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The Racketeer Influenced and Corrupt Organizations Act (RICO) and Double Jeopardy

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I. Background of RICO

Since its inception in 1970, The Racketeer Influenced and Corrupt Organizations Act (RICO) has been used to prosecute groups such as the Italian-American Mafia, police departments, and, most recently, the Young Slime Life Gang in Atlanta, Georgia. It has also found itself at the center of popular culture by being featured in prominent television shows such as HBO's *The Sopranos.* Both in popular culture, and in real life, RICO has often been criticized for a number of reasons. Chief among these being that RICO cases may run the risk of violating the Fifth Amendment "double jeopardy" clause. The Supreme Court revisited the idea of double jeopardy in *Grady v. Corbin*, ultimately redirecting the focus on the acts of the crime rather than the elements needed to prove it. This meant that a person could not be tried a second time for a crime that consists of the same actions they previously had been prosecuted for.[1] Although *Grady* was not necessarily intended to be applied to RICO, and was later overturned, it highlights the double jeopardy issue in RICO quite clearly. Additional cases have also established various other double jeopardy standards, creating additional confusion as to which standard is most appropriate in RICO cases, and in double jeopardy violations in general.

RICO requires that five elements be proven beyond a reasonable doubt. Those elements are that (1) an enterprise must have existed (an enterprise being an individual, corporation, or group that was not legally an entity), (2) the enterprise affected interstate commerce, and (3) the defendant was in some way associated with that enterprise. The last two elements are that (4) the defendant had a pattern of racketeering activity (racketeering including extortion, fraud,

[1] McGee Lennea, *Criminal Rico and Double Jeopardy Analysis in the wake of Grady v. Corbin*, 77 (1992)

corruption, and bribery) and (5) the defendant engaged in at least two racketeering activities related to the enterprise.[2]

The double jeopardy issue arises in the legal requirement to prove that fifth element. Prosecutors pursuing RICO charges have at times used a crime that a person had already been tried for, or even served time for, as means to prove one of those racketeering activities.[3] This leads to a possible violation of the double jeopardy clause, and shows the need for clarification regarding which crimes can be used to prove a RICO charge, and which double jeopardy standard ought to be applied. Clarification regarding RICO and double jeopardy is vital to ensure that a defendant's Fifth Amendment rights are not violated.

II. Double Jeopardy Issue Shown in United States v. Calabrese

To observe the severity of the RICO double jeopardy issue we can turn our attention to *United States v. Calabrese.* In *Calabrese,* defendants Frank Calabrese Sr. and James Marcello were already serving time for previous RICO convictions, and were then indicted on a second RICO charge.[4] This second indictment alleged various new crimes but also included crimes that had been established as predicate offenses. In this case, the predicate offenses were crimes that had been used to prove the initial RICO case. Calabrese and Marcello claimed that using those crimes to prove another violation of RICO would violate their Fifth Amendment rights, and even suggested that prosecutors simply remove those crimes from their indictment, and focus on other possible crimes instead. The district court denied this motion, and the district's decision was affirmed on appeal.

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[2] *109. Rico charges*, The United States Department of Justice, https://www.justice.gov/archives/jm/criminal-resource-manual-109-rico-charges

[3] *Criminal Law. Fifth Amendment. Seventh Circuit Holds that RICO Conspiracy Charges can Proceed to Trial...*, 121 Harvard Law Review (2008)

[4] F.3d 575 (7th Cir. 2007).

In his opinion, Judge Posner wrote that the conspiracies and crimes used for the second RICO charge would be different, even if the acts that made up those crimes were the same acts used to prove the initial RICO charge.[5] If we follow the standard set in *Grady*, which clearly identifies being prosecuted for the same act twice as a violation of double jeopardy, then perhaps the defendants' motion should have been granted. The language in *Grady* is specific: The government may not prosecute for a crime that would include proving an offense or action the defendant has already been prosecuted for.[6]

III. Double Jeopardy Standard in Brown v. Ohio

Similar to *Grady*, *Brown v. Ohio* also examined the standard for double jeopardy. It held that in certain situations where a successive prosecution requires the "relitigation of factual issues" that had been resolved in the first case, the Court can find this to be a double jeopardy violation. This also points toward looking at the factual makeup and the actions that composed a crime, as opposed to just the legal elements.

This contrasts the Blockburger test established in *Blockburger v. United States.* The Blockburger test examines whether a secondary indictment would require proving an element that was not already proven in the previous indictment.[7] If the elements are different, the prosecution can proceed, but if the elements are the same then the Fifth Amendment right to no double jeopardy has been violated.[8] Both *Grady* and *Brown* are more expansive and inclusive in their interpretation of the Fifth Amendment than *Blockburger* was.

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[5] *Id.*

[6] 495 U.S. 508 (1990)

[7] *Blockburger Test.* Practical law - Westlaw. https://content.next.westlaw.com/practical-law/document/Iffb0427378eb11ea80afece799150095/Blockburger-Test?viewType=FullText&contextData=(sc.Default) (last visited Mar 27, 2023)

[8] *Id.*

IV. How can RICO account for Double Jeopardy?

Even if these possible issues don't actually constitute a violation of double jeopardy, they raise important concerns. Aside from *Calabrese,* there are numerous other cases where defendants have shown concern that a RICO indictment would in some way violate their Fifth Amendment rights. The prevalence of these concerns makes it clear that RICO is, at minimum, open to critique on these grounds. In particular, it seems like *Grady* supports the defendants in raising these concerns. While the act itself might be constitutional, it seems as though greater clarification regarding what predicate acts or crimes are able to be used, would be beneficial for both prosecutors and defendants.

That clarification could come from *Grady* and *Brown* or another case that outlines the same actions or facts being used to prove separate crimes as a violation of double jeopardy. While *Grady* has been mentioned and considered in the context of RICO, it was ultimately overturned in *United States v. Dixon. Dixon* reinstated the idea of a same-elements test that had been identified in *Blockburger.*

Though the Blockburger test may be beneficial in preventing some violations of double jeopardy, it fails to account for all possible violations. The standard that had been considered in *Grady,* that prosecuting the same action twice was also a violation of double jeopardy, helped ensure that double jeopardy was not being violated, particularly in RICO cases. The language of the Fifth Amendment makes no mention of elements, only stating that someone can't be prosecuted for the same "offense" twice.[9] This begs the question: Is an offense composed of the elements used to prosecute it, or is an offense the actions that compose it? This question is not

[9] U.S. Const. amend. V

answered in the Fifth Amendment itself and, therefore, an argument can be made for either belief.

With that said, when dealing with a RICO charge, which can lead to a defendant being sentenced to upwards of a decade in prison, it is vital to thoroughly consider a defendant's double jeopardy concerns. Due to the lack of clarity in the Fifth Amendment, there is nothing specifying that an offense isn't merely the action that composed it. As we've seen in *Grady*, *Blockburger*, and *Brown*, there are a number of ways the Fifth Amendment can be considered.

