Loyola of Los Angeles Law Review

Volume 34
Number 2 *Symposium—The Rampart Scandal: Policing the Criminal Justice System*

Article 8

1-1-2001

Calling in the Girl Scouts: Feminist Legal Theory and Police Misconduct

Mary Ellen Gale

CALLING IN THE GIRL SCOUTS: FEMINIST LEGAL THEORY AND POLICE MISCONDUCT

*Mary Ellen Gale**

The most surprising thing about feminist legal scholarship on police misconduct is that there is not much of it.[1] This comparative silence is surprising because feminist legal theorists have taken it as their mission to question everything.[2] Feminist legal scholars have investigated and critiqued a wide variety of laws and legal issues—not just the obvious ones like employment discrimination,[3] sexual

* Professor of Law, Whittier Law School; A.B., Radcliffe College/Harvard University; J.D., Yale Law School.

1. Or not much that so identifies itself. The legal discussion most relevant to this Essay appears in Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence,* 105 YALE L.J. 1, 81-94 (1995), analyzing "the conventionally masculine job of police officer to explore the disparate impact of gendered job requirements," and describing pre-1995 recommendations that "feminiz[ing] the force" of the Los Angeles Police Department would reduce the city's levels of both general criminal violence and police abuse. *Id.* at 81, 86-91; *see also* Angela P. Harris, *Gender, Violence, Race, and Criminal Justice,* 52 STAN. L. REV. 777, 793-99 (2000) (describing "the hypermasculine culture of policing"). For an excellent sociological analysis, see SUSAN L. MILLER, GENDER AND COMMUNITY POLICING: WALKING THE TALK (1999). For a feminist history, see JANIS APPIER, POLICING WOMEN: THE SEXUAL POLITICS OF LAW ENFORCEMENT AND THE LAPD (1998). Nonlegal feminist researchers have written fairly extensively about how both sexual identity as male or female and gender role expectations affect organizations, including law enforcement agencies. *See* MILLER, *supra,* at 65-98. On the distinction between sex and gender, see *infra* note 21.

2. *See, e.g.,* Heather Ruth Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence,* 1 BERKELEY WOMEN'S L.J. 64 (1985), *reprinted in* FEMINIST LEGAL THEORY: FOUNDATIONS 22-31 (D. Kelly Weisberg ed., 1993) [hereinafter FOUNDATIONS].

3. *E.g.,* KATHARINE T. BARTLETT & ANGELA P. HARRIS, GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY 147-246, 267-350 (2d ed. 1998) (feminist textbook covering a wide range of employment discrimination topics,

harassment,[4] rape,[5] prostitution,[6] domestic violence,[7] divorce,[8] child

---

cases, and materials, and contrasting formal with substantive equality); DEBORAH L. RHODE, JUSTICE AND GENDER 161-201 (1989); Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183 (1989); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Gary Minda, *Title VII at the Crossroads of Employment Discrimination Law and Postmodern Feminist Theory:* United Auto Workers v. Johnson Controls, Inc. *and Its Implications for the Women's Rights Movement*, 11 ST. LOUIS U. PUB. L. REV. 89 (1992); Vicki Schultz, *Telling Stories About Women and Work; Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749 (1990); Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797 (1989). The illustrative citations in this and following footnotes are inevitably idiosyncratic and incomplete; feminist legal scholars are prolific.

4. Of course, it was not so obvious until Professor Catharine MacKinnon gave it a voice and a name. *See* CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION (1979); *see also* Kathryn Abrams, *The New Jurisprudence of Sexual Harassment*, 83 CORNELL L. REV. 1169 (1998); Anita Bernstein, *Treating Sexual Harassment with Respect*, 111 HARV. L. REV. 445 (1997); Nancy S. Ehrenreich, *Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law*, 99 YALE L.J. 1177 (1990); Emma Coleman Jordan, *Race, Gender, and Social Class in the Thomas Sexual Harassment Hearings: The Hidden Fault Lines in Political Discourse*, 15 HARV. WOMEN'S L.J. 1 (1992); Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683 (1998).

5. *E.g.*, DATE RAPE: FEMINISM, PHILOSOPHY, AND THE LAW (Leslie Francis ed., 1996); SUSAN ESTRICH, REAL RAPE (1987); David P. Bryden, *Redefining Rape*, 3 BUFF. CRIM. L. REV. 317 (2000); Lynne Henderson, *Rape and Responsibility*, 11 LAW & PHIL. 127 (1992); Elizabeth M. Iglesias, *Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869 (1996); Morrison Torrey, *Feminist Legal Scholarship on Rape: A Maturing Look at One Form of Violence Against Women*, 2 WM. & MARY J. WOMEN & L. 35 (1995).

6. *E.g.*, Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 YALE J.L. & FEMINISM 47 (1992); Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. GENDER & L. 65 (1993); Vednita Carter & Evelina Giobbe, *Duet: Prostitution, Racism and Feminist Discourse*, 10 HASTINGS WOMEN'S L.J. 37 (1999); Ann M. Lucas, *Race, Class, Gender, and Deviancy: The Criminalization of Prostitution*, 10 BERKELEY WOMEN'S L.J. 47 (1995); Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13 (1993); Symposium, *Decriminalizing Prostitution: Liberalization or Dehumanization?*, 1 CARDOZO WOMEN'S L.J. 101 (1993).

7. *E.g.*, ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING (2000); Donna Coker, *Enhancing Autonomy for Battered*

custody and support,[9] and reproductive choice.[10] They also have analyzed broad legal subjects and systems—torts,[11] contracts,[12]

Women: Lessons from Navajo Peacemaking, 47 UCLA L. REV. 1 (1999); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1 (1998); G. Kristian Miccio, *Notes from the Underground: Battered Women, the State, and Conceptions of Accountability*, 23 HARV. WOMEN'S L.J. 133 (2000); Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996); Symposium, *Women, Children and Domestic Violence: Current Tensions and Emerging Issues*, 27 FORDHAM URB. L.J. 565 (2000).

8. *E.g.*, MARTHA ALBERTSON FINEMAN, THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM (1991); June Carbone & Margaret F. Brinig, *Rethinking Marriage: Feminist Ideology, Economic Change, and Divorce Reform*, 65 TUL. L. REV. 953 (1991); Barbara Stark, *Guys and Dolls: Remedial Nurturing Skills in Post-Divorce Practice, Feminist Theory, and Family Law Doctrine*, 26 HOFSTRA L. REV. 293 (1997).

9. *E.g.*, SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY (1989); Katharine T. Bartlett & Carol B. Stack, *Joint Custody, Feminism and the Dependency Dilemma*, 2 BERKELEY WOMEN'S L.J. 9 (1986); Mary Becker, *Maternal Feelings: Myth, Taboo, and Child Custody*, 1 S. CAL. REV. L. & WOMEN'S STUD. 133 (1992); Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415 (1991); Iglesias, *supra* note 5, at 977-90.

10. *E.g.*, KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD (1984); CARMEL SHALEV, BIRTH POWER: THE CASE FOR SURROGACY (1989); Katharine T. Bartlett, *Feminism and Family Law*, 33 FAM. L.Q. 475, 488-94 (1999); Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261 (1992); Judith Jarvis Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFF. 47 (1971); Robin West, *Liberalism and Abortion*, 87 GEO. L.J. 2117 (1999); Joan C. Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 N.Y.U. L. REV. 1559 (1991).

11. *E.g.*, Leslie Bender, *An Overview of Feminist Torts Scholarship*, 78 CORNELL L. REV. 575 (1993); Leslie Bender, *Frontier of Legal Thought III: Feminist (Re)Torts: Thoughts on the Liability Crisis, Mass Torts, Power, and Responsibilities*, 1990 DUKE L.J. 848; Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J.L. & FEMINISM 41 (1989); Lucinda M. Finley, *Female Trouble: The Implications of Tort Reform for Women*, 64 TENN. L. REV. 847 (1997).

12. *E.g.*, MARY JOE FRUG, POSTMODERN LEGAL FEMINISM 53-107, 111-124 (1992) (feminist analysis of contract doctrines); Patricia J. Williams, *On Being the Object of Property*, *in* THE ALCHEMY OF RACE AND RIGHTS 216-36 (1991), *reprinted in part in* FOUNDATIONS, *supra* note 2, at 594-602; Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L.J. 997, 1008 (1985).

property,[13] criminal law,[14] criminal and civil procedure,[15] criminal sentencing,[16] judicial systems,[17] legal education,[18] law teaching,[19]

13. *See, e.g.*, Jeffrey D. Goldberg, *Involuntary Servitudes: A Property-Based Notion of Abortion Choice*, 38 UCLA L. REV. 1597 (1991); Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983); Margaret Jane Radin, *Market Inalienability*, 100 HARV. L. REV. 1849 (1987); Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982); Rahika Rao, *Property, Privacy, and the Human Body*, 80 B.U. L. REV. 359 (2000); Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 YALE J.L. & FEMINISM 81 (1997).

14. *E.g.*, Dana M. Britton, *Feminism in Criminology: Engendering the Outlaw*, 571 ANNALS AM. ACAD. POL. & SOC. SCI. 57 (2000); Naomi Cahn, *Policing Women: Moral Arguments and the Dilemmas of Criminalization*, 49 DEPAUL L. REV. 817 (2000); Mary Irene Coombs, *Crime in the Stacks, or A Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117 (1988); Susan N. Herman, *Thelma and Louise and Bonnie and Jean: Images of Women as Criminals*, 2 S. CAL. REV. L. & WOMEN'S STUD. 53 (1992); Paula C. Johnson, *At the Intersection of Injustice: Experiences of African American Women in Crime and Sentencing*, 4 AM. U. J. GENDER & L. 1 (1995); Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151 (1995); Mary Coombs, *Putting Women First*, 93 MICH. L. REV. 1686 (1995) (book review).

15. *See* Roy L. Brooks, *Feminist Jurisdiction: Toward an Understanding of Feminist Procedure*, 43 U. KAN. L. REV. 317 (1995); Dana Raigrodski, *Breaking Out of "Custody": A Feminist Voice in Constitutional Criminal Procedure*, 36 AM. CRIM. L. REV. 1301 (1999); Judith Resnik, *"Naturally" Without Gender: Women, Jurisdiction, and the Federal Courts*, 66 N.Y.U. L. REV. 1682 (1991).

16. *E.g.*, Christopher M. Alexander, *Crushing Equality: Gender Equal Sentencing in America*, 6 AM. U. J. GENDER & L. 199 (1997); Joan W. Howarth, *Deciding to Kill: Revealing the Gender in the Task Handed to Capital Jurors*, 1994 WIS. L. REV. 1345; Melinda E. O'Neil, *The Gender Gap Argument: Exploring the Disparity of Sentencing Women to Death*, 25 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 213 (1999); Symposium, *Gender and Sentencing*, 8 FED. SENTENCING REP. 134 (1995).

17. *E.g.*, Judith Resnik, *Gender Bias: From Classes to Courts*, 45 STAN. L. REV. 2195 (1993); Elizabeth M. Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87 (1988); Kathleen L. Soll, *Gender Bias Task Forces: How They Have Fulfilled Their Mandate and Recommendations for Change*, 2 S. CAL. REV. L. & WOMEN'S STUD. 633 (1993); *see, e.g.*, THE NINTH CIRCUIT GENDER BIAS TASK FORCE, THE EFFECTS OF GENDER IN THE FEDERAL COURTS: FINAL REPORT (1993), *reprinted in* 67 S. CAL. L. REV. 745 (1994). By 1997 more than forty task forces had issued reports on gender, race, and ethnic bias in the state and federal courts. *See* Judith Resnik, *Gender Matters, Race Matters*, 14 N.Y.L. SCH. J. HUM. RTS. 219, 225 (1997).

