

THE ABOLITION OF WOMAN

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INTRODUCTION

The American woman is in decline. From the boardroom to the classroom, women and girls seem to be in jeopardy. In the corporate realm, sexism remains abundant,¹ even in female-dominated companies.² Female voices are silenced in the academy.³ Women and girls are experiencing sadness at extremely high rates.⁴ Sexual violence seems as acute as ever,⁵ and girls seem to be self-harming in unreasonable abundance.⁶ While

¹ Bryan Robinson, *Gender Discrimination Is Still Alive and Well in the Workplace in 2021*, FORBES (Feb. 15, 2021, 6:51 AM), <https://www.forbes.com/sites/bryanrobinson/2021/02/15/gender-discrimination-is-still-alive-and-well-in-the-workplace-in-2021/?sh=59b143fe7f1c>. See generally BRYAN ROBINSON, *CHAINED TO A DESK IN A HYBRID WORLD* (2023) (expanding on the concept of corporate sexism).

² Amy Diehl, Amber L. Stephenson & Leanne M. Dzubinski, *Research: How Bias Against Women Persists in Female-Dominated Workplaces*, HARV. BUS. REV. (Mar. 2, 2022), <https://hbr.org/2022/03/research-how-bias-against-women-persists-in-female-dominated-workplaces>. Evident in the experiences of the recently fired Levi Strauss executive in line to take over as the company's CEO, Jennifer Sey, women are still maligned in the boardroom. See Jennifer Sey, *Would Levi's Ex-Brand President Still Have Her Job If She Was a Man?*, MSNBC (Nov. 8, 2022, 11:50 AM), <https://www.msnbc.com/know-your-value/business-culture/former-levi-s-executive-jennifer-sey-her-new-book-levi-n1300578> (offering an excerpt from Sey's recent book on the subject, "Levi's Unbuttoned"):

When I started at Levi's, the place was riddled with soft, and less soft, sexism; men who were jerks just because they could be. Most of both the everyday mortifications and the obstacles to career advancement that I endured during my time at Levi's directly related to my being a woman. These incidents—some minor, some not—are by no means the unique purview of Levi's. And I'm not whining, only pointing out that the wind was very much in my face, not at my back, in my career trek at the company.

Id. (detailing her numerous and continued experiences of sexual discrimination during her time at the company and how her perception of pandemic restrictions in that context was an element of her corporate release).

³ Sarah Jane Aiston & Chee Kent Fo, *The Silence/ing of Academic Women*, 33 GENDER & EDUC. 138 (2021) (offering a rigorous analysis of the phenomenon). While not an academic, a strong effort was exerted to silence noted fiction author J.K. Rowling for her views on gender. See, e.g., Abby Gardner, *A Complete Breakdown of the J.K. Rowling Transgender-Comments Controversy*, GLAMOUR, <https://www.glamour.com/story/a-complete-breakdown-of-the-jk-rowling-transgender-comments-controversy> (last updated Apr. 11, 2024).

⁴ "Almost 60% of female students [between the ages of twelve and twenty-two] experienced persistent feelings of sadness or hopelessness" in 2021; "nearly 25% made a suicide plan." CTRS. FOR DISEASE CONTROL & PREVENTION, *YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY & TRENDS REPORT: 2011-2021* 2 (2021) (available at: https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf) [hereinafter *YOUTH RISK SURVEY*]. Thirty percent of girls seriously considered attempting suicide that year, and thirteen percent actually attempted suicide. *Id.* at 63, 67.

⁵ Eighteen percent of female students experienced sexual violence in 2021. *Id.* at 55. Fourteen percent revealed that they have at some point in their lives been forced to have sex. *Id.* at 54.

⁶ In 2015, 23.8% of girls purposefully self-harmed. Martin A. Monto, Nick McRee & Frank S. Deryck, *Nonsuicidal Self-Injury Among a Representative Sample of US Adolescents, 2015*, 108 AM. J. PUB. HEALTH 1042, 1044 (2018).

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opportunities for women in other areas have improved,⁷ health and well-being indicators for girls and women regarding sexual behavior, substance use, violence and mental health worsened significantly from 2011 to 2021.⁸ It seems that girls do not even want to be girls.⁹ How has all of this happened on the heels of decades of feminist jurisprudence?¹⁰ This Article examines whether the notion of “woman” may be being reimagined toward annihilation by ideology that deconstructs the uniqueness of women, unwittingly creating the potential abolition of woman.

Section I of this Article examines the basis and history of feminist jurisprudence, affirming the genesis of women’s rights as unique to women. It then traces how that ideology has become a bit twisted in the twenty-first century. Section II examines and analyzes three areas of law that affect women most uniquely: reproduction, gender fluidity, and motherhood. Examining these areas and the incidents surrounding each tends to reveal a devolution of the concept of woman. Section II also demonstrates how feminism uses language of reproductive freedom to limit women, how feminism uses gender fluidity to eliminate women, and how feminism has begun to speak about motherhood in order to replace women. Section III then presents a solution to metamodern feminism’s destructive treatment of women and looks to context for the next generation to stanchion female flourishing.

⁷ An example includes rising numbers of women in college: “The number of women pursuing higher education has increased steadily over the last 40 years, outpacing men in both college enrollment and graduation.” Jessica Bryant, *Women Continue to Outnumber Men in College Completion*, BESTCOLLEGES (July 8, 2022), <https://www.bestcolleges.com/news/analysis/2021/11/19/women-complete-college-more-than-men>. Women lawyers and law students are also rising in number: “In 2010, fewer than one-third of all lawyers (31%) were women. Thirteen years later, in 2023, 39% of all lawyers were women.” *Women, Demographics*, ABA PROFILE LEGAL PRO. 2023, <https://www.abalegalprofile.com/women.html> (last visited May 8, 2024). “Women now significantly outnumber men in U.S. law schools, and the gap is widening.” *Id.*

⁸ See generally YOUTH RISK SURVEY, *supra* note 4. The same does not seem to be true for men and boys during the identical time frame. See *id.*

⁹ See Emma Hartley, *Why Do So Many Teen Girls Want to Change Gender?*, PROSPECT (Mar. 3, 2020), <https://www.prospectmagazine.co.uk/essays/39935/why-do-so-many-teenage-girls-want-to-change-gender> (“In November 2017, the *Guardian* reported that 70 per cent of referrals [for gender reassignment] were female.”).

¹⁰ Top female jurists and scientists have similarly been unable to offer a clear definition of “woman.” Alia E. Dastagir, *Marsha Blackburn Asked Ketanji Brown Jackson to Define ‘Woman.’ Science Says There’s No Simple Answer.*, USA TODAY, <https://www.usatoday.com/story/life/health-wellness/2022/03/24/marsha-blackburn-asked-ketanji-jackson-define-woman-science/7152439001> (last updated Mar. 27, 2022, 9:13 PM) (“There is no sufficient way to clearly define what makes someone a woman.”); see also Jeremiah Poff, *WATCH: Education Secretary Miguel Cardona Refuses to Answer ‘What Is a Woman?’*, WASH. EXAM’R (Apr. 18, 2023, 5:11 PM), <https://www.washingtonexaminer.com/restoring-america/equality-not-elitism/watch-miguel-cardona-refuses-to-answer-what-is-a-woman>.

This Article conducts an exploration of whether woman's conquest of law, in the moment, turns out to be woman's conquest of "woman."¹¹

I. FEMINIST JURISPRUDENCE ONCE AFFIRMED WOMEN

Those who began the fight for women's rights and equality waged war with a providential perspective.¹² Their goals were to emancipate women from social constraints that prevented them from realizing their full potential in a society that did not regard women as whole persons.¹³ The courage and faith that European and American women displayed in the seventeenth century and during the American and French Revolutions gave birth to the philosophical underpinnings of the Women's Rights Movement.¹⁴

In the United States, after finally winning the right to vote in 1920, women continued to fight for and use what political power they gathered to champion the causes of other women who lacked power and resources.¹⁵ Utilizing subversive measures where possible through fiction, comedy, scholarship, and even poetry, female writers worked to advance women's concerns as "human."¹⁶ Second-wave feminism in the 1960s and 1970s led

¹¹ "Man's conquest of Nature turns out, in the moment of its consummation, to be Nature's conquest of Man." C.S. LEWIS, *THE ABOLITION OF MAN* 43 (MacMillan Co. 1947).

¹² See generally Judith Sargent Murray, *On the Equality of the Sexes*, in *THE FEMINIST PAPERS: FROM ADAMS TO DE BEAUVOIR* (Alice S. Rossi ed., 1973); Carolyn De Swarte Gifford, *American Women and the Bible: The Nature of Woman as a Hermeneutical Issue*, in *FEMINIST PERSPECTIVES ON BIBLICAL SCHOLARSHIP* (Adela Yarbro Collins ed., 1985). See also MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMAN* (Penguin Books 1988). In Part I, Ch. 1, Wollstonecraft sets the foundation for her arguments on the design of humanity, noting ". . . I build my belief on the perfection of God." *Id.* at 95.

¹³ See generally OLIVE BANKS, *FACES OF FEMINISM* (1981) (providing an historical perspective of women's movements). Examples illustrating these advances range from the abolition of slavery to female suffrage. See *id.* A very early example of female liberation is observed in the Ursuline missions, founded by Angela Merici in the sixteenth century, named for the spiritual patron Saint Ursula, built to advance the education of women in schools and universities, but "hemmed in by the many papal rules about the conduct of their lives" were consigned to the strict identity of nuns. THOMAS CAHILL, *HERETICS AND HEROES: HOW RENAISSANCE ARTISTS AND REFORMATION PRIESTS CREATED OUR WORLD* x (2013). For more on the unhelpful and often very harmful role of religion in the advancement of women's rights see Lynne Marie Kohm, Diane J. Chandler & Doris Gomez, *Christianity, Feminism, and the Paradox of Female Happiness*, 17 *TRINITY L. REV.* 191, Part I (2011) (critically assessing the failures of religious Christianity in promoting women's interests).

¹⁴ BANKS, *supra* note 13. Wollstonecraft is a prime example of this, as her writings were nearly all penned in the very midst of the political chaos of the time. WOLLSTONECRAFT, *supra* note 12, at Introduction (Introduction by Miriam Brody).

¹⁵ See BANKS, *supra* note 13, at 154-55 (particularly referring to the fight for the abolition of slavery).

¹⁶ An excellent example is found in Dorothy L. Sayers, an Oxford scholar, playwright, poet, and novelist, whose writings implicitly reflect forerunners of the first and second waves of feminism. See generally Hannah Dawn Stumpf, *The First and Second Wave of Dorothy L. Sayers*, 3 *PAPERS PRESENTED PREVIOUS COLLOQUIA* 1 (2018) (available at: <https://pillars.taylor.edu/colloquium-papers/3>). See

to a crossroads in feminist legal thought in the 1980s and 1990s in America.¹⁷ “Rich debate promoting or criticizing the aims of feminism, such as the Equal Rights Amendment, how women should lead their lives, and what ‘real’ women wanted soaked the halls of academia and the daily life of the general populace.”¹⁸ Then it seemed that feminism itself began to change.¹⁹ Some top feminist theorists seemed to see this altered perspective on the horizon, as “[f]eminist legal scholarship” appeared “to be drifting toward abstract grand theory presentations.”²⁰

There is a long history of feminist legal theory and feminist jurisprudence,²¹ referred to as adaptive and foundational.²² The many faces of feminism altered and changed throughout the twentieth century, into the twenty-first century where it has moved so far away from seeking goodness for all women that it has altered women’s rights almost beyond recognition,²³ peaking with the inability to offer a coherent definition of what it means to be a woman.²⁴

generally CRYSTAL DOWNING, *SUBVERSIVE: CHRIST, CULTURE, AND THE SHOCKING DOROTHY L. SAYERS* (2020).

¹⁷ See Lynne Marie Kohm & Colleen Holmes, *The Rise and Fall of Women’s Rights: Have Sexuality and Reproductive Freedom Forfeited Victory?*, 6 WM. & MARY J. RACE, GENDER & SOC. JUST. 381, 395-96 (2000) (although not using the commonly coined term “second-wave” to describe this shift in feminism, providing an overview of how feminist thought narrowed its focus onto sexuality and increased congruence between men and women during this time period).

