

Journal of Law and Social Deviance

Volume One

2011

Interdisciplinary and Independent Studies of
Sociality, Deviance, and Law

Carmen M. Cusack
Editor

Matthew Waranius
Editorial Assistant and Technical Support

Editorial Advisory Board:
Megan Buzby, PhD
University of Alaska

Michael Boyer, JD
University of Alaska

Lesley Northup, PhD
Florida International University

David Walter, JD
Florida International University

Journal of Law and Social Deviance
Volume One
2011

ABSTRACT BOOKLET CONTENTS

Journal Contents.....	iii
Homophobia in the Caribbean: Jamaica	
Charlene L. Smith and Ryan Kosobucki.....	1
What Up with DADT: Addressing Confusion from Inside the Military	
Matthew E. Waranius.....	3
All Your Eggs in One Basket: Why Contract Law Proves Unreliable In Frozen Embryo Adoption Cases	
Austin Caster.....	5
Placentophagy and Embryophagy: An Analysis of Socially Deviant Behavior Within Gender, Families, or the Home (Etudes 1)	
Carmen M. Cusack.....	10

Eliciting an Emotional Response:
An Analysis of Revenge
And the Criminal Justice System

Dan Johnson.....12

Journal of Law and Social Deviance
Volume One
2011

An independent publication of academics,
professionals, researchers, and scholars

CONTENTS

Editor's
Introduction.....i

Contribution.....iii

Homophobia in the Caribbean:
Jamaica

Charlene L. Smith and Ryan Kosobucki.....1

What Up with DADT:
Addressing Confusion from Inside the Military

Matthew E. Waranius.....56

All Your Eggs in One Basket:
Why Contract Law Proves Unreliable
In Frozen Embryo Adoption Cases

Austin Caster.....85

Placentophagy and Embryophagy:
An Analysis of Socially Deviant Behavior
Within Gender, Families, or the Home (Etudes 1)

Carmen M. Cusack.....112

Eliciting an Emotional Response:
An Analysis of Revenge
And the Criminal Justice System

Dan Johnson.....170

HOMOPHOBIA IN THE CARIBBEAN: JAMAICA

Charlene L. Smith
Ryan Kosobucki

Various Non-Governmental Organizations (NGOs) have recently stated that the ex-English colonies of Jamaica, Trinidad, and Tobago are among the most homophobic places in the world. The authors explore the validity of these claims by discussing some of the explanations, theories and observations of these former colonies. While the authors will focus on the influence that Britain had in Jamaica, comparisons will also be made to other ex-Caribbean colonies. The second portion will examine the current homophobic climate through observations from those living in, as well as outside Jamaica. The third portion will be an introduction to the norms and rules regarding homosexuality emerging from plantation societies that began with English laws and culture. The fourth portion will

Smith, Kosobucki

discuss the cultural developments in the time between the abolition of slavery and Jamaica's independence. Explanations of what resulted after independence will also be explored. To provide a broader picture, there will be a discussion of the religious roots of homophobia and African pre-Christian social values to determine whether they present an ongoing barrier to change. The final section will survey the current laws with regard to same sex relationships between Caribbean men along with the enactment of laws against discriminatory treatment. The authors will conclude by observing the different ways in which the West's attitudes toward male homosexuality contrasts with Jamaica's with a question: are we engaging in "social colonialism" as many in the Caribbean maintain?

WHAT UP WITH DADT?: ADDRESSING CONFUSION FROM INSIDE THE MILITARY

Matthew E. Waranius, LT

Since its inception, Don't Ask Don't Tell (DADT) has had an amorphous existence and affect on the military. Originally, DADT was perceived as a saving grace by the heavily ostracized gay servicemember community, or at the very least, a savvy compromise. DADT has been manipulated into a tool for heterosexual and homosexual servicemembers to achieve early, voluntary separation with honorable discharge from the military, but has at the same time, been a looming threat to those who truly did not want to tell. Despite receiving unparalleled media coverage, DADT has left civilians and military personnel confused and in a state of limbo. This paper will 1) give a detailed history of DADT, 2) present an idea of what the military appears to believe the

Waranius

implications will be of the DADT repeal once the dust settles, 3) address the remaining inequalities and the unanswered questions left in the wake of the impending repeal.

**ALL YOUR EGGS IN ONE
BASKET:
WHY CONTRACT LAW PROVES
UNRELIABLE IN FROZEN EMBRYO
ADOPTION CASES**

Austin Caster

As more couples begin to rely on assisted reproductive technology as a result of increasing subfertility to conceive their children, the question arises what will happen to the remaining frozen embryos once a couple completes its own family. A 2003 study reported that at the time about 400,000 frozen embryos were stored in the United States. About eighty-eight percent were designated by the patients who created them for future family building with only two percent to be donated to another family, but what about the remaining embryos after their family is complete? Should that couple have the right to destroy embryos created from its own gametes? Even if the couple from which the embryos were created considers the unused ones its

Caster

“property,” is it ethical to let what could become a human life be disposed of or expire on a shelf? Should another infertile couple be allowed to adopt the unused embryos? What if the first couple changes its mind or the second couple does not use them all? Based on holdings from cases involving same-sex parent adoptions and surrogacy contracts, judges still seem so conflicted about the public policy implications that, depending on the state, couples cannot be sure until their case climbs the entire chain of appeals—which could be several years after a child is born and very expensive with cryopreservation costs in addition to litigation fees.

