

Gender and the Law

Elizabeth Kukura

Laura Lane-Steele

Neoshia Roemer

Editors

2026 Edition

Issued in October 2026



For Customer Assistance Call 1-800-328-4880

© 2026 Thomson Reuters

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

About the Editors

Elizabeth Kukura (she/her) is an Associate Professor of Law at the Drexel University Kline School of Law, where her research explores the intersections of health law and gender, with a particular focus on reproductive health and the law and politics of childbirth. Professor Kukura's scholarship has appeared in such journals as the *Georgetown Law Journal*, *Washington & Lee Law Review*, *Arizona State Law Journal*, *Fordham Law Review*, and the *Journal of Law, Medicine & Ethics*, among others. She received her JD from New York University School of Law, where she was editor-in-chief of the NYU Review of Law & Social Change. She also holds an LLM from Temple University Beasley School of Law and an MSc in Human Rights from the London School of Economics & Political Science. Professor Kukura is a member of the Quality Maternal & Newborn Care Research Alliance.

Laura Lane-Steele is an Assistant Professor at the University of South Carolina Joseph F. Rice School of Law. She writes on antidiscrimination law and family law, with a focus on sex, gender, and sexuality. Her work has appeared or is forthcoming in the *California Law Review*, *Southern California Law Review*, *Texas A & M Law Review*, *Columbia Journal of Gender and the Law*, and *University of Pennsylvania Journal of Law and Social Change*. Prior to joining South Carolina Law, she was a Forrester Fellow at Tulane Law School. She also clerked for the Honorable Jane R. Roth of the United States Court of Appeals for the Third Circuit.

Neoshia R. Roemer is a Professor of Law at Seton Hall University School of Law, where she teaches courses in contract law, family law, poverty law, and federal Indian law. Professor Roemer's areas of interest include domestic violence, family-based rights, child welfare, poverty issues, and the Indian Child Welfare Act. Prior to joining the faculty at Seton Hall, Professor Roemer worked at the University of Idaho College of Law and as a Fellow and, later, Staff Attorney for the Indigenous Law & Policy Center at the Michigan State University College of Law.

About the Editorial Board

Jamie R. Abrams is a Professor of Law at the American University Washington College of Law. She teaches courses in Family Law, Torts, Gender and the Law, and Legal Rhetoric. Her scholarly research focuses on reproductive and birthing decision-making, gendered violence, and legal education pedagogy. She has published numerous books, chapters, and articles in these subject areas. She has appeared in media outlets such as the N.Y. Times, Washington Post, N.P.R., and NBC's Today Show.

Sania Anwar is Assistant Professor of Law at Wake Forest University School of Law. Her research areas include law and philosophy, jurisprudence, and the theoretical foundations of private law. Her scholarship focuses on law's structural normativity and explores how legal systems constitute expectations through concepts of reliance and responsibility. Her research is situated in analytic jurisprudence and private law theory and uses conceptual analysis to evaluate historical and contemporary contestations of legal concepts and categories. She previously served as the inaugural Ruth Bader Ginsburg Academic Fellow at Columbia Law School.

Shannon Fyfe is an Associate Professor at the Washington & Lee University School of Law, where she also holds a courtesy appointment in the philosophy department. Previously, she was an Assistant Professor of Philosophy at George Mason University, where she was also a Faculty Fellow in the Institute for Philosophy and Public Policy and an Adjunct Professor at the Antonin Scalia Law School. She holds both a J.D. and a Ph.D. in philosophy from Vanderbilt University. Her primary areas of research are in legal philosophy and feminist ethics, especially related to international conflict, criminal law and accountability, and healthcare.

Aníbal Rosario Lebrón is a Professor of Law at Rutgers Law School. A Puerto Rican attorney, linguist, poet, and photographer, he holds an LL.M. in Legal Theory from New York University and a J.D., a Post-Graduate Certificate in Linguistics, and a B.S. from the University of Puerto Rico. Before joining Rutgers, he taught at Howard University and has held visiting appointments at Brooklyn Law School, University of Louisville, Hofstra University, and Universidad Interamericana. He also served as an adjunct professor at Universidad de Puerto Rico. Professor Rosario Lebrón is a former member of the Board of Directors of LatCrit and former Co-Chair of the Hispanic National Bar Association's Section on Afro-Latinidad. His research examines the relationship between law, identity, status, belonging, and subordination

through the lenses of constitutional theory, feminist theory, critical race theory, queer legal theory, and critical social theory. His scholarship focuses on constitutional law, family law, evidence, children's rights, LGBTQ+ rights, and critical pedagogy, with particular attention to how legal institutions shape equality, agency, recognition, and access to justice. Professor Rosario Lebrón is also committed to expanding access to legal education and the legal profession and has developed numerous pipeline, mentoring, and educational outreach initiatives for students from historically underrepresented communities.

About the Contributors

Swethaa S. Ballakrishnen (they/them) is a socio-legal scholar whose research and teaching examines law's connections to actions, institutions, and relationships at the periphery, broadly defined. Particularly, across a range of sites and different levels of analysis, their work interrogates how law and legal institutions create, continue, and counter different kinds of socio-economic and cultural inequalities.

Professor Ballakrishnen is committed to building and serving socio-legal communities, especially ones that focus on critical questions concerning legal education and the profession. At UCI, they co-run the Center for Empirical Research on the Legal Profession, the Socio-Legal Studies Workshop, and the Law, Society, and Culture Emphasis. In addition, beyond UCI, they are affiliated faculty at the Harvard Law School Center on the Legal Profession, on the board of trustees of the Law and Society Association (LSA) and the ISA Research Committee on Sociology of Law, a co-founder of the LSA Collaborative Research Network on Legal Education, and on the Executive Committee of the AALS Section on Empirical Study of Legal Education and the Legal Profession. In 2017-18, they were the AccessLex Visiting Scholar on Legal Education at the American Bar Foundation. In 2020, Professor Ballakrishnen was named a AALS Teacher of the Year.

(Author of Chapter 16, *Blasé: Deviant Lawyers and the Denial of Discrimination*.)

Kate Brennan is a researcher whose work intersects technology, law, and power. A graduate of Yale Law School, where she served as Editor in Chief of the Yale Journal of Law and Feminism, she also holds a dual B.A. from Brown University in Gender and Sexuality Studies and Modern Culture and Media. She currently works in AI policy and critical research.

(Co-author of Chapter 15, *Decommissioning Rape Law*.)

Jessica Clarke, Robert C. and Nanette T. Packard Professor of Law at University of Southern California Gould School of Law, writes on antidiscrimination law, with a focus on sex, gender, and sexuality. Her work has appeared in law journals including the *California Law Review*, *Columbia Law Review*, *Duke Law Journal*, *Harvard Law Review*, *New York University Law Review*, *Northwestern University Law Review*, and *Yale Law Journal*, as well as other outlets including the *New England Journal of Medicine*, *Los Angeles Times* and *Harvard Business Review*. She has twice received the Dukeminier Award for the best legal scholarship on sexual orientation and gender identity.

(Author of Chapter 3, *Scrutinizing Sex*.)

