Introduction

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Gender and the Law 2025

Welcome to the 2025 edition of *Gender and the Law*. Each volume of this publication demands thoughtful and often difficult article selections. This year, however, as we made our decisions against a backdrop of mounting threats and harms to higher education and sex, sexual orientation, and gender identity and expression (SSOGIE) equality, the editorial process felt more urgent and challenging than when we took the baton in the aftermath of the pandemic.

Our Editorial Board was not immune to the impact of such regressive policies. Our esteemed co-editor, Daniela Kraiem, had to make the difficult choice of stepping away from the Board to better serve the students affected by the federal government cuts in her role as Assistant Dean of Career and Professional Development. Daniela co-led our Editorial Board with brilliance and vision from 2022 to 2024. We, along with our entire community of readers, authors, and editors, extend our deepest gratitude for her unwavering leadership and profound commitment to advancing the scholarship on Gender and the Law.

With these realities weighing heavily on us, the Editorial Board scoured dozens and dozens of exceptional articles. The work of our colleagues showed us the magnitude of how much ground has been lost and how much terrain remains in peril. We made selections with deep respect for our colleagues writing bold scholarship in the field of Gender and the Law, often from within states and institutions seeking to scrub their curricula and faculty rosters of such vital content and experts. We also made our selections in awe and gratitude to them and the journals

publishing this impactful writing against these same threats.

Producing the volume, thus, became not just an editorial task but a uniquely sacred one. Following this call, we aimed in this Volume to select articles with enduring relevance to the legal battles ahead. This goal came with a paradox.

Legal scholarship itself is under siege amidst the rise of authoritarianism. Websites are being erased and scrubbed. Books are being removed from shelves. Studies are being suspended. All these authoritarian actions metastasize on misinformation, censored speech, the discrediting of experts, and the retrenchment of traditional gender norms.

On the one hand, these threats make the production of excellent legal scholarship harder than ever. On the other hand, legal scholarship holds a uniquely important role as both a time capsule – capturing the shifts occurring in law and society – and a roadmap orienting us forward. These scholars remind us that we do not eulogize the state of the law, but we must seize every opportunity to still make change towards SSOGIE equality.

We pivot. We adapt. We unite.

Many of the selected authors embody this view. They propose bold new visions for equality, rewriting the landscape entirely from a deep intersectional knowledge. While that has always been true in the field, it seems more important than ever to name. One of President Trump's inaugural executive actions was an Executive Order titled *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*. This deeply regressive Executive Order, with a stroke of a pen, sought to undo decades of progress for gender equality, and it particularly sought to do so in the name of protecting women.

This Volume accordingly reminds us that the only way forward is to be in a community with all oppressed people. As the authors in this volume reveal, the struggles are all interconnected. The gender equality project cannot jettison its support of trans rights without also undermining reproductive rights and allowing women's rights to be co-opted as an oppressive tool. It cannot advocate for reproductive decision-making without incorporating the needs of individuals with disabilities. It cannot erase the stories of some marginalized communities without distorting the entire cause. The selected articles in this Volume resonate with each other because they meet the moment by speaking to these urgent themes of solidarity, strategy, and political action.

Trans Backlash & Equality Erosion

We open the Volume with a piece showcasing the importance of following these guiding principles at this juncture. From *Lawrence v. Texas* to *Obergefell v. Hodges*, the Constitution has long been a tool to advance LGBT rights. Now, it is increasingly being used to curtail them. Professor Katie Eyer's article, *Anti-Transgender Constitutional Law*, 77 VAN. L. REV. 1113 (2024) documents the dramatic rise in constitutional challenges to trans protective laws and policies, cataloging all cases between January 2013 and June 2023.

Virtually non-existent before 2016, anti-transgender constitutional claims are now a core piece of the larger anti-trans legal project, and, as

Professor Eyer's study reveals, such claims are seeing increasing success in court. These arguments are deployed in numerous legal contexts, attacking everything from state-wide anti-discrimination laws to school district policies. And while these anti-trans constitutional claims rely on a wide range of doctrines, the most common arguments are rooted in the First Amendment's guarantees of free speech and free exercise.

