

REGIONAL
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CASES

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Case 1: Holding Heritage Hostage

In March 2001 the ancient Buddhas of Bamiyan were destroyed by the Taliban government in Afghanistan. The Buddhas were a sign of the place Afghanistan occupied on the silk road. Explaining the destruction, a government spokesperson said, “We are destroying the statues in accordance with Islamic law and it is purely a religious issue.”¹ Other accounts suggest that if foreign resources allocated toward restoration had been redirected to the Taliban, the Buddhas may have been saved.

More recently ISIS made news by destroying ancient Assyrian reliefs, but according to a US military spokesman, “[w]hat you don’t see is that ISIS is selling far more pieces than they are destroying.”² By some accounts, thousands of artifacts have been looted in ISIS-controlled areas and smuggled abroad. David Gill, a professor of archaeological heritage, reports: “We went into one gallery and were chatting about a piece and the person quite openly said, ‘We just got this out of Syria . . . So it’s quite open in that sense.’”³ ISIS has propaganda and religious interests in destroying the pre-Islamic heritage of Iraq and Syria, but they have a strong financial interest in selling off more portable artifacts.

However, the trade in looted artifacts is not limited to state or quasi-state actors. With rising unemployment and weakening national authority in states like Egypt, Syria, and Iraq, some have taken to looting world heritage sites as a way to make ends meet. In the context of war (and an attendant refugee crisis) resources are not focused on securing cultural artifacts. UNESCO ambassador Philippe Lalliot says, “When tens of thousands of people are dying, should we be worried about cultural cleansing? Yes, because heritage unites and culture provides dialogue that fanatical groups want to destroy.”⁴

Given the security problems in failed states and war zones, it may be that paying looters is a cost-effective way to secure cultural artifacts. James Cuno, former museum curator and CEO of the J. Paul Getty Trust, writes “This unconscionable destruction is an argument for why portable works of art should be distributed throughout the world and not concentrated in one place.”⁵ Of

¹ Buddhas of Bamiyan, *Wikipedia, The Free Encyclopedia*, Retrieved August 3, 2015, from

https://en.wikipedia.org/wiki/Buddhas_of_Bamiyan#Dynamiting_and_destruction.2C_March_2001

² Anik See, *How ISIS funds activities through sale of ancient artifacts*, CBC Canada, June 12, 2015,

<http://www.cbc.ca/news/canada/how-isis-funds-activities-through-sale-of-ancient-artifacts-1.3095925>

³ Daniela Deane, *Islamic State is selling looted Syrian art in London to fund its fight*, The Washington Post, February 25, 2015, http://www.washingtonpost.com/world/is-looted-syrian-art-showing-up-in-london-to-fund-activities/2015/02/25/785ab630-bcd0-11e4-b274-e5209a3bc9a9_story.html

⁴ Staff Writer, *ISIS selling Iraq’s artifacts in black market: UNESCO*, Al Arabiya News, September 30, 2014, <http://english.alarabiya.net/en/News/middle-east/2014/09/30/ISIS-selling-Iraq-s-artifacts-in-black-market.html>

⁵ Andrew Moore, *Deploring ISIS, Destroyer of a Civilization’s Art*, New York Times: Opinion Pages, March 11, 2015, http://www.nytimes.com/2015/03/11/opinion/deploring-isis-destroyer-of-a-civilizations-art.html?_r=0

course, purchasing looted items is illegal, but some looters argue that in a troubled time they are selling their own heritage to pay for the necessities of life.⁶

⁶ VICE. Egyptian Tomb Raiders: Sneak Peek. Retrieved August 3, 2015, from https://m.youtube.com/watch?v=njjLv_wkcG0&autoplay=1

Case 2: Million Dollar Parrot

The Kakapo is a flightless parrot found only in New Zealand. With a population of just over 100, it is almost extinct. According to Kakapo Recovery, a non-profit organization dedicated to saving the parrot, the Kakapo is not only the world's heaviest parrot but also the oldest living bird, with a life expectancy of over 90 years.⁷ In the last 20 years, Kakapo conservation efforts have managed to increase the population from 50 in 1995 to almost 150 in 2015.⁸ The yearly cost of the Kakapo conservation efforts has been estimated to be \$250,000.⁹ But some scientists have argued that, given our limited resources, it does not make sense to spend so much energy to save a bird with such a small population and a small chance of staging a comeback.

Corey Bradshaw, one of the scientists who are critical of the Kakapo conservation efforts, said that the Kakapo will likely go extinct “regardless of any interventions.”¹⁰ The reason for this is that animals with low population numbers (i.e., below 5000) can be easily “wiped out by extreme events such as cyclones or forest fires.”¹¹ Bradshaw also believes that efforts and resources applied to protecting the Kakapo could be devoted to saving species with a better chance of survival. As he puts it, “[i]t really comes down to accounting, are we deliberately or inadvertently losing hundreds if not thousands of species by putting money into species that are a lost cause?”¹²

However, not everyone agrees that the Kakapo should be allowed to die. While the \$250,000 spent by the government on the Kakapo is not an insignificant sum, that annual expenditure constitutes a tiny fraction of New Zealand's GDP (\$185 billion), and additional conservation efforts rely on private donations.¹³ Moreover, some have argued that the Kakapo's uniqueness makes the species essential to New Zealand's (and the world's) natural heritage.¹⁴ In fact, Al Morrison, the director-general of the Department of Conservation, does not believe cost-benefit analyses should guide fauna conservation efforts. Saving the Kakapo is not merely about preventing a rare species from going extinct, but could possibly be something much more powerful: a symbol of humanity's capacity to undo the damage to the environment it wrought in previous centuries. Allowing the Kakapo to thrive would require having a healthy environment

⁷ Kakapo Recovery, July 15, 2015, <http://kakaporecovery.org.nz/about-kakapo/>

⁸ Torrie, Bronwin. “Let Wonderfully Weird Kakapo Die – Scientist,” Stuff, July 15, 2015, <http://www.stuff.co.nz/environment/4879292/Let-wonderfully-weird-kakapo-die-scientist>

⁹ Moran, Emma, Ross Cullen, and Kenneth FD Hughey, “Financing Threatened Species Management: The Costs Of Single Species Programmes And The Budget Constraint,” New Zealand Agricultural and Resource Economics Society 2005 Conference, August 26-27, 2005, Nelson, New Zealand.

¹⁰ Torrie, Bronwin

¹¹ Torrie, Bronwin

¹² Torrie, Bronwin

¹³ “Feathers Fly over Kakapo Comments,” One News, July 15, 2015, <http://tvnz.co.nz/national-news/feathers-fly-over-kakapo-comments-4118780>

¹⁴ “Feathers Fly over Kakapo Comments.”

— for both humans and non-human animals. According to Morrison, “[i]f . . . [the] kakapo flourishes then we as a species prosper. We give up on them, we give up on ourselves.”¹⁵

¹⁵ “Feathers Fly over Kakapo Comments.”

Case 3: Anti-Vax Tax

In January of 2015 over 100 people in the US contracted measles, mostly from an outbreak of the disease at California's Disneyland theme park.¹⁶ The outbreak was spread in part by people who had refused to accept vaccinations for themselves or their children. In July of 2015, the Washington State Department of Health confirmed the first death from measles in the United States in 12 years.¹⁷

Vaccinations for diseases like measles, mumps, and rubella have kept these diseases in check in the Western world for more than 50 years. While these diseases used to run rampant and threaten adults and children alike, they had all but been defeated up until the early 2000s.¹⁸ Guided by a pop-culture movement that cited, among other things, a (now retracted) scientific paper linking autism with the vaccine for measles, mumps, and rubella (MMR),¹⁹ people began delaying vaccinations for their children or refusing them outright. While numerous studies have shown that childhood vaccinations are safe and reliable bulwarks against disease,²⁰ the number of parents refusing vaccines has continued to climb.

Anti-vaccination groups also cite a worrisomely close partnership between the pharmaceutical companies making the vaccines and the Federal Drug Administration (FDA) which oversees the safety of vaccines. They maintain that the FDA does not sufficiently supervise the implementation of precautions after the drugs are on the market for human use.²¹ They also cite the existence of the National Vaccine Injury Compensation Program (NVICP) as evidence that vaccines are legally recognized as possibly causing suffering that requires compensation by the government.²² (They also suggest that the NVICP incorrectly shields pharmaceutical companies from justified lawsuits.)

As the number of unvaccinated people grew, so did the risk that a carrier of one of these diseases could spread the disease more rapidly. If the human "herd" lost its increased immunity to the

¹⁶ Stephen Reinberg, *Low Vaccination Rates and Disney Measles Outbreak*, HealthDay Reporter, March 16, 2015, <http://www.webmd.com/children/vaccines/news/20150316/low-vaccination-rates-likely-behind-disney-measles-outbreak-study>

¹⁷ Maggie Fox, *Washington Woman is First US Measles Death in 12 Years*, NBC News, July 3, 2015, <http://www.nbcnews.com/health/health-news/woman-dies-measles-first-us-death-12-years-n385946>

¹⁸ National Center for Immunization and Respiratory Diseases (Division of Viral Diseases), *Measles History*, Centers for Disease Control and Prevention, November 3, 2014, <http://www.cdc.gov/measles/about/history.html>

¹⁹ Fiona Godlee, Jane Smith, and Harvey Marcovitch, *Wakefield's article linking MMR vaccine and autism was fraudulent*. BMJ 2011;342:c7452, January 6, 2011, <http://www.bmj.com/content/342/bmj.c7452>

²⁰ Centers for Disease Control and Prevention, *Vaccine Safety*, March 27, 2015, <http://www.cdc.gov/vaccinesafety/index.html>

²¹ Shannon Barber, *No, I Am Not an Anti-Vaxxer, But I Do Understand Their Stance*, Addictinginfo.com, February 3, 2015, <http://www.addictinginfo.org/2015/02/03/no-i-am-not-an-anti-vaxxer-but-i-do-understand-the-stance/>

²² Barbara Loe Fisher, *Why Vaccine-Injured Kids Are So Rarely Compensated*, Mercola.com Health News, December 13, 2008, <http://articles.mercola.com/sites/articles/archive/2008/12/13/why-vaccine-injured-kids-are-rarely-compensated.aspx>

disease, even those who were vaccinated could be at risk. And with an increased number of life-threatening illnesses comes increased healthcare costs. For instance, the cost of the measles outbreak is high, potentially costing up to \$10,000 per case. In a healthcare system like the one in the United States, these costs are absorbed not only by the families of the sick children, but may also be “shared” by all those paying for health insurance in the form of increased premiums.²³

Citing the unfairness of saddling those who vaccinate their children with the increased health insurance costs from those who do not, a team of doctors and lawyers are now proposing a tax on those who refuse vaccinations.²⁴ Since vaccinations have been established to be safe for most children and vaccination costs are covered by all health insurance plans, they argue that the choice not to vaccinate one’s children should be discouraged by creating a tangible disincentive to opt out of vaccination, regardless of whether any members of the family actually contract a vaccine-preventable disease. Furthermore, such a tax would allow the healthcare system to recoup the costs directly from those whose choices potentially increase the costs. In this way, the proposed tax would work much like a tax on cigarettes that would fund lung cancer treatment. Anti-vaccination advocates and other libertarian thinkers, however, argue that such a tax interferes with important principles of liberty.