Because the United States follows the presumption that family law matters should generally be decided at the state rather than federal level, one of the most rapidly evolving, emotionally charged American law regimes has become one of the least stable and most incongruent. A biological father’s rights to a child he never knew was conceived, a posthumously conceived child’s ability to inherit from both of her parents, or even a

couple's choice to donate or dispose of frozen embryos at all varies drastically merely by crossing state lines. And for some of the most polarizing issues facing our nation, many states have no laws in place at all.

In other areas of law if a particular state's constitution, statutes, and courts remain silent on an issue, private parties with equal bargaining power (absent fraud, duress, or other malfeasance) can enter a contract to safeguard their intents and remedies should a dispute arise or use a choice of law provision to incorporate another state's regime. In many contentious modern family law issues, however, without stable legislation in place, judges can strike down an otherwise valid agreement, sometimes because of nothing more than their own political persuasion, individual religion, or morals tells them a particular contract is against public policy.

Those hit hardest by this luck-of-the-draw approach include infertile and same-sex couples.

Because these couples cannot have a child on their own for reasons they would argue are beyond their control, they need medical help to fulfill their dreams of becoming parents. Even though courts, social workers, adoption agencies, and legislatures may have a good faith belief they know what is in the best interests of someone else's child, these barren couples face obstacles even unmarried criminals and adolescents bypass in conceiving and obtaining parental rights as long as they are fertile and heterosexual.

This article will show why infertile couples cannot unequivocally rely on good faith, consensual contracts in cases of assisted reproductive technology because the law is so unsettled. Each section will show why, because of alleged public policy implications, contract doctrines or clauses such as (1) the termination of parental rights, (2) the doctrine of waste, and (3) liquidated damages still remain almost completely unreliable in a matter regarding assisted reproductive technology. Though this uncertainty affects infertile couples trying to

complete their families through various methods including adoption, surrogacy, in vitro fertilization, and artificial insemination, this article will focus on cases involving the donation, sometimes referred to as adoption, of frozen embryos.

**PLACENTOPHAGY AND
EMBRYOPHAGY:
AN ANALYSIS OF SOCIALLY
DEVIANT BEHAVIOR WITHIN
GENDER, FAMILIES, OR THE HOME
(ETUDES 1)**

Carmen M. Cusack

This paper concludes that the private, eccentric acts of placentophagy and embryophagy are not illegal. Placentophagy is the eating of a placenta. Embryophagy is the eating of an embryo. This paper suggests that placentophagy and embryophagy, while not specifically legalized by statute or case law, are not acts for which a person can be charged of any crime relating to anthropophagy. Anthropophagy occurs when a human eats human tissue or blood. First, this paper proves that for the most part, anthropophagy is not illegal in the United States. Statutes and case law demonstrate that generally, the consumption of human tissue or blood is not illegal even though the

Cusack

possession of human blood and tissue often correlates strongly with other criminal activity. Second, this paper will argue that placentophagy and embryophagy in the home are legal anthropophagic acts; and that the policy and politics, not law, are the only obstacles for some women who question their power to possess and eat human blood and tissue.

**ELICITING AN EMOTIONAL
RESPONSE:
AN ANALYSIS OF REVENGE AND
THE CRIMINAL JUSTICE SYSTEM**

Dan Johnson, J.D.

Revenge. The mere mention of the word conjures images of those who have done wrong and have received what, presumably, they deserved in retaliation. As such, the concept of revenge is an abstract idea to which anyone can relate. Revenge is as old as history and has been discussed and illustrated throughout literature, film, and conversation. Surely, the phrases “an eye for an eye,” “hell hath no fury like a woman scorned,” and “revenge is a dish best served cold” are not unfamiliar notions. As long as the idea of revenge has existed, it remains as popular a motif in today’s society as it has always been. Perhaps one of the best-known examples of revenge can be seen in the Judeo-Christian Bible and the story of Samson. At his wedding, Samson gives a riddle to his

Johnson

groomsmen and promises to provide garments upon their solution of it. The riddle is quite difficult, so the groomsmen threaten Samson's wife to get the answer out of Samson, thus swindling him. Upon receiving the threats, Samson's wife tells them the answer and they proceed to win the bet. Samson is so outraged that he goes to Ashkelon, kills the thirty men, and takes their belongings, leaving the garments he promised. Then, he "gives" his wife to a friend, thereby excluding her from his life. A second and, perhaps, more justifiable example of Samson's revenge is shown in his destruction of the Temple of Dagon. After falling prey to another woman, Delilah, Samson is handed over to his enemies who gouge out his eyes and take him captive. While being paraded as a captive in front of his enemies, Samson asks God to strengthen him so "that he may be at once avenged of the Philistines for his two eyes." He then manages to kill everyone in the temple, including himself, which is a sum greater than any he had ever killed prior.