Free speech and free exercise anti-transgender arguments have continued to dominate post June 2023 (the end of the article's study period). They have also seen increasing success at all levels, including at the Supreme Court. In *303 Creative v. Elenis*, the Court relied on the compelled speech doctrine to hollow out a law prohibiting sexual orientation-based discrimination in public accommodations. Likewise, the Court in *Mahmoud v. Taylor* held that an LGBT inclusive school curriculum should be considered a substantial interference with parents' ability to guide their children's religious upbringing.

Professor Eyer's ten-year case study is a vital contribution to the scholarship on trans rights, but its significance extends far beyond that. Professor Eyer makes clear that these constitutional arguments have no real limiting principle. They can be used to weaken and undermine anti-discrimination law writ large. If providing services to a same-sex couple or hiring a trans employee violates the First Amendment, providing services to an interracial couple or refusing to hire a woman employee could too. Professor Eyer aptly calls these anti-trans arguments the "canary in the coal mine" for the future of anti-discrimination law and shows why all groups protected by anti-discrimination laws should care about and oppose attempts to undercut anti-discrimination laws with expansive speech and religion-based arguments.

Enforcing Normative Bodies & Identities

With the backdrop of anti-trans litigation as a backlash to LGB rights litigation in part due to the privileging of certain groups of the LGBTQ+ community in the equality movement, the second article of this collection, Kendra Albert, *You Should Be Ashamed of Yourself: Privacy Claims by Transgender Litigants and Navigating Transnormativity*, 59 HARV. C.R.-C.L. L. REV. 237 (2024), invites us to think critically about litigation strategies and their long-term effect in hegemonic narratives. Kendra Albert examines how transgender litigants have historically used privacy claims to fight discrimination. However, these claims often rely on transnormative narratives that align with stereotypical, narrow ideas of what it means to be "truly" transgender and that serve privileged members of the trans community.

Albert argues that while privacy claims can win individual victories, they often reinforce restrictive norms about gender and offer only conservative, status-quo-preserving change. They can offer short-term wins but risk entrenching new forms of normativity that dictate who is a "good" or "deserving" transgender person. Albert argues that a more transformative approach would confront transnormativity directly and seek broader structural changes rather than merely protecting the right to hide. Albert's argument becomes more salient in light of the receding role privacy and due process are playing in SSOGIE rights litigation.

This article is an invitation to avoid repeating the error of reifying hegemonic narratives as we shift from privacy claims to a new terrain for equality.

Amanda Landenberger's article, *Flattening Breast Cancer by Removing the Breasts: Protecting a Woman's Right to Choose Reconstruction of an Aesthetic Flat Chest*, 25 GEORGETOWN J. GENDER & L. 1197 (2024), continues this section's theme of interrogating the role of the law in enforcing normative bodies and identities. Landenberger's thesis might cause many readers to do a double-take, surprised that the stated proposal is not *already* the existing standard of care in law and medicine. Landenberger concludes that, just as women should (and do) have the right to have a mastectomy to decrease cancer risks, women should also have the right to decide whether to have reconstruction of their breast(s) or to "go flat" and reconstruct the breast area of the chest wall only.

Landenberger uses powerful – often searing – stories of patients from the news and legislative testimony to explain how standards of care have evolved over the years to remedy similarly egregious paternalism and arbitrariness, but how this critical gap remains. Following the *Women's Health and Cancer Rights Act of 1998*, insurers are required to cover post-mastectomy reconstruction and also alignment surgery on the non-cancerous breast to yield symmetry aesthetically. Doctors do not, however, as Landenberger reveals, routinely inform their patients that they also have the option *not* to do an external reconstruction of the breast itself, and could instead elect a flat chest, which itself involves complicated surgical techniques. Landenberger highlights how many women do not get a full menu of options that includes a flat chest because of physician bias and relative physician inexperience with this surgical technique. Women might nonetheless prefer this approach because implants and other reconstruction techniques include increased surgeries and risks (e.g., implant rupture, infection).