David S. Cohen's scholarship explores the intersection of constitutional law and gender with a particular focus on how the law impacts abortion provision. He also researches sex segregation, masculinity, and voting anomalies at the Supreme Court.

In the wake of the reversal of *Roe v. Wade*, Professor Cohen has been one of the leading national experts on abortion. Along with his coauthors Greer Donley (Pitt) and Rachel Rebouché (Texas), he has written several oft-cited law review articles about the aftermath. In particular, their work was cited by the dissenting opinion in *Dobbs* and has been the inspiration for at least 22 state laws and executive orders passed to protect abortion rights in the face of the Supreme Court's reversal. He also published a book about abortion provision after *Roe* was overturned, *After Dobbs: How the Supreme Court Ended Roe But Not Abortion* (with Carole Joffe).

He currently serves on the Guttmacher Institute's Institutional Review Board. He continues to work on pro bono cases affecting abortion access and LGBTQ+ rights, including a case before the Pennsylvania Supreme Court challenging the state's ban on Medicaid abortion coverage.

(Co-author of Chapter 9, *From Medical Exceptions to Reproductive Freedom*.)

Rangita de Silva de Alwis is a globally recognized international women's rights expert and a member of the treaty body to the UN Convention on the Elimination of Discrimination against Women (CEDAW), where she is Chair of the Working Group on Individual Petitions Mechanism under the Optional Protocol and the Women, Peace and Security Co-Chair. In 2025, marking the 25th anniversary of the UN Security Council Resolution 1325, she authored the Addendum to the CEDAW's GR 30 on a new international normative framework on peace and security. She is also on the high-level advisory board of the President of the UN General Assembly and Vice Chair of the International Bar Association's Human Rights Institute, which is headed by Baroness Helena Kennedy of the Shaws, KC.

She has published widely in leading law journals including at Harvard, Yale, Penn, Columbia, Berkeley, Duke, UCLA, Michigan, Virginia, Georgetown, Chicago, and in the Oxford and Cambridge Press. Her Casebook on Global Gender Justice is to be published by Cambridge University Press.

At the University of Pennsylvania Carey Law School, where she was the Associate Dean of International Affairs, she teaches International Women's Human Rights; Women, Law, and Leadership; and the Policy Lab on Women in Conflict and the Policy Lab on AI and Bias, and directs the Global Institute for Human Rights. She is also faculty at the Harvard Kennedy School of Government and at Wharton where she teaches Globalization and Human Rights. She was a Visiting Fellow at the Faculty of Law, Mansfield College, Oxford and at the Oxford Bonavero Institute of Human Rights in the Trinity Term (2024). She was a Visit-

ing Policy Fellow at the Oxford Internet Institute in the Trinity Term (2025) researching her paper on AI- driven Lethal Autonomous Weapons Systems (LAWS) to be published by the Chicago Journal of International Law. She is also co-chair of the High- Level Expert Group on Global Gender Justice. She was appointed Distinguished Visiting Professor at the International Law Center at the National University of Singapore for December 2025.

In recognition of Rangita's global work in advancing women's rights, she was named the Hillary Rodham Clinton Distinguished Fellow on Gender Equity, Georgetown Institute for Women, Peace and Security. She has been recognized globally for her work, including by the South Korean Supreme Court and with the Austrian Justitia award and was honored by Harvard Law School as a Woman Inspiring Change, 2015.

(Author of Chapter 14, *Gendering the International Convention on Cybercrimes*.)

Professor Greer Donley is the John B. Nicklas, Jr. Faculty Fellow at the University of Pittsburgh School of Law. Professor Donley is a national expert on abortion and the law. Donley has published widely and been quoted extensively in the media, especially on topics related to medication abortion, interjurisdictional abortion conflicts, and the impact of abortion bans on other aspects of reproductive healthcare.

Donley's scholarly works have been published in the *Stanford Law Review*, *Columbia Law Review*, *Michigan Law Review*, *Duke Law Journal*, and *Cornell Law Review*, among others. Her popular writing often appears in the *New York Times*, *the Atlantic*, *the Washington Post*, and *Slate*. Her paper, *The New Abortion Battleground*, co-authored with David S. Cohen and Rachel Rebouché, was downloaded over 20,000 times, covered widely in the media, and cited by the Supreme Court's dissent in *Dobbs v. Jackson Women's Health Organization*.

Since the fall of *Roe v. Wade*, Professor Donley has regularly applied her expertise to advocacy work. Professor Donley helped design, draft, and pass the first abortion shield law in Connecticut, which has now been replicated in many states and cities. She also helped draft an FDA Law Scholars amicus brief in the *Alliance for Hippocratic Medicine v. FDA* case and was one of two primary drafters of a citizen petition to the FDA to add miscarriage management to the mifepristone label.

Donley's scholarship, advocacy, and teaching have been recognized through a variety of awards, including a Chancellor's Distinguished Research Award (junior category), Marion Young Award for Political Engagement, Robert T. Harper Excellence in Teaching Award, Haub Law Emerging Scholar Award in Women, Gender & Law, and SLU & ASLME Health Law Scholar Award. In 2022, she was the 11th most downloaded law professor on SSRN.

(Co-author of Chapter 9, *From Medical Exceptions to Reproductive Freedom*.)

Professor Mary D. Fan holds the Jack R. MacDonald Endowed Chair at the University of Washington School of Law, where she special-

izes in criminal law and procedure, evidence and data privacy. She is the author of numerous articles and a book, *Camera Power: Proof, Policing, Privacy, and Audiovisual Big Data*, published by Cambridge University Press. Her research and teaching are informed by her experiences as a federal prosecutor in the Southern District of California and as an associate legal officer at a United Nations criminal tribunal. Her scholarship has been cited by judges and in major media venues.

Professor Fan was the Herman Phleger Visiting Professor at Stanford Law School, where she taught first-year criminal law, and a Visiting Scientist at the Harvard School of Public Health. Professor Fan is an elected member of the American Law Institute (ALI) and an elected Life Fellow of the American Bar Association (ABA). Among Professor Fan's most cherished honors is that the student body has three times voted to award her Professor of the Year for teaching excellence.

(Author of Chapter 10, *Abortion Ally or Abettor: Accomplice and Conspiracy Liability After Dobbs*.)

Professor Joseph Fischel, Professor of Women's, Gender, and Sexuality Studies at Yale University, is a theorist of social and sexual justice. His research on the regulation of sex, gender, and sexuality traverses normative political theory, queer studies, and critical race and feminist legal theory. His first two books interrogate consent as the magnetizing, dominant metric of modern sex law and late modern sexual ethics. *Sex and Harm in the Age of Consent* (2016) argues that the sociolegal figures of the recidivistic sex offender, the innocent child and the heroic homosexual invest consent with its normative power while obfuscating more pervasive but less perceptible forms of sexual injury and gendered violence. *Screw Consent: A Better Politics of Sexual Justice* (2019) explores cases of atypical and non-normative sex in order to scaffold a sexual ethics less beholden to consent for what we think of as the ordinary couple form. His third book, *Sodomy's Solicitations: A Right to Queerness* (2025), examines the life and afterlife of sodomy law in New Orleans and beyond to reconsider the centrality of sex—in contradistinction to race, gender or sexuality—for liberal and neoliberal governance. *Sodomy's Solicitations* champions a right to queerness across rather than within identity formations—a right to relatively unpoliced gender, sexual, and intimate pluralism. Fischel co-edited *Enticements: Queer Legal Studies* (2024) with University of Toronto law professor Brenda Cossman.