The story of Samson is instructive because it shows a society in which revenge was not only normal, but also condoned. Samson's story, like others to be illustrated later, shows revenge could be exacted for a relatively minor offense like cheating to win a bet or an act as major as avenging the gouging of eyes and subsequent enslavement. Further, Samson's actions illustrate the fact that the contemplated vengeance is not always exacted in proportion to the perceived crime. Clearly, the criminal justice system is proper in that it prevents this type of disproportionate punishment. However, stories like Samson's are indicative of a startling problem with the criminal justice system. Those who make law and advocate are disconnected from the true issues revolving around the desire for revenge. Those policymakers are not in touch with the psychological effects the desire for retribution has on a potential vigilante. The effects on a person like Samson, his family, or any of the other victims portrayed in this story are not thoroughly considered or reflected in the law. The laws are

written only as though a crime was perpetrated against the state. The state does not deal with the unrequited emotions of the victims. This raw emotion is seen throughout Samson's story, yet is seemingly unnoticed by policymakers, both in his time and today. For this reason, the study of literature in conjunction with the study of law is an invaluable asset in analyzing whether the government is taking the proper approach with victims and, if not, what could possibly be done better.

However, in spite of the story of Samson and the lessons it demonstrates, revenge has, for the most part, become a highly romanticized idea in today's culture. This glamorized idea is especially prevalent in social contract societies where revenge is not allowed and the government administers justice. Movies especially have a penchant for creating societal heroes out of characters who seek vigilante justice against those who have done them wrong. As a prime example, dozens of films have been made about Wyatt Earp, the famous Western

frontier lawman, none more prominent than 1993's *Tombstone* or 1994's *Wyatt Earp*. The general storyline of both movies is the same. Wyatt relocates to Tombstone, Arizona, with his brothers to escape the life of a lawman and to attempt to stake his claim and make his fortune. He and his brothers soon find themselves thrust back into the lifestyle of lawmen. Their decision comes when a lawless gang headed by The Clantons and Johnny Ringo begin to wreak havoc. The elements of the law and lawlessness set the stage for the inevitable confrontation: the infamous shootout at the O.K. Corral. The Earps and Doc Holliday win the fight, either killing or injuring several of the gang members. In order to regain control of the town and retaliate, the gang attacks Virgil and Morgan Earp, injuring the former and slaying the latter. The final portion of both movies depicts Wyatt Earp and his friends seeking revenge against the remaining members of the gang with great success.

The various Wyatt Earp films and countless other revenge plot films demonstrate one of the

greatest fallacies the idea of revenge perpetuates. In these stories, a hero, against whom a wrong has been committed, is always the focal point and he or she embarks on a quest to “make it right.” As an added factor, the law is usually unable to aid the hero for some reason. Usually, the problem is a due process concern for the wrongdoer or there simply is not a law on point for that issue. For instance, in *Wyatt Earp*, Kevin Costner’s Earp saddles up his horse to begin his quest for vengeance. When confronted about the justice of his quest, Earp scowls, “If those men think they can hide behind those laws then they’ve missed their guess.” The law Earp is referring to was a court ruling earlier in the movie that determined there could not be a murder without a witness. The fallacy in this simplistic storyline assumes that all crimes can be portrayed in this black and white manner. The wronged hero must exact his own justice because the law has failed him. The constitutional prohibition against cruel and unusual punishment is never considered. This prohibition certainly could

be applied to the excessive punishment of tracking down and eliminating an entire group to avenge the death of one person. Further, the protections of due process of the law are never contemplated. This is especially problematic in the context of *Tombstone* and *Wyatt Earp* considering Earp was a lawman meant to ensure due process.

This romanticized idea of vengeance should be most interesting to those who undertake legal scholarship. Through the world of literature, a legal scholar, judge, or advocate can better understand the gray area that truly encompasses the essence of vengeance. Reprisal is not black and white like *Tombstone* or *Wyatt Earp* would lead their viewers to believe. Studying characters throughout literature and applying the lessons they provide to legal scholarship illuminate the various emotions of the victim vigilante. Legal professionals, just like any other group, can easily fall into the romanticized portrait of black and white when considering a crime. Even those who perpetuate legal doctrine do not always consider the effects such a viewpoint of

crime and retribution can have on the people the system is set to influence.

The legal scholar needs to understand both the positive and negative dynamics that affect the victim turned revenge seeker. However, an analysis of the individual alone is not a sufficient way to examine the system as a whole. The scholar must then look at societies that still have vigilante justice and have not converted to a social contract status. This analysis is important to show why the government needs to have a system that provides for the victims of crime. The need for this system is crucial so victims do not feel that the law is not doing enough to issue justice to those who deserve it. Finally, the legal scholar must ask what the system must do to provide a justifiable return to merit the power it has been given.