

Northern Illinois University Law Review

Volume 31 | Issue 3

Article 6

6-1-2011

Vol. 31, no. 3, Summer 2011: Table of Contents and Masthead

Northern Illinois University Law Review

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Recommended Citation

Northern Illinois University Law Review (2011) "Vol. 31, no. 3, Summer 2011: Table of Contents and Masthead," *Northern Illinois University Law Review*: Vol. 31: Iss. 3, Article 6.

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Northern Illinois University

Law Review

Volume 31

Summer 2011

Number 3

SYMPOSIUM:

WHICH WAY HOME—LAW REVIEW SYMPOSIUM ON HUMAN TRAFFICKING

ARTICLES

On Making Persons: Legal Constructions of Personhood and Their Nexus with Human Trafficking

Karen E. Bravo.....467

This article identifies and analyzes the role of law in constructing personhood and the impact of such construction on human trafficking. Who is a “person”? Are all human beings “persons”? Are children, legal immigrants, undocumented migrants, ex-convicts, and/or individuals who have been trafficked “persons” or “quasi-persons” under contemporary law? The concept and term “person” is ubiquitous in the legal literature – in statutes, constitutions, and treaties. It is deployed and manipulated by courts and legislatures to give and withhold rights to groups, entities, and individuals within societies. However, where legal recognition and protection of personhood is withheld, it creates vulnerability and increases opportunities for exploitation, including human trafficking.

The Eyes that Blind Us: The Overlooked Phenomenon of Trafficking into the Agricultural Sector

Shelley Cavalieri.....501

This article offers an analysis of American anti-trafficking legislation. It documents the level of American preoccupation with trafficking for sex work by using existing data from the Department of Justice to demonstrate just how current anti-trafficking efforts focus their attention on trafficking for sex work, to the detriment of trafficking into other labor sectors. The author offers a critique of this overemphasis, observing how the expectations of the individuals involved in enforcing anti-trafficking laws influence what kinds of cases they consider to be trafficking cases. The article also offers a few modest interventions that might help reallocate some of the energy dedicated to trafficking for sex work on the equally meritorious, but perhaps less titillating, issue of trafficking into agricultural services.

Lessons from the Road: Ecuador, Jamaica, and Other Efforts to Combat Trafficking in Persons in the Americas

Salvador A. Cicero-Dominguez.....521

This article identifies obstacles encountered in the hemisphere and provides practical examples in order to assist countries in adopting laws that are not only consistent with their international obligations, but more importantly help them better serve their citizenry. The article also explores the various ideas and lessons learned over the last five years throughout the hemisphere, drawing heavily from the author's experience in Ecuador and in the course of training throughout the American continent for consular, immigration, law enforcement officers, and United Nations' Peace Keeping forces. A brief comment is made of various laws adopted in the region, and analysis centers on the existing Jamaican anti-trafficking law as a best practice law, proposing its use as a model law in Latin America and the Caribbean.

What is the Monetary Value of Slave Labor?: Restitution Based on a Traditional Fair Market Valuation Basis May Not Fully Compensate Human Labor Trafficking Victims

Benjamin Thomas Greer.....553

Human trafficking is an abomination that decimates the lives of the trafficked, fracturing families, and is an act exploiting human labor as a renewable resource. Post-conviction proceedings primarily focus on the disposition of sentence and rehabilitation of the convicted. Restitution for the victim is too often marginalized, relegated to an afterthought. Prosecutors are often reluctant to vigorously pursue victim restitution, as they feel they have achieved their mandate of conviction, shifting their focus to their next case file. Without a nuanced and appropriately formulated monetary recovery for their damages, the victim fails to be made "whole." With the recent resurgence and focus on victims' rights, proper calculation of human trafficking restitution should also be carefully examined. Respective to forced labor trafficking, a traditional fair market value calculation for forced labor could be abused and exploited by the perpetrator. In a relationship where power and control is completely concentrated in one party, and that party has been found to have criminal culpability, they should not be afforded the benefits of a restitution calculation that is fundamentally built upon a freely negotiated wage between two similarly empowered or situated parties. Since the trafficker/victim relationship was wholly weighed in favor of the trafficker, it would stand that a restitution order should be created to address this past disparity of power. California Penal Code section 1202.4(q), with its insightful alternative methods for calculating restitution, could be utilized to address this disparity. I believe the court should be guided by wages that have been negotiated by workers with significant negotiating control and power – i.e. a collective bargaining wages. This form of calculation best addresses the entirety of the injury endured by the victim.

Dead on Arrival: The Health Insurance Industry’s Bleak Prognosis due to Unconstitutional Ratemaking in the Patient Protection and Affordable Care Act

Rebecca J. Kopps.....577

The public discussion surrounding health care reform thus far has centered around how the newly enacted law will affect consumers. Yet, the law most profoundly affects the health insurance industry, whose interests have largely been ignored. While the enactment of the Patient Protection and Affordable Care Act was viewed as a triumph for the Obama Administration, it casts a much darker shadow on the future of the health insurance industry that it regulates. Through provisions requiring minimum covered benefits, rate justifications, limits on selecting eligible enrollees, and most notably, an excessively high minimum medical loss ratio, this law involves substantial regulation of the health insurance industry which rises to the level of systematic coercion. The control that the legislature exerts over the insurance industry through PPACA amounts to legislative treatment of the industry like a public utility. As such, in creating this law, ratemaking was wrongly implemented and unconstitutionally applied in a manner that strips the health insurance industry of their Fifth Amendment right to receive a reasonable rate of return on their investments. Although the purported goals of health care reform, such as lowering health care costs, increasing health care quality, and simplifying health care transactions, are undoubtedly noble, the resulting legislation overreaches constitutional legislative power, and will ultimately prove to be a death knoll for the health insurance industry.

Unnaturally Stubborn: Illinois’ Reluctance in *Krywin v. Chicago Transit Authority* to Do Away with the Natural Accumulation Rule, and the Resulting Impact upon the Duty of Common Carriers

Theodore Richgels.....613

*The Natural Accumulation Rule is a legal doctrine that has been interpreted and applied by the Illinois courts to mean that a landowner may escape liability for injuries to a third party on his or her land that occur as a result of a natural accumulation of rain, ice or snow. Another legal doctrine that is recognized in Illinois is the duty of common carriers (such as buses, airplanes, and commuter trains) to provide a safe place for their passengers to disembark or “alight” from the vehicle they are riding. These two legal doctrines came into conflict with one another in the 2010 Illinois Supreme Court case of *Krywin v. Chicago Transit Authority*, which involved a woman who slipped and fell on a patch of ice while disembarking from a Chicago El train. This Note examines the Illinois Supreme Court’s decision in *Krywin* to continue to uphold the Natural Accumulation Rule, despite the fact that Illinois is one of the few states remaining that continues to recognize this somewhat antiquated concept. This Note makes the conclusion that the Court’s decision in *Krywin* was incorrect because it was inconsistent with the intension of the Illinois legislature, and was inconsistent with prior precedent set both in Illinois and other similarly.*

**NORTHERN ILLINOIS UNIVERSITY
LAW REVIEW**

Volume 31

Summer 2011

Number 3

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Special thanks to Lynne Smith, Christina Raguse, Barbara Manning, Pamela Sampson, Diana Grace, Frank Lima, John Austin, and Therese Clarke Arado for administrative and support purposes.

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The NORTHERN ILLINOIS UNIVERSITY LAW REVIEW (ISSN 0734-1490) is published tri-annually by the students of the Northern Illinois University College of Law, DeKalb, Illinois 60115-2854.

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Cite as N. ILL. U. L. REV. (2011)
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