Indeed, people generally have the right to refuse medical treatment for themselves as well as their children—some advocates believe that they should have the right to refuse vaccines as well. They argue that the state should not take a position on treatments where some people have serious doubts about the scientific data, and that the tax amounts to economic coercion. There is no such tax, for instance, on foods that may increase the risk of diabetes or heart disease (which are far more costly diseases). And there are no societal sanctions on those who refuse to cover their mouths when they cough or come to work when they are sick with the flu, even though the flu is a communicable disease with a much higher risk of transmission than measles, mumps, or rubella.

²³ Charlotte Moser, Dorit Rubinstein Reiss, and Robert Schwartz, *Funding the Costs of Disease Outbreaks Caused by Non Vaccinations*, June 3, 2014, *Journal of Law, Medicine, and Ethics*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2445610##

²⁴ Ibid.

Case 4: Forced Chemotherapy

Before Cassandra could have her first round of chemotherapy to treat Hodgkin lymphoma, she had to have a port placed in her body to deliver the cancer-fighting drugs. During this surgical procedure, she had to be strapped to the bed²⁵ against her wishes, for she was adamantly against receiving chemotherapy—a treatment she deemed poisonous to her body, despite knowing that without it she would almost certainly die. Had Cassandra been at least 18 years old, she would have had the legal right to refuse the cancer treatment. From a legal and moral standpoint, the doctrine of informed consent and informed refusal protects the liberty of competent adults to make autonomous medical decisions. However, being only 17, Cassandra’s wishes were dismissed by the Connecticut Supreme Court. The judges unanimously ruled that Cassandra could be forced by the state to receive chemotherapy, because she lacked the necessary maturity to make her own medical decisions.²⁶

After receiving her diagnosis, Cassandra and her mother, Jackie Fortin, began to miss medical appointments, in order to avoid the prescribed chemotherapy. According to Cassandra, her mother urged her to reconsider her staunch position against chemotherapy. Unable to change her daughter’s mind, Fortin ultimately decided to respect the girl’s decision. Given that Hodgkin lymphoma is a highly treatable form of cancer, but fatal without treatment, Cassandra’s doctors reported Fortin for neglect to the Department of Children and Families (DCF).²⁷ Shortly thereafter, Cassandra was removed from her home and placed under the custody of the state. As Kristina Stevens, a DCF representative, declared, “if the system . . . [didn’t] react and respond, this child . . . [would] die.”²⁸

While young children clearly lack the capacity to make autonomous medical decisions, adolescents, especially older ones, pose a challenge to the doctrine of the presumed incompetence (i.e., lack of legal ability) of minors. Adolescents find themselves at a transitional stage between the incompetence of childhood and the competence and autonomy of adulthood. Thus, as Dr. Saskia Nagel, a neuroscientist and philosopher, has argued, “[a]utonomy should not be viewed as an all-or-none phenomenon. One does not have it fully or not at all.”²⁹ Instead, she proposes that autonomy should be considered a “gradual phenomenon that develops over time.”³⁰

²⁵ Briggs, Bill. “Connecticut Teen Who Refused Chemo Now in ‘Remission,’ Seeks Freedom.” NBC News. July 15, 2015, <http://www.nbcnews.com/health/cancer/connecticut-teen-who-refused-chemo-now-remission-seeks-freedom-n320061>

²⁶ Nalpathanchil, Lucy. “Can Connecticut Force A Teenage Girl To Undergo Chemotherapy?” NPR July 15, 2015, <http://www.npr.org/sections/health-shots/2015/01/08/375659085/can-connecticut-force-a-teenage-girl-to-undergo-chemotherapy>

²⁷ Nalpathanchil, Lucy.

²⁸ Nalpathanchil, Lucy.

²⁹ Nagel, Saskia K. “Autonomy—A Genuinely Gradual Phenomenon.” *AJOB Neuroscience* 4.4 (2013): 60-61.

³⁰ Nagel, Saskia K.

This idea was echoed by Joshua Michtom, Cassandra’s public defender, when he said that teenagers “can get contraception. They can get addiction treatment. They can donate blood. They can be tried as adults for certain crimes. So there’s recognition overall that maturity doesn’t happen overnight. You don’t go to sleep a 17-year-old knucklehead and wake up an 18-year-old sage.”³¹ Thus, some states have adopted the mature minor doctrine, which grants individuals under 18 with a sufficient level of maturity the right to refuse medical treatment. However, the courts have recognized that “this right is not absolute . . . [and] could be limited by the state interest to preserve life.”³²

Today Cassandra is in remission. Though she is looking forward to returning to her home and resuming her normal life, she is still troubled by what happened to her: “I will never be okay with how this all happened — being taken away from home, hospitalized and especially being strapped to the bed . . . I still wish I was given the right to explore and go with alternatives . . . Anybody should have that right. Minor or not.”³³

³¹ Briggs, Bill. “Connecticut Teen With Curable Cancer Fights to Stop Chemo.” NBC News July 15, 2015, <http://www.nbcnews.com/health/cancer/connecticut-teen-curable-cancer-fights-stop-chemo-n281511>

³² Harvey, Martin T. “Adolescent Competency and The Refusal Of Medical Treatment.” *Health Matrix* 13 (2003): 297.

³³ Briggs, Bill. “Connecticut Teen Who Refused Chemo Now in ‘Remission,’ Seeks Freedom.”

Case 5: A Heritage of Hate

Adolf Hitler was a baby once; he was born in an Inn in the small Austrian town of Braunau am Inn. The building where he was born, the “Gasthof zum Pommer” or “Pommer’s Inn,” is still standing near the city center and is still owned by the Pommer family. The building is marked only by a small granite stone on the front easement reading “For peace, liberty and democracy. Never again fascism. Millions of dead to remind us.” Local residents are understandably unnerved by the site and have expressed concerns that it will become a pilgrimage destination for neo-Nazis.³⁴

In an effort to prevent unwanted use of the property, the Austrian interior ministry has leased the building since 1972. The most recent use of the Inn was as a day center and occupational training facility for disabled adults. That contract was ended three years ago because the facility has not been renovated and lacks many modern amenities and handicap-accessible facilities. The owner has refused to allow changes or renovations, and the Austrian government continues to pay nearly five thousand Euros a month in rent for the unoccupied building.³⁵

The interior ministry has offered to buy the building, but the owner seems unwilling to sell. Perhaps the historical value of the Inn makes it a significant investment. Some have urged the government to take more forceful action to obtain the historical building and either destroy it or turn it into a museum describing the horrors of the Holocaust.³⁶ Local historian Andreas Maislinger says, “Something has to happen with the house. It can’t just sit there empty for the next 10 years . . . Owning property is also a responsibility. And if there is a historical connection, no matter what kind of connection it might be, that responsibility is even larger.”³⁷

³⁴ Bethany Bell, *Hitler’s old house gives Austria a headache*, BBC News, December 29, 2014, <http://www.bbc.com/news/world-europe-30539384>

³⁵ Melissa Eddy, *Austria May Force Sale of Hitler Birthplace*, The New York Times, January 14, 2015, http://www.nytimes.com/2015/01/15/world/europe/braunau-austria-hitler-birthplace.html?_r=0

³⁶ Ibid.

³⁷ Charles Hawley, *Birthplace of a Dictator: Austrian Town Wonders What to Do with Hitler’s Home*, Spiegel International, September 12, 2012, <http://www.spiegel.de/international/europe/debate-erupts-in-austria-over-the-braunau-birthplace-of-adolf-hitler-a-857908.html>

Case 6: A Cartoon of Free Speech

In 2009, housewife, Pamela Geller got her fifteen minutes of fame when she embarked on a crusade against the building of a mosque near the site of the September 11, 2001, attack on the World Trade Center, an area also known as Ground Zero.³⁸ Ms. Geller was quoted in major news outlets like the New York Times and the Washington Post condemning the "Islamization of America," but the mosque was built and operated until 2014 when the developer opted to convert the site into a museum to Islamic history.³⁹

Then in 2015, Ms. Geller and her American Freedom Defense Initiative (AFDI) resurfaced after the attacks on the French satirical magazine, Charlie Hebdo, to publish a number of anti-Islamic advertisements in major outlets throughout the U.S. and to organize the "Jihad Watch Muhammad Art Exhibit and Cartoon Contest" in Garland, Texas.⁴⁰ The controversial views espoused by Ms. Geller and AFDI have caused the Southern Poverty Law Center to add them to their list of active hate-groups.