Because of this, the Court should consider revisiting the standards set in *Grady* and *Brown.* The Court could establish a test or standard that combines all three of these cases and their standards to ensure that double jeopardy is not violated. It could compose a three-step test. Firstly, if a successive RICO prosecution requires proving substantially the same elements, it would be barred due to *Blockburger*. If it does not require the same elements, but is composed of relitigating the same factual issues that have been previously settled, it would be barred due to *Brown.* And lastly, if the successive prosecution is examining the same actions that have been previously examined, it would be barred due to *Grady.* This combination, or one similar, would ensure that all double jeopardy concerns are considered thoroughly, particularly in cases such as RICO, which often carry lengthy sentences.

V. Conclusion

It's important to note that any clarification to double jeopardy as it applies to RICO would not necessarily mean that a career criminal is not charged with a crime or sentenced to jail time. True career criminals that violate RICO by running a criminal enterprise would likely have a number of offenses which could be used as predicate offenses. For example, in *Calabrese*, the defendants encouraged the prosecutors to examine other crimes to pursue as criminal predicate offenses. The defendants in *Calabrese* weren't making an attempt to ambush the entirety of a

prosecution, merely the elements that risked a possible violation of their rights. Any reconsideration or clarification of double jeopardy as it applies to RICO would be done to ensure that there is no violation of the Fifth Amendment. Both RICO and the Fifth Amendment are complex and important legal obligations. Greater clarification would be beneficial to ensure that RICO charges can still be pursued without a fear of violating a defendant's rights.

Florida's Fight Over Intent in Fla. Stat. §934.215

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On Tuesday, November 17, 2020, Assistant State Attorneys from the Leon County State Attorney's Office, and Investigators from the Tallahassee Police Department announced the conclusion of a two-year human-trafficking and sex-trafficking investigation in Tallahassee, Florida. During the announcement, the investigation was termed *Operation Stolen Innocence*. At the conclusion of the investigation over 100 people were charged with felonies, including, but not limited to, the following: Commercial Sex Trafficking, Lewd and Lascivious Battery, and Use of a Two-Way Communication Device in Facilitation of a Felony.[1]

However, the pursuit of justice reached a halt on July 8, 2021, when a Leon County Judge overruled a jury's verdict on the first case prosecutors sought to obtain a conviction on. The primary purpose for the overruling of the jury's conviction was the tenant of intent. The Judge stated that the "[defendant] neither knew nor believed the person he solicited was under the age of 16, which he said was an essential element to prove an attempted battery."[2] It is worth noting that the Use of a Two-Way Communication Device charge was also dropped because the judge determined that the charge implicitly requires "felonious intent."[3] Subsequently, the State of Florida appealed the Circuit Judge's decision due to the ambiguity in the statute. On November 29, 2021, the First District Court of Appeals in Florida dismissed the State of Florida's appeal but did not address the merits of the argument. Thus, it is clear that a debate still

[1]https://www.usatoday.com/story/news/nation/2020/11/17/170-plus-people-charged-massive-child-sex-trafficking-investigation-tallahassee/6331680002/
[2]https://www.tallahassee.com/story/news/local/2021/07/08/judge-overturns-guilty-verdict-first-operation-stolen-innocence-trial-tallahassee/7893021002/
[3] Judge Carroll's July 7, 2021 Order Vacating the Conviction of Daniel Mitchell

exists in Florida Law on whether the charge of Use of a Two-Way Communication Device in Facilitation of a Felony contrary to Fla. Stat. §934.215 requires intent to commit the underlying felony.

I. The Elements of Use of a Two-Way Communication Device in Facilitation of a Felony

Florida Statute §934.215 prohibits the use of a "two-way communications device, including, but not limited to, a portable two-way wireless communications device, in facilitation or furtherance of the commission of any felony offense."[4] Any person who commits the aforementioned offense commits a felony of the third-degree, which is punishable by a maximum of five years in the Florida Department of Corrections.[5] Thus, ambiguous elements of the instant charge could have a drastic and glaring impact on citizen's lives in the State of Florida if the elements of the charge are misinterpreted.

The current elements of Use of a Two-Way Communication Device in Facilitation of a Felony contrary to Fla. Stat. §934.215 are the following:

1. (Defendant) used a two-way communications device.

2. (Defendant) did so for the purpose of facilitating or furthering the commission of a felony.

However, the standard jury instructions and the statute itself are ambiguous as to what "purposefully facilitating" and "purposefully furthering" mean within the context of the charge. There exist no current definitions of either of the two terms. A legal analysis of a statute usually begins with the language of the statute.[6] However, when the statute's language is ambiguous,

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[4] §934.215
[5] §775.082 (2)(c)(e)
[6] See Jefferson v. State 264 So.3d 1023 (2018).

attorneys and judges "discern legislative intent by analyzing the text of the statute and interpreting the words and phrases penned by the legislature" in accordance with their plain, ordinary, and common meanings.[7] The legislative intent is determined by "looking behind the statute's plain language and employing principles of statutory construction to determine legislative intent" of the statute.[8] This essay will analyze the plain, ordinary, and common meanings of Florida Statute §934.215, as well as look behind the statute's plain language in order to propose two polar interpretations on the topic:

1) intent should be required to prove the elements of Fla. Stat. §934.215; and

2) intent should not be required to prove the elements of Fla. Stat. §934.215.

However, acknowledging that the law is very rarely clear-cut, the paper will conclude with a synthesis of both perspectives, which results in a balanced medium for both prosecutors and defense attorneys in the State of Florida.

II. Intent Should be Required to Prove the Elements of Fla. Stat. §934.215

To begin with the construction of the jury instructions for Fla. Stat. §934.215, the second element requires that the defendant engaged in usage of a two-way communication device and

2) (Defendant) did so for the purpose of facilitating or furthering the commission of a felony.

The words "facilitation" and "furtherance" are not categorically defined in the Florida Statutes. However, other jurisdictions have been able to reach a consensus definition as guided by state common laws and federal statute. For instance, in Kentucky, the courts have defined furtherance as the following: "In criminal law, furthering, helping forward, promotion, or advancement of a

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[7] See Baden v. Baden, 260 So.3d 1108 (Fla. 2d DCA 2018).
[8] English v. State, 191 So.3d 448, 450 (Fla. 2016) ; see also Daniels v. Fla. Dep't of Health, 898 So.2d 61, 65 (Fla. 2005)

criminal project or conspiracy."[9] Whereas, federal courts following 21 U.S. Code §843(b) have interpreted facilitation as having "equivalent meaning" with "aid," "abet," and "assist."[10] Both definitions from courts in the United States require an implicit intent element or men's rea element to be present in order to prove the crime. Subsequently, an argument can be made that the men's rea component is created by the plain and ordinary definitions of Fla. Stat. §934.215 and its construction.