¹⁸ Jennie Leigh DePaul, *How Feminism Failed the Rest of Us: Detrimental Effects of Modern Feminist Legal Thought on Living Out Biblical Womanhood 2* (2022) (unpublished manuscript) (on file with author) (examining and citing the jurisprudence at that time).

¹⁹ Kohm & Holmes, *supra* note 17, at 420:

New thinking in the postmodernism era requires more than the old guard rules of 1960s feminism. The movement for women’s rights began with authentic social objectives, yet those noble goals have eroded into ones of personal success, egotism, erotica, arrogance, and congenitally infuriated feminism. Those values do not represent most contemporary women.

Id.

²⁰ Martha Albertson Fineman, *Introduction*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY* xii (Martha Albertson Fineman & Nancy Sweet Thomadsen eds., 1991).

²¹ See Tracy A. Thomas, *The Long History of Feminist Legal Theory*, in *THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES* (Deborah L. Brake, Martha Chamallas & Verna L. Williams eds., 2022)

²² See Linda C. McClain & Brittany K. Hacker, *Liberal Feminist Jurisprudence: Foundational, Enduring, Adaptive*, in *THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES* (Deborah L. Brake, Martha Chamallas & Verna L. Williams eds., 2022).

²³ See *infra* Section II (discussing male opportunism replacing female opportunity in reproduction, parenthood, gender patriarchy, etc.).

²⁴ Poff, *supra* note 10.

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Metamodern feminism increasingly benefits only a small class of women.²⁵ What is feminism communicating to the next generation, particularly when little girls do not want to be female? Feminist theory has become unreasonable, a theory of freedom advanced seemingly only by abortion and the sexual revolution,²⁶ missing the mark on the significance of poverty for women.²⁷ Rather than benefiting women economically, feminist jurisprudence has seemed to enslave women to sexuality in new ways. “The modern progressive twist on the classics is to add that prostitution might be a great line of work.”²⁸

Some scholars proffer that women’s liberation was less the result of human moral progress than it was an effect of the material consequences of the Industrial Revolution.²⁹ The Industrial Era is now effectively over, left behind for the age of artificial intelligence, biotech, and all-pervasive computing, and, as a result, technology is liberating humans from their natural limits and embodied sex differences.³⁰ Although this shift benefits a small but elite class of successful, professional women, it also makes it easier to commodify women’s bodies, human intimacy, and female reproductive abilities.³¹ Metamodern feminism has left behind the rich intellectual history

²⁵ See MARY HARRINGTON, *FEMINISM AGAINST PROGRESS* (2023) (offering a critical analysis of feminism examining the inherent concerns and contradictions in metamodern feminist theory which offer little benefit to everyday women, while benefitting largely only progressive, professional women).

²⁶ *Id.* (examining those shifts).

²⁷ Natasha Chart, *Progressive False Consciousness*, WRONG SPEAK PUBLISHING (Aug. 9, 2022), <https://www.wrongspeakpublishing.com/p/progressive-false-consciousness>:

In the case of feminism, a political movement that’s supposed to be about representing women, let’s talk about how often poverty comes up as a significant circumstance in women’s lives. Tied to leftist politics, women show up to feminism looking for all kinds of help and what they get is a critique of capitalism.

Id.:

Capitalism has problems, but where are the feminist entrepreneurial education networks? Want to free [B]lack women? Black women in the US are likelier than white women or men to try starting a new business. What if the immediate help many struggling women need is straightforward business advice and informed lending?

Id.

²⁸ *Id.*

²⁹ ERIKA BACHIOCHI, *THE RIGHTS OF WOMEN: RECLAIMING A LOST VISION* (2021) (providing a synthesis of ancient scholars and modern political insight that locates the family’s vital work at the center of personal and political self-government to demonstrate that when rights are properly understood as a civil and political apparatus born of the natural duties we owe to one another, they make more visible our personal responsibilities and more viable our common life together).

³⁰ *Id.*; see generally HARRINGTON, *supra* note 25.

³¹ Bachiochi and Harrington argue that feminism has been captured by well-off, white-collar women who use it to advance their own economic and political interests under the pretense that these are the interests of all women—all the while wielding the term like a club against anyone, male or female, who dissents. See BACHIOCHI, *supra* note 29; HARRINGTON, *supra* note 25.

of feminism which upholds women as rights holders.³² This pattern of jurisprudence presents and advances a dystopian future in which poor women become little more than convenient sources of gestation,³³ their bodies become parts to be harvested, their wombs to be rented by the rich.³⁴ While “[t]he important reproductive rights cases . . . gave women some control over their bodies[.]”³⁵ reproductive justice has labored to be more expansive and holistic in its critical framework.³⁶ Feminist legal theorists now tend to perceive feminist jurisprudence as not just a school of thought, but as a way of life.³⁷

What is concerning is that these notions are beginning to be important in the context of obscuring differentiations between female and male. For example, second-wave feminism used law to attempt to achieve equality for women and show how the law contributed to women’s subordination.³⁸ These adjusted foundations of the Women’s Rights Movement, however, began by claiming there are no differences between males and females: “In areas such as education, litigators had to argue that girls should be able to play with boys on teams, while school systems argued that ‘physical differences’ hindered safety and other concerns that required separation for nonequal skills.”³⁹ In the late 1980s it appeared that girls and women had to shy away from their sex by ignoring biological differences to gain a greater

³² See generally BACHIOCHI, *supra* note 29, at ch. 7. Bachiochi proposes a philosophical and legal framework for rights that builds on the communitarian tradition of feminist thought from the work of Elizabeth Fox-Genovese and Jean Bethke Elshtain and draws on the insight of prominent (mostly feminist) figures such as Mary Wollstonecraft, Sarah Grimké, Frances Willard, Florence Kelley, Betty Friedan, Pauli Murray, Ruth Bader Ginsburg, and Mary Ann Glendon. See *id.* Bachiochi’s book is unique in its treatment of the moral roots of women’s rights in America and its critique of the feminist movement’s current trajectory.

³³ See, e.g., Sheela Suryanarayanan, *Poverty and Commercial Surrogacy in India: An Intersectional Analytical Approach*, 8 *DIGNITY: J. ANALYSIS EXPLOITATION & VIOLENCE* 1 (2023) (finding that commercial surrogacy matches patterns around the world of inequality for women who act as surrogates).

³⁴ An example of this might include the concept of “whole body gestational donation,” where a woman who has indicated a desire to be an organ donor and who is later in a vegetative state on life support can be considered for surrogacy. See Anna Smajdor, *Whole Body Gestational Donation*, 44 *THEORETICAL MED. & BIOETHICS* 113 (2023).

³⁵ Carrie Menkel-Meadow, *Mainstreaming Feminist Legal Theory*, 23 *PAC. L.J.* 1493, 1498 (1992).

³⁶ “Reproductive justice” has been defined “as the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.” *Reproductive Justice*, SISTER SONG, <https://www.sistersong.net/reproductive-justice> (last visited May 8, 2024) (defining women’s reproductive rights as human rights, rather than reproductive rights and abilities unique to women).

³⁷ NANCY LEVIT & ROBERT R.M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* 74 (2d ed. 2016) (pulling together the numerous strands of feminism to illustrate the intersection of law and life with gender).

³⁸ Menkel-Meadow, *supra* note 35, at 1494.

³⁹ *Id.* at 1498 (quoting Karen L. Tokarz, *Separate But Unequal Educational Sports Programs: The Need for a New Theory of Equality*, 1 *BERKELEY WOMEN’S L.J.* 201, 206-07 (1985)).

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footing toward equality. Then, theories on race and its role in women's oppression became important.⁴⁰ Some scholars argue that in these contexts of obscuring sex differentiations, a sexual revolution was sparked which did not advance women's rights,⁴¹ but rather harmed women and girls.⁴²

While early American feminists supported women and women's rights and opposed abortion,⁴³ some modern feminist theorists and social justice movements, by contrast, have embraced abortion in all its forms to the detriment of women.⁴⁴ Early pro-life feminists, for example, saw a man's ability to walk away from a child he had fathered as a grave moral fault.⁴⁵ Present-day feminism, however, often sees the ability to walk away—for women via abortion, or for men via refusing to take responsibility—as the basic prerequisite to being an equal citizen, a natural assumption, if the basic unit of society is the lone unencumbered citizen.⁴⁶ Next steps tend toward the transhuman, aiming to liberate human beings from any limits of being

⁴⁰ See ELIZABETH SPELMAN, *INESSENTIAL WOMEN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988) (discussing the varieties of women's experiences as filtered through different races, ethnicities, and classes).

⁴¹ LOUISE PERRY, *THE CASE AGAINST THE SEXUAL REVOLUTION* (2022) (arguing, among many things, that physical variation in the sexes “is built upon biological substrate” rather than race, even if that is denied by liberal feminist activists). *Id.* at 29.

⁴² KARA DANSKY, *THE ABOLITION OF SEX: HOW THE TRANSGENDER AGENDA HARMS WOMEN AND GIRLS* 39 (2021); ABIGAIL SHRIER, *IRREVERSIBLE DAMAGE* (2020) (both tracing these theories with narratives of harm to real girls).

⁴³ Kohm & Holmes, *supra* note 17, at 393-95:

Early women's rights activists, indeed, viewed abortion as distasteful and as one method by which men exerted control over women's sexuality. “Early feminist opposition to abortion recognized that abortion itself did not empower women, but rather it allowed males relinquishment of responsibility for pregnancy.” Elizabeth Cady Stanton opposed abortion because she thought that it was dangerous for women. She found both abortion and infanticide to be “disgusting and degrading crimes.” Her colleague, Susan B. Anthony, called abortion “the horrible crime of child murder.” The founding feminists saw abortion as an evil consequence of unrestrained male sexuality and an irresponsibility against which they should focus their efforts. Yet these goals have been sadly distorted as modern feminists embrace the consequence of abortion and pursue . . . unrestrained sexuality and irresponsibility.

Id. at 394 (internal citations omitted).

⁴⁴ See Lynne Marie Kohm, *Sex Selection Abortion and the Boomerang Effect of a Woman's Right to Choose: A Paradox of the Skeptics*, 4 *WM & MARY J. WOMEN & L.* 91 (1997) [hereinafter *Sex Selection Abortion*] (illustrating the trend and effect of choosing boys over girls for birth in a context of abortion choices globally); Lynne Marie Kohm, *The Challenges of Teaching Gender Equality in a World of Gendercide*, 6 *REGENT J.L. & PUB. POL'Y* 1 (2013) (pointing out the annihilation of girls by abortion methods presenting a key challenge to feminist theorists); Britney N. Brigner & Lynne Marie Kohm, *Women and Assisted Suicide: Exposing the Gender Vulnerability to Acquiescent Death*, 4 *CARDOZO WOMEN'S L.J.* 241 (1998) (examining the disparate effect of assisted suicide on women).

⁴⁵ See generally BACHIOCHI, *supra* note 29, at ch. 9 (discussing solutions that rebind those ties with what Bachiochi calls a “renewed family ecology”).

⁴⁶ Richard Dagger, *The Sandelian Republic and the Encumbered Self*, 61 *REV. POL.* 181 (1999) (arguing against contemporary liberalism).

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human, with the end game that any restriction is suspect.⁴⁷ Does every woman agree that these are good goals of feminism? Shaped by these views, feminism has ceased to advocate for the freedom of women to be women, but rather seems to advocate for the right of women to be free of the burdens of being women.

These views sell everyone short, but particularly women. What began as a movement to advance all women has been twisted to free women from being women.

II. FEMINIST JURISPRUDENCE IMPAIRING FEMALE UNIQUENESS

The human body is teleological—it has a purpose.⁴⁸ The biology of sex thus also has a purpose, and biology proves and provides an integrated telos.⁴⁹ Every cell in the body of a person relates to an individual's sex.⁵⁰ Ideology seeking to amend that telos is based on a malleable belief system, and is subjectively relative.⁵¹ Implementing that ideology into a system of authority has been the path to gender fluidity, with weighty consequences. “Being a woman has been difficult because of the barriers placed in my path; parental judgments, restrictions, fears. But, this new monster, set to take away our spaces, freedoms, hard fought victories and, yes, even our name: WOMEN, is the worst possible.”⁵² When that female telos is ignored, or attempted to be altered, it seems that women suffer the consequences. In that context, this section focuses on reproduction, fluidity, and motherhood.