Landenberger importantly draws numerous connections between women seeking to go flat chested to lower their cancer risk and the delivery of gender-affirming care, intersecting around the right to bodily autonomy and the application of medical best practices. A medical model that valorizes *any* specific breast aesthetic over another is problematic for all, particularly recognizing that cisgender men, trans women, and trans men also experience breast cancer. Reforms to the standards of care governing breast cancer risk management will train more doctors on this procedure, build more inclusive informed consent models, and de-tether chest shape (flat or curved) from rigid gender binaries. Landenberger explains how law reforms to strengthen informed consent, interpret the *Women's Health and Cancer Rights Act of 1998* to include reconstructing the breast tissue of the chest wall only (not just the protruding breast), or adopt legislative reforms like New York State has requiring insurers to cover flat closures equally, are achievable reforms to strengthen autonomy for all.

In the final piece that closes this section on Enforcing Normative Bodies & Identities, *Is the Use of Artificial Intelligence in the FemTech Industry Feminist? The Biological and Legal Dilemmas in the FemTech*

Industry From a Feminist Perspective, 22 IND. HEALTH L. REV. 93 (2025), Adi Youcht takes up a parallel concern in the rapidly evolving FemTech industry. Youcht examines whether the use of artificial intelligence in the digital health technologies targeting women's medical needs can be considered genuinely feminist or risk reinforcing structural inequalities.

The FemTech sector, valued at $28 billion, encompasses AI applications addressing women's diseases, fertility, and sexuality. It offers significant opportunities to advance gender equality by addressing historically neglected women's health issues and strengthening women's autonomy over their bodies. However, Youcht identifies three critical challenges from a feminist perspective: algorithmic bias stemming from male-dominated medical data that may discriminate against women; the reinforcement of stereotypical social perceptions about women's needs and desires; and serious privacy concerns that could threaten reproductive rights and bodily autonomy.

Through empirical illustrations and comparative legal analysis, Youcht argues that AI-based FemTech products have transformative potential for women's healthcare. However, they also raise fundamental questions about whether these technologies truly serve feminist principles or merely apply new technological solutions to perpetuate existing inequalities. Youcht proposes a feminist regulatory framework that combines traditional bioethics, AI ethics, and feminist ethics to ensure that FemTech development prioritizes women's perspectives and experiences. Youcht concludes that comprehensive, feminist-informed regulation incorporating principles of social justice, transparency, autonomy, and accountability is essential to realize the promise of AI in women's health while preventing the entrenchment of gender-based discrimination in medical technology.

Interrogating Medicalized Bodies

The following section continues to ask how the law creates normative bodies. But in this section's opening article, *Bending Gender: Disability Justice, Abolitionist Queer Theory, and ADA Claims for Gender Dysphoria*, 137 HARV. L. REV. F. 237 (2024), author D. Dangaran turns this question on its head by tackling one of the most controversial litigation strategies in trans rights litigation. The trans rights movement is currently grappling with a strategic and conceptual divide over whether individuals diagnosed with gender dysphoria should pursue legal claims under the *Americans with Disabilities Act* (ADA).

On the one hand, some advocates view the medicalization of bodies through the ADA as a pragmatic tool to secure necessary medical accommodations, particularly in institutional settings such as prisons. On the other hand, critics caution that relying on the ADA reinforces a pathologizing framework that legitimizes state control over gender identity and access to care. D. Dangaran intervenes in that debate by defending the use of the ADA as a viable litigation strategy for incarcerated trans people seeking accommodations for gender dysphoria.

Using a critical autoethnographic approach, Dangaran presents survey data on the perspectives of trans individuals incarcerated in

Massachusetts, offering insight into how those most affected understand and weigh the costs and benefits of asserting ADA claims within a system that continues to medicalize and regulate trans bodies. Informed by the survey, Dangaran responds to the critiques that worry that framing gender dysphoria as a disability could reinforce medicalization, stigma, or pathologization of trans identities and caution that legal strategies focused on individual rights may depoliticize the broader aims of gender justice by urging a more intersectional and abolitionist approach that sees disability justice as a tool for collective liberation. This Crip approach and the ethnographic work shake the assumptions of what good litigation strategies should be or are.