Furthermore, use of a Two-Way Communication Device in Facilitation of a Felony requires an underlying felony to be present in Florida. The most common underlying felonies that accompany Use of a Two-Way Communication Device are Drug Trafficking, Sex Trafficking, Traveling to Meet a Minor, and Lewd and Lascivious Battery. In the case of Drug Trafficking, Human Trafficking of a Minor, and Traveling to Meet a Minor, all three require prerequisite intent of wrongdoing. To begin first with drug trafficking, which is prohibited in Florida under Fla. Stat. §893.135, the jury instructions require the following:

1. (Defendant) knowingly [possessed] [sold] [purchased] [manufactured] [delivered] [brought into Florida] a substance.
2. The substance was [(name of controlled substance)] [a mixture containing (name of controlled substance)].
3. The [(name of controlled substance)] [mixture containing (name of controlled substance)] weighed [(insert weight alleged)].

It is clear from the construction of the statute that intent is required to prove drug trafficking under §893.135. In the case of drug trafficking, if one was to further or facilitate the underlying

[9] Powers v. Comm., 114 Ky. 237, 70 S. W. 652.
[10] Abuelhawa v. US, 556 US 816 - Supreme Court 2009

felony, then that individual would have the requisite knowledge that they were committing a crime and thus intent could be proven. Furthermore, intent would be required to prove the underlying felony and transitively should be applied to the Use of a Two-Way Communication device charge.

Similarly, Human Trafficking of a Minor, which is prohibited in Florida under Fla. Stat §786.06(4), also requires the requisite intent present to prove its elements in a court of law.

1. (Defendant) [was a parent] [was a legal guardian] [had custody or control] of (victim).
2. (Defendant) [sold or otherwise transferred custody or control of (victim)] [offered to sell or offered to otherwise transfer custody of (victim)].
3. (Defendant) did so [knowing] [or] [in reckless disregard of the fact] that as a consequence of the sale or transfer, (victim) would be subjected to human trafficking.
4. At the time, (victim) was under the age of 18 years.

Within the Jury Instructions itself, element three required that the State prove beyond a reasonable doubt that the Defendant did so "knowing or in reckless disregard" that the alleged victim would be subjected to human trafficking. Reckless disregard's plain and ordinary meaning is knowing of, but choosing to do nothing about; thus, knowledge is again integral to the meaning of Fla. Stat §786.06(4). Subsequently, an argument can be made that if a human trafficker of a minor used a two-way communication device, then the intent argument and component of the underlying felony should be transitively applied to the Use of a Two-Way Communication Device charge.

While both Drug Trafficking and Human Trafficking of a Minor generally require the use of technology or communication for the crime to occur, the construction of the statute does not mention technological communication. However, in Fla. Stat. §847.0135(4)(a), commonly

known as Traveling to Meet a Minor, the use of technology is required for the state to prove the felony charge. To prove Traveling to Meet a Minor, the State of Florida must prove beyond a reasonable doubt that the

1. (Defendant) used a[n] [computer on-line service] [Internet service] [local bulletin board service] [device capable of electronic data storage or transmission] to [seduce] [solicit] [lure] [entice] [attempt to [seduce] [solicit] [lure] [entice]] a [child] [person believed by the defendant to be a child] to engage in [(insert illegal act in chapter 794, 800, or 827 as alleged in the charging instrument)] [unlawful sexual conduct].
2. (Defendant) then [traveled] [attempted to travel] [caused another to travel] [attempted to cause another to travel] [within this state] [to this state] [from this state] for the purpose of [(insert violation of chapter 794, 800, or 827 as alleged in the charging instrument)] [unlawful sexual conduct] with a [child] [person believed by the defendant to be a child].

Thus, Traveling to Meet a Minor has similar components and requirements to Fla. Stat. §934.215. For one, both crimes require the use of technology. However, one key difference has evolved in the common law. §847.0135(4)(a) requires "the defendant to have actual knowledge or to believe that the recipient of the communication is a minor."[11] Proponents of the required intent doctrine proffer that because Fla. Stat. §934.215 and §847.0135(4)(a) both have technological components that if intent is required on one charge, intent should also be required on the other. Such a proposition is supported by the tradition and history of the Florida Courts. The tradition and history of the Florida Courts in regard to intent can be found in the Court's Dicta in Pinder v. State decision.[12] In the dicta, the 5th DCA wrote that:

[11] Simmons v. State, 944 So. 2d 317 - Fla: Supreme Court 2006

[12] Pinder v. State, 128 So.3d 141 (Fla 5th DCA 2013).

> Florida courts will ordinarily **presume** that the Legislature intends statutes defining a criminal violation to contain a knowledge requirement absent an express indication of a contrary intent. Wegner v. State, 928 So.2d 436, 439 (Fla. 2d DCA 2006) (statute imposing criminal liability on person who receives computer transmissions of descriptive or identifying information about minor for purpose of facilitating sexual conduct with minor would be construed as requiring knowledge by accused that person from whom or about whom he received computer transmission was minor); *see also* Cashatt v. State, 873 So.2d 430 (Fla. 1st DCA 2004) (criminal statutes, such as computer pornography statutes, are presumed to include broadly applicable scienter requirements in absence of express contrary intent).

In the instant case, it would seem rational and well-intended that Fla. Stat. §934.215 carry a men's rea element given its factual and procedural similarities in application with other statutes and the presumption that Courts have awarded to the Legislature's Intent.

III. Intent Should Not be Required to Prove the Elements of Fla. Stat. §934.215

But what happens when Ignorance of the Law is not a Defense to the alleged infraction or criminal enterprise? Such a question exists when a defendant is charged with Lewd and Lascivious Battery contrary to Fla. Stat. §800.4. The statute expresses the legislature's intent and defeats the presumption of intent established in Wegner. Fla. Stat. §800.4(C) states that "The perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section."[13] Thus, the legislature makes clear that men's rea is not required to prove Lewd and Lascivious Battery; rather, all that is required is actus rea. When actus rea is

[13] Fla. Stat. §800.4(C)

the only required element, such an offense is commonly labeled a "strict liability offense."[14] While both the plain and ordinary meaning seem to imply intent is required, especially if §934.215 is applied to underlying felonies with men's rea elements, the plain and ordinary meaning of furtherance and facilitation[15] seem to contradict Fla. Stat. §800.4(c). Thus, if a perpetrator utilized a technological device to facilitate or further a Lewd and Lascivious Battery, the plain and ordinary meaning of "facilitate" and "further" become critical to comprehend for pre-trial hearings, sentencing, and trials.

