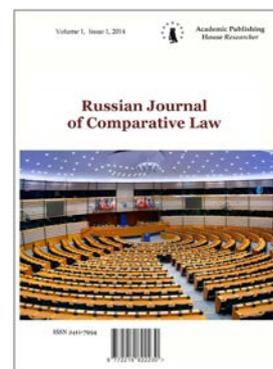


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The Development of Legal Rights in the American Legal System

Roberto Rosas

St. Mary's University School of Law, San Antonio, Texas, USA
One Camino Santa Maria, San Antonio, Texas 78249
Doctor of juridical science, professor
Email: rrosas@stmarytx.edu

Abstract

This article takes a snapshot of some of the most controversial topics in American society today and the juridical response to these topics by individual states, the United States Congress, and the United States Supreme Court. Although there are numerous legal topics that deserve mention and analysis, this article is limited to the discussion of nine fairly new rights created by state and federal laws. The rights discussed in this article include the following: 1) The right to open carry a firearm; 2) The right to consume marijuana; 3) The right to marry or to civil unions between same-sex couples; 4) The right to sexual offender residential information; 5) The right to the protection of victims of human trafficking; 6) The right to the protection of the environment; 7) The right to privacy in relation to unsolicited telemarketing telephone calls; 8) The right to determining what medical treatment to receive and the right to organ donation; and 9) The right to euthanasia or death with dignity. This article briefly addresses the topics of sexual and racial discrimination. Finally, the most far-reaching decisions handed down by the United States Supreme Court between 2013 and the present are discussed.

Keywords: firearm, marijuana, civil union, same-sex marriage, sexual offender registry, human trafficking, environmental protection, unsolicited telemarketing telephone calls, organ donation, medical treatment, euthanasia, death with dignity, sexual discrimination, racial discrimination.

Introduction

Currently, the United States recognizes an extensive variety of individual rights. Although many are already recognized, the government can consider it necessary to create additional rights to conform to society's evolving characteristics and to protect their citizens. Although new rights are usually derived from previously established rights they still allow society to continue making progress.

There are two general categories of rights that are recognized in the United States: natural and non-natural rights. Under the category of natural rights there is a right to life, a right to liberty and a right to property; from these three rights many other recognized rights are derived. For example, the right against deprivation of one's life and the right against suffering abuse and injury are derived from the right to life. From the right of liberty are derived such rights as the right

to free expression and the right to bear arms. The right to reside in a decent home is derived from the right to property [1].

Non-natural rights are divided into two general categories: rights of the person and citizenship rights. Non-natural rights of the person include the right to contract and the right to due process of the laws for those individuals who are subjected to criminal prosecution. Among other rights non-natural citizenship rights include the right to vote and to be elected, and the right to the enforcement of these rights [1].

In addition, universal rights exist that are recognized internationally and have been adopted by the United Nations (UN) in several treaties, conventions and declarations [2]. The United Nations was the first to recognize the necessity of establishing and protecting certain human rights at a global level. The Universal Declaration of Human Rights approved by the UN is based on the recognition of four principal rights. The first is the right to freedom of speech and expression throughout the world. The second addresses religious freedom. The third is the right to obtain economic security for one's development and well-being. The fourth is the right to be free from fear or apprehension. This article will address the fairly new legal rights that have been recognized in the past years.

Materials and methods

The principal sources for this article writing are as follows:

(1) the most important treaties that define the fundamentals of international law from *The Universal Declaration of Human Rights approved by the United Nations*. These universal rights exist in that they are recognized internationally and have been adopted by member states of the United Nations in several treaties, conventions, and declarations;

(2) national laws of many states and judgments of national courts were taken from the Supreme Court of the United States (SCOTUS) blog. Those rights give insight to some of the most controversial topics in American society today and the judicial response to these topics by individual states;

(3) the process of researching general scientific methods of cognition as well as private law methods were used following the Bluebook method.

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The right to open carry a firearm

Over the past recent years, gun control has been a controversial topic that has rocked the United State's core. With mass shootings on the rise, there is a national drive to reduce gun violence [3]. The Second Amendment of the Constitution, which allows the right to bear arms, is an important issue at the moment. Gun activists and gun control groups have been consistently lobbying to Congress to create legislation in their favor [4].

There are two different ways in which citizens can carry firearms in the United States: open carry and concealed carry. In the United States, there is no federal law that establishes the issuance of concealed or open-carry permits; such laws are left to the states. All states permit the carrying of firearms, but each state differs on whether they allow open carry or concealed carry. "Open carry" means that the firearm can be seen by observers. "Concealed carry" means that the firearm is holstered and hidden from other's view [3].

In the past, concealed carry had been the default law amongst most states. There are three categories into which state concealed carry laws can be divided: (1) "may issue," which means that the permit to conceal carry will be issued on a case by case basis, with no specific requirements to fulfill, (2) "shall issue", means that once the requirements have been satisfied, the permit shall be given, and (3) "unrestricted," which means there is no permit required [3]. For unrestricted states, there are state laws stating where it is and is not allowed to enter with a concealed gun [3].

In recent years, the practice of open carry has seen a substantial increase in the United States. As of today, there is no federal law that restricts or allows the open carrying of handguns in public [5]. The term "open carry" refers to the law that allows concealed handgun license holders to display a holstered handgun in plain sight as they go about their daily activities. Open carry laws differ widely from state to state. As of 2015, twenty-seven states permit open carry without requiring the citizen to apply for any permit or license, fifteen states permit open carry with restrictions, and eight states prohibit open carry [6]. Some justifications for states allowing the

open carrying of handguns are: (1) open carry is a visible deterrent to crime and (2) open carry provides quicker access than concealed carry does [7].

One main issue that open carry laws have to face is whether the right to openly carry a firearm increases or deters crime. The states that do allow open carry reason that their states are now safer because thieves are less likely to engage in criminal activity against a person who is armed. Researcher Gary Kleck found that 92 percent of criminal attacks are deterred when a gun is merely shown [7]. However, being able to claim that one policy is the sole responsible for a change in crime trends is daring. Compiling the crime rate of a state is dependent on many factors, including environmental and socio-economic factors [7]. According to the Uniform Crime Reporting figures of 2012 compiled by the U.S. Department of Justice, the statistics show that laws that allow open carry of firearms make states safer, or at least, don't make them more dangerous [8]. State Representative Matt Gaetz of Florida presented this statistic during his sponsorship of a bill that would allow open carry of firearms in the state of Florida. Clearly, there are many more factors to this statistic [8]. A problem with such a simplistic approach is that it is assumed that the groups of states are identical, which they are not. As of right now, it is unclear whether allowing citizens to openly carry their firearms is an actual deterrent of crime rates [8].

Although contrary to popular beliefs, open carry has never been ruled as an explicit right under the Second Amendment of the U.S. Constitution by any court. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court of the United States held in a 5-4 decision that the Constitution's Second Amendment applies to an individual's right to possess firearms for traditional lawful purposes [9]. The Supreme Court ruled that an individual's right to own a gun for personal use is protected under the Second Amendment. Justice Antonin Scalia wrote about the elements of the Second Amendment, "We find that they guarantee the individual right to carry weapons in case of confrontation" [9]. Scalia continued, "Like most rights, the Second Amendment is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever for whatever purpose" [9]. The ability to open carry does not derive from our Second Amendment, but rather from the constitutions and statutes of the states.