18. *E.g.*, Nancy S. Erickson, *Sex Bias in Law School Courses: Some Com-*

law practice,[20] and, more generally, constitutional guarantees of civil rights and liberties, due process, equal protection, and freedom of speech—to expose and oppose sex and gender[21] bias and

---

mon Issues, 38 J. LEGAL EDUC. 101 (1988); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League School*, 143 U. PA. L. REV. 1 (1994); Mairi N. Morrison, *May It Please Whose Court?: How Moot Court Perpetuates Gender Bias in the "Real World" of Practice*, 6 UCLA WOMEN'S L.J. 49 (1995); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988).

19. *E.g.*, Marina Angel, *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799 (1988); Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Susan Bisom-Rapp, *Contextualizing the Debate: How Feminist and Critical Race Scholarship Can Inform the Teaching of Employment Discrimination Law*, 44 J. LEGAL EDUC. 366 (1994); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991); Catherine W. Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155 (1988); Vicki C. Jackson, *Empiricism, Gender, and Legal Pedagogy: An Experiment in a Federal Courts Seminar at Georgetown University Law Center*, 83 GEO. L.J. 461 (1994); Joan C. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311 (1994); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"*, 38 J. LEGAL EDUC. 61 (1988); Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women as Law Professors*, 25 ARIZ. L. REV. 869 (1983).

20. *E.g.*, CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 79-326 (1983) (describing women in a variety of law practices); Stacy Caplow, *Still in the Dark: Disappointing Images of Women Lawyers in the Movies*, 20 WOMEN'S RTS. L. REP. 55 (1999); Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1175 (1992); Joan W. Howarth, *Women Defenders on Television: Representing Suspects and the Racial Politics of Retribution*, 3 GENDER RACE & JUST. 475 (2000); Ashley Kissinger, *Civil Rights and Professional Wrongs: A Female Lawyer's Dilemma*, 73 TEX. L. REV. 1419 (1995); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985); Lynn Hecht Schafran, *Is the Law Male? Let Me Count the Ways*, 69 CHI.-KENT L. REV. 397 (1993); Abbe Smith, *Criminal Responsibility, Social Responsibility, and Angry Young Men: Reflections of a Feminist Criminal Defense Lawyer*, 21 N.Y.U. REV. L. & SOC. CHANGE 433 (1994); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) (noting how conventions of legal argument exclude women's perspectives from legal proceedings).

21. The distinction between sex and gender in legal and other feminist theory is generally the distinction between biology and culture. "[G]ender [is] to

discrimination that often underlie ostensibly neutral structures and principles of justice.

The sound of feminist silence is also surprising because police misconduct—violence, corruption, violation of civil rights—is so clearly a male problem. The most familiar narratives of police abuses of government power and betrayals of public trust in the United States and, especially, in Los Angeles—from the Watts insurrection and the McCone Commission,[22] to the police beating of Rodney King and the Christopher Commission,[23] to the Rampart scandal and the *Chemerinsky Report*,[24] spanning most of the half century

---

sex what masculine and feminine are to male and female." Case, *supra* note 1, at 2; *see also* RHODE, *supra* note 3, at 5 (noting that in feminist theory, "sex" generally refers to biological differences, "gender" to "culturally constructed differences"). *But see* BARTLETT & HARRIS, *supra* note 3, at 1084-89 (providing collected materials that suggest that neither sex nor gender has either a determinate physical or behavioral referent or a fixed meaning in feminist legal theories).

22. *See* GOVERNOR'S COMM'N ON THE L.A. RIOTS, VIOLENCE IN THE CITY—AN END OR A BEGINNING? (1965), *available at* http://209.24.112.224/DrPseudocryptonym/HellsBibliophiles/ViolenceInTheCity.html (last visited Oct. 7, 2000) [hereinafter VIOLENCE IN THE CITY]. The commission was chaired by John A. McCone, former director of the Central Intelligence Agency.

23. *See* INDEP. COMM'N ON THE L.A. POLICE DEP'T, REPORT OF THE INDEPENDENT COMMISSION (1991) (the commission was chaired by Warren Christopher, former United States Deputy Attorney General and Deputy Secretary of State) [hereinafter CHRISTOPHER COMMISSION REPORT]; *see also* HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES 199-234 (1998) (offering a pre-Rampart assessment of LAPD reforms). Human Rights Watch reported "lack of progress" and "slow progress" in complying with Christopher Commission recommendations. HUMAN RIGHTS WATCH, *supra*, at 205.

24. *See* ERWIN CHEMERINSKY, AN INDEPENDENT ANALYSIS OF THE LOS ANGELES POLICE DEPARTMENT'S BOARD OF INQUIRY REPORT ON THE RAMPART SCANDAL (2000) [hereinafter CHEMERINSKY REPORT] (this report is available in this issue of the *Loyola of Los Angeles Law Review*; however, the pagination refers to the original version of the report available at http://www.lacity.org/lapd-reform/chem_report.pdf.). In addition to the *Board of Inquiry Report* and the *Chemerinsky Report*, a Rampart Independent Review Panel of more than 100 law enforcement professionals nationwide, appointed by the Los Angeles Police Commission, planned to issue a report shortly after this Essay went to press, and was expected to recommend "sweeping reforms" in LAPD handling of police misconduct charges. *See* Tina Daunt, *Panel to Urge Wide Internal Reform of LAPD Probes*, L.A. TIMES, Oct. 13, 2000, at B1.

from Los Angeles Police Chiefs Parker to Parks[25]—all of them are stories about men behaving badly.

Through their monopoly of legalized force and their defiance of civilian authority and control, some of the Los Angeles police, at their worst,[26] have turned cruelty and indifference, violence and deceit, from moral wrongs into everyday public policy—and justified them as community service, the only way to protect the rest of us from crime. Like an occupying army, they sweep through the meanest streets of the city, too often bringing neither law nor order, brutally beating and shooting criminal suspects, flagrantly denying the most basic of civil rights, fabricating evidence and even committing perjury, twisting the criminal justice system to convict and imprison even the legally and factually innocent.[27] And where the failures of the Los Angeles Police Department end, the evasions and denials by its political leaders begin. Resisting meaningful reform and federal supervision in words reminiscent of Southern governors and school superintendents who defied school desegregation as hostile interference with local prerogatives and prejudices, the city's current mayor, its police chief, and their allies sought for months to repel the United States Department of Justice, and along with it the Constitution and civil rights laws that apply throughout the nation, as alien invaders of their gang's territory.[28] For now, they seem to have capitulated,[29] but

25. The references are to Police Chiefs William H. Parker, who served from 1950 to 1966, and Bernard C. Parks, who was appointed in 1997. *See* Terry McDermott, *Behind the Bunker Mentality*, L.A. TIMES, June 11, 2000, at A1.

26. This phrasing is intended not to contradict the overwhelming evidence that police misconduct is systemic, but to acknowledge that most police officers perform their jobs well. *See* CHEMERINSKY REPORT, *supra* note 24, at 8 (stating that despite serious problems within the LAPD, the "vast majority" of officers are hard-working, honest, and responsible).

27. *See id.* at 4; HUMAN RIGHTS WATCH, *supra* note 23, at 214-19; Lou Cannon, *One Bad Cop*, N.Y. TIMES, Oct. 1, 2000, § 6, at 32; Michael D. Harris & Anne La Jeunesse, *Past Lawsuits Dog Most Scandal Cops*, L.A. DAILY J., May 26, 2000, at 1; Anne La Jeunesse & Chris Ford, *A Hot August Night: Rogue Cops May Have Framed Seven in the Summer of 1996*, L.A. DAILY J., June 2, 2000, at 1; Charles L. Lindner, *Rampart: The System Has Become Dysfunctional*, L.A. TIMES, Mar. 19, 2000, at M1; McDermott, *supra* note 25; Editorial, *Rampart Scandal Rolls On*, L.A. TIMES, Aug. 21, 2000, at B1 (listing developments in the Rampart scandal).

28. *See* Erwin Chemerinsky, *LAPD Must Come Under Court Order*, L.A. TIMES, Sept. 13, 2000, at B9 (arguing that a consent decree is not a federal

skeptics wonder whether the LAPD can ever overcome its long history of intransigence and reinvent itself, or succumb to reinvention by others.[30]

Studies of the police culture that perpetuates the paramilitary mythology of police work show that police misconduct is tightly linked to, if not directly caused by, stereotypic, aggressive, rampant masculinity—at its worst a naked celebration of the legal and physical power to subdue, subordinate, and dehumanize the people who become the targets of law enforcement.[31] This pattern and practice are conjoined with a scarcely concealed contempt for a supposedly

---

takeover because the police commission and chief retain management and disciplinary authority); Tina Daunt, *U.S. Underlines Its Determination on Police Reform*, L.A. TIMES, Sept. 14, 2000, at B1 (reporting that Los Angeles Mayor Richard Riordan, Police Chief Parks, and four of fifteen City Council members strongly oppose U.S. Justice Department's demand for a consent decree to ensure meaningful reform, some calling it "a federal takeover of the LAPD"); Jim Newton, *A Glimpse Into Future of LAPD?*, L.A. TIMES, Oct. 15, 2000, at A1 [hereinafter Newton, *LAPD Future*] ("For months [Riordan and Parks] pulled string after string in Los Angeles and Washington in a futile attempt to head off the deal."); Jim Newton, *Would-Be Mayors Split on U.S. Intervention in LAPD Politics*, L.A. TIMES, Sept. 4, 2000, at A1.

29. *See* Tina Daunt, *City Agrees to U.S. Reforms for LAPD*, L.A. TIMES, Sept. 20, 2000, at A1; Peter Y. Hong & Tina Daunt, *Parks Drops His Opposition, Commits LAPD to Decree*, L.A. TIMES, Sept. 21, 2000, at B1; Newton, *LAPD Future*, supra note 28. At the time this Essay went to press, the Los Angeles City Council had just given final approval to a consent decree containing "the most sweeping set of changes ever imposed on [the LAPD] from outside." Tina Daunt & Jim Newton, *Council Oks Police Reform Pact with U.S.*, L.A. TIMES, Nov. 3, 2000, at A1.

30. *See* Joe Domanick, *Can the LAPD Reform Itself?*, L.A. TIMES, Sept. 24, 2000, at M1 (observing that monitor will need "superhuman tenacity" to overcome LAPD's resistance to reform); *see also* Chris Ford, *Rampart Will Leave No One Untouched*, L.A. DAILY J., May 12, 2000, at 1 (reporting that the Rampart scandal is likely to have severe political consequences for many of the people involved, particularly Chief Bernard Parks and Mayor Richard Riordan).

31. *See* MILLER, *supra* note 1, at 3-4 (noting that traditionally, police have been "masculine crimefighters, . . . brave, suspicious, aloof, objective, cynical, physically intimidating, and willing to use force and even brutality"); Harris, *supra* note 1, at 781 ("[V]iolent acts are . . . , sometimes, the result of the character of masculinity itself as a cultural ideal."); *id.* at 793 (stating that "hypermasculinity" combines violence and masculinity with strong opposition to femininity and homosexuality and strong emphasis on physical strength and aggression; "[p]olice work has traditionally been coded hypermasculine").

uncomprehending and ungrateful public[32] that demands safety without acknowledging or paying what the police believe, or purport to believe, is the necessary price. Even good cops share this attitude. As one officer told the *Los Angeles Times*, "[T]hey want a kinder, gentler police force, but it's not a kinder, gentler society."[33] The entire criminal justice system in Los Angeles, deeply compromised by years of acquiescence in police lying, spying, and violence, seems to accept the LAPD's vision as its own.[34] From a still broader perspective, society itself too often condones police corruption and excessive force in the belief that law enforcement requires "direct action in the streets" based on a military model that all but demands action outside

32. *See* CHRISTOPHER COMMISSION REPORT, *supra* note 23, at 99-100 (documenting that some commanding officers believe that "too many LAPD patrol officers view the public with resentment and hostility" and treat civilians with discourtesy and disrespect); McDermott, *supra* note 25 (noting that LAPD officers generally discredit critics without street experience: "As numerous officers put it, 'We're the only people in society, when we hear shots being fired, we run toward the bullets.'"); Newton, *LAPD Future*, *supra* note 28 (reporting that Pittsburgh police, under federal supervision similar to that proposed for Los Angeles, are "fed up . . . with what they perceive as an ungrateful public").