So far, this paper has argued that if the underlying felony contains a men's rea element, then transitively the application of Fla. Stat. §934.215 would also require the men's rea element. Thus, this paper must join the proponents of the no intent doctrine in their reading of Fla. Stat. §934.215. Specifically, when they claim that if the underlying felony does not contain a men's rea element then transitively the application of Fla. Stat. §934.215 would also not require the men's rea element to be present to convict the defendant. From just a few examples of Florida Criminal Law, the doctrines have clashed and substantive disagreements about the law are apparent. Such substantive disagreements are allowed to continue because Florida does not have a clear and concise test to determine whether or not intent is required when Prosecutor's charge Defendants with violating Fla. Stat. §934.215.

IV. Synthesis of the Intent and No-Intent Perspectives

To conclude the discussion on Fla. Stat. §934.215, I propose that a "strict-liability" test be applied to the underlying felony of Fla. Stat. §934.21. The strict-liability test is reasonable so as to reconcile and synthesize both the intent doctrine and the no intent doctrine because, as a

[14] Gentry v. State ,437 So.2d 1097 (Fla.1983).
[15] Powers v. Comm., 114 Ky. 237, 70 S. W. 652 and Abuelhawa v. US, 556 US 816 - Supreme Court 2009

general rule, strict liability is disfavored unless the Legislature has expressly dispensed with a men's rea requirement in the statute.[16] The prospective test would be constituted as follows: *If the underlying felony is a strict-liability offense then and only then does Use of a Two Way Communication Device in Facilitation of a Felony not need to establish men's rea.* That is to say that all underlying offenses that are not strict liability do need to establish knowledge or a men's rea component. These prospective tests would be applicable and sufficient to appease both the intent doctrine proponents and the no intent doctrine opponents.

The Use of a Two-Way Communication Device felony in the state of Florida has quickly become one-way prosecutors can increase the penalties of Sex Trafficking, Drug Trafficking, and Traveling to Meet a Minor. As these cases unfold, judges will have to decide whether intent is required to prove the respective crimes when a technological device is used. Judges would be best suited to require a men's rea component if the underlying felony is not a strict liability crime.

[16] See Waites v. State, 702 So.2d 1373 (4th DCA 1997); *Padilla v. State*, 753 So.2d 659 (2nd DCA 2000)

Florida House Bill 999 and the Culture Wars: Defining Reality, America's Identity, and the Role of Academic Freedom in Higher Education

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I. Introduction

The culture wars, as a prominent feature of the sociopolitical landscape of contemporary American society, have shaped debates regarding differing cultural values, beliefs, and practices dominating public discourse. Florida House Bill 999 has emerged as a contentious subject within the ongoing culture wars, polarizing public opinions of academic freedom and knowledge dissemination against concerns over political influence and ideological control in higher education institutions. The bill, filed on February 21, 2023, by Republican Representative Alex Andrade, proposes a ban on academic programs centered on "Critical Race Theory, gender studies, intersectionality, or any derivative major or minor" (Florida House Bill 999 3) associated with these theoretical frameworks, including diversity, equity, and inclusion (DEI) initiatives within state universities. Additionally, the bill seeks to confer decision-making authority over faculty hiring to the boards of trustees, further shaping the academic landscape within these institutions (Florida House Bill 999 4). In order to understand the full impact of Florida House Bill 999, there needs to be an evaluation of how the culture wars paradigm has magnified the intensity of the debate surrounding it, with a specific focus on both sides of the issue, its rise as a symptom of the battle to define reality, and how it ultimately reveals the deeply-rooted struggle between competing visions of America's future and identity, including the role of education in shaping it.

II. House Bill 999 and the Culture Wars: An Overview

The culture wars themselves have been historically characterized as "a struggle between progressive and conservative worldviews," with each side seeking to assert their moral authority and define the values, beliefs, and practices that shape American society (Hartman 3). The bill states that disciplines like Critical Race Theory and gender studies "undermine the educational mission of our universities" (Florida House Bill 999 2). In this context, HB 999 reflects a broader historical trend in which culture war issues are framed as binary problems, pitting traditional values against progressive ideologies. According to the bill, it aims to "prohibit state universities and state colleges from establishing or supporting certain entities that promote race or sex stereotyping or scapegoating" (FL HB 999.1). The bill prohibits the promotion of ideas that suggest "an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex" or that "an individual's moral character is necessarily determined by his or her race or sex" (FL HB 999.3). The legislation also outlines specific consequences for institutions found to be in violation of these provisions, stating that "the board of trustees of a state university or a state college shall ensure compliance with this section and shall terminate any entity or program that violates this section" (FL HB 999.5).

On one side of the HB 999 debate, predominantly conservative proponents argue that the academic programs targeted by the bill promote a divisive and ideologically driven narrative that undermines American values and social cohesion. The conservative argument in favor of HB 999 is exemplified by William Bauer's article in the *Los Angeles Review of Books*, in which he contends that the bill aims to protect students from "intolerant orthodoxy" perpetuated by the targeted academic programs (Bauer 1). Similarly, Michelle Goldberg argues in *The Baltimore Sun* that the bill seeks to "eradicate the disciplines that challenge conservative orthodoxy" (1).

Proponents of the bill also argue that disciplines like critical race theory and gender studies promote divisiveness and a distorted view of American society, where they “undermine the educational mission of our universities” (Florida House Bill 999 2). Restricting the teaching of certain topics related to race and sex is seen as a necessary measure to preserve and promote traditional American values, such as unity, patriotism, and meritocracy. They argue that the current educational system, which allows for the teaching of critical race theory and other controversial subjects, fosters division and undermines the shared values that hold the nation together. In this view, the bill serves as a corrective force, reorienting education toward fostering a shared understanding of American history and values that can unite the nation.

On the other side of the debate, predominantly progressive opponents of Florida House Bill 999 argue that the bill represents an assault on academic freedom and the pursuit of knowledge. They maintain that restricting access to these programs would hinder students' ability to engage with diverse perspectives and critically evaluate complex societal issues. The legislation, in this view, “is not about defending intellectual freedom but about asserting a particular moral and political order” (Bauer 1). These critics argue that the bill's provisions would not only hinder the development of critical thinking skills among students but also undermine the core values of higher education institutions. Wendy Brown argues in “The Ruins of Neoliberalism and the Construction of a New Common Sense” that the bill represents a broader trend of undermining the critical role of education in the pursuit of truth and democracy (67). Progressive critics of the bill also emphasize the potential negative repercussions on academic freedom and intellectual diversity. Opponents of the bill argue that the restrictions it imposes represent an attack on academic freedom, a whitewashing of history, and a perpetuation of existing social inequalities. They contend that an honest examination of America's past,

including its difficult and painful episodes, is essential for fostering critical thinking, empathy, and a deeper understanding of the nation's complex identity. Furthermore, they believe that by limiting the discussion of race- and sex-related topics, the bill prevents students from grappling with the structural issues that contribute to ongoing disparities and injustices in American society.