Effective January 1, 2016, the State of Texas became the newest state to pass a law regarding the open carry of handguns. All the more surprising was that Texas was the first state to ban its citizens from carrying handguns, a restriction that lasted for more than 125 years [10]. Now, twenty years after the Legislature approved the carrying of concealed handguns, lawmakers now have legalized the openly carrying of holstered weapons. However, the law will still ban the usage of handguns in certain public places including churches, hospitals, correctional facilities, and certain premises where alcohol is served or sold. Business owners are offered the opportunity to ban customers from openly carrying the handguns by posting signs in their stores' entrances. Potentially ignoring the signs risks violating trespassing laws and incur penalties and fines.

Since open carry has become more frequent, corporations have been the first to respond to these laws by asking their customers not to bring firearms into their stores. Major retailers such as Whole Foods, H-E-B, and Whataburger, whose principal place of business is located in Texas, have given similar views regarding open carry within their premises. Whole Foods spokesperson Michal Silverman said, "We have opted not to allow firearms on the premises except for store security." An H-E-B spokesperson said, "We have always asked our customers to conceal their weapons." Whataburger said, "Customers tell us they are uncomfortable." Most of these businesses expressed that they have updated their signage outside their stores to disallow weapons on premises. Some national retailers including Target, Starbucks, and Chipotle, have asked gun owners to not bring their weapons to their businesses [11]. These types of measurements have put retailers in a fine line position. Gun-right activists have started to boycott retailers that prohibit open carry, arguing a violation of their rights to bear arms. On the other side, gun control advocates argue that stores that allow customers to bear arms make them feel unsafe while shopping. Stuck in the middle of a gun war, retailers fear the risk of losing business to either side [12].

The right to consume marijuana

Under the Controlled Substances Act of the United States of America, marijuana is a schedule I drug, and its use is illegal. Marijuana "has a potential for abuse... has no currently accepted medical use in treatment in the United States [and] there is a lack of accepted safety for use of the drug or other substance under medical supervision" [13]. It is a federal offense to use marijuana. However, since 1996, twenty-three states and Washington D.C. have allowed the use of marijuana

in some form [14]. Most of these states allow the use of marijuana for medical purposes. The Institute of Medicine, in agreement with these state laws, issued a report stating that medical marijuana has a “potential therapeutic value... primarily, for pain relief, control of nausea and vomiting, and appetite stimulation” [15]. Further scientific data shows that marijuana “is effective in relieving some of the symptoms of HIV/AIDS, cancer, glaucoma, and multiple sclerosis” [15]. A number of states have reduced the penalty for possession of small amounts of marijuana. Other states allow the recreational use of the drug, with legal quantities varying from state to state.

With its use being illegal federally but not statewide, the Obama administration encouraged the federal prosecutors to not prosecute people who used marijuana for medical purposes legally in the states that allow such use [15]. In 2014, the United States House of Representatives passed a bill prohibiting the DEA, the lead agency for domestic enforcement of federal law drugs, from arresting medical marijuana patients in states where it is legal to use marijuana for treatments [16]. Since at the federal level the use of marijuana is illegal, both non-users and users of the drug are confused as to what is lawful. States, such as Virginia, have allowed doctors to prescribe individuals marijuana since decades ago. However, because there is a federal law that prohibits doctors from prescribing marijuana, these state laws are held to be invalid. Doctors in these states can only write a recommendation to use marijuana, but cannot prescribe it to a patient [17].

Today, statistics show that a majority of Americans support the legalization of the recreational use of marijuana [18]. Currently, the legal purchase of recreational marijuana is allowed in four states – Alaska, Colorado, Oregon, and Washington, as well as in the District of Columbia. Many other states are in the midst of deciding whether to legalize the drug. There are many arguments both against and for the legalization and decriminalization of marijuana. Most of the arguments made against are moral, emphasizing that it is after all a drug. On the other side, supporters argue about “a potential tax revenue, job creation, and reduction of the burden of offenders on state prison systems” [19]. Allen St. Pierre, executive director at the National Organization for the Reform of Marijuana Laws, argues that “legalizing marijuana would generate revenue where we now hemorrhage out billions and billions of dollars” [19].

On December 2015, the federal government asked the United States Supreme Court to avoid taking a case brought against Colorado’s legalized marijuana laws by Nebraska and Oklahoma [20]. Nebraska and Oklahoma claim that Colorado’s legalization laws has negatively impacted them since “modern-day bootleggers” are crossing over to Colorado buying “pot” legally and illegally crossing state lines [20]. Oklahoma and Nebraska have sued Colorado with the hope of making the state’s legal marijuana system illegal. In prior cases, the Supreme Court has always tried to avoid getting in between state disputes. At the federal level, marijuana remains illegal. Unlike in Colorado, where citizens are allowed to grow, posses, and consume marijuana, but cannot leave the state with it. The Supreme Court has not responded on whether it will take the case [20].

The right to marry or civil unions between same-sex couples

January 2016, thirty-five states in the nation allowed civil unions between same-sex couples. In addition, the District of Columbia also allows same-sex marriage. These thirty-five states have allowed same-sex marriage by court decision, by state legislature or by popular votes [21]. California, Connecticut, Iowa, Massachusetts, New Jersey, New Mexico, Oregon and Pennsylvania have all allowed same sex marriage through court decision. Delaware, Hawaii, Illinois, Minnesota, New Hampshire, New York, Rhode Island and Vermont have allowed same-sex marriage through state legislature. Maine, Maryland and Washington have allowed same-sex marriage through popular vote.

In 1997, the state of Vermont was sued by a number of homosexual and lesbian couples to obtain marriage licenses and have their relationships legally recognized [22]. The plaintiffs were three same-sex couples who had lived together in committed relationships for periods of four to twenty-five years [22]. Two of the couples had raised children together [22]. Each couple applied for a marriage license from their respective town clerk, and each was refused a license as ineligible under the applicable state marriage laws [22]. The Supreme Court of Vermont addressed the issue of whether the State of Vermont may exclude same-sex couples from the benefits and protections that its laws provide to opposite-sex married couples [22]? The Common Benefits Clause of the Vermont Constitution reads, in part, “that government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part

only of that community..." [22]. The court stated that the plaintiffs could not be deprived of the statutory benefits and protections afforded persons of the opposite sex who choose to marry [22]. In December of 1999, the Supreme Court of Vermont ruled that the prohibition of same-sex marriages unlawfully discriminated against gay couples. The court ordered the legislature to correct the problem by legalizing same-sex marriages or by establishing a type of civil union that can be registered; thereby granting gay couples the same rights as heterosexual couples [23]. Consequently, homosexuals in the State of Vermont have been able to obtain certificates of civil unions since July 2000 [24].

As a result of the Supreme Judicial Court ruling in *Goodridge v. Department of Public Health*, since 2004, same-sex couples have been able to legally obtain marriage licenses and marry in Massachusetts [25]. In *Goodridge*, same-sex couples denied marriage licenses filed action for declaratory judgment against Department and Commissioner of Public Health, alleging that department policy and practice of denying marriage licenses to same-sex couples violated numerous provisions of state constitution [25]. The plaintiffs were fourteen individuals from five Massachusetts counties [25]. The plaintiffs included business executives, lawyers, an investment banker, educators, therapists, and a computer engineer, and many were active in church, community, and school groups [25]. The question the Supreme Court of Massachusetts addressed was whether, as the department claimed, government action that bars same-sex couples from civil marriage constitutes a legitimate exercise of the State's authority to regulate conduct, or whether, as the plaintiffs claimed, this categorical marriage exclusion violated the Massachusetts Constitution [25]. The Supreme Court of Massachusetts held that barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution [25].