(Co-author of Chapter 15, *Decommissioning Rape Law*.)

Professor Grossman is the inaugural Ellen K. Solender Endowed Chair in Women and the Law at SMU Dedman School of Law. Professor Grossman writes extensively on sex discrimination and workplace equality, with a particular focus on issues such as sexual harassment and pregnancy discrimination. Her book, *Nine To Five: How Gender, Sex And Sexuality Continue To Define The American Workplace* (Cambridge, 2016), provides a lively and accessible discussion of contemporary cases and events that show gender continues to define the work experience in

both predictable and surprising ways. She is also an expert in family law, especially parentage law and the state regulation of marriage. She is co-author (with Lawrence M. Friedman) of *Inside The Castle: Law And The Family In 20th Century American* (Princeton University Press, 2011), a comprehensive social history of U.S. family law. She has published articles in *Stanford Law Review*, *Georgetown Law Journal*, and the *Yale Journal on Law and Feminism*, among other places. Grossman is the coeditor of *Gender Equality: Dimensions Of Women's Equal Citizenship* (Cambridge University Press, 2009), an interdisciplinary anthology that explores persistent gaps between formal commitments to gender equality and the reality of women's lives, and *Family Law In New York* (Carolina Academic Press, 2015). She is also a regular columnist for Justia's *Verdict*, an elected member of the American Law Institute, and the recipient of a grant from the National Endowment for the Humanities for her work on parentage law.

(Author of Chapter 7, *Who Decides? The Role of Parental Rights in Abortion and Gender-Affirming-Care Decisions for Minors.*)

Dr. Ido Katri is an Assistant Professor in the Faculty of Law and the School of Social Work at Tel Aviv University. He teaches and researches in the field of Legal and Critical Theory, as well as Administrative, Equality and Welfare Law, with a focus on issues of trans rights, gender and sexuality, race and racialization, subjectivity and subjection. Katri earned an LL.M and SJD from the University of Toronto Faculty of Law in the collaborative programs for Sexual Diversity Studies and Jewish Studies. He is a former scholar at the Pierre Elliott Trudeau Foundation, a graduate of the Vanier Canada program, the recipient of the Governor General Gold Medal and other awards and grants. His recent publications include: *Intersex, Trans, and the Irrationality of Gender-Affirming Care Bans*, 134 *Yale Law Journal*; *Transition in Sex Reclassification Law*, 70 *UCLA Law Review*; *The Perils of Gender Self-Determination*, 71 *American Journal of Comparative Law*.

(Co-author of Chapter 4, *Intersex, Trans And The Irrationality Of Gender Affirming Care Bans.*)

Elizabeth Kukura (she/her) is an Associate Professor of Law at the Drexel University Kline School of Law, where her research explores the intersections of health law and gender, with a particular focus on reproductive health and the law and politics of childbirth. Professor Kukura's scholarship has appeared in such journals as the *Georgetown Law Journal*, *Washington & Lee Law Review*, *Arizona State Law Journal*, *Fordham Law Review*, and the *Journal of Law, Medicine & Ethics*, among others. She received her JD from New York University School of Law, where she was editor-in-chief of the *NYU Review of Law & Social Change*. She also holds an LL.M from Temple University Beasley School of Law and an MSc in Human Rights from the London School of Economics & Political Science. Professor Kukura is a member of the Quality Maternal & Newborn Care Research Alliance.

(Author of Chapter 8, *Normalizing Maternal Ambivalence*.)

Katherine McClain Fleming is an Equal Justice Works Fellow at the American Civil Liberties Union Reproductive Freedom Project. After graduating from Harvard Law School in 2024, she clerked on the New Jersey Supreme Court and the United States Court of Appeals for the Second Circuit. Her student note, *Wrongful Death: A Loaded Gun of Fetal Personhood and Intimate Intimidation*, was published in the Harvard Journal of Law and Gender in 2024. She previously completed legal internships at Planned Parenthood Federation of America, Gender Justice, and Pregnancy Justice. She was lead author on the Pregnancy Justice issue brief, *When Fetuses Gain Personhood: Understanding the Impact on IVF, Contraception, Medical Treatment, Criminal Law, Child Support, and Beyond*, published in 2022.

(Co-author of Chapter 1, *Conservative Family Values as Constitutional Law: Private Regulation and the Erosion of Fundamental Rights*.)

Noy Naaman is an Assistant Professor at Reichman University's Harry Radzyner Law School. He holds an S.J.D. from the University of Toronto, an LL.M. from Columbia University (Harlan Fiske Stone), and an LL.B. from Tel Aviv University (magna cum laude). Before joining Reichman University, Dr. Naaman completed postdoctoral fellowships at Yale Law School, UC Berkeley School of Law, and the Hebrew University of Jerusalem (Minerva Center for Human Rights, Child and Youth Rights Program). He also served as a Visiting Professor at Western Law in Canada. Dr. Naaman's research focuses on the intersections of family law and children's rights, bioethics and critical legal theory. His work has been published in leading journals, including Washington University Law Review, Yale Journal of Law & the Humanities, American Journal of Comparative Law, and Harvard Journal of Law & Gender, and has been cited in several landmark decisions of the Israeli Supreme Court. His research has been recognized with numerous competitive fellowships and awards, including the Human Rights Fellowship (Columbia Law School), Ontario Trillium Scholarship, Connaught International Scholarship (Canada), Fulbright Israel Postdoctoral Fellowship, Israel Science Foundation (ISF) Postdoctoral Fellowship, ICON Prize for Outstanding Paper in Public Law, Sarah Weddington Writing Prize, and a research fellowship from the Max Planck Institute for the Study of Crime, Security and Law.

(Author of Chapter 12, *Reproductive Time in Law*.)

Laura Portuondo is an Associate Professor at Brooklyn Law School. She is a constitutional law scholar with expertise in First and Fourteenth Amendment liberty and equality jurisprudence. Her scholarship examines the constitutional law of gender, race, and religion together to generate unique insights about all three areas of law and constitutional theory more broadly. Professor Portuondo's work has appeared or is forthcoming in the *Yale Law Journal*, *Michigan Law Review*, *Georgetown Law Journal*, *Duke Law Journal*, *UCLA Law Review*, and other top journals. Professor Portuondo teaches Constitutional Law,

Family Law, and Reproductive Rights and Justice.

Professor Portuondo's research and teaching have both earned recognition. In 2024, she was recognized as the Haub Law Emerging Scholar in Women, Gender, & Law. In 2025, Professor Portuondo won the Order of the Barons Professor of the Year for her teaching at the University of Houston Law Center. Her work has been reviewed multiple times in JOTWELL.