On Sunday, May 3, 2015, two armed gunmen arrived at the site of the cartoon contest in Garland and opened fire.⁴¹ Some Garland residents objected to the contest as an incitement to violence, blasphemous, or otherwise in poor taste, but the event nonetheless drew about 200 people contending for the \$10,000 prize.⁴² Nadir Soofi and Elton Simpson, the shooters, were devout Muslims, and Simpson had been suspected of terrorism-related activities as far back as 2006.⁴³ The gunmen, armed with assault rifles and body armor, shot an unarmed security guard, Bruce

³⁸ Michelle Boorstein, "In flap over mosque near Ground Zero, conservative bloggers gaining influence," The Washington Post, August 19, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/08/18/AR2010081802582_pf.html; Anne Barnard and Alan Feuer, "Pamela Geller: In Her Own Words" (published interview transcript), The New York Times, October 8, 2010, http://www.nytimes.com/2010/10/10/nyregion/10gellerb.html?pagewanted=all&_r=0.

³⁹ Danika Fears, "Developer ditches plan for 'Ground Zero mosque.'" New York Post, April 30, 2014, <http://nypost.com/2014/04/30/developer-ditches-ground-zero-mosque-to-create-museum-for-islam/>.

⁴⁰ "Anti-Islamic Ads To Be Featured On New York Transit System, Courtesy of Pamela Geller," HuffPost Religion via The Associated Press, September 19, 2014, <http://www.huffingtonpost.com/news/american-freedom-defense-initiative/>; "American Freedom Defense Initiative" (search results), The Huffington Post, retrieved August 23, 2015, <http://www.huffingtonpost.com/news/american-freedom-defense-initiative/>; Sam Frizell, "The Controversial Group Behind the Muhammad Cartoon Contest," Time Magazine, May 4, 2015, <http://time.com/3845346/pamela-geller-afdi-american-freedom-defense-initiative/>; Lindsey Bever, "Pamela Geller, the incendiary organizer of Texas 'prophet Muhammad cartoon contest,'" The Washington Post, May 4, 2015, <http://www.washingtonpost.com/news/morning-mix/wp/2015/05/04/why-a-woman-named-pamela-geller-organized-a-prophet-muhammad-cartoon-contest/>

⁴¹ Kevin Conlon, "Two shot dead after they open fire at Mohammed cartoon event in Texas," cnn.com, <http://www.cnn.com/2015/05/03/us/mohammed-drawing-contest-shooting/>, May 4, 2015.

⁴² Catherine Stoichet, "Garland, Texas, shooting suspect linked himself to ISIS in tweets," CNN.com, May 4, 2015, <http://www.cnn.com/2015/05/04/us/garland-mohammed-drawing-contest-shooting/>.

⁴³ Jeffrey Weiss and Kevin Krause, "2 Garland shooters lives twined to tragic end," The Dallas Morning News, <http://www.dallasnews.com/news/crime/headlines/20150504-2-garland-shooters-lives-twined-to-tragic-end.ece>, May 5, 2015.

Joiner, in the leg in front of the Curtis Culwell Center.⁴⁴ Police officers helping with security at the event returned fire, killing both Soofi and Simpson.

This was not the first time Mr. Simpson had been accused of ties to terrorism. In 2006, Simpson was investigated for befriending an individual believed to be attempting to set up a terrorist cell in Arizona, and from 2010 to 2011, Mr. Simpson was prosecuted for lying to the Federal Bureau of Investigation (FBI).⁴⁵ More recently, Mr. Simpson had been under intermittent surveillance due to Twitter postings about ISIS, but officials claimed they had no indication that an attack was imminent.⁴⁶

While few would argue that violence like that displayed in this case is an appropriate response to perceived religious harms, some do note that the social and political climate in the U.S. and abroad has fostered a climate of hostility between Muslim minorities and the Western societies in which they live. For instance, groups like Geller's AFDI have fought against the construction of mosques in Murfreesboro, Tennessee, and have pushed for anti-sharia laws to be enacted to prevent the Islamization of America.⁴⁷ Some would call such measures over-reach, and argue that they are hateful actions taken to oppress Muslims in a country purportedly built on religious tolerance rather than to prevent the imposition of Muslim culture on mainstream America.⁴⁸

⁴⁴ David Taintor and Alastair Jamieson, "Garland shooting: What we know," MSNBC.com, May 5, 2015, <http://www.msnbc.com/msnbc/draw-muhammad-shooting-what-we-know>; Manny Fernandez, Richard Pérez-Peña, and Fernanda Santos, "Gunman in Texas Shooting was F.B.I. Suspect in Jihad Inquiry," The New York Times, May 4, 2015, http://www.nytimes.com/2015/05/05/us/garland-texas-shooting-muhammad-cartoons.html?_r=0.

⁴⁵ Sasha Goldstein, "Garland shooting suspect Elton Simpson tied previous terror probe, authorities say as search of Phoenix apartment continues," New York Daily News, May 4, 2015, <http://www.nydailynews.com/news/crime/garland-shooter-elton-simpson-tied-previous-terror-probe-article-1.2209345>.

⁴⁶ See Fernandez, et al., "Gunman in Texas Shooting was F.B.I. Suspect in Jihad Inquiry" supra.

⁴⁷ Bob Smietana, "Murfreesboro mosque fight laid to rest after Supreme Court ruling," The Washington Post, June 3, 2014, <http://www.religionnews.com/2014/06/03/murfreesboro-mosque-fight-laid-rest-supreme-court-ruling/>; "Anti Sharia Law," (search results), The Huffington Post, retrieved August 23, 2015, <http://www.huffingtonpost.com/news/anti-sharia-law/>.

⁴⁸ "Bans on Sharia and International Law," American Civil Liberties Union, retrieved August 23, 2015, <https://www.aclu.org/bans-sharia-and-international-law>

Case 7: Composting Corpses

Katrina Spade wants to revolutionize the way we dispose of our dead. She founded the “Urban Death Project”⁴⁹ to develop a system for composting corpses into usable soil. The system uses the process by which bodies would normally decompose and accelerates it using carbon materials, aeration, and hydration. The scientific basis for this process is not new — it is widely used to safely dispose of and repurpose livestock carcasses. Though process has not yet been used to compost human remains, Spade aims to modify it to suit that purpose. Spade envisions a three-story facility with a core made to house the composting system. Mourners would place the body of their deceased loved one into the core during a ceremony. Within a few months, all of the bodies that had been placed in the core would fully decompose into soil that could be used in public parks or given to family members. Because many bodies would be placed in the core together, the families would not necessarily receive the soil produced by their own loved one’s remains. The nutrient-rich soil would be ideal to grow plants, nurturing new life.⁵⁰

This process is more environmentally friendly than the more typical processes of burial and cremation.⁵¹ Traditional burial entails draining the body of blood and replacing the blood with preservatives, including the carcinogen formaldehyde. The internal organs are also injected with toxic chemicals.⁵² Bodies are then buried in wood or metal coffins in concrete-lined graves. Every year in the in U.S., this adds up to 90,000 tons of steel, 9 million meters of wood, and 1.6 million tons of concrete being buried with our dead.⁵³ And for each cremation, crematory machines use enough energy to meet the demands of a single person for a whole month.⁵⁴ So, as Spade notes, “there are environmental repercussions to both,” and composting the dead would provide an alternative with less of an environmental impact.⁵⁵

One criticism of composting — especially the collective aspect of Spade’s plan — is that it is disrespectful to the dead. As one cemetery director stated, “[f]rom my perspective, personally, human remains are deserving of a pretty high degree of respect . . . To do any form of collective

⁴⁹ The Urban Death Project, <http://www.urbandeathproject.org/tablet/index.html>

⁵⁰ Katrina Spade, *The Urban Death Project: Laying Our Loved Ones to Rest*, Kickstarter Campaign, May 2015, Kickstarter.com, <https://www.kickstarter.com/projects/546469190/the-urban-death-project-laying-our-loved-ones-to-r>

⁵¹ Sarah Berman, *This Nonprofit Wants to Turn Corpses into Compost*, Vice, March 18, 2015, <http://www.vice.com/read/this-seattle-non-profit-wants-to-compost-dead-people-263>

⁵² *A Mortician Talks Openly About Death, And Wants You To, Too*, NPR, October 8, 2014, <http://www.npr.org/2014/10/08/352765943/a-mortician-talks-openly-about-death-and-wants-you-to-too>

⁵³ Berman, *supra*.

⁵⁴ Leo Hickman, *Should I . . . Be Buried or Cremated?* The Guardian, October 18, 2005, <http://www.theguardian.com/environment/2005/oct/18/ethicalmoney.climatechange>

⁵⁵ Sarah Toce, *The Urban Death Project and Human Composting*, Windy City Times, June 2, 2015, <http://www.windycitymediagroup.com/lgbt/The-Urban-Death-Project-and-human-composting-/51651.html>

disposition, I don't think the public would find it acceptable."⁵⁶ One commenter noted: "A pile of bodies is usually called a 'mass grave.' Please stop what you're doing." Indeed, many people find the thought of composting to be disgusting and repulsive to cultural and religious traditions. For example, another comment described the plan as "sick."⁵⁷ But Spade believes that composting is a powerful symbol of the cycle of nature: "The deceased are folded back into the communities where they have lived as the great potential of our bodies to grow new life is celebrated."⁵⁸

Legal barriers are another concern for the project. In many states, bodies are required to be entombed, buried, cremated, or donated to science. A natural burial or composting is not an option.⁵⁹ Interestingly, these regulations are mostly based in tradition and psychology rather than public health concerns—dead bodies are generally not the biohazards that they are often assumed to be.⁶⁰ So there is hope that new methods of disposing of dead bodies can become legal as they gain acceptance. Indeed, for example, water cremation (a process in which a body is reduced to ashes through alkaline hydrolysis instead of flames) has been legalized in a handful of states in recent years.⁶¹

⁵⁶ Berman, *supra*.

