The Yale Law Journal

To: All J.D. and M.S.L. Candidates at the Yale Law School
From: The *Yale Law Journal* Volume 131 Notes & Comments Committee (Prashanta Augustine, Jackson Busch, Benjamin Della Rocca, Catherine Feuille, Max Goldberg, Kate Hamilton, Eliane Holmlund & Rachel Sommers)
Re: Notes Submission Guidelines
Date: March 5, 2021 (updated July 22, 2021)

I. INTRODUCTION

We invite and encourage all current J.D. and M.S.L. students to submit a Note for publication in Volume 131 of the *Yale Law Journal*. A Note makes an original, well-supported argument that advances the frontier of legal scholarship in a particular field. Publication in the *Journal* allows student authors to communicate their ideas to the legal community, develop their scholarly voice, and join a time-honored tradition of excellence and innovation in student scholarship. We are strongly committed to publishing an array of Notes that reflect the diversity of intellectual interests at the law school.

The Volume 131 submission deadlines ("drop dates") are: **Friday, February 26, at 5 PM**; **Friday, April 9, at 5 PM**; **Friday, July 23, at 5PM**; and **Friday, October 1, at 5 PM.**

Please refer to the rest of this memorandum for guidance on developing and submitting your Note. The Notes & Comments Committee (Committee) takes its commitment to anonymous review seriously. To preserve anonymity, all questions regarding the Notes submissions process and requests for Notes Development Editors following receipt of a Revise & Resubmit letter should be directed to Managing Editors Josh Altman (joshua.altman@yale.edu) and Sammy Bensinger (samantha.bensinger@yale.edu). **Please do not contact any member of the Notes & Comments Committee regarding your submission.**

II. DEVELOPING YOUR NOTE

What Is a Note?

A Note is a student-written piece of legal scholarship. Notes are not limited by topic, methodology, or approach. Successful Notes typically share the following three characteristics:

- **Original**: A Note should advance a particular area of legal scholarship beyond its current state, situating itself within and contributing to an existing legal discourse.
- **Justified**: The Note's argument should be analytically sound. Each step in the argument should be well supported by legal authorities. The Note should provide persuasive evidence for each of its conclusions and acknowledge the limits of its argument. Citations should be complete and unambiguous. The *Journal* follows *The Bluebook: A Uniform System of Citation*

should be well supported by legal authorities. The Note should provide persuasive evidence for each of its conclusions and acknowledge the limits of its argument. Citations should be complete and unambiguous. The *Journal* follows *The Bluebook: A Uniform System of Citation* (21st ed. 2020) for citation form and the *Chicago Manual of Style* (17th ed. 2017) for stylistic matters not addressed by *The Bluebook*.

- **Well-written and structured effectively**: The Note should employ clear and concise prose and it should present the argument logically. It should clearly convey its thesis and the relevance of each section to the overall argument.

We welcome Notes adapted from clinical briefs, memos, or seminar papers. Although Notes can originate from Substantials or SAWs, effective Notes differ from most Substantials and SAWs in two main ways. First, a Note need not contain a lengthy literature review and should proceed quickly to the author's original argument and analysis. Second, a Note should be directed at a broad legal audience, not at a single professor.

Notes published in previous volumes of the *Journal* provide examples of excellent student scholarship. Recent examples include:

- James T. Campbell, Note, *Island Judges*, 129 YALE L. J. 1888 (2020), https://www.yalelawjournal.org/pdf/CampbellNote_zp39ntcp.pdf.
- Valeria M. Pelet del Toro, Note, *Beyond the Critique of Rights: The Puerto Rico Legal Project and Civil Rights Litigation in America's Colony*, 128 YALE L.J. 792 (2019), https://www.yalelawjournal.org/pdf/PeletdelToro_pinq2u76.pdf.
- Yumehiko Hoshijima, Note, *Presidential Administration and the Durability of Climate-Consciousness*, 127 YALE L.J. 170 (2017), https://www.yalelawjournal.org/pdf/Hoshijima_bvkmgxae.pdf.
- Sarah Golabek-Goldman, Note, *Ban the Address: Combating Employment Discrimination Against the Homeless*, 126 YALE L.J. 1788 (2017), http://www.yalelawjournal.org/pdf/h.1788.Golabek-Goldman.1868_9wo15f6u.pdf.

Resources for Developing Your Note

The Notes & Comments Committee offers several resources to students who are interested in learning more about the submissions process or receiving feedback on their ideas or writing.