33. McDermott, *supra* note 25 (quoting Randy Cochran, a LAPD officer who spent most of his twenty-six years on the force on patrol in South Los Angeles).

34. *See* CHEMERINSKY REPORT, *supra* note 24, at 6 ("Prosecutors, defense attorneys, and judges must share responsibility when innocent people are convicted."); Scott Glover & Matt Lait, *LAPD Misconduct Cases Rarely Resulted in Charges*, L.A. TIMES, Oct. 22, 2000, at A1 (reporting that Los Angeles prosecutors routinely failed to charge LAPD officers with crimes, often in spite of "substantial evidence of their guilt"); Lindner, *supra* note 27; Editorial, *Make the Law Obey Laws*, L.A. TIMES, Oct. 30, 2000, at B6 (asserting that police corruption uncovered by Rampart scandal and federal civil rights investigators "is the direct consequence of long-standing failures of local police and prosecutors").

the law.[35] Once again, we have met the enemy and it is us—or at least some of us.[36]

Does it have to be this way? Can we do anything to change it? And—to return to my specific topic—do feminist legal theories offer insights, strategies, explanations, or justifications for change that can help deconstruct and dismantle the culture of police abuse? Defending the police for using pepper spray and pellets to disperse unruly demonstrators during the 2000 Democratic National Convention in Los Angeles, the officer in charge demanded, "What would you do, call in the Girl Scouts?"[37] As this Essay will demonstrate, my answer is yes.

The first Part of the Essay describes five major types of feminist legal theory and two variants[38] that may provide guidance in

35. *See* Symposium, *Police Violence: Causes and Cures*, 7 J.L. & POL'Y 77, 85-86 (1998) (remarks of Paul G. Chevigny); *see also* CHEMERINSKY REPORT, *supra* note 24, at 36 ("The public creates additional corrupting dynamics by assigning police sisyphean missions and demanding measurable results."); PAUL G. CHEVIGNY, EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS 7, 10-11 (1995) (commenting that police work both reflects and reshapes social order); *cf.* Sherry Bebitch Jeffe, *Rampart Shadows Mayoral Candidates*, L.A. TIMES, Oct. 1, 2000, at M1 (reporting that many Los Angeles residents "have not been directly affected by Rampart, let alone enraged by it. They don't care how drug dealers or gang members get put in jail, as long as they stay there.").

36. This line is, of course, paraphrased from cartoonist Walt Kelly's Pogo. The original, "We have met the enemy and he is us," referred to environmental pollution. *See Walt Kelly*, *at* http://www.bpib.com/kelly.htm (last visited Oct. 23, 2000).

37. Beth Shuster & Jim Newton, *Campaign 2000: LAPD's Response to Protests Shows Its Strength and, Critics Say, Its Faults*, L.A. TIMES, Aug. 16, 2000, at A1 (quoting the police commander in charge of LAPD's convention planning unit).

38. These categories and short descriptions inevitably fail to capture the depth, variety, and complexity of feminist legal theory. The most notable gap is the absence of lesbian feminist theory, even though it may be especially relevant in the context of analyzing police conduct and misconduct. *See* MILLER, *supra* note 1, at 9-10 (stating that a "significant number" of eighteen women neighborhood police officers in her study of an anonymous police department "were 'out' lesbians"); *id.* at 222-23 (finding that community policing may attract lesbians because it provides "flexibility" and departs from "established macho heterosexual police culture"); *see also* Patricia A. Cain, *Lesbian Perspective, Lesbian Experience, and the Risk of Essentialism*, 2 VA. J. SOC. POL'Y & L. 43, 70-71 (1994) (urging the development and recognition of lesbian legal theory). Nonetheless, a complete taxonomy of legal feminism is far

response to police misconduct. The second Part provides a brief historical description of police misconduct, police culture, and policewomen in Los Angeles. The third Part examines each feminist legal theory's possible justifications for transforming the job of law enforcement and applies them to the most obvious feminist solution: hiring women to serve as police officers. In conclusion, I sketch, very briefly, what feminist policing or law enforcement might look like, even when both sexes are doing it, and suggest that it would not only discourage violence, abuse, and corruption but make our communities safer, more equal, and more free.

I. FEMINIST LEGAL THEORIES

Feminist legal theory divides, not always neatly, into five primary strands that I shall call liberal, cultural, radical, postmodern, and critical race feminism.[39] Liberal feminism, the most familiar, took the civil rights movement of the 1950s and 1960s as both its theoretical model and its practical guide, defining sex discrimination as analogous to race discrimination and sex equality as decision-making without regard to sex, analogous to color-blindness in racial equal protection theory. Liberal feminism produced the failed attempt to enact a federal Equal Rights Amendment.[40] Its theory and practice are also exemplified by the Women's Rights Project of the American Civil Liberties Union, which flourished in the 1970s under the leadership of Ruth Bader Ginsburg and first persuaded the Supreme Court of the United States that sex-based discrimination unjustly perpetuates harmful gender stereotypes and violates constitutional guarantees of equal protection.[41] The original or "classical"[42]

---

beyond the scope of this Essay. For one of my earlier, partial attempts, see Mary Ellen Gale, *Unfinished Women: The Supreme Court and the Incomplete Transformation of Women's Rights in the United States*, 9 WHITTIER L. REV. 445 (1987) (commenting that feminist controversies over theoretical models to resolve three 1987 Supreme Court cases on employment discrimination illuminate inadequacies of liberal feminism to identify, oppose, and remedy sex discrimination).

39. For a similar, though not identical, method of ordering feminist legal theories, see GARY MINDA, POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END 128-48 (1995).

40. *See generally* JANE J. MANSBRIDGE, WHY WE LOST THE ERA (1986) (describing the background of the ERA).

41. *See* David Cole, *Are You Now or Have You Ever Been a Member of the*

liberal feminists seek formal equality with men, nothing less but seldom much more. They sometimes define "more" as "different," "different" as "special," and "special treatment" under law as an icy descent down the slippery slope from the hard-won and easily lost plateau of formal equality into the valley of discrimination from which the climb began.[43] They support affirmative action when it means outreach, equal opportunities, and even some modest restructuring of male-gendered institutions, especially in public and private employment,[44] but they at least provisionally accept many existing cultural norms and legal standards—even if those standards were designed by men for men. When Justice Ginsburg ruled on behalf of the Court that the Virginia Military Institute should open its doors to women students generally on the same terms as men, with a few accommodations to satisfy conventional concerns about physical privacy,[45] she spoke from within the classical liberal feminist tradition, de-emphasizing both biological and cultural differences between

---

ACLU?, 90 MICH. L. REV. 1404, 1409 (1992) ("[T]he ACLU Women's Rights Project almost single-handedly developed the constitutional law of gender discrimination under the leadership of Ruth Bader Ginsburg."); Mary Ellen Gale & Nadine Strossen, *The Real ACLU*, 2 YALE J.L. & FEMINISM 161, 164-66 (1989) (giving a narrative of how the ACLU supported women's rights).

42. *See* Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L.J. 149, 151 n.3 (2000) (describing this strand of theory as "classical, liberal-legal feminism").

43. *See* Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 14 WOMEN'S RTS. L. REP. 151, 170 (1992) (arguing that "special benefits for pregnant women" are dangerous to women's equality, and adding that, "[i]f we can't have it both ways, we need to think carefully about which way we want to have it"); *see also* Joan Williams, *Do Women Need Special Treatment? Do Feminists Need Equality?*, 9 J. CONTEMP. LEGAL ISSUES 279, 296 (1998) (noting that few or no feminists have ever advocated nothing but formal equality); *id.* at 319 ("the special treatment debate . . . deteriorated into a gender war," in which feminist adversaries too often obscured their own agreements); *cf. id.* at 280 (asking if feminists should reconsider whether to abandon "equality rhetoric . . . in a culture where equality and rights talk are the accepted rhetorics for translating moral claims into legal ones").

44. *See* Joan Williams, *supra* note 43, at 299 (discussing how the writings of both Wendy Williams and now-Justice Ginsburg demonstrate their "commit[ment] to deconstructing male norms" and their support of affirmative action for women).

45. *See* United States v. Virginia, 518 U.S. 515 (1996).

women and men in recognition of their common humanity and their common right to equal education and employment opportunities.[46]

A second set of liberal feminists argues that formal equality—even the imperfect gender symmetry that most of the first group would probably accept—cannot suffice in all circumstances. These "difference" feminists reject gender-blindness as either a methodology or a goal. Because women are biologically and culturally different from men, because, most important, only women undergo pregnancy and give birth to children, and women more often than men serve as the primary caregivers for children, true equality in the home, the workplace, and the world must take account of the reality of women's lives to ensure gender justice. Although liberal difference feminists vary as to how many sex- and gender-based differences they believe the law should accommodate, and what criteria should be used to identify them,[47] they have moved decisively beyond the simple notion that sex equality in general demands no more than compensating for past discrimination and making jobs, educational opportunities, and other social goods available to women who demonstrate the qualifications and characteristics required of men. When Justice Thurgood Marshall

46. Nonetheless, she observed for the Court that, "Sex classifications may be used to compensate women for particular economic disabilities they have suffered, to promote equal employment opportunity, [and] to advance full development of the talent and capacities of our Nation's people." *Id.* at 533 (internal citations, quotation marks, and brackets omitted). This plainly goes beyond formal equality, in recognition of past and continuing harms of gender discrimination. *Cf.* Mary Anne C. Case, *"The Very Stereotype the Law Condemns": Constitutional Discrimination Law as a Quest for Perfect Proxies*, 85 CORNELL L. REV. 1447, 1461 (2000) (pointing out that this language raises the question "what limits, if any, there are on the use of discrimination as a proxy to justify compensatory or affirmative action schemes for women").

47. *Compare* Herma Hill Kay, *Equality and Difference: The Case of Pregnancy*, 1 BERKELEY WOMEN'S L.J. 1, 26-31, 34 (1985) (addressing biological differences only), *with* Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279, 1296-97 (1987) (describing cultural as well as biological differences, and noting that "the distinction between biological and cultural . . . is itself culturally based"). Robin West, whose cultural or relational feminist views also reflect the second form of liberal feminism, would revise the law more broadly and deeply to account for women's different "subjective, hedonic lives," including not just the central, relational experiences of pregnancy and child-nurturing, but also uniquely female forms of suffering and pleasure. *See* West, *supra* note 42, at 149-50, 162-64, 176, 180, 209-15.

ruled for the Court that California employment laws could single out "pregnant workers" for job protection not offered to nonpregnant workers,[48] he spoke for this second version of liberal feminism, one that takes account of at least some differences between women and men in order to remove barriers to substantive equality.

Cultural or relational feminism builds still further on the acknowledgment of distinctions between men and women, often beginning with psychologist Carol Gilligan's influential though controversial insight and argument that the moral development of girls and boys is strongly gendered and often may be fundamentally different.[49] While boys becoming men usually learn an ethic of justice based on hierarchical principles and abstract, individual rights, she suggests, girls becoming women embrace an ethic of caring and connection among human beings, to weave and to reinforce the web of personal relationships that constructs our private and public lives.[50] Cultural feminists value this "different voice" of women, whom they see as "more nurturing, caring, loving, and responsible" than men.[51] They argue that neither liberal nor radical feminism can seriously challenge patriarchy because neither offers an alternative set of values to displace it.[52] In response to the criticism that cultural feminism mistakes socially constructed gender differences for essential

48. *See* Cal. Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272 (1987) (holding that a California statute protecting jobs for four months of pregnancy-based disability leave, but not for other disability leaves, does not violate Title VII of the Civil Rights Act of 1964).