⁵⁷ Catrin Einhorn, *A Project to Turn Corpses into Compost*, The New York Times, April 13, 2015, http://www.nytimes.com/2015/04/14/science/a-project-to-turn-corpses-into-compost.html?_r=0

⁵⁸ Urban Death Project, urbandeathproject.org

⁵⁹ Einhorn, *supra*; see also Caitlin Doughty, *Ask A Mortician: Composting The Dead?* November 13, 2014, <http://www.orderofthegooddeath.com/ask-mortician-composting-dead>; Susan Scutti, *Mortician Caitlin Doughty Wants to End Cremation, Burial Status Quo With Alternative Funerals*, Medical Daily, September 19, 2014, <http://www.medicaldaily.com/mortician-caitlin-doughty-wants-end-cremation-burial-status-quo-alternative-funerals-304054>

⁶⁰ Alex Reshanov, *How to Dispose of a Dead Body, Legally*, EarthSky, September 14, 2012, <http://earthsky.org/human-world/how-to-dispose-of-a-dead-body-legally>

⁶¹ Einhorn, *supra*; Reshanov, *supra*.

Case 8: The Indian Child Welfare Act

While many school children are still taught that Christopher Columbus discovered the Western world in 1492, most will eventually find it odd that Columbus could have discovered anything when it had been inhabited by American Indians for thousands of years before Columbus was even born. Most will eventually be exposed to the fact that European settlers did not respect the land rights of American Indians. As European colonies in the New World grew, many American Indians were made sick by European diseases, moved onto reservations far from their ancestral homes, or exterminated outright.

Hundreds of years later, while American Indian tribes still exist among the many cultural groups which make up the United States of America, they have not always shared in the prosperity of the richest nation in the world. Nearly 25% of American Indians live in poverty, and unemployment is at twice the national rate.⁶² Native American languages are also dying out⁶³ as English becomes not just the dominant language of the United States, but also of commerce and technology worldwide. These facts and statistics have led many tribes to wonder how they can maintain their lands and identities as a separate culture, when economic survival and success seem to require assimilation at a basic level.

One method that tribes have championed in recent times is the Indian Child Welfare Act (ICWA), which mandates that social services place displaced American Indian children with tribal relatives or other tribes before non-tribal placement is considered.⁶⁴ The ICWA is meant to protect tribes by safeguarding their most valuable resources: tribal children.⁶⁵ Also, advocates of the Act claim tribal children deserve to be placed in a home where the culture is similar to the one they were born into. The shock of losing one's biological parents is bad enough, but it could be compounded by being transferred to parents from an entirely different cultural heritage with different languages, traditions, and even food.⁶⁶

Tribal leaders also see benefits to policies like the ICWA. As tribes lose more members to assimilation with the wider United States, some see their populations dropping below the

⁶² Jens Manuel Krogstad, *One-in-four Native Americans and Alaskan Natives are living in poverty*, Pew Research Center, June 13, 2014, <http://www.pewresearch.org/fact-tank/2014/06/13/1-in-4-native-americans-and-alaska-natives-are-living-in-poverty/>

⁶³ James Crawford, *Endangered Native American Languages: What is to be done and why?*, The Bilingual Research Journal, Winter 1995, https://castl.duq.edu/Conferences/Urbanlearnr/Endangered_Native_American.pdf

⁶⁴ 25 U.S.C. #sect# 1915 Placement of Indian children (a) Published Department of Interior Bureau of Indian Affairs Guidelines: F.I. Adoptive Placements

⁶⁵ 25 U.S.C. #sect# 1901 Congressional findings

⁶⁶ Terry L. Cross, *The ICWA: 35 Years in and We Must Still Fight for Our Children*, Indian Country Today Media Network, November 8, 2013, <http://indiancountrytodaymedianetwork.com/2013/11/08/icwa-35-years-and-we-must-still-fight-our-children>

necessary levels to maintain an independent language and culture.⁶⁷ By keeping displaced American Indian children within their tribes, there are more possible recipients of this cultural heritage—more proud American Indian children that can go on to teach tribal ways to their own children someday.

However, some child welfare advocates offer a differing view of these policies. Citing poverty and substance abuse statistics⁶⁸ among American Indian tribes, they claim that the ICWA may lead to children being placed in less stable households. It may be an advantage to place children with families that are culturally similar to their biological parents when there are many available, high-quality foster parent options. But when such high-quality options are not available in sufficient numbers, a bias towards any tribal placement may be a detriment to children. Finally, many anti-ICWA parents maintain that the ICWA's rules are much too broad, give too much authority to tribes and tribal courts (even when making decisions about children held off-reservation) and ignore the individual rights of parents, particularly of multi-racial children.⁶⁹

Tribal advocates respond that without policies like the ICWA, there may be no way for them to renew their communities. By placing children with the “highest rated” foster parents available, the dominant white American culture ends up enlarging its ranks and cutting off the potential for tribal children to meaningfully connect to their ancestors.

⁶⁷ Jeremy Miller, *Most native tongues of the West are all but lost*, High Country News, March 2, 2015, <https://www.hcn.org/issues/47.4/most-native-tongues-of-the-west-are-all-but-lost>

⁶⁸ George E. Woody, et al, *Racial-Ethnic Variations in Substance-Related Disorders Among Adolescents in the United States*, JAMA Psychiatry, November 2011, <http://archpsyc.jamanetwork.com/article.aspx?articleid=1107330>

⁶⁹ Elizabeth Morris, *BIA Issues Devastating, “Anti-Family” ICWA Rules*, Christian Newswire, February 25, 2015, <http://www.christiannewswire.com/news/3456975608.html>

Case 9: Police Officers' Bill of Rights

After Freddie Gray died a brutal death while in police custody, it took days before the Baltimore Police Department mounted an internal investigation. The reason for the delay was the Law Enforcement Officers Bill of Rights (LEOBOR), which provides that officers cannot be forced to make a statement within 10 days of an incident and that superiors cannot question an officer without a lawyer present. Additionally, an officer may only be questioned for a reasonable amount of time, at a reasonable hour, and by only one or two investigators (fellow policemen). Some believe that this “ ‘special layer of due process’ afforded police officers ‘impedes accountability, and truly is a key element of our lack of responsiveness to these cases’ of apparent excessive force.”⁷⁰

But on the other hand, as explained by one former Baltimore homicide officer named Stephen Tabling, these special provisions can be important for the fair treatment of police. In 1962 Tabling fatally shot an armed robber and was suspended without pay pending an investigation and trial for homicide. Tabling was eventually exonerated, but after this experience he says, “I made up my mind that if I was ever in a position to investigate police, I would not treat others the way I was treated.”⁷¹ Without some legal protections, “A sheriff or chief would just call you in and say, ‘You’re finished, pack up, you’re done.’”⁷²

In 1972, Maryland became the first state to implement a law enforcement officer’s bill of rights. Maryland’s LEOBOR provides that officers are not to be questioned for ten days—a period of time designed to allow officers to “cool down” and obtain legal representation. Some worry that “by the time those suspected of misbehavior have to commit to a story, they will have had ample opportunity to consult with others about what to say.”⁷³ Others say “when it comes to the administrative case, they [officers] don’t have the luxury to keep quiet . . . the LEOBOR gives them the right to be represented, which can include an attorney or a union representative, gives them the adequate time to get that representation and then make a statement.”⁷⁴

Once the investigation begins the LEOBOR requires a hearing board composed of other police officers. This means that “a police chief cannot impose discipline unless the chief’s subordinates

⁷⁰ Eli Hager, *Blue Shield*, The Marshall Project, April 27, 2015, <https://www.themarshallproject.org/2015/04/27/blue-shield>

⁷¹ The Real News, *Does Maryland’s Police Bill of Rights Protect Bad Cops?* January 15, 2015, https://www.youtube.com/watch?v=rgrlWmqcWYc&feature=player_embedded

⁷² Adam May, *Maryland police lawyer: Officers’ Bill of Rights is not wrong*, Aljazeera America, May 3, 2015, <http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/5/3/maryland-police-lawyer-officers-bill-of-rights-is-not-wrong.html>

⁷³ Walter Olson, *Freddie Gray’s Death and the Law Cops Hide Behind*, Newsweek, April 29, 2015, <http://www.newsweek.com/freddie-grays-death-and-law-cops-hide-behind-326631>

⁷⁴ May, *supra*.

approve, including one of equal rank of the officer being investigated.”⁷⁵ A peer-based review board offers insight as to what would constitute reasonable behavior from the perspective of the officer being investigated. However, the requirement for a hearing board composed only of other officers effectively precludes civilian oversight.

In a review of procedures, a Maryland Municipal League document describes the system of LEOBOR as “due process plus.”⁷⁶ An author for *Reason* compares this system to teacher tenure and claims that “Firing a bad cop is damn near impossible.”⁷⁷ Both the CATO Institute and the ACLU have called for a rollback of the LEOBOR.⁷⁸ However some worry that without a robust LEOBOR, “police officers would be subject to a lot of frivolous prosecutions. I think good police officers would lose their job and their standing.”⁷⁹

⁷⁵ Susan Goering, *Reform Maryland’s officers’ bill of rights*, Baltimore Sun, August 3, 2015, <http://www.baltimoresun.com/news/opinion/bs-ed-aclu-leobr-20150117-story.html>

⁷⁶ Karen J. Kruger, Law Enforcement Officers’ Bill of Rights, *What Town Managers Need to Know*: MML Summer Conference June 2012, <http://www.mdmmunicipal.org/DocumentCenter/View/504>

⁷⁷ Mike Riggs, *Why Firing a Bad Cop Is Damn Near Impossible*, Reason, October 19, 2012, <http://reason.com/archives/2012/10/19/how-special-rights-for-law-enforcement-m>

⁷⁸ Walter Olson, *Police Misconduct and ‘Law Enforcement Officers’ Bill of Rights’ Laws*, Cato At Liberty, April 24, 2015, <http://www.cato.org/blog/police-misconduct-law-enforcement-officers-bill-rights>

⁷⁹ May, *supra*.

Case 10: A Pain in the Neck

Dr. David Vandercar was retired from a career in psychology and anesthesiology when his daughter suffered a neck injury and needed help that turned out to be hard to find.⁸⁰ Her doctors advocated for expensive surgeries and insisted on giving her injections which didn't seem to help her neck pain; Dr. Vandercar was confident that the more traditional pain management regimen of narcotic pain medications would be more effective. But his daughter was having difficulty finding doctors who would provide medications without the other more invasive treatments. So Dr. Vandercar opened Tampa Pain Clinic . . . and business could not have been better.