Shortly after the Massachusetts decision in *Goodridge*, in 2005, Connecticut became the second state in the nation to enact a state law providing civil unions to same-sex couples. In *Kerrigan v. Commissioner of Public Health*, eight same-sex couples denied marriage licenses brought action against state and local officials, seeking declaration that any statute, regulation or common-law rule precluding otherwise qualified individuals from marrying someone of the same sex, or because they are gay or lesbian couples, violates the state constitution [26]. The issue presented by this case was whether the state statutory prohibition against same sex marriage violates the constitution of Connecticut [26]. The Supreme Court of Connecticut held that, in light of the history of pernicious discrimination faced by gay men and lesbians, and because the institution of marriage carries with it a status and significance that the newly created classification of civil unions does not embody, the segregation of heterosexual and homosexual couples into separate institutions constitutes a cognizable harm [26]. In addition, the Court held that, "(1) our state scheme discriminates on the basis of sexual orientation, (2) for the same reasons that classifications predicated on gender are considered quasi-suspect for purposes of the equal protection provisions of the United States constitution, sexual orientation constitutes a quasi-suspect classification for purposes of the equal protection provisions of the state constitution, and, therefore, our statutes discriminating against gay persons are subject to heightened or intermediate judicial scrutiny, and (3) the state has failed to provide sufficient justification for excluding same sex couples from the institution of marriage" [26]. In October of 2008, the Supreme Court of Connecticut ruled that it was a violation of the equal protection act to ban same-sex marriages [27].

In 2008, the Supreme Court of California ruled that same-sex couples have a right to marry. Shortly after the decision, Proposition 8 "proposed a state constitutional amendment that defined marriage as a relationship between a man and a woman" and was passed in November 2008, again banning same-sex marriage in California" [27]. Proposition 8, which was officially titled "Proposition 8- Eliminates Right of Same-Sex Couples to Marry, was a statewide ballot proposition in California" [28]. On November 4, 2008, voters approved the measure and made same-sex marriage illegal in California, but on Wednesday, August 4, 2010, a federal judge ruled that Proposition 8 is unconstitutional under the U.S. Constitution and barred its enforcement [28]. Same-sex marriage resumed in California in 2013 since the U.S. Supreme Court decided to overturn proposition 8 [29].

In April of 2009, the Supreme Court of Iowa ruled that it was unconstitutionally to ban same-sex marriages and subsequently Iowa began performing same-sex marriages in June of 2009 [30]. In *Varnum v. Brien*, same-sex couples who had been denied marriage licenses by county recorder

brought action challenging statute limiting civil marriage to a union between a man and a woman [31]. The Supreme Court of Iowa had to decide if the state statute limiting civil marriage to a union between a man and a woman violates the Iowa Constitution, as the district court had ruled [31]. The Court held that the Iowa Code section 595.2 was unconstitutional because the County has been unable to identify a constitutionally adequate justification for excluding plaintiffs from the institution of civil marriage [31].

The following year, in 2010, New Hampshire and the District of Columbia both allowed same-sex marriages. In 2011, New York allowed same-sex marriages through state legislation. In 2012, both Washington state and Maine allowed same-sex marriage; Washington through legislation and Maine through a public initiative [27].

New Jersey, Delaware, Maryland, Minnesota, Rhode Island, and New Mexico, all legalized same-sex unions in 2013 [29]. In 2014, Pennsylvania, Oregon, and Illinois joined the other fifteen states and the District of Columbia in allowing same-sex marriages [29]. The majority of these states allow civil unions and domestic partnerships.

As of October of 2014, there has been a drastic increase in the number of states that have legalized same-sex marriages from nineteen to thirty five. Surprisingly, thirteen states legalized same-sex marriage in the month of October of 2014 [32]. These states include, Alaska, Arizona, Idaho, Indiana, Nevada, North Carolina, Oklahoma, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

Today thirty five states are issuing marriage licenses to same-sex couples: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington state, West Virginia, Wisconsin and Wyoming, as well as Washington DC, which sets its own marriage laws but is not legally a state [32]. If the trend over the past three years is any indication of the future, it is likely that the United States will see an increasing number of states that will legalize same-sex marriages.

The right to sexual offender residential information

Sex offenders registration and notification programs are essential for public safety. These programs work as a system for monitoring and tracking sex offenders after they are released [33]. In 1947, in the United States, California was the first state to have a sex offender registration program, but this program was not public and did not include community notification [33]. Almost 50 years later the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was passed in 1994, in honor of Jacob Wetterling, an 11 year old child who was abducted at gunpoint while riding a bike and never seen again. This law required states to have a sex offender list [34]. That same year on July 1994, in the state of New Jersey, Megan Kanka, a 7 year old, was brutally raped and murdered by a neighbor who was a two-time convicted sex offender [35]. In response to this incident, the state of New Jersey passed a law that required the registration of every sexual offender with the local police departments. Many residents in the state, not satisfied with the effectiveness of this requirement, urged that the law be modified in such a way that residents would be notified every time a sex offender moved into their neighborhood [35]. The law was amended just 89 days from the date of Megan's death and became known as Megan's law [35]. Even though other states had existing laws that required the local registration of sex offenders, Megan's law was the catalyst for the drafting of new laws, both state and federal, that expanded the protection of the American public from registered sex offenders. In 2002, the Supreme Court of the United States affirmed the public disclosure requirement [36]. Four years later, in 2006, the Adam Walsh Child Protection and Safety Act was signed by President George W. Bush, and by 2007 it had become law [37]. The Act organizes sex offenders into three tiers based on each state's own statutes; the tiers are not necessarily separated by the seriousness of the offense committed nor the risk of the sex offender doing a second offense [37]. Tier 3 offenses include but are not limited to sexual acts with someone unconscious, sexual acts with a child under the age of 12, sexual acts involving force or carried out under threat [38]. Tier 2 offenses generally consist of non-violent sexual offenses involving minors [38]. Tier 1 offenses usually consist of non-violent offenses that involve victims who have reached the age of consent; includes both felonies and misdemeanors [38]. The Act requires Tier 3 offenders to a lifetime registration and an update of their whereabouts every three months. Tier 2 offenders must register for 25 years and must

update their whereabouts every 6 months and Tier 1 offenders must register between 10-15 years and have an annual verification of their whereabouts [38].

Section 2250 of Title 18, of the United States Code dealing with Child exploitation and obscenity sets forth the law for sex offenders. It is a federal offense for a sex offender to not register on the Sex Offender Registration or to fail to update his registration as required [39]. The law also prohibits sex offenders from engaging in interstate travel, foreign travel or entering, leaving or residing in an Indian reservation [39]. Registering on the Sex Offender Registration means each sex offender will register their: name, address, employment, vehicle, fingerprints, a DNA sample, criminal history, a recent photo and other information; not all this will be available to the public [40]. The public will be able to see the sex offender's name, his/her current location and his/her offenses [40]. This information could be found on a website, by anyone interested, in all states including the District of Columbia [40]. A sex offender who does not register properly can face fines and up to 10 years in prison. A sex offender who does not register properly and commits a violent federal crime can face up to 30 years in prison [40].

In 2014, an unexpected twist started surfacing. Nowadays people are arguing that the sex offender registry is too harsh, and that the consequences are becoming tougher based on a flawed stereotypes and not on concrete evidence [41]. One of the arguments is that not all sex offenders commit a second offense, which is what community notification strives to prevent [41]. One of the advocates for less harsh penalties is Jacob Wetterling's mother, the mother of the little boy who was abducted while riding a bike and has since then never been seen. Ms. Wetterling goes on to say "These [sex offenders] are human beings who made a mistake. If we want them to succeed, we're going to need to build a place for integrating them into our culture" [41]. For now, there are no bills waiting to be signed that would prevent tougher sentences, although some attorneys have begun the pursuit of having legal changes for registered sex offenders [42].