Practical Scholarship Editors (PSEs)

Prior to submitting a piece of scholarship to *YLJ*, students can take advantage of Office Hours hosted by our PSEs. PSE Office Hours may serve as useful opportunities for brainstorming topics, writing a Statement of Originality, or receiving substantive feedback at any stage of the writing process. Students should also feel free to attend PSE Office Hours after submission.

You can sign up for a thirty-minute Office Hours slot with Practical Scholarship Editors Atticus Ballesteros (office hour sign-up link here) and Kayla Crowell (office hour sign-up link here). For questions regarding the PSE Office Hours or student scholarship support more generally, please contact our Atticus (atticus.ballesteros@yale.edu) and Kayla (kayla.crowell@yale.edu).

As a reminder, PSEs do not sit on the Committee and do not ordinarily participate in Committee deliberations. The Notes & Comments Committee will not know whether or not you met with a PSE prior to submission, and attending PSE Office Hours prior to submission will have **no bearing** on the Committee's deliberations.

Notes Development Editors

Students who have submitted a piece to *YLJ* and received a Revise & Resubmit letter (R&R) and are interested in resubmitting may request a Notes Development Editor (NDE). Unlike the PSEs, NDEs serve on the Committee. They work with student authors to provide substantive, stylistic, and organizational advice during the Notes development process. Most importantly, NDEs elaborate on the contents of R&Rs. We strongly encourage authors to take advantage of the NDE program in anticipation of resubmitting their pieces at a later drop date.

NDEs are assigned to authors on a first-come, first-served basis. Students who are assigned an NDE are entitled to one meeting with their NDE to discuss their R&R. NDEs will not meet with students in the week leading up to a drop date (e.g., the last date that an NDE consultation can be scheduled before the April 9 drop date is April 2). Following the meeting, NDEs will also provide feedback on one Note draft.

Please note that NDEs are recused from discussing and voting on Notes that they are assigned. **It is important that you do not contact a Notes & Comments Editor directly to request their assistance in developing your Note**. Instead, email Managing Editors Josh Altman (joshua.altman@yale.edu) and Sammy Bensinger (samantha.bensinger@yale.edu) to request an NDE. In your email, please include: (1) your name and class year, (2) the title of your submission, and (3) a copy of any R&R(s) you received.

Please note that NDEs are available only after submission to *YLJ* and receipt of an R&R; students interested in advice or suggestions before submitting their Note to *YLJ* for the first time should consult with a PSE.

Other Resources

We encourage students to review our Common Suggestions for Notes & Comments and our Guide to Writing a Note or Comment Based on Summer, Clinical, or RA Work, both of which are available on our website: http://www.yalelawjournal.org/student-submissions.

Student Scholarship Funding

YLJ has limited funding available to support student scholarship. To be eligible to apply for *YLJ* funding, a Yale Law School student must have exhausted all of Yale Law School's academic research funding opportunities and plan to submit their project to *YLJ* as a Note or Comment.

To apply, please email ylj@yalelawjournal.org and attach the following:

1. Documentation showing that you have applied to, and have not received funding from, the Oscar M. Ruebhausen Fund, the Streicker Fund for Student Research (if eligible), and the Howard M. Holtzmann Fund in International Arbitration and Dispute Resolution (if eligible); and
2. A one-to-three page proposal that includes: the title of your project, the amount of funding you are requesting, your faculty advisor (if any), a brief description of the project and the specific purpose of the funding you are requesting, an anticipated timeline, whether you intend to submit your project to *YLJ* as a Note or Comment, and a brief explanation of the original contribution your project will make to existing literature.

Students who receive *YLJ* funding for their scholarship will be required to submit their project as a Note or Comment and, upon publication (in *YLJ* or another publication), disclose that their research was funded by *YLJ*.

III. POLICIES ON REVIEWING AND ACCEPTING NOTES

Anonymous Review

The Committee is strongly committed to impartial, anonymous review. Notes are reviewed without knowledge of authors' names or other identifying information, and authors' identities are only revealed to the Committee after a Note has been accepted. Any Committee member who can identify a Note's author with confidence will be recused from deliberations.

To preserve the anonymity critical to the Committee's review of submissions, you should not discuss any aspect of your Note or the submissions process with members of the Committee apart from your NDE, if applicable.

