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 (Gavin Jackson, Prashanta Augustine, Jackson Busch, Benjamin Della Rocca, Catherine Feuille, Max Goldberg, Kate Hamilton, Eliane Holmlund & Rachel Sommers)
Re: Comments Submission Guidelines
Date: February 8, 2020

I. INTRODUCTION

We invite and encourage all current J.D. and M.S.L. students to submit a Comment for publication in Volume 131 of the *Yale Law Journal*. A Comment 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 Comments that reflect the diversity of intellectual interests at the law school.

The Spring 2020 submission deadlines ("drop dates") for Volume 131 will be **Friday, February 19, at 5 PM** and **Friday, April 9, at 5 PM.**

There will be two additional drop dates for Volume 131, one in July, and one October (exact dates to be determined).

Please refer to the rest of this memorandum for guidance on developing and submitting your Comment. The Notes & Comments Committee (Committee) takes its commitment to anonymous review seriously. To preserve anonymity, all questions regarding the Comments submissions process and requests for Comments 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 COMMENT

What Is a Comment?

A Comment is a short piece of student scholarship that presents an original and concise argument. A Comment should have a strong, clear thesis and minimal literature review.

Comments can come in many forms. The *Journal* has previously published case Comments (evaluating particular court decisions), practitioner-oriented Comments, Comments that survey or critique an area of jurisprudence, and Comments that identify tensions or gaps in both modern

and long-established doctrines. 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*.

Many of the Comments published in the *Journal* have been based on ideas that authors encountered through work in clinics, summer internships, and research assistantships. The diversity in the breadth and scope of published Comments underscores that any piece with a clear and original thesis can be successful.

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

- Lisset M. Pino, *Colonizing History:* Rice v. Cayetano *and the Fight for Native Hawaiian Self-Determination*, 129 YALE L.J. 2574 (2020), https://www.yalelawjournal.org/pdf/PinoComment_8o8t4id8.pdf.
- Jade Ford & Mary Ella Simmons, Comments, *The Treaty Problem: Understanding the Framers' Approach to International Legal Commitments*, 128 YALE L.J. 843 (2019), https://www.yalelawjournal.org/pdf/FordSimmons_noshfrtx.pdf.
- Charles C. Bridge, Comment, *The* Bostic *Question*, 126 YALE L.J. 824 (2017), http://www.yalelawjournal.org/pdf/i.894.Bridge.907_822ocpsz.pdf.
- Joshua Revesz, Comment, *Ideological Imbalance and the Peremptory Challenge*, 125 YALE L.J. 2182 (2016), http://www.yalelawjournal.org/pdf/i.2535.Revesz.2549_nb3q1wht.pdf.

Resources for Developing Your Comment

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. These 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.

Comments 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 Comments Development Editor (CDE). Unlike the PSEs, CDEs serve on the Committee. They work with student authors to provide substantive, stylistic, and organizational advice during the Comments development process. Most importantly, CDEs elaborate on the contents of R&Rs. We strongly encourage authors to take advantage of the CDE program in anticipation of resubmitting their pieces at a later drop date.

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

Please note that CDEs are recused from discussing and voting on Comments that they are assigned. **It is important that you do not contact a Notes & Comments Editor directly to request their assistance in developing your Comment**. Instead, email Managing Editors Josh Altman (joshua.altman@yale.edu) and Sammy Bensinger (samantha.bensinger@yale.edu) to request an CDE. 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 CDEs are available only after submission to *YLJ* and receipt of an R&R; students interested in advice or suggestions before submitting their Comment 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.

III. POLICIES ON REVIEWING AND ACCEPTING COMMENTS

Anonymous Review

The Committee is strongly committed to impartial, anonymous review. Comments are reviewed without knowledge of authors' names or other identifying information, and authors' identities are only revealed to the Committee after a Comment has been accepted. Any Committee member who can identify a Comment'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 Comment or the submissions process with members of the Committee apart from your CDE, 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.**

Comments Revision

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

IV. POLICIES ON COMMENTS SUBMISSION

Eligibility

Only J.D. and M.S.L. candidates at Yale Law School are eligible to submit Comments. Students may submit co-written Comments 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 Comment, 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. **Please note that this is a change from previous volumes of the *Yale Law Journal*,** which required that graduated students submit their Comments by the first drop date following their graduation.

Word Limit

First-time submissions must be between 3,000 and 7,000 words. The Committee will not review first-time submissions outside this range. This word limit includes text and footnotes, but does not include the Statement of Originality. There is no word limit for resubmitted Comments.

The Committee has accepted Comments at both extremes of the range. Quantity is not correlated with quality, and we strongly encourage you to avoid making your submission longer than necessary.

Format

Please use 12-point Times New Roman font and double-space the text of your Comment. For the footnotes, use 10-point Times New Roman font and single-spacing. The Comment 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 Comment is the product of clinical work or a research assistantship. The Notes & Comments Committee will determine whether such permission formatting.

Statement of Originality

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

- First, it should identify the Comment'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 Comment's **relationship to the closest existing works** on the topic. What sources does your Comment build on, and how does your Comment deviate from existing arguments? Every piece of scholarship relies on what has come before, so the Statement should discuss the Comment'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 Comment. Please feel free to discuss ideas or material that would contribute to an appreciation of your argument but were not emphasized in the Comment itself.

We use the Statement of Originality to learn more about the nature and extent of a Comment's original contribution. The Statement of Originality is not an opportunity to make an extended pitch for your Comment 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 Comment 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 Comment, to describe this literature accurately, and to explain the relationship between the Comment and existing literature honestly. **Please note that we conduct preemption checks for each submission.** Even beyond the acceptance process, every Comment author is expected to stand behind their Comment as original and accurate. If it is discovered after acceptance that the Comment 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 the Statement. 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 a CDE 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 Comment 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 Comment has changed since the prior submission and why these changes have improved or strengthened the Comment. Of special interest to the Committee is how the author has chosen to implement suggestions offered in past R&Rs. A page or so should suffice. If you have previously resubmitted your Comment, 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 Comment).

V. HOW TO SUBMIT YOUR COMMENT

The *Journal* accepts student Comment 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 Comment, 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 Comment" 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 Comment.

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 Comment (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 Comments 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 Comment. Your information will be held in strict confidence by the Managing Editors, and only the Managing Editors will know the identity of authors whose Comments 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

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

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. 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

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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).

[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).

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 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

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[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).

[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).

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.