The right to the protection of victims of human trafficking

The issue of human trafficking became a focal point in 2000. In the beginning of the 21st century, at least 700,000 people were reported as victims of international trafficking each year, 14,500–17,500 of which are women and children who are trafficked specifically into the United States [43]. In 2000, the Trafficking Victims Protection Act (TVPA) was created to, "ensure just and effective punishment of traffickers, and to protect their victims" [44]. This law was signed by President Bill Clinton October 28, 2000 [45]. According to the Social Security article, the new law states that regardless of immigration status, noncitizens who have been or are victims of "severe forms of trafficking in persons in the United States" and will be eligible to receive many of the benefits that are received by citizens, including Supplemental Security Income (SSI) [45]. "Severe forms of trafficking in persons in the United States," is defined as:

"Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; and, The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery" [45].

SSI is provided for victims of human trafficking who are under the age of 18 or are older than 18 but have been certified by the Secretary of Health and Human Services, after consulting with the Attorney General, as "cooperating in every reasonable way in the investigation and prosecution of severe forms of trafficking, and who have made a bona fide application with the Immigration and Naturalization Service for a new "T" immigration visa" [45].

Currently, the TVPA includes three separate components, which are normally referred to as the "three P's." These three sections are Protection of Unaccompanied Trafficked Minors, Prosecution of Human Traffickers, and Prevention of Human Trafficking.

One of the TVPA's goal was to increase the Government's efforts to protect foreign nationals who have been victims of trafficking [46]. These efforts included protection of witnesses who had previously not been eligible for government protection and "non-immigrant status for victims of trafficking if they cooperated in the investigation and prosecution of traffickers (T-Visas, as well as providing other mechanisms to ensure the continued presence of victims to assist in such investigations and prosecutions)" [46]. According to an article from the United States Department of State, "adequate victim protection relies on effective partnerships between law enforcement and

service providers, not only immediately after rescue, but also as they work to facilitate participation in criminal justice and civil proceedings” [47].

The next element of the “3Ps” is prosecution of human traffickers. The TVPA strengthens the ability for the United States government to prosecute human traffickers. These efforts included, but were not limited to:

“Creating a series of new crimes on trafficking, forced labor, and document servitude that supplemented existing limited crimes related to slavery and involuntary servitude; and recognizing that modern-day slavery takes place in the context of fraud and coercion, as well as force, and is based on new clear definitions for both trafficking into sexual exploitation and labor exploitation: Sex trafficking was defined as, “a commercial sex act that is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.”⁴ Labor trafficking was defined as, “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” [46].

The Department of State will then evaluate whether the “government will prescribe a maximum prison sentence of at least four years’ deprivation of liberty for the crime of trafficking in persons and vigorously prosecute alleged trafficking offenders” [47]. All of the sentences will consider the severity of the person’s involvement in human trafficking, as well as the gravity of the crime [47]. The last element of the “3Ps” is prevention of human trafficking. The goal of preventing human trafficking includes taking measures such as:

“Rectifying laws that omit classes of workers from labor law protection; providing robust labor law enforcement, particularly in key sectors where trafficking is most typically found; implementing measures that address significant vulnerabilities such as birth registration and identification; carefully constructing labor recruitment programs that ensure protection of workers from exploitation; strengthening partnerships between law enforcement, government, and nongovernmental organizations to collaborate, coordinate, and communicate more effectively; emphasizing effective policy implementation with stronger enforcement, better reporting, and government-endorsed business standards; and tackling this global crime at its root causes by monitoring product supply chains and reducing demand for commercial sex” [47].

Individuals who are victims of human trafficking and are interested in applying for the T-visa that was approved by the TVPA, can download the new I-914 form from the U.S. Citizenship and Immigration Services website [48].

The Trafficking Victims Protection Act of 2000 also created two types of nonimmigrant visas. The first are U visas, which are given to victims of certain crimes who are currently assisting or have previously assisted law enforcement officials in the investigation of current or past crimes [49]. These visas allow victims to temporarily remain in the United States with a nonimmigrant status through the process of assisting law enforcement officials [49]. Individuals with U visas who have met certain conditions can potentially receive permanent resident status. However, Congress limited these visas to 10,000 per year [49]. Individuals who believe they may qualify for a U visa may complete the “USCIS Form I-918, Petition for U Nonimmigrant Status” (Form I-918) [49]. The second form of nonimmigrant visas are T visas, which are for victims of human trafficking [50]. People may be eligible for T visas if:

“They are or were victims of human trafficking; are in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking; Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or you are under the age of 18, or you are unable to cooperate due to physical or psychological trauma); demonstrate that you would suffer extreme hardship involving unusual and severe harm if you were removed from the United States; Are admissible to the United States. If not admissible, you may apply for a waiver on a Form I-192, Application for Advance Permission to Enter as a Non-Immigrant” [50].

Individuals who are victims of human trafficking and are interested in applying for the T-visa that was approved by the TVPA, can download the new I-914 form from the U.S. Citizenship and Immigration Services website [51].

The Trafficking Victims Protection Act of 2000 has been amended multiple times throughout the years. Three years after the TVPA of 2000, the U.S. Department of State passed the Trafficking Victims Protection Reauthorization Act of 2003 [52]. This reauthorization of the TVPA focused on

authorizing more than \$200 million over two years to help combat human trafficking [53]. In addition, this reauthorization required the U.S. government to terminate any contracts with “overseas contractors who engage in sex trafficking or commercial sex, or who used forced labor” [53]. This reauthorization also created a federal civil cause of action that will allow victims of human trafficking to sue their traffickers [53]. Furthermore, it will “allow state and local law enforcement officials to assist in identifying trafficking victims for immigration purposes, who may then become eligible for federal social benefits and will extend benefits to additional family members of the trafficking victims” [53]. The Attorney General will also be required to present an annual report of U.S. Government activities that are being implemented in order to combat human trafficking [54].

In 2005, Congress passed the Trafficking Victims Protection Reauthorization Act of 2005 [53]. This reauthorization of the act expanded the amount of money to be spent on combating human trafficking from \$200 million over two years, to \$300 million over two years [53]. In addition, this act authorized “new programs to serve U.S. citizen or legal permanent resident victims of domestic human trafficking, including a pilot program for sheltering minors” as well as, “grant programs to assist state and local law enforcement efforts in combating human trafficking” [53]. It also addressed sex tourism through implementing prevention programs and expanded “federal criminal jurisdiction to trafficking offenses committed by U.S. government personnel and contractors while abroad” [53]. Finally, this reauthorization required the U.S. Agency for International Development to “conduct studies on prevention and protection of trafficking victims abroad and authorizes \$5 million for a pilot treatment program” [53].

In 2008, Congress passed the William Willberforce Trafficking Victims Protection Reauthorization Act of 2008 [55]. Before this reauthorization there was no provision that focused on protecting unaccompanied minors that were trafficked to the United States. Although this Act did not necessarily take care of all of the court and immigration process issues concerning unaccompanied trafficked minors, this Act did however strengthen these kids’ protection. First, “the Act addresses the need to provide legal counsel to unaccompanied minors” [56] by requiring the Secretary of State to “ensure, to the greatest extent practicable that all unaccompanied alien children have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking” [57]. Secondly, the Act “requires that the custodians of unaccompanied minors participate in the Legal Orientation Program,” [56] in which the parents will be “educated about the immigration process, the court proceedings, and basic legal information” [56].

