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THE RULE 23(B)(3) SUPERIORITY REQUIREMENT AND TRANSNATIONAL CLASS ACTIONS: EXCLUDING FOREIGN CLASS MEMBERS IN FAVOR OF EUROPEAN REMEDIES
By Michael P. Murtagh..1

This Article analyzes the way federal courts conduct their superiority inquiries on motions for clasis certification in transnational class actions. Opt-out class actiions under Rule 23(b)(3) conflict with an important premise of legal systems around the world, namely, that one cannot be bound to a judgment unless one affirmatively participated in the lawsuit. Federal courts sometimes either decline to certify the class or exclude foreign class members from the class because of the risk that the courts of foreign countries will not enforce the class action judgment. This Article argues that the current approach inefficiently exposes the parties to costly litigation and risk. In order to efficiently achieve the purposes of Rule 23, courts should exclude foreign class members when it is unclear that foreign courts would enforce the judgment. This solution would efficiently avoid the inconsistent results that the current approach has generated and is further justified in light of the emerging mechanisms for settling and litigating mass claims in Europe. This Article highlights the Dutch Collective Settlement Act of 2005 as one such mechanism that has already had a significant impact on transnational class action litigation.

THE IMPUNITY GAP OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: CAUSES AND CONSEQUENCES
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The International Criminal Tribunal for Rwanda (ICTR) has achieved considerable success in bringing to justice those most responsible for the 1994 genocide in Rwanda. However, the ICTR's Prosecutor has failed to indict a single member of the Rwandan Patriotic Front (RPF), a rebel group that now governs Rwanda, for war crimes and crimes against humanity committed in 1994 as a result of state noncooperation. Instead, the Prosecutor allowed Rwanda to conduct a sham trial into a notorious massacre involving thirteen clergy that his office had investigated. This Article takes a close look at this case and is based on the authors' own investigation of the crime and their direct observations during the trial. It also draws on the authors' experience at the ICTR. The Article analyzes the consequences of impunity for these crimes both inside Rwanda and in the international arena and provides a comparative study with other post-conflict countries which have experienced ad hoc criminal tribunals. The Article argues that the Prosecutor's failure to prosecute the RPF has negative consequences for Rwanda, the ICTR, and international justice. First, it leaves a legacy of "victor's justice" and impunity that may have already encouraged RPF crimes in the Democratic Republic of Congo. Second, it has contributed to an inaccurate and incomplete picture of the events of 1994, thus opening the door to revisionism on both sides. Third, it has passed up a further opportunity to strengthen the Rwandan judicial system. Finally, it undermines the Tribunal's legacy and sets a bad precedent for international justice.

INTERNATIONAL CIVIL RELIGION: RESPECTING RELIGIOUS DIVERSITY WHILE PROMOTING INTERNATIONAL COOPERATION
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International civil religion grounds moral claims that permeate and transcend traditional religious paradigms. Given the inevitability of international interactions – interactions that cross geographic, religious, and cultural boundaries – our global society is in need of a universally endorsable framework that un-

dergirds the United Nations international human rights regime. International civil religion provides that framework.

Numerous scholars and moral theorists have incrementally discerned the parameters of civil religion including, inter alia, Jean-Jacques Rousseau, Alexis de Tocqueville, Robert Bellah, Martin Marty, and Harold Berman. The tenets of international civil religion infuse the diplomatically drafted United Nations covenants and conventions on human rights, including, inter alia, the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. This Paper stands for the proposition that one best comprehends civil religion by combining certain attributes of political liberalism, the capabilities approach, and cosmopolitanism, to form a lens through which to view the United Nations human rights documents. Such a view maximizes individual religious freedom, limiting it only when individual religious exercise would harm others or prevent their individual religious exercise.

In a progressively pluralistic and increasingly interconnected global society, moral ground rules must not only govern our actions, but also justify that governing. International civil religion provides a valuable and workable worldview for understanding those ground rules. International civil religion bolsters the power of the human rights regime, bestowing a rationale for that regime that surpasses mere social expediency.

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HEALTH, HUMAN RIGHTS, AND VIOLENCE AGAINST WOMEN AND GIRLS: BROADLY REDEFINING AFFIRMATIVE STATE DUTIES AFTER *OPUZ V. TURKEY*
By Cheryl Hanna..127

This Paper was initially presented at the *Hastings International & Comparative Law Review* symposium *Heath as a Human Right: The Global Option*. The symposium was held in memory of Professor Virginia Leary, a leader in international law. Professor Hanna takes this theme and applies it to global problem of violence against women and girls and makes two as-

sertions. First, while there has been tremendous progress in our understanding of how male violence against women and girls undermines gender equality and impacts their right to autonomy and full citizenship, the most fundamental and basic consequence of such violence – physical and mental injury – is often overlooked. Second, while few would question that states have an affirmative duty to implement policies geared at ending male violence against females, many would question whether such policies should include mandated interventions that are contrary to a woman's choice to preference her privacy over her health or safety. Advocates for abused women have been debating where the line between the right to health and the right to family autonomy and privacy ought to be drawn for nearly two decades, just as health advocates have struggled with the question of when mandatory public health interventions should yield to privacy concerns.

To rethink this conflict, the author examines *Opuz v. Turkey*, recently decided by the European Court of Human Rights, which articulates a clear and simple standard to guide state actors in deciding whether mandatory interventions into specific relationships promote or compromise human rights. *Opuz* shows the Court's willingness to err on the side of ensuring physical and mental integrity rather than the more conceptually amorphous concept of privacy. She urges policy makers in the United States and beyond to use *Opuz* as a guide in meeting their affirmative duties to end gendered violence.