Dr. Vandercar treated many different kinds of patients. Some were injured in car accidents, had suffered repetitive work injuries, or had developed debilitating illnesses. Dr. Vandercar required proof of injury, preferably an MRI, and would often prescribe a large quantity of opiate pain killers to his patients.⁸¹ The paperwork provided at the initial consultation described the risks and benefits of pain management with emphasis on the risk of addiction, sedation, and possible death. Patients were also required to execute an agreement only to seek treatment for pain management from Dr. Vandercar and submit to regular drug screening. But these measures were imperfect, and Dr. Vandercar's patients sometimes succumbed to addiction or died from abuse of their medications.

Anecdotal accounts from pain patients⁸² retell how medications that were supposed to help them function better instead ruined their lives, including stories of arrest,⁸³ family strife,⁸⁴ and even the death of innocent children of pain sufferers.⁸⁵ In interviews, Dr. Vandercar freely admitted that some of his patients overdosed on medications he prescribed, but he argued that the help the medications provided to the vast majority of his patients outweighed the risk that a few would overdose.⁸⁶ There are patients like Keyanna Otholt, who suffers from "two failed back surgeries, arachnoiditis, reflex sympathetic dystrophy, Hepatitis B, chronic obstructive pulmonary disease, arthritis, stage 4 endometriosis, myofascial pain, fibromyalgia and chronic fatigue." In recent

⁸⁰ Chris Tisch and Abbie Vansickle, "The Politics of Pain," St. Petersburg Times (now Tampa Bay Times), February 28, 2008. http://www.sptimes.com/2008/02/24/Worldandnation/The_politics_of_pain.shtml

⁸¹ See patient review titled, "Mubang; pros and cons," by CPP on Sept. 22, 2014; [vitals.com](http://www.vitals.com); http://www.vitals.com/doctors/Dr_John_Mubang/reviews.

⁸² There is no indication that the following categories/stories necessarily applies to any of Dr. Vandercar's patients unless expressly alleged.

⁸³ Chris Tisch, "Pain caused his hellish descent," St. Petersburg Times (now Tampa Bay Times), February 24, 2008, http://www.sptimes.com/2008/02/24/Worldandnation/Pain_caused_his_helli.shtml.

⁸⁴ "Florida's Pill Problem: A Prescription for Controversy," (student documentary, faculty advisor: Ray L. Mendez), <http://mysaltwood.co.uk/ARTICLES/AUGUST2011/Florida's%20Pill%20Problem/Florida's%20Pill%20Problem.html>, Dec. 9, 2010.

⁸⁵ Matt Reinig, "Spring Hill mom gets 30 months in toddler's overdose death," The Tampa Tribune, November 18, 2013, <http://tbo.com/news/crime/hernando-mother-sentenced-today-in-overdose-death-of-daughter-20131118/>; Tony Marrero, "Hernando mother faces prison over drug death of 2-year-old daughter," Tampa Bay Times, November 15, 2013, <http://www.tampabay.com/news/courts/criminal/mother-faces-prison-over-drug-death-of-2-year-old-daughter/2152680>.

⁸⁶ See "Politics of Pain," *supra*.

years, Ms. Otholt and many other “legitimate” pain patients have had difficulty filling their prescriptions due to increased pressure and regulation from Florida legislators, law enforcement, and the Drug Enforcement Administration (DEA), leading to what many refer to as the “pharmacy crawl,” visiting dozens of pharmacies to find one both willing and able to fill the prescriptions they need to be able to function.⁸⁷

Over the years, the pendulum has swung in both directions in terms of legislative and enforcement approaches. In 1994, several states including Florida adopted guidelines that protected doctors who prescribed pain medication in order to enable them to treat terminal or severely injured patients with less fear of prosecution. But this led to an influx of self-described pain management physicians who had little or no background in anesthesiology and a “pill mill” epidemic.⁸⁸ In response, Florida implemented the prescription drug database in 2011 to aid physicians and pharmacies in spotting “doctor shoppers,” or patients who would visit multiple doctors to obtain prescriptions for narcotics.⁸⁹ Dr. Vandercar and his staff, like many pain management clinics, supported implementation of the database.⁹⁰ State and federal authorities also prosecuted drug manufacturers⁹¹ and pharmacies⁹² for distributing excessive amounts of narcotics. Prescription drug overdoses began to decline, and the state continued its efforts to rein in the sources of prescription drug abuse.

Unfortunately, the restrictions that reduced prescription drug deaths also came with unintended consequences. Some pain patients who were unable to fill their prescriptions turned to heroin to deal with their pain, and heroin overdoses have been on the rise since the crackdown on pill mills

⁸⁷ Mark Maginn, “Living with Pain: The Pharmacy Crawl in Florida,” American News Report, May 30, 2012, <http://americannewsreport.com/living-with-pain-the-pharmacy-crawl-in-florida-8814404>; Timothy W. Martin, “Making the ‘Pharmacy Crawl,’” Sept. 26, 2012, <http://www.wsj.com/articles/SB10000872396390443720204578004873138298306>; Leticia Stein, “Getting pills a pain even for legitimate patients,” St. Petersburg Times (now Tampa Bay Times), Feb. 11, 2011, <http://www.tampabay.com/news/health/medicine/getting-pills-a-pain-even-for-legitimate-patients/1151024>; Liz Freeman, “Pill mill fallout: Legitimate patients have trouble getting pain meds,” Oct. 18, 2014, http://www.naplesnews.com/news/local-news/pill-mill-fallout-legitimate-patients-have-trouble-getting-pain-meds_31951071.

⁸⁸ See Politics of Pain; see also Tatyana Lyapustina and G. Caleb Alexander, “The prescription opioid addiction and abuse epidemic: how it happened and what we can do about it,” The Pharmaceutical Journal, June 11, 2015, <http://www.pharmaceutical-journal.com/opinion/comment/the-prescription-opioid-addiction-and-abuse-epidemic-how-it-happened-and-what-we-can-do-about-it/20068579.article>.

⁸⁹ Elaine Silvestrini, “Florida heals from pill mill epidemic,” The Tampa Tribune, Aug. 30, 2014, <http://tbo.com/news/crime/florida-heals-from-pill-mill-epidemic-20140830/>

⁹⁰ Ashley VanDercar, “Drug database is vital tool in fighting abuse,” St. Petersburg Times (now Tampa Bay Times), Feb. 13, 2011, <http://www.tampabay.com/opinion/columns/drug-database-is-vital-tool-in-fighting-abuse/1151095> (Ms. VanDercar was attorney and risk manager for Dr. VanDercar’s Tampa Pain Clinic).

⁹¹ Barry Meier, “A New Painkiller Crackdown Targets Drug Distributors,” The New York Times, Oct. 17, 2012, http://www.nytimes.com/2012/10/18/business/to-fight-prescription-painkiller-abuse-dea-targets-distributors.html?_r=0.

⁹² Mark Lowery, “DEA official blames pharmacists, doctors, pain-med denials,” Modern Medicine Network, Feb. 3, 2014, <http://drugtopics.modernmedicine.com/drug-topics/content/tags/cardinal-health/dea-official-blames-pharmacists-doctors-pain-med-denials?page=full>

started.⁹³ With the stigma and risks involved with treating chronic pain, many doctors, pharmacists, and drug manufacturers have struggled with appropriate prescription policies; unfortunately, the development of alternative pain treatments is lagging well behind demand for chronic pain treatment.⁹⁴ And the ramifications of the pill mill epidemic continue to be felt to this day—some are still suffering from addiction or the consequences of bad choices made while under the influence of narcotic pain medications. Some doctors and pharmacists also find themselves held liable for the choices of their patients, including Dr. Vandercar.

In a complaint filed January 15, 2012, Florida’s Department of Health charged Dr. Vandercar with medical malpractice for the overprescription of narcotic pain medication to a patient identified as JNE.⁹⁵ Through public hearings, it came to light that this patient, Jeremy Eubanks, was a UPS driver who suffered a back injury, became addicted to opiates prescribed by Dr. Vandercar, and subsequently robbed a pharmacy to satisfy his addiction.⁹⁶ Dr. Vandercar worked out a settlement with the state Department of Health in which he promised to pay \$15,000, receive a reprimand, and stop prescribing controlled substances. But the Florida Board of Medicine rejected the settlement and ordered that his license be suspended indefinitely and he pay \$20,000.⁹⁷ Dr. Vandercar, already suffering from cancer, ultimately sold his clinic to Dr. John Mubang, who had his own legal issues.⁹⁸

⁹³ See “Florida heals from pill mill epidemic,” *supra*; Elie Dolgin, “Technology: Barriers to misuse,” Nature.com, June 24, 2015, http://www.nature.com/nature/journal/v522/n7557_supp/full/522S60a.html.

⁹⁴ See “Technology: Barriers to misuse” and “The prescription opioid addiction and abuse epidemic,” *supra*; Emily Wax-Thibodeaux, “Federal research seeks alternatives to addictive opioids for veterans in pain,” The Washington Post, Sept. 25, 2014, <http://www.washingtonpost.com/blogs/federal-eye/wp/2014/09/25/federal-research-seeks-alternatives-to-addictive-opioids-for-veterans-in-pain/>; Caitlyn Fitzpatrick, “Successful Non-Narcotic Approach to Chronic Pain Relief,” MD Magazine, June 19, 2015, <http://www.hcplive.com/medical-news/successful-non-narcotic-approach-to-chronic-pain-relief>;

⁹⁵ See <https://appsmqa.doh.state.fl.us/IRM00PRAES/PRASINDI.ASP?LicId=49754&ProfNBR=1501>, click “Link to Complaint.”

⁹⁶ Bob Lamendola, “Liposuction Deaths End Surgeon’s Career,” (see subsection Dr. David Vandercar), Health News Florida, August 1, 2013, <http://health.wusf.usf.edu/post/liposuction-deaths-end-surgeons-career>.