Currently in 2014, there has been an increasing amount of unaccompanied minors crossing the Mexico border into the United States. In 2014 alone, there have been over 67,00 children who have crossed illegally into the United States [58]. The majority of these unaccompanied minor come from Mexico, Honduras, El Salvador, and Guatemala [59]. It is believed this number will only continue to increase due to the nature of the violence these children face in their countries [59].

The right to the protection of the environment

On May 16, 1994, in Geneva, the United Nations' first Declaration of Principles on Human Rights and the Environment was written, establishing for the first time a direct relationship between human rights and the environment. The Declaration demonstrated that the already accepted human rights for the protection of the environment include the right of all persons to have a secure, healthy, and ecologically acceptable environment [60].

The declaration is divided into five parts. The first part of the declaration expressed that human rights, the right to an ecologically healthy environment and peace are interdependent and indivisible rights that all persons, present and future generations, should enjoy. The second part established that all persons have the right to live free from contamination, environmental degradations, as well as all activities that have a negative effect on the environment or threaten lives, health and the well-being of individuals. At the same time, it recognizes the right to the protection and preservation of the air, land, flora, animal life and the natural processes and essential areas necessary to maintain biological diversity and ecosystems. It also gives all persons a right to safe and healthy food adequate to their well-being and to right to a safe and healthy working environment [60]. The third part deals with the right of information and of opinion. It recognizes all persons have a right to information concerning the environment, including but not limited to information necessary for public participation in environmental decision-making.

A person seeking this information should not encounter an undue financial burden; the information should be available under reasonable time, should be clear and should be understandable. All persons have a right to express opinions regarding the environment and they have a right to human rights and environmental education [60]. The fourth part delegates duties to all persons and to the States regarding the environment. All persons have a duty to protect and preserve the environment while all States have a duty to respect and make sure the environment is secure, healthy and ecological. One of the State's duties includes controlling, licensing, regulating or prohibiting any activity that could be potentially harmful to the environment. All States also have to ensure that any international agencies or organizations they join observe the rights and duties of the Declaration [60]. The fifth and last part of the Declaration sets forth that all persons are entitled to a social and international order in which the rights of the Declaration can be fully fulfilled [60].

In the United States, the struggle between economic development and the protection of the environment continues. In 2008, the Environmental Protection Agency (EPA) drafted new rules, that if had been approved, would have permitted mining companies to discard waste generated by their activities in high mountain areas, including rocks and dirt, into rivers and other running waters [61]. If these new rules would have been approved it would have been great for the mining operations, especially those in West Virginia and Kentucky as well as other mining states in the western part of the nation [61]. Although some would have benefited from the new rules, in 2011, the EPA, under the Clean Water Act, stopped the proposal disposal of mining waste into streams [62]. The Clean Water Act regulates the discharge of pollutants into waters of the United States [63]. It was originally enacted in 1948 and was named the Federal Water Pollution Control Act, but it expanded in 1972 and renamed the Clean Water Act. Under this Act the EPA has been able to implement pollution control programs and water quality standards. The Act also makes it unlawful for anyone to discharge large pollutants into navigable waters without a permit, obtained by the EPA, named the National Pollutant Discharge Elimination System [63].

Besides the Clean Water Act, recently, the United States has had many issues with global warming. The concern over global warming has been a major environmental topic on minds of the American public. This should be of no surprise since global warming has had an incredible increase in the past years; there is more carbon dioxide today than there has ever been in the past 800,000 years [64]. With the increase of global warming come many dangers to the public; some consequences of global warming include massive fires, droughts, and severe hurricanes [65]. Accordingly, the U.S. Global Change Research Program reports the temperature in the United States has increased by 2 degrees in the last 50 years [66]. Former Vice-president Al Gore was awarded the 2007 Nobel Peace Prize, sharing it with the Intergovernmental Panel on Climate Change, a network of scientists [67]. Mr. Gore's cautionary film about the consequences of climate change, "An Inconvenient Truth," won the 2007 Academy Award for best documentary [68]. The film was about Mr. Gore's campaign to make global warming recognized as a worldwide issue [69]. In 2009 Mr. Gore won a Grammy Award for Best Spoken Word Album for his book "An Inconvenient Truth: The Planetary Emergency of Global Warming and What We Can Do About It" [70].

More recently President Obama made a pledge to reduce the United States' carbon emissions by 17 percent, from 2005 levels, by 2020, this goal should be met by following the rules of the Environmental Protection Agency. At the United Nations Climate Summit the President of the United States gave a speech aimed at world leaders to confront climate change; his main focus being China. The President acknowledged that the United States and China were the countries with the biggest economies but the biggest polluters. In his speech he said it was their responsibility as big nations to start the change [71].

Another global warming activist, David Suzuki, just kicked off his environmental rights tour in Canada. Mr. Suzuki co-founded the David Suzuki Foundation in 1990, "to find ways for society to live in balance with the natural world that does sustain us" [72]. The environmental rights tour he just launched is a campaign to add clean air and water rights to Canada's constitution [73]. He believes a healthy environment should be included in Canada's legal framework [73].

The right to privacy in relation to unsolicited telemarketing telephone calls

On January 28, 2003, the Do-Not-Call Implementation Act was introduced sponsored by Representatives Billy Tauzin and John Dingell and it was signed into law by President

Bush on September 2003. This Act allowed the Federal Trade Commission to collect fees for the implementation and enforcement of a "do-not-call" registry, and for other purposes [74]. Even with President Bush's signature several federal district courts did not agree with the list. Finally, on February 17, 2004, the Tenth Circuit Court of Appeals, upheld the constitutionality of the law that enforced the do not call list [75].

After the law was constitutionally upheld several states in the nation have approved laws that protect consumers from unsolicited telemarketing telephone calls. These new state laws are based on section 64.1200 of Chapter 47 of the Code of Federal Regulations, prohibiting any person to conduct telephone calls without previous authorization using any automated or artificial system to make such calls [78]. The prohibition extends to facsimiles, computers and other means of communication that are utilized with the intention of sending an unsolicited commercial message [78]. Even when the consumer authorizes the acceptance of these solicitations, the law prohibits the making of telephone calls before 8 a.m. and after 9 p.m. [78]. The federal law establishes additional requirements before permitting these systematic telephone calls. One requirement is that the person or company making the phone calls needs to have established procedures for maintaining a list of persons that do not want to be bothered by calls [78]. These procedures should exist in writing and be available to anyone who wishes to review the lists upon request [78].

Although placing your phone number on the Do not Call Registry will stop most calls, it will not stop all unsolicited calls; there are a few exceptions. The Federal Communications Commission (FCC) explains that these restrictions are not applicable to emergency calls that are necessary for the safety and health of the consumer, calls that are not typically commercial in nature, calls from non-profit organizations, calls that do not constitute telephone solicitations or calls under which the consumer has already established a commercial relationship [77]. The FCC suggests that to suspend unsolicited telemarketing calls, the consumer has only to indicate clearly the desire to be placed on the National Do Not Call Registry, which is managed by the Federal Trade Commission. Anyone can register online at www.donotcall.gov or by calling toll free 1-888-382-1222 from the home or cell phone they wish to register [78]. The FCC suggests that consumers maintain a list of all those commercial entities with whom they have already requested to be placed on the do-not-call list [79].

The United States Congress approved two Bills that if signed into legislation would permanently authorize the FCC to collect fees from telemarketers to fund the program and also make the do-not-call list permanent [80]. On February 15, 2008, President George W. Bush signed into law the H.R. Bill 3541: Do-Not-Call Improvement Act of 2007 [81]. This renewal allowed consumers to register only once instead of every five years, and allowed the removal of a number from the list only if the number is invalid, disconnected, has been reassigned, or the owner of the number asks to be removed [81].

