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# Three Steps Forward, Two Back: Shuffling of Women from 1920 Suffragists to 2019 as the “Year of Men.”

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## I. INTRODUCTION

Much to our dismay, American women are as entrenched and surrounded by patriarchy as are women in other societies worldwide. Demeaning women’s truths, identities, and rationality is evident throughout American history: from suffragists and abolitionists, to the Anita Hill saga with Clarence Thomas’ appointment on the Supreme Court, to Christine Blasey Ford with Brett Kavanaugh-like supporters negating her sound-mindedness as she identified him as the perpetrator, to President Trump screaming, “Grab ‘em by the pussy!,”<sup>1</sup> or to Southern States calling for Taliban-style imprisonment for miscarriages.<sup>2</sup> Even with changing modern feminist theory, female voices remain unheard and suppressed. As Eve Ensler from *One Billion Rising* states, “Three billion women have vaginas, so that’s a lot of women.”<sup>3</sup> Also, important to note is “[n]ot every woman has a vagina, or wants to be defined by [her] vagina.”<sup>4</sup>

With the existence of so many women, it is a natural progression for women to speak up on their travails and raise their experiences in the conversation. The 1990s were strewn by *Vagina Monologues* where “women performers recite[d] vulva-centric stories about childbirth and pap smears and masturbation and sexual assault.”<sup>5</sup> The #MeToo Movement was an outgrowth of women’s voices being muffled and hushed. In 2017, *TIME* named,

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<sup>1</sup> *Transcript: Donald Trump’s Taped Comments About Women*, N.Y. TIMES (Oct. 8, 2016), <http://www.nytimes.com/2016/10/08/us/donald-trump-tape-transcript.html> [<http://perma.cc/K9MU-v427>].

<sup>2</sup> See generally Grace Panetta, *Women could get up to 30 years in prison for having a miscarriage under Georgia’s harsh new abortion law*, BUS. INSIDER (May 10, 2019, 9:02 AM), <http://www.businessinsider.com/women-30-years-prison-miscarriage-georgia-abortion-2019-5> [<http://perma.cc/SU4Y-96U6>].

<sup>3</sup> Katherine Gillespie, *Do We Still Need ‘The Vagina Monologues’?*, VICE (Oct. 2, 2017, 7:07 PM), [http://www.vice.com/en\\_nz/article/j5gk8p/is-the-vagina-monologues-still-woke](http://www.vice.com/en_nz/article/j5gk8p/is-the-vagina-monologues-still-woke) [<http://perma.cc/T77X-FVXC>].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

as Person of the Year, “The Silence Breakers”—those who shared stories of their sexual assault and harassment.<sup>6</sup>

Even with increased dialogue surrounding rights of women, an overlay of dialogue emphasizing patriarchy exists in America. “Patriarchy says to American women—‘I can protect you from annihilation. I alone can protect you.’ (Sound familiar? It should.) ‘All that you have to [do] is submit to me, and realize that every time I hurt you, it’s for your own good.’”<sup>7</sup> Patriarchal rhetoric is alive and thriving in American culture, society, and politics.

Despite momentous, global progress in women’s rights, some critics claim 2019 as the “Year of Men.”<sup>8</sup> The question then becomes: have we taken two steps back from the three steps forward? Are we, as women, shuffling back and forth, in ebbs and flows, with no end in sight? Have we truly progressed on paper, in theory, or are there practical ramifications of women’s suffrage and the #MeToo Movement? What next? Do women need a male figure to guide them through life when walking on a dark street or while being in a male-dominated environment? Will tables turn if women are provided power rivaling that of men?

First, this Article introduces the present state of women’s rights in light of the #MeToo Movement and 2019 being the “Year of Men,” in order to demonstrate how change happens at an uneven pace.

Second, this Article provides a synopsis of women’s rights from the suffragists and the abolitionist era, to the modern-day digital movement; more anonymous and where more is often at stake. Are women braver, or more cowardly—hiding behind a digital screen to name men who have harassed them? Are female superiors more apt and sensitive in listening to women and prioritizing their needs? What qualities do we imbibe in our institutions and societies to better accommodate our women, our sisters, and our daughters? How do we unshackle women from patriarchy rampant in our societies?

The subsequent section analyzes women’s rights through different domains—church, military, prison, immigration, homelessness, ruralism, disability, and abortion. In each domain,

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<sup>6</sup> See Stephanie Zacharek et al., *Person of the Year 2017: The Silence Breakers*, TIME, <http://time.com/time-person-of-the-year-2017-silence-breakers/> [<http://perma.cc/ES69-X6TW>] (last visited Feb. 19, 2020).

<sup>7</sup> Umair Haque, *Why Do (So Many) American Women Still Support Patriarchy?*, EUDAIMONIA & CO. (May 16, 2019), <http://eand.co/why-do-enough-american-women-still-support-patriarchy-53767f2d7a4> [<http://perma.cc/URT9-LSNY>].

<sup>8</sup> Ephrat Livni, *There’s a problem at the heart of #MeToo—here’s how to solve it*, QUARTZ (Oct. 14, 2018), <http://qz.com/1422215/metoo-backlash-will-2019-be-the-year-of-men/> [<http://perma.cc/6H9F-PFA6>].

a common theme is found to be the abuse of women—in which women cope, try to cope, or are told how they should cope, with physical, mental, emotional, and sexual abuse. Women’s spiraling, vicious cycles of entrapment, leading them to worse plights than they were once in, are evident.

The final section of this Article refocuses on the progress propelled by the #MeToo Movement, and strides we as a society have to make, to move forward three steps, instead of two steps back. Women’s shuffle for rights has to turn into a movement forward.

## II. 2019 AS THE “YEAR OF MEN”

Change happens—unevenly.

In 1991, Clarence Thomas was confirmed to the Supreme Court despite testimony from lawyer Anita Hill, who accused Thomas of sexual harassment before an all-male Senate Judiciary Committee. The [following] year, in 1992, more women ran for political office and were elected to the Senate than ever before. [This was] dubbed The Year of the Woman.<sup>9</sup>

The year 2019 has been labeled, “Year of Men,” based on the re-emergence of accused men in cultural conversations: from Louis CK masturbating in the presence of women comics, to Aziz Ansari with creepy behavioral issues.<sup>10</sup> In 2019, all such men were back in the limelight with a woe-is-me attitude. Most shocking is Brett Kavanaugh being sworn in as the 114th Justice of the United States Supreme Court, even upon the Senate Judiciary Committee’s hearing on sexual assault allegations against the nominee.<sup>11</sup> Journalist Connie Chung’s write up encompasses the struggle women face amidst the upheaval of the #MeToo Movement and other women’s rights movements. While she revealed she was molested by her family doctor in college, Connie writes, “Will ‘She Too’ be etched on my tombstone instead? I don’t *want* to tell the truth. I *must* tell the truth.”<sup>12</sup> Most women, such as Connie, feel an obligation, *an impasse burden*, to tell the truth.

In the same vein, “none of the men who appear on the Shitty Media Men List, even those who were accused of multiple counts

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Amy Howe, *Kavanaugh confirmed as 114th justice (Updated)*, SCOTUSBLOG (Oct. 6, 2018, 4:10 PM), <http://www.scotusblog.com/2018/10/kavanaugh-confirmed-as-114th-justice/> [<http://perma.cc/F4SP-8Z6L>].

<sup>12</sup> Connie Chung, *Dear Christine Blasey Ford: I, too, was sexually assaulted—and it’s seared into my memory forever*, WASH. POST (Oct. 3, 2018, 9:47 AM), [http://www.washingtonpost.com/opinions/dear-christine-blasey-ford-i-too-was-sexually-assaulted-and-its-seared-into-my-memory-forever/2018/10/03/2449ed3c-c68a-11e8-9b1c-a90f1daae309\\_story.html](http://www.washingtonpost.com/opinions/dear-christine-blasey-ford-i-too-was-sexually-assaulted-and-its-seared-into-my-memory-forever/2018/10/03/2449ed3c-c68a-11e8-9b1c-a90f1daae309_story.html) [<http://perma.cc/2LHJ-LBUE>].

of rape, have faced criminal charges.”<sup>13</sup> The Shitty Men Media List, a crowdsourced Google spreadsheet, collected allegations and rumors of sexual misconduct against approximately seventy men in the media industry.<sup>14</sup> As an anonymous online spreadsheet, the List was a supplement to existing whisper networks on allegations of sexual harassment and violence in the media industry.<sup>15</sup> Active for twelve hours, the list swiftly went viral within media circles.<sup>16</sup> Reputations of those men, however, preceded them.<sup>17</sup> Thus, even with industry-wide common knowledge, women are yet to see tangible, real, long-lasting impacts of their actions and speech.

What brought the #MeToo Movement to the forefront of American life was sexual misconduct and rape allegations against Harvey Weinstein.<sup>18</sup> In 2006, #MeToo Founder “Tarana Burke, veteran organizer, activist and movement builder,” started her work to help “survivors of sexual violence, particularly Black women and girls, find ways to heal.”<sup>19</sup>

Although Burke appreciates that in 2018 there existed an amazing, global #MeToo platform to talk about sexual violence, to deal with sexual violence, and to galvanize survivors, she wishes the conversation around the movement was different and that our culture was different.<sup>20</sup> Burke wants the #MeToo Movement to focus on those who have labored to step forward and voice “MeToo.”<sup>21</sup> Instead, she sees some in our culture perceiving the Movement as taking men down, which is not what is happening, nor was it her intention.

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<sup>13</sup> Constance Grady, *The “Shitty Media Men” list, explained*, VOX (Jan. 11, 2018, 3:00 PM), <http://www.vox.com/culture/2018/1/11/16877966/shitty-media-men-list-explained> [<http://perma.cc/2MF4-KGKK>].

<sup>14</sup> Moira Donegan, *I Started the Media Men List: My Name is Moira Donegan*, CUT (Jan. 10, 2018), <http://www.thecut.com/2018/01/moira-donegan-i-started-the-media-men-list.html> [<http://perma.cc/3JYU-QMWY>].

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See id.*

<sup>18</sup> *See* Tom Hays & Michael R. Sisak, *Weinstein rape trial opens, marking milestone for #MeToo*, AP NEWS (Jan. 22, 2020), <http://apnews.com/2d1427a79ef085495b63a45b5f8fb6a7> [<http://perma.cc/D35A-CY9L>].

<sup>19</sup> *“Me Too Movement” turns 2*, SUNDANCE (Oct. 18, 2019), <http://v103.heart.com/content/2019-10-18-me-too-movement-turns-2/> [<http://perma.cc/2QFY-7FBG>].

<sup>20</sup> *See History & Vision*, ME TOO, <http://metoomvmt.org/about/> [<http://perma.cc/EL2J-VRNK>] (last visited Feb. 19, 2020); Courtney Connley, *#MeToo founder Tarana Burke has a new hashtag to encourage presidential candidates to address sexual violence*, CNBC (Oct. 22, 2019, 10:15 AM), <http://www.cnb.com/2019/10/22/metoo-founder-tarana-burkes-new-hashtag-for-presidential-candidates.html> [<http://perma.cc/6L3G-D7YK>].