III. The Struggle to Define "America"

The debate surrounding Florida House Bill 999 is emblematic of the culture wars' impact on American society, revealing the deeply rooted struggle between competing visions of America's future and identity. James Hunter in *Culture Wars: The Struggle to Define America* argues that the culture wars stem from a fundamental struggle between two opposing worldviews: the progressive, which is characterized by a commitment to diversity, pluralism, and social justice, and the traditionalist, which emphasizes the importance of established norms, values, and institutions (42). These clashing worldviews create a battleground on which various social, political, and cultural issues are contested, as both sides seek to assert their values and beliefs as the dominant narrative shaping American society in a war "fought in part with weapons of law and public policy, but at its deepest level it is a struggle over the power to define reality" (Hunter 52). These perspectives are reflective of the conservative belief that certain academic programs are inherently at odds with traditional American values and that limiting their influence within higher education institutions is necessary to preserve social cohesion and national identity. The discourse on Florida House Bill 999 reflects this battle to "define reality," with each side seeking to assert their vision of America's future and identity through the intellectual landscape of higher education institutions. The introduction of Florida House Bill

999 into the state's legislative agenda reflects the increasing polarization of American society along ideological lines, as well as the heightened stakes of the culture wars.

Richard Hofstadter explains in “The Paranoid Style in American Politics” that the “paranoid style” in American politics is characterized by an “angry mind” and a “sense of heated exaggeration, suspiciousness, and conspiratorial fantasy” (29). This paranoid style has often manifested in counter-subversive movements, such as anti-Masonic, anti-Catholic, and anti-Mormon movements, which were driven by a perceived need to defend traditional American values against moral corruption and subversion in order to maintain the dominant social order (Davis 304-323). Connecting this to Florida House Bill 999, the paranoid style can be seen within the perspective of HB 999 proponents, rooted in a longstanding tradition of American conservatism that views liberal and progressive ideologies as threats to the nation's moral fabric (Hofstadter 29). From this perspective, the bill's restrictions on certain academic programs are seen as an attempt by conservatives to impose their own worldview on higher education institutions, limiting the intellectual diversity necessary for engaging in meaningful conversations about American society and identity. Conversely, opponents of the bill, primarily progressive, argue that the legislation undermines academic freedom and knowledge dissemination by censoring specific disciplines. They contend that academic programs like critical race theory are essential for addressing the structural inequalities that perpetuate racial disparities in American society. As Goldberg notes, opponents view the bill as an “'apocalyptic' attack on higher education” (1). In essence, these battles center on the question of what it means to be an American, and they are fueled by deep-seated differences in political, religious, and moral beliefs. These differing perspectives on the bill's implications connect back to the fundamental disagreements between progressive and conservative worldviews in the culture wars

(Hartman 3). The intensity of the debate underscores the importance of understanding and navigating the culture wars as they continue to shape American society and its institutions.

IV. Socio-Political Implications on Florida's Higher Education

The bill's proposal to ban academic programs centering on critical race theory, gender studies, intersectionality, and their derivatives, along with the reconfiguration of faculty hiring practices, suggests a concerted effort to assert control over the intellectual landscape of higher education institutions. This effort reflects a broader pattern of political intervention in educational matters that has been seen in recent years, as both progressives and traditionalists have sought to advance their respective agendas through policy decisions and legislative action. By examining the arguments put forth by both conservatives and progressives, it becomes clear that the bill serves as a microcosm of the broader struggle to define reality within the context of education, moral authority, and individual identity. This struggle embodies Florida House Bill 999 not only as a culture war issue, but as a matter of "who speaks, and with what authority" in American society. Education is a key battleground in the culture wars because it has the power to shape the beliefs, values, and perspectives of future generations. The debates around Florida House Bill 999 underscore the high stakes involved in determining the content and direction of the nation's educational system. By controlling the narrative and the information presented to students, each side seeks to advance its vision of America and its understanding of the nation's identity.

V. Conclusions and Considerations

The controversy surrounding Florida House Bill 999 arises from the conflicting views on the role of higher education in addressing societal inequalities. Both sides of the culture war issue are driven by a deep-seated desire to assert control over the intellectual landscape,

reflecting their broader struggle for moral authority and the power to shape societal values. As the United States becomes increasingly diverse and polarized, finding common ground and fostering a shared understanding of what it means to be an American will be essential for bridging the divides and forging a more cohesive and inclusive society. The debate over Florida House Bill 999 not only highlights the profound disagreements about the content and direction of the nation's educational system but also underscores the nation's ability to navigate its complex and often contentious cultural landscape.

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Scalian Originalism and the Constitution

Writer: Julia Tamborello

Editor: Madelyn Luther

To understand why the Supreme Court has been handing down so many decisions that lead to public outrage, one needs to understand Antonin Scalia's view of the Constitution, which has gained traction amongst conservative legal scholars. Scalia claimed to interpret the Constitution as it would have been understood at the time it was written – not what the writers intended, but how the public would have taken their meaning.[1] This view ignores any attempt of the Framers to nod to potential liberalization in future generations, since the public had no such intent. Scalian originalism forces the Constitution to preserve a society built on white supremacy, colonialism, and patriarchy. Scalia's teachings are especially embraced by a conservative legal group called the Federalist Society, who develop member shortlists for federal judgeships and whose appointment recommendations to Trump led to the overturning of *Roe v. Wade*.[2] Given the decisions handed down from the October 2021 term, the Supreme Court looks poised to continue hacking at people's rights with the blade of Scalian originalism – and the Supreme Court sets the tone for the country. A shift to Scalia's ideas nationwide will be dangerous, especially for those without voting blocks for political protection.