Elizabeth Kukura's article, *The Relationship Between Medicalization and Criminalization in Reproductive Health*, 34 HEALTH MATRIX 217 (2024), continues this section's theme of interrogating medicalized bodies, richly exploring the relationship between demedicalization and criminalization in reproductive health care. Kukura threads one family's narrative effectively throughout the whole piece as a portal to show readers the complexities and nuances in how families and birthing persons navigate their medical decision-making and the flaws and failures in how the state and health care systems respond. Kukura explains how the United States myopically and problematically uses criminalization – and threats of criminalization – in ways that are coercive, targeted, and flawed. This article is full of complex relational content, whereby Kukura explains the interconnections between the demedicalization of childbirth and the criminalization of pregnant people's decision-making, as well as the complicated relationships that reproductive decision-makers have with the state and mainstream medicine.

Kukura brings great nuance to this area of law, nudging readers away from strict binaries around demedicalization and around decision-making, recognizing instead that there is a lot of fluidity and nuance in how families and individuals navigate this landscape depending on resources, family status, health factors, and risks. This nuanced decision-making does not always align with the calculus that a physician or health care institution would make.

Kukura powerfully explains, though, how profoundly problematic it is for providers to weaponize the state's criminal system to compel a reproductive health outcome because such approaches violate patient privacy, undermine autonomy, and breach medical ethics. Criminal responses are often rushed and flawed traumatizations with steep power imbalances wielded during a birthing person's most vulnerable times, counter-intuitively pushing families further away from the medical care the physician seeks to compel and disproportionately weaponized against families of color. These complex interactions merit deep consideration in our current political landscape as we see strained maternal care systems, increased criminal retributive responses, and strong natalist policy agendas.

Mapping the Sexual and Reproductive Justice Agenda in Disability Law

As Kukura's work underscores the dangers of coercive state involvement in reproductive health, the next set of contributions further deepen this conversation by mapping how law and policy similarly constrain autonomy at the intersection of disability and sexual and reproductive justice. The authors in this section show us how state structures not only neglect but actively suppress the sexual and reproductive agency of people with disabilities.

Legal commentary about people with disabilities often focuses on their vulnerability to abuse, exploitation, or discrimination, invoking victim status when criticizing the law or its enforcement. Natalie Chin's *The Structural Desexualization of Disability*, 124 COLUM. L. REV. 1595 (2024) rejects that approach, offering an incisive critique of state interference with choices regarding sexuality for individuals with intellectual and developmental disabilities. Her starting place is a universal one, that sexuality is "integral to the human experience," and yet individuals with intellectual and developmental disabilities often do not enjoy the same choices as members of the broader population when it comes to love and intimacy, sexual pleasure and self-expression, and reproduction.

She argues that sexuality is rendered invisible for individuals with intellectual and developmental disabilities, a systematic desexualization produced by state systems that are present in such individuals' lives but fail to recognize or account for the sexuality of individuals with intellectual and developmental disabilities. Chin draws on her deep familiarity with the bureaucracies navigated by individuals with intellectual and developmental disabilities to apply her framework to specific systems engaged in the desexualization of such individuals: guardianship, special education, and the Home- and Community-Based Services Waiver program. Her illuminating analysis supports an argument for sexuality as a community integration priority under the ADA. More broadly, Chin makes a convincing case that the structural desexualization of disability is a factor in driving sexual violence against people with intellectual and developmental disabilities, enriching the discourse about sexual violence generally with nuanced analysis about the state's role in facilitating violence in a way that transcends familiar victim-perpetrator binaries.