<sup>21</sup> *See* Connley, *supra* note 20.

As Burke stated, we must listen to untold stories of minority women.<sup>22</sup> Minority women who have spoken up and shared their stories, even prior to the #MeToo Movement, must be lauded. In her acceptance speech of the Cecil B. DeMille Award for lifetime achievement at the Golden Globes, Oprah Winfrey mentioned being “inspired by all the women who have felt strong enough and empowered enough to speak up and share their personal stories. . . . But it’s not just a story affecting the entertainment industry. It’s one that transcends any culture, geography, race, religion, politics or workplace.”<sup>23</sup>

The #MeToo Movement and the “Year of Men” only represent the most recent efforts to grapple with women’s rights. The women’s rights movement has a long and complex history.

### III. WOMEN’S RIGHTS MOVEMENT: A HISTORICAL REVIEW

According to *Women and the Constitution*, the United States Constitution was ordained and established by men in the 1780s.<sup>24</sup> “[W]omen did not participate in the conventions that framed and ratified the Constitution. Women did not vote for convention delegates. And women—as women—did not publicly participate in constitutional debates in the press, in pamphlets, and so on.”<sup>25</sup>

The year 1848 marked the women’s suffragist movement, or woman suffrage;<sup>26</sup> the struggle of women to vote and run for office. The Seneca Falls convention in New York was the launchpad for the women’s rights movement.<sup>27</sup> Lack of governmental action pushed a segment of woman suffragists to become more militant.<sup>28</sup> Thus, prominent female activists demanded more. For example, Mary Wollstonecraft declared “war against the patriarchy . . . nothing less than ‘a revolution in female manners.’”<sup>29</sup> This was in no way comparable to dinner etiquette, but “rather sought to overthrow the system of

<sup>22</sup> ‘Our Pain is Never Prioritized.’ #MeToo Founder Tarana Burke Says We Must Listen to ‘Untold’ Stories of Minority Women, TIME (Apr. 23, 2019), <http://time.com/5574163/tarana-burke-metoo-time-100-summit/> [<http://perma.cc/372Z-TFJC>].

<sup>23</sup> Giovanni Russonello, *Read Oprah Winfrey’s Golden Globes Speech*, N.Y. TIMES (Jan. 7, 2018), <http://www.nytimes.com/2018/01/07/movies/oprah-winfrey-golden-globes-speech-transcript.html> [<http://perma.cc/EG34-UYRV>].

<sup>24</sup> Akhil Reed Amar, *Women and the Constitution*, 18 HARV. J.L. & PUB. POL’Y 465, 465 (1994).

<sup>25</sup> *Id.*

<sup>26</sup> *Seneca Falls Convention*, HISTORY (Nov. 20, 2019), <http://www.history.com/topics/womens-rights/seneca-falls-convention> [<http://perma.cc/H6BX-33KX>].

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Mary Wollstonecraft’s A Vindication of the Rights of Woman (1792)*, ORDINARY PHILOSOPHY (July 26, 2018), <http://ordinaryphilosophy.com/2018/07/26/mary-wollstonecrafts-a-vindication-of-the-rights-of-woman-1792-annotated-and-introduced-by-eileen-hunt-botting/> [<http://perma.cc/EX3K-PYDA>].

socialisation that made men and women prisoners of each other's tyranny . . . ."<sup>30</sup> In print, "[s]he targeted literary and intellectual giants—John Milton, Jean-Jacques Rousseau, Edmund Burke—for propagating absurd and pernicious ideas about the innate inferiority and natural subordination of women to men."<sup>31</sup>

The struggle for growing women's rights also extended into the literary realm. In abolitionist literature, slave women and girls iterated graphic accounts of their lives as enslaved women.<sup>32</sup>

The 1856 Republican platform defines slavery and polygamy as "twin relics of barbarism." . . . Slave women were breeders against their will as women. They were forced to be wet nurses as women, and sexual playthings as women. . . . Slave masters intimately associated with slave women. They were the fathers of slave women. They were the (half) brothers of slave women. They were the sexual partners of slave women. And sometimes they were more than one of these things at the same time. They were having sex with their daughters and their (half) sisters.

Discourse on these matters featured women, speaking and writing publicly as women—the Grimke sisters' and Harriet Martineau's public lectures against slavery, Harriet Beecher Stowe's *Uncle Tom's Cabin*. . . . In a famous speech, Senator Charles Sumner makes a very similar argument, and he's caned on the floor of the Senate for suggesting that slave masters are sleeping with their slave women . . . .<sup>33</sup>

The cruelty exposed through the telling of these women's narratives shed light on the plight of enslaved women during this time. "[B]lack women refugees suffered tragic losses that would have long-term economic, political, social, and psychological consequences. . . . Black women in refugee camps fought mightily against ideas that rendered them undeserving claimants to the nation's attention or freedom and citizenship."<sup>34</sup> The abolitionist literature provided insight into the plight of enslaved women, highlighting the situation of not only white women, but women of color as well.

During Reconstruction, women became "agents and the subjects of the Thirteenth Amendment."<sup>35</sup> Agents, "because women publicly mobilized for the Abolitionist movement."<sup>36</sup> Subjects, "because half of the people who were emancipated were

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Amar, *supra* note 24, at 466.

<sup>33</sup> *Id.* at 466–67.

<sup>34</sup> Thavolia Glymph, "Invisible Disabilities": *Black Women in War and in Freedom*, 160 *PROC. AM. PHIL. SOC'Y* 237, 241 (Sept. 2016).

<sup>35</sup> Amar, *supra* note 24, at 467.

<sup>36</sup> *Id.*



female.”<sup>37</sup> Then, the Fourteenth Amendment—the lynchpin of civil rights—examined “*privileges and immunities*’ of all citizens,” native-born men and women, “and ‘*equal protection*’ of all persons”; yet designed and defined by the status of “unmarried white women.”<sup>38</sup> In effect, it was stating that “America would let [African Americans]—black men and black women—have the rights that unmarried white women” were entitled to for long enough.<sup>39</sup> Lastly, the United States Constitution, with the Nineteenth Amendment, restored “symmetry between race and gender . . . [upon] years of hard labor of a women’s rights crusade . . . about women’s equality.”<sup>40</sup>

The history of women’s rights, particularly of women of color, is a complex and intricate history. (Her) story did not stop with the passage of the Thirteenth and Fourteenth Amendments. It carries on through the present and is seen in various aspects of our society.

The following section discusses different domains for women—church, military, prison, immigration, homelessness, ruralism, disability, and abortion—which have seen the battles and abuses of women and their struggles until this day.

#### IV. DIFFERENT DOMAINS FOR WOMEN’S ABUSE AND RIGHTS

##### A. Church

“In February 2019, Pope Francis spoke out against what he described as the ‘sexual slavery’ that nuns all-too-frequently suffered at the hands of Catholic priests.”<sup>41</sup> This is not a nascent phenomenon, however:

Writing in the early 16th century, the Dutch scholar Erasmus already lamented that the faithful “often fall into the hands of priests who, under the pretense of confession, commit acts which are not fit to be mentioned.” . . . [I]n Spain in 1558, . . . a female penitent of Granada disclosed to a Jesuit that her confessor was harassing her. . . . For a woman to denounce the offending priest carried serious risks for her honor and even her life. . . . Jesuit superiors and Pedro Guerrero, archbishop of Granada, decided . . . another confessor could report the case on the woman’s behalf . . . [which] was strongly contested by

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 467–68 (emphasis added).

<sup>39</sup> *Id.* at 468–69.

<sup>40</sup> *Id.* at 471.

<sup>41</sup> Wietse De Boer, *The Catholic Church and Sexual Abuse, Then and Now*, 12 ORIGINS (Mar. 2019), <http://origins.osu.edu/article/catholic-church-sexual-abuse-pope-confession-priests-nuns> [<http://perma.cc/XGM8-WGKE>].

members of other religious orders, who objected to the inevitable breach of the secrecy of confession.<sup>42</sup>

“The suspicion that all too often priests abused or seduced their flock—usually young women—was common in the late Middle Ages. When the Reformation erupted, it became fodder for Protestant critics of the Catholic Church.”<sup>43</sup> The abuse and suppression of women within the domain of the church is not necessarily a thing of the past. The impacts on women in the religious realm can take on more indirect forms as well.

Do religious, “good” women take more shit? A study published in 2002 used:

[A] South Carolina sample to describe the perceptions of 199 parishioners and 57 battered women attitudes toward whether church teaching contributes to domestic violence, whether women should be submissive toward their husbands, and formal services offered by churches. Different perceptions emerged. More battered women believed church teaching contributed to domestic violence. Neither group believed that women should be submissive toward their spouse.<sup>44</sup>

Factors were the “loss of innocence, a period of self-blame, the loss of religious faith, immense pressure to maintain silence, recognition of the imbalance of power, and healing through outside help.”<sup>45</sup> Some church teachings result in ripple effects on women’s plights external to physical religious boundaries.

Sexual abuse and church power deem women’s silence to be a sign of submission. A campus life administrator warned students at Divine Child High School in Dearborn, Michigan, during a presentation on dealing with sexual harassment and rape, that “if you dress provocative[ly] . . . and leave absolutely nothing to the imagination younger girls look and go, ‘Oh, my gosh. She’s got plenty of boys around her.’”<sup>46</sup> Additionally, the administrator stated such clothing was contributing to the boys’ and mens’ bad behavior and that all the blame is on the girls.<sup>47</sup> The administrator added, “Those younger guys go, ‘Oh. That’s how you talk about women. That’s how you look at women as an object, something to be dissected.’”<sup>48</sup> Another example is a

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Ameda A. Manetta et al., *The Church—Does it Provide Support for Abused Women? Differences in the Perceptions of Battered Women and Parishioners*, 5 J. RELIGION & ABUSE 5, 5 (2003).

<sup>45</sup> See generally Katherine Van Wormer & Lois Berns, *The Impact of Priest Sexual Abuse: Female Survivors’ Narratives*, 19 AFFILIA 53 (2004).

<sup>46</sup> Zeinab Najm, *Female DC students protest sexual harassment lesson*, DOWNRIVER SUNDAY TIMES (June 14, 2019), <http://www.downriversundaytimes.com/2019/06/14/female-dc-students-protest-sexual-harassment-lesson/> [<http://perma.cc/TZT5-5KYS>].

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

statement made by Mike Shoemsmith, a pastor, who said, “Men are visually stimulated and unwanted stimulation should meet the basic definition of assault.”<sup>49</sup> Shoemsmith was “asserting that women who dress in a suggestive manner are ‘guilty of indecent visual assault on a man’s imagination, which does cause mental anguish and torment.’”<sup>50</sup> These perspectives and implications about what values women should adhere to end up impacting women at a young age and sticking with them as they grow.