⁴⁷ Harrington discusses that these concepts of transhumanism naturally follow tinkering with female reproduction. HARRINGTON, *supra* note 25, at ch. 1. See also Adam Kirsch, *Looking Forward to the End of Humanity*, WALL ST. J. (June 20, 2020, 12:01 AM), <https://www.wsj.com/articles/looking-forward-to-the-end-of-humanity-11592625661>; JAMES HUGHES, *CITIZEN CYBORG: WHY DEMOCRATIC SOCIETIES MUST RESPOND TO THE REDESIGNED HUMAN OF THE FUTURE* (2004); David Gelles, *Immortality 2.0: A Silicon Valley Insider Looks at California's Transhumanist Movement*, GENETICS & SOC'Y (Jan. 1, 2009), <https://www.geneticsandsociety.org/article/immortality-20-silicon-valley-insider-looks-californias-transhumanist-movement>; Stefan Lorenz Sorgner, *Beyond Humanism: Reflections on Trans- and Posthumanism*, 21 J. EVOLUTION & TECH. 1 (2010).

⁴⁸ Carl Sachs, *Naturalized Teleology: Cybernetics, Organization, Purpose*, 42 TOPOI 781 (2023) (available at: <https://link.springer.com/article/10.1007/s11245-022-09851-9>).

⁴⁹ *Id.* (working to naturalize and control that process).

⁵⁰ EXPLORING THE BIOLOGICAL CONTRIBUTIONS TO HUMAN HEALTH: DOES SEX MATTER? 28 (Theresa M. Witzmann & Mary-Lou Pardue eds., 2001) (explaining genetic and molecular bases of sex-based differences in human biology, “XX in the female and XY in the male,” illustrating in this publication how they affect human disease). See also Iris Pinheiro, Lien Dejager & Claude Libert, *X-Chromosome-Located MicroRNAs in Immunity: Might They Explain Male/Female Differences?*, 33 BIOESSAYS 791 (2011).

⁵¹ Kent A. Ono & John M. Sloop, *Commitment to Telos—A Sustained Critical Rhetoric*, 59 COMM'N MONOGRAPHS 48 (1992) (examining the lack of malleability of telos).

⁵² C. Eide, *Letters from the Front: My Awakening*, WOLF (Dec. 29, 2022), <https://womensliberationfront.org/letters-from-the-front-submissions/my-awakening>.

A. Reproduction

Postmodern feminism has tended to view the termination of a pregnancy by abortion as a victory over female reproduction.⁵³ This thinking is amplified in metamodernism where chemical abortion, or the abortion pill, has been available since the end of the twentieth century.⁵⁴ The history of birth control in the United States is even more opaque. In 1873, Congress passed the Comstock Act, which criminalized mailing obscenity, contraceptives, abortifacients, or sex toys with the U.S. Postal Service and authorized the U.S. Postal Service to confiscate mailed birth control.⁵⁵ In *People v. Sanger*, the New York Court of Appeals found that a physician or druggist acting upon the physician's prescription, acting in good faith to help a married person, is protected from prosecution under the Comstock Act.⁵⁶ In 1920, reproductive justice originator Margaret Sanger stated that "birth control is nothing more or less than the facilitation of the process of weeding out the unfit [and] of preventing the birth of defectives."⁵⁷ Sanger's ideas gathered momentum, and between 1907 and 1929 thirty-one states enacted forced sterilization laws.⁵⁸

Some proffer that reproductive rights are being criminalized.⁵⁹ "The expanding surveillance and criminalization of mutual aid, self-managed care, and bodily autonomy, and the growing attempts to criminalize pregnant people, parents, and health care providers have far-reaching ramifications beyond abortion criminalization that require us to join together to collectively resist!"⁶⁰ This has compelled twenty-first century feminist jurisprudence to fuel the movement to defund the police state, focusing on perceived targets

⁵³ See generally Kohm & Holmes, *supra* note 17.

⁵⁴ See Jennifer Jackman, *Anatomy of a Feminist Victory: Winning the Transfer of RU 486 Patent Rights to the United States, 1988-1994*, 24 J. WOMEN POL. & POL'Y 81 (2003) (detailing the process from French scientific research to licensure in the United States).

⁵⁵ *A Brief History of Birth Control*, OUR BODIES OURSELVES TODAY AT SUFFOLK UNIV., <https://www.ourbodiesourselves.org/health-info/a-brief-history-of-birth-control> (last visited May 8, 2024).

⁵⁶ *People v. Sanger*, 222 N.Y. 192, 194-95 (1918).

⁵⁷ *Eugenics and Birth Control*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/pill-eugenics-and-birth-control> (last visited May 8, 2024) (claiming Sanger stated that she disagreed with some of the ideas of eugenicists but aligned with them to gain legitimacy with the scientific establishment).

⁵⁸ Alexandra Minna Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those with Disabilities – and Lasted Into the 21st Century*, CONVERSATION (Aug. 26, 2020, 8:20 AM), <https://theconversation.com/forced-sterilization-policies-in-the-us-targeted-minorities-and-those-with-disabilities-and-lived-into-the-21st-century-143144>.

⁵⁹ ABORTION DECRIMINALIZATION IS PART OF THE LARGER STRUGGLE AGAINST POLICING AND CRIMINALIZATION (available at <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/6194235775f2a0615ea53cde/1637098383973/Decriminalize+Abortion>) [hereinafter ABORTION DECRIMINALIZATION].

⁶⁰ *Id.* at 2.

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to protect,⁶¹ but not listing women among the protectable.⁶² Again, it is likely that not all women agree that deconstructing the police state is a good goal of feminism,⁶³ even if it may be what some elite feminists prefer.⁶⁴ Modern feminist jurisprudence offers solutions for interrupting this criminalization (that focus on a myriad of target groups),⁶⁵ arguing that “[t]he pervasive culture, policies, and practices of punishment leads to the criminalization of Black, Indigenous, low-income, disabled, migrant, trans and queer people and parents—whether through the criminalization of poverty, drug use, or abortion[.]”⁶⁶ with some asserting that doctors contribute to this injustice.⁶⁷ Under this philosophy, traditional avenues for the protection of women

⁶¹ *Id.*:

[W]hat does abortion criminalization have to do with movements to end police violence and criminalization? EVERYTHING. . . . Such laws are just the latest examples in a long history of criminalizing bodily autonomy, especially for Black, Indigenous, migrant, disabled, queer, and trans people, and people with low incomes who will experience the harshest impacts of anti-abortion legislation.

Id. at 2.

⁶² *Id.* Women are nonetheless vulnerable as people, even if not included in the list:

Conspiracy charges are already driving mass criminalization and incarceration of parents, trans people, disabled people, people who use drugs, and others who assist each other in accessing care. Abortion criminalization is yet another way of increasing the surveillance of our bodies, relationships, autonomy, and mutual aid—widening the net of criminalization, and potentially legitimizing other new forms and means of criminalization.

Id. at 3 (internal citations omitted). Further clarity of this position is also included with hashtags: “#DEFUNDPOLICE INCLUDES REPRODUCTIVE JUSTICE, AND REPRODUCTIVE JUSTICE MEANS #DEFUNDPOLICE.” *Id.* at 9.

⁶³ See, e.g., Devin Buckley, *#DefundThePolice May Be Trendy, but Hurts Women*, FEMINIST CURRENT (July 16, 2021), <https://www.feministcurrent.com/2021/07/16/defundthepolice-may-be-trendy-but-hurts-women> (noting the chilling effect on women’s safety of the defund the police movement).

⁶⁴ See ABORTION DECRIMINALIZATION, *supra* note 59. For another view on defunding, dismantling, and abolishing police, see generally MARIAME KABA & ANDREA J. RITCHIE, NO MORE POLICE: A CASE FOR ABOLITION (2022) (where black feminist scholars argue for abolition of police). See also Anne-Marie Veillette, *Racialized Popular Feminism: A Decolonial Analysis of Women’s Struggle with Police Violence in Rio de Janeiro’s Favelas*, 48 LATIN AM. PERSPS. 87 (2021) (using feminist theory to battle police violence).

⁶⁵ See CTR. FOR ADVANCING INNOVATIVE POL’Y, RESISTING CRIMINALIZATION OF REPRODUCTIVE AUTONOMY: POLICY DOS AND DONT’S 1 (2019) (available at: <https://www.interruptingcriminalization.com/resisting-crim>) (using an initial list of victims including “pregnant people, parents, and providers,” not using the term “woman” or “women” until page three, and thereafter in the list of victims) [hereinafter RESISTING CRIMINALIZATION OF REPRODUCTIVE AUTONOMY].

⁶⁶ ABORTION DECRIMINALIZATION, *supra* note 59, at 5. Women are still not mentioned with any specificity. Protecting what might seem as peripheral issues such as drug use, seemingly arguing that pregnant drug users should not have punishments for endangering the lives of their children before or after birth, arguing that this especially impacts Black, Indigenous, disabled, trans and queer people, migrants, low-income people. No data is offered to support these conclusions. See *id.*

⁶⁷ *Id.* at 6-7 (arguing that doctors work to criminalize autonomy). Here there is a subtle attempt to make abortion criminalization an identity that may be assumed by minorities, even asserting that mandatory reporting of abuse is racist. *Id.* at 8.

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desiring an abortion may no longer be acceptable, such as: (a) police are unwelcome to provide security at healthcare facilities;⁶⁸ (b) regulations or restrictions targeted at specific health treatment or services are wrong;⁶⁹ (c) any abortion restriction is wrong;⁷⁰ and (d) crisis pregnancy resource centers are evil.⁷¹ One might alternatively argue that having police provide security at abortion clinics might offer women protection from harm;⁷² that some abortion regulations may protect women;⁷³ and that pregnancy resource centers might help women.⁷⁴ Indeed, many of these denounced elements seem to work to help and even protect women.⁷⁵

It is worth noting that decriminalizing abortion, even as stated here, does not prevent unplanned pregnancies.⁷⁶ In fact, recent studies show that

⁶⁸ *Id.* at 11. Furthermore, when a health care facility announces its policy to defund the police, providing state police security to that facility may be less likely. For example, see the statement at *Defund the Police: What it Means and Why Planned Parenthood Supports It*, PLANNED PARENTHOOD ACTION FUND (July 9, 2020), <https://www.plannedparenthoodaction.org/blog/defunding-the-police-what-it-means-and-why-planned-parenthood-supports-it> (setting forth Planned Parenthood's solidarity with the movement against police; such a policy must naturally disincentivize police presence at those facilities).

⁶⁹ ABORTION DECRIMINALIZATION, *supra* note 59, at 11 (“drawing inspiration from” and setting forth “abolitionist demands to divest from the things that harm our communities[.]”).

⁷⁰ *Id.* at 11.

⁷¹ *Id.* at 11 (citing a very emotionally charged article to state why crisis pregnancy centers are evil: Shireen Shakouri, *What Is a Crisis Pregnancy Center? How Do They Push Alternative Facts?*, REPROACTION (Aug. 7, 2017), <https://reproaction.org/what-is-a-crisis-pregnancy-center>, and offering specific policy recommendations: RESISTING CRIMINALIZATION OF REPRODUCTIVE AUTONOMY, *supra* note 65). “Criminalization of abortion providers, abortion seekers, and their communities does nothing to prevent unplanned pregnancy. Organizing for full decriminalization is the only way forward, while we continue the grassroots work to build and strengthen our capacity for mutual aid and communities of care.” ABORTION DECRIMINALIZATION, *supra* note 59, at 13.

⁷² Jon Schuppe, *Abortion Clinics are Bracing for Protests, Harassment and Violence if Roe Fails*, NBC NEWS (May 4, 2022, 4:43 PM), <https://www.nbcnews.com/news/us-news/abortion-clinics-protests-security-rcna27270> (arguing for increased police officers and patrols).

⁷³ See, e.g., Lisa B. Haddad, *Unsafe Abortion: Unnecessary Maternal Mortality*, 2 REV. OBSTETRICS & GYNECOLOGY 122 (2009) (offering evidence of how unregulated abortion creates abortion results that are unsafe, even fatal, for women).