The Notes & Comments Committee will not consider submissions that contain identifying information about the author. Prior to uploading any documents, please double check to make sure that you have removed all self-identifying references from your documents (except the Submission Form, which is the only document that should contain identifying information). **For all documents, please select "File" and then "Properties" on Microsoft Word and remove your name from the "Author" field.**

Notes Revision

All students who have submitted a Note will be notified promptly of the Committee's decision, which will entail one of the following: (1) acceptance of the Note or (2) a request to revise and resubmit the Note. Students who receive a request to resubmit the Note will also receive an R&R, which evaluates the strengths and weaknesses of the Note and provides constructive feedback on how the author should revise the Note to increase its likelihood of acceptance. Once you receive an R&R, you can request an NDE to review it.

Please note that acceptance of a Note on the first submission is extremely rare. The vast majority of Notes published in the *Journal* are accepted on the second or even third submission. We strongly encourage all students who receive an R&R to incorporate the Committee's suggestions for revision and resubmit their Note. We also recommend that students who receive an R&R work with an NDE to revise their Notes for resubmission. Finally, we encourage you to submit your Note at the earliest drop date possible. The earlier you submit, the more time you will have to implement the Committee's suggestions and resubmit at a later date.

Membership

The Notes & Comments Committee welcomes submissions from non-*YLJ* members. Students whose single- or co-authored Notes are accepted for publication by the fall of their 3L year will be invited to join *YLJ* as First-Year Editors. Students offered membership on the basis of Note acceptance must complete a mandatory Bluebook training program, and will be expected to fulfill the same responsibilities as students who are offered membership through our admissions process. As always, membership offered on the basis of Note acceptance will be revoked if the Note is not published in Volume 131. This policy is identical to that of Volume 130, with one exception: students offered membership on Volume 131 on the basis of Note acceptance will be required to complete a *Bluebook* training program instead of passing a mandatory *Bluebook* exam. Typically, two to four students receive an offer for *YLJ* membership on the basis of Note acceptance each volume. Students who "note on" before the winter of their 2L year will have the opportunity to slate for upper-masthead positions.

IV. POLICIES ON NOTE SUBMISSION

Eligibility

Only J.D. and M.S.L. candidates at Yale Law School are eligible to submit Notes. Students may submit co-written Notes if all authors are J.D. or M.S.L. candidates. Students who have already acquired a J.D. or its foreign equivalent may *not* submit a Note, but are welcome to submit *YLJ Forum* pieces. Eligible students may publish up to one Note and one Comment in Volume 131. For students who have graduated from the law school, the last eligible drop date is the second drop date following their graduation date. **Please note that this is a change from previous volumes of the *Yale Law Journal*,** which required that graduated students submit their Notes by the first drop

date following their graduation.

Word Limit

First-time submissions are subject to a word limit of 15,000 words. To be fair to authors who comply with the word limit, the Committee will not review first-time submissions that exceed 15,000 words. The word limit includes text and footnotes and does not include the Abstract, Table of Contents, or Statement of Originality. Second-time submissions are subject to a word limit of 20,000 words. A previous submission to Volume 129 or 130 counts toward this restriction. There is no word limit on Notes resubmitted three times or more.

Please note that there is no minimum Note length. Quality is not correlated with quantity, and your Note need not come close to utilizing the full 15,000-word allowance. In the past, the Committee has accepted Notes that were **significantly shorter** than 15,000 words. We **strongly encourage** you to avoid making your submission longer than necessary, especially given that Notes often increase in length upon resubmission and acceptance. Excellent submissions can easily fall between 11,000 and 13,000 words.

Format

Please use 12-point Times New Roman font and double-space the text of your Note. For the footnotes, use 10-point Times New Roman font and single-spacing. The Note should use 1-inch margins and include page numbers in the bottom-right corner of the page. Please pay careful attention to spelling and citation formatting.

Source Corroboration

All citations, including datasets, must be capable of being corroborated by the *Journal*. If your submission is accepted for publication, you will be asked to provide PDFs and hardcopy books of your sources to the Managing Editors to assist our source corroboration procedure. In addition, authors must obtain prior, written permission for the use and publication of any non-public material, including but not limited to quotes or paraphrases from interviews, non-public court documents or records of adjudication, and non-public data. This proviso is particularly important if your Note is the product of clinical work or a research assistantship. The Notes & Comments Committee will determine whether such permission is acceptable.

Statement of Originality

A Statement of Originality should accompany all Note submissions and resubmissions. The Statement of Originality should accomplish several related objectives:

- First, it should identify the Note's **original contribution** to the literature. You should think of the Statement of Originality as an opportunity to highlight the novelty of your

argument to an inexpert audience.