In addition to abuse and violence, modern day churches ratify latent attitudes of female inferiority within them; reflected in church priesthood rankings and female promotions. While roughly six in ten American Catholics (59%), in a 2015 Pew Research Center survey, said they support ordaining women in their church,<sup>51</sup> 87% of Mormons (including 90% of Mormon women) in a 2011 Pew Research Center survey said they do not support allowing women to enter the LDS priesthood.<sup>52</sup> In a succeeding Mormon survey, in 2016, a study showed younger Mormons far more likely to be troubled by women’s roles in the LDS Church.<sup>53</sup>

Male leaders often act as spiritual coverings for women. For example, “preserving a de facto ‘male headship,’ . . . a female leader would be required to be in an accountable relationship with a male, perhaps her husband or a more senior minister . . . .”<sup>54</sup> Some church boards do not authorize women to exercise formal senior leadership roles but will allow them to exercise other roles.<sup>55</sup>

Again, not a novel phenomenon: within Christianity, the New Testament has been cited in order to deny women the right

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<sup>49</sup> Kyle Mantyla, *Trump-Allied Pastor Carl Gallups Says Women Are Sexually Assaulting Men By Dressing Provocatively*, RIGHT WING WATCH (Oct. 23, 2017, 1:58 PM), <http://www.rightwingwatch.org/post/trump-allied-pastor-carl-gallups-says-women-are-sexually-assaulting-men-by-dressing-provocatively/> [<http://perma.cc/93M3-MXQN>].

<sup>50</sup> *Id.*

<sup>51</sup> See PEW RESEARCH CTR., U.S. CATHOLICS OPEN TO NON-TRADITIONAL FAMILIES 73 (Michael Lipka et al. eds., 2015), <http://www.pewresearch.org/wp-content/uploads/sites/7/2015/09/Catholics-and-Family-Life-09-01-2015.pdf> [<http://perma.cc/KD4D-Q926>].

<sup>52</sup> *Id.*; see also Aleksandra Sandstrom, *Women relatively rare in top positions of religious leadership*, PEW RESEARCH CTR. (Mar. 2, 2016), <http://www.pewresearch.org/fact-tank/2016/03/02/women-relatively-rare-in-top-positions-of-religious-leadership/> [<http://perma.cc/2L7E-GYU3>].

<sup>53</sup> See Jana Riess, *Younger Mormons far more likely to be troubled by women’s roles in the LDS Church, study shows*, RELIGION NEWS (Nov. 26, 2018), <http://religionnews.com/2018/11/26/younger-mormons-far-more-likely-to-be-troubled-by-womens-roles-in-the-lds-church-study-shows/> [<http://perma.cc/WRG4-XK48>].

<sup>54</sup> Tanya Riches & Mark Jennings, *Explainer: why some churches teach that women are ‘separate but equal’*, CONVERSATION (Dec. 21, 2016, 2:01 PM), <http://theconversation.com/explainer-why-some-churches-teach-that-women-are-separate-but-equal-64305> [<http://perma.cc/9YKT-ZKTR>].

<sup>55</sup> *Id.*

to be priests and pastors for much of its history. One of these is found in 1 Timothy 2:12: “I do not permit a woman to teach or to assume authority over a man; she must be quiet.”<sup>56</sup> A different text offers evidence that women should not be in leadership roles in churches and is found in 1 Corinthians 14:34–35:

Women are to be silent in the churches. They are not permitted to speak, but must be in submission, as the Law says. If they wish to inquire about something, they are to ask their own husbands at home; for it is dishonorable for a woman to speak in the church.<sup>57</sup>

Restoring a sense of manliness to men in the church, through “The *Emangelization*,” Cardinal Raymond Burke delivered a whopper of a manifesto in an interview.<sup>58</sup> Burke offered a lengthy meditation on what he perceived to be the problem with the modern church, beginning with the advent of the women’s rights movement during the 1960s for female participation in the Catholic Church.<sup>59</sup> Deriding it as “radical feminism,” the “‘goodness and importance of men became very obscured,’ which gave rise to a ‘very feminized’ Church.”<sup>60</sup> He also discusses a period of time “when men who were feminized and confused about their own sexual identity had entered the priesthood; sadly some of these disordered men sexually abused minors; a terrible tragedy for which the Church mourns.”<sup>61</sup> “[H]e also appears rankled by ordinary women doing ordinary Church activities,” which, according to him, “constitutes the dangerous feminization of the Church that has alienated, disenchanting and made men sexually confused.”<sup>62</sup> Manly discipline was his basis for boys to choose being altar boys.<sup>63</sup> Girl servers made young men uncomfortable and unwilling to do things with girls.<sup>64</sup> He also, ironically, stated how girls excelled at altar service and how boys drifted away over time.<sup>65</sup> This interview demonstrates some of the pre-existing perceptions and expectations regarding girls and young women.

<sup>56</sup> 1 *Timothy* 2:12.

<sup>57</sup> 1 *Corinthians* 14:34–35.

<sup>58</sup> See *The New Emangelization Project*, NEW EMANGELIZATION, <http://www.newemangelization.com/the-new-emangelization-project-2/> [<http://perma.cc/UJ9D-SR6T>] (last visited Dec. 11, 2019).

<sup>59</sup> Terrence McCoy, *Former highest-ranking U.S. cardinal blames ‘feminization’ for the Catholic Church’s problems*, WASH. POST (Jan. 13, 2015, 2:46 AM), <http://www.washingtonpost.com/news/morning-mix/wp/2015/01/13/former-highest-ranking-u-s-cardinal-blames-feminized-church-for-the-catholic-churchs-problems> [<http://perma.cc/W2PC-6DR4>].

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

Last, the idea of complementarianism, of separate but equal, i.e., men and women play different, yet “complementary roles in life, society and . . . religious practice.”<sup>66</sup> They “are equal in personhood, [yet] they are created for different roles.”<sup>67</sup> Although seemingly benign facially, the notion of complementarianism has shackling effects on women’s progress and their roles in church and society. For instance, while women may assist in the church’s decision-making processes, the extreme authority lies within the purview of the man in marriage, courtship, and in the polity of churches.<sup>68</sup> The notion also precludes women from a predefined set of roles and functions within the church ministry and society.<sup>69</sup> Therefore, on the whole, churches, though imparting wisdom and age-old teachings, are rampant with the same archaic notions of the fifteenth and sixteenth century of abuse and patriarchy, which prevented women from rising up in the ranks and progressing in their church-ordained roles.

## B. Military

On paper, the military has made tremendous progress.<sup>70</sup> The United States Department of Defense (“DOD”) “announced new policies that will open more than 14,000 military job opportunities to women . . . [but] 200,000 positions will still remain exclusive to men, from front-line infantry positions to high-level special operations roles.”<sup>71</sup> The DOD is the nation’s largest employer.<sup>72</sup> With 3.2 million employees and 1.4 million

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<sup>66</sup> Riches & Jennings, *supra* note 54.

<sup>67</sup> Alyssa Roat, *What are Complementarianism and Egalitarianism? What’s the Difference?*, CHRISTIANITY.COM, <http://www.christianity.com/wiki/christian-terms/what-are-complementarianism-and-egalitarianism-what-s-the-difference.html> [<http://perma.cc/M6Mw-YEPQ>] (last visited Feb. 19, 2020).

<sup>68</sup> *See id.*

<sup>69</sup> *See id.*

<sup>70</sup> *See* Major Shelly S. McNulty, *Myth Busted: Women are Serving in Ground Combat Positions*, 68 A.F. L. REV. 119, 150 (2012). The DOD and the Services should eliminate the combat exclusion policies for women, including the removal of barriers and inconsistencies, to create a level playing field for all qualified service members. The Commission recommends a time-phased approach: (1) women in career fields/specialties currently open to them should be immediately able to be assigned to any unit that requires that career field/specialty, consistent with current operational environment; (2) DOD and the Services should take deliberate steps in a phased approach to open additional career fields and units involved in “direct ground combat” to qualified women; and (3) DOD and the Services should report to Congress the process and timeline for removing barriers that inhibit women from achieving senior leadership positions. Jennifer L. Barry, *A Few Good (Wo)men: Gender Inclusion in the United States Military*, COLUM. SIPA (Nov. 19, 2013), <http://jia.sipa.columbia.edu/online-articles/few-good-women-gender-inclusion-united-states-military> [<http://perma.cc/YQ88-SGMW>].

<sup>71</sup> Dani Moritz, *Women in the Military: Why Can’t We Serve on the Front Lines?*, MUSE, <http://www.themuse.com/advice/women-in-the-military-why-cant-we-serve-on-the-front-lines> [<http://perma.cc/2RX8-JTES>] (last visited Feb. 19, 2020).

<sup>72</sup> Barry, *supra* note 70.

active-duty service members, a mere 14.5% are women.<sup>73</sup> DOD rules and regulations prevented women over the years from being assigned to units below brigade level (those engaging in ground combat).<sup>74</sup> Women were, thus, barred from serving in infantry, artillery, armor, combat engineers, and special operations units of battalion size or smaller.<sup>75</sup>

Harries Jenkins envisions:

[A] four-stage, sequential policy change: from [a complete] exclusion of women from all or most military occupational specialties through partial exclusion and qualified inclusion to full inclusion. Women have generally been relegated to support roles, the ground combat-arms occupations having been the most resistant to the inclusion of women. . . . Stage 4 employment in the core operational military specialties of the direct fighting arms as a prerequisite for advancement to more senior positions at both the commissioned and non-commissioned officer levels . . . has been a limiting factor for women in uniform.<sup>76</sup>

Historically within the U.S. military, women served alongside their husbands or disguised as men. In 1775 and 1783, women followed their husbands, through necessity, as laundresses, cooks, and nurses.<sup>77</sup> Over time, their positions evolved to clerking and supply, and then to espionage assignments.<sup>78</sup> World War II formalized female involvement through Women's Auxiliary Army Corps in 1942 and Women's Army Corps in 1943.<sup>79</sup>

The Armed Forces Integration Act of 1948 for the first time integrated women and granted them full status in the military services and the reserves. . . . [However,] [f]or the first time women were explicitly excluded from combat positions by law. . . . No statute addressed combat in the Army. In 1948, the Army rejected statutory coverage to maintain maximum flexibility in assignment.<sup>80</sup>

In the 1960s, socio-legal demands for employment equality and efforts to stabilize persistent shortfalls in technical personnel pushed the U.S. military to allow excluded groups, like

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Franklin C. Pinch, *An Introduction to Challenge and Change in Military: Gender and Diversity Issues*, in CHALLENGE AND CHANGE IN THE MILITARY: GENDER AND DIVERSITY ISSUES 1, 5 (Franklin C. Pinch et al. eds., 2004).

<sup>77</sup> See *Time Line: Women in the U.S. Military*, COLONIAL WILLIAMSBURG FOUND. (2008), [http://www.history.org/history/teaching/newsletter/volume7/images/nov/women\\_military\\_time\\_line.pdf](http://www.history.org/history/teaching/newsletter/volume7/images/nov/women_military_time_line.pdf) [<http://perma.cc/Q752-VHUS>].

<sup>78</sup> See *id.*

<sup>79</sup> Lucy V. Katz, *Free a Man to Fight: The Exclusion of Women from Combat Positions in the Armed Forces*, 10 LAW & INEQ. 1, 4–5 (1992).