HIV/AIDS AND HUMAN RIGHTS IN BOTSWANA AND SWAZILAND: A MATTER OF DIGNITY AND HEALTH
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A health and human rights framework provides a comprehensive perspective for understanding complex interactions between HIV/AIDS, human rights, and the health of individuals and communities. By helping to identify a broad range of social factors that affect health, such a framework also facilitates the development of interventions and policies that maximize both health and human rights benefits. In this Article, we discuss the various linkages between health and human rights and review the literature on HIV/AIDS and human rights, with a focus on

under-resourced settings. In particular, we examine how the framework is relevant to the specific epidemics in Botswana and Swaziland, based on the findings of populations-based studies in the two countries conducted by Physicians for Human Rights in 2004 and 2005.

In Botswana and Swaziland, which have the world's highest rates of HIV/AIDS, HIV transmission occurs primarily through sexual practices rooted in women's disempowerment and lack of human rights, and is further facilitated by poverty and food insufficiency. The legal system in both of these countries discriminates against women and limits their autonomy through restrictions on property ownership, inheritance and other rights. Social, economic and cultural practices create and enforce these legalized gender inequalities in all aspects of women's lives. Neither country has met its obligations as signatories to treaties and covenants under international human rights law. As a result, women continue to be disproportionately vulnerable to HIV/AIDS. Once infected, women experience a host of further violations of human rights, including those enumerated in international treaties, covenants and laws to which both Botswana and Swaziland are signatories. To address the epidemic effectively and eliminate such violations, states must incorporate a comprehensive health and human rights framework. Respect for human rights is not optional in the struggle to prevent and alleviate the suffering caused by HIV/AIDS; it is a moral and legal imperative.

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The rapid and continual advances in electronic record keeping create new and challenging privacy concerns in a variety of contexts. This Note examines the particular privacy issues countries face as their health care systems move towards more centralized, electronic medical record keeping. Electronic medical records provide for the increased collection, availability, ag-

gregation, and dissemination of medical data which can facilitate more effective care, but can also leave people vulnerable to having private information misused. This Note focuses on the current privacy law framework in the United States and Canada. It will then explore whether the legal standards in these countries have or are adapting to provide adequate safeguards against the new privacy concerns resulting from the increasing use of electronic medical records.

IMMIGRATION, CRIME, AND PUBLIC PERCEPTION: VICTIMIZATION LEGISLATION IN THE UNITED STATES AND CANADA – CAN THE U VISA SERVE AS A MODEL?
By Bettina Rodriguez Schlegel 203

This Note compares the forces behind the creation and the implementation of crime victim visa legislation in the United States and Canada. Both are recognized globally as important immigrant-receiving nations with long histories of reliance on immigrant populations for economic growth and expansion. Both states have crafted immigration policies in line with their economic needs and societal perceptions of immigrants in relation to the dominant culture mores. This Note analyzes the two nation's historical trends in relation to immigration as a stepping stone towards understanding the current realities of immigrant life in North America and delves in to the impacts of immigrant victimization on immigrant communities as a whole, and each government's response to this troubling phenomenon.

While Canada has taken what may be considered a more holistic approach to the problem of immigrant victimization, the only pathway to legal status it provides to undocumented individuals is through temporary resident permits for victims of trafficking. The U.S. Congress, on the other hand, has promulgated the U Visa – a comprehensive visa program providing legal status to immigrant crime victims who cooperate with police investigators and prosecutors.

Ultimately, this Note asks whether the U Visa can serve as a model for Canadian legislators by closely examining the U Visa's successes and perceived failures in both implementation and the question of law enforcement involvement. Taking into account the vast differences between the two nations, this Note gleans relevant lessons from the U.S. U Visa program while also

looking towards other innovative strategies better suited towards Canada's cultural and legal frameworks.

FRAGRANT OR FOUL? REGULATION OF THE GLOBAL PERFUME INDUSTRY AND THE IMPLICATIONS FOR AMERICAN SOVEREIGNTY
By Caroline M. Reebs 223

The regulation of fragranced personal care products is increasingly scrutinized in the United States. As the FDA's cosmetic product requirements are minimal, particularly when compared to those followed by food producers and drug manufacturers, consumer groups emphasize the negative health implications. Industry, on the other hand, maintains that fragrances are safe for use and are effectively monitored by international trade associations. Because the government plays a modest role in cosmetic regulation, an arbiter is needed.

This Note examines the above concerns in a comparative light. The European Union's *Cosmetic Directive* imposes more requirements on cosmetic manufacturers and maintains a lengthier list of banned ingredients, which suggests enhanced consumer safety. In Canada, however, the *Cosmetic Regulations* provides a balance between public safety and industry competitiveness. Because manufacturers must submit a complete list of all product ingredients to Health Canada for review, including ingredients covered by trade secret law, a moderate level of government oversight is provided. This Note considers the implementation of an identical regulation in the U.S.

The disparate treatment of cosmetics not only affects consumer safety but is also a growing challenge to U.S. business interests. The E.U. and other international organizations are taking active leadership roles in global regulatory initiatives. While the emulation of Canadian law may provide temporary relief for domestic concerns, the author also contemplates the role played by U.S. sovereignty – both as a cause of and possible solution to the gaps in U.S. fragranced-cosmetic regulation.