The FCC can impose fines against telemarketers who violate the do not call registry, but does not award any individual damages [82]. Although no individual damages are awarded, individuals who suspect a company is violating the registry should file a complaint [82]. Complaints can be filed online by filling out the complaint form or can be filed by being sent to the FCC's Consumer Center. The complaint should include your basic information, identifying information of the caller, whether the caller advertised or sold any property, goods, or services, and more importantly whether you had already told the caller/company you did not want to be called [82]. In May 2014, the company Sprint was fined \$7.5 million for violating the registry; as part of the settlement they also had to implement a two-year plan with the FCC so that their employees are familiar with the registry [83].

Less than a year after the National Do Not Call Registry began, a survey indicated that people who registered for the list saw a reduction in the unsolicited calls they received; from an average of 30 calls a month to about an average of 6 per month [84]. Since its inception, about 72 percent of Americans have taken advantage of the program, 77 percent of those say that they have seen a reduction in their unsolicited telemarketing calls [84].

The right to determining what medical treatment to receive and the right to organ donation

In the United States, individuals have the right to decide in advance what method of medical treatment they wish to receive in case they become physically or mentally incapacitated and lose the ability to communicate. The Department of Health and Human Services, on behalf of the

Administration for the Financing of Medical care, stated that adults in hospitals, infirmaries, and another medical institutions, have certain special rights including the right to have their medical and personal records kept confidential and the right to decide what medical treatment they wish to receive. The right to make organ donations and decide about the types and extent of medical care they would like to receive or refuse is based on the federal Patient Self-Determination Act (PSDA) [85].

The Patient Self-Determination Act requires that all health institutions that receive federal funds under the Medicare or Medicaid programs should provide patients that are getting medical care in hospitals or extended care facilities, entering into hospice or home care enrolling in HMOs information regarding their right to make their own decisions with respect to their medical treatment [85]. The PSDA also requires for health care agencies to ask patients whether they have an advance directive, if they do not, patients have the right to prepare the document. An advance directive is a legal document by which an individual can make medical and health-care informed decisions [86]. The two main types of advance directives are “living wills” and “Durable Power of Attorney for Health Care.” A living will is the oldest type of advance directive and it is both signed and witnessed. A living will normally instructs a physician to either withhold or withdraw from medical procedures if the patient is unable to make their own decisions about their medical treatment [86]. On the other hand a Durable Power of Attorney for Health Care is a legal document that is also signed and witness but instructs a designated individual to make decisions about the patients’ health on his/her behalf [86]. Neither one of these two types of advance directive methods require the presence of an attorney.

In regards to organ donation, all the states in the nation have adopted some version of the Uniform Anatomical Gift Act. The principal reasons for establishing rules for the legal donation of organs include: the determination and limitation of which persons can make legal organ donations; the determination of the rights of the closest family members of the patient; the specific provisions under which these donations can be carried out; and the establishment of the rights of the family members as to their remains of the body once the organs have been removed [87]. In 1987, the Uniform Anatomical Gift Act was amended which consisted of seventeen sections as opposed to the 1968 version, which included eleven.

In 2014, the state of Pennsylvania had a big movement to promote organ donation after a case involving the parents of a two-year old girl who wanted to donate her organs and save other children lives [88]. “Organ donation organizations and many in the medical community support the effort to update the state's organ donation law” [88]. The proposed bill in Pennsylvania would “streamline and codify best practices for organ donation at medical facilities across the state, supporters say, and increase donation education to expand the pool of donors” [88].

The right to ethanasia or death with dignity

In the United States, Henry Hunt attempted to legalize euthanasia for the first time in 1906 at the General Assembly of Ohio [89]. Mr. Hunt was introducing this concept on behalf of Anna Hall, a heiress who had watched her mother die of liver cancer; Ms. Hall was determined to ensure no one else had to suffer the same pain her mother did. She was so dedicated to ensure others would not suffer that she wrote an extensive letter and organized a debate on euthanasia at the annual meeting of the American Humane Association of 1905. Following Ms. Hall's determination, Mr. Hunt proposed a bill at Ohio's General Assembly that basically asked for euthanasia to be legalized. Mr. Hunt's bill proposed the administration of an anesthetic to bring a patient to death. There were some requirements that had to be met: the patient must have had to be of legal age, and of sound and mind; the patient must had been suffering from a fatal injury or an irrevocable illness or must had been in great physical pain. The bill also proposed that before the anesthetic was administered the case be heard by a physician, required informed consent in front of three witnesses and also required that three physicians agree it was impossible for the patient to recover. Ultimately, the bill did not pass, and for the following years the euthanasia debate was significantly reduced [89].

The controversy over the legality of euthanasia is so great and serious that as of June 2014 only four states have legalized physician- assisted suicide. From those four, three (Oregon, Vermont and Washington) have legalized it through legislation, while the state of Montana has legalized it through court ruling [90]. Three states (Alabama, Massachusetts, and West Virginia) and the District of Columbia have prohibited physician-assisted suicide via common law [90].

Four other states (Nevada, North Carolina, Utah and Wyoming) have no laws prohibiting assisted suicide [90].

The law of the state of Oregon that allows assisted suicide, the first state in the United States to allow assisted suicide, is referred to as "death with dignity." The law is heavily regulated and there are a variety of requirements that must be met; solely age or disability are not enough [91]. Although the requirements are not exactly the same as Mr. Hunt's bill proposed, they are very similar but might be harder to meet. The main requirements include: suffering from a terminal disease and voluntarily expressing wishes to die [91]. A disease is considered terminal if it is incurable and irreversible and if by a reasonable medical judgment it is determined that it would cause the patient's death within six months [91]. Voluntarily expressing a wish to die includes a wish made both verbally and in writing [91]. The individual must be well informed which means he must know of his medical diagnosis, his prognosis, the probable results of taking the medication, and must be aware of any feasible alternative [91]. Depression cannot be a cause for assisted suicide [91]. If a physician believes his patient is suffering from a psychological disorder, a psychiatrist disorder or from depression that is impairing his judgment, he must refer the patient to counseling [91]. At least 15 days must go by from when the patient makes the initial oral request to die to when the prescription is given, and at least 48 hours shall elapse from when patient makes written request to die to when the prescription is given [91].

In the year 2013, 122 residents of the state of Oregon had prescriptions written to them to end their lives. From those, 63 ingested the medication, 28 did not take the medication but died of other causes, and 31 have an unknown status. Since the inception of Oregon's Death With Dignity Act, 1,173 persons have had prescriptions written and 752 persons have chosen to end their lives through physician-assisted suicide [92].

The federal government's response to Oregon's Death with Dignity Act has changed in recent years. Under the Clinton administration, then Attorney General, Janet Reno wrote a letter to Congress in June 1998 stating that federal prosecution of Oregon physicians who fully comply with Oregon law would be beyond the scope of the Federal Controlled Substances Act of 1969 [93]. However, in November 2001, then U.S. Attorney General, John Ashcroft, announcing the Bush administration position, indicated that he did not consider the assistance of a patient in committing suicide a legitimate medical proposition and declared that any physician that used any drug to accelerate the death of any of his/her patients would be violating the Federal Controlled Substances Act (CSA) and would be penalized by having his/her medical license suspended or revoked. During that same year, several physicians from the state of Oregon provided lethal doses to 44 terminal patients, 22 of which satisfactorily obtained their objective. Due to the opposition demonstrated by the current administration against the Death with Dignity Act, the state of Oregon initiated a lawsuit to try to block any interference by the federal government with the imposition of this law. On April 17, 2002, the United States District Court for the District of Oregon issued a permanent injunction enjoining Ashcroft from employing, enforcing, or giving legal effect to the Attorney General's directive. Although the original patients involved in the case died from their respective terminal illness, the Bush administration continued their fight against physician-assisted suicide under Ashcroft's successor, Alberto Gonzales. However, the Supreme Court upheld Oregon's Death With Dignity Act in *Gonzales v. Oregon* by a margin of 6-3 in a hard fought victory for states' rights [94]. In 2008 the state of Washington enacted the same law while the state of Montana did not regulate the same safeguards [95].