Robyn M. Powell's article, *Disabling Abortion Bans*, 58 U.C. DAVIS L. REV. 1091 (2024), continues a meaningful conversation at the intersection of disability and reproductive justice. Arguing that unclear health exceptions in abortion laws disproportionately impact people with disabilities, this article explores the legal disparities that exist in the aftermath of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). As abortion law returned to the states, the inequalities and challenges facing people with disabilities became even more complicated. Notably, Powell also critiques the absence of mental health conditions as health care exceptions for abortion. In doing so, the article makes a powerful contribution in reminding readers that disability, especially when discussing abortion, is not a matter of one-size-fits-all nar-

ratives or approaches.

This article makes a critical contribution by arguing that the lack of protections for people with disabilities presents equal protection, due process, and right-to-life problems. As Powell argues, potential avenues for protecting people with disabilities from abortion statutes that disproportionately impact them continue to exist at the state level, as do avenues for protecting abortion providers. How state constitutional provisions could protect abortion rights and health care is an avenue of legal advocacy that scholars and litigators continue to explore. As abortion remains a sociolegal issue of great importance and influx in 2024, Powell reminds readers that there are still ways in which the law can protect people with disabilities, and that reproductive justice must include disability justice.

Personhood and Resistance in the Post-*Dobbs* World

The next set of articles deepens the inquiry about autonomy and vulnerability by studying the implications of *Dobbs* in gender violence and Evidence Law. The first piece takes on the idea of fetal personhood. Laws reflecting a belief that a fetus is a full legal person threaten the rights of the pregnant person. When the fetus's interests clash with those of the pregnant person, the fetus's interests may prevail. But rights erosion is not the only threat such laws pose to women and pregnant people.

As Professors Meghan Boone and Benjamin McMichael's article, *Reproductive Objectification*, 108 MINN. L. J. 2493 (2024), shows that fetal personhood laws risk turning the pregnant person into an object, a reproductive vessel for the fetus. The authors support their theoretical argument about fetal personhood laws and objectification by tracing the connection between such laws and an all-too-common product of objectification: violence. Specifically, they analyze the correlation between laws reflecting fetal personhood and homicide rates of women of reproductive age. The results are as depressing as they are unsurprising. Homicide rates are higher in states with laws that reflect fetal personhood. The authors' insights will become increasingly relevant as fetal personhood laws continue to increase in scope and number in our post-*Dobbs* world. And as this article's findings suggest, the objectification of pregnant people may put all women of reproductive age at increased risk of violence, not just pregnant people.

The post-Dobbs world has forced scholars, practitioners, and activists to rethink how they operate within the legal system and how to transform it. One of the year's most compelling proposals comes from Nila Bala's *Parent-Child Privilege as Resistance*, 65 B.C. L. REV. 823 (2024). In her article, Bala introduces the provocative idea of "privilege as resistance," framing evidentiary privileges as tools to challenge and disrupt unjust laws. She proposes the establishment of a legal privilege that would protect confidential communications between parents and children, particularly in the sensitive realm of reproductive healthcare. Despite evidence that most pregnant minors consult their parents before seeking abortions, the majority of states do not recognize a parent-child privilege, leaving these conversations legally unprotected while facilitat-

ing the prosecution of both parents and minors for terminating a pregnancy. Similarly, in the juvenile legal system, the family regulation system, and the immigration system, parents and children are forced to testify against each other, putting them in precarious situations. Drawing on the historical denial of private family life to enslaved and Indigenous peoples, Bala calls for a legal reimagining that acknowledges and safeguards intimate family dialogues. She argues that adopting such a privilege would be a step toward resisting systemic legal structures that have long targeted Black and Native families through the immigration, juvenile, criminal, and child welfare systems. In doing so, the article makes a powerful case for how legal reform could support family autonomy, empower parental support, and uphold young people's privacy.

Silenced Gendered Stories

As the articles in the Volume up to this point suggest, it is increasingly urgent to examine not only the legal doctrines themselves but also the narratives that give them power. The following articles explore precisely how law constructs and is constructed by narratives. The work of scholars in this section challenges the epistemic foundations of legal knowledge on gender, reproduction, environment, and harm.