49. *See* CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982). On the empirical and theoretical controversy over Gilligan's work, see CYNTHIA FUCHS EPSTEIN, DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER 76-92, 98 (1988) (reviewing research on gender and personality and stating that "intellectual capacity and emotional qualities are distributed through humanity without restrictions of sex"); MINDA, *supra* note 39, at 137; Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1786-88 (1991).

50. *See, e.g.*, GILLIGAN, *supra* note 49, at 24-32, 38-39, 47-49, 151-59.

51. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 13-14 (1988).

52. *See, e.g.*, Mary Becker, *Patriarchy and Inequality: Towards a Substantive Feminism*, U. CHI. LEGAL F., 1999, at 21, 21 (discussing generally the notion that patriarchy will not be displaced until an alternate value system is offered).

biological realities, they reply that their account "resonates with many women."[53] They question whether liberal feminists have missed the point that fundamental social change is necessary to ensure that equality means something more than assimilation into a culture constructed to perpetuate male prerogatives and perspectives, and whether radical feminists have been too ready to discount what women's voices say now in focusing on what they might say in some problematic future when gender equality has been achieved. Cultural feminists seek to develop "a female-centered counterculture"[54] that supplements or even replaces the liberal-legal construction of individual but depersonalized rights with a legal order that listens to women's voices and heeds the ways in which women's values may differ from those of men.

Some cultural feminists also rely on another recent development in legal theory, narratives of real and imagined personal experiences that exemplify and illuminate the myriad forms that discrimination based on race, sex, or race-and-sex may assume in everyday life, the depth and variety of the harms it inflicts, and the wide array of responses it engenders in those who suffer it.[55] Because the dominant account—the official story—of law is profoundly and uncompromisingly male, they contend, narrative jurisprudence provides a corrective: the unofficial story about what really happens to women and how they think and feel about it.[56] Though no modern Supreme Court decision reflects the views of cultural feminists and few or none of them would endorse older rulings that both sheltered and imprisoned women as "the center of home and family life,"[57] their voice can be heard along with liberal feminists seeking renewed and deeper legal recognition and respect for some of the traditionally

53. *Id.* at 40.

54. MINDA, *supra* note 39, at 135.

55. *See id.* at 155-56, 160-61; Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Symposium, *Storytelling*, 87 MICH. L. REV. 2073 (1989).

56. *See* West, *supra* note 42, at 158.

57. Hoyt v. Florida, 368 U.S. 57, 62 (1961) (holding that a state may limit women's jury service to affirmative volunteers even though it automatically places men on jury lists). The *Hoyt* decision was described in the more recent case of *United States v. Virginia*, 518 U.S. 515, 560 (1996), as an example of "now abandoned view[s]."

gendered roles of women, especially the care and nurture of children.[58] More softly but ominously, in reductive and regressive tones that most cultural feminists probably would reject, this voice also registers in some of the Court's assumptions, deeply stereotypic and occasionally counterfactual, about the ways in which being a woman is different from being a man.[59]

Radical or dominance feminism rejects both the classical liberal feminist claim that sex discrimination is merely the irrational continuation of outdated prejudices and the cultural feminist claim that women, by nature or by nurture, are the guardians of human relationships. Radical feminists see a world of intentional, hierarchical, rigidly structured, and self-reinforcing male domination and entitlement, characterized by the violent, hostile, sexualized, and systematic social and economic subordination of women to and by men.[60] Radical feminists like Catharine MacKinnon and Andrea Dworkin argue that law, along with other cultural forces, is deeply

58. *See* MINDA, *supra* note 39, at 137.

59. *E.g.*, Rostker v. Goldberg, 453 U.S. 57, 77 (1981) (excluding women from military draft does not violate equal protection partly because excluding women from military combat is a "fundamental" principle in American life); Michael M. v. Superior Court, 450 U.S. 464, 467 (1981) (punishing only men for statutory rape does not violate equal protection because only men can cause pregnancy and only women can get pregnant; risk of pregnancy is a natural deterrent to teen-age sexual intercourse that makes legal deterrent unnecessary); Geduldig v. Aiello, 417 U.S. 484, 496-97 n.20 (1974) (holding that the government may exclude pregnancy-related disability from otherwise comprehensive employee benefits plan because pregnancy is not a sex-based classification). Women were excluded from combat based on cultural stereotype, not principle. The statements that only men can cause pregnancy, and that pregnancy is unrelated (or unimportantly related) to sexual identity and sex discrimination, are simply and obviously wrong. Although the Court's observations arise from and reinforce a prefeminist or antifeminist conception of women as incomplete men, the cultural feminist description of women as fundamentally different from men because of linked biological and cultural differences retrospectively lends this skewed jurisprudence a conditional legitimacy. *Cf.* Wendy W. Williams, *supra* note 43, at 151 (arguing that because judicial authority is limited to case review, "women's equality as delivered by the courts can only be an integration into a pre-existing, predominantly male world"); *id.* at 155-66 (discussing the cases from a liberal feminist perspective).

60. *See* ALLISON M. JAGGAR, FEMINIST POLITICS AND HUMAN NATURE 83-122, 249-302 (1988) (discussing, respectively, radical feminist conceptions of human nature and the politics of radical feminism).

gendered to perpetuate male power and female servility. Men use law to hurt women. Their law constructs and constricts women as sexual objects, forces them into submission, and then treats submission as proof of inferiority and refuses to respect them as moral agents, the subjects of their own lives.[61] Because radical feminists perceive gender as primarily a question of power and politics, of sex inequality and sexual oppression rather than sex difference,[62] they seek new conceptions of law to redistribute power, to end male domination, and thereby to ensure women's equality, freeing women to discover, for the first time, an independent destiny and a voice of their own.[63] But the voice that radical feminists expect to hear is not that of the cultural feminists. To affirm sex difference under conditions of male dominance, MacKinnon argues, is "to affirm the qualities and characteristics of powerlessness."[64] The morality of caring and connectedness is neither innate nor chosen, she argues, but imposed by the pervasive system of sex inequality. "Women value care because men have valued us according to the care we give them . . . . Women think in relational terms because our existence is defined in relation to men."[65] We will discover women's true voice, MacKinnon asserts, only when we lift men's feet from our necks, rise, and speak at last for ourselves.[66]

---

61. *See* ANDREA DWORKIN, PORNOGRAPHY: MEN POSSESSING WOMEN (1989); CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987) [hereinafter MACKINNON, FEMINISM UNMODIFIED]; CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989) [hereinafter MACKINNON, FEMINIST THEORY OF THE STATE].

62. *See* MACKINNON, FEMINISM UNMODIFIED, *supra* note 61, at 35-36, 40-45; MACKINNON, FEMINIST THEORY OF THE STATE, *supra* note 61, at 218-19, 237-43.

63. *See* MACKINNON, FEMINIST THEORY OF THE STATE, *supra* note 61, at 244-49.

64. MACKINNON, FEMINISM UNMODIFIED, *supra* note 61, at 39.

65. *Id.*

66. *See id.* at 45. In using the line, "Take your foot off our necks, and then we will hear in what tongue women speak," MacKinnon paraphrases an 1837 letter from an early feminist abolitionist. The original line read, "I ask no favors for my sex . . . . All I ask of our brethren is, that they will take their feet from off our necks." SARAH GRIMKE, LETTERS ON THE EQUALITY OF THE SEXES AND THE CONDITION OF WOMAN: ADDRESSED TO MARY S. PARKER, PRESIDENT OF THE BOSTON FEMALE ANTI-SLAVERY SOCIETY 10 (1970), *quoted in* Mary Becker, *The Sixties Shift to Formal Equality and the Courts: An Argument for Pragmatism and Politics*, 40 WM. & MARY L. REV. 209, 241

Radical feminist theory and its correlative attempt to destroy the hierarchy of gender seem far removed from the cautious constitutional and statutory jurisprudence of equal protection and antidiscrimination law. Nonetheless its legal initiatives include one important, though shared, victory. Feminists of all types joined to persuade courts and legislatures throughout the nation to take sexual harassment seriously as a form of sex discrimination in employment and education. Although the major Supreme Court decisions are written in the familiar terminology of liberal law,[67] they echo, however faintly, the radical feminist critique of gendered power and the many ways it works to disadvantage and dispossess women, not only of jobs and education, but of identity, status, and self-respect. The radical feminists' other primary legal initiative has been less successful. Lower courts invalidated, as unconstitutional censorship, MacKinnon and Dworkin's proposed antipornography ordinance, which defined a wide range of sexually explicit words and images as prohibited sex discrimination that in certain circumstances entitled a defined class of victims to civil remedies.[68] The courts found the ordinance unconstitutionally vague and overbroad, and accepted the

---

n.246 (1998).

67. *See* Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999) (ruling that a school board's deliberate indifference and failure to remedy severe student-on-student sexual harassment may violate federal antidiscrimination laws); Faragher v. City of Boca Raton, 524 U.S. 775 (1998) (holding that employer may be vicariously liable for negligently failing to prevent sexual harassment); Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998) (issuing a similar holding as above); Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75 (1998) (finding that same-sex sexual harassment may violate federal employment discrimination laws); Harris v. Forklift Sys., Inc., 510 U.S. 17 (1993) (concluding that sexual harassment that creates an objectively hostile work environment, subjectively so perceived by the victim, is a form of sex discrimination even if it does not cause serious psychological harm); Meritor Sav. Bank v. Vinson, 477 U.S. 57 (1986) (ruling that sexual harassment that creates hostile work environment may constitute illegal sex discrimination).

68. *See* Am. Booksellers Ass'n v. Hudnut, 771 F.2d 323 (7th Cir. 1985), *aff'g* 598 F. Supp. 1316 (S.D. Ind. 1984) (holding Indianapolis ordinance unconstitutional). It seems that no other governmental entity in the United States enacted the proposed antipornography ordinance, though it took the mayor's veto twice to defeat the original and a revision in Minneapolis. *See* Paul Brest & Ann Vandenberg, *Politics, Feminism, and the Constitution: The Anti-Pornography Movement in Minneapolis*, 39 STAN. L. REV. 607, 644-45, 653 (1987).

arguments of liberal feminists that freedom of erotic expression, at least in words and pictures, even if it contributes significantly to female subordination, not only protects liberty for everyone but better serves gender equality.[69] MacKinnon's reply was to continue her critical attack on liberal ways of thinking about free expression. "Law is only words," she wrote, "yet we do not analyze law as the mere expression of ideas . . . . It makes no more sense to treat pornography as mere abstraction and representation than it does to treat law as simulation or fantasy."[70] She called for "a new model for freedom of expression in which the free speech position no longer supports social dominance"—like that exerted by Nazis, Klansmen, pornographers—"while doing nothing for their victims."[71]

Postmodern or eclectic legal feminism rejects what its adherents consider to be the innate, reductionist essentialism of most other versions of feminism—the almost inescapable urge to tell one primary story of gender injustice, to universalize the multiple, complex, subtly nuanced, and richly varied experiences of women. Postmodern legal feminists perceive both equality and gender not as objective, fixed, and determinate but as contextual, subjective, contingent, shifting, and uncertain.[72] They focus on language—and legal language in particular—as a primary means of constructing social reality. Gender itself is socially constructed and individually experienced from moment to moment, as part of the uneven flow of individual consciousness, despite the perverse consistency of gender role expectations. Gender is performance rather than essence.[73] It is subject to linguistic and legal deconstruction—to self-contradictory, liberating, even defiant analysis that exposes its ideological basis and bias.[74] Narrative jurisprudence is important for postmodern legal

69. *See* Lisa Duggan et al., *False Promises: Feminist Anti-Pornography Legislation in the U.S., in* WOMEN AGAINST CENSORSHIP 130 (Varda Burstyn ed., 1985). My description of this feminist split is intended to be neutral, or at least fair. This Essay is not the place to re-examine it.