⁷⁴ See Kelsey Abkin, *What are Crisis Pregnancy Centers, and What Do They Do?*, GOODRX HEALTH (Feb. 28, 2022), <https://www.goodrx.com/conditions/pregnancy/crisis-pregnancy-centers> (explaining the benefits and concerns about pregnancy resource centers); see also *About NIFLA*, NAT'L INST. FAM. & LIFE ADVOC., <https://nifla.org/about-nifla> (last visited May 8, 2024); *About Care Net*, CARE NET, <https://www.care-net.org/about> (last visited May 8, 2024); *What Is a Pregnancy Center?*, HEARTBEAT INT'L, <https://www.heartbeatinternational.org> (last visited May 8, 2024). All proffer that they work to empower and help women who are pregnant by providing pregnancy tests, ultrasound testing, services, and assistance.

⁷⁵ See generally Haddad, *supra* note 73; Abkin, *supra* note 74; see also *About NIFLA*, *supra* note 74; *About Care Net*, *supra* note 74; *What Is a Pregnancy Center?*, *supra* note 74 (all of which proffer that they work to empower and help women who are pregnant by providing pregnancy tests, ultrasound testing, services, and assistance).

⁷⁶ See, e.g., Marianne Bitler & Madeline Zavodny, *Did Abortion Legalization Reduce the Number of Unwanted Children? Evidence from Adoptions*, 34 PERSPS. SEXUAL & REPROD. HEALTH 25 (2002) (available at: <https://pubmed.ncbi.nlm.nih.gov/11990636>) (showing evidence of adoption of “unwanted

women in the United States primarily seek abortions because they do not have adequate financial or personal support to have their child and are otherwise economically vulnerable, and these metrics are particularly true for young women.⁷⁷ A desire for economic equality may be a driver for the choice to have an abortion,⁷⁸ working to create more desire for abortion availability, effectively commoditizing reproduction.⁷⁹

There are observable concerns regarding abortion as a preference to birth.⁸⁰ Low fertility rates evidence a sort of antipathy for birth.⁸¹ The selective abortion of female fetuses clearly denies the humanity of fetuses because they are female.⁸² Abortion has not reduced sexual violence, and in many ways has facilitated violence against women and children.⁸³

A generation of jurisprudence on reproductive rights and feminist legal theory has understood liberty as “the right to define one’s own concept of existence.”⁸⁴ This subjectivism, however, has co-opted “femaleness” and a woman’s lived experience to the detriment of women and girls by using jurisprudential notions that should have provided benefits to women to

children” in the wake of legalized abortion; explaining the obvious that making abortion legal or illegal does not stop unplanned pregnancies from happening, as the very nature of abortion requires a pregnancy).

⁷⁷ Lynne Marie Kohm, *Vulnerability of Young Women to Late Term Abortion*, (June 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3405624.

⁷⁸ See Vyacheslav Karpov & Kimmo Kääriäinen, “Abortion Culture” in *Russia: Its Origins, Scope, and Challenge to Social Development*, 22 J. APPLIED SOCIOLOGY 13 (2005) (explaining how an abortion culture emerged under communism in Russia and that abortion became the acceptable norm for dealing with medical and socioeconomic hardships).

⁷⁹ See Rosalind Pollack Petchesky, *Reproductive Freedom: Beyond “A Woman’s Right to Choose”*, 5 J. WOMEN CULTURE & SOC’Y 661 (1980) (showing the lengths to which women go to control their reproductive conditions, particularly in a socialist context); see also Kathleen E. Akers, *The Commoditized Family: Communism’s Destructive Lust for Equality Evidenced by Abortion Rates* (Oct. 2022) (unpublished manuscript) (on file with the author) (detailing how communism’s desire for economic equality brought all time high abortion rates and how this is mirrored in socialist policies in America).

⁸⁰ For a review of the comparative safety of abortion to birth, see Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215 (2012).

⁸¹ 2021 *Population Data Sheet Highlights Declining Fertility Rates*, IISD (Aug. 18, 2021), <https://sdg.iisd.org/news/2021-population-data-sheet-highlights-declining-fertility-rates>.

⁸² See generally *Sex Selection Abortion*, *supra* note 44.

⁸³ See Catherine T. Coyle, Martha W. Shuping, Anne Speckhard & Jennie E. Brightup, *The Relationship of Abortion and Violence Against Women: Violence Prevention Strategies and Research Needs*, 30 ISSUES L. & MED. 111, 111 (2015) (discussing “the evidence that victims of Intimate Partner Violence are disproportionately represented in women presenting for abortion” suggesting the need for screening and offering prevention strategies).

⁸⁴ *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992). As this Article will illustrate in Part III, that subjective notion is traced in the jurisprudence of *Casey*, which upheld reproductive rights as subjective reality, stating that “[a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. *Id.* at 851.

generate new benefits to men in women's spaces.⁸⁵ "It also facilitates the transference of socio-cultural practices into the Women's Movement that nurture male privilege and pampering in spaces that women have fought for centuries to mark as their own."⁸⁶ This denial of self-actualization for women leads to objectification, as feminist legal scholar Andrea Dworkin discusses:

Objectification occurs when a human being, through social means, is made less than human, turned into a thing or commodity, bought and sold. When objectification occurs, a person is depersonalized, so that no individuality or integrity is available socially or in what is an extremely circumscribed privacy (because those who dominate determine its boundaries). Objectification is an injury right at the heart of discrimination: those who can be used as if they are not fully human are no longer fully human in social terms; their humanity is hurt by being diminished.⁸⁷

The objectification experienced by women and girls today may be inadvertent, and possibly even unwitting, but it has become a tool for diminishing women and girls.⁸⁸ Rather than advancing women's equality, feminist theories may have caused "woman" to cease to have value.⁸⁹

Is this the abolition of woman? In *The Abolition of Man*, C.S. Lewis prophetically shows that the recognition of objective value is the foundation of what holds together a society, until "Conditioners" manipulate and willfully abandon objective value—bringing about their own abolition.⁹⁰ When a few powerful human beings find answers to human problems in predetermined concepts of existence, objectivity is lost to subjective

⁸⁵ See Patricia McFadden, *Why Women's Spaces are Critical to Feminist Autonomy*, VANCOUVER RAPE RELIEF & WOMEN'S SHELTER (1995), <https://rapereliefshelter.bc.ca/why-womens-spaces-are-critical-to-feminist-autonomy> (discussing the conceptual notion of spacing and its importance to women's spaces in overall women's rights).

⁸⁶ *Id.* (arguing against men's inclusion into women's political and structural spaces). "Surveillance of women's political consciousness is a key objective of the patriarchal backlash, which manifests itself through male demands for inclusion into women's spaces." *Id.*

⁸⁷ Andrea Dworkin, *Against the Male Flood: Censorship, Pornography, and Equality*, 8 HARV. WOMEN'S L.J. 1, 15 (1985). *But c.f.* Donovan Cleckley, *Transitioning But Not Transcending: Dispelling the Distortions of Andrea Dworkin's Work*, DISTANCE (Apr. 13, 2023), <https://www.thedistancemag.com/p/transitioning-but-not-transcending> (citing and discussing the many disagreements over Dworkin's theories as applied to transgenderism).

⁸⁸ See ANDREA HEINZ & KATHY KING, WHEN MEN BUY SEX: WHO REALLY PAYS?: CANADIAN STORIES OF EXPLOITATION, SURVIVAL, AND ADVOCACY 5 (2023) (revealing that a culture of male entitlement to the bodies of women and girls, sexually objectifying them for men's pleasure, is opportunistic and harms countless women under the guise of the "academic definition" for prostitution "generally understood as the exchange of sex for money").

⁸⁹ See Mary Laing, Ian R. Cook, Tom Baker & Octavia Calder-Dawe, "Maybe I'm a Quiet Activist": *Sex Work Scholars and Negotiations of 'Minor' Academic-Activism*, 27 SEXUALITIES 188, 193-94 (2022) (summarizing various feminist theories and their connection to sex work's potential harms to women and their value).

⁹⁰ MICHAEL WARD, AFTER HUMANITY: A GUIDE TO C.S. LEWIS'S THE ABOLITION OF MAN 16 (2021) ("To be human is to have an awareness of objectivity; this is the universal human experience.").

judgments, feelings, and emotions.⁹¹ More power is acquired by those few, but nevertheless ultimately fosters their destruction.⁹² Replacing objectivity with subjectivism alters or removes an object's objective value, and, in the extreme, it objectifies and erases that object.⁹³ An unmooring from objective value may be leading to the abolition of woman.

Language tends to be a tool to acquire power, particularly in the law.⁹⁴ In this unwitting expedition to conquer femaleness, language may effectively work to take the place of women, such as replacing "woman" and "mother" with "birthing person," expanding the definition of womanhood and effectively working to eliminate the original words.⁹⁵ For example, Johns Hopkins University moved to erase women by redefining woman as "non-man."⁹⁶ Because diluting a word also serves to eliminate the idea,⁹⁷ eliminating the word "woman" serves to dilute the idea of woman. As Lewis unfolds his case, it becomes evident that he is concerned with how human beings relate to reality, especially by means of language and sentiment; does what we say about things correspond to how they really are?⁹⁸ Has the

⁹¹ *Id.*

⁹² *Id.* "We no longer find the solution to the problems of life in 'knowledge, self-discipline, and virtue,' but increasingly in willpower, technological control, and surgical alteration of nature to suit our own convenience. *Id.* at 16 (quoting LEWIS, *supra* note 11, at 48). This is "'the world of post-humanity which, some knowingly and some unknowingly, nearly all men in all nations are at present labouring to produce.'" *Id.* (quoting LEWIS, *supra* note 11, at 47); *see also Scientific Objectivity*, STANFORD ENCYC. PHIL., <https://plato.stanford.edu/entries/scientific-objectivity> (last updated Oct. 30, 2020) ("Objectivity is a value. To call a thing objective implies that it has a certain importance to us and that we approve of it. Objectivity comes in degrees. Claims, methods, results, and scientists can be more or less objective, and, other things being equal, the more objective, the better.").

⁹³ *See* Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 FEMINIST STUDS. 575 (1988); JANET A. KOURANY, PHILOSOPHY OF SCIENCE AFTER FEMINISM (2010) (explaining this phenomenon).

⁹⁴ JOHN M. CONLEY, WILLIAM M. O'BARR & ROBIN CONLEY RINER, JUST WORDS: LAW, LANGUAGE, AND POWER xvi (3d ed. 2019) ("Indeed, we argue, it is in the details of the talk that constitutes legal practice that discrimination occurs, that patriarchy manifests itself, and that the power of the law is realized."). The law is not the only place where language reveals power. *See* how civilizations abandon their native tongues to fit in and survive in hostile situations in THOMAS CAHILL, DESIRE OF THE EVERLASTING HILLS: THE WORLD BEFORE AND AFTER JESUS 57 (1999) (describing how Jewish people and the Irish "abandoned their ancestral language" to survive).

⁹⁵ Recall that "woman" cannot be defined. *See generally* Dastagir, *supra* note 10.

⁹⁶ Thomas Kika, *Johns Hopkins Sparks Backlash by Defining Lesbians as 'Non-Man'*, NEWSWEEK, <https://www.newsweek.com/johns-hopkins-accused-trying-erase-women-its-lesbian-term-1806134> (last updated June 14, 2023, 2:06 PM).

⁹⁷ *See* Smita Sharma & Shivangi Bhatt, *Language as a Vehicle of Domination: A Totalitarian World in George Orwell's Animal Farm and Nineteen Eighty-Four*, 11 IIS UNIV. J.A. 234 (2023) (discussing the elimination of a word to manipulate ideas).

⁹⁸ *See generally* LEWIS, *supra* note 11 (discussing what he endearingly calls "the Green Book"). Lewis scholar, Michael Ward, expounds on this by asking whether queries, such as are our feelings about external matters, are; nothing more than private emotions or can they somehow be true – true not just for ourselves, but true objectively? He suggests that subjective thinking holds "that aesthetic and moral knowledge can never be more than merely individual and persons," noting their actual inauthenticity, as

meaning of “woman” become co-opted for men’s benefit using feminist jurisprudence?⁹⁹ Feminist legal theory, with the original objective of bringing equality for women, has been twisted to effectuate a form of annihilation of women and women’s rights.