We open this section with Sara A. Colangelo's article, *Bridging Silos: Environmental and Reproductive Justice in the Climate Crisis*, 112 CALIFORNIA L. REV. 1255 (2024). Colangelo's article is a reflective, inviting, and urgent call to action to legal advocates in the environmental justice and reproductive justice movements. The article's main premise is that "physical manifestations of environmental injustice arising from *climate change* undermine reproductive justice, especially for women of color living in under-resourced communities." Colangelo offers concrete examples to prove this point, including disrupted abortion access after major storms, sexual violence in storm shelters, disrupted medical services due to flooding and storms, transportation barriers to care, and heat-related pregnancy/birth complications. Colangelo maps out the concentric circles that intersect the reproductive and environmental justice agendas and advocates for strategic alignment, bridging the movements. This approach might seem obvious to the reader. Still, Colangelo explains that this is a needed countermeasure to the largely siloed advocacy that now exists, whereby, for example, agencies like FEMA do not analyze climate disasters through a gender justice lens in tracking or measuring harms.

The article was poignant when published in 2024, but its message is even more potent in 2025 as political attacks escalate, budget cuts deepen, and the legal order is upended. Colangelo explains that these movements "share norms, goals, and concerns that lend themselves to coalition building," but also that they face acute crises because of adverse legal authority (*e.g., Dobbs* and *West Virginia v. EPA,* 597 U.S. 697 (2022)). This article is not Pollyanna-ish in its proposal. Instead, it highlights how the movements worry about blurring their clear missions and are skittish about partnerships because of past disagreement, for example, citing the reproductive justice movement's opposition to

problematic population control measures. Colangelo emphasizes integrative lawyering and community-based advocacy as vital components of the partnerships she envisions.

The next piece takes the exploration of law narratives in a similarly powerful direction by asking whose voices the law listens to and whose voices it silences. Yvette Butler's article, *Silencing the Sex Worker*, 71 U.C.L.A. L. REV. 726 (2024), encourages readers to consider whose narrative matters. Relying on feminist theory and the theory of epistemic oppression, Butler's article invites readers to consider how and why the law chooses which narratives it believes about sex work. Butler demonstrates that when listeners believe narratives that delegitimize and criminalize sex work but reject narratives that speak to choice and empowerment, the law silences sex workers. Often, whose narrative was believable turns upon the identity of the storyteller and listener. Butler challenges the utility of ignoring and rejecting the narratives of sex workers in favor of creating policy decisions on sex work that neither listen to nor speak to their experiences. By ignoring the stories of those sex work policy impacts, and as Butler highlights this truth in other areas of the law, policy will continue to address sex work issues and rights inadequately. As 2024 ended in legal uncertainty amidst another political shift, Butler's article provides a powerful reminder of how the law perpetuates oppression by ignoring the narratives of those it wishes to control.

Martha Chamallas's work provides a foundational entry point for this inquiry. In her article, *Trauma Damages* 52 SW. L. REV. 543 (2024), Chamallas takes a social justice approach to trauma and tort law, laying a foundation for addressing trauma with substantive and remedial legal tools and providing recourse to marginalized people whose injuries have historically been minimized or ignored within the law. Specifically, she tackles the distinction between physical and emotional harm in tort law, using the concept of trauma in an array of contexts to illustrate how tort law's narrow view of harm leaves certain types of plaintiffs without recourse. She begins by observing the lack of attention paid to trauma and its relationship with tort claims and remedies before identifying three distinct but related contexts of trauma—rape trauma, racial trauma, and birth trauma—where the law fails to recognize plaintiffs' injuries as worthy of recovery. Comparison across settings and to the framework provided by the clinical diagnosis of post-traumatic stress disorder helps to illuminate the link between injuries suffered and the systems of subordination and oppression that cause harm.

Chamallas uses the examples of rape trauma, racial trauma, and birth trauma to support her significant contributions in this article, in particular, the call to eliminate artificial distinctions between physical and emotional harms and a recommitment to the eggshell plaintiff doctrine. For example, because trauma defies classification as either purely physical or emotional injury, the traditional distinction between these types of harm has justified denying birthing people recovery for traumatic injuries caused by provider mistreatment. Furthermore, Chamallas argues that racialized trauma should qualify victims of

chronic racism to qualify as eggshell plaintiffs who are likely to suffer intensified injuries because of past trauma. Ultimately, she claims that accounting for the actual existence of trauma in tort doctrine would reshape how courts estimate losses and provide more generous recovery to non-affluent classes of victims. This article shows that succeeding in this endeavor demands we employ a social justice lens in tort law.