⁹⁷ Daniel Cohen, “Doctors Crack Down on Doctors,” WSVN.com (Fox affiliate, Miami), Aug. 20, 2013, <http://www.wsvn.com/story/23201657/doctors-crack-down-on-doctors>; Bob Lamendola, “State Rules Tampa Pain Doctor’s License Should Be Suspended,” WUSF News, August 2, 2013, <http://wusfnews.wusf.usf.edu/post/state-rules-tampa-pain-doctors-license-should-be-suspended>.

⁹⁸ Jessica Vander Velde, “Mistrial declared in case of Seffner doctor who prescribed painkillers to detectives,” St. Petersburg Times (now Tampa Bay Times), Sept. 16, 2010, <http://www.tampabay.com/news/courts/criminal/mistrial-declared-in-case-of-seffner-doctor-who-prescribed-painkillers-to/1121940>.

Case 11: There will be Hell to pay . . .

Aaron and Melissa Klein baked up a storm of controversy when they refused to bake a wedding cake for Laurel and Rachel Bowman-Cryer and ended up liable for \$135,000 in damages for the unlawful denial of service as well as for emotional distress.⁹⁹ Their refusal to bake the wedding cake violated a state statute in Oregon that prohibited discrimination based upon sexual orientation.¹⁰⁰

Many states over the past few decades have struggled with the issues of discrimination based on sexual orientation and same-sex marriage. According to the American Civil Liberties Union, 23 states provide at least some protections against discrimination based on sexual orientation. Additionally, 37 states passed laws providing express legal sanction to same-sex marriages while the remaining 13 outlawed them—some states even added a state constitutional definition of marriage as a union between one man and one woman.¹⁰¹

The United States Supreme Court recently reviewed the many disparate state laws on same-sex marriage in the case of *Obergefell v. Hodges*¹⁰² and determined that denying same-sex couples the right to marry violates the Due Process and Equal Protection clauses of the Fourteenth Amendment to the U.S. Constitution. Thus, there now exists a federally recognized Constitutional right to legal marriage equality for same-sex couples.¹⁰³ The right to marry, however, does not equate to the full host of legal protections that many anti-discrimination laws provide, and the states, therefore, still have authority to pass laws for or against discrimination based on sexual orientation.

Presuming the laws protecting homosexual and transgender rights continue to expand, the federal branches of government may take some unique methods to enforce such equality. For instance, the U.S. Supreme Court justified the federal Civil Rights Act of 1964's ban on discrimination in public accommodations under Congress's right to regulate interstate commerce, which some find

⁹⁹ Travis Gettys, "Oregon bakers forced to pay \$135,000 after sharing lesbian couple's home address," Raw Story, July 10, 2015, <http://www.washingtonpost.com/blogs/govbeat/wp/2015/04/03/heres-how-to-use-religious-freedom-laws-to-fend-off-a-gay-discrimination-suit/>.

¹⁰⁰ See Or. Stat. § 659A.400, 659A.403, and 659A.409, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors659A.html

¹⁰¹ "State Same-Sex Marriage State Laws Map," Governing: The States and Localities, retrieved July 11, 2015, <http://www.governing.com/gov-data/same-sex-marriage-civil-unions-doma-laws-by-state.html>; "Same-Sex Marriage Laws," National Conference of State Laws, June 26, 2015, <http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx>.

¹⁰² *Obergefell v. Hodges*, --- S.Ct. ---, 2015 WL 2473451 (2015), at http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf.

¹⁰³ While some may argue the holding extends to individuals of "all sexual orientations," "sexual orientation" might be interpreted to include polyamory or polygamy, and it remains unclear whether the holding will extend to polyamorous or polygamous unions.

to be an overreach of Congressional authority;¹⁰⁴ the IRS also famously threatened withdrawal of the tax exempt status of Bob Jones University and Goldsboro Christian School to encourage these institutions to end racially discriminatory policies and integrate their student bodies.¹⁰⁵

And as these newfound protections for the LGBT community gain ground, individuals, businesses, and state and local governments struggle to reconcile apparent conflicts between federally protected rights, as is the case with the Oregonian bakers. The Kleins' greatest complaint appears to be that the state laws preventing discrimination based on sexual orientation pit their right to free speech and exercise of religion against others' rights to equal protection under the laws.¹⁰⁶ And the Kleins are not alone in their struggle—Jack Phillips is facing liability under a similar Colorado statute that prohibited him from refusing to bake a wedding cake for Charlie Craig and David Mullins,¹⁰⁷ and Barronelle Stutzman was fined \$1,000 and prohibited from further violating the Washington anti-discrimination statute after she refused to provide flowers for Robert Ingersoll and Curt Freed's wedding.¹⁰⁸

In attempts to balance the rights of each side of these debates, over nineteen (19) states have passed laws providing small business owners protections to act or refuse to act on the basis of “religious freedom.”¹⁰⁹ The first such law was enacted in 1993, and they are often titled “Religious Freedom Restoration Acts” (or RFRAs). Such laws aim at, for instance, protecting a Christian baker's right to refuse to bake a wedding cake for a gay couple, or Jewish baker's right to refuse an order for a cake that bears a swastika. Many states with RFRAs also maintain anti-discrimination laws which protect individuals against discrimination based upon sexual orientation.¹¹⁰ Some claim the RFRAs help ensure that one party's right to live and work free

¹⁰⁴ “Commerce Clause,” Wex Legal Dictionary, Legal Information Institute, Cornell University Law School, https://www.law.cornell.edu/wex/commerce_clause; “Key Supreme Court Cases, Heart of Atlanta Motel v. U.S. (379 U.S. 241, 1964),” American Bar Association Division for Public Education,

http://www.americanbar.org/groups/public_education/initiatives_awards/students_in_action/atlanta.html

¹⁰⁵ Peter J. Reilly, “Will IRS Force Gay Marriage On Conservative Churches?” *Forbes*, July 9, 2015, <http://www.forbes.com/sites/peterjreilly/2015/07/09/will-irs-force-gay-marriage-on-conservative-churches/>.

¹⁰⁶ William J. Cadigan, “Christian cake shops vs. same-sex marriage,” *CNN*, July 11, 2015, <http://www.cnn.com/2015/07/10/us/oregon-colorado-same-sex-wedding-cake-cases/>.

¹⁰⁷ *See id.* *See also*, Jack Healy, “States Weigh Gay Marriage, Rights and Cake,” *The New York Times*, July 7, 2015, http://www.nytimes.com/2015/07/08/us/states-weigh-gay-marriage-rights-and-cake.html?_r=1.

¹⁰⁸ Zack Ford, “Anti-Gay Florist Fine \$1,000 And Ordered Not To Discriminate,” *ThinkProgress*, March 30, 2015, <http://thinkprogress.org/lgbt/2015/03/30/3640391/florist-pays-price-for-discrimination/>; Zack Ford, “Judge To Anti-Gay Florist: Religion Is Not An Excuse To Defy Anti-Discrimination Law,” *ThinkProgress*, Feb. 19, 2015, <http://thinkprogress.org/lgbt/2015/02/19/3624626/washington-florist-loses-religious-freedom-anti-gay-discrimination/>.

¹⁰⁹ Kelsey Harkness, “These 19 States Have Religious Freedom Laws Similar to Indiana's. Here's What That Means,” *The Daily Signal*, March 31, 2015, <http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx>.

¹¹⁰ *Id.* *See also*, “Non-Discrimination Laws,” *Movement Advancement Project*, retrieved July 11, 2015, http://www.lgbtmap.org/equality-maps/non_discrimination_laws; “Maps of State Laws & Policies,” *Human Rights Campaign*, retrieved July 11, 2015, http://www.hrc.org/state_maps.

from discrimination is balanced against another party's right to free speech and exercise of religion.¹¹¹

¹¹¹ Jeff Guo, "Here's how to use religious freedom laws to fend off a gay discrimination suit," The Washington Post, April 3, 2015, <http://www.washingtonpost.com/blogs/govbeat/wp/2015/04/03/heres-how-to-use-religious-freedom-laws-to-fend-off-a-gay-discrimination-suit/>.

Case 12: Feminism and Video Games #gamergate

In February 2013, female video game designer Zoe Quinn released a game called *Depression Quest* to mixed reviews from the video gaming websites.¹¹² It has now been played over a million times. One positive review, however, would prove problematic: a review from the website *Kotaku*¹¹³, where one of Quinn's ex-boyfriends worked. While Quinn's ex had not worked on the review, the suspicion of breached journalistic norms fomented an uprising on the Internet around games like *Depression Quest* that have non-standard gameplay and a socio-political message.

A cultural battle between new, more reform-minded gamers and "hardcore" gamers who saw their hold over games and gaming journalism slipping away came to a head with the battle over Zoe Quinn's game reviews. The conversation took place largely on social media sites like Twitter, where the hashtag #gamergate marked off posts that engaged in the discussion. However, discussion quickly turned ugly as the debate over whether *Depression Quest* deserved positive reviews turned to a debate about other kinds of diversity in video games. Eventually, sexist, racist, and even abusive or threatening posts, marked with #gamergate proliferated throughout social media sites.¹¹⁴ Those who stood up for feminist or anti-racist reforms within gaming were threatened with rape, violence, and being "doxxed" (having their personal information published, like a physical address or phone number) online. Many reformers report fearing for their safety from those who might be mentally unwell and think they can score real life points by harming reformers.

At the advent of the video game era, those who played video games (or "gamers") came from a fairly narrow social demographic: young, middle-class men with high levels of computer savvy. Video game publishers targeted this market aggressively, and the games that seemed to do better than any other games on this market were aggressive. Indeed, the modern archetype of the video game became the "first person shooter," in which characters stand behind a weapon and cooperate with teammates to achieve missions, typically with large body counts. Gamers gathered in online forums and traded modifications to games while waiting for the next best game to arrive. It became many people's primary hobby, and eventually the term "gamer" came to be associated with a certain identity: someone who played, hacked, and modified video games, often proudly alone in his basement to the exclusion of off-line (IRL) relationships and other forms of entertainment, such as sports or cinema.