B. Fluidity

In September of 2017, Scientific American Magazine published a special issue on sex and gender, with the front cover heralding “It’s Not a Women’s Issue: Everybody has a stake in the new science of sex and gender.”¹⁰⁰ Focused essentially on femaleness, the issue carried articles on girls in computer science at early ages, economic barriers to work for women, missing daughters in Asia caused by cultural traditions, and harnessing “female energy.”¹⁰¹ Early notions of fluidity were also an important part of the content.¹⁰² Notwithstanding that women and girls were meant to be honored by the issue, gender fluidity instead appeared to be the focus.¹⁰³

1. Sexual Identity

Sexual identity is a complicated concept. Grounded in a belief that the direction of one’s sexual desire constitutes his or her identity, it affords each individual a label (gay, lesbian, straight, etc.) and a social role.¹⁰⁴ “Perceived as innate and as stemming from inner desire, sexual identity has to be searched out, found, named and expressed in order for each person to be a fully functional and happy adult.”¹⁰⁵

they want their expression to be taken as true. WARD, *supra* note 75, at 13. In the end, this philosophy “is dehumanizing.” See generally LEWIS, *supra* note 11.

⁹⁹ Some have argued this is Eve envy. MELISSA KRUEGER, *THE ENVY OF EVE* (2012). Krueger presents several ideas. Is Eve envied by all men? Is man jealous of Eve? Is he invading her experiences or has feminist jurisprudence opened that door to blur the lines of sex to the annihilation of women’s lived experiences? Women are told to live in a man’s world as they are assigned men’s rights but designated as unable to exclude men. Yet the data in all scientific objective areas of chromosomal, biological, hormonal, copied to level the reality of sexual differences is very real. See *id.*

¹⁰⁰ See generally Mariette Dichristina, *Welcome to Everybody’s Issue on Sex and Gender*, SCI. AM. (Sept. 1, 2017), <https://www.scientificamerican.com/article/welcome-to-everybody-s-issue-on-sex-and-gender> (there is a picture of the cover statement: “It’s Not a Women’s Issue”).

¹⁰¹ *Id.*

¹⁰² *Id.* at 30 (discussing the “new science” of sex and gender), 32 (discussing gender myths), 44 (examining sex and gender expression).

¹⁰³ See generally *id.*

¹⁰⁴ Stanton L. Jones, *The End of Sexual Identity: Why Sex Is Too Important to Define Who We Are—A Review Essay*, 41 CHRISTIAN SCHOLAR’S REV. 299, 300 (2012) (reviewing JENELL WILLIAMS PARIS, *THE END OF SEXUAL IDENTITY: WHY SEX IS TOO IMPORTANT TO DEFINE WHO WE ARE* 41 (2011)) (using this book review to discuss how sexual identity is problematic not just in terms of homosexuality but in terms of heterosexuality as well). “Sexual identity is a Western, nineteenth-century formulation of what it means to be human.” *Id.*

¹⁰⁵ PARIS, *supra* note 104, at 41 (a call to eschew grounding identity in sexuality at all).

Fixed points of sexual identity offer some clarity on relationships and potential relationships, but that standing is challenged by notions of fluidity.¹⁰⁶ A potentially destabilizing quality,¹⁰⁷ it can work to obliterate sex in the law, annihilating privacy rights and individual safety.¹⁰⁸ “[T]he interlocking oppressions do not all lock neatly together, but grind hideously and noisily both against each other and within themselves. They produce friction rather than diminish it, and increase tensions[.]”¹⁰⁹ This complicated concept can work toward oppression.

2. Loss of Equality Notion

Title IX of the Education Amendments (“Title IX”), designed to protect against sex-based discrimination in education,¹¹⁰ played a key role in breaking down the isolated view that sexual harassment was not a systematic violation of civil rights.¹¹¹ Providing a framework that illuminated commonalities on U.S. college campuses, it also fostered the #MeToo movement.¹¹² Where many campuses once tolerated widespread, severe, and violent sexual harassment that resulted in tremendous educational harms, the #MeToo movement ultimately created a civil rights movement against sexual harassment.¹¹³ Gender-based violence on campuses was uncovered by some key feminist social science innovations that measured sexual victimization

¹⁰⁶ See DOUGLAS MURRAY, *THE MADNESS OF CROWDS: GENDER, RACE AND IDENTITY* 24-25 (2019). Murray, a gay man, notes that the notion of fluidity in sexual identity can be harmful for gay people: “For many gay men and women the idea that sexuality is fluid and that what goes one way may go another . . . is an attack on their person.” *Id.* at 23.

¹⁰⁷ *Id.* at 25-26 (detailing that the question about why some people are gay remains “unresolved on an identity question which has arrived at the very forefront of our purported values” after decades of research); see generally CARL TRUEMAN, *THE RISE AND TRIUMPH OF THE MODERN SELF: CULTURAL AMNESIA, EXPRESSIVE INDIVIDUALISM, AND THE ROAD TO SEXUAL REVOLUTION* (2020) (detailing the historical progression).

¹⁰⁸ See DANSKY, *supra* note 42, at 39 (discussing the various Equality Acts proposed in federal and state governments to protect gender identity as obliterating sex in the law).

¹⁰⁹ MURRAY, *supra* note 106, at 231.

¹¹⁰ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. Title IX was enacted as part of the Education Amendments of 1972 to prohibit sex-based discrimination in any school or any other education program that receives funding from the federal government. *See id.*

¹¹¹ Nancy Chi Cantalupo, *The Title IX Movement Against Campus Sexual Harassment: How a Civil Rights Law and a Feminist Movement Inspired Each Other*, in *THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES* (Wayne State U. L. Sch., Working Paper No. 2021-83, 2021).

¹¹² *Id.* at 2 (“the tie that bound [various forms of sexually harassing and violent conduct was] sexism, plain and simple. Sexism, and the systemic damage it did; sexism, as it mingled with class and race to create unequal opportunities and outcomes.”) (quoting REBECCA TRAISTER, *GOOD AND MAD: THE REVOLUTIONARY POWER OF WOMEN’S ANGER* 39 (2018)).

¹¹³ *See id.* “[S]ome campuses actively covered up sexual harassment, while others passively discouraged victims from reporting through opaque and confusing policies and procedures.” *Id.* at 3 (citing Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 SUFFOLK U. L. REV. 467, 471 (2005)).

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more accurately than criminal legal definitions previously allowed for.¹¹⁴ Though some argued this direction brought about a loss of due process for those accused,¹¹⁵ through Title IX feminist jurisprudence brilliantly pushed the criminal system to address sexual harassment as a matter of inequality.¹¹⁶ Complications arise, however, when the law perceives sex as a social construct ordering society into classes of people.¹¹⁷ Because this notion of social construction is inherent in feminist jurisprudence, feminist theory applied can result in a lack of understanding something as basic as how sexual violence harms women.¹¹⁸

Compounded gender-based stereotypes in the context of American criminal jurisprudence warped the presumption of innocence in sexual assault cases.¹¹⁹ Title IX was used to “address sexual assault as a form of gender discrimination, with a shared understanding that gender inequality is both a cause and consequence of sexual violence.”¹²⁰ Any defense of accused

¹¹⁴ See MARY P. KOSS, CTR. FOR VICTIM RSCH., SEXUAL EXPERIENCES SURVEY-LONG FORM VICTIMIZATION (SES-LFV) (2006) (available at <https://justiceresearch.dspacedirect.org/server/api/core/bitstreams/b0eb839c-b37c-4d5d-8dc9-78fc2e810336/content>).

¹¹⁵ See Matthew R. Triplett, *Sexual Assault on College Campuses: Seeking the Appropriate Balance Between Due Process and Victim Protection*, 62 DUKE L.J. 487 (2012) (examining the lack of clarity in process for both victims and accused); Casey McGowan, *The Threat of Expulsion as Unacceptable Coercion: Title IX, Due Process, and Coerced Confessions*, 66 EMORY L.J. 1175 (2016) (discussing the lack of due process safeguards for accused students).

¹¹⁶ Cantalupo, *supra* note 111, at 5. Cantalupo also mistakenly seems to argue that “gendered realities of sexual assault” were only happening to women, making assault a crime from a feminist perspective only. *Id.* at 9.

¹¹⁷ Professor Katherine Bartlett sets out the various scholarship based on that approach in several chapters of her casebook. See KATHARINE T. BARTLETT, GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY (1993), as covered in Lynne Marie Kohm, *A Christian Perspective on Gender Equality*, 15 DUKE J. GENDER L. & POL’Y 339, 345-46 (2008) [hereinafter *A Christian Perspective*].

¹¹⁸ See, e.g., Kate Moyle, *An Expert’s Guide to Enjoying Sex After Sexual Assault*, COSMOPOLITAN, <https://www.cosmopolitan.com/uk/love-sex/sex/a13118822/sex-after-sexual-assault-rape> (last updated Oct. 25, 2019).

¹¹⁹ For example, Cantalupo argues:

[T]he quasi-criminal standard . . . signals skepticism of victims’ credibility alone and puts extra burdens on victims to convince the fact-finder of their truthfulness . . . arguably discriminatory on its face. . . . [S]uch one-sided skepticism also draws from and compounds gender-based stereotypes and the myth that women lie about being raped[.]

Cantalupo, *supra* note 111, at 8. This type of thinking is not helpful to actual victims of sexual violence, and generally harmed the fairness of the testimony process, leading to slogans such as “believe all women,” which supported untruthful women while inadvertently mocking and minimizing women truly harmed. See Aubri F. McDonald, *Framing #MeToo: Assessing the Power and Unintended Consequences of a Social Media Movement to Address Sexual Assault*, in HANDBOOK OF SEXUAL ASSAULT AND SEXUAL ASSAULT PREVENTION 79 (William T. O’Donohue, & Paul A. Schewe eds., 2019) (discussing the unintended consequences of the #MeToo movement with regard to their impact on politics, identity, policy, and gender relations).

¹²⁰ Cantalupo, *supra* note 111, at 14. See Cantalupo’s further foundation for using the preponderance standard as a best practice in sexual assault cases in Nancy Chi Cantalupo, *Campus Violence:*

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students tended to be viewed by feminists as a free speech trope,¹²¹ or as another form of white supremacy,¹²² both of which are unhelpful to female equality.

Changes to Title IX, which was originally designed to protect women and girls from “arbitrary barriers” in education programs,¹²³ have been proposed and opposed in every executive administration, but the most recent changes to Title IX redefined “sex” to include “gender identity” by the Department of Health and Human Services.¹²⁴ This direction effectively removed actual vulnerabilities based on sex, essentially squashing any actual movement toward equality that was previously made by Title IX.¹²⁵

Understanding the Extraordinary Through the Ordinary, 35 J.C. & U.L. 613 (2009) and Nancy Chi Cantalupo, *Title IX’s Civil Rights Approach and the Criminal Justice System*, in *THE CRISIS OF CAMPUS SEXUAL VIOLENCE: CRITICAL PERSPECTIVES ON PREVENTION AND RESPONSE* 125 (Sara Carrigan Wooten & Roland W. Mitchell eds., 2016).

¹²¹ Cantalupo, *supra* note 111, at 16-17.

¹²² *Id.* at 20 (lodging accusations against several others that they “either consciously or subconsciously dismissed – and thereby erased – the woman of color, but not the white woman, as a sexual harassment victim”); RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 7-9 (1984).

¹²³ Elizabeth Kaufer Busch & William E. Thro, *Restoring Title IX’s Constitutional Integrity*, 33 MARQ. SPORTS L. REV. 507, 507 (2022).

¹²⁴ *Discrimination on the Basis of Sex*, U.S. DEP’T HEALTH & HUM. SERVS., <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html> (last reviewed Apr. 30, 2024).