70. CATHARINE A. MACKINNON, ONLY WORDS 40 (1993).

71. *Id.* at 109.

72. *See* FRUG, *supra* note 12; MINDA, *supra* note 39, at 141-47; Mary Joe Frug, *A Postmodern Feminist Legal Manifesto*, 105 HARV. L. REV. 1045 (1992).

73. *See, e.g.*, MILLER, *supra* note 1, at 66 ("The sociological term 'doing gender' describes the activity of practicing such [gendered] behavior.").

74. *See* Williams, *supra* note 10, at 1567-68.

feminists because it illustrates the infinite variety of women's lives and voices and the sometimes provisional, improvised, and paradoxical nature of their multiple identities and unstable selves,[75] not because it generates a unified feminist theory or a transcendent explanation for women's oppression. For postmodernists, there is no such explanation, no single theory of what it means to be a woman.

Similarly, there is no single theory of what it means to be a man. The exploration of "multiple truths and splintered subjectivities"[76] extends to men as well as women. Because men also have plural, unstable identities and gender anxieties based on social hierarchies of race, class, and sexual orientation, among other variables, there are multiple "masculinities" as well.[77] Some postmodern feminists accept the sociological argument that violence and criminality strongly correlate with biological and cultural maleness partly because of "power struggles among men" that encourage the winners to assert their dominance at the expense of the losers, who in turn seek other ways to re-establish their manliness, to prove that they are not women.[78] Nonetheless, postmodernists share the belief of other feminists that women's interests, rights, needs, and values too often have been omitted from the social, political, and legal conversations that shape our lives—that it is necessary to resist male dominance directly, as well as its psychological and sociological origins. The goal of postmodern legal feminists is to end gender oppression through social and legal reconstructions that respect differences among women and men as well as between women and men, to encourage pluralistic conceptions of gender and equality that diminish male hegemony and increase female autonomy, while acknowledging the open-ended indeterminacy of the quest. Because of its emphasis on particularity and discontinuity, postmodern legal feminism does not readily translate into a coherent strategy for legal change, but it offers support for litigation and legislation that further equality and

75. *See* john a. powell, *The Multiple Self: Exploring Between and Beyond Modernity and Postmodernity*, 81 MINN. L. REV. 1481, 1483-84 (1997) (writing that the self is composed of multiple, fragmented, and shifting identities).

76. Anne C. Dailey, *Feminism's Return to Liberalism*, 102 YALE L.J. 1265, 1266 (1993).

77. *See* Harris, *supra* note 1, at 782-84.

78. *See id.* at 783.

self-determination based on the complexity and variety of women's lives.

Critical race feminism combines feminism with critical race theory, which emerged in the 1980s to challenge liberal theories of racism and civil rights by focusing on the persistence and pervasiveness of race discrimination.[79] Critical race theorists reject both the goal of formal equality and the methodology of racially neutral decision-making, arguing that the deep structure of American society is so implacably racist and racialized that alleged color-blindness and neutral meritocracy perpetuate the white privilege and racial oppression they ostensibly counteract.[80] Critical race theorists value storytelling and narrative scholarship as one powerful way to communicate how racism and white supremacy continue to shape the lives of people of color, to record their resistance and validate their perspectives, to create new legal strategies, and to continue the search for racial justice.[81] Critical race feminists explore the ways that race, sex, and class combine to form crucial determinants of identity and experience, and change the face and nature of gender discrimination and male supremacy.[82] Though allied in many respects with postmodern

79. *See* DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995) [hereinafter CRITICAL RACE THEORY]; MINDA, *supra* note 39, at 167-85; Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241 (1993); Crenshaw, *supra* note 3; Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); john a. powell, *Racial Realism or Racial Despair?*, 24 CONN. L. REV. 533 (1992).

80. *See* Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1 (1991); Reva B. Siegel, *Discrimination in the Eyes of the Law: How "Color-Blindness" Discourse Disrupts and Rationalizes Social Stratification*, 88 CAL. L. REV. 77 (2000).

81. *See* CRITICAL RACE THEORY, *supra* note 79, at xiii-xv; Delgado, *supra* note 55, at 2415-16.

82. *See* Kimberle Crenshaw, *Whose Story Is It, Anyway? Feminist and Antiracist Appropriations of Anita Hill*, *in* RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY 402 (Toni Morrison ed., 1992); Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365; Kimberle Crenshaw, *Demarginalizing the Intersec-*

feminists in their insistence on multiple voices and outsider narratives as revelatory of the real world and of the changes necessary for women to flourish in it, critical race feminists argue that other feminists too often disregard or barely recognize the racial and ethnic consciousness and the unconscious racism of the social construction of gender discrimination and gender itself.[83]

Despite its academic origins, critical race feminism is grounded in insight and analysis based on feminist legal practice,[84] and has made two significant, interconnected contributions to antidiscrimination law. Its proponents exposed the racism in judicial rulings that women of color (unlike white women, whom some judges seemed to consider race-less) could not properly represent the biological and legal class of women. They also pointed out another obvious truth that some courts resist, that employers and others may discriminate along two vectors at once. For example, women of color may suffer intersectional or multidimensional harms different from those inflicted on white women or racial minority men and therefore can be a cognizable class for the purpose of identifying and remedying discrimination.[85]

---

tion of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics, U. CHI. LEGAL F., 1989, at 139 [hereinafter Crenshaw, *Demarginalizing the Intersection*]; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, The Life of One Blackwoman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259 (1993).

83. *E.g.*, Crenshaw, *Demarginalizing the Intersection*, *supra* note 82, at 67 ("The value of feminist theory to Black women is diminished because it evolves from a white racial context that is seldom acknowledged . . . . [T]heir exclusion is reinforced when *white* women speak for and as *women*."); *see* Robin D. Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*, 103 HARV. L. REV. 1864 (1990); Lawrence, *supra* note 79.

84. *E.g.*, Caldwell, *supra* note 82; Crenshaw, *supra* note 82; White, *supra* note 20.

85. *See, e.g.*, Caldwell, *supra* note 82, at 368, 371 (noting that employment discrimination decisions are often based on the unarticulated "premise that, although racism and sexism share much in common, they are nonetheless fundamentally unrelated phenomena—a proposition proved false by history and contemporary reality"); Crenshaw, *Demarginalizing the Intersection*, *supra* note 82, at 58-66 (analyzing cases). The difference between the terms "intersectional" and "multidimensional" is subtle; some theorists use the latter to describe the lived experience of combined but inseparable racial, biological,

Critical race theory has generated another new category of legal scholarship known as "critical white studies," which focuses on white supremacy and privilege as a "social organizing principle"[86] and seeks, more consciously and skeptically than classical liberal scholarship and without its allegiance to formal neutrality, to dismantle them and to construct in their place an "antiracist white identity."[87] Critical white feminism explores ways in which white women can ally with racial and ethnic minorities to oppose racial and sexual oppression and inequality without, however inadvertently, appropriating or displacing minority perspectives, or replicating part of the dominant white male discourse. Because that discourse simultaneously privileges white women because they are white and subordinates white women because they are women,[88] white women have a double, contradictory, almost deconstructive[89] relationship with the world of white male privilege. The dominant message is to stay in the game, because white women share some of the benefits of societal racism, and the subordinate, contradictory message is to end the

---

and sexual identities. *See* Harris, *supra* note 1, at 782 n.23. Susan L. Miller's sociological research confirms this experience in practice for some lesbian policewomen. *See* MILLER, *supra* note 1, at 134-36 (observing that sexual orientation combined with race and gender to influence their approach to police work).

86. CRITICAL RACE THEORY, *supra* note 79, at 541. *See generally* CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic eds., 1997).

87. Barbara J. Flagg, *Changing the Rules: Some Preliminary Thoughts on Doctrinal Reform, Indeterminacy, and Whiteness*, 11 BERKELEY WOMEN'S L.J. 250, 250 (1996); *see* Collin O'Connor Udell, *Stalking the Wild Lacuna: Communication, Cognition and Contingency*, 16 LAW & INEQ. 493, 511-12 (1998).

88. *See* Martha R. Mahoney, *Whiteness and Women, in Practice and Theory: A Reply to Catharine MacKinnon*, 5 YALE J.L. & FEMINISM 217, 233-44 (1993) (arguing that racist society affects all of us, and that the invisibility of privilege to the privileged prevents most white feminists from giving the same depth of thought to their race as they have to their gender); *id.* at 247-48 (asserting that the meaning of whiteness must be made visible in order to challenge it).

89. This is not quite deconstructive because the second message is not contained within, but merely, though ineluctably, accompanies the first. The "dangerous supplement" in deconstructive theory inverts or displaces the hierarchy of thought represented by the statement or text itself. *See* Jack M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743, 747, 755-64, 786 (1987) (explaining French philosopher Jacques Derrida's theory of textual interpretation).

game, or call it into serious question, because white women carry some of the burdens of societal sexism. Critical white feminism asks white women, especially feminists, to reconsider their divided situation, to evaluate even their feminist theories and actions to ensure that they oppose rather than accept or support injustices based on race and class that primarily harm other women.

Despite their differences, all of the feminist legal theories described above can offer at least a provisional analysis of police misconduct and can suggest remedial actions. Because police misconduct appears to be either caused by or substantially aggravated by the police culture of hypermasculinity[90] with which it correlates, the most obvious solution is to de-gender or re-gender police work female as well as male and assign it to women as well as to men.[91] Because biological sex strongly predicts cultural and behavioral gender for individuals, the most obvious way to re-gender police work is to hire more women officers and promote them to positions of leadership.[92] However, since each theory has its own perspective, feminists of different types may support this recommendation in different ways, respond with varying degrees of urgency, suggest different approaches, or provide different justifications. Nonetheless, differences in theory and perspective do not tell the whole story. Even if the postmodern insight into our contingent and shifting identities is correct, even if we cannot universalize women's experiences or discover neutral and permanent truths about the intersections of race, class, and sex in social and legal systems, the multiple stories we tell may converge in shared strategies for change. "Transformative work, which is . . . the point of feminist struggle, involves listening

90. For a definition of hypermasculinity, see *supra* note 31.

91. However, at least one city police force that seriously experimented with nontraditional policing found it more expedient to re-gender traditionally female skills and activities as male. *See* MILLER, *supra* note 1, at 214-15. This approach, despite its short-term practical advantages, reinforces male supremacy instead of challenging it.

92. *But see* Case, *supra* note 1, at 93. Case argues that it is a "facile mistake . . . to essentialize the female as feminine" and therefore to conclude that making the police force more female is either necessary or sufficient to make it more feminine. Even if feminine traits like "sensitivity" and "empathy" are required, some men will have them and some women will not, as federal employment discrimination cases have recognized. *Id.* at 93-94 & n.326 (citing the cases that support this notion).

respectfully to those who see what we cannot."[93] It requires us to build a "narrative bridge"[94] between ourselves and other women, to imagine their lives as well as our own, and to stand together in the many places where we can find common ground.[95]

II. POLICE CULTURE, POLICE MISCONDUCT, AND POLICE WOMEN

The history of police misconduct in Los Angeles now stretches over more than a century. It began with the divided public ideology and culture of Los Angeles in the late 1800s and early 1900s, formally rigid and puritanical, informally licentious and criminal, and the police force that the city's leaders created to enforce the laws they often chose to disobey.[96] From its founding in 1877, the police department and its officers were expected to act "as thuggish enforcers of the rich man's laws,"[97] especially against racial and ethnic minorities. Many policemen augmented their low salaries with payoffs from criminals and gangsters who also financed local politicians.[98] Local businessmen fought the unions during a twenty-year strike from 1890 to 1910, when two workers bombed the printing plant of the *Los Angeles Times*, killing twenty-one employees, demoralizing the labor movement, and plunging the police department "unequivocally, passionately, and irrevocably in the business of spying, surveillance, and repression"[99] that has characterized it ever since.