One example of the danger this legal interpretation poses is the Fifth Circuit decision *U.S. v. Rahimi*, which was handed down in February of 2023.[3] The Fifth Circuit is the federal appellate court for Louisiana, Mississippi, and Texas, and *Rahimi* came out of Texas.[4] Zackery

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[1] Aaron Blake, *Neil Gorsuch, Antonin Scalia, and originalism, explained,* The Washington Post, February 1, 2017

[2] The Federalist Society, *About Us*, FedSoc.org, 2023. Noah Feldman and Lidia Jean Kott, *The conservative club that came to dominate the Supreme Court*, The Harvard Gazette, March 4, 2021

[3] *United States v. Rahimi*, No. 21-11001 (5th Cir. Mar. 2, 2023)

[4] *United States v. Rahimi*, No. 21-11001 (5th Cir. Mar. 2, 2023)

Rahimi was arrested after being involved in five different shootings, and he was charged with a federal crime under Title 8, Section 922 of the U.S. criminal code.[5] This section outlines who is not permitted to possess guns under federal law, and people who are under restraining orders for harassing, stalking, or threatening a partner or their children are included – the theory being that possession of a firearm by someone who has proven to intend harm of some kind to another person could lead to criminal gun violence.[6] The law is intended to protect victims of domestic violence, who are statistically more likely to be women.[7] Rahimi's ex-girlfriend had a restraining order against him, and Rahimi's possession of a gun was federally illegal.[8] Rahimi appealed the indictment by arguing the law was unconstitutional under the 2nd Amendment right to bear arms.[9] Scalia wrote the opinion opening the door to this argument in the 2008 case *D.C. v. Heller*, overturning almost a century of interpreting the 2nd Amendment to create a collective right based on the militia clause in the 2nd Amendment (a right to possess a weapon for military or National Guard service),[10] and instead deciding the 2nd Amendment offers an individual right.[11]

There is a long and glorious history in Constitutional jurisprudence in acknowledging that the Bill of Rights are not Get Out of Jail Free cards, that they do not provide unlimited protection from infringement on certain rights, and that even the Second Amendment has limits. Cases where an infringement of the Constitution is alleged require a strict scrutiny analysis of the law in question – the law must be narrowly tailored to serve a compelling government interest and

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[5] *United States v. Rahimi*, No. 21-11001 (5th Cir. Mar. 2, 2023)
[6] *United States v. Rahimi*, No. 21-11001 (5th Cir. Mar. 2, 2023)
[7] National Coalition Against Domestic Violence, *Statistics*, https://ncadv.org/statistics, 2020
[8] *United States v. Rahimi*, No. 21-11001 (5th Cir. Mar. 2, 2023)
[9] *United States v. Rahimi*, No. 21-11001 (5th Cir. Mar. 2, 2023)
[10] *D.C. v. Heller*, 554 US 570 (2008)
[11] *D.C. v. Heller*, 554 US 570 (2008)

must be the least restrictive means possible to achieve that result.[12] Since *Heller* and *McDonald v. Chicago*, another Scalia-written opinion incorporating the 2nd Amendment right to the states,[13] courts have first determined if the right is truly infringed on by the law and then applied strict scrutiny to see if the law can stand.[14] In June of 2022, the Court introduced a new test in *New York State Pistol and Rifle Association v. Bruen*, an opinion written by frequent Scalia ally and Federalist Society member Clarence Thomas that struck down a century-old New York law requiring a license for the purchase of guns.[15] The new test requires any regulation of guns to have an analogous law historically – i.e., if a state wants to ban handguns, as D.C. did in the 2008 case, they must be able to prove that some time prior to 14th Amendment's ratification in 1868, there were laws to the same or a similar purpose in several states.[16]

Rahimi is one of many cases being reargued in the wake of *Bruen*, and shows the terrifying implications that rooting the 2nd Amendment solely in history provides. The judges of the Fifth Circuit determined who could be restricted from owning a gun under the Second Amendment by reaching back in English jurisprudence all the way to 1662.[17] They concluded that Rahimi would not meet the definition of a "dangerous person" because it was common for men to beat their wives at the time the Constitution was written – i.e., be domestic abusers who might have had a restraining order taken against them now – and the first law against domestic violence in the U.S. wasn't passed until 1850.[18] This is a ludicrous interpretation of the 2nd Amendment. It requires analysts to rely on laws created when anyone who was not a white man

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[12] Cornell Law School Legal Information Institute, *Strict Scrutiny*, https://www.law.cornell.edu/wex/strict_scrutiny

[13] *McDonald v. Chicago*, 561 US 742 (2010)

[14] *McDonald v. Chicago*, 561 US 742 (2010), *D.C. v. Heller*, 554 US 570 (2008)

[15] *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___ (2022)

[16] *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___ (2022)

[17] *United States v. Rahimi*, No. 21-11001 (5th Cir. Mar. 2, 2023)

[18] Rudnick Law, *A Brief History and Overview of Domestic Violence*, https://www.rudnicklaw.com/blog/history-domestic-violence/, September 4, 2019

was not an equal citizen, or even a person. This interpretation would justify police brutality against Black Americans based on the Constitution's classification of African enslaved people as ⅗ of a white man. Ask the 1900+ women murdered by gun violence in 2018, 63 percent of whom were killed by their spouse or partner,[19] if their abuser having a gun made them more dangerous. The idea that the state cannot call someone who has a pattern of threatening or violent behavior a "dangerous person," to prevent them from gun ownership because Matthew Hale would not consider them dangerous, is demented.

This decision would not have been handed down like this without *Bruen*, the tireless efforts of the Federalist Society, and the egos of Samuel Alito and Clarence Thomas, who seem to be competing for which justice can undermine the legitimacy of the Court the most. Who would win that competition is up for debate, but the role the Federalist Society has played in ruining the legal minds of the country's conservative constitutional scholars is not. The society was founded in 1982.[20] Their goal, as described on their website, is to "reorder priorities in the legal system to place a premium on individual liberty, traditional values, and the rule of law."[21] What they have done in practice is abuse the mistakes of history to force law to be discriminatory today, from Alito's claim in *Dobbs* that women are not entitled to lifesaving healthcare[22] – Alito is a member and has spoken at five Federalist Society events in the last 20 years[23] – because they were not entitled to it back when women were not considered people, to Thomas's concurrence in *Van Orden v. Perry* – Thomas is also a member and has spoken at

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[19] Violence Policy Center, *Nearly 2,000 Women Murdered by Men in One Year, New Violence Policy Center Study Finds*, https://vpc.org/press/nearly-2000-women-murdered-by-men-in-one-year-new-violence-policy-center-study-finds/, September 23, 2020

[20] The Federalist Society, *About Us*, FedSoc.org, 2023.

[21] The Federalist Society, *About Us*, FedSoc.org, 2023.

[22] *Dobbs v. Jackson Women's Health*, 597 U.S. __ (2022), pp 65-66.

[23] The Federalist Society, *Contributors: Samuel Alito*, FedSoc.org, 2023.

eight Federalist Society events in the last 20 years[24] – and other cases where he expresses a belief that individual states can create a state religion under the 1st and 14th Amendments.[25] Pulling reasoning from the 18th and 19th centuries to justify decisions that create real harms today is an incorrect interpretation of the Constitution and misunderstanding of its purpose. The Constitution was written ambiguously to be a document that lasted; it does not contain many specifics for a reason. The people writing the Constitution knew there would be new technologies and even new rights they had never heard of; the Federalist Society views that only rights listed in the Constitution count is the exact opposite of what the Framers intended. The original Federalist party who took part in writing the Constitution even rejected the idea of a Bill of Rights when first writing the Constitution to prevent the possibility that people would claim that only those rights were guaranteed.[26] The 9th Amendment embodies that fear, saying that there are rights not enumerated in the Constitution.[27] A document that was intended to grow and change can never do so if judges interpret it as it was understood over 200 years ago.