Professor Portuondo received her B.A. in English summa cum laude with distinction from Yale College. She earned her J.D. from Yale Law School, where she was an editor of the *Yale Law Journal*. Following law school, she clerked for the Hon. Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit and the Hon. Jed S. Rakoff of the U.S. District Court for the Southern District of New York. She also worked as a judicial strategy fellow at the Center for Reproductive Rights and as a Fellow with the Program for the Study of Reproductive Justice at Yale Law School. Prior to joining Brooklyn Law School, Professor Portuondo taught at the University of Houston Law Center.

(Author of Chapter 2, *Gendered Liberty*.)

Kate Redburn (they/them), Associate Professor of Law at Columbia Law School, is a legal historian with expertise in anti-discrimination law and the First Amendment, as well as the Director of the Center for Gender & Sexuality Law. Their research links history, gender studies, and law to understand the evolving relationship between doctrine, identity, and political economy in the postwar United States. They have written on the rise of religious objection to anti-discrimination law, transgender constitutional history, and regulation of non-normative families.

Redburn's academic work has been published or is forthcoming in the *Harvard Law Review*, *California Law Review*, *University of Chicago Law Review*, *Yale Law Journal*, and *Law and History Review*. They also write essays and book reviews about the history of sexuality, transgender politics, and constitutional law that have appeared in the *New York Times*, *Los Angeles Times*, *CityLab*, *Dissent*, and other publications.

In 2025, they were named Emerging Scholar of the Year by the *Yale Law Journal*. Prior to joining the faculty, they clerked for Judge Guido Calabresi of the U.S. Court of Appeals for the 2nd Circuit and helped found the Law and Political Economy Project. They are a graduate of Yale Law School and will soon complete a Ph.D. in history at Yale.

(Author of Chapter 5, *Skrmetti Beyond Scrutiny*.)

Neoshia R. Roemer is a Professor of Law at Seton Hall University School of Law, where she teaches courses in contract law, family law, poverty law, and federal Indian law. Professor Roemer's areas of interest include domestic violence, family-based rights, child welfare, poverty issues, and the Indian Child Welfare Act. Prior to joining the faculty at Seton Hall, Professor Roemer worked at the University of Idaho College of Law and as a Fellow and, later, Staff Attorney for the Indigenous Law & Policy Center at the Michigan State University College of Law.

(Author of Chapter 6, *Reproducing Citizenship*.)

Lauren van Schilfgaarde (Cochiti Pueblo) is an Assistant Professor of Law at the UCLA School of Law. Her research focuses on tribal sovereignty and federal Indian law. She has written on topics ranging from restorative justice, taxation, cultural resource protection, and jurisdiction. She previously was the Yuhaaviatam of San Manuel Nation Director of the Tribal Legal Development Clinic at UCLA Law wherein she supervised live-client projects concerning tribal governance and justice systems, ethics, cultural resource protection, voting, child welfare, and more. She received her undergraduate degree at Colorado College and her law degree from UCLA School of Law. van Schilfgaarde previously served as the Tribal Law Specialist at the Tribal Law and Policy Institute (TLPI) in West Hollywood, CA, and as a law clerk for the Native American Rights Fund and Legal Aid Foundation of Los Angeles. van Schilfgaarde currently serves as a board member of the Pukúu Cultural Community Services, the AALS Section on Indian Nations & Indigenous Peoples, and the Native American Concerns Committee of the American Bar Association.

(Author of Chapter 11, *Native Reproductive Self-Determination*.)

Clara Spera is a Lecturer at Harvard and Columbia Law Schools, where she teaches seminars on reproductive rights lawyering in the post-*Dobbs* era. She has practiced law in the field of reproductive rights for nearly a decade, including in the nonprofit sector, most recently at the National Women's Law Center (NWLC), where she helped lead the Abortion Access Legal Defense Fund, provided strategic advice on reproductive rights and health issues, and litigated reproductive rights cases, and, earlier, at the American Civil Liberties Union Reproductive Freedom Project where she brought several challenges to abortion restrictions in both federal and state courts. She was also a fellow with the Federal Defenders of New York and represented indigent defendants at all stages of criminal proceedings in federal court. She has spent time in private practice, at an AmLaw50 firm and at a litigation boutique.

Clara is a graduate of Harvard Law School, the University of Cambridge, and the University of Chicago. She clerked on the U.S. Court of Appeals for the Second Circuit and the U.S. District Court for the Southern District of New York. Clara is a member of the Equal Rights Amendment Coalition's ERA Advisory Council, a group dedicated to passing an Equal Rights Amendment. She also serves on the Equal Justice Works Alumni Advisory Council, where she is Chair of the Mentorship Committee.

(Co-author of Chapter 1, *Conservative Family Values as Constitutional Law: Private Regulation and the Erosion of Fundamental Rights*.)

Maayan Sudai is Visiting Research Fellow with the Harvard STS Program, an SJD candidate at Harvard Law School, and a Student Fellow in Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School. Maayan's current research examines the interaction between law, science and society, mainly through a criti-

cal lens and combining multiple disciplines, such as history of medicine, law and social change, health law and bioethics, and Science Technology and Society (STS) studies. After serving as a leading advocate for the intersex rights' movement in Israel, Maayan's dissertation explores the legal struggles of patient advocacy movements against medical institutions in the US.

Besides her legal education, Maayan received training in the history of science discipline and particularly in the field of gender analysis of science. After serving as an advocate for the Intersex patient advocacy movement in Israel and as a member of an international group reviewing the ethical, legal and cultural aspects of disorders in sex development (DSD), Maayan's research looks at the Intersex Rights movement in the U.S. as a case study to explore the dynamic relationship between medical autonomy and legal authority when challenged by patient advocacy movements. More broadly, Maayan seeks to identify, describe and evaluate the legal tools which accommodate the participation of patients in biomedical policy making.

Before becoming a fellow with the STS program Maayan was a student Fellow in the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics in Harvard Law School. She holds both a B.A and an LL.B from the University of Haifa, as well as an LL.M from Harvard Law School. Maayan has served as a teaching assistant in the University of Haifa and Harvard University; she is the winner of the E. David Fischman Scholarship and a contributor to the "Bill of Health" blog.

(Co-author of Chapter 4, *Intersex, Trans And The Irrationality Of Gender Affirming Care Bans.*)

Emily Suski is the Mitchell Willoughby Professor of Advocacy & Social Justice and the Associate Dean of Strategic and Institutional Priorities at the University of South Carolina Joseph F. Rice School of Law. Her areas of expertise include education law—particularly, Title IX and civil rights in the public schools; health & poverty law; and clinical legal education. Her scholarship explores issues at the intersection of education law and civil rights. Her articles have been published in journals including the *Stanford Law Review*, *Emory Law Journal*, *Iowa Law Review*, *Minnesota Law Review*, *California Law Review*, *UCLA Law Review*, and *Clinical Law Review*.

Prior to joining the University of South Carolina faculty, Suski was on the faculty at Georgia State University College of Law. She has also taught as a lecturer at the University of Virginia School of Law and was a clinical teaching fellow at Georgetown University Law Center. She holds an LL.M. with honors from Georgetown University Law Center and a J.D., M.S.W., and B.A. with distinction from the University of North Carolina.