The history of women police officers in Los Angeles extends back nearly as far. One month before the Los Angeles Times bombing, Alice Stebbins Wells, a social worker with a theological education and a missionary zeal, joined the Los Angeles Police

93. Mahoney, *supra* note 88, at 248.

94. Dailey, *supra* note 76, at 1273.

95. *See id.* at 1278-85. Dailey argues that the feminist commitment to "community across diversity" can reconstitute an "empathetic liberalism" from the many different voices of feminism. "Through narrative, the feminist vision of human connection offers liberalism the possibility of political union built upon bonds deeper than self-interest." *Id.* at 1283.

96. *See* JOE DOMANICK, TO PROTECT AND TO SERVE: THE LAPD'S CENTURY OF WAR IN THE CITY OF DREAMS 33-34 (1994) (discussing the LAPD's pervasive policing and its remarkable autonomy, power, and ability to silence critics).

97. *Id.* at 34.

98. *See id.* at 34-35.

99. *Id.* at 38-39.

Department as the first woman police officer in the United States.[100] Her political campaign for the job—which required enactment of a special city ordinance permitting "the employment of one police officer who shall be a woman"[101]—was cultural feminism in practice, an attitude that would prevail for years, separating women police officers from the perceived primary tasks of law enforcement but also empowering them to demonstrate that there might be another way to enforce the law.[102] Women, she argued, were natural experts in crime prevention, especially among women; they would know better than men how to prevent women and children from committing crimes and to protect them from becoming victims of crime.[103] Assigned to the Juvenile Bureau, she remained there for nearly thirty years.[104] Although she instantly became a minor national celebrity, traveling throughout the United States and Canada to urge other cities to hire women officers,[105] she is not even mentioned in one of the best-known biographies of the Los Angeles Police Department,[106] perhaps partly because, to some extent, she represents a mission that failed.

Until the 1930s policewomen emphasized social work and crime prevention, acting as "municipal mothers" and rejecting male police work as irrelevant, even antithetical, to their job.[107] Organized into

100. *See* APPIER, *supra* note 1, at 10; MILLER, *supra* note 1, at 76. In response to pressure from African American women's groups, in 1916 the LAPD also hired the first black policewoman in the United States, Georgia Ann Robinson. Her primary job was to help African American women and children, with special focus on resisting sexual exploitation. *See* APPIER, *supra* note 1, at 127-28.

101. APPIER, *supra* note 1, at 10.

102. *See id.* at 46-57.

103. *See id.* at 9.

104. *See id.* at 108.

105. *See id.* at 10.

106. *See* DOMANICK, *supra* note 96. Women in the LAPD are mentioned rarely, on less than ten of his 439 pages of text, usually as the subject of male derision and complaint. *See id.* at 9-10, 11-12, 290, 292, 304, 306.

107. *See* MILLER, *supra* note 1, at 76 (quoting D.M. SCHULZ, FROM SOCIAL WORKER TO CRIMEFIGHTER: WOMEN IN UNITED STATES MUNICIPAL POLICING 4 (1995)). The LAPD established a Juvenile Bureau in 1909. *See* APPIER, *supra* note 1, at 107. The Los Angeles City Council authorized a "City Mother's Bureau" in 1914, primarily to protect immigrant and working class girls from sexual exploitation and "misconduct" and to counsel them and their mothers. *See id.* at 81-86; MILLER, *supra* note 1, at 80.

separate women's bureaus, they "were removed from the male power base of the police organization, with a negative impact on the scope of their responsibilities, salaries, prestige, and opportunities for promotion."[108] Nonetheless, despite publicly reassuring policemen that women would not replace them, some early policewomen sought to redirect police work "from a narrow concentration on detection and arrest to a broad commitment to identifying and eliminating the causes of crime" and "to extend the idealized female world of nurture into the criminal justice system."[109] This mission collapsed after 1930,[110] as police reformers emphasized crime control and sought to professionalize police forces and discourage political and financial corruption by instituting hierarchical bureaucracies and military-like chains of command, and by isolating police from the communities in which they worked.[111]

"Officers were expected to be detached, remote, [and] stoic, conveying dispassionate objectivity."[112] Policewomen's social service activities were not part of the new model. Janis Appier, in her historical study of women in the LAPD, observes, "Perhaps in no other city in the United States did women police have a more promising start than Los Angeles, or, in retrospect, a more thorough defeat."[113]

In the 1920s, "enlightened" police chiefs introduced modern management and technology, formal education for police work, and higher wages. "But . . . no one questioned what might happen if the . . . emphasis on training, and faceless paramilitary policing, along with the ever-expanding power and independence of police departments from civilian control, was carried to its ultimate conclusion."[114] In subordinating women, disdaining crime prevention, and circumventing civilian government, the LAPD developed and unleashed a ferocious style of police work that defeated its own

108. MILLER, *supra* note 1, at 82.
109. APPIER, *supra* note 1, at 56, 58.
110. *See id.* at 138.
111. *See* MILLER, *supra* note 1, at 78-79.
112. *Id.* at 79 (continuing with, "[n]ote that the only method devised to curb corruption was to promote dehumanization; only when man is a machine can he be free of vice").
113. APPIER, *supra* note 1, at 69.
114. DOMANICK, *supra* note 96, at 49.

ostensible goals, engendering outlaws within the ranks of law enforcement. In the 1930s the department, acting on its own initiative, illegally blockaded California's state borders, far from Los Angeles and its geographic authority, to repel thousands of migrant workers. In the city, the police force rounded up the homeless and deported them out of state.[115] By 1938 police violence and corruption led to trials that disclosed massive police surveillance of any and all critics of the LAPD.[116] After the end of World War II, the LAPD instituted an Internal Affairs Division to investigate misconduct by police officers, and in 1950 the head of that unit, William H. Parker, was appointed Police Chief.[117]

During that same era, a second generation of women police officers joined the department. Rejecting the "social-worker identity" of their predecessors, they sought to adapt to the male model of police work, and were assigned to work in teams with veteran policemen who often resented their presence, doubted their ability, and demeaned them as "unfeminine."[118] Like classical liberal feminists, they strove to meet male standards, acquiring uniforms, badges, and, in 1939, guns.[119] But equality proved elusive.

"Ironically, the arming of policewomen illustrates their loss of power. Because policewomen no longer sought to infuse police work with the values associated with women and social work, they no longer represented a threat to male hegemony."[120] Eager to conform and to be accepted, they failed to challenge the emerging "crime control" model that, in Los Angeles and throughout the nation, became the dominant mode of law enforcement in the United States.[121] Crime control "marginalized policewomen" because it valued "aggression, dominance, physical strength, and toughness"—

115. *See id.* at 60-61.
116. *See id.* at 77.
117. *See id.* at 99-100, 103.
118. *See* APPIER, *supra* note 1, at 156, 158.
119. *See id.* at 158-60. Appier notes that some "opposition to uniforms for policewomen involved female gender identity. Police uniforms were and are a universally understood symbol for the coercive power of the state over life, liberty, and property." *Id.* at 63. Women in uniforms "challenged gender hierarchy." *Id.*
120. *Id.* at 160.
121. *See id.* at 160-66; CHRISTOPHER COMMISSION REPORT, *supra* note 23, at xiv.

characteristics that crime controllers associated exclusively with men.[122]

During Chief Parker's sixteen-year command, he further modernized and militarized the LAPD, successfully insulated it from political accountability and control, encouraged its racism, and deepened its isolation from the civilians it policed.[123] As it became more stridently masculine, the department excluded women from police patrol, assigned them only to "tasks relating to women and children, desk duty, and administration," and denied them promotion above the rank of sergeant.[124] It also refused to permit women officers to arrest men.[125] Reluctantly abandoning sex-segregated job classifications in 1973 after federal employment discrimination laws made them unquestionably illegal, the department then imposed a physical abilities test that excluded half of all women but only 2.6% of men and height regulations that excluded 87% of all women but only 20% of men.[126] In 1973 female Sergeant Fanchon Blake initiated seven years of litigation that finally led to consent decrees requiring the LAPD to increase the numbers of both women and racial minority police officers.[127]

Since Parker's command, except for "brief interludes" including the five-year term of Willie L. Williams in the mid-1990s, the LAPD "has been run by three direct Parker descendants: Ed Davis, Daryl Gates and Bernard Parks."[128] From 1965 to 1999 Los Angeles

122. APPIER, *supra* note 1, at 165-66; *cf.* Case, *supra* note 1, at 71 (noting that some employers disadvantage women employees "both for manifesting and for failing to manifest stereotypically feminine behavior").

123. *See* DOMANICK, *supra* note 96, at 85-86, 103-16, 151-58.

124. Blake v. City of Los Angeles, 595 F.2d 1367, 1371 (9th Cir. 1979) (reversing a district court's summary judgment in favor of the police department). The Ninth Circuit, in a decision written by Judge Shirley Hufstedler, held that the LAPD's sex-segregated job classifications violated equal protection and that the disparate impact of physical test and height regulations constituted a prima facie case of sex discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1972 to apply to state and local governments, set forth at 42 U.S.C. § 2000e-1 to -16 (2000).

125. *See* APPIER, *supra* note 1, at 168.

126. *See Blake*, 595 F.2d at 1374.

127. *See* APPIER, *supra* note 1, at 169. The decrees set goals at twenty percent for women and representation equal to that in the Los Angeles work force for minorities. *See id.*

128. McDermott, *supra* note 25. Parks, appointed in 1997 with the support

experienced the Watts insurrection, the massive violations of privacy disclosed by a police spying case in the 1980s,[129] the Rodney King beating, the Rampart scandal, and hundreds of other incidents, large and small, both notorious and unremarked.[130] All of these combined to display the department—despite the work of many dedicated and responsible officers—as fundamentally hostile to civil rights and civil liberties, to racial and ethnic minorities, to democratic accountability, and to the communities it purported to protect and to serve.

Some incidents led to investigations and recommendations, which were seldom honored. "The cycle is so habitual that one steadfast aspect of each new report is a section wondering why the recommendations in past reports haven't been carried out."[131] After Watts "exploded in gunfire and flames" in August 1965,[132] the McCone Commission issued a report[133] that "was received with outrage" by many, including the California State Advisory Committee to the United States Commission on Civil Rights, for its failure to treat police misconduct and abuse as causative factors.[134] The report recorded "severe criticism" of the LAPD, "a deep and longstanding schism" between the police and "the Negro community," and

---

of reformers, reportedly has alienated the police force by inflexible disciplinary regulations, yet failed to uncover the Rampart scandal prior to disclosures by former officer Rafael Perez and others in 1999. *See* Cannon, *supra* note 27; McDermott, *supra* note 25.

129. *See* DOMANICK, *supra* note 96, at 294-95 (noting that the LAPD had been illegally spying on "everybody"—more than 200 individuals and organizations, including governmental agencies like the Los Angeles City Council and Police Commission and political, religious, civil rights, women's, and environmental groups); Jim Newton, *LAPD Seeks New Rules for Undercover Probes*, L.A. TIMES, Oct. 11, 1996, at A1 (reporting that the police sought to end restrictions on intelligence gathering imposed by 1984 consent decree after "explosive scandal over police spying").

