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***ARTICLES***

A Taxonomy of Virtual Work ..... *Miriam A. Cherry* 951

*Millions of people worldwide entertain themselves or supplement their incomes—or both—by meeting with fellow employees as avatars in virtual worlds such as Second Life, solving complicated problems on websites like Innocentive, or casually "clicking" to make money for simple tasks on Amazon.com's Mechanical Turk. Virtual work has great promise—increasing efficiency by reducing the time and expense involved in gathering workers who live great distances apart, and allowing for efficient use of skills so that the whole is truly greater than the sum of its parts. At the same time, virtual work presents its own unique series of challenges, and regulation is needed to ensure that the end result is not virtual sweatshops. Some of the questions that virtual work raises are: How might the minimum wage laws apply to new forms of work, such as crowdsourcing, where work is broken down to small components? How could virtual worlds help us to test the amount of unconscious bias that exists in hiring? How will unions use virtual worlds, and as happened in the 2007 IBM Italy "virtual strike," are more virtual industrial actions yet to come? Other issues discussed in the Article include virtual work approaches to whistleblowing, harassment, and disability law. While still nascent, these legal issues are of concern to employees and employers alike, and in light of that fact, it is appropriate to begin formulating well-thought out approaches to address them.*

From Oglethorpe to the Overthrow of the Confederacy: Habeas Corpus in Georgia, 1733–1865 ..... *Donald E. Wilkes, Jr.* 1015

*This Article provides, for the first time, a comprehensive account of the writ of habeas corpus in Georgia not*

*primarily focused on use of the writ as a postconviction remedy. The Article covers the 132-year period stretching from 1733, when the Georgia colony was established, to 1865, when the American Civil War came to a close. Part II of this Article, which examines the writ of habeas corpus in colonial Georgia, begins by briefly summarizing the history and development of the writ in England, and then analyzes the reception and availability in the colony of the common law writ of habeas corpus and the English Habeas Corpus Act of 1679. Part III explores habeas corpus in Georgia during the Antebellum era, and demonstrates that both common law habeas corpus and the 1679 English habeas statute continued to be part of Georgia law throughout this period. Part IV focuses on habeas corpus in Georgia during the Civil War, and explores four major habeas corpus developments in wartime Georgia. The first was the taking effect of the habeas corpus provisions contained within the Georgia Code of 1861, and the consequent abolition of the state's common law writ of habeas corpus and repeal of the 1679 English statute. The second development was the enactment of an 1863 habeas corpus statute designed to assure that when properly applied for the writ would not be denied. The third was Georgia's fiery resistance to Confederate suspension of habeas corpus. The fourth development was the willingness of the Georgia Supreme Court, in case after case, to permit persons serving in or conscripted by the Confederate Army or the Georgia state militia to seek and where appropriate obtain state habeas relief from military service. Part V brings the Article to a close by summarizing the sound reasons supporting the view that during the period extending from the founding of the colony until the end of the War Between the States the writ of habeas corpus was the glory of Georgia law.*

***ESSAY***

What *McDonald* Means for Unenumerated Rights.....*A. Christopher Bryant* 1073

*In June a splintered Supreme Court held in* McDonald v. City of Chicago *that the Second Amendment applied to state and local governments. But the case was about*

*much more than handguns. It presented the Court with an unprecedented opportunity to correct its own erroneous precedent and revive the Fourteenth Amendment's Privileges or Immunities Clause. The plurality declined the offer not, as Justice Alito's opinion suggested, out of a profound respect for stare decisis, but rather because at least four Justices like the consequences of that ancient error, especially insofar as unenumerated rights are concerned. This observation in turn raises questions about interpretative method and the Court's fidelity to the written Constitution.*

***NOTES***

EXTRA! Read All About It: Why Notice by Newspaper Publication Fails to Meet *Mullane*'s Desire-to-Inform Standard and How Modern Technology Provides a Viable Alternative..... *Jennifer Lee Case* 1095

*Decades ago the Supreme Court articulated that due process requires adopting a means of service that one would naturally adopt if he actually desired to inform another. For generations newspaper publication has been allowed where the party to be notified is not known or cannot be located. But, given the rapid transformation of information dissemination over our country's recent history, are newspapers a method that anyone would use if they truly wanted to relay information to another person?*