- Second, the Statement should clearly and precisely explain the Note's **relationship to the closest existing works** on the topic. What sources does your Note build on, and how does your Note deviate from existing arguments? Every piece of scholarship relies on what has come before, so the Statement should discuss the Note's major sources and intellectual debts, including cited and uncited scholarship. Do not merely list your sources, but explain them and distinguish your argument from those of other authors.
- Third, the Statement should discuss the literature that forms the **intellectual background** for the Note. Please feel free to discuss ideas or material that would contribute to an appreciation of your argument but that are not emphasized in the Note itself.

We use the Statement of Originality to learn more about the nature and extent of a Note's original contribution. The Statement of Originality is not an opportunity to make an extended pitch for your Note as a whole—only for the aspects that are original. You should not reproduce the Introduction in your Statement, nor should you include a detailed roadmap. You should only discuss the finer details of your Note insofar as they are necessary to convey the substance and contours of your original contribution.

When it comes to the existing literature, however, you should err on the side of caution and overinclusion. We expect authors to identify the literature that comes closest to the Note, to describe this literature accurately, and to explain the relationship between the Note and existing literature honestly. **Please note that we conduct preemption checks for each submission.** Even beyond the acceptance process, every Note author is expected to stand behind their Note as original and accurate. If it is discovered after acceptance that the Note does not meet these standards, the piece will not be published.

The appropriate length for your Statement of Originality may vary depending on the topic and scope of the existing literature. **While there is no minimum required length, the word limit for the Statement is 1,500 words, excluding footnotes.** That is, the Committee will only read the first 1,500 words of your Statement of Originality. A sample Statement appears at the end of this document. Be sure to check both legal and non-legal books and periodicals, as well as both online and printed sources. If you decide to work with an NDE in developing your submission, they will be available to offer advice on the Statement of Originality. Additionally, you can find a tutorial on preemption checking from the Yale Law Library at: http://library.law.yale.edu/research/preemption-checking.

Resubmission Memorandum

Authors who are resubmitting their Note must include the following materials in their submission package: (1) all R&Rs, including letters from previous volumes of the *Journal*, and (2) a Resubmission Memorandum. The Resubmission Memorandum should describe how the Note

has changed since the prior submission and why these changes have improved or strengthened the Note. Of special interest to the Committee is how the author has chosen to implement suggestions offered in past Revise & Resubmit letters. A page or so should suffice. If you have previously resubmitted your Note, please submit your previous Resubmission Memoranda as well (i.e., please submit a Resubmission Memorandum corresponding to each R&R that you have received for the Note).

V. HOW TO SUBMIT YOUR NOTE

The *Journal* accepts student Note submissions only through our online submission system. If you have any difficulties with the mechanics of the submission process, please email Managing Editors Josh Altman (joshua.altman@yale.edu) and Sammy Bensinger (samantha.bensinger@yale.edu) with questions.

1. To submit your Note, go to https://yalelawjournal.force.com/submissions and click "Not a member?" to create your account.
2. Once your account has been created, log in and click "New Submission," then check the "Student Note" bubble and select "Next."
3. Follow the instructions to input the required information.
4. On the "File Uploads" page, you must upload the following submission materials in Microsoft Word format and then select "Next":

    a. **Submission File**: Upload your submission. Please be sure that your submitted file has been thoroughly anonymized and that your name, institutional affiliation, and acknowledgments (including sponsorship information) do not appear in your submission, including in the file name. Check the "properties" option under the "File" Menu and delete your name. If your name appears anywhere in the file then we will be unable to consider your submission. Please be sure your document includes a Table of Contents and a Cover Page. The Cover Page should include: (1) the title of your piece in the upper left corner; (2) the word count including footnotes; (3) an Abstract no longer than 100 words; and (4) a sentence indicating whether you have previously submitted the Note.

    b. **Supplementary Files:**
        i. **Statement of Originality**: Upload your Statement of Originality. As with your submission, please be sure that your Statement of Originality has been thoroughly anonymized and that your name, institutional affiliation, and acknowledgments (including sponsorship information) do not appear, including in the file name.
        ii. **Revise & Resubmit Letter(s)**: If you have previously submitted your Note (even to prior volumes), you are required to upload the **original version** of any previous Revise & Resubmit Letter(s) associate with your submission.

iii. **Disclosure Requirements**: The *Yale Law Journal* requires disclosure of conflicts of interest, underlying data, and IRB approval, when applicable. To comply with these requirements, please upload as a supplementary file a single document titled "[SUBMISSION TITLE]_DISCLOSURES." These disclosure requirements are discussed at greater length in our Submission Guidelines. For the *Journal*'s guidelines pertaining to empirical work, please refer to the Data-Retention Policy for Authors and Dataverse Instructions.