¹²⁵ See Sarah Pruitt, *How Title IX Transformed Women’s Sports*, HISTORY, <https://www.history.com/news/title-nine-womens-sports> (last updated Aug. 16, 2023) (illustrating how Title IX changed women’s sports by dramatically increasing the numbers of girls and women participating in sports); Julia Elbaba, *What Is Title IX and How Has it Transformed Women’s Sports?*, NBCSPORTS CHICAGO, <https://www.nbcsportschicago.com/ncaa/what-is-title-ix-and-how-has-it-transformed-womens-sports/325761> (last updated June 6, 2022, 4:44 PM) (Title IX protected women from sexual discrimination and sexual harassment); Alvin Powell, *How Title IX Transformed Colleges, Universities Over Past 50 Years*, HARV. GAZETTE (June 22, 2022), <https://news.harvard.edu/gazette/story/2022/06/how-title-ix-transformed-colleges-universities-over-past-50-years> (Title IX barred educational discrimination against women). Under the 2023 Department of Health and Human Services regulations, girls and women will not enjoy the same protections they previously held exclusively under Title IX. See also Press Release, U.N. Hum. Rts. Off. Comm’r, United States: Proposed Title IX Changes Will Impact Rights of Women and Girls in Sports and Education Says UN expert (Dec. 27, 2023), <https://www.ohchr.org/en/press-releases/2023/12/united-states-proposed-title-ix-changes-will-impact-rights-women-and-girls>. “Proposed rule changes to Title IX would violate the rights to equality and non-discrimination of student-athletes that are biological women and girls and contravene the United States’ obligations under international human rights law, a UN expert warned today.” *Id.*:

“I share the concern expressed by women and girl athletes and women sports associations, as well as women and girls on sports scholarships, that the proposed Title IX rule changes would have detrimental effects on the participation of biological women and girls in sports, including by denying them the opportunity to compete fairly, resulting in the loss of athletic and scholarship opportunities.” said Reem Alsalem, UN Special Rapporteur on violence against women and girls. The proposed change to Title IX would also lead to the removal of intimate spaces such as separate shower facilities and locker rooms for males and females. “More importantly, it would lead to the loss of privacy, an increased risk of

3. Gender Patriarchy

Women's studies and related disciplines have long adopted different meanings of gender and sex, stating that gender is masculine/feminine while sex is male/female.¹²⁶ Feminists have long argued that when a woman is discriminated against for having masculine characteristics, it is treated as sex discrimination, but when a man is discriminated against for having feminine characteristics he may not receive the same protection.¹²⁷ They argue that this differential treatment "marks the continuing devaluation, in life and in law, of qualities deemed feminine. The man who exhibits feminine qualities is doubly despised, for manifesting the disfavored qualities and for descending from his masculine gender privilege to do so."¹²⁸ Fueling the need for protections for men, this type of feminist theory has led to the protection of men to express feminine characteristics for it to be valued in society:

It is important for women and feminists to concern themselves with the treatment of the effeminate man. This is because, analogous to the argument made by those who seek to integrate pink-collar ghettos, it may be that certain behaviors are just like certain jobs—they will not be valued unless and until men can feel free to engage in them. So long as stereotypically feminine behavior, from wearing dresses and jewelry to speaking softly or in high-pitched voice, to nurturing or raising children, is forced into a female ghetto, it may continue to be devalued.¹²⁹

physical injury, heightened exposure to sexual harassment and voyeurism, as well as a more frequent and accumulated psychological distress due to the loss of privacy and fair and equal sporting and academic opportunities," Alsalem said.

Id.

¹²⁶ Mary Anne Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 *YALE L.J.* 1, 2 (1995).

¹²⁷ *Id.* at 3.

¹²⁸ *Id.* ("We are in danger of substituting for prohibited sex discrimination a still acceptable gender discrimination, that is to say, discrimination against the stereotypically feminine, especially when manifested by men, but also when manifested by women.").

¹²⁹ *Id.* Arguing that sexual orientation throughout Western history has been defined as "active/passive or penetrative/receptive" rather than by actual sex, Case argues that sexual orientation was defined by gender (effeminate and passive versus masculine and active). *Id.* at 13-14 (claiming historical gender fluidity, which likely distorts the unique experience and treatment of women in ancient western cultures which practiced homosexuality, comparing it to the males who were penetrated). See EVA CANTARELLA, *BISEXUALITY IN THE ANCIENT WORLD* 112-13, 175-81 (Cormac O Cuilleánáin trans., Yale Univ. Press, 1992); GEORGE CHAUNCEY, *GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKING OF THE GAY MALE WORLD 1890-1940* 15, 27-28 (1994); Michael L. Satlow, "They Abused Him Like a Woman": *Homoeroticism, Gender Blurring, and the Rabbis in Late Antiquity*, 5 *J. HIST. SEXUALITY* 1 (1994). For an argument that active/passive is still the fault line for sexual orientation as well as gender, see Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 *CAL. L. REV.* 1, 56-71 (1995).

These notions of femininity,¹³⁰ however, do not promote women, as noted in 1973 by Professor Robin Morgan when she discussed the potential for a rift among radical feminist activists.¹³¹

While some premise that femininity is not valued in many spaces, the conclusion that men must become feminine for femininity to ever be respected can rather move toward androgyny, and potentially lead to the erasure of women by combining the sexes into one entity.¹³² “[T]he combination of masculine and feminine qualities in the androgynous personality [is] most conducive to success and happiness because it allow[s] one to adapt best to a wide variety of situations.”¹³³ Professor Case states this clearly: “By disaggregating gender from sex and sexual orientation focusing attention on the reasons why the feminine might have been devalued

¹³⁰ Case, *supra* note 126, at 7. “There can be, I would contend, a world of difference between being female and being feminine . . . Thus, while Epstein insists that ‘gender is for nouns,’ I, on the contrary, am of the view that gender is for adjectives, sex is for nouns.” *Id.* at 11-12 (quoting Richard A. Epstein, *Gender Is for Nouns*, 41 DEPAUL L. REV. 981, 981 (1992)). This language distinction has eventually led to “gender” not merely referring to adjectives of conventional masculinity or femininity, but to gender identity re-defining reality. Case’s argument, while still considered conventional understanding (that sex refers to the gender assigned at birth, while gender refers to gender identity or expression) is a rhetorical distinction that has allowed gender to become the controlling noun (and pronoun) defining a person (even as those that adopt this view argue that they are breaking free of oppressive societal norms of gender—while taking drastic measures to argue that gender identity, rather than stating fluid adjectives, is so essential that we must surgically mutilate our bodies to deny sex). Furthermore, Case seems to hold Justice Ginsburg responsible for the interchangeability of “sex” and “gender.” *Id.* at 10. Urging a return to distinguishing between sex, “the anatomical and physiological distinctions between men and women,” and gender, “the cultural overlay on those anatomical and physiological distinctions.” *Id.* (citing Ruth Bader Ginsburg, *Gender in the Supreme Court: The 1973 and 1974 Terms*, 1975 SUP. CT. REV. 1, 1 n.1). It might be worth noting in the U.S. Supreme Court context that:

Scalia noted in a recent opinion that he would refer to “sex” rather than “gender” discrimination because “[t]he word ‘gender’ has acquired the new and useful connotation of cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes. That is to say, gender is to sex as feminine is to female and masculine is to male.”

Case, *supra* note 126, at 11 (quoting *J.E.B. v. Alabama*, 114 S. Ct. 1419, 1436 n.1 (1994) (Scalia, J., dissenting)).

¹³¹ Feminist Robin Morgan is reported to have stated:

I will not call a male ‘she;’ thirty-two years of suffering in this androcentric society, and surviving, have earned me the title ‘woman;’ one walk down the street by a male transvestite, five minutes of his being hassled (which he may enjoy), and then he dares, he *dares* to think he understands our pain? No, in our mothers’ names and in our own, we must not call him sister.

Michelle Goldberg, *What is a Woman?*, NEW YORKER (July 28, 2014), <https://www.newyorker.com/magazine/2014/08/04/woman-2> (quoting Robin Morgan, though Goldberg does not provide a source for the statement).

¹³² Mary Anne Warren, *Is Androgyny the Answer to Sexual Stereotyping?*, in ‘MASCULINITY,’ ‘FEMININITY,’ AND ‘ANDROGyny’: A MODERN PHILOSOPHICAL DISCUSSION 170 (Mary Betterling-Braggin, ed. 1982).

¹³³ Case, *supra* note 126, at 19 (discussing Sandra Lipsitz Bem, *The Measurement of Psychological Androgyny*, 42 J. CONSULTING & CLINICAL PSYCH. 155, 156-57 (1974)).

in both women and men, I hope to protect what is valuable about the traditionally feminine without essentializing it, limiting it to women, or limiting women to it.”¹³⁴

4. Infinity of Gender Difference

Fragmenting and fracturing the focus of feminist objectives, rather than working toward wholeness and integrity, created an infinity of gender difference.¹³⁵ Lesbians and women of color criticized essentialist feminism as being based on white, middle-class assumptions, because gendered experience and legal treatment is filtered by race, class, and other social factors.¹³⁶ A focus on poststructuralist and post-modernist critiques of concepts of knowledge and self-perception has led to the opportunity for an infinity of genders.¹³⁷

If to use Gertrude Stein’s famous words, “there is no there, there” because gender identity is fractured by the multiple levels and socially constructed bases on which it exists, theorists have begun to ask whether there is any core to feminism if “woman” is totally socially constructed and fractured by multiple different experiences.¹³⁸

Earlier feminist lawyers’ strategy to attack doctrines in areas such as family law, rape, employment, and domestic violence asked the Court to recognize formal equality as a matter of constitutional law: “Yet the legal strategy that culminated in *Roe v. Wade* employed old legal categories to construct a genderless ‘right to privacy’ which protects both female bodies and male medical establishments.”¹³⁹ Out of this jurisprudence came the negative fallout of divorce for women,¹⁴⁰ which also “helped expose how formal and rhetorical equality was not entirely responsive to women’s needs for substantive, actual or outcome equality.”¹⁴¹ All of this casts doubt on “difference theories” of gender, such as Battered Woman Syndrome, for

¹³⁴ Case, *supra* note 126, at 105.

¹³⁵ Julia Churchill Schoellkopf, *Gender: An Infinite and Evolving Theory*, LESBIAN GAY BISEXUAL TRANSGENDER QUEER CTR. 6 (2012) (explaining how the social construct of gender entails so many facets of one’s being, and creates new questions and choices toward unnumbered “different and infinite expressions”).

¹³⁶ Menkel-Meadow, *supra* note 35, at 1502.

¹³⁷ *Id.*

¹³⁸ *Id.* at 1502-03.

¹³⁹ *Id.* at 1504-05. See generally Herma Hill Kay & Christine A. Littleton, *Feminist Jurisprudence Text Notes*, in *SEX-BASED DISCRIMINATION* 884 (3d ed. 1988); Carrie Menkel-Meadow, Martha Minow & David Vernon, *From the Editors*, 38 J. LEGAL ED. 1 (1988) (explaining the purpose of a journal centered on women in legal education).

¹⁴⁰ See LENORE WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 323 (1985) (analyzing an empirical study showing that neutralized no fault regimes created inequalities for families after divorce).

¹⁴¹ Menkel-Meadow, *supra* note 35, at 1506.

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perceiving women as passive and dependent victims while acquitting women for murdering their husbands.¹⁴²

Feminist theorists' disagreements have (albeit inadvertently) created subjective standards. For example, Professor Menkel-Meadow discusses the work of MacKinnon-Dworkin that attempted to create legislation allowing women to sue over pornography that they felt was harmful or offensive to them or women, creating a subjective standard.¹⁴³ Gender difference feminism asserted by Carol Gilligan argued that there will be different laws when women's values are recognized in the legal system as gender difference,¹⁴⁴ a notion that has been very controversial.¹⁴⁵ This is unsurprising, and again prescient, as it is becoming somewhat clear that feminist jurisprudence in metamodernism is essentially, though unwittingly, aspiring to destroy gender differences.¹⁴⁶ Again the goal posts are shifted. Professor Leslie Bender similarly argued that women's values of care and connection should create a negligence standard with a higher level of caution because women are generally more careful.¹⁴⁷ Marion Crain argued that these gender differences could transform child care, parental leave, and other social benefits if women collectively organized to implement values of care and self-sacrifice in the public sphere,¹⁴⁸ and Karen Gross argued that women's different values might reframe some of the goals in bankruptcy law.¹⁴⁹ While working to use feminist theories to advance women's circumstances, this jurisprudence has worked to create a fractured environment that welcomed and paved the way for gender difference to thrive, to the detriment of women themselves.