In 2010, a survey made in the United States of more than 10,000 patients showed that approximately 46% of physicians believe assisted suicide should be allowed, while 41 % believe it should not; 14% believe it depends on the situation [96]. The topic is so controversial that another survey done in 2013 showed different results. This survey had approximately 2000 participants, from those, two-thirds did not believe in physician-assisted suicide, from those two-thirds, 60 % of the participants were from the United States [97]. Physicians against assisted suicide believe assisting a patient to his/her death violates their oath of doing no harm. Physicians for assisted suicide believe a physician should have autonomy and just like they assist at a birth, they should be able to assist at a death [97].

One of the most well-known advocates for physician-assisted suicide is Jack Kevorkian. [98]. He has been labeled by some as "Dr. Death" since he claims to have helped 130 terminally ill people end their lives. Some consider him a hero since he set the platform for the reform; he insisted,

"dying is not a crime" [98]. In 1999, Kevorkian was convicted of second-degree murder for his direct role in a case of voluntary euthanasia. He was sentenced to 10 to 25 years but was released on parole after serving 8 years, after agreeing, as part of a long list of conditions, not to participate in future suicides [99]. In 2008, Kevorkian announced his plans to run for Congress as an independent. He ran and received 8,987 of the votes, which were 2.6% of them [100].

More recently in 2013, Dr. Iain Kerr, a Scottish doctor admitted he had helped four individuals commit suicide by either giving them sleeping pills or telling them how many antidepressants they needed to take to end their lives. Dr. Kerr believes the law should change because there may be times when a patient's "... preferred course of action will be suicide or to be assisted to die" [101].

Even more recent, in 2014, in the City of New York a debate was held named "Legalize Assisted Suicide." Before the debate 65 % of the people were in favor of legalization while 10 % were against, 22 % were undecided. After the debate 67 % were in favor, and 22 % were against, which means opponents of legalization convinced more undecided people than proponents of the legalization [102].

Sexual discrimination

Just as racial discrimination allegations began surfacing in 2014, sexual discrimination allegations did not stay behind; the main concern being sexual discrimination in the work place. Examples of sexual discrimination include, but are not limited to: hiring, employment conditions, firing, promoting, getting more benefits, etc. based on your gender [103]. It is important to note that not only is sexual discrimination against the law, but retaliation for reporting or opposing sexual discrimination is also [103]. An employer cannot "punish" an employee who either reports sexual discrimination against herself/himself or another fellow employee.

In the United States there is a statute known as Title VII [104]. Title VII is a formal equality statute that protects individuals from employment discrimination on the basis of race, color, religion, sex, or national origin [104]. Specifically, Title VII promotes the idea that everyone, whether you are a male or a female, you should be treated equally in the workplace [104]. There are several methods courts use to determine whether there has been sexual discrimination in the workplace; these are referred to as burden of proof allocations [105]. One commonly used burden of proof allocation is based on circumstantial evidence. There are three steps involved when using the circumstantial evidence proof of discrimination: [105].

"First, the plaintiff must present sufficient evidence about the challenged action (e.g., failure to promote, hire, etc.) to constitute circumstantial evidence that the plaintiff was discriminated against because of some prohibited characteristics (e.g., sex or race under title VII, or sexual orientation under ENDA). This is called the plaintiff's prima facie case. Second, the defendant must respond by simply offering a legitimate non-discriminatory reason for the action about which the plaintiff is complaining. This is called satisfying the burden of production. Finally, the plaintiff must present evidence that demonstrates that is, that proves that, despite the reason offered by the defendant, the action in reality was motivated by the defendant's intention to discriminate. This is called the burden of persuasion and may be achieved, for example, by proving that the reason offered by the defendant is merely a pretext for actual discrimination" [105].

In September 2014, a book Senator Kirsten Gillibrand wrote called "Off the Sidelines" was released. In this book Sen. Gillibrand talks about several sexist encounters she has encountered with her male colleagues. She goes on to give examples of what she was name called, such as "...You're even pretty when you're fat" [106]. She says these incidents she encountered in Congress have only made her more motivated. She is motivated to take issues such as campus and military sexual assault. She is calling women to "speak up," "gather strength," and "support one another" [106].

Racial discrimination

On August 9, 2014 an African American 19 year old, named Michael Brown was fatally shot by Darren Wilson, a White police officer from Ferguson, Missouri, a suburb of St. Louis [107]. The facts of the case are that Brown and a friend, Dorian Johnson, were walking in the middle of the street when Wilson drove up to them and asked them to move to the sidewalk. An altercation began between them, where the facts are not crystal clear. Wilson alleges Brown punched him in the face when he told him to move to the sidewalk, that hit allegedly was the first hit. From there a series of hits and punches began while Wilson was still in the car. After that Wilson got out of the

car and reached for his gun. Wilson told Brown to back off or he would shoot. Brown did not believe Wilson would shoot and started yelling at him. The argument continued until Brown reached his waistband, at this point Wilson believed Brown was armed. Brown never put his hands in the air to show he was surrendering. Wilson alleges he fired three times and realized Brown flinched, but he kept on walking towards Wilson, after a few more shots that did not stop Brown, Wilson ultimately shot him in the head which ended Brown's life. After the altercation it became public knowledge that Brown was not armed [107].

On November 24, 2014, a prosecutor from St. Louis County announced that a grand jury had decided not to indict Wilson. The decision caused a huge riot and waves of anger among those who were protesting outside the Ferguson Police Department; buildings were set on fire and the looting of several businesses occurred [108]. About a week later, on December 1, 2014 several grand jury proceedings were revealed although they are usually privileged and kept in secrecy. One key transcript that has not been revealed is the testimony of Brown's friend who was with me the day of the shooting, Johnson [109]. So far the investigation is still ongoing.

A few months before the case in Ferguson, on July of 2014, Eric Garner was confronted by the police trying to arrest him for allegedly selling illegal cigarettes. According to a video that was recorded during the confrontation, Eric Garner raised both hands in the air and, with passive defiance, told the officer not to touch him. However, one of the officers choked and pulled him into the sidewalk, rolling him onto his stomach. The video show where Eric Garner repeatedly yelled "I can't breathe! I can't breathe!" Eric Garner was later pronounced dead at a nearby hospital. He suffered a heart attack and died en route to the hospital. Officer Daniel Pantaleo, was the officer who is seen on the video choking Eric Garner. A Staten Island grand jury decided not to indict Officer Pantaleo in the case involving the death of Eric Garner [110]. An immense waive of protesters have expressed outrage due to the grand jury's decisions in both Eric Garner's case and Michael Brown's cases.

Supreme Court opinions 2014-2015

The Supreme Court of the United States has handed down several important decisions, which will have a long lasting impact.