5. On the "Submit" page, select "Submit."
6. Follow the link to the **mandatory** **Notes & Comments Submission Survey**. Fill out the Survey. **This Survey is required for all Notes authors, and your submission will not be reviewed until you have filled it out.** Note that Members of the Notes & Comments Committee will never gain access to the contents of this Survey, and your personal information will not be used to evaluate your Note. Your information will be held in strict confidence by the Managing Editors, and only the Managing Editors will know the identity of authors whose Notes are not accepted. Your information may be used at an aggregate level to help the Committee better understand the composition of the submissions pool, but it will not be linked to you as an identified or unidentified individual. If you have any questions about this Survey, please contact the Managing Editors Josh Altman (joshua.altman@yale.edu) and Sammy Bensinger (samantha.bensinger@yale.edu).

The Notes & Comments Committee will not review submissions that depart from any of the guidelines contained in this memorandum or that are incomplete.

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We very much look forward to receiving and reading your Note. Please contact Managing Editors Josh Altman (joshua.altman@yale.edu) and Sammy Bensinger (samantha.bensinger@yale.edu) if you have any questions.

All the best,

The *Yale Law Journal* Volume 131 Notes & Comments Committee

Prashanta Augustine, Jackson Busch, Benjamin Della Rocca, Catherine Feuille, Max Goldberg, Kate Hamilton, Eliane Holmlund & Rachel Sommers

The Yale Law Journal

Sample Statement of Originality

Domestic Violence Asylum After *Matter of L-R*

This Note discusses the legal obstacles to asylum applications by women fleeing severe domestic violence. As described in Part II(B) of the paper, this type of asylum claim has a long and tortured history over the past 20 years. The Note questions whether recent developments — specifically, DHS's willingness to support some asylum applications by domestic violence victims in Immigration Court — will actually lead to greater consistency in the adjudication of such claims. I outline a series of doctrinal flaws in the DHS position and suggest that those flaws are contributing to inconsistent adjudications that jeopardize the safety of women who come to the U.S. seeking refuge from domestic violence. I then offer a new proposal for a regulatory reform analogous to the 1996 statutory reform allowing asylum claims based on avoidance of forcible population control policies (namely, China's one-child policy) and describe the regulatory hurdles that such a reform would have to overcome.

While there is an existing literature on the general topic of women and asylum, the rapidly changing nature of the law in this field has rendered most accounts of domestic violence asylum largely outdated. In particular, two changes that post-date these accounts have had a significant impact on the law and form the starting point for this Note. The first is DHS's brief in *Matter of L-R-*,[1] which endorsed the basic framework for domestic violence asylum claims offered by earlier scholarly accounts. The second is the BIA's redefinition of "particular social group" through decisions in 2006 and 2008,[2] which cast doubt on the doctrinal soundness of that framework.

A few scholarly commentaries were written *after* these significant changes, but their reform proposals do not go far enough towards ameliorating the effect of adjudicator bias against domestic violence claims and formalizing protection for domestic violence victims. This Note is the first to analyze the doctrinal and practical flaws of the 2009 DHS brief and argue that regulation is needed to create a clearer, more coherent legal standard that satisfies U.S. obligations under the Refugee Convention. The Note goes on to offer a novel solution to the problem of domestic violence asylum that would resolve aspects of the asylum standard as a matter of law for domestic violence claims while still allowing adjudicators to make independent decisions about individual asylum applications.

The first section of the Note draws on three distinct bodies of scholarship to argue that domestic violence asylum is entirely consonant with the broad aims of asylum and refugee law.

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[1] Department of Homeland Security's Supplemental Brief, *In the Matter of L-R-* (B.I.A. April 13, 2009), *available at* http://cgrs.uchastings.edu/pdfs/Redacted%20DHS%20brief%20on%20PSG.pdf.

[2] *See* Matter of C-A-, 3 I. & N. Dec. 951 (BIA 2006) (particular social group must be "visible") and Matter of S-E-G-, 24 I. & N. Dec. 579 (BIA 2008) (particular social group must have well-defined boundaries).