(Author of Chapter 13, *Equal Protection, Title IX, and the School Civil Rights Collapse.*)

Introduction

Introduction	xvii
A. ERODING RIGHTS	1
B. FAILURES OF SEX DISCRIMINATION DOCTRINE	131
C. THE BOUNDARIES OF PARENTAL RIGHTS	361
D. REPRODUCTIVE HEALTH AND JUSTICE	517
E. RECONCEIVING THE LAW OF SEXUAL VIOLENCE	739
F. LEGAL EDUCATION	917

Preface

Gender and the Law 2026

Welcome to the 2026 edition of *Gender and the Law*. In recent years, our volumes have been shaped by the aftermath of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. We continue to see *Dobbs*' effects ripple through the scholarship in this volume, reaching well beyond abortion into the family, trans rights, health care, and citizenship. But *Dobbs* is no longer the only recent decision reshaping this field. In 2025, the Court handed down two more monumental gender decisions, upholding a ban on gender-affirming care for minors in *United States v. Skrametti* and recognizing a religious right to opt children out of LGBTQ-inclusive public-school curricula in *Mahmoud v. Taylor*. These decisions did not arrive in a vacuum. The start of the second Trump Administration in January 2025 ushered in a new wave of attacks on gender, diversity, and equity.

Scholars have not been immune from these attacks. Emily Suski, whose work is featured in this volume, is one example. The University of Arkansas rescinded Suski's appointment as dean of the law school because she signed on to an amicus brief in support of trans rights. Suski is not alone. Numerous other scholars have faced political blowback for engaging in advocacy on these issues. And yet, the work continues despite the harsh political climate, and more is surely coming, given the lag in publication schedules. We are pleased to feature important examples in this year's volume of *Gender and the Law*.

In reviewing this year's gender and law scholarship, the Board observed the depth and breadth of new, thought-provoking work critiquing the legal frameworks governing sex discrimination, parental rights, reproductive rights, and sexual violence. Such articles continue longstanding work in the areas of feminist legal theory and queer theory, imagining futures untethered from the constraints imposed by particular political actors or the current composition of the courts.

As in prior volumes, this volume contains a striking number of articles published in flagship law reviews and journals. While gender-

focused journals continue to play an important role in creating dedicated spaces for writing on cutting-edge topics related to law and gender, the prominence of such scholarship in generalist journals reflects recognition of the centrality of gender to political and social life. The value placed on such scholarship provides an important bulwark against the regressive legal movements that threaten both academic freedom and diversity within the academy, as well as the autonomy and dignity of women and gender-diverse individuals more generally.

Eroding Rights

On the heels of the *Dobbs* decision and the ascension of the second Trump Administration, the continued erosion of privacy-based rights served as a prominent theme in 2025's gender-oriented scholarship. In *Family Values as Constitutional Law: Private Regulation and the Erosion of Fundamental Rights*, Clara Spera and Katherine Fleming show how the Supreme Court has empowered private actors to override the constitutional rights of minorities and marginalized groups in the name of conservative Christian religious liberty. The authors call this jurisprudential shift a paradox or an inversion of the protective function of constitutional rights. This strategy allows private actors to not only seek exemptions to override anti-discrimination protections, but also to impose their beliefs on others, including those who suffer grave harms as a result. Rights erosion by private actors, the article argues, is a key part of the long-term litigation playbook developed and used by movements against reproductive and LGBTQ+ freedoms for the promotion of Christian ideals of family and liberty.

Spera and Fleming's account of this inversion of rights through private action is both urgent and timely. The authors describe private action as the coordinated use of religious exemptions, vigilante enforcement mechanisms, information control, private manipulation, and stigma to erode constitutional rights. This article reveals the insidious growth of private actions, deployed as coordinated attacks on reproductive rights and LGBTQ+ equality. In doing so, it paints the present landscape involving these private actions in various domains and suggests that their next convergence point, following their ultimate success in *Dobbs*, will be the demise of *Obergefell* and ARTs (assisted reproductive technologies).

Laura Portuondo's *Gendered Liberty* shifts the lens from the private actors the Court has empowered to the Court's own hand in the same project. She argues that the Court has developed a constitutional liberty jurisprudence that systematically protects those who enforce traditional gender norms while denying protection to those who defy them. The article identifies a symbiotic relationship between expanding First Amendment protections for conscientious conduct (exemplified by cases like *Fulton v. City of Philadelphia* and *303 Creative v. Elenis*) that have shielded religious objectors from LGBTQ+ antidiscrimination laws and shrinking Fourteenth Amendment protections for gender-related conduct (most dramatically illustrated by *Dobbs*). Portuondo argues this is not the product of neutral constitutional principle but of what she calls "gendered liberty": a covert theory that treats enforcement of gender

conformity as a fundamental freedom while treating defiance of gender norms as constitutionally irrelevant. The values underlying expanded conscientious conduct protections under the First Amendment (autonomy, self-determination, and protection of identity-linked conduct from government devaluation) should be, but are not, applied with equal force to what Portuondo calls “gendered conduct,” i.e. conduct that is socially linked to gendered identity. This asymmetry, Portuondo insists, is not an inevitable consequence of any neutral theory of liberty but reflects a Supreme Court that has affirmatively committed itself to enforcing gender conformity.

Failures of Sex Discrimination Doctrine

The next section continues to focus on the erosion of rights, focusing particularly on sex discrimination law’s failure to protect transgender individuals. We open with Jessica Clarke’s *Scrutinizing Sex*, which invites us to reconsider the robustness of equal protection doctrine in a period of doctrinal retrenchment. Clarke critiques a growing line of lower court decisions that declined to treat sex classifications affecting transgender individuals as constitutionally suspect. In doing so, she argues, these courts have departed from the Supreme Court’s anti-classification principles, which currently govern race discrimination law and were last employed in the affirmative action cases. Clarke argues that, as in race cases, laws that classify based on sex must trigger the corresponding scrutiny under equal protection regardless of legislative intent, group harm, or perceived neutrality.

Clarke reconstructs the doctrinal architecture of equal protection, emphasizing that the main operation courts must engage in is distinguishing between facial classifications and facially neutral laws. Where a law uses sex as an operative criterion in determining its application, it constitutes a facial classification and triggers heightened scrutiny as a matter of rule, not discretion. By contrast, facially neutral laws require additional proof, such as discriminatory intent, to warrant heightened review. For Clarke, this distinction is central. The presence of a classification alone is sufficient to trigger scrutiny, and courts err when they collapse this threshold inquiry into an evaluation of the law’s purposes or effects. Applying this framework, Clarke argues that transgender health care bans are paradigmatic sex classifications because they condition access to medical treatment on sex assigned at birth, even when framed in ostensibly neutral terms such as “medical procedure” or “transition.” Courts that decline to apply heightened scrutiny, she contends, improperly collapse the threshold inquiry into the merits, allowing purportedly benign justifications such as appeals to biology or child welfare to evade meaningful judicial review.