130. *See, e.g.*, DOMANICK, *supra* note 96, at 263-67, 270-77 (discussing the LAPD's high occurrence of shootings involving unarmed civilians and its biased internal investigations); UNDERSTANDING THE RIOTS: LOS ANGELES BEFORE AND AFTER THE RODNEY KING CASE 15, 31, 37-42 (1992) [hereinafter UNDERSTANDING THE RIOTS]; McDermott, *supra* note 25.

131. McDermott, *supra* note 25; *see* HUMAN RIGHTS WATCH, *supra* note 23, at 1, 25.

132. UNDERSTANDING THE RIOTS, *supra* note 130, at 9, 10, 21.

133. *See* VIOLENCE IN THE CITY, *supra* note 22.

134. DOMANICK, *supra* note 96, at 191.

recurrent charges of police brutality,[135] but rejected the suggestion that a civilian review board be created to respond to complaints against the police, instead proposing an outside inspector general.[136] This recommendation was not followed until five years after the Christopher Commission made a similar recommendation in 1991.[137]

Not surprisingly in the 1960s, when crime control was the primary approach to law enforcement, and when women officers constituted only a small fraction of city police forces and less than three percent of the LAPD,[138] the McCone Commission apparently never considered the possibility that women police officers, or a less relentlessly aggressive and masculine method of policing, might lower the level of police abuse and civilian hostility. Indeed, the report exhibited no sex or gender awareness at all. Just two years later, however, a Commission that was formed to examine relationships between police and the public throughout the United States urged local departments to hire more women and racial minorities.[139] The

135. VIOLENCE IN THE CITY, *supra* note 22, at 19; *see* CHRISTOPHER COMMISSION REPORT, *supra* note 23, at 70.

136. *See* VIOLENCE IN THE CITY, *supra* note 22, at 20-21; *cf.* REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 206, 301-07 (New York Times Co. ed., 1968) [hereinafter KERNER COMMISSION REPORT] (discussing police brutality in predominantly African American neighborhoods and its contribution to civil disorder). The National Advisory Commission, chaired by Illinois Governor Otto Kerner, noted that routine traffic stops by police in Harlem, Watts, Newark, and Detroit flared into widespread violence partly because "police have come to symbolize white power, white racism and white repression," especially in black ghettoes. KERNER COMMISSION REPORT, *supra*, at 206. The report acknowledged widespread complaints about "police brutality" and "harassment," but found that "[t]he true extent of excessive and unjustified use of force is difficult to determine." *Id.* at 302-03. Nonetheless, the Kerner Commission was far more willing than the McCone Commission to criticize white society and its institutions, including law enforcement, and to recommend significant reforms.

137. *See* CHRISTOPHER COMMISSION REPORT, *supra* note 23, at xx, 173-78; HUMAN RIGHTS WATCH, *supra* note 23, at 209.

138. Before 1971, the federal government did not publish statistics on the number of police women nationally or by state or city. *See* APPIER, *supra* note 1, at 171 n.3. In 1970 the percentage of women officers in the LAPD was 2.62; in 1973 it was 2.15; and in 1976 it was 2.08. *See* Blake v. City of Los Angeles, 595 F.2d 1367, 1371 (9th Cir. 1979).

139. *See* MILLER, *supra* note 1, at 85 (citing PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: THE POLICE 125 (1967))

President's Commission on Law Enforcement and Administration of Justice began with the suggestion that women could do "planning and research, training, intelligence, inspection, public information, community relations," computer programming, laboratory analysis, and legal work.[140] The Commission later backed into the broader recommendation that "women should serve regularly in patrol, vice, and investigative divisions," and eventually "assume administrative responsibilities."[141]

The LAPD listened to little or no advice from others. As the Christopher Commission rediscovered twenty-six years later, the LAPD after Watts did nothing serious to change its ways,[142] unless under duress from the courts. In July 1991 the Commission issued its response to the violent arrest four months earlier of Rodney King, the recipient of fifty-six baton blows and uncounted kicks in the presence of twenty-seven law enforcement officers, all recorded on videotape by a civilian none of them noticed, and played and replayed on television screens around the world.[143] The Commission concentrated its inquiry and its recommendations on police use of excessive force.[144] In contrast with its predecessors, the Christopher Commission recognized the importance of race and sex discrimination in both police employment and police misconduct.[145] It found "substantial progress in the hiring of racial minorities and women" since the consent decrees a decade earlier,[146] but also reported that minorities and women continued to occupy subordinate rather than managerial positions and receive less desirable assignments.[147] Pervasive racism, sexism, and hostility to gays and lesbians, throughout the department and in its police work, combined with the crime control model of law enforcement, helped perpetuate an organizational culture that encouraged male domination, discourtesy, hostility,

140. *Id.* (citing PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: THE POLICE 125 (1967)).
141. *Id.* (citing PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: THE POLICE 125 (1967)).
142. *See* DOMANICK, *supra* note 96, at 192.
143. *See* UNDERSTANDING THE RIOTS, *supra* note 130, at 33.
144. *See* CHRISTOPHER COMMISSION REPORT, *supra* note 23, at ii.
145. *See id.* at 71, 81-92.
146. *Id.* at 71.
147. *See id.* at 82-83.

discrimination, harassment, and violence.[148] Because "most female officers use a style of policing that minimizes the use of excessive force and inappropriate confrontations," the Commission pointedly observed, "the continued existence of discrimination against female officers can deprive the Department of specific skills, and thereby contribute to the problem of excessive force."[149] The data demonstrated that women officers were far less likely than men to resort to unnecessary violence. No woman ranked in the top 120 reported users of force, or in the top 132 officers with the largest number of combined use-of-force reports, personnel complaints, and officer-involved shootings.[150] Women officers, 12.6% of the police force in 1990, were only 3.4% of those involved in major incidents that produced the eighty-three most serious lawsuits against the LAPD in the four previous years, and only 3.7% of the 808 officers with the highest number of incidents.[151]

Women officers were not praised or rewarded for this record of nonviolent policing that threatened the LAPD's ingrained way of life. The Commission found "widespread and strongly felt gender bias."[152] In a 1987 study, seventy percent of women officers reported that they were not judged on ability, seventy-six percent were subjected to sexist remarks, fifty-five percent had partners who told them they were incompetent, and forty-three percent were confronted with "lack of sensitivity to cultural/racial issues."[153] Another study reported that "male officers do not overtly refuse to work with females but rather use subtle [sic] tactics such as not talking to them in the car or not providing them with information to help them learn the job," and even, in many cases, "deliberately orchestrat[ing] a fight . . . to see how a female probationer would 'handle herself.'"[154] Unaware of or undeterred by research showing that women officers

148. *See id.* at 69-92.
149. *Id.* at 83.
150. *See id.* at 84.
151. *See id.* at 71, 84.
152. *Id.* at 83.
153. *Id.* at 85 (quoting a 1987 internal affairs study by Dr. Martin Reiser revealing perceptions of sworn personnel about the treatment of women and minorities).
154. *Id.* at 86 (quoting 1987 study).

throughout the nation perform as well as men,[155] many LAPD training officers, who partner new officers in their first year and thus play a critical role in socializing them, "expressed concerns that female officers were not as capable, effective, or trustworthy as their male counterparts."[156]

The Commission concluded, however, that "male attitudes" and "stereotypical role models in law enforcement"—not women officers—were the real problem.[157] It strongly recommended that the LAPD recruit more racial minorities and women, provide "active leadership" and "cultural awareness training" to counteract racism, sexism, and stereotypes, and to ensure that minorities and women have "full and equal opportunity" to obtain coveted assignments and attain "leadership positions."[158] More generally, it urged the department to "develop and employ tactics that emphasize containment and control rather than confrontation and physical force," and "to foster within the LAPD a different attitude toward the population it serves, and to assist the public to gain greater trust in the Department."[159] The Commission even dared to recommend that the LAPD adopt a "community-based policing model" that "treats service to the public and prevention of crime as the primary function of police in society."[160] In short, the Commission asked for precisely what the LAPD seemed most determined Los Angeles would never get: a

155. *See id.* at 88; MILLER, *supra* note 1, at 86 (recounting that data from six major cities "showed that although male officers still questioned the effectiveness of women and whether they could physically handle the job, these concerns were not substantiated by performance evaluations").

156. CHRISTOPHER COMMISSION REPORT, *supra* note 23, at 86.

157. *Id.* at 88.

158. *Id.* at 91-92. In reply to these recommendations, Police Chief Daryl F. Gates quoted the LAPD's affirmative action policy, which required uniform application of a "merit principle," and stated that the LAPD's policy "is . . . to ensure that all reasonable and positive efforts are made to achieve a work force which, at all levels, reflects parity with the sex/ethnic makeup of the City's civilian labor force" and to consider affirmative action in hiring, promotion, and assignments. Since the March 1981 consent decrees, he reported, women officers had risen from 2.6% to 13.3% of the LAPD. DARYL F. GATES, DEPARTMENT RESPONSE TO THE RECOMMENDATIONS OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT (1991) (response to CLA Report Recommendation Number 1).

159. CHRISTOPHER COMMISSION REPORT, *supra* note 23, at 105.

160. *Id.* at 98.

revival, in modern form, of the crime prevention model of police work that the department had at first tolerated but then decisively rejected when women offered it as a supplemental approach seventy-five years before. Nonetheless, a women's advisory group followed up the Commission's report with its own "blueprint for gender equity" including "less masculine and more feminine criteria" for hiring and evaluating police officers,[161] and the Los Angeles City Council passed a resolution urging the LAPD to set a goal of forty-three percent women officers.[162]

In an interview in 1991, Joseph Wambaugh, a fourteen-year veteran of the LAPD and a successful author of fiction and nonfiction books about police work, suggested that the city council had not gone far enough. He recommended a woman police chief and a police force of "50% women or more" because "female cops can go a long way toward helping to mitigate the super-aggressive, paramilitary macho myth of the gung-ho cop and introducing the sobering element of maturity in police work."[163] Women, he said, can reveal and discuss their emotions in a way that men, especially young men, cannot. By acknowledging the fear that accompanies physical danger, women police officers accept it without shame or bravado. Because "they don't need to whip on somebody because he scared them" and are more willing "to back off and wait for help" instead of saving face by busting heads, they can set an example of calm, considered, and compassionate response[164] that men can learn, however slowly, to follow. "Police work," Wambaugh said, "is not about physical altercations . . . [or] about shooting people . . . . It's about talking to people" and "problem solving," tasks for which women are "eminently better qualified than men."[165]

161. Case, *supra* note 1, at 88-91 (summarizing THE WOMEN'S ADVISORY COUNCIL TO THE L.A. POLICE COMM'N, A BLUEPRINT FOR IMPLEMENTING GENDER EQUITY IN THE LOS ANGELES POLICE DEPARTMENT (1993)).

162. *See id. at* 89.

163. Robert Scheer, *Joseph Wambaugh: What LAPD Needs Is Women to Combat Testosterone Level*, L.A. TIMES, July 14, 1991, at M3.

164. *Id.* The Christopher Commission similarly reported that many officers of both sexes "believe female officers are less personally challenged by defiant suspects and feel less need to [respond] with immediate force or confrontational language." CHRISTOPHER COMMISSION REPORT, *supra* note 23, at 84.