<sup>80</sup> *Id.* (footnotes omitted).

women, to participate.<sup>81</sup> Thus was born the Institutional Model. Stemming from traditional military norms, the Institutional Model depicts a “paternalistic . . . custodial management style.”<sup>82</sup> Women developed greater roles in the military, but they were still constrained in their opportunities as a result of their gender.

On January 24, 2013, in a momentous shift, the DOD lifted a ban on women serving in combat fields and assignments, overcoming the participation barrier for women.<sup>83</sup> Then Secretary of Defense, Leon Panetta, rescinded the ban, thereby permitting military departments and services to review their occupational standards and assignment policies to make recommendations in authorizing all combat roles to women no later than January 1, 2016.<sup>84</sup> On December 3, 2015, in a marked change from 1994, Secretary Aspin approved a new Direct Combat Exclusion Rule:

[W]omen shall be excluded from assignment] to units below brigade level . . . Secretary of Defense Ashton Carter ordered the military to open all combat jobs to women with no exceptions. . . . On March 10, 2016, Secretary Carter announced that the Services’ and SOCOM’s implementation plans for the integration of women into direct ground combat roles were approved.<sup>85</sup>

A few years thereafter, “[i]n February 2019, a U.S. District judge ruled that requiring all men to register for a military draft, while excluding women, is unconstitutional.”<sup>86</sup> Previously, “[l]egislation prohibited assignment of Navy women to combat aircraft or to any ships and of Air Force women to duty in combat missions.”<sup>87</sup> The new law eliminates “Navy bars to women in combat aviation,” but retains the statutory ban on women in combat vessels.<sup>88</sup>

In February 23, 2010, Secretary of Defense Robert Gates notified Congress of a decision by the Navy to allow women to serve on nuclear submarines.<sup>89</sup> In 2011, the Navy began

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<sup>81</sup> Pinch, *supra* note 76, at 5.

<sup>82</sup> *Id.*

<sup>83</sup> See KRISTY N. KAMARCK, CONG. RESEARCH SERV., R42075, WOMAN IN COMBAT: ISSUES FOR CONGRESS 1 (2016).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at Summary, 1, 6.

<sup>86</sup> Erin Blakemore, *How Women Fought Their Way Into the U.S. Armed Forces*, HISTORY, <http://www.history.com/news/women-fought-armed-forces-war-service> [<http://perma.cc/B88X-VGY>] (last updated Feb. 26, 2019).

<sup>87</sup> Katz, *supra* note 79, at 5 (footnotes omitted).

<sup>88</sup> *Id.* at 6.

<sup>89</sup> See David Kerley & Luis Martinez, *Exclusive: Navy to Lift Ban on Woman Serving Aboard Submarines*, ABC NEWS (Feb. 23, 2010, 9:24 AM), <http://abcnews.go.com/Politics/navy-end-ban-women-serving-aboard-submarines-congress/story?id=9921378> [<http://perma.cc/T9TM-YHYS>].

assigning female officers to submarines.<sup>90</sup> In 2015, the Navy started accepting applications for assignment of enlisted women to submarines, and on June 22, 2015, announced a list of thirty-eight female enlisted sailors who would begin training to convert to a submarine rating.<sup>91</sup>

Even with the tremendous, albeit slow, progress over the years, “gender equality issues in the military go beyond rules about what positions women are allowed to serve in.”<sup>92</sup> Even when new roles are opened up to women, there are other barriers to their advancement. For example:

A new survey of active-duty troops has found that the number of sexual assaults in the U.S. military rose by 38% from 2016 to 2018, a dramatic increase that comes despite years of efforts to halt rape and other sex crimes in the ranks. The Defense Department’s fiscal 2018 Report on Sexual Assault in the Military, released Thursday, found that roughly 20,500 service members experienced sexual assault, up from an estimated 14,900 in 2016.<sup>93</sup>

Scores of incidents dictate vicious abuses women have undergone in the military. For instance:

Kate Ranta said that despite reporting physical abuse to her husband’s commanding officer, he was protected by the system because he might lose his pension so near to retirement. While he was referred to a court martial, he faced no charges; she was instead told the issue was handled “administratively.” But then her husband showed up at her house with a gun, shooting both herself and her father—right in front of their toddler. “Thomas did this in front of William, his own son, who was only 4—his own son who screamed, ‘Don’t do it Daddy, don’t shoot Mommy,’” Ranta said. “By some miracle, we all lived.” . . . Favoritism and a complex bureaucracy cannot shield dangerous perpetrators.<sup>94</sup>

Sexual assault, harassment, and a lack of respect for female bodies are visible in the military. “Jeannie Crosby, who served in the Air Force for 20 years,” brings up an underlying factor for

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<sup>90</sup> See Luis Martinez, *Secret Submarine Videos of Female Officers Investigated*, ABC NEWS (Dec. 12, 2014, 5:05 PM), <http://abcnews.go.com/Politics/secret-submarine-videos-female-officers-investigated/story?id=27571331> [<http://perma.cc/HQL9-2CTS>].

<sup>91</sup> See Rear Admiral Chas Richard, *First Enlisted Women to Serve on Submarines Announced*, NAVY LIVE (June 22, 2015), <http://navylive.dodlive.mil/2015/06/22/first-enlisted-women-to-serve-on-submarines-announced/> [<http://perma.cc/U9YR-AK69>].

<sup>92</sup> Moritz, *supra* note 71.

<sup>93</sup> Patricia Kime, *Despite Efforts, Sexual Assaults Up Nearly 40% in US Military*, MILITARY.COM (May 2, 2019), <http://www.military.com/daily-news/2019/05/02/despite-efforts-sexual-assaults-nearly-40-us-military.html> [<http://perma.cc/2HTS-DFKA>].

<sup>94</sup> Jessica Taylor, *Lawmakers Hear Emotional Stories From ‘Forgotten Crisis’ Of Military Domestic Violence*, NPR (Sept. 18, 2019 7:09 PM), <http://www.npr.org/2019/09/18/762100271/lawmakers-hear-emotional-stories-from-forgotten-crisis-of-military-domestic-viol> [<http://perma.cc/2PMM-6BUA>].



discrimination: “respect—or lack thereof.”<sup>95</sup> The “ideal ‘military image of the physically strong, emotionally tough, masculine war hero.’ Such policies are internally sustained by the cultural influence of a combat masculine war-fighting (CMW) model, shaped largely by men.”<sup>96</sup> Windham describes a not-atypical scenario:

Sometimes, before you even check into a command,<sup>97</sup> they will look at the orders of the incoming personnel and see that it’s a woman. The first thing people start talking about is, “I wonder if she’s hot, I wonder if she puts out, I wonder if she’s fat.”<sup>98</sup>

Sexual crimes and separate sleeping quarters are arcane, yet relevant, arguments on why women should not serve in some roles within the military. In a sad, but real, instance, Marine Corporal Amanda Downs was raped while in Military Operational Specialty School.<sup>99</sup> Downs remained silent for two years, because one of her superiors cited her underage drinking as the reason she would get into more trouble than the man who raped her.<sup>100</sup> Other incidents include how, in 2006, male shipmates clandestinely snuck into female barracks, placed videotapes in there, and set it to record female shipmates.<sup>101</sup> Even when women report such matters to male chiefs, very little is done. A woman reveals how her male chief assured her that “he would get to the bottom of it. By lunchtime, the strange looks from everyone became obvious. Another shipmate told [her] that everyone in the company office had passed the camera around and saw the video of [her] naked, getting into and out of the shower.”<sup>102</sup>

One account of Florence Shmorgoner of the Marine Corps, talks about how in 2015 she was sexually assaulted, but how she waited until 2017 to report it:

[She] was scared that [she] would not be believed or, worse, that [she] would be deemed a “troublemaker” in [her] platoon. It took about a year for the whole process to end. [She] was fortunate enough to go to counseling and see a psychologist and was found to have depression, anxiety disorder and PTSD—all stemming from the assault. [She] struggled with [her] self-worth . . . ha[d] nightmares of the assault . . . [and] contemplated suicide.<sup>103</sup>

<sup>95</sup> Moritz, *supra* note 71.

<sup>96</sup> Pinch, *supra* note 76, at 6.

<sup>97</sup> The above phrase “check into a command” means to present orders to superiors after being transferred.

<sup>98</sup> Moritz, *supra* note 71.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Lauren Katzenberg, *40 Stories From Women About Life in the Military*, N.Y. TIMES (Mar. 8, 2019), <http://www.nytimes.com/2019/03/08/magazine/women-military-stories.html> [<http://perma.cc/96ML-C9BV>].

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

In a different incident, retired Petty Officer First Class Jean Coriat of the Navy, recounts structural and infrastructure changes:

In 2004, I had orders to be stationed on the U.S.S. Fitzgerald, which at the time was stationed in San Diego. When my ship finally pulled in, I found out I was the first female enlisted sailor to ever be stationed onboard. They didn't even have a place for me to sleep.<sup>104</sup>

Until recent times, women on submarines faced similar issues. While laws allowed women to serve on surface combatants in the early 1990s, the Navy barred women from submarine assignments.<sup>105</sup> Instead of direct combat concerns, the Navy cited privacy and habitability in cramped spaces, as well as budgeting issues in retrofitting submarines to accommodate both men and women.<sup>106</sup> Even as early as 2000, recommendations were “met with some opposition from senior Navy officials and Members of Congress who cited” the aforementioned concerns, along with “the possibility of sexual misconduct affecting unit cohesion and effectiveness.”<sup>107</sup>

### 1. Advances for Women in Military

Although the preceding accounts take two steps back in telling the stark reality of women in the military, they should not stymie the three steps forward the military has made; instead, they should propel us as a society to implement changes in steering away from the male-dominated, locker room environment women often have to face.

Harries-Jenkins sees three concepts as relevant to developing micro-policy that will optimize diversity: tokenism, equal opportunities, and positive discrimination. According to leading analysts, women must number 15 percent of an organization to be considered more than a token. Most Western militaries do not meet this standard. Women are being treated . . . as highly visible “tokens,” rather than as fully contributing military members.<sup>108</sup>

This is more true in operational combatant areas.

The author cites research showing several negative outcomes from this absence of gender neutrality, [such as] acute work stress for those women involved. . . . Harries-Jenkins contrasts this with the diversity model, which “starts from the fundamental premise that the organization, structure, and management of the military reflect the norms and values of civilian society.” This represents the movement to “an inclusionary ideal-type image, . . . created and reinforced by the adopted micro-level personnel policies.” The diversity model, however,

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<sup>104</sup> *Id.*

<sup>105</sup> See KAMARCK, *supra* note 83, at 9.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Pinch, *supra* note 76, at 6.

is “noticeably complex” and depends on a balance between socio-legal demands and what is required to maintain “combat capability.”<sup>109</sup>

Some progress encompasses changes in statutory regimes to reflect changing norms and times to allow women to fully participate in varied roles in different aspects of the military. One story which is slightly heartening:

I served in the Army for nine years as someone else. About two years ago, I was able to start serving openly as a transgender woman. I’ve faced discrimination since I’ve come out and lost some friends, but it has been worth it. I’ve gained a lot personally and professionally and have become part of a community that is open and willing to embrace change. I’ve had several soldiers tell me I’ve changed their views on not only transgender service members but also female service members being in combat arms.<sup>110</sup>

In sum, “[t]he [DOD] must learn to believe women and take action based on their claims and evidence.”<sup>111</sup> History of women in the military highlights the many changes that have occurred to open up opportunities to women. However, it also serves as a reminder of the indirect restrictions and barriers women face, such as sexual assault.