Clarke emphasizes that the harm of classification lies not only in unequal outcomes but in the very act of assigning legal consequences based on sex, thereby reinforcing state authority over identity and embodiment. Clarke’s argument underscores that weakening scrutiny for certain sex classifications does not simply affect transgender individuals but destabilizes the broader architecture of sex discrimination law. In doing so, the article challenges us to recognize that the future of gender equality depends not only on expanding rights, but on preserving the doctrinal

tools necessary to contest emerging forms of state-imposed inequality.

While Clarke's article makes clear why bans on trans health care should trigger heightened scrutiny, the next article in the volume argues that these laws are unconstitutional under any level of judicial review. Ido Katri and Maayan Sudai's article *Intersex, Trans, and the Irrationality of Gender-Affirming-Care Bans* centers its analysis on these laws' intersex exceptions. Every state ban on gender-affirming care contains such an exception: the same puberty blockers, hormones, and surgeries these statutes prohibit for transgender minors are expressly permitted when performed on intersex infants, often shortly after their birth and without their consent. Katri and Sudai use these exceptions to expose these bans' irrationality. States claim these bans are necessary to shield minors from irreversible medical procedures they may come to regret later in life, but intersex exceptions directly undermine those exact goals. Simultaneously banning a set of medical interventions for one group (trans minors) while affirmatively authorizing them for another, more vulnerable group (intersex infants) cannot rationally serve these states' asserted goals. This internal incoherence, the authors argue, is what makes the laws fail even rational-basis review, the most deferential standard of review. The bans, in other words, fail on their own terms, independent of whether they also discriminate on a suspect basis.

This article's arguments about these laws' irrationality are particularly useful after the decision in *Skrimetti*, which applied rational basis review to such a ban (a holding that defies the doctrine, as Clarke's article shows). Crucially, the article does not claim the bans are irrational in any absolute sense. They are perfectly coherent once their real aim comes into view: enforcing a binary understanding of sex by producing bodies that conform to it, which advances cis-normativity at the expense of trans and intersex minors alike.

This article's contributions are not merely doctrinal in nature. It also provides a detailed account of how intersex minors' interests and trans minors' interests are both distinct and interconnected. While intersex advocacy typically seeks to restrict early medical intervention, trans minors seek to access it, a divergence that has occasionally pitted the two groups' litigation strategies against each other. The authors show that this opposition is false. Both sets of interests rest on a common foundation of bodily self-determination, and both communities are harmed by the same presumption that sex is fixed, binary, and properly enforced on minors' bodies. Drawing on reproductive-justice scholarship and critical disability studies, the article closes by sketching the conditions such self-determination would require for cis, trans, and intersex minors alike, offering a normative vision that refuses to trade one group's protection for another's.

Whereas the first two articles in this section were published prior to, but in anticipation of, the *Skrimetti* decision, this section's final article, Kate Redburn's *Skrimetti Beyond Scrutiny*, responds to it. Redburn's piece raises an essential alarm regarding the future of the Court's sex-based classifications equal protection doctrine, unpacks the flaws of *Skrimetti*'s reasoning, and foreshadows further doctrinal regressions.

Redburn describes how *Skrmetti* “inaugurated” a methodological approach analyzing sex classifications arising in the “medical context.” The Court concluded that Tennessee’s statute prohibiting gender-affirming care for transgender minors classified only by age and medical use, sidestepping the heightened scrutiny sex-based classification analysis. This shifted the Court’s “locus for evaluation,” allowing the court to “skirt[] any significant engagement with [the statute’s] legislative history and avoid[] the state’s clear intent to treat transgender kids differently.” This diverts the question to whether the state “may regulate gender-affirming care for minors” instead of “whether [the statute] was an appropriate way to do so.” This yields a “troubling double deference” whereby the Court defers to the statute as medical and sex-neutral, thus empowering the most deferential level of rational basis review.

The pressing question Redburn raises is how far the Court will carry this logic or how broadly the Court will push sex classifications “Beyond Scrutiny.” Will the logic be limited to transgender minors’ access to gender-affirming care, or does “it signal[] a larger rupture with the past”? Redburn vigilantly previews how the 2026 Court might continue this doctrine to “validate anti-transgender animus masquerading as medical or biological judgment,” a move Redburn calls “scientific ventriloquism.” Redburn captures a backslide of extraordinary significance to gender equality with enduring ramifications. The Court’s reasoning might “be the leading edge of the spear to eviscerate constitutional sex equality by validating sex-based generalizations, stereotypes, and even open animus when they become disguised as natural qualities.” This threatens generations of legal development and stands to jettison our constitutional framework into a regressive “separate-spheres ideology.”

The Court’s June 2026 decision in *West Virginia v. B.P.J.*, upholding state restrictions on transgender athletes’ participation in girls’ and women’s sports, underscores the stakes these articles identify, stakes we expect to take up further in next year’s volume.

Exploring the Boundaries of Privacy and Parental Rights

Amidst a growing pronatalist movement in 2025, scholarship on gender and the law continued its focus on the politicization of parental rights and the ideological limitations of those rights. The first article in this section, Neoshia Roemer’s article *Reproducing Citizenship*, examines the Trump Administration’s Protecting the Meaning and Value of American Citizenship Executive Order—the Order underlying the Supreme Court’s 2026 decision *Trump v. Barbara*. This Executive Order provided an unconstitutional limitation on birthright citizenship, limiting it to a child who has at least one parent who is either a permanent resident or U.S. Citizen in order to obtain birthright citizenship on the basis of being born within the territory of the United States. Roemer argues that this Order constitutes an Executive attempt to limit which families reproduce in ways that are beyond state power. Continuing the theme of the erosion of privacy rights, the conservative movement behind this Order aims to encourage reproduction within white, middle-class, Christian families with a married man and woman, while discouraging

reproduction in families outside of this “traditional” model.

While the Order does not attempt to directly limit reproductive decisions, by “reproducing citizenship” or controlling who gets to become a citizen, the Order impermissibly intrudes on the family. Roemer proposes a “constitutional rights plus” framework, utilizing both human rights and the Fourteenth Amendment, for understanding the relationship between a child’s right to citizenship and the reproductive rights of their parent(s). Her article concludes that the Trump Administration’s claims to be pro-family are disingenuous, as it is only interested in reproducing a certain type of citizen, while limiting the reproductive rights of other families. Undoubtedly, more scholarship is forthcoming centering *Trump v. Barbara* and the vigilance needed to maintain the right to citizenship.

In the next article, *Who Decides? The Role of Parental Rights in Abortion and Gender-Affirming Care Decisions for Minors*, Joanna Grossman explores the bounds of parental authority when it comes to two of the most hotly debated legal issues of the post-*Dobbs* era: gender-affirming care and abortion. Pointing to the political and ideological agendas driving when the state should utilize its *parens patriae* authority, Grossman argues the law is inconsistent on parental authority. Specifically, the law prioritizes parental decision-making when those decisions align with political and ideological agendas and disfavors it when they do not. In an era where jurisprudence is returning to the concept of strict parental authority in cases like *Mahmoud v. Taylor*, this Article highlights how politics and ideology drive legal decision-making on who can access rights and who cannot.