Burwell v. Hobby Lobby Stores, Inc., is a very important case because it is the first time the Court has recognized that a for-profit corporation can have a claim of religious belief [111]. The facts of the case are simple; David and Barbara Green, owners of Hobby Lobby did not want to provide their employees with insurance that covered for birth control pills and abortion pills; they argued this went against their religious beliefs [112]. They argued the Affordable Care Act, also referred to as Obamacare, violated their First Amendment right to religious freedom because it required them to provide coverage for pills they consider a substitute for abortion, such as the morning after pill, along with other things, such as sexually transmitted disease classes, that go against their religious beliefs [113]. Congress passed the Affordable Care Act in 2010, it relies on the Health Resources and Services Administration (HRSA) to determine what types of preventive care for women should be covered by certain employer healthcare plans. The HRSA decided all twenty contraceptives approved by the U.S. Food and Drug Administration should be covered [114]. They exempted non-profit organizations, religious employers, and employers with fewer than 50 employees from having insurance that covered preventive care if they had an objection [115]. The exemptions did not include for-profit organizations/businesses; since Hobby Lobby is a for profit organization they were required to provide insurance coverage for preventive care for woman, if they did not, they could be fined \$100 per person/per day [116]. Due to Hobby Lobby's claims the Supreme Court of the United States had to decide the issue of whether religious employers can refuse to comply with a federal rule requiring their health plans to cover birth control. After much controversy, and a 5-4 vote, the Court held that the Green's did not have to provide for birth control methods in their health insurance coverage, because providing coverage did violate their religious beliefs [112]. They did make clear that this only applied to closely held corporations, not to any corporation that wanted to do this [112]. Judge Samuel Alito, one of the Judges who wrote the majority opinion stated,

"The companies in the cases before us are closely held corporations, each owned and controlled by members of a single family, and no one has disputed the sincerity of their religious beliefs".

In another case, *McCullen v. Coakley*, the Supreme Court determined that a Massachusetts law which makes it a crime and a violation of the First Amendment, to stand on a public road or sidewalk within thirty-five feet of a reproductive health care facility was unconstitutional. The Court held that the statute was not content-based due to the fact that it established buffered zones at only clinics that performed abortions and the fact that it exempted certain groups including clinic employees and agents. The Court also held that the statute was not narrowly tailored to serve significant governmental interest, and thus violated free speech guarantees [117].

In another important opinion, *Riley v. California*, the court held police need warrants to search the cell phones of people they arrest. In this case David L. Riley was arrested in 2009 after a traffic stop led officers to find loaded firearms in his car. When he was arrested the officers took his phone and searched through his contacts, messages, photos and videos; based in part on what they found on the cellphone they also charged him with an unrelated shooting that had happened several weeks before his arrest. The Court held that neither the interest of protecting officers' safety nor the interest of preventing destruction of evidence justify dispensing with warrant requirements for searches of cell phone data. The Court stated that it is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest [118]. Chief Justice John Roberts delivered the opinion of the majority saying, "Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon--say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one." This case is especially relevant in today's society because citizens are more reliant on technology than ever, including their cell phones.

In November 2014, the Supreme Court decided the *Carroll v. Carman* case. In this case police officer, Carroll, from the Pennsylvania State Police Department received a report that a man named Michael Zita had stolen a car and two handguns and had fled to the Carman's house. The officer went to the Carman's residence to investigate and believed there was something or someone in the rear of the property. The officer approached the rear of the house, announced his presence and when no one answered went inside. The Carroll's then confronted the officer and consented to a search of their house, Zita was not found. The Carmans then sued Officer Carroll for unlawful entry to the property. The officer argued his entry was legal under the "knock and talk" exception, which allows officers to knock on someone's door as long as the officers are standing on parts of the person's property that the general public is allowed to stand on. The District Court found in favor of Carroll, but on appeal the decision was reversed, the Court of Appeals said the "knock and talk" exception must begin at the front door, and they it also said the Officer did not have immunity because he violated a clear established law. The Supreme Court said there was no clearly established law that says the "knock and talk" exception must begin at the front door, since there was no clear rule Officer Carroll was entitled to qualify immunity [119].

Most recently, in June 2015, in *Oberfegell v. Hodges*, the Supreme Court of the United States held that "the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State." This holding legalized gay marriage throughout the United States.

Results

Although the federal government may use its power to encourage states to adopt certain laws under the Tenth Amendment. The federal government is limited from directing states to enact specific legislation, or requiring officials to enforce federal laws on a state level. As such, these rights can co-exist in a mode that the government of the U.S. allows for basic rights to be protected on a federal level, and simultaneously allows the individual states to protect other rights that are of local importance. The advancement of these new rights are the result of social changes in the U.S. communities in order to adapt with society. A great sense of community and respect towards human rights and civil liberties has surfaced. These new rights in a judicial point of view, can also be viewed as a global achievement that can help past studies about each and every right in matters

comparing other countries rights. Complying also to international agreements that the United States has acquired before the world.

Conclusion

The United States of America's legal system covers a wide variety of legal topics, so wide that it would be impossible to include all of them in this article. All rights are created by federal and state laws and by Supreme Court decisions. The reason that all these rights can co-exist is that the mode of the government of the United States allows for basic rights to be protected on a federal level, and simultaneously allows the individual states to protect other rights that are of local importance without interference from the central government. These rights are the offspring of the natural and legal rights that the United States recognizes, and can be further divided between rights that are created because of necessity and those that are created because of changes in societal views. The rights considered a necessity not only would most people agree are necessary but they have been established by federal legislation and every jurisdiction in the country must recognize them. For example: the right to the protection of the environment, the right to sexual offender information, and the right to the protection of victims of human trafficking. There are some rights that are not created by necessity but because of societal views; these rights have not been established by the federal legislation and therefore are only recognized in certain regions of the country. For example, the right to open carry a firearm, the right to consume marijuana, the right of same-sex couples to marry, the right to euthanasia, the right to determine what medical treatment to receive, and the right to organ donation. Whether it is a right that derived from necessity or from changes in our society these rights are recognized because of the wide variety of topics our legal system covers.

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УДК 343

Развитие юридических прав в американской правовой системе

Роберто Росас

Юридическая школа Университета Святой Марии, США
Доктор юридических наук, профессор
E-mail: rrosas@stmarytx.edu

Аннотация. Эта статья отражает некоторые из самых спорных тем в американском обществе. Она дает юридический ответ на эти темы со стороны отдельных государств, Конгресс Соединенных Штатов и Верховного суда США. Эта статья ограничивается обсуждением девяти довольно новых прав, созданных федеральными законами. Рассмотренные в данной статье права включают в себя следующее: 1) право на открытое ношение огнестрельного оружия; 2) право потреблять марихуану; 3) право на заключение брака или гражданские союзы между однополыми парами; 4) право виновного в сексуальном преступлении на информацию; 5) право на защиту жертв торговли людьми; 6) право на охрану окружающей среды; 7) право на неприкосновенность частной жизни в отношении нежелательных телефонных звонков; 8) право на определение того, что медицинское лечение, чтобы получить и право на пожертвования органов; 9) право на эвтаназию или смерть с достоинством. В данной статье кратко рассматриваются темы сексуальной и расовой дискриминации. И, наконец, обсуждаются наиболее далеко идущие решения, вынесенные Верховным судом Соединенных Штатов в период между 2013 г. и по настоящее время.

Ключевые слова: огнестрельное оружие, марихуана, гражданский союз, однополый брак, реестр лиц, виновных в сексуальном преступлении, торговля людьми, охрана окружающей среды, непредусмотренные телефонные звонки, донорство органов, медицинское лечение, эвтаназия, смерть с достоинством, дискриминация по половому признаку, расовая дискриминация.