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Professor Brilmayer challenges Americans to consider whether and under what circumstances selective intervention is morally objectionable. The article suggests that because the Cold War is over, the U.S. can no longer justify its decisions to selectively intervene in world conflicts based on principles of defeating communism. Acknowledging that self-interest may limit U.S. policy choices, the author concludes that when all things are equal, Americans have a moral obligation to apply interventionist principles in a consistent and nonarbitrary manner.

Articles

SEX AND TEMPERAMENT IN MODERN SOCIETY: A DARWINIAN VIEW OF THE GLASS CEILING AND THE GENDER GAP <i>Kingsley R. Browne</i>	971
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The "glass ceiling" and the "gender gap" in compensation are commonly characterized as statistical measures of unfairness to women and attributed to inappropriate employer behavior and sexist socialization patterns. Biological, psychological, and anthropological evidence suggests, however, that the underlying assumption of the functional identity of men and women is incorrect. Well-known stereotypes of men as more competitive, more driven toward acquisition of status and resources, and more inclined to take risks than women, and stereotypes of women as more nurturant, more risk averse, less greedy, and less single-minded than men are true as generalizations. These temperamental sex differences have an underlying biological basis that is a legacy of our evolutionary history, and they are in large part responsible for differential workplace outcomes.

THE IMPORTANCE OF APPEARING PRINCIPLED..... <i>Deborah Hellman</i>	1107
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Supreme Court opinions increasingly acknowledge the importance of *appearing* to decide in a principled manner. This candid concern with how Court decisions are perceived initially may seem problematic, even illegitimate.

A commitment to judicial independence seems to preclude such deference to the public's reactions. This article argues that this seemingly counter-intuitive approach toward appearing principled is the right approach. For the Court, as for other institutions or individuals called upon to justify themselves to others, appearing to decide in the correct manner is a normatively necessary component of good judicial decision-making.

In the article, Professor Hellman argues that judges ought to take into account whether the reasons they offer for decisions are likely to be accepted by others as good reasons for the outcomes reached. In part, this requirement derives from the fact that judicial opinions seek to justify outcomes *to others*. In part, it derives from the fact that in order for the Court justifiably to compel compliance with its directives in individual cases, it must be effective enough to do so generally. Because the Court's ability to be effective is intimately tied to its image, the Court has an important reason to safeguard that image.

THE TORT OF BAD FAITH IN FIRST-PARTY
INSURANCE TRANSACTIONS AFTER
TWO DECADES.....*Roger C. Henderson* 1153

This article summarizes the development of the tort of bad faith against first-party insurers, with particular attention to the standards of culpability that have been adopted by the courts to determine whether an insurer has fulfilled its duty of good faith and fair dealing toward its insured. The author discusses new areas and types of conduct, beyond that of claim processing, for which insurers have been held to have acted in bad faith. A critical examination of issues regarding causation and types of harm that should be required before the tort is recognized is also provided. Finally, developments in the area of punitive damages are reviewed, not only as they apply to the tort of bad faith, but for tortious conduct in general.

THE OTHER RIGHT-TO-LIFE DEBATE:
WHEN DOES FOURTEENTH
AMENDMENT "LIFE" END?*Douglas O. Linder* 1183

A new medical controversy is developing. Thousands of brain-damaged and seriously ill patients who owe their existence to medical technology are seeing that existence threatened by a growing acceptance of medical rationing and euthanasia. Some medical professionals, insurance executives, and legislators advocate denying life-sustaining care and treatment to certain classes of patients, even against the wishes of a patient. Professor Linder examines whether a state that participates in a decision to deny life-sustaining care violates the guarantee of the Fourteenth Amendment that no person shall be deprived of life without due process of law. Professor Linder suggests that the answer may depend upon whether the injury of a patient is of such a nature as to negate any "life" interest that the patient would otherwise have.

DEMING, TQM AND THE EMERGING
MANAGERIAL CRITIQUE OF LAW
PRACTICE.....*David G. Oedel* 1209

Lawyers have long dismissed management theory as irrelevant to the conduct of their profession. But a growing knot of practical problems in the legal profession, including billing troubles, slow service, and public disgruntlement, have begun to threaten the profession's stability. This paper by Professor Oedel reviews the foundations of quality management theory and its possible use by lawyers and firms in reforming law practice.

RECOVERY FOR NEGLIGENT INFILCTION OF
EMOTIONAL DISTRESS ATTENDANT
TO ECONOMIC LOSS: A

REASSESSMENT *Leslie Benton Sandor & Carol Berry* 1247

This article explores the reasons behind courts' reluctance to grant emotional distress damages to persons who suffer economic harms as a direct result of a defendant's negligence. This article examines the policies and existing rules used to deny recovery, arguing that they provide neither a fair nor workable model for courts to use in determining whether a plaintiff may bring suit, and ultimately, recover for her injury. It argues for courts to adopt a two-pronged approach: first, to determine whether the defendant owes a duty to the plaintiff, either one implied by law, assumed by the defendant or arising out of a special relationship between the plaintiff and the defendant; and only then to determine whether the injury suffered is serious enough to warrant recovery. This conceptual framework strikes a balance between the policies underlying tort law and the interest of the individual injured plaintiff.

Notes

WITTE V. UNITED STATES: CONDUCT MAY BE
CONSIDERED FOR MULTIPLE PUNISHMENTS
WITHOUT VIOLATING DOUBLE JEOPARDY *Jason Ebe* 1279

The relevant conduct provisions of the United States Sentencing Guidelines have been the subject of considerable debate since their promulgation almost a decade ago. Application of these provisions violates the Double Jeopardy Clause when an offender is twice punished for the same conduct. This note examines the United States Supreme Court's recent holding in *Witte v. United States* that relevant conduct used to enhance an offender's sentence may not qualify as punishment for purposes of double jeopardy analysis. This note then questions the Court's holding and the reasoning behind it, and concludes that the majority ignored a vital distinction in its analysis.

THE ENDANGERED SPECIES ACT AND
EXTINCTION OF RESERVED INDIAN WATER
RIGHTS ON THE SAN JUAN RIVER *Adrian N. Hansen* 1305

The federal government's enforcement of the Endangered Species Act (ESA) has stymied development of tribal reserved water rights to the San Juan River. This note examines competing claims on San Juan River water, including de facto reserved water rights created under the ESA for endangered native fish, in the context of the regulatory framework governing allocation of the water. The note then identifies two approaches the federal government may take to fulfill its trust obligation and mitigate the burden unfairly imposed on the affected tribes.

PROBATE LAW AND MEDIATION: A
THERAPEUTIC PERSPECTIVE *Patricia Monroe Wisnom* 1345

This note examines some of the duties and potential liabilities of a Personal Representative under Arizona probate law. Those duties are then evaluated under the scholarship of therapeutic jurisprudence. Finally, this note proposes that mediation be introduced to the probate procedures for the benefit of all parties involved.

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