One group of writings is the product of feminist historians and theorists writing generally about the causes of domestic violence.[3] The second group of articles connects domestic violence to international human rights norms and a state's obligations under human rights law.[4] The third group consists of sociological studies of the prevalence and nature of domestic violence, most notably the World Health Organization's groundbreaking 2005 multicountry comparative study of domestic violence.[5]

The bulk of the Note focuses on the government's position in *L-R-*, its impact on asylum adjudications since 2009, and the path forward. The work of the Center for Gender & Refugee Studies at U.C. Hastings College of Law has been invaluable in understanding how domestic violence asylum claims are currently being handled in immigration courts. Karen Musalo, the head of CGRS, has a unique historical perspective on the current status of domestic violence asylum claims thanks to her more than twenty years as an advocate for immigrant women.[6] Thanks to their wide network of asylum advocates, CGRS is able to collect otherwise-unpublished data on immigration judge decisions in gender asylum cases. Blaine Bookey's recent analysis of that database includes a discussion decisions made after the important 2009 brief was released,[7] and that information was crucial to understanding the limitations of the *L-R-* framework as a comprehensive solution to the domestic violence asylum problem. Nina Rabin's similar study of decisions by judges at the Eloy, Arizona, immigration court[8] portrayed a group of adjudicators whose hostility to domestic violence asylum was unchanged by DHS's about-face in *L-R-*.

A small number of articles published after the *L-R-* brief do offer possible solutions to the domestic violence asylum problems continuing after *L-R-*, but none go far enough towards ameliorating the effect of adjudicator bias towards domestic violence claims. Marisa Silenzi Cianciarulo proposes that domestic violence claims should be treated as political opinion claims rather than particular social group claims.[9] Barbara Barreno and Elsa M. Bullard both argue that

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[3] *See, e.g.*, LENORE WALKER, THE BATTERED WOMAN (1980); CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989); Reva B. Siegel, *The Rule of Love*, 105 YALE L.J. 2117, 2122-23 (1996); ELIZABETH PLECK, DOMESTIC TYRANNY (2004).

[4] *See, e.g.*, Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291 (1994); Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87 (1993).

[5] *See* CLAUDIA GARCIA-MORENO, ET AL., WHO MULTI-COUNTRY STUDY ON WOMEN'S HEALTH AND DOMESTIC VIOLENCE AGAINST WOMEN (2005).

[6] Karen Musalo, *A Short History of Gender Asylum in the United States*, 29 Refugee Surv. Q. 46 (2010).

[7] Blaine Bookey, *Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 HASTINGS WOMEN'S L.J. 107 (2013).

[8] Nina Rabin, *At the Border between Public and Private: U.S. Immigration Policy for Victims of Domestic Violence* 28-32 (Arizona Legal Studies Discussion Paper No. 12-23, May 2012).

[9] *See* Marisa Silenzi Cianciarulo, *Batterers as Agents of the State: Challenging the Public/private Distinction in Intimate Partner Violence-Based Asylum Claims*, 35 HARV. J.L. & GENDER 117 (2012).

the analysis should be shifted to focus on the government's failure to act rather than the motives of the persecutor himself.[10] However, requiring adjudicators to assess the motives behind the government's failure to act will not resolve the inconsistencies that we now see in the outcomes of domestic violence asylum claims, which stem from a more fundamental disbelief by some adjudicators that asylum covers domestic violence claims at all. Finally, Natalie Rodriguez argues for regulations to refine the meaning of particular social group.[11] While I agree with her that regulation is the right approach to solving the current problem, her proposal does not go far enough in making the law more favorable to this type of asylum claim. Among other differences, she would continue to allow adjudicators to determine that persecution occurred on the basis of gender as a matter of fact; I will argue that the historical and sociological evidence tying domestic violence to gender warrants drawing that connection as a matter of law.

Both the detailed account of the doctrinal problems with *L-R-* and the specific regulatory reform offered in the note are new. This note therefore makes a unique contribution to the literature on domestic violence asylum, and thus should not be regarded as preempted by the existing literature.

[10] *See* Elsa M. Bullard, *Insufficient Government Protection: The Inescapable Element in Domestic Violence Asylum Cases*, 95 MINN. L. REV. 1867 (2011); Barbara R. Barreno, *In Search of Guidance: An Examination of Past, Present, and Future Adjudications of Domestic Violence Asylum Claims*, 64 VAND. L. REV. 225, 263 (2011).

[11] *See* Natalie Rodriguez, *Give Us Your Weary but Not Your Battered*, 18 SW. J. INT'L L. 317 (2011).