¹¹² Kyle Orland, *What Depression Quest Taught Me About Dealing with Mental Illness*, Ars Technica. August 21, 2014. <http://arstechnica.com/gaming/2014/08/what-depression-quest-taught-me-about-dealing-with-mental-illness/>

¹¹³ Phil Owen, *4 Video Games that Help You Understand and Deal With Your Depression*, Kotaku, April 19, 2013, <http://kotaku.com/4-video-games-that-help-you-understand-and-deal-with-yo-473476131>

¹¹⁴ Zachary Jason, *Game of Fear*, Boston Magazine, May 2015, <http://www.bostonmagazine.com/news/article/2015/04/28/gamergate/>

This hegemony began to crumble after the turn of the millennium. Coming from a world of console games where little to no technical knowledge was required, video gamers from many diverse backgrounds poured into the marketplace, eager for games that were about more than just killing other players. *The Sims* attracted a huge audience just by allowing gamers to manipulate the environment of simulated people living their daily lives.¹¹⁵ As gaming and the internet converged, games also became more social, attracting people with something other than flashy graphics and frenetic gameplay. After the arrival of smartphones like the iPhone and Android with their “app” stores, most adults gained a device that could play advanced games anywhere for pennies on the dollar compared to traditional computer game prices. So-called “casual” gamers came to outnumber “hardcore” gamers by significant margins as people drifted to games like *Angry Birds* and *Candy Crush*^{116,117}.

With the huge increase in casual gamers came a market for all types of new gaming experiences from complex puzzle-solving games to impossible-to-win games like the “endless runner” genre. It was only a matter of time before game designers found a market niche for games with a social message like *Depression Quest*. As the “hardcore” gamers began to lose their influence in the gaming world, new gamers brought with them a new social consciousness. Servers where racism and sexism were rampant became symbols of all that was wrong with the gaming community, and the new gamers sought to marginalize and criticize racism and sexism wherever they found it. As game designers began to push the envelope and invent new subject matter and gameplay, video game journalism also began to change. Many sites (like kotaku.com and gamasutra.com) highlighted these newer, innovative games in addition to “traditional” first-person shooters, and the communities who played traditional games came under much closer scrutiny.

While many people welcomed this new era of gaming and game journalism, others believed that it began to infringe on the old gaming culture. Gaming, particularly the in realm of first-person shooters, had become a haven for young men to release their frustrations in a fantasy world. Old school gamers fought back by arguing for a “if you don’t like it, leave it and find something else” approach, backed up by a quasi-libertarian philosophy that decries many methods of censorship.¹¹⁸ If a player found a cooperative group of other players, scorn and ridicule was dished out gratuitously. Gamers prided themselves on having thick skin and using any kind of

¹¹⁵ John Gaudiosi, “*The Sims 4*” and Other Upcoming Games to Watch, CNN, September 3, 2013, <http://www.cnn.com/2013/09/02/tech/gaming-gadgets/games-watch-gamescom/>

¹¹⁶ “Panda McBearface”, *Casual Gaming: Is It a Crime*, GameZone, April 18, 2013, <http://www.mweb.co.za/games/view/tabid/4210/Article/6547/Casual-gaming-is-it-a-crime.aspx>

¹¹⁷ Noah Nelson, *Hard-Core and Casual Gamers Play in Different Worlds*, NPR All Tech Considered, November 22, 2013, <http://www.npr.org/sections/alltechconsidered/2013/11/29/246747168/hard-core-and-casual-gamers-play-in-different-worlds>

¹¹⁸ Clayton Ofricks, *Xbox Live: Defense Against Racism or Free Speech Restriction*, Whatculture.com, August 11, 2012, <http://whatculture.com/gaming/xbox-live-defense-against-racism-or-free-speech-restriction.php>

ridicule they could to gain an advantage, including sexist and racist slurs and jokes. When people challenged that culture, they fought back.¹¹⁹

¹¹⁹ Jason Schreier, *Anti-Bigotry Gaming Site Defaced with Racial Slurs*, Kotaku.com, July 24, 2012, <http://kotaku.com/5928723/anti-bigotry-gaming-site-defaced-with-racial-slurs>

13: Sex and Dementia

Last Fall, Henry Rayhons—a former state legislator—was charged with sexual abuse after he allegedly had sex with his wife, Donna Lou Young, an Alzheimer’s patient living in a nursing home. He was facing up to ten years in prison. He was recently acquitted of the crime, but the case stirred an important debate about consent.¹²⁰

The couple was married in 2007. A widow and a widower, they were both in their 70s. But they had unexpectedly found love again with each other, and they were inseparable. “We just loved being together,” Rayhons explained. However, about four years ago, Young was diagnosed with early onset Alzheimer’s. As her condition worsened, she began to repeat herself and forget things. Eventually, and despite Rayhons’ resistance, Young’s two daughters moved their mother to a nursing home.

Her daughters also became concerned about the way Rayhons was interacting with their mother. He came to visit her often, even multiple times a day. He wanted to take her on outings, but her daughters believed that outside activities agitated her. Young allegedly told one of her daughters that Rayhons liked to have sex once or twice a day, and her daughters were worried that their mother no longer had the capacity to consent to sexual activity. The daughters met with Young’s physicians, who gave Young a standardized cognitive test (the Brief Interview for Mental Status or BIMS) and, based on the results, put in writing that Young’s activities should be limited and that she was unable to consent to sex.¹²¹ Rayhons allegedly had sex with her eight days later.

Though Rayhons claims that he never had sex with his wife in the nursing home, he also believes that Young’s “love for [him] never changed in any way, shape, or form. . . . Physically as well. . . . She was just as aware that I was the person that she loved from the day we were married to the day she passed away.”¹²² There is no indication that Young was distressed in any way by Rayhons’ actions, and sex may be beneficial to dementia patients — calming their agitation, easing their loneliness, and perhaps even improving their physical health.¹²³ As aging expert Daniel Reingold explains, “A married couple has absolutely every right to be intimate. For the court to try and legislate intimacy between a married couple is a very dark road to go down. . . . It is one thing to have the capacity to make a complex medical decision for yourself and quite another to have the capacity to enjoy the touch of your husband.”¹²⁴

¹²⁰ Ann Brenoff, *Dementia And Sex: What Was Really On Trial With Henry Rayhons*, The Huffington Post, April 23, 2015, http://www.huffingtonpost.com/ann-brenoff/dementia-and-sex-henry-rayhons_b_7122460.html; see also Sarah Kaplan, *Former Iowa legislator Henry Rayhons, 78, found not guilty of sexually abusing wife with Alzheimer’s*, The Washington Post, April 23, 2015, <http://www.washingtonpost.com/news/morning-mix/wp/2015/04/23/former-iowa-legislator-henry-rayhons-78-found-not-guilty-of-sexually-abusing-wife-with-alzheimers/>

¹²¹ Bryan Gruley, *Can A Wife With Dementia Say Yes to Sex?* Bloomberg Business, December 9, 2014, <http://www.bloomberg.com/news/2014-12-09/rape-case-asks-if-wife-with-dementia-can-say-yes-to-her-husband.html>

¹²² Pam Belluck, *An Intimacy That Outlasted Dementia*, NY Times, April 27, 2015, <http://www.nytimes.com/2015/04/28/health/an-intimacy-that-outlasted-dementia.html>

¹²³ Pam Bellock, *Sex, Dementia and a Husband on Trial at Age 78*, The New York Times, April 13, 2015, <http://www.nytimes.com/2015/04/14/health/sex-dementia-and-a-husband-henry-rayhons-on-trial-at-age-78.html>

¹²⁴ Brenoff, *supra*.

Indeed, the BIMS test that was given to Young is not necessarily helpful in determining whether a patient can consent to sex. As Susan Wehry, a geriatric psychiatrist, notes, “I’m sensitive to the nursing home’s desire to protect their resident and certainly to the daughters’ desire to protect their mother.” However, Wehry concludes, “The BIMS in this case tells me nothing except that she has dementia. You can have virtually no short-term memory and still consent to a lot of things.” Douglas Wornell, another geriatric psychiatrist, agrees, noting that knowing whether one wants sex is “along the order of knowing you want some food.”¹²⁵

But if affirmative consent is required for each and every sexual activity in the moment, how can it be determined that a dementia patient is able to meaningfully consent? Even Young’s daughters, who were obviously trying to protect their mother, did not know what she would have wanted in this particular situation.¹²⁶ As one Law Professor puts it, “Any partner in a marriage has the right to say no What we haven’t completely understood is, as in this case, at what point in dementia do you lose the right to say ‘yes?’”¹²⁷

¹²⁵ Gruley, *supra*.

¹²⁶ Rob Belgau, The Significance of Marital Privacy, NY Times Room For Debate, April 22, 2015, <http://www.nytimes.com/roomfordebate/2015/04/22/can-people-with-dementia-have-a-sex-life>

¹²⁷ Gruley, *supra*.

Case 14: Changing Ideals of Beauty #effyourbeautystandards

Tess Holliday (aka Tess Munster) wanted to be a model since she was 15 years old, but she was always told that she was too short and too fat to be a model — even a plus-sized model. But about five years ago, her Model Mayhem profile was discovered by the casting director for an A&E program called *Heavy*, and she was hired to be the face of the show. It was her first big break. Today, at 29 years old, Holliday is the first model of her size (size 22) and height (5'3½") to sign with a major modeling agency. In recent months, she has worked with companies such as Torrid, Yours Clothing, and Simply Be.¹²⁸ Her newfound success has led to much media attention, both positive and negative.

Holliday has become a poster child for the body positivity movement. She started the #effyourbeautystandards campaign to promote body positivity. Though it has taken her many years, she finally feels confident as a plus-sized woman, and she started the campaign to encourage other women to share her confidence: “The goal is to allow other women to feel OK about wearing a bathing suit or pretty lingerie, to feel sexy enough to be in photographs and confident enough to post them online if they want to,” she explains. Obviously this message resonates with a lot of people. More than a million and half Instagram photos have been posted with the hashtag.¹²⁹ Holliday also has over 826,000 Facebook fans and 645,000 Instagram followers.