### C. Prison

According to the Bureau of Justice Statistics, female prison population has rapidly risen. “Since 1990, the female inmate population has increased annually on average 8.3%, while the annual rate of growth of male inmates has been 6.4% on average.”<sup>112</sup> In the last ten years, women inmates markedly increased 81%.<sup>113</sup> Specifically, in 2007, of the entire U.S. prison population, female prisoners comprised 7%.<sup>114</sup> In the same year, the female population in prison rose 3.2%, whereas the male population grew by 1.9%.<sup>115</sup> “Racial minority groups comprise the majority of the prison population,” with “female imprisonment rates” showing that 150 Black women, seventy-nine Hispanic, and fifty White females were imprisoned, per 100,000 U.S. residents, as per Bureau of Justice Statistics.<sup>116</sup>

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<sup>109</sup> *Id.*

<sup>110</sup> Katzenberg, *supra* note 101.

<sup>111</sup> Taylor, *supra* note 94.

<sup>112</sup> Hye-Sun Kim, Prisoner Classification Re-visited: A Further Test of the Level of Service Inventory-Revised (LSI-R) Intake Assessment 4 (May 2010) (unpublished Ph.D. dissertation, Indiana University of Pennsylvania) (citation omitted).

<sup>113</sup> Laurence French, *The Incarcerated Black Female: The Case of Social Double Jeopardy* 8 J. BLACK STUDIES 321, 323 (1978).

<sup>114</sup> Kim, *supra* note 112, at 5.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 7–8.

[M]any have been swept up in the War on Drugs and subject to increasingly punitive sentencing policies for nonviolent offenders. . . . [M]ore than 200,000 women [are] behind bars and more than one million on probation and parole. Many of these women struggle with substance abuse, mental illness, and histories of physical and sexual abuse. Few get the services they need.<sup>117</sup>

The study of the incarceration of women reveals the large role sexual abuse plays in the lives of women both prior to and during incarceration.

### 1. Abuse in Prisons and Its Effects

According to Human Rights Watch, “[b]eing a woman prisoner in U.S. state prisons can be a terrifying experience.”<sup>118</sup> “Sexual abuse behind bars is one of the most widespread and neglected human rights crises in the U.S. today.”<sup>119</sup> Sexual and physical abuse prior to, within, and after prison is a common experience faced by women. Victimization as a child and during adulthood is also connected to subsequent offending.<sup>120</sup> “According to the best available research, 20 percent of inmates in men’s institutions are sexually abused at some point during their incarceration. The rate for women’s institutions varies, with one in four inmates being victimized at the worst facilities.”<sup>121</sup> Moreover, “[g]overnment statistics show that 79% of women in federal and state prisons have reported past physical abuse, and over 60% have reported past sexual abuse.”<sup>122</sup>

In 2007, the Bureau of Justice Statistics (BJS) estimated that 60,500 federal and state prisoners had been sexually abused at their current facility in the past year alone, and that 25,000 county jail inmates had been sexually abused at their current jail in the past six months. Youth are at even higher risk; in 2010, BJS reported that nearly one in eight youth confined to a juvenile detention facility were victimized at that facility in the preceding year—80 percent of them by staff. Nationally, the estimates of actual sexual assaults in detention

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<sup>117</sup> *Women in Prison*, ACLU, <http://www.aclu.org/issues/prisoners-rights/women-prison> [http://perma.cc/MS37-55J9] (last visited Feb. 19, 2020).

<sup>118</sup> *All too Familiar: Sexual Abuse of Women in U.S. State Prisons*, HUMAN RIGHTS WATCH (Dec. 1, 1996), <http://www.hrw.org/report/1996/12/01/all-too-familiar/sexual-abuse-women-us-state-prisons> [http://perma.cc/X9eA-553A].

<sup>119</sup> Linda McFarlane & Melissa Rothstein, *Survivors Behind Bars: Supporting Survivors of Prison Rape and Sexual Assault*, in SUPPORT FOR SURVIVORS TRAINING MANUAL 1, 5 (2010), <http://www.calcasa.org/wp-content/uploads/2010/12/Survivors-Behind-Bars.pdf> [http://perma.cc/GN2Q-QDFN].

<sup>120</sup> See Barbara Owen & Barbara Bloom, *Profiling Women Prisoners: Findings From National Surveys and a California Sample*, 75 PRISON J. 165, 169 (1995).

<sup>121</sup> McFarlane & Rothstein, *supra* note 119, at 5 (footnotes omitted).

<sup>122</sup> *Words From Prison: Violence Against Women, Homelessness and Incarceration*, ACLU, <http://www.aclu.org/other/words-prison-violence-against-women-homelessness-and-incarceration> [http://perma.cc/WB2X-GH6N] (last visited Feb. 19, 2020).

facilities are some fifteen times higher than the number of official reports filed for the same time period.<sup>123</sup>

Human Rights Watch examined this serious problem in their review of sexual abuse in selected U.S. prisons. The damage of the abuse itself is compounded by four specific issues: (1) the inability to escape one's abuser; (2) ineffectual or nonexistent investigative and grievance procedures; (3) lack of employee accountability (either criminally or administratively); and (4) little or no public concern.<sup>124</sup>

Additionally, victims must meet an incredibly high burden of proof to substantiate a constitutional claim. The Eighth Amendment establishes the right to be free from cruel and unusual punishment. However, for victims to establish a violation of their Eighth Amendment rights they must prove that the prison official had a "seriously culpable state of mind" by satisfying the subjective deliberate indifference test. The test requires that the prison official must (1) "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists" and (2) "also draw the inference." For victims, the difficulty lies in proving that prison administrators were aware of the risk and ignored it. In applying the test courts have severely limited the liability of prison officials.<sup>125</sup>

This provides a losing proposition for women prisoners.

An alternate reason for the high incidence of prison sexual assault is state prisons' limited oversight. The Federal government made history by passing the Prison Rape Elimination Act ("PREA").<sup>126</sup> "The PREA implemented national standards for the detection, prevention and punishment of prison rape."<sup>127</sup> However, the PREA standards are limited to federal jurisdictions.<sup>128</sup> "Thus, because state and local facilities confine the majority of inmates, most inmates are not protected by the PREA standards."<sup>129</sup>

Women in prison are also at risk for infectious diseases, including HIV, tuberculosis, sexually transmitted diseases, . . . and hepatitis B and C infections. Pregnancy and reproductive health needs are another neglected area of health care. Problems of pregnant inmates

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<sup>123</sup> McFarlane & Rothstein, *supra* note 119, at 5.

<sup>124</sup> *Prisons: Prisons for Women*, LAW LIBR.—AM. L. & LEGAL INFO., <http://law.jrank.org/pages/1805/Prisons-Prisons-Women-Problems-unmet-needs-in-contemporary-women-s-prison.html> [<http://perma.cc/694F-7HCK>] (last visited Feb. 19, 2020).

<sup>125</sup> Christina Picora, *Female Inmates and Sexual Assault*, JURIST (Sept. 15, 2014, 7:00 PM), <http://www.jurist.org/commentary/2014/09/christina-picora-female-inmates/> [<http://perma.cc/BT7G-RMUK>]. See also U.S. CONST. amend. VIII.

<sup>126</sup> See Prison Rape Elimination Act of 2003, 34 U.S.C. §§ 30301–30309 (2012).

<sup>127</sup> Picora, *supra* note 125. See also *Prison Rape Elimination Act of 2003 (PREA)*, ACLU (Apr. 4, 2011), <http://www.aclu.org/other/prison-rape-elimination-act-2003-prea?redirect=prisoners-rights-womens-rights/prison-rape-elimination-act-2003-prea> [<http://perma.cc/9JVE-6L2V>].

<sup>128</sup> Picora, *supra* note 125.

<sup>129</sup> *Id.*

include lack of prenatal and postnatal care, inadequate education regarding childbirth and parenting, and little or no preparation for the mother's separation from the infant after delivery.<sup>130</sup>

According to the ACLU, nearly 60% of people in women's prison nationwide, and as many as 94% of some women's prison populations, have a history of physical or sexual abuse before being incarcerated.<sup>131</sup>

Violence perpetrated against women and girls puts them at risk for incarceration because their survival strategies are routinely criminalized. From being coerced into criminal activity by their abusers to fighting back to defend their lives or their children's lives, survivors of domestic violence can find themselves trapped between the danger of sometimes life-threatening violence and the risk of spending the rest of their lives in prison. . . . A study of women incarcerated in New York's Rikers Island found that most of the domestic violence survivors interviewed reported engaging in illegal activity in response to experiences of abuse, the threat of violence, or coercion by a male partner.<sup>132</sup>

## 2. Women's Abuse Impacting Mental Health

Amongst the female prison population, mental health problems and sexual abuse are rampant. "[Seventy-three] percent of women in state prisons and 75 percent in jails have mental health problems, compared with 55 percent and 63 percent of men, respectively. In state prisons, 75 percent of women met the criteria for substance abuse problems, and 68 percent had past physical or sexual abuse."<sup>133</sup> Women in prison have a much higher rate of mental health problems as compared to men.<sup>134</sup> Solitary confinement exacerbates such underlying mental health conditions.<sup>135</sup> "While many prisoners of both genders have abusive pasts in common, incarcerated women have a greater statistical likelihood of experiencing physical and sexual trauma. The resulting pain often drives them into the

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<sup>130</sup> *Prisons: Prisons for Women*, *supra* note 124.

<sup>131</sup> *Prison Rape Elimination Act of 2003*, *supra* note 126.

<sup>132</sup> *Fact Sheet on Domestic Violence & the Criminalization of Survival*, FREE MARISSA NOW, <http://www.freemariissanow.org/fact-sheet-on-domestic-violence--criminalization.html> [<http://perma.cc/46AV-VG4T>] (last visited Feb. 19, 2020).

<sup>133</sup> Jared C. Clark, *Inequality in Prison*, 40 AM. PSYCHOL. ASS'N 55, 55 (2009).

<sup>134</sup> *More Incarcerated Women than Men Report Mental Health Problems*, EJI (July 10, 2017), <http://eji.org/news/more-incarcerated-women-report-mental-health-problems/> [<http://perma.cc/V4FN-5S47>].