The Federalist Society currently holds a majority on the Supreme Court. It's why we saw the *Dobbs* decision and why we are likely to see decisions rolling back protections of LGBTQ+ rights, affirmative action, and the Indian Child Welfare Act in the next couple of months. They hold that majority because of how successfully the Federalist Society has organized conservative legal scholars, united them in one theory of jurisprudence, and established its credentials as a far-right legal organization. As long as their stranglehold on the Court continues, we are in real danger of losing all the civil rights gains of the last century. The quickest and best way to dilute

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[24] The Federalist Society, *Contributors: Clarence Thomas*, FedSoc.org, 2023.

[25] *Van Orden v. Perry* 545 U.S. 677 (2005)

[26] Jack Rakove, Michael Rappaport, and Jeffrey Rosen, *The Federalists vs the Anti-Federalists*, https://constitutioncenter.org/news-debate/podcasts/the-federalists-vs-the-anti-federalists, August 8, 2019

[27] U.S. Const. Amendment 9

their influence is for President Biden to expand and restructure the Court with the help of the Senate, providing balancing points of view that outnumber the six Federalist Society justices currently on the Bench, and establishing a version of the Court that is less politically charged and therefore more legitimate. Nine people should not be capable of stripping millions of their rights, especially when six of them still aren't sure about *Brown v. Board of Education.*

AI: Creativity, Copyright, and Personhood

Writer: Madelyn Luther

Editor: Elke Schumacher

The rise of AI has understandably raised concerns about how the technology will impact intellectual property, copyright, and creativity. AI, or artificial intelligence, is an evolving technology that computer scientists have just begun to develop. It is extremely difficult to define AI because of its vast capabilities and applications. In their work titled "Applicability of Artificial Intelligence in Different Fields of Life," computer scientists and researchers Shukla Shubhendu and Jaiswal Vijay attempt to narrow down the definition of AI to "a branch of computer science concerned with the study and creation of computer systems" that exhibit some form of intelligence, whether that be systems that can learn from existing data to create new concepts and tasks, or use data to "reason and draw useful conclusions about the world."[1] Some question whether this technology is capable of 'creating' in the same sense humans are.

Artificial intelligence will undoubtedly forever change the field of intellectual property law. AI raises significant questions as it relates to intellectual property law, such as whether current intellectual property laws can be applied to artificial intelligence and how the technology will impact real creators and inventors.

This recent uptick in technological development of AI is not the first time in recent history that legal questions of non-human creation and copyright laws have been raised. A six-year legal battle between PETA and photographer David Slater involved attributing authorship to

[1] Shukla Shubhendu & Jaiswal Vijay, "Applicability of Artificial Intelligence in Different Fields of Life", *IJSER* 28-35 https://www.ijser.in/archives/v1i1/MDExMzA5MTU=.pdf (Sept. 2013)

the widely publicized 'Monkey Selfie.'[2] The selfie, displayed above, was an image taken as a result of a situation devised by Slater where Naruto, a macaque living in the jungles of Indonesia, was able to snap the iconic shot because of how Slater had set up his camera. After a series of appeals, including an appeal in which U.S. District Judge William Orrick decided that Naruto cannot own the intellectual property rights to the handful of pictures that were taken,[3] PETA and Slater arrived at a settlement.[4] Furthermore, the U.S. Copyright Office was inclined to comment on the case, stating that "a photograph taken by a monkey" lacks human authorship.[5] Chapter 300 of the "Compendium of U.S. Copyright Office Practices" further outlines the works that merit human authorship and, as such, are registrable. The office will register works as copyrightable so long as they are "an original work of authorship, provided that the work was created by a human being." Additionally, they will not register works that are:

David Slater via Wikimedia Commons

> Produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author. The crucial question is "whether the 'work' is basically one of human authorship, with the computer [or other devices] merely being an assisting instrument, or whether the traditional elements of authorship in the work (literary, artistic, or musical

[2] David Slater, "Monkey Selfie", *Wikimedia Commons* https://commons.wikimedia.org/wiki/Macaca#/media/File:Macaca_nigra_self-portrait.jpg (2008)
[3] David Kravets, "Judge says monkey cannot own copyright to famous selfies", *Ars Technica* https://arstechnica.com/tech-policy/2016/01/judge-says-monkey-cannot-own-copyright-to-famous-selfies/ (Jan. 2016)
[4] Zachary Toliver, "Settlement Reached: 'Monkey Selfie' Case Broke New Ground for Animal Rights", *PETA* https://www.peta.org/blog/settlement-reached-monkey-selfie-case-broke-new-ground-animal-rights/ (Sept. 2017)
[5] U.S. Copyright Office, Compendium of U.S. Copyright Office Practices § 101 (3d ed. 2021). https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf (2021)

expression or elements of selection, arrangement, etc.) were actually conceived and executed not by man but by a machine."[6]

These regulations were not written with the intent to be applied to rapidly changing and growing AI technologies. These technologies are capable of performing intelligent tasks. However, the precedent here is useful to understand, and raises questions about how personhood affects AI and copyright law.

Naturally, with the development of new technologies comes apprehension and fear. Some of the fear surrounding AI include the prediction that it will change the global economy, alter job prospects in many industries,[7] and potentially be used to plagiarize or "algiarise" college essays. Algiarism[8] is a term that was developed recently to describe how some students use AI to complete their schoolwork, such as writing essays for them. Some fears of the developing technology are well-grounded, such as the tendency for many different types of AI to discriminate; perhaps most notably, face recognition technologies, which are used by law enforcement, have been proven to racially profile individuals.[9] But many tend to focus more on these negative aspects of AI and dismiss its potential benefits.

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[6] *Id.*

[7] Nick Bilton, "The New Generation of A.I. Apps Could Make Writers and Artists Obsolete", *Vanity Fair* https://www.vanityfair.com/news/2022/06/the-new-generation-of-ai-apps-could-make-writers-and-artists-obsolete (Jun. 2022)

[8] Marie Fincher, "Unleashing the Power of AI: Can ChatGPT Write Essays?", *Trust My Paper* https://www.trustmypaper.com/blog/power-ai-can-chatgpt-write-essays (Jan. 2023)

[9] Olga Akselrod, ACLU: News and Commentary, "How Artificial Intelligence Can Deepen Racial and Economic Inequities", *ACLU* https://www.aclu.org/news/privacy-technology/how-artificial-intelligence-can-deepen-racial-and-economic-inequities (Jul. 2021)

AI has the potential to aid in a multitude of sectors, including finance, healthcare, criminal justice, journalism,[10] and more.[11] It could revolutionize and streamline such sectors. Moreover, at the end of the day, AI is efficiency, and efficiency is profit in the eyes of executives. So, whether we like it or not, the implementation of AI across many different fields is inevitable. And generally, people are not well-informed on what AI is and how it functions. Some have a tendency to anthropomorphize AI, subconsciously equating it to human action and invention, which comes with a host of negative consequences.[12] This gives people an inaccurate idea of what AI is and how it functions. It may also make them more likely to fear the technology. So, for a multitude of reasons, the development of AI technology is often faced with apprehension from the general public, though the apprehension may be ungrounded at times.