*This Note examines the shift in how American's receive news and information in our modern society. It explores the decline in newspaper readership, the rise of Internet communication, and the historical mobility of our society. Based on the continuous decline in newspaper use and the unstoppable expansion of the Internet, this Note concludes that newspapers are not a method of communication that anyone desiring to notify another party would reasonably use. Therefore, notice by newspaper publication no longer meets the constitutional standard for due process.*

*This Note concludes by proposing a method of notification that embraces the new ways in which society communicates and emboldens proactive citizens to harness the power of electronic applications and services to monitor challenges to their property rights. Given the*

*efficacy of modern-day technology in reaching people, this Note encourages the Court to modify the Federal Rules and leverage modern advancements to better protect each citizen's constitutional right to notification and an opportunity to be heard.*

Imprisoned by Liability: Why *Bivens* Suits Should Not Be Available Against Employees of Privately Run Federal Prisons ..... *Isabella Ruth Edmundson* 1127

*With the increasing privatization of prisons, a growing issue is whether individual employees in private federal prisons are liable through a* Bivens *suit for violating the constitutional rights of inmates. Four circuits have confronted the issue. Three circuits have held that no* Bivens *action is available; but recently the Ninth Circuit has held the contrary.*

*The Supreme Court's* Bivens *case law offers mixed messages as to whether an implied cause of action should be available in this situation. One view is that, despite an initial willingness to expand* Bivens*, the Supreme Court has consistently moved away from recognizing new* Bivens *suits. An expanding class of alternative remedies that are considered adequate to foreclose a* Bivens *action could explain part of this shift. Another interpretation is that recent Supreme Court cases have reaffirmed that the Supreme Court's current approach to* Bivens *is substantially the same as it was right after* Bivens *was decided.*

*This Note will argue that based on recent Supreme Court jurisprudence private prison employees should not be subject to* Bivens *liability. Important policy considerations underlying* Bivens *actions further suggest a finding of no liability. Also, because a state law negligence suit should be viewed as an adequate alternative, the creation of an implied cause of action in this context is unnecessary.*

Amy and Vicky's Cause: Perils of the Federal Restitution Framework for Child Pornography Victims ..... *Robert William Jacques* 1167

*Child pornography is unique among violent crimes in at least one aspect: victims are harmed not only from their*

*initial abuse but also from knowing that people on the Internet continue to view the images. In recent years, a split has arisen among federal courts on whether victims of child pornography are entitled to restitution from non-production offenders, i.e., offenders that were not involved in the initial abuse of victims. The controversy has surrounded 18 U.S.C. § 2259—the mandatory restitution statute for sex offenses. While some courts find victim harm not sufficiently traceable to the crimes at issue to grant restitution, other courts emphasize Congress's intent to compensate victims in ordering restitution. The problem with restitution in the child pornography context, however, is deeper than just interpreting § 2259 for non-production offenses. This Note suggests that a mandatory fine for non-production offenders would alleviate not only the causality problem but also other issues plaguing the restitution framework.*

Ineffective-Assistance-of-Counsel Blues:
Navigating the Muddy Waters of Georgia Law
After 2010 State Supreme Court Decisions ..... *Ryan C. Tuck* 1199

*The constitutional right to counsel is a guarantee of* effective *counsel, but vindicating this right through an ineffective assistance of counsel challenge (IAC) is difficult for most defendants, especially indigent ones. In Georgia, the difficulty of arguing a successful IAC claim is heightened by strange rules for when such claims can be raised. Georgia long has adhered to an IAC timing approach that few other jurisdictions still follow and the Supreme Court has rejected, threatening waiver if defendants do not argue IAC as early as practicable. When appellate counsel is new, this opportunity is the direct appeal. In contrast, most courts prefer that IAC claims be raised at collateral review.*

*In 2008, the Georgia Supreme Court made the state's rules even more unique, suggesting that indigent defendants were entitled to new appellate counsel without any threshold showing of merit, which (though unspoken by the court) would jump-start the ticking clock toward waiver. Many lambasted this rule as deepening perceived problems with Georgia's IAC timing rules in an indigent defense system already struggling for resources. A pair of*

*2010 cases, however, suggests that the state court may be tempering both this no-threshold rule and Georgia's approach to IAC timing, more broadly.*

*This Note evaluates those cases and their implications for Georgia's rules, as well as the larger debate about the ideal approach to IAC timing.*

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