<sup>135</sup> ACLU, *STILL WORSE THAN SECOND-CLASS: SOLITARY CONFINEMENT OF WOMEN IN THE UNITED STATES* 8 (2019).

most frequent convictions for women: substance abuse and property crime to support addictions.”<sup>136</sup>

A related study found:

[O]f 525 abused women at a mental health center who had committed at least one crime, nearly half had been coerced into committing crimes by their batterers as “part of a structural sequence of actions in a climate of terror and diminished, violated sense of self.” Rita Smith, the executive director of the National Coalition Against Domestic Violence asserts that, “Most battered women who kill in self-defense end up in prison.”<sup>137</sup>

Mothers represent the majority of people in women’s prisons, creating a devastating impact on families, children, pregnancy, and childbirth. 70% of people in women’s prisons are mothers. The number of mothers in prison in the US increased by 122% between 1991 and 2007. . . . [A] vast majority of people in women’s prisons [are] mothers when they enter prison, but many of these people are also the primary caretakers of their children at home. 1.3 million children are affected by female imprisonment . . . [inclusive of] the children at home when the mother is imprisoned and the babies born and raised in prison. In 33 states in the U.S. it is legal to shackle a female inmate while she is giving birth. Thirty-one of these states do not require prison employees to check with medical staff before determining whether or not a prisoner should be restrained.<sup>138</sup>

Women in prison are often ignored and left vulnerable in their needs, which threatens their mental and physical health. The prior abuse these women experience sets them on a vicious cycle of abuse and its negative impacts carry through to their experiences in prison.

Substance use is a common experience of incarcerated women. “[T]o cope with the pain of abuse,” women often use drugs.<sup>139</sup> For example, “40% of incarcerated women had used drugs at the time of the offense [at] a rate higher than that of male offenders.”<sup>140</sup> Drug use positively correlates with recidivism for women.<sup>141</sup> Lastly, incarcerated women, “particularly women of color, return to impoverished neighborhoods following release from prison.”<sup>142</sup> The experiences that these women undergo often set them up for recidivism—particularly women of color.

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<sup>136</sup> *Needs of Female Prisoners*, PRISON FELLOWSHIP, <http://www.prisonfellowship.org/resources/training-resources/in-prison/prison-culture/needs-of-female-prisoners/> [<http://perma.cc/Y4T9-33N9>] (last visited Feb. 19, 2020).

<sup>137</sup> *Fact Sheet on Domestic Violence & the Criminalization of Survival*, *supra* note 132.

<sup>138</sup> *Id.*

<sup>139</sup> Beth M. Huebner et al., *Women Coming Home: Long-Term Patterns of Recidivism*, 27 JUST. Q. 225, 228 (Apr. 2010).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 241.

<sup>142</sup> *Id.* at 230.

Numerous race-specific effects develop for women. Regardless of gender, African Americans and Hispanics disproportionately represent the prison population.<sup>143</sup> “Many risk measurement variables are related to race.”<sup>144</sup> “Using follow-up periods of 2–5 years, recidivism rates of female offenders vary from 22% to 57.6%.”<sup>145</sup>

[W]hite women with lower salient factor scores (higher risk) and more prior convictions were more likely to fail and to recidivate more quickly. For non-white women, obtaining a high school diploma decreased the probability of failure and increased the time until failure, but education was unrelated to the timing of failure.<sup>146</sup>

In terms of mental health, “13% of white women were classified as having some form of mental illness while only 7% of women of minority race had a similar diagnosis.”<sup>147</sup> These numbers should be read in the light of “underassessment of female parolee’s mental health and substance abuse needs.”<sup>148</sup>

Black women and other marginalized people are especially likely to be criminalized, prosecuted, and incarcerated while trying to navigate and survive the conditions of violence in their lives. In 1991, the ratio of black women to white women convicted of killing their abusive husbands was nearly two to one. Women of color and low income women are disproportionately affected by mandatory arrest policies for domestic violence. Of survivors in a New York City study who had been arrested along with their abusers (dual arrest cases) or arrested as a result of a complaint lodged by their abuser (retaliatory arrest cases), 66% were African American or Latina, 43% were living below the poverty line, and 19% percent were receiving public assistance at the time.<sup>149</sup>

In order to analyze female patterns of recidivism, a study by the 1994 Bureau of Justice Statistics revealed the most important predictors of recidivism for women three years post release are: number of prior arrests, age at release, and being African American.<sup>150</sup> The report was missing “substance abuse, institutional programming, and post-release context . . .”<sup>151</sup>

The processes that place victims under correctional control are the “criminalization” of women’s survival strategies and “entrapment”

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<sup>143</sup> See Kim, *supra* note 112, at 8.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 6. See also MEDA CHESNEY-LIND, *THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME* 149–50 (C. Terry Hendrix et al. eds., 1997).

<sup>146</sup> Huebner et al., *supra* note 139, at 243.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* (citation omitted).

<sup>149</sup> *Fact Sheet on Domestic Violence & the Criminalization of Survival*, *supra* note 132.

<sup>150</sup> Huebner et al., *supra* note 139, at 227.

<sup>151</sup> *Id.*; see also ELIZABETH DESCHENES ET AL., *RECIDIVISM AMONG FEMALE PRISONERS: SECONDARY ANALYSIS OF THE 1994 BJS RECIDIVISM DATA SET 2* (2006).



into crime by abusers and by gender, race and class oppression. Once entrapped and criminalized, women are re-victimized and subjected to “enforcement violence” by the state through coercive laws, immigration policies, social welfare policies and law enforcement practices. . . . Women of color activists call for both the battered women’s movement and the prison abolition movement to join together to stop violence against women who are “victimized by both interpersonal and state violence.”<sup>152</sup>

By targeting substance, physical and sexual abuse, and allowing inmates to maintain healthy connections to their families and significant others, penal institutions can help women stay tied to their communities and successfully rejoin them, opening up better possibilities for educational and job opportunities. Without such interventions, these women have little chance of succeeding after prison. . . . “Many women come out of these systems in worse condition than when they went in.” . . . “You have to acknowledge that gender makes a difference,” said Covington. “Many places today are still trying to do everything gender-neutral. There is no gender-neutral. In our society, gender-neutral is male.”<sup>153</sup>

Disparate disciplinary practices are evident between men and women prisoners. Women tend to receive disciplinary action at a greater rate than men, although “male prisons typically hold a much greater percentage of violent offenders . . . .”<sup>154</sup> According to research, “women prisoners were cited more frequently and punished more severely than males,” even though “[t]hese infractions committed by women in prison tend to be petty when compared to the more serious infractions committed by male prisoners.”<sup>155</sup>

Women, more so than other inmates, “import histories of economic marginalization, physical and sexual abuse, drug and alcohol addictions, and familial responsibilities that can affect their imprisonment experience” and reentry into their communities of habitat.<sup>156</sup> Minority women and women of color face an even harder time undergoing the burdening wheels of the American criminal justice process. I call it process, a supply chain of criminal justice, an assembly line of checkpoints. Although linear and sequential, its outcomes are *non-linear and non-sequential*, with daunting, cumbersome barriers to potential freedom. For women and women of color, these stages closely parallel hell’s stages in Dante’s *Inferno*. In addition:

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<sup>152</sup> Mary E. Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration*, VAWNET 1 (Dec. 2002), [http://vawnet.org/sites/default/files/assets/files/2017-08/AR\\_Incarceration.pdf](http://vawnet.org/sites/default/files/assets/files/2017-08/AR_Incarceration.pdf) [<http://perma.cc/2M7D-TZUS>] (citations omitted).

<sup>153</sup> Clark, *supra* note 133, at 5.

<sup>154</sup> *Prisons: Prisons for Women*, *supra* note 124.

<sup>155</sup> *Id.* (citation omitted).

<sup>156</sup> Huebner et al., *supra* note 139, at 226.

Stephanie Covington, PhD, co-director of the Center for Gender and Justice in La Jolla, Calif., at an APA 2009 Annual Convention session [states] women are poor, undereducated, unskilled, single mothers and disproportionately women of color . . . [with] their paths to crime . . . marked by abuse, poverty and addiction.<sup>157</sup>

For such women, when asked on their post-prison opportunities, their response is: “One is the drug dealer and the other is the pimp.”<sup>158</sup> Moreover, research shows “[l]icensing restrictions, stigma, and perceived risk in hiring decisions in female-dominated occupations and industries, along with barriers to childcare subsidies are all likely to exert a heightened burden on women.”<sup>159</sup>

Psychiatrist Judith Herman writes the following:

[T]hree stages in the process of healing from trauma: safety, remembrance and mourning, and reconnection. “Survivors feel unsafe in their bodies. Their emotions and their thinking feel out of control. They also feel unsafe in relation to other people.” Stage One (safety) addresses the woman’s safety concerns in all of these domains. In the second stage of recovery (remembrance and mourning) the survivor tells the story of the trauma and mourns the old self that the trauma destroyed. In Stage Three (reconnection) the survivor faces the task of creating a future; now she develops a new self. . . . [T]he difficulty is that many women are *not* safe in our criminal justice system where they are vulnerable to abuse and harassment from correctional staff. Stage One recovery from trauma, safety, is the appropriate level of intervention for women in early recovery from addiction. If we want women to heal from addiction, we must set up a safe environment in which the healing process can begin to take place. Dr. Herman uses Twelve Step groups as an example of the type of group appropriate for Stage One (safety) recovery because of their focus on present-tense issues of self-care, in a supportive, homogeneous environment.<sup>160</sup>

Belknap and Holsinger argued, “[o]ne of the greatest limitations of existing criminological research is the low priority given to the role of gender in the etiology of offending.”<sup>161</sup> Nevertheless, gender frequently has been overlooked in assessing offenders’ risk and needs because of ““there being too few [female]

<sup>157</sup> Clark, *supra* note 133, at 5.

<sup>158</sup> *Id.*

<sup>159</sup> Joni Hersch & Erin E. Meyers, *The Gendered Burdens of Conviction and Collateral Consequences on Employment*, 45 J. LEGIS. 171, 191–92 (2018).

<sup>160</sup> Stephanie S. Covington, *Women in Prison: Approaches in the Treatment of Our Most Invisible Population*, 21 WOMEN & THERAPY J. 141, 149 (1998). See also JUDITH L. HERMAN, *TRAUMA AND RECOVERY* 160 (1992).

<sup>161</sup> Joanne Belknap & Kristi Holsinger, *Chapter 7: The Gendered Nature of Risk Factors for Delinquency*, in *GIRLS, WOMEN, AND CRIME: SELECTED READINGS* 101, 101 (Jerry Westby et al. eds., 2d ed. 2013).

to count.”<sup>162</sup> Women often have very distinct experiences while in prison, or related to their time in prison, than their male counterparts do.