Finally, this section turns to Elizabeth Kukura’s *Normalizing Maternal Ambivalence*, which explores the law’s punitive approach to pregnant women and mothers whose choices do not align with conventional decision making surrounding pregnancy and motherhood. Framing this as ambivalence (or perceived ambivalence) about pregnancy and motherhood, this article identifies trends that pre-date *Dobbs* but which have intensified in the post-*Dobbs* climate of enhanced pregnancy surveillance. Applying a critical legal lens, Kukura explores how the law uses maternal ambivalence as evidence of criminal culpability or lack of fitness to parent.

Kukura’s article provides necessary analytical clarity for the use of maternal ambivalence as a legal concept. It distinguishes such ambivalence from adjacent concepts like postpartum depression, parenting stress, and motherhood regret. Kukura’s research reveals the extent of the problem and its disproportionate burden and harm for women who are already marginalized and surveilled: Black women, women in financial hardship, and women in other vulnerable conditions. By offering maternal ambivalence as a critical and analytical lens, Kukura gives scholars and advocates a framework to identify and challenge what would otherwise be viewed as idiosyncratic or unconnected prosecutions or removals. Her contribution is particularly urgent in the post-*Dobbs* legal world as it focuses on how the law further criminalizes some women for their reproductive decision-making.

Reproductive Health and Justice

In the immediate post-*Dobbs* era, the case remains a focal point in Gender and the Law scholarship. Indeed, there is so much scholarship on how *Dobbs* has mobilized new law and challenged current doctrine that this volume could not possibly include all of the important articles on this subject. For example, Lindsay Wiley's *States as Shields*, 110 Minn. L. Rev. 1 (2025), which is not included in this volume, provides a fascinating account of how abortion and gender-affirming care laws continue to put pressure on the concept of federalism and the limits of state power to provide reproductive health care.

The first article in this section, David S. Cohen and Greer Donley's *From Medical Exceptions to Reproductive Freedom*, stands out as an example of scholarship that aims to construct a future of reproductive autonomy in a post-*Dobbs* world. It offers a long-term strategic blueprint for the movement for reproductive freedom at a time when post-*Dobbs* seismic shifts in legal landscapes and medical settings continue to unfold in predictable and unpredictable ways. For Cohen and Donley, the time to engineer multi-faceted and cohesive movement strategies is not when the dust settles. The time is now, when the starkest, at times fatal, consequences of abortion bans can be harnessed to proactively dismantle restrictive and oppressive state laws. This approach, they argue, constructs the empirical and jurisprudential groundwork for ultimately nullifying *Dobbs* using its own internal reasons for overturning *Roe*.

Cohen and Donley acknowledge that focusing on the subset of stories that generate the most shock and sympathy can construct and reify evaluative frameworks of "justified" and "unjustified" abortions. The focus on these stories displaces the foundational concepts underlying reproductive freedom: true choice regarding epistemological, bodily, and parental autonomy. They suggest that the way forward is not around this tension, but with and through it, in order to reconceptualize *all* abortions as health- and life-saving.

By structuring, cultivating, and harnessing doctrinal instability, this article offers a coherent and long-horizon framework for a proactive strategy of defensive litigation for the post-*Dobbs* period. It is also notable for insisting that the doctrinal tools and strategies to challenge *Dobbs* are available now: the restoration of reproductive freedom need not await a future Congress or a changed Court.

The reality of post-*Dobbs* abortion access, reliant to an unprecedented degree on both the availability of medication abortion and interstate travel, has invited abortion opponents to adopt creative strategies to disrupt the ability of abortion-seekers living in restrictive states to receive care in states with more liberal abortion laws. In her timely article, *Abortion Ally or Abettor: Accomplice and Conspiracy Liability After Dobbs*, Mary Fan explores the risk that accomplice and conspiracy liability pose for those who help others pursue reproductive freedoms and the chilling impact of such liability. In Fan's analysis, helpers might include abortion funds, grassroots organizations, pilots, and what Fan refers to as "other humanitarian volunteers." She applies an anti-totalitarian frame in identifying defenses for those who help others pursue reproductive and gender freedoms after *Dobbs*, grounded in

freedom of speech, the right to interstate travel, and canons of statutory interpretation. Her analysis frames potential accomplice and conspiracy liability as crimes of compassion akin to providing aid to migrants across international borders. Importantly, reliance on anti-totalitarian theory invokes protection against government control of movements, bodies, and information, in notable contrast to reproductive rights arguments that sound in liberty or even equality. Though her analysis focuses on abortion care, Fan highlights that the article's implications may also apply to gender-affirming care, as more states ban provision of such care to minors and families are forced to seek care outside their home jurisdictions.

Contemplating disparities in reproductive health care post-Dobbs, Lauren van Schilfgaarde's *Native Reproductive Self-Determination* highlights the reproductive health care challenges facing Native Americans in light of settler colonialism and federal Indian law. Although the federal government owes a trust responsibility to federally recognized Indian Tribes, which includes the right to health care, these duties remained unfulfilled in 2025. While most literature has focused on the underfunding of the Indian Health System as a problem, van Schilfgaarde reconceptualizes the issue as the lack of fulfillment of treaty obligations and the denial of true self-determination for Indian Tribes. In doing so, van Schilfgaarde blends concepts of reproductive justice and Tribal sovereignty to argue that Indian Tribes must have self-determination to not only administer their own health care systems but to administer reproductive health care as Tribes see fit. In the twilight of *Dobbs*, this work highlights an ongoing need for reimagining reproductive healthcare for colonized—and marginalized—peoples and exploring how gender issues impact Tribal Sovereignty.

Finally, in *Reproductive Time in Law*, Noy Naaman offers a novel look at how the social construction of time intersects with various dimensions of reproduction, such as fertility preservation, pregnancy termination, and parentage recognition. By surfacing how timelines and time-based restrictions shape how people access care and exercise rights, Naaman challenges traditional ideologies of procreation and parentage that suggest such restrictions are demanded by physical or genetic processes rather than a normative commitment to a particular vision of family-building rooted in patriarchal, racist, class-based, and heteronormative structures. The article shows how reproductive time is constructed and sometimes manipulated through medical-legal processes, theorizing three different types of reproductive time—fertility time, gestational time, and parentage time—that have a disproportionate, subordinating effect on certain categories of people, such as women who wish to preserve their fertility, women who recognize their pregnancies at a later stage of gestation, and same-sex couples who rely on reproductive technology to help them become parents. Ultimately, it shows how a legal understanding of reproductive time in these various domains contributes to inequality. In its cross-cutting, sociolegal approach, Naaman's contribution offers an example of accessible, illuminating, and thought-provoking scholarship that is a pleasure to read.

Reconceiving the Law of Sexual Violence

Though neither an outgrowth of *Dobbs* nor squarely focused on reproductive health, sexual violence and gender discrimination remain important, undertheorized issues within American law.