¹⁴² *Id.* at 1507-08 (proffering that other feminists would prefer to cast these women as "agents of their own release from violence" which is contrary to a self-defense theory).

¹⁴³ *Id.* at 1508.

¹⁴⁴ CAROL GILLIGAN, *IN A DIFFERENT VOICE* (Harvard Univ. Press 1977) (basing feminist theory on making women's voices heard and highlighting female qualities and the ethic of care).

¹⁴⁵ Menkel-Meadow, *supra* note 35, at 1516.

¹⁴⁶ Schoellkopf, *supra* note 135, at 7. "Blurring boundaries and accepting similarities and differences of all people as natural must be executed to reconstruct gender." *Id.*

¹⁴⁷ Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3 (1988); Menkel-Meadow, *supra* note 35, at 1520.

¹⁴⁸ Marion Crain, "Where Have All the Cowboys Gone?" *Marriage and Breadwinning in Postindustrial Society*, 60 OHIO ST. L.J. 1877 (1999); Menkel-Meadow, *supra* note 35, at 1528; *see also* Marion Crain, *Confronting the Structural Character of Working Women's Economic Subordination: Collective Action vs. Individual Rights Strategies*, 3 KAN. J.L. & PUB. POL'Y 26 (1993).

¹⁴⁹ Karen Gross, *Re-Vision of the Bankruptcy System: New Images of Individual Debtors*, 88 MICH. L. REV. 1506 (1990); Menkel-Meadow, *supra* note 35, at 1530.

C. Motherhood

Feminist theories have also disagreed over legal protections for motherhood.¹⁵⁰ The Pregnancy Discrimination Act amended Title VII of the Civil Rights Act to treat pregnancy as sex discrimination if male health conditions were covered under employer benefits.¹⁵¹ State laws then gave pregnant women more benefits than general disabilities, causing a disagreement among feminists, as some did not believe pregnant women should be treated differently based on their needs versus other people with disabilities.¹⁵² Some feminist legal theorists argued that this divergence developed into a “gender of two” in which gender difference could be acknowledged and, at minimum, accommodated,¹⁵³ however, others argue that this created binary ways of thinking about gender differences.¹⁵⁴ As Professor Menkel-Meadow states, “[b]inary polarities are reductionist and men and women are seen only in ways in which they can be compared to each other, on both individual and group levels.”¹⁵⁵ Renowned feminist scholar Martha Fineman has lamented the increasingly exclusive direction of feminism, declaring:

There is a need for the development of theoretical language to express women’s experiences so as not to alienate women who live some aspects of traditional lives. Feminists should not trivialize women’s voluntarily shouldering of material or social disadvantages as caretakers, labeling their doing so the product of false consciousness or resulting individual or group pathology.¹⁵⁶

Criticizing feminist legal thought, Fineman argues that second-wave feminism destroyed the unique characteristics and wants of women, particularly those women who become mothers.¹⁵⁷ She argues that when statutory language replaces “mother” and “father” with “parent,” or any other term, it erases “any distinctive or unique aspects of mothering,” which excises natural advantages for women in the realms of adoption and

¹⁵⁰ See the disagreement between Tokarz, *supra* note 39, and Menkel-Meadow, *supra* note 35.

¹⁵⁰ Menkel-Meadow, *supra* note 35, at 1500.

¹⁵¹ Pregnancy Discrimination Act, 42 U.S.C. § 2000e (1978), amending § 107 of Title VII of the Civil Rights Act of 1964.

¹⁵² Menkel-Meadow, *supra* note 35, at 1500.

¹⁵³ Tokarz, *supra* note 39, at 206 (criticizing the maintenance of separate teams as enacting an inequality of experience that could only be justified by the “separate but equal” doctrine of *Plessy v. Ferguson*, 163 U.S. 537 (1986), now rejected for purposes of equality analysis under the Equal Protection Clause). See also Menkel-Meadow, *supra* note 35, at 1499-1500.

¹⁵⁴ Menkel-Meadow, *supra* note 35, at 1500.

¹⁵⁵ *Id.*

¹⁵⁶ MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 53 (1995).

¹⁵⁷ *Id.*

custody.¹⁵⁸ Rather than the natural effect of signaling male and female shared commitment to the care of children, gender neutrality has, in effect, created an environment where “caretaking is devalued and biological and economic connection are deemed of paramount importance.”¹⁵⁹

Scholars are beginning to argue that important aspects of life and family should be a matter of essential education because they are so relevant to life generally.¹⁶⁰ The lack of education on romantic friendships, marriage, and family is likely one of the reasons that contemporary students’ knowledge about what contributes to a successful marriage and family is anemic.¹⁶¹ Martha Fineman argued that neutralizing the language of parenthood was hurting women by ignoring the parenting experiences of women;¹⁶² while Katherine Bartlett argued that gender neutral concepts would allow women to break free of sex stereotypes, as these notions have been playing out in the courtroom for the last several decades.¹⁶³

In the name of liberating women, feminist legal thought “has in fact gradually chewed away at women’s choices,” especially those connected to caretaking and valuing biological connection.¹⁶⁴ Lewis was both prophetic and prescient when he challenged the reshaping of reality.¹⁶⁵ By examining and analyzing the areas of reproduction, fluidity, and motherhood, this section has revealed that the concept of “woman” has moved toward abolition rather than power and strength.

¹⁵⁸ *Id.* at 67-70.

¹⁵⁹ *Id.* at 70.

¹⁶⁰ Perry L. Glanzer, *Marriage as a Required Liberal Art*, CHRISTIAN SCHOLAR’S REV. (May 27, 2022), <https://christianscholars.com/marriage-as-a-required-liberal-art>. See also Perry L. Glanzer, Jonathan P. Hill & Jessica A. Robinson, *Emerging Adults’ Conceptions of Purpose and the Good Life: A Classification and Comparison*, 50 YOUTH & SOC’Y 715 (2015). Other scholars make the very valid point that marriage and family are the building blocks of success. See IAN ROWE, AGENCY: THE FOUR POINT PLAN (F.R.E.E.) FOR ALL CHILDREN TO OVERCOME THE VICTIMHOOD NARRATIVE AND DISCOVER THEIR PATHWAY TO POWER (2022) (setting out marriage and family as part of a plan for children to overcome victimhood).

¹⁶¹ See generally Glanzer, *supra* note 160.

¹⁶² See generally FINEMAN, *supra* note 156; Menkel-Meadow, *supra* note 35, at 1505 (citing MARTHA FINEMAN, THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM (1991)); see also LEVIT, VERCHICK & MINOW, *supra* note 37, at 74.

¹⁶³ Katharine T. Bartlett & Carol B. Stack, *Joint Custody, Feminism and the Dependency Dilemma*, 2 BERKELEY WOMEN’S L.J. 9 (1986).

¹⁶⁴ DePaul, *supra* note 18, at 29.

¹⁶⁵ LEWIS, *supra* note 11, at ch. 1 (challenging ALEC KING & MARTIN KETLEY, THE CONTROL OF LANGUAGE (1930), what Lewis refers to as ‘The Green Book,’ making education “personal, individual”). Philosophers have since called Lewis “prophetic” and “prescient.” See, e.g., ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY (3d ed. 2022).

III. SOLUTION TO THE FEMINIST'S DILEMMA

Martha Fineman discreetly expressed fears for what has been discussed in the previous two sections, apprehensive that feminist sensibilities would become absorbed into or lost in “the morass of legal concepts and words. . . . Feminism, it seems, has not and, perhaps, cannot transform the law. Rather, the law, when it becomes the battleground, threatens to transform feminism.”¹⁶⁶

There is a sense in Fineman’s work that women’s experiences might matter more than theorists realized,¹⁶⁷ that feminism’s alliance with political theories, methods, and ideologies have left women’s concerns behind.¹⁶⁸ Indeed, “[t]he dark side of the sexual revolution is that even though it liberated women—unyoking sex from consequences has primarily benefited men.”¹⁶⁹ While laboring so hard for sexual equality, feminism has not advanced women’s interests, but rather has been utilized by male ascendancy to create a culture of deception¹⁷⁰ that harms women and girls.¹⁷¹

The law has shaped human life as subjectively relative over the past fifty years, creating an entire generation of subjective relativism through the progeny of *Roe* and *Casey*’s subjectivity.¹⁷² Set out explicitly in a key

¹⁶⁶ Fineman, *supra* note 20, at xii (“I, for one, am a legal scholar who has lost faith.”).

¹⁶⁷ Discussing this notion a bit further in her introductory section “Feminist Methodologies,” Martha Fineman is clearly stating the need for a paradigm that cannot, in her view, be “gender-neutral.” See Fineman, *supra* note 20, at 4.

¹⁶⁸ Bridget Phetasy, *I Regret Being a Slut*, BEYOND PARODY WITH BRIDGET PHETASY (Aug. 17, 2022), <https://bridgetphetasy.substack.com/p/slut-regret> (lamenting a feminist culture that has left her “empty and demoralized” as a woman).

¹⁶⁹ *Id.* (explaining the deception she felt):

If I get *really* honest with myself, I’d say most of these usually drunken encounters left me feeling empty and demoralized. And worthless. I wouldn’t have said that at the time, though. At the time, I would have told you I was “liberated” . . . I would have said one-night stands made me feel “emboldened.” But in reality, I was using sex like a drug; trying unsuccessfully to fill a hole inside me with men. (Pun intended.)

Id.

¹⁷⁰ *Id.* That deception is obvious even to those in the midst of the available morass:

The Culture was right there to pick me up and dust me off. I doubled down on being a proud slut and internalized the biggest and most damaging lie: that loveless sex is empowering. I basked in the girl-power glow of that delusion for decades, weaponizing my sexuality while convincing myself I was full of the divine feminine. . . . I told myself that because I could seduce a man, I was powerful. But as [Louise] Perry says in her book, [*The Case Against the Sexual Revolution*,] “[w]omen can all too easily fail to recognize that being desired is not the same thing as being held in high esteem.”

Id.

¹⁷¹ *Id.* (“But maybe it’s the inevitable conclusion to the sexual revolution. Today’s youth are being fed an even more dangerous lie than the one that I was fed about loveless sex. I was told sex doesn’t matter. They’re being told *biology* doesn’t matter.”) (citing PERRY, *THE CASE AGAINST THE SEXUAL REVOLUTION: A NEW GUIDE TO SEX IN THE 21ST CENTURY* (2022)).

¹⁷² *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

passage from *Casey*, Justice Anthony Kennedy penned this phrase: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”¹⁷³ Defining one’s own concept of existence, or relying on those who “define their own values and live according to them,”¹⁷⁴ can result in nihilism that marks moral, theological, and social fragmentation¹⁷⁵ which can hang like a “specter [that is] haunting the world.”¹⁷⁶

This jurisprudence was, however, overruled in June of 2022 in *Dobbs v. Jackson Women’s Health*.¹⁷⁷ *Dobbs*’ legal theory reorders—reimagines if you will—jurisprudence objectively rather than subjectively. “Ordered liberty sets limits and defines the boundary between competing interests.”¹⁷⁸ These two opposing perceptions, one pre-*Dobbs*, and the other from *Dobbs*—one of relativism, the other of order, respectively—sustain one’s view of the world and the type of person one is in it.¹⁷⁹ Human flourishing is found in that ordered liberty.¹⁸⁰ In his essay, *The Weight of Glory*, Lewis posits, “Do you think I am trying to weave a spell? Perhaps I am” and we have need of breaking the great spell.¹⁸¹ Breaking the great spell of relativism with ordered liberty closes the floodgates of subjectivism that were opened by the Supreme Court in the 1970s, leaving realistic thinkers free to reimagine fresh and stronger legal theories of life, equality, and liberty based in objective reality. Replacing subjective relativism with this objectivity is the solution to the feminist’s dilemma. The world has liturgies, or spells, that need to be broken.¹⁸² Legal academics can be called to break these spells with wise

¹⁷³ *Casey*, 505 U.S. at 851. This passage has been termed the “mystery passage” by numerous scholars and has been applied to various scenarios. See, e.g., Michael B. Hickey, *Reading the Mystery Passage Narrowly: A Legal, Ethical and Practical Argument Against Physician Assisted Suicide*, 12 NOTRE DAME J.L. ETHICS & PUB. POL’Y 567 (1998).