165. Scheer, *supra* note 163.

Nine years later when the Rampart scandal emerged from the depths in which LAPD officers had conspired to hide it, the number of women officers had increased to nearly twenty percent.[166] But departmental culture and conduct had not noticeably improved. Describing Rampart as "the worst scandal in the history of Los Angeles," Professor Erwin Chemerinsky recommended placing the LAPD under judicial order and federal supervision through a consent decree between the city and the U.S. Department of Justice.[167] He called for an independent commission to conduct a wide-ranging investigation of the LAPD beyond the limited scope of the Christopher Commission, structural reforms to deter police abuse and ensure its prompt discovery, and fundamental changes in departmental culture and practice.[168] Acknowledging the barriers to cultural reform, his report nonetheless declared that LAPD management "must accept and implement the Christopher Commission's mandate to move from the over-aggressive paramilitary policing culture to one of openness, problem solving, and community engagement."[169]

In a letter earlier this year to city officials, two well known feminists and a former woman police chief provided another reason to hire more women police officers. They wrote:

> The comparative lack of women in the LAPD reinforces and exaggerates a workplace culture that condones authoritarian personalities, where men with common backgrounds and values participate in misconduct with no fear of scrutiny by their like-minded peers or detection by supervisors. Rafael Perez summed it up when he told investigators that female officers could not be trusted to be "in the loop," meaning that female officers could not be trusted to abide by the "code of silence" if they had knowledge of misconduct or corruption. Adding significant numbers of

166. *See* CHEMERINSKY REPORT, *supra* note 24, at 55; *see also* Beth Shuster, *Some Say Gender Balance Is Remedy for LAPD Troubles*, L.A. TIMES, Sept. 18, 2000, at B1 (reporting that the number of women officers in the LAPD "hovers at about 18%").

167. *See* CHEMERINSKY REPORT, *supra* note 24, at 40, 139. The city has since agreed to federal supervision. *See* Daunt, *supra* note 29.

168. *See* CHEMERINSKY REPORT, *supra* note 24, at 12-16, 139-150.

169. *Id.* at 45.

> women to the LAPD will break up this "squad room mentality."[170]

As Joseph Wambaugh suggested, women leaders and officers almost certainly would be far more ready and able than men to accept the challenge of transforming the police force. The problem is that too many male officers are unready and unable to accept women even as partners in law enforcement. As Chemerinsky found, despite their increased percentage, women officers in the LAPD still are subject to serious hostility and discrimination.[171] Nonetheless, they also remain far less likely than men to abuse their authority: "The vast majority of the officers known to have committed misconduct in the Rampart [scandal] were male."[172] A study by two women's groups, conducted in response to the Rampart revelations, reported that the cost to the city of lawsuits over the last ten years involving male officers accused of excessive force, sexual assault, or domestic violence was twenty-three times the cost of similar misconduct cases involving female officers, although the ratio of men to women officers on patrol was four to one.[173] Both groups and Professor Chemerinsky recommended stronger efforts to achieve the "gender balance" mandated by the city council, including "[a]ggressive outreach and recruitment" and, possibly, hiring requirements to remedy past

170. Letter from Katharine Spillar, Penny Harrington, and Abby J. Leibman, to City Officials (May 18, 2000), *quoted in* CHEMERINSKY REPORT, *supra* note 24, at 54-55.

171. *See* CHEMERINSKY REPORT, *supra* note 24, at 55; *see also* Beth Shuster & Vincent J. Schodolski, *Poor Morale Rife in LAPD, Survey Finds*, L.A. TIMES, Sept. 8, 2000, at A1 (reporting that an independent survey conducted for the Los Angeles Police Commission showed a "divided and demoralized force"; some respondents criticized low entry standards, specifically blaming affirmative action designed to increase the number of minority and women officers for the problems with the force).

172. CHEMERINSKY REPORT, *supra* note 24, at 54.

173. *See* Shuster, *supra* note 166. The city paid $63.4 million for male misconduct, and $2.8 million for female misconduct. No women officers were named as defendants in sexual assault or domestic violence cases. *See id.*; Feminist Majority Found. & Nat'l Ctr. for Women and Policing, *Gender Differences in the Cost of Police Brutality and Misconduct a Content Analysis of LAPD Civil Liability Cases: 1990-1999* (Sept. 5, 2000), *available at* http://feminist.org/police/ExcessiveForce.html (last visited Sept. 20, 2000).

and continuing discrimination[174] as well as to change the culture of the LAPD.

III. FEMINIST JUSTIFICATIONS FOR EMPLOYING WOMEN POLICE OFFICERS

Most feminist legal theorists would learn without surprise that the Los Angeles police force has neither welcomed women officers nor achieved gender equality. Law enforcement, like military combat, is culturally[175] gendered male partly to preserve for men a monopoly of legitimate violence—a myth they cannot relinquish without also surrendering what many men seem to believe, consciously or not, to be an indispensable core of their masculine identity, the capacity for domination of others and the regular performance of that domination to ensure their place in the male hierarchy. The Supreme Court unhesitatingly deferred to this notion of manhood when it endorsed the "fundamental principle" that women should not routinely engage in fighting wars,[176] although the fundamental facts are otherwise: women have been front-line soldiers, sometimes unwillingly, "throughout recorded history."[177]

Violence and masculinity may also intertwine not just because men value domination but because they fear loss of autonomy and identity, and seek to defend them by separating, even violently, from the encroachments of domination by others, usually male, or of intimacy with others, often female.[178] In this account, violence is not an

174. CHEMERINSKY REPORT, *supra* note 24, at 55.

175. It is gendered, or culturally encoded, as male, but not sexed or biologically encoded. Apart from potential body strength, women are not significantly limited in their innate physical capacity to think and act violently against or with others.

176. *See* Rostker v. Goldberg, 453 U.S. 57, 77 (1981).

177. Colonel Fred L. Borch III, *Camouflage Isn't Only for Combat; Gender, Sexuality, and Women in the Military; Battle Cries and Lullabies: Women in War from Prehistory to the Present*, 164 MIL. L. REV. 235, 236 (2000) (book review).

178. *See* NANCY CHODOROW, THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER 173 (1978) (asserting that in order to grow up male, boys must separate from the caregiving mother); Harris, *supra* note 1, at 786 n.34 (referring to "[m]en's need to defend themselves at all costs from being contaminated with femininity"). The unstable combination of control, intimacy, and separation is still another pattern, sometimes associated with domestic violence.

expression of strength but a simultaneous admission and denial of weakness. Violence escalates when masculinity is challenged, to keep the admission hidden and unacknowledged. Violence is doing gender as a cover-up for insecurity. From still another perspective, criminal violence and police violence are a brother act, in which male gender expectations are fulfilled on both sides. Crime, especially violent crime, and police work are both overwhelmingly male occupations. The police officer and the criminal clarify and solidify their roles in the mirror of confrontation with each other.[179] "Street gangs and elite police squads are bitter enemies, but they are also united in a kind of masculine community,"[180] defined in part by the use of violence and the exclusion of women.

Hypermasculinity also correlates with lower class and social status,[181] which characterized nearly all policemen (though not policewomen[182]) in the preprofessional era of the early 1900s and may still be partly true for entry-level positions today. The professional model of police work and its ideal officer, "the fierce warrior-robot, devoid of emotions or personality," reject other types of police work or personal characteristics: "anything not related to capturing or annihilating the enemies of law and order, or personal styles that [are] open, warm, and communicative."[183] The hypermasculine culture of police work makes it difficult for men to accept women as equals. If women become successful patrol officers, police commanders, and police chiefs, the gender hierarchy is destabilized, even overthrown, and those who relied on it are left unprotected. Although the fear of women's competition and equality is itself an emotion, and evidently a powerful one, it is never so identified by the men whose actions express it. It is transformed instead into a factual statement about the nature of police work, even though study after study has demonstrated that professional crime control by aloof and hostile strangers

179. *See* Cannon, *supra* note 27, at 66 (quoting disgraced former officer Rafael Perez: "Whoever chases monsters should see to it that in the process he does not become a monster himself.").

180. Harris, *supra* note 1, at 793.

181. *See id.* at 785.

182. *See* APPIER, *supra* note 1, at 65-66 (noting that early policewomen were mostly upper-middle or middle class; policemen were predominantly working class); MILLER, *supra* note 1, at 80.

183. MILLER, *supra* note 1, at 83.

with disproportionate upper body strength does not even accomplish the purported goal—it is ineffective in controlling crime.[184]

What, then, do feminists have to say in favor of employing more women police officers? Consider first the classical liberal feminists who favor formal equality and warn that legal acknowledgment of gender differentiation will nearly always be used to discredit and disadvantage women in the competition for equal employment and the search for equal respect. The Christopher Commission and author Joseph Wambaugh endorse women police and seek their participation and leadership because they can talk to and listen to people better than men can, solving problems before rather than after a situation escalates to confrontation and violence, and because they have the judgment, patience, and compassion to wait rather than to take actions that risk harms to or from recalcitrant suspects or bystanders. Nonetheless, many men and some women may hear, embedded in this praise, a deconstructive counterpoint: that women talk and men act, that women shun risk and may compound the danger to civilians or to other officers by failing to respond effectively when decisive action is needed, and that women compensate for deficiencies of physical skill and courage by confessing fear and shifting the danger to others. If women cannot or will not carry an equal share of the load, why hand it to them in the first place?

The feminists who wrote the letter to city officials[185] further contend that most women police officers will neither participate in nor remain silent about corrupt practices or police violence and abuse, undermining the infamous "code of silence" that makes it seem as though organized crime-fighting has absorbed the perverse ethics of organized crime.[186] To most reasonable observers, that is a strong reason to hire women not only alongside of but instead of men. If one takes the strictures of formal equality seriously, however, this scenario offers no reassurance that women will be equally qualified partners in the shared enterprise. For classical liberal feminists, the idealized woman, the one entitled to equal employment and

184. *See id.* at 84.

185. *See* CHEMERINSKY REPORT, *supra* note 24, at 585.

186. *See id.* at 18-22. "Blowing the whistle, even to stop law-breaking [by other police officers], marks cops as traitors of a vaunted code of silence and inviolable covenant of loyalty." *Id.* at 21.

equal pay, is one fully ready to compete and cooperate with men on their terms, without seriously disturbing organizational culture or values. The women that Wambaugh and the letter writers describe, whatever their virtues or, rather, *because* of their virtues, are neither fungible with male officers nor potential participants eager to join and ratify the status quo. They are, instead, unsettling and even threatening agents of change.

Moreover, because these women who differ from men seem like better police officers because of their differences, the liberal feminist analysis is in some danger of deconstructing itself. Liberal legal feminists, or at least those who adhere strictly to the model, may pursue formal equality at the expense of substantive justice, accommodating not only male standards of performance but of misconduct as well. The sociological account of women police officers as culturally both different and better does not fit within the classical liberal paradigm of sex equality. From this liberal perspective, the predominant reason to hire women must be that women are like men, not different from them, and deserve the same treatment and the same opportunities. Liberals reject arguments based on sex and gender differences—even supposed superiority in virtue and performance. Women who claim entitlement to the job of law enforcement without fulfilling the standard requirements for police work—even stereotypical and questionable standards like upper body strength and an aggressive attitude—are seekers of special treatment who do not qualify for protection under antidiscrimination laws.

Of course, this account of classical liberal feminism is only a fiction, some might say a caricature. No liberal feminist would really insist on a symmetry so complete that women must assimilate even violent and corrupt misconduct that interferes with job performance, or conform to physical standards irrelevant to doing the work. But who decides? And by what process? From outside the police culture, it is likely that most people believe that Rampart, like the Rodney King beating, was police crime, especially unforgivable because we the people gave the government power to enforce the laws on our behalf, and instead it used that power to break these laws so completely that some of the victims can never put the pieces of their lives back together. And perhaps a few of us—those most vulnerable to batons or guns when police misunderstand, mistake, or

deliberately choose to inflict harm—will whisper, it might have been us. But the state jury members who acquitted the officers who beat Rodney King did not see what the world saw on that videotape.

If the King beating, or even lower levels of questionable violence and mistreatment of criminal suspects are practice as usual, women who oppose them—or report them—are likely to be devalued, stigmatized, isolated, disciplined, demoted, or even discharged for not conforming to the male norms of the