Because the rise of AI is inevitable, the field of intellectual property law must be expanded to account for AI. Amitai and Oren Etzioni point out in their article "Should Artificial Intelligence Be Regulated?" that as it stands currently, because of all the issues and difficulties that arise when attempting to regulate AI, not many countries have regulations on it.[13] AI is, as previously stated, a somewhat ambiguous and very broad term, so it is difficult for lawmakers to regulate it. Despite its challenges, in the coming years lawmakers should brace themselves for the further development and subsequent regulation of AI. Targeted approaches to regulating specific types of AI may benefit Americans. Though AI has numerous upsides and potential

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[10] Corinna Underwood, "Automated Journalism – AI Applications at New York Times, Reuters, and Other Media Giants", *EMERJ* https://emerj.com/ai-sector-overviews/automated-journalism-applications/ (Nov. 2019)

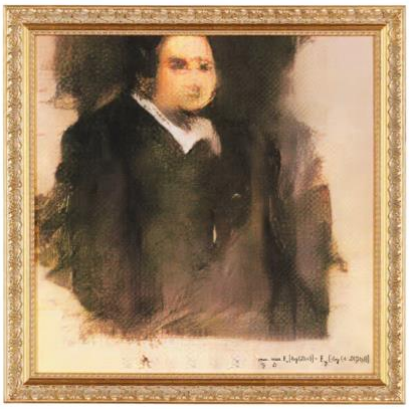
[11] Darrell M. West & John R. Allen, "How artificial intelligence is transforming the world", *Brookings* https://www.brookings.edu/research/how-artificial-intelligence-is-transforming-the-world/#_edn2 (Apr. 2018)

[12] Naveen Joshi, "The dangers of anthropomorphizing artificial intelligence", *Allerin* https://www.allerin.com/blog/the-dangers-of-anthropomorphizing-artificial-intelligence (Feb. 2020)

[13] Amitai Etzioni and Oren Etzioni, "Should Artificial Intelligence Be Regulated?", *Issues in Science and Technology*, vol. 33, no. 4, 32-36 http://www.jstor.org/stable/44577330 (2017)

profitability—which proponents of nonintervention highlight so that AI can continue to make advances—the technology will need to be regulated, as it has already caused significant concerns in a number of fields. In regards to intellectual property law, AI raises questions about copyright law and attributing authorship to creative works produced with the help of AI such as literary works, songs, artistic works, and more.

One artistic work that was created with the assistance of AI technology is *Edmond de Belamy,* depicted below.[14] This 2018 piece is a "generative Adversarial Network print" on canvas, signed with part of the algorithm that was used to create it. It was published by Obvious Art, Paris, and sold through Christie's at over forty times the estimated sale price—the price realized a whopping $432,500. Clearly, at least some people see the artistic merit of AI-generated art and are willing to pay a hefty price for it. Ziv Epstein et al. use this work as a basis for a recent study in which they analyzed the psychological and financial effects of anthropomorphizing AI technology.



Edmond de Belamy by Obvious (collective)

When people anthropomorphize AI, they falsely attribute human characteristics to the technology. Epstein et al. found in their study that there is great variety in the extent to which people anthropomorphize AI.[15] They used the case of *Edmond de Belamy* as a basis for their research, noting their test subjects' opinions on the art piece. When their test subjects subconsciously equated AI generation of the piece to the process of human invention, they falsely attributed authorship of the art to the technology. Epstein et al. argue that this has dire

[14] Christie's, "Edmond de Belamy," from La Famille de Belamy by Obvious (collective), https://www.christies.com/en/lot/lot-6166184 (2018)
[15] Ziv Epstein et al. "Who Gets Credit for AI-Generated Art?", *iScience*, vol. 23(9), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7492988/ (Aug. 2020)

consequences on the genuine authorship and human creativity behind the piece. They argue that there were many humans involved in creating the final piece of art, and attributing authorship to the AI alone dismisses these humans' involvement. Furthermore, Epstein et al. argue that the words used in the media and beyond to describe AI contributes to this anthropomorphization. When we say that AI is capable of "producing," "creating," or "understanding," depending on the context, this can contribute to the general public's tendency to anthropomorphize the technology. As such, legal scholars should be wary of anthropomorphizing AI when contemplating how personhood affects copyright and intellectual property law.

Lawyers and scholars should begin asking themselves whether AI should have exclusive rights to their creations and inventions. It is tricky to discern whether these rights should be granted to the inventor of the technology and if that is a single individual, company, or group of people, or whether these rights should be given to the AI itself. And if creative rights are granted to AI, what does this mean for IP? What does this mean for humanity at large? These pressing questions will inevitably expand the field of intellectual property law. Artificial intelligence law may even become its own field of law someday.

To add, AI will have unprecedented impacts on real creators and inventors. Some wonder whether fields like journalism will become obsolete because of AI. Artificial intelligence is predicted to attack creatives first, slowly and increasingly taking over the field. Some computer engineers and analysts do not believe that AI will entirely replace journalists, but instead, they will supplement the work that is being written by journalists now. These engineers and analysts believe that the technology will first focus on subjects in journalism that are drier, like sports and

finance, rather than more creative pieces.[16] Regardless, this is still a pressing and legitimate concern for journalists. If these predictions come true, AI could feasibly then impact job opportunities, salaries, and more, if it does not change the industry entirely.

Maybe artistic, literary, and journalistic works produced with the help of AI are just poor taste, something akin to kitsch art. Regardless of the artistic merit of these pieces, they are being created. This brings into question how the field of intellectual property law will respond to this influx of AI 'creation.' Up-and-coming lawyers should keep their eyes out for AI and how it will impact intellectual property law. The field may experience great job growth and opportunities in the growing decades, as creatives, inventors, educators, politicians, and more struggle to regulate the technology.

[16] Nick Bilton, "The New Generation of A.I. Apps Could Make Writers and Artists Obsolete", *Vanity Fair* https://www.vanityfair.com/news/2022/06/the-new-generation-of-ai-apps-could-make-writers-and-artists-obsolete (Jun. 2022)