¹⁷⁴ PAUL GOULD, *CULTURAL APOLOGETICS: RENEWING THE CHRISTIAN VOICE, CONSCIENCE, AND IMAGINATION IN A DISENCHANTED WORLD* 175 (2019) (quoting MIROSLAV VOLF, *FLOURISHING: WHY WE NEED RELIGION IN A GLOBALIZED WORLD* (2015)).

¹⁷⁵ *Id.* at 174-77 (quoting VOLF, *supra* note 174 and discussing this fragmentation).

¹⁷⁶ *Id.* at 174 (quoting VOLF, *supra* note 174).

¹⁷⁷ *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

¹⁷⁸ *Id.* at 217.

¹⁷⁹ GOULD, *supra* note 174, at 175.

¹⁸⁰ *Id.* at 176 (“Those who see and delight in the world as Jesus does become world celebrators instead of world deniers.”).

¹⁸¹ C.S. Lewis, *The Weight of Glory*, in C.S. LEWIS, *THE WEIGHT OF GLORY AND OTHER ADDRESSES* 31 (Harper Collins 1949) [hereinafter *The Weight of Glory*]. Lewis often discusses these mysteries as “magic,” and announces that “deeper magic still” is available to break this spell. That deeper magic is discussed in his novel “The Chronicles of Narnia: The Lion, the Witch and the Wardrobe,” when Aslan rises to new life in the penultimate chapter. See C.S. LEWIS, *THE CHRONICLES OF NARNIA: THE LION, THE WITCH AND THE WARDROBE* (1978).

¹⁸² *The Weight of Glory*, *supra* note 183. “And you and I have need of the strongest spell that can be found to wake us from the evil enchantment of worldliness which has been laid upon us . . . [.]” *Id.* at 31.

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jurisprudence.¹⁸³ Basic principles of legal history and legal philosophy are helpful here, as the combination of political and intellectual factors helped to produce modern Western legal systems and the development of the concept of law as an autonomous, integrated, developing body of legal principles and procedures.¹⁸⁴ Fully integrating objectivity and reason, direction for sexual equality is possible. Equality can only be re-reimagined by re-starting with objective theologies: female is good. In fact, it is very good.¹⁸⁵

This marked significance—that female is very good—intrinsically carries a human responsibility to recognize and understand objective rationality, and offers an ability to create abstract conceptions from the natural world, affording women and men the opportunity to create a glorious, peaceful world or a fallen chaotic environment, depending upon our motives and understandings.¹⁸⁶ The legal protections in the Fourteenth Amendment arise out of this legal philosophy of the common law, protecting citizens from oppression.¹⁸⁷ This foundation provides a framework in which the mystery of the created human being is bound by reality, and this Article argues that those notions can be translated into legal policy that protects women and girls as unique human beings. The reverse is leading women down a path toward despair. When little girls no longer want to be female, feminist aspiration is unreservedly lost. Rightly applied, these historic philosophical principles hold significant commodity positions on human flourishing with a view of female that is celebratory, divinely reflective, and offering the strongest philosophy of gender and sexuality, preserving, honoring, esteeming, safeguarding, and defending,¹⁸⁸ rather than abolishing, women.

¹⁸³ For example, a Christian perspective on gender equality demands an integrated analysis into all ideology, making it transformative. *A Christian Perspective*, *supra* note 117, at 358-59 (seeking an authentic understanding of gender equality as a societal goal). See also the work of feminist professor Pamela Cochran who asserts that an avenue of that transformation is Christianity. PAMELA D. COCHRAN, *EVANGELICAL FEMINISM: A HISTORY* 190-91 (2005).

¹⁸⁴ HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION*, 85-88, 94-99 (1983).

¹⁸⁵ When humanity was created in God's image in Genesis 1, they were created male and female, *Genesis* 1:27, furthermore, this sixth day creation was the first time in the process of creation that God referred to His creation as "very good." *Genesis* 1:31. *See also* *Genesis* 1:27 ("So God created man in his own image, in the image of God he created him, male and female He created them."). This view is empowered and celebrated in personal faith in Jesus Christ. *See generally* *A Christian Perspective*, *supra* note 117.

¹⁸⁶ *See generally* John Piper, *The Image of God: An Approach from Biblical and Systematic Theology*, *DESIRINGGOD* (Mar. 1, 1971), <https://www.desiringgod.org/articles/the-image-of-god>.

¹⁸⁷ JEFFREY A. BRAUCH, *A HIGHER LAW: READINGS ON THE INFLUENCE OF CHRISTIAN THOUGHT IN ANGLO-AMERICAN LAW* 329 (2d ed. 2008).

¹⁸⁸ *See* Douglas B. Rasmussen, *Human Flourishing and the Appeal to Human Nature*, 16 *SOC. PHIL. & POL'Y* 1 (1999) (generally espousing these principles as part of social policy). *See generally* MACINTRYE, *supra* note 165, at 263 (explaining the nature of contemporary moral disagreement in ethics through relativism and calling postmodernism "the new dark ages").

The subjective ethos of *Casey* and *Roe* can be described as a tidal wave of cultural narratives pummeling away with a saturating desire to express certainty about things we do not know; at the same time it is wildly dismissive and relativistic about things that we actually do know, such as male and female, and sexual thriving, all of which lead to human flourishing.¹⁸⁹ *Dobbs* now moves the gateway to ordered liberty, a refreshed transformative narrative affording a sign post to ontological design.¹⁹⁰ This jurisprudential objectivity protects women.¹⁹¹ The key is that barriers in sexuality can be addressed, and reality can be rescued from relativism by reimagining in jurisprudence a legal philosophy of sexuality based on female being very good.¹⁹² If the goal is to promote the flourishing of women, feminists can win without denying that basic philosophy by integrating that inherent goodness of woman into legal policy.

Arising almost ubiquitously in much of her work, Catharine MacKinnon's foresight of male opportunism within feminist theory is particularly poignant in her review of the 1948 Universal Declaration of Human Rights where she concludes that it "takes a lot of imagination . . . to see a real woman in the Universal Declaration's majestic guarantees of what 'everyone is entitled to,'" ¹⁹³ arguing that sex equality, and sex equality law, uses men and maleness as the standard for analysis.¹⁹⁴ "It is male dominance in law that subordinates women to the legal status of *not-yet-human*."¹⁹⁵ Indeed, "[r]ights advocates of all stripes, when they are not simply ignoring traditional human anthropology, unite in a sort of secular ecumenism to

¹⁸⁹ TRUEMAN, *supra* note 107.

¹⁹⁰ Professor N.T. Wright explains the concept of worldview as having "signposts"—categories inherent to humanity by which we measure everything else, such as justice, beauty, power, truth, etc. *See generally* N.T. WRIGHT, *BROKEN SIGNPOSTS: HOW CHRISTIANITY MAKES SENSE OF THE WORLD* (2020). This Article asserts that ordered liberty may be such a signpost.

¹⁹¹ This jurisprudence protects women by allowing states to regulate providers of women's health to protect the health of women as a state can now do under *Dobbs*. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

¹⁹² When humanity was created in God's image in Genesis 1, they were created male and female. *Genesis* 1:27. Furthermore, this sixth day creation was the first time in the process of creation that God referred to His creation as "very good." *Genesis* 1:31. *See also Genesis* 1:27 ("So God created man in his own image, in the image of God he created him, male and female He created them."). This view is empowered and celebrated in personal faith in Jesus Christ. *See generally A Christian Perspective, supra* note 117.

¹⁹³ Catharine MacKinnon, *Are Women Human?*, in *ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES* 42 (2006). Her perspective on international law argued that if women were recognized, understood as human, they would not be violated and mistreated as they are. *See Karima Bennoune, Why Does it Matter if Women are Human: Catharine MacKinnon's Contributions to International Law*, 47 *TULSA L. REV.* 107, 111-12 (2013) (arguing that much of the women's rights movement tends not to speak about what Woman is).

¹⁹⁴ *See* CATHARINE A. MCKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 32-34 (1988).

¹⁹⁵ Andrew R. DeLoach, *Law's Image of Woman*, 11 *J. CHRISTIAN LEGAL THOUGHT* 1, 1 (2021).

undermine or overthrow it[.] . . . [T]oday’s anthropological revisionists eschew the ‘material reality of female embodiment’[.]”¹⁹⁶ As one judge points out, “The opposite of objective truth is poisonous subjectivism. And, as C.S. Lewis warned long ago, starting down that slippery slope must soon lead to the abolition of man.”¹⁹⁷ The abolition of woman likewise occurs with retrograde views of women imposed to deconstruct differences between men and women, arguing those differences are nothing but oppressive norms.¹⁹⁸

A proper focus in feminist jurisprudence on woman as a human good might begin with scholar Robin West when she clarifies that feminists take women’s humanity seriously, but the law does not.¹⁹⁹ West recognizes that if a false conception of our nature is embraced, the law might “only incidentally [] benefit real instead of hypothetical women.”²⁰⁰ Therefore, “‘the metaphysical revolt’ of [] modern feminism [] has become ‘blind to the supernatural’ and, consequently, gives law no image of Woman recognizable as truly human.”²⁰¹ Feminist jurisprudence can be used to change that, rather than using language of reproductive freedom to limit women, fluidity to eliminate women, and newspeak about motherhood to replace women.

CONCLUSION

The bad news is that legal policy protecting women and girls is in decline. The good news is that that can be altered toward human flourishing with a renewed focus on the objective view that woman is a human good. While “Man’s conquest of Nature turns out, in the moment of its consummation, to be Nature’s conquest of Man,”²⁰² women do not have to follow this pattern and bring about the conquest of woman. Using feminist

¹⁹⁶ *Id.* at 1. DeLoach argues for a shift in focus from Woman as object to Woman as subject (citing Abigail Favale, *Feminism’s Last Battle*, PUB. DISCOURSE (July 17, 2021), <https://www.thepublicdiscourse.com/2021/07/76717>).

¹⁹⁷ Janice Rogers Brown, May 2022 Policy Counsel Speeches (May 18, 2022) (available at: <https://cfnp.org/policy-counsel/may-2022>). “[T]he poison of subjectivism dictates that protest is the distinctive moral feature of the modern anger” and “indignation the predominant modern emotion.” *Id.* (quoting James Panero, *Going Under with the Overclass*, 42 NEW CRITERION (2022) (discussing Christopher Lasch)).

¹⁹⁸ Judge Brown calls this phenomenon “a tyranny of those at the top of the social hierarchy, a self-interested, narcissistic minority committed to ‘warping . . . not just state power but all human institutions to serve private interests at public expense.’” *Id.*

¹⁹⁹ Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 3-4 (1988) (arguing that the application of law is “masculine jurisprudence”).

²⁰⁰ Robin West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN’S L.J. 149, 211 (2000).

²⁰¹ DeLoach, *supra* note 197, at 8 (citing ALICE VON HILDEBRAND, *THE PRIVILEGE OF BEING A WOMAN* 65 (2002)). *See also* Mary Rice Hasson, *Erasing Females in Language and Law*, 11 J. CHRISTIAN LEGAL THOUGHT 44 (2021).

²⁰² LEWIS, *supra* note 11, at 43.

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jurisprudence, women (and ascribing men) do not need to continue to annihilate womanhood by making reproduction, sex, and motherhood the villains. Active use of feminist legal theory and social constructs have harmed women rather than foster equality, but reassertion of objective legal policy can reverse that outcome.

This Article has traced recent jurisprudence to discuss whether metamodern feminist theories have worked to advance women and equality, or whether what has resulted may be that “woman” ceases to have value, even and essentially resulting in the abolition of woman. It traced the notion set out in *The Abolition of Man*, where Lewis examined the recognition of value as objective, rather than controlled by the subjective judgments of a few.²⁰³ Feminist jurisprudence does not have to follow the trail of subjectivism. Rather, embracing objective reality could yield a clue to restoring human flourishing for women.²⁰⁴ Woman’s final conquest of law, in the moment, does not have to be the abolition of woman.

²⁰³ See generally Lewis, *supra* note 11.

²⁰⁴ Lewis, *supra* note 11, at 53 (referring to the *Tao*).