Subordination Within the Borders of Marriage

The next section of articles moves from questions of narrative to questions of legal recognition and status. The authors reveal how the law misrepresents some lives and actively denies rights and protections to those outside normative family structures. They showcase how the narratives of the nuclear heterosexual families are still embedded in the frameworks of family and immigration law.

Though family structures continue to diversify in the twenty-first century, the law has largely remained static in embracing and protecting family structures outside the married opposite sex couple paradigm. Susan Hazeldean's article, *Illegitimate Families*, 59 HARV. C.R.-C.L. REV. 157 (2024), provides a comprehensive review of the rights of same sex unmarried parents of children. Hazeldean argues that distinguishing between the legal rights of married parents and unmarried parents creates an issue of inequality in which the law denies unmarried same sex parents equal protection. Framing this system as an exclusionary regime of parents' rights, Hazeldean argues that these rights are necessary to protect both children and parents. Though the role of children's rights within the family remains debatable within this legal regime, protecting legal parents' rights remains critical to support the parent-child relationship. Ultimately, Hazeldean's article provides important advocacy around protecting families that exist in diverse family structures as a matter of equality.

Veronica T. Thronson's article *The Derivative Dilemma: The Gendered Role of Dependency in Immigration Law,* 28 U. PA. J.L. & SOC. CHANGE 147 (2025), on the other hand, captures how the United States immigration law systemically creates derivative statuses, whereby one person's immigration status is "linked and subordinated to another's through a familial relationship." This approach "reinforces gendered power imbalances" and "subject[s] women to antiquated notions of coverture, feminization, and domestication." This legal system, in place since the early 1900s, codifies "strong echoes" of coverture into U.S. immigration law, even as derivative statuses shifted in modern eras to a gender-neutral frame. Thronson describes how this gender hierarchy emerges in the context of work visas and student visas, leaving spouses with only a conditional status that is not durable. Derivative status leaves spouses who accompany their employee or student spouses, more often women, unable to work, compelled by law to subordinate their ambitions and pursuits to their spouse, and fraught with coercion and control because the immigration status terminates if the relationship ends. It also risks the possibility that the parent could be separated from their children *per se* as a consequence of divorce because the applicant and their children retain their lawful status, while the spouse

does not.

Workable models exist to address the hierarchy and coercion baked into this derivative status model. For example, following the *Violence Against Women Act* model, the United States could allow self-petitioning when a spouse loses status or humanitarian parole when lost status might separate a parent from their children. Instead, to date, lawmakers and presidential administrations have only supported political reforms to address domestic violence issues, thus revealing that we need a shift in political will.

Nowhere & Everywhere: Gender's Inconspicuousness in the Law

While the previous section exposed how law constructs and constrains individuals and care-take units through family normativity, the last section turns to a subtler but equally entrenched dynamic: how gendered labor, relationships, and harms are rendered invisible or misrecognized within the legal system. From in-home care work, custody standards, and the structure of legal complaints, the authors in this section illuminate how law often reinforces inequality through failing or refusing to see gender.

The opening article of this section, Professor Yiran Zhang's article *The Care Bureaucracy,* 99 INDIANA L. J. 1241 (2024), addresses the always-gendered issue of the state's relationship to in-home care. Her paper argues that the legal and regulatory structures governing public in-home care in the United States have developed into what she calls a "disciplinary care bureaucracy." In the name of fraud prevention, this system micromanages the delivery of home care through task-based assessments and relentless documentation, turning the relational and person-centered nature of care into a bureaucratic process of surveillance and control.