Sexual violence is pervasive across all sectors of society, and our children's schools are no exception. In theory, Title IX's prohibition on sex-based discrimination imposes a legal duty on schools to protect their students from sexual harassment. But as Emily Suski's body of scholarship has exposed, the judicial hollowing out of Title IX has rendered it practically toothless in this regard. Suski's 2025 article, *Equal Protection, Title IX, and the School Civil Rights Collapse*, charts an alternative path to legal protection against school sexual harassment: the Equal Protection Clause, as enforced through Section 1983. Plaintiffs can bring both Title IX and Section 1983 equal protection claims against a school for its deliberate indifference to sexual harassment, and, as the Supreme Court has made explicit, while the two claims overlap, they are also distinct. That distinction, Suski argues, leaves room for the Equal Protection Clause to provide protection that Title IX does not. Yet Section 1983 equal protection claims for sexual harassment usually meet the same fate as their Title IX counterparts because, as Suski shows, courts import Title IX's impossibly high standards into the equal protection context. And in doing so, courts depart from the standards governing other Section 1983 deliberate-indifference claims. It should be no harder to win a Section 1983 claim for deliberate indifference to sexual harassment in schools than for deliberate indifference to other kinds of equal protection violations. But because courts exceptionalize sexual-harassment claims, it is. Suski's article gives its readers a devastating reminder of Title IX's impotency and of sexual-violence exceptionalism in the law. But it also gives us a path forward. It lays out the doctrinal equal protection argument clearly and persuasively, providing a blueprint ready for courts and plaintiffs to adopt.

While schools have long been a site of pervasive sexual violence and discrimination, AI and other technological advances have created new ones. In *Gendering the International Convention on Cybercrimes*, Rangita de Silva de Alwis explores how. The article critically examines the role of gender in recent international legal instruments, including the Global Digital Compact (2024), the UN General Assembly Resolution on AI for Sustainable Development (2024), and the Cyber Crime Convention (2025). These instruments attempt to channel the potential for AI to positively impact human rights goals, especially with respect to sustainable development and equity. De Alwis shows, however, that these fast-moving technologies and the associated regulatory regimes have thus far failed to pay adequate attention to gender considerations. Because AI algorithms are trained on what has come before, they can reify historical gender bias and pre-existing inequitable policies, both within and between countries. De Alwis demonstrates how even when international legal instruments recognize the general potential for bias and discrimination in AI, they have largely failed to address issues like women being excluded from the technology industry and the use of

technologies to perpetrate crimes that disproportionately impact women and girls. De Alwis offers specific suggestions for how to incorporate other international human rights obligations into these new instruments to more effectively address gender inequalities. Finally, she considers gender bias in new and developing generative AI technologies, and she argues that there must be a concerted effort to address gender bias in the source data in AI training databases.

The final article in this section, *Decommissioning Rape Law*, takes a different approach to critiquing and reimagining legal frameworks governing sexual violence. In their provocative article, Joseph J. Fischel and Kate Brennan argue for a novel, arguably more feminist, legal approach to addressing rape and sexual assault. They identify historical challenges the law has faced in attempting to respond to the wrongs and harms associated with rape, and show how these challenges have not been overcome in the current legal landscape. As it stands, rape law does not currently fulfill its goals of justice and care for rape victims, and sexual assault remains highly underreported. Fischel and Brennan present their “decommission hypothesis,” which suggests we should dispense with our current rape laws, and instead distinguish between different “core wrongs” of sexual violence rather than attempting to fit them all into the framework contemplated by criminal rape law. The authors argue in favor of a more expansive legal approach, where the distinct wrongs of sexual violence are addressed within multiple and fitting areas of the law. Fischel and Brennan identify two costs of decommissioning rape law, namely the expressive impact and the monetary cost, but nevertheless maintain that the benefits of their proposal would outweigh the costs, and that the goal of ending rape requires that we reimagine rape law to be more responsive to the various kinds of wrongdoing sexual violence can entail. Even readers who do not agree with Fischel and Brennan’s perspective on how the law should address rape will find much to engage with in this boundary-pushing piece of scholarship.

Legal Education

The volume closes with Swethaa Ballakrishnen’s *Blasé: Deviant Lawyers and the Denial of Discrimination*, which offers a powerful sociolegal insight into how we understand gender discrimination and how it manifests in legal education and practice. Ballakrishnen, who was an inaugural member of the series’ Editorial Board, conducted interviews with law students and early-career legal professionals from understudied and differently recognized minority identities. By studying this minority group without measuring them against a presumed normative baseline, Ballakrishnen uncovers how much of the harm experienced by genderqueer individuals occurs in a liminal space where interactional violence is both pervasive and routinely dismissed as insignificant or non-actionable.

For instance, misgendering is often coupled with a persistent refusal to recognize it as a harm, even when challenged. This relational violence shows that this type of discrimination is not even considered a microaggression. As society and law are confronted with emergent

gender categories such as nonbinary, in the language of discrimination, these categories become only partially legible at most. Not being able to articulate this harm as either social or legal leads the individuals who experienced the harm to question their own reality, and it has a chilling effect on how they conduct themselves and express their gender, as well as on their professional opportunities. Ballakrishnen denotes this phenomenon as blasé discrimination, or “interactional violence that is not legally or socially cognizable as discrimination but still causes harm.” This gendered dynamic reveals how legal recognition lags behind social reality.

As a law and society project, *Blasé* thus urges us to rethink the boundaries of discrimination itself, not only by exposing how gender norms structure everyday interactions in the legal profession, but by showing how our current discrimination law regimes fail to capture emerging forms of gendered inequality. In doing so, the article contributes to a broader reimagining of how law should evolve. Even where doctrine has not yet caught up, Ballakrishnen’s account challenges us to treat these interactional harms as sites of legal and institutional concern, prompting us to envision how law might evolve to recognize and remedy injuries that remain, for now, largely invisible.

The Editorial Board that made these selections is a group of impactful scholars dedicated to highlighting scholarship in *Gender and the Law*, who volunteered for the project despite their many other professional commitments. This year brought a change in leadership, as Elizabeth R. Kukura (Drexel University Thomas R. Kline School of Law), Laura Lane-Steele (University of South Carolina, Joseph F. Rice School of Law), and Neoshia R. Roemer (Seaton Hall Law School) took over as Lead Editors. Former Lead Editors Aníbal Rosario Lebrón (Rutgers Law School) and Jamie R. Abrams (American University Washington College of Law), who—along with Daniela Kraiem (American University Washington College of Law)—were responsible for reconceiving *Gender and the Law* as a collective editorial project, remained on the Board, joined by new members Sania Anwar (Wake Forest University School of Law) and Shannon Fyfe (Washington & Lee University School of Law), both of whom bring deep expertise and new critical perspectives to the Editorial Board. The Board is grateful to Professors Abrams, Kraiem, and Lebrón for their years of service to promoting scholarship at the intersection of law and gender and their vision in broadening and strengthening *Gender and the Law*. In particular, collaborative decision-making in the selection process has enabled the Board to draw on the areas of expertise of its respective members and to consider the contributions of Board members for inclusion in the volume where warranted.

Editing these volumes is a project of the Feminist Legal Theory Collaborative Research Network, a section of the Law and Society Association. The Editorial Board chose to donate the modest stipend for editing the 2025 volume to non-profit organizations in the Chicago metro area, the location of the 2025 Law and Society Annual Meeting. In this small way, the Editorial Board hopes to use this labor to support the work of those advocates and organizers on the ground in the communities that host us.