But Holliday has also faced criticism for promoting obesity and normalizing unhealthy habits. Her BMI is 42—to put that in perspective, a BMI higher than 30 is considered obese and a BMI higher than 40 is considered morbidly obese. Higher BMIs are associated with higher risk of various diseases, including heart disease, high blood pressure, type 2 diabetes, and certain types of cancer. Many believe that Holliday is doing society a disservice by normalizing, even glorifying, a body shape that is a serious health risk.¹³⁰ As one doctor puts it, “Far from fat being fabulous, it is a public health time bomb.”¹³¹

Interestingly, there is some precedent for the idea of banning models that represent an unhealthy ideal. A few countries have gone so far as to ban excessively thin models based on a similar

¹²⁸ Amanda Shapiro, *Tess Holliday Is The Biggest Thing To Ever Happen To Modeling*, BuzzFeed, May 14, 2015, <http://www.buzzfeed.com/ashapiro009/tess-holliday-plus-size-model#.ppqr1aRXm>

¹²⁹ Tess Holliday, *Size-22 model: Why I love my body and want other women to love theirs*, Today, April 7, 2015, <http://www.today.com/style/model-tess-holliday-body-image-confidence-love-t13451>

¹³⁰ *Tess Holliday—Body Positivity or Promoting Unhealthy Lifestyle?* PopDust, June 14, 2015, <http://popdust.com/2015/06/14/tess-holliday-body-positivity-or-promoting-unhealthy-lifestyle/>; National Heart, Blood, and Lung Institute, *Assessing Your Weight and Health Risk*, http://www.nhlbi.nih.gov/health/educational/lose_wt/risk.htm (last accessed June 13, 2015); Carolyn Hall, *6 Things I Don't Understand About the Fat Acceptance Movement*, Thought Catalog, April 22, 2014, <http://thoughtcatalog.com/carolyn-hall/2014/04/6-things-i-dont-understand-about-the-fat-acceptance-movement/>; Laura Connor, *Tess Holliday: Calls for Simply Be plus-size social media campaign to be BANNED because 'being fat is life-threatening'*, Mirror, June 8, 2015, <http://www.mirror.co.uk/news/uk-news/tess-holliday-calls-simply-plus-size-5844902>

¹³¹ Dr. Sarah Burnett, *The Cynical Lie that “Fat is Fabulous” and Why Plus Size Bloggers should Never be Considered Role Models for Young Women*, The Telegraph, April 23, 2015, <http://www.telegraph.co.uk/news/health/11554755/The-cynical-lie-that-fat-is-fabulous-and-why-plus-size-bloggers-should-never-be-considered-role-models-for-young-women.html>

public-health rationale. For example, following the death of model Isabelle Caro due to anorexia, the French legislature approved a bill prohibiting models with a BMI below 18 from working in the fashion industry. If modeling agents break the new law, they could be subject to hefty fines and even face jail time. The French health minister called the new law “an important message to young women who see these models as an aesthetic example.”¹³² Others have criticized the law as a shift in the right direction but ultimately ineffective: “Just because someone is at a very low BMI doesn’t mean that they have an eating disorder, and just because someone’s in the normal range or even in the high range of BMI doesn’t mean that they don’t have an eating disorder either.”¹³³

As for Tess Holliday, she responds to her critics by pointing out that she is happy, healthy, and enjoys working out. She doesn’t smoke, and barely drinks.¹³⁴ Indeed, BMI alone is a poor measurement of a person’s health.¹³⁵ But Holliday also maintains that health is a personal choice, and that body acceptance should not depend on health.¹³⁶ She explains, “We all have issues with our bodies. There’s something about all of us that we wish we could change. If it’s something you can work on, then do it. If not, accept it and that’s beautiful.”¹³⁷ Body advocate Jess Baker agrees, taking the message even further: “body love is not just for fat people, it’s for every person imaginable. Everyone has the right to self-love: skinny people. Fat people. Short people. Tall people. All abilities. All sizes. All shapes. All shades. All sexes. All genders. Haters and lovers alike.”¹³⁸

¹³² Laura Stampler, *France Just Banned Ultra-Thin Models*, TIME, April 3, 2015, <http://time.com/3770696/france-banned-ultra-thin-models/>

¹³³ Alex Villarreal, *Banning Too-Thin Models: Right Move, Wrong Approach, Say Experts*, Voice of America, April 3, 2015,

¹³⁴ Lina Lecaro, *Tess Holliday Is Challenging Our Concept of Beauty*, LA Weekly, May 16, 2015, <http://www.laweekly.com/arts/tess-holliday-is-challenging-our-concept-of-beauty-5534145>; *Plus-Size Model to Critics: Get a Hobby*, CNN, January 28, 2015, <http://www.cnn.com/videos/health/2015/01/28/bts-tds-intv-plus-size-model-tess-holliday-munster.hln>; see also Chrystal Bougon, *It’s OK To Be Fat. Go Ahead. You’re Allowed*, Huff Post Women, May 16, 2015, http://www.huffingtonpost.com/chrystal-bougon/its-ok-to-be-fat-go-ahead-youre-allowed_b_7103846.html

¹³⁵ Peter Janiszewski, Ph.D., *Why the Body Mass Index (BMI) is a Poor Measure of Your Health*, Obesity Panacea, February 10, 2012, <http://blogs.plos.org/obesitypanacea/2012/02/10/why-the-body-mass-index-bmi-is-a-poor-measure-of-your-health/>

¹³⁶ Lecaro, *supra*; *Plus-Size Model to Critics*, *supra*; Bougon, *supra*.

¹³⁷ Emily Sher, *Plus-Size Model Makes History, Leads Positive Body Image Campaign*, Today, January 29, 2015, <http://www.today.com/health/plus-size-model-tess-holliday-makes-history-leads-effyourbeautystandards-positive-2D80454218>

¹³⁸ Jes Baker, *Why People Hate Tess Munster (And Other Happy Fat People)*, The Militant Baker, January 28, 2015, <http://www.themilitantbaker.com/2015/01/why-people-hate-tess-munster-and-other.html>

Case 15: \$15,000 Baby

In 2014, Apple and Facebook announced that they would add egg-freezing to their employees' compensation packages—a generous financial incentive to women interested in the procedure, as each round of egg retrieval can cost between \$10,000 and \$15,000.¹³⁹ Though in the past egg-freezing was often used by women who underwent perimenopause early or by those who received chemotherapy, today this new perk might be used to attract young female employees interested in delaying motherhood.¹⁴⁰ As companies struggle to hire and retain women, offering egg-freezing benefits may allow employers like Apple to hold on to some of its most ambitious employees: women who want to “have it all,” with both a career and motherhood. Both Apple and Facebook have explained that they are simply responding to employees' demands, with Apple adding that the company wants to make sure that its female employees “do the best work of their lives as they care for loved ones and raise their families.”¹⁴¹ Brigitte Adams, an employee at a tech company, seems to agree: “I would equate it to . . . adoption assistance . . . [I]t's not the be-all and end-all, but it's definitely a nice perk.”¹⁴²

Though egg-freezing is no longer an experimental technology, it does come with risks. Before eggs can be harvested via outpatient surgery, women have to inject themselves with strong hormones.¹⁴³ When women decide to use the eggs, there is only a 30% chance that the implanted zygote will result in the birth of a child.¹⁴⁴ Moreover, the older women get and the more rounds of egg retrieval they undergo, the lower the odds of success.¹⁴⁵ For this reason, the American Society for Reproductive Medicine has declared that they “cannot at this time endorse its widespread elective use to delay childbearing.”¹⁴⁶

Indeed, sociologist Rene Almeling and historians Joanna Radin and Sarah Richardson have expressed the worry that egg-freezing benefits represent a failure of corporate policy to see childbearing and childrearing as a human need, instead of an inconvenience that needs to be

¹³⁹ Claire Miller, “Freezing Eggs as Part of Employee Benefits: Some Women See Darker Message.” The New York Times, July 16, 2015, <http://www.nytimes.com/2014/10/15/upshot/egg-freezing-as-a-work-benefit-some-women-see-darker-message.html>

¹⁴⁰ Rebecca Meade, “Cold Comfort: Tech Jobs and Egg Freezing.” The New Yorker, July 16, 2015, <http://www.newyorker.com/news/daily-comment/facebook-apple-egg-freezing-benefits>

¹⁴¹ Miller, *supra*.

¹⁴² Laura Sydell, “Silicon Valley Companies Add New Benefit For Women: Egg-Freezing.” NPR, July 16, 2015, <http://www.npr.org/blogs/alltechconsidered/2014/10/17/356765423/silicon-valley-companies-add-new-benefit-for-women-egg-freezing>

¹⁴³ Rene Almeling, Joanna Radin, and Sarah S. Richardson, “Egg-freezing a better deal for companies than for women.” CNN, July 16, 2015, <http://www.cnn.com/2014/10/20/opinion/almeling-radin-richardson-egg-freezing/>

¹⁴⁴ Almeling, Radin, and Richardson, *supra*.

¹⁴⁵ Sydell, *supra*.

¹⁴⁶ The American College of Obstetricians and Gynecologists, “Committee Opinion: Oocyte Cryopreservation,” January 2014, <http://www.acog.org/-/media/Committee-Opinions/Committee-on-Gynecologic-Practice/co584.pdf?dmc=1>

solved through technological innovation.¹⁴⁷ Policies that support childbearing and childrearing as a human need emphasize paid leave and view family life not as a hindrance but rather as something that can be compatible with high performance at work. However, instead of empowering women and allowing them to take control of their fertility, egg-freezing may pressure women to delay motherhood in order to be perceived as “serious employees.”¹⁴⁸ If the intention is to make the workplace more amenable to women, companies could instead address the systemic problems faced by working mothers, such as “the limited availability of subsidized care for preschool children, the resistance of corporate culture to flexible or reduced hours for the parents of young children, the lack of federally mandated, paid family leave.”¹⁴⁹

¹⁴⁷ Almeling, Radin, and Richardson, *supra*.

¹⁴⁸ Miller, *supra*.

¹⁴⁹ Meade, *supra*.