.). Directly responding to the Dobbs decision, this statute wisely predicted the future of United States policies regarding abortion and offers extensive protections for abortion providers from every state in the nation.

Another important New York statute related to abortion extradition is under statute § 837 Functions, Powers and Duties of Division. This statute is an executive law that has been amended to add a new section: 837-w [There are two § 837-w] Cooperation with certain out-of-state investigations (NY CLS Exec § 837-w). This section protects any and all persons involved with lawful abortions from interstate legal investigations, as the New York Police Department is now prohibited from assisting or apprising out-of-state agencies in any action regarding lawful abortions performed in New York: "No state or local law enforcement agency shall cooperate with or provide information to any individual or out-of-state agency or department regarding the provision of a lawful abortion performed in this state" (Ibid.). This section is one of many provisions that New York has passed in order to provide legal safeguards for not only NYS citizens, but also citizens in other states, from legal investigations. As the influx of out-of-state patients into the state of New York becomes more apparent, the implications of this migration will undoubtedly result in potential persecution from out-of-state agents (Cohen, Donley & Rebouché, 2023). Despite New York State's recent protections for abortions of out-of-state patients and NYS abortion providers, the question remains of whether they will be enough to combat the hostile, post-Dobbs landscape that SCOTUS has now imposed.

CITATIONS

Dobbs v. Jackson Women's Health Organization, No. 19-1392 (5th Cir. 2022). https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

David S. Cohen, Greer Donley & Rachel Rebouché, "ARTICLE: THE NEW ABORTION BATTLEGROUND," Columbia Law Review, 123, 1 (January, 2023). https://advance-lexis-com.proxy.binghamton.edu/api/document?collection=analytical-mat erials&id=urn:contentItem:67FV-58V1-JC8V-40KV-00000-00&context=1516831.

Carleen M. Zubrzycki, "ARTICLE: The Abortion Interoperability Trap," Yale Law Journal Forum, 132, 197 (October 18, 2022). https://advance-lexis-com.proxy.binghamton.edu/api/document?collection=analytical-mat erials&id=urn:contentItem:66ND-SC21-F7G6-62K4-00000-00&context=1516831. 4. § 570.17 Extradition of abortion providers., NY CLS CPL § 570.17 (Current through 2022 released Chapters 1-657). https://advance-lexis-com.proxy.binghamton.edu/api/document?collection=statutes-legisl ation&id=urn:contentItem:65PS-W2V3-CGX8-04D9-00000-00&context=1516831. 5. § 837-w. [There are two § 837-w] Cooperation with certain out-of-state investigations., NY CLS Exec § 837-w (Current through 2023 released Chapter 1). https://advance-lexis-com.proxy.binghamton.edu/api/document?collection=statutes-legisl ation&id=urn:contentItem:65PS-VD63-CGX8-04BS-00000-00&context=1516831.

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