By prioritizing excessive proceduralism over substantive accountability, Zhang reveals that this system undermines what should be its primary goal: ensuring that care is delivered safely and effectively. The result is a system that undercuts both workers and recipients: it imposes unpaid, invasive bureaucratic labor on caregivers and deters families from accessing or continuing care. Zhang argues that the state's obsession with preventing fraud in in-home care is not just a technical concern, but a political and racialized one. Because the system evolved from means-tested welfare programs, its default stance is distrust toward its users, both the low-income, often immigrant women of color who provide care, and the disabled and elderly recipients who rely on it. Zhang ends the article by proposing alternative governance models, primarily based on lessons from the Department of Veterans Affairs' caregiver programs, proving that public in-home care does not have to function in this way and can instead shift toward trust, relational care, and holistic support.

The question of care is again problematized from a different perspective in the next article, *Best Interests of the Child and Expanding Family,* 14 U.C. IRVINE L. REV. 857 (2024). Stephanie L. Tang shows how the law continues to privilege the nuclear family by highlighting how

custody law often fails to reflect the complex realities of contemporary families, especially those reliant on extended kin and nonparent caregivers. Tang surveys the judicial application of the best interest of the child standard across all fifty states and the District of Columbia, revealing a troubling inconsistency: while extended family support may be viewed favorably in relocation cases, it is often held against parents during initial custody determinations. Tang's work underscores how family law can reinforce class, gender, and racial hierarchies by privileging self-sufficiency over communal caregiving, which has been shown to be especially harmful to women, low-income families, and communities of color. Her work urges a reform that recognizes caregiving beyond the nuclear family and moves us finally beyond the margins of marriage.

The collection closes with *Collective Complaint*, 4 AM. J. L. & EQUALITY 374 (2024), in which Tristin Green offers a compelling and nuanced way to think about the tensions between individual and group-based action in the legal struggle to advance systemic change. Acknowledging the appeal of collective action among progressives, including as a response to neoliberalism's privileging of the individual, Green seeks to carve out more space for individual complaint in service of the collective good.

Using employment discrimination to illustrate the underlying dynamics, she explains how the individualizing of discrimination and complaint leads to both the isolation of individual complainants from others experiencing similar harms and the atomization of complainants' stories, reducing complex experiences into narrow claims in search of narrow solutions. Understandably, this leads to a preference for group-based action, focusing on procedures that enable litigation on behalf of groups of aggrieved complainants. Green argues, however, that an overemphasis on group-based activity in pursuit of the collective good risks excluding individuals who want to challenge systemic practices and effect institutional change, while also minimizing the practical difficulties of group-based efforts that can slow momentum and reinforce differences among affected individuals according to race and other relevant statuses.

Ultimately, she advances a more capacious view of collective action, one that addresses both the isolating and atomizing of individual experiences, arguing that law and legal processes should empower people who "are not necessarily acting *in* groups to tell their own broader stories and to demand broad (collective) assessments and solutions *for* groups." In this way, Green offers a lifeline to those disillusioned by the constraints of current legal frameworks, encouraging more expansive thinking about how to harness the power of individuals' stories about their lives to change oppressive systems.

The Editorial Board that made these selections is an accomplished and committed group of scholars and teachers who volunteered for the project despite their many other commitments. With their deep dedication to highlighting scholarship in Gender and the Law, they each brought a robust knowledge of their fields and a collaborative spirit to the work. The Lead Editors Aníbal Rosario Lebrón (Rutgers University)

and Jamie R. Abrams (American University) are immensely grateful to have April G. Dawson (North Carolina Central University School of Law), Elizabeth R. Kukura (Drexel University Thomas R. Kline School of Law), Laura Lane-Steele (University of South Carolina School of Law), and Neoshia R. Roemer (Seaton Hall Law School) all return to the Editorial Board this year to bring their wisdom and insights. We treasure the collegiality and fellowship of this editorial process.

Editing these volumes is a project of the Feminist Legal Theory Collaborative Research Network, a section of the Law and Society Association. Each year, the Editorial Board donates the modest stipend for editing the volume to organizations that promote SSOGIE equality. In this small way, the Editorial Board hopes to use this labor to support the work of those advocates and organizers on the ground.