“[The] Table [below] shows the change of the prison population by gender and race since 1995.”<sup>163</sup>

*Number of Prisoners under State or Federal Jurisdiction*

Year	Male				Female			
	Total <sup>a</sup>	White	Black	Hispanic	Total <sup>a</sup>	White	Black	Hispanic
1995	1,021,059	487,400	509,800	N/A	63,963	30,500	31,900	N/A
1996	1,068,123	511,300	528,600	N/A	69,599	33,800	33,900	N/A
1997	1,121,663	541,700	548,900	N/A	73,835	36,300	35,500	N/A
1998	1,216,053	N/A	N/A	N/A	84,354	N/A	N/A	N/A
1999	1,222,799	403,700	558,700	219,500	82,594	27,100	38,300	14,100
2000	1,247,000	401,900	532,400	242,600	84,300	33,600	32,200	13,100
2001	1,259,481	449,200	585,800	199,700	85,031	36,200	36,400	10,200
2002	1,291,326	436,800	586,700	235,300	89,044	35,400	36,000	15,000
2003	1,316,495	454,300	586,300	215,900	92,785	39,100	35,000	16,200
2004	1,337,700	449,300	551,300	260,600	96,100	42,500	32,100	15,000
2005	1,362,500	459,700	547,200	279,000	98,600	45,800	29,900	15,900
2006	1,401,400	478,800	535,100	291,000	103,300	49,200	28,600	17,500
2007	1,427,300	471,400	556,900	301,200	105,500	50,500	29,300	17,600

<sup>a</sup> includes “others” such as Asian, American Indians, Alaska Natives, Native Hawaiians, and other Pacific Islander. (Bureau of Justice Statistics, 1995-2007)

### One study explored:

[P]atterns by which women enter into criminal activities. [The research drew] upon in-depth life history interviews with a sample of 20 incarcerated women. The author constructs a conceptual framework for understanding the progression from victim to survivor to offender in the subjects’ life histories. This framework shows that the best available options for escape from physical and sexual violence are *often survival strategies which are criminal: i.e., running away from home, use of drugs, and the illegal street work required to survive as a runaway*.<sup>164</sup>

Women deemed as survivors, not as victims, based on their narratives, talk about their commitments to important

<sup>162</sup> Kim, *supra* note 112, at 4. See also Jean Folsom & Jill Atkinson, *The Generalizability of the LSI-R and the Cat to the Prediction of Recidivism in Female Offenders*, 34 CRIM. JUST. & BEHAV. 1044, 1044 (2007); Kirk Heilbrun et al., *How “Specific” are Gender-Specific Rehabilitation Needs?*, 35 CRIM. JUST. & BEHAV. 1382, 1382 (2008); PATRICIA VAN VOORHIS ET AL., *ACHIEVING ACCURATE PICTURES OF RISK AND IDENTIFYING GENDER-RESPONSIVE NEEDS: TWO NEW ASSESSMENTS FOR WOMEN OFFENDERS 1* (2008).

<sup>163</sup> Kim, *supra* note 112, at 4–5.

<sup>164</sup> Mary E. Gilfus, *From Victims to Survivors to Offenders: Women’s Routes of Entry and Immersion Into Street Crime*, 4 WOMEN & CRIM. JUST. 63, 63 (1992) (emphasis added).

relationships in their lives which discuss their entry into and commitments to criminal activities.<sup>165</sup> “Women’s responses to victimization and women’s relational identities are seen as factors which both motivate and restrain women’s criminal activities. The concept of *immersion* in street crime is offered as a more accurate term than criminal career in describing women’s criminal histories.”<sup>166</sup> Overall, “[i]f women are to be successfully reintegrated back into society after serving their sentences, there must be a continuum of care that can connect them to a community.”<sup>167</sup>

Women have understandably distinct experiences from men when adding prison to the equation. Gender, and its impacts, plays heavily into the life experiences of women prior to prison, during prison, and in recidivism.

#### D. Immigrants

Women immigrating to the United States are confined due to structural processes severely restraining them. For example, they “must remain ‘properly married,’” i.e., live with their husbands, a United States citizen or permanent resident, for two years prior to applying for permanent resident status.<sup>168</sup> Socially marginalized women risk fatal injury from abusive husbands shrouded in silence for fear of deportation.<sup>169</sup> These restrictions create structural barriers to the advancement of immigrant women.

#### E. Violence and Homelessness

Domestic violence is a primary cause of female homelessness.<sup>170</sup> It has resulted in homelessness for between 0.25% and 0.50% of women.<sup>171</sup> Statistics show:

Three women die each day from intimate partner violence. Black women are almost three times more likely to die at the hands of a current or ex-partner than members of other racial backgrounds. Among African American women killed by their partner, almost half were killed while in the process of leaving the relationship, highlighting the need to take extra precautions at that time.<sup>172</sup>

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Stephanie S. Covington, *A Woman’s Journey Home: Challenges for Female Offenders*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 1, 15 (Jeremy Travis & Michelle Waul eds., Jan. 5, 2004), <http://www.stephaniecovington.com/assets/files/3.pdf> [<http://perma.cc/SUL7-DU7P>].

<sup>168</sup> *Words From Prison: Violence Against Women, Homelessness and Incarceration*, *supra* note 122.

<sup>169</sup> *Id.*

<sup>170</sup> *Domestic Violence and Homelessness*, ACLU, <http://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> [<http://perma.cc/2Z85/QS47>] (last visited Mar. 2, 2020).

<sup>171</sup> *Fact Sheet on Domestic Violence & the Criminalization of Survival*, *supra* note 132.

<sup>172</sup> *Id.*

Pregnant women or women who gave birth face a higher risk of escalating domestic violence.<sup>173</sup> Each year, 324,000 pregnant women are physically or sexually assaulted by an intimate partner.<sup>174</sup> “Pregnancy can be an especially dangerous time for people in abusive relationships, and abuse can often begin or escalate during the pregnancy.”<sup>175</sup>

Pregnancy complications, including low weight gain, anemia, infections, and first and second trimester bleeding, are significantly higher for victims of domestic violence. . . . Domestic violence accounts for a large portion of maternal mortality. Homicide is the second leading cause of injury related deaths in pregnant and postpartum women in the United States.<sup>176</sup>

Beyond domestic violence, “over 90 percent of homeless women have experienced severe violence or sexual assault at some point in their lives.”<sup>177</sup> Violence and homelessness tend to go hand in hand. Moreover, law enforcement targets homeless women as a visible population.

For instance, while being released from prison, as part of her efforts to begin her life again, “Rosa sought public housing. However, the public housing authority told her she was ineligible for housing assistance due to her prior conviction. Because of her conviction, Rosa was also unable to find an employer who would hire her; as a result, she wasn’t able to afford housing in the private market.”<sup>178</sup> Her inability to obtain housing or employment put Rosa on the streets again.<sup>179</sup>

Out of desperation and without a legal source of income, she occasionally supported herself through prostitution though she knew she risked re-imprisonment or even deportation for this. With no place to live, she was physically and sexually assaulted on multiple occasions. She never reported these crimes to law enforcement as she believed she would likely be arrested if she did so.<sup>180</sup>

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<sup>173</sup> See *Reproductive Justice & Marissa Alexander*, FREE MARISSA NOW, <http://www.freemariissanow.org/fact-sheet-on-reproductive-justice--marissa-alexander.html> [http://perma.cc/2MD2-KX3G] (last visited Mar. 3, 2020).

<sup>174</sup> *Pregnancy and Domestic Violence Facts*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, [http://www.uua.org/sites/live-new.uua.org/files/documents/ncadv/dv\\_pregnancy.pdf](http://www.uua.org/sites/live-new.uua.org/files/documents/ncadv/dv_pregnancy.pdf) [http://perma.cc/V3S6-QTE2] (last visited Mar. 3, 2020).

<sup>175</sup> *Pregnancy and Abuse: How to Stay Safe for Your 9 Months*, NAT’L DOMESTIC VIOLENCE HOTLINE (July 23, 2013), <http://www.thehotline.org/2013/07/23/pregnancy-and-abuse-how-to-stay-safe-for-your-9-months/> [http://perma.cc/C63N-8RMP]; *Reproductive Justice & Marissa Alexander*, *supra* note 173.

<sup>176</sup> *Reproductive Justice & Marissa Alexander*, *supra* note 173. See also Jeani Chang et al., *Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991–1999*, 95 AM. J. PUB. HEALTH 471, 474 (2005).

<sup>177</sup> *Words From Prison: Violence Against Women, Homelessness and Incarceration*, *supra* note 122.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

Violence against women enhances the chances of homelessness, which, as seen, can contribute to the likelihood of prison time and subsequent negative, cyclical impacts against women.

## F. Rural Women and Abuse

Geographical isolation, and thereby, a lack of communal support, places rural women in abusive partner relationships at severe risk.<sup>181</sup> “A supportive network with access to resources would thus, enable rural women in abusive partner relationships” on a path to freedom.<sup>182</sup> One study:

[I]nterviewed rural women in previous abusive partner relationships . . . [on three dimensions:] past and current abuse, supportive and nonsupportive networks, and access to resources. [S]upportive persons predicted declines in long-term abuse when information and advice were provided to help women access resources. Nonsupportive persons hindered women from access to resources and were a factor in keeping them bound in abusive relationships.<sup>183</sup>

The geographic isolation of women in rural areas can often exasperate the issues of domestic violence because access to support and resources are more limited. Without support, the abuse can often begin the cycles described above.

## G. Women and Disabilities

According to the National Study of Women With Physical Disabilities, the prevalence of abuse was not significantly different between women with and without disabilities. Women with physical disabilities, however, reported significantly longer durations of abuse. Unique vulnerabilities to abuse experienced by women with disabilities include social stereotypes of asexuality and passivity, lack of adaptive equipment, inaccessible home and community environments, increased exposure to medical and institutional settings, dependence on perpetrators for personal assistance, and lack of employment options.<sup>184</sup>

Properly identifying “women with disabilities who are in abusive situations and their referral to appropriate community services” is, therefore, important.<sup>185</sup> These range from policy changes in increasing “training for all types of service providers in abuse interventions,” improving “architectural and attitudinal accessibility of programs for battered women,” increasing

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<sup>181</sup> Kathy Bosch & Walter R. Schumm, *Accessibility to Resources: Helping Rural Women in Abusive Partner Relationships Become Free from Abuse*, 30 J. SEX & MARITAL THERAPY 357, 357 (2004).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> Margaret A. Nosek et al., *Abuse of Women with Disabilities: Policy Implications*, 8 J. DISABILITY POL'Y STUD. 157, 158 (1997).

<sup>185</sup> *Id.*

“responsiveness of adult protective services,” increasing “options for personal assistance,” expanding “affordable and accessible legal services,” and improving “communication among community services.”<sup>186</sup>

As with women in rural areas, women with disabilities are often cut off from the level of support they need and are left in positions where abuse can dictate their lives. As such, additional protections need to be implemented to adequately protect vulnerable women.

#### H. Abortion and Women’s Rights

Fetal personhood has dire and long-lasting consequences for women. Lawmakers in numerous states are enacting laws recognizing fetuses as people, separate from the mother.<sup>187</sup> Pregnant women are at a high risk of facing criminal charges for miscarriages or stillbirths.<sup>188</sup> Fetal personhood has implications for “constitutional rights to due process, a fair trial, and the right to counsel for fetuses whose mothers have been charged with a criminal offense.”<sup>189</sup> If fetal personhood statutes are “upheld by a court, [they] could also jeopardize the legality of fertility treatments like in vitro fertilization or even surrogacy, . . . involv[ing] the destruction of embryos [which] would qualify as people under the law.”<sup>190</sup>

For example, “Gov. Brian Kemp of Georgia signed the ‘heartbeat bill’ HB 481 into law, . . . establish[ing] fetuses as full people under the law.”<sup>191</sup> This means “women could be held criminally responsible for seeking an abortion or even for having a miscarriage.”<sup>192</sup> The bill has granted full Fourteenth Amendment rights to all unborn children.

Georgia’s law goes further than other states in holding women criminally responsible. Women could be charged with murder as per the law’s personhood provisions—those who perform their own abortions, travel out of state for an abortion, or are found to be responsible for a miscarriage.<sup>193</sup> Similarly, the 2018 Alabama personhood statute provides wide latitude for

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<sup>186</sup> *Id.*

<sup>187</sup> See Grace Panetta, *Women could get up to 30 years in prison for having a miscarriage under Georgia’s harsh new abortion law*, BUS. INSIDER (May 10, 2019, 9:02 AM), <http://www.businessinsider.com/women-30-years-prison-miscarriage-georgia-abortion-2019-5> [<http://perma.cc/2U54-4G5J>].

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*; see H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

<sup>192</sup> Panetta, *supra* note 187.

<sup>193</sup> *Id.*

actions impacting a fetus as criminal behavior with potential for prosecution.<sup>194</sup> For example, on a suit initiated by the embryo's would-be father, the district court gave the estate of a six-week-old aborted embryo legal standing to sue an abortion clinic for wrongful death.<sup>195</sup>

Experiences of women in a myriad of different domains demonstrates that the work towards women's equality is not a thing of the past. Numerous indirect barriers, such as sexual abuse, impact advancements of women to this day.

#### V. REVISITING 2019 AS THE "YEAR OF MEN"<sup>196</sup>

Women supporting women is a double-edged sword. Powerful men in America are playing "victim and advancing it with the brutality of oppressors. While women accuse men of sexual misconduct, the accused and their allies often rewrite the narrative."<sup>197</sup> Instead of negating the blame, such accused men of power belittle their accusers and blame a "hysterical culture," making the accuser sound hopeless and befuddled.<sup>198</sup> For example, Kavanaugh supporters and Kavanaugh himself hesitated from stating "that Ford was lying about being assaulted."<sup>199</sup> Instead they stated she "confused her assailant with someone else,"<sup>200</sup> thereby demeaning Ford's intelligence and rational, sound mind.

#### A. Intersectional Feminism: Triple Constraints of Gender, Race, and Class

For many women of color, the triple constraints of gender, race, and class are shackles holding women back from advancing in life and employment. Coined by scholar and civil rights advocate Kimberlé Crenshaw, *intersectionality*, also called *intersectional feminism*, is a branch of feminism asserting that all aspects of social and political identities (gender, race, class, sexuality, disability, etc.) discrimination overlap or "intersect."<sup>201</sup> For example, race with gender, in the case of a black woman. For Crenshaw, "women of colour . . . [were] doubly discriminated against, particularly in

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<sup>194</sup> *See id.*

<sup>195</sup> *Id.*

<sup>196</sup> Livni, *supra* note 8.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *What Does Intersectional Feminism Actually Mean?*, IWDA (May 11, 2018), <http://iwda.org.au/what-does-intersectional-feminism-actually-mean/> [<http://perma.cc/DT43-3RAZ>].



law.”<sup>202</sup> The 1976 case of *Degraffenreid v. General Motors* shows how the court found that five African American women working as secretaries at GM were not discriminated against by race or gender by the car manufacturer, because the company employed African American factory workers.<sup>203</sup> The court lost sight of the fact that “the sheer majority of secretaries were white women, and factory workers were all men. So the women lost.”<sup>204</sup> In modern rhetoric, intersectionality represents the “interplay between [many] kinds of discrimination, whether it’s based on gender, race, age, class, socioeconomic status, physical or mental ability, gender or sexual identity, religion, or ethnicity.”<sup>205</sup>

## B. Legislative Progress and Citizen Movement

The House Ethics Committee called for a swift resolution in “reporting sexual harassment and other abusive workplace behavior on Capitol Hill. . . . [T]he 10 members of the Ethics Committee wrote to congressional leaders . . . to tout the House-passed reform bill and highlight the ‘overwhelming’ bipartisan support in the lower chamber for changing the process for reporting misconduct.”<sup>206</sup>

Additionally, the (mis)use of nondisclosure agreements and buying of female silence was:

One of the systemic problems exposed by coverage of Harvey Weinstein and other powerful men. . . . For example, Zelda Perkins, Weinstein’s former assistant, signed an agreement as part of a settlement that prevented her from telling even family members that Weinstein had exposed himself to her repeatedly, including forcing her to take dictation while he bathed . . . .<sup>207</sup>

Thus, came about the #MeToo law restricting, and even prohibiting, the use of non-disclosure agreements in sexual misconduct cases. In Perkins’s case:

The agreement kept [her] from speaking out for almost 20 years. . . . In September 2018, California banned the agreements in

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> Elise Viebeck, *House ethics panel calls for resolution of sexual harassment reform talks*, WASH. POST (Nov. 20, 2018, 10:07 AM), [http://www.washingtonpost.com/powerpost/house-ethics-panel-calls-for-resolution-of-sexual-harassment-reform-talks/2018/11/20/349915d4-ece4-11e8-8679-934a2b33be52\\_story.html](http://www.washingtonpost.com/powerpost/house-ethics-panel-calls-for-resolution-of-sexual-harassment-reform-talks/2018/11/20/349915d4-ece4-11e8-8679-934a2b33be52_story.html) [<http://perma.cc/92DU-PHEG>].

<sup>207</sup> Anna North, *7 positive changes that have come from the #MeToo movement*, VOX (Oct. 4, 2019, 7:00 AM), <http://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019> [<http://perma.cc/8BSK-9TMG>]. See also Stacy Perman, *#MeToo law restricts use of nondisclosure agreements in sexual misconduct cases*, L.A. TIMES (Dec. 31, 2018, 3:00 AM), <http://www.latimes.com/business/hollywood/la-fi-ct-nda-hollywood-20181231-story.html> [<http://perma.cc/JW9T-3ZKH>].

cases involving sexual assault, harassment, or sex discrimination. New York and New Jersey enacted similar laws. . . . Last year, Congress passed legislation addressing a number of issues advocates had raised with its process for congressional employees to report harassment or assault. The law eliminated a mandatory three-month waiting period for people reporting misconduct, during which the survivor would have to go through counseling and mediation before filing a lawsuit. It also barred legislators from using taxpayer money to cover harassment settlements, [in years prior since 2003] \$300,000 of taxpayer funds had been used for that purpose.<sup>208</sup>

Moreover, millions of domestic and farm workers—the people who clean Americans’ homes, care for their children, and harvest their food—lack sexual harassment protections because they work for employers with fewer than 15 employees. . . . [H]undreds of domestic and farm workers rallied in Washington last year to urge Congress to extend harassment protections to cover them.<sup>209</sup>

Senator Patty Murry (D., Wash.) and Representatives Katherine Clark (D., Mass.) and Ayanna Pressley (D., Mass.) enacted the federal BE HEARD Act banning some types of nondisclosure agreements.<sup>210</sup>

Furthermore, sexual harassment lawsuits are irrationally expensive.<sup>211</sup> Monetary awards have seen an uptick in the #MeToo era.

Time’s Up, a group of women in Hollywood working to fight harassment, started the Time’s Up Legal Defense Fund, aimed at helping survivors of sexual misconduct, especially in low-wage industries, get legal representation. . . . Since . . . January 2018, [the fund] has raised over \$24 million and connected 3,677 people with attorneys to pursue possible legal action . . . .<sup>212</sup>

Accused of ignoring victims and not acting on the athletes’ reports, officials at Michigan State University, where Larry

<sup>208</sup> North, *supra* note 207. See also Juliet Linderman, *Congress agrees on bill holding lawmakers financially liable in sexual harassment settlements*, USA TODAY (Dec. 12, 2018, 9:09 PM), <http://www.usatoday.com/story/news/politics/2018/12/12/house-senate-agree-anti-sexual-harassment-bill/2295234002/> [<http://perma.cc/BW2X-2TTE>]; Perman, *supra* note 207; Juliet Linderman, *\$300k in taxpayer funds has been spent settling sexual harassment claims against Congress, report says*, PBS (Jan. 12, 2018, 6:42 PM), <http://www.pbs.org/newshour/politics/300k-in-taxpayer-funds-has-been-spent-settling-sexual-harassment-claims-against-congress-report-says> [<http://perma.cc/6UGC-Y35W>]; *Combating Sexual Harassment: Frequently Asked Questions*, N.Y. STATE, <http://www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions> [<http://perma.cc/22GB-BMZQ>] (last visited Mar. 2, 2020); Vincent N. Avallone & Meghan T. Meade, *New Jersey’s Latest #METOO Law Goes Beyond Sexual Harassment*, NAT’L L. REV. (Mar. 25, 2019), <http://www.natlawreview.com/article/new-jersey-s-latest-metoo-law-goes-beyond-sexual-harassment> [<http://perma.cc/329H-W3RV>].

<sup>209</sup> North, *supra* note 207.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

Nassar was a sports medicine physician, created a \$500 million settlement fund.<sup>213</sup> Largest in the university system, survivors could get between \$250,000 and \$2.5 million each from the fund.<sup>214</sup>

[F]ormer USA Gymnastics team doctor Larry Nassar . . . was sentenced to 40 to 175 years in prison for sexually abusing more than 100 young athletes, in addition to an earlier 60-year sentence on child pornography charges. . . . In 2018, the Equal Employment Opportunity Commission filed 41 sexual harassment lawsuits, more than a 50 percent increase over 2017, according to MarketWatch. The EEOC won \$70 million from companies on behalf of harassment survivors in 2018, up 47 percent from 2017.<sup>215</sup>

## VI. TAKEAWAYS

Patriarchy, psychologically, is striking up such an abusive bargain with American women. Rights of women have witnessed ebbs and flows throughout history. Each time women march three steps forward, their progress is stymied two steps back.

It is heartening that the talk on gender and power is on the rise in American societies. “[O]ne reason Justice Kavanaugh was confirmed is because white men want to hold onto their power in government.”<sup>216</sup> Abused, uneducated, and poor female victims addicted to alcohol and drugs are drawn to patriarchy’s tenets: “I alone can protect you! I am strong! I am violent. You need violence to protect you from violence.’ . . . [A] woman who-[is] dedicated to patriarchy is born.”<sup>217</sup> To overcome this, we as a society must take several preventative, as well as forward-looking, steps.

Community support—whether offline or online—is an important factor for women to feel sustained and empowered in overcoming their abusive pasts and spiraling negative present. In the 2019 post #MeToo era, a digital anonymity and covertness is allowing ordinary women to come forward. Anonymized lists, whisper networks, and informal alliances are becoming stronger forces in pinpointing men as abusers and accused. The anonymity of the web has created global voices to stand in solidarity.

Women face different problems than those of men. Systemic and infrastructural changes in traditional institutions have been slow, e.g. military, to non-existent, e.g. church. Transformation in female institutions, female rhetoric, and female vulnerabilities, has to come from inside out and outside in, within these structures and frameworks.

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<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Haque, *supra* note 7.

Listening to women and believing women is the most underrated aspect of modern female rights movements. We, as a society, have to start charting out solutions to women's issues and problems, as a collective, as different from men, and tailored and streamlined to address women in the totality of their circumstances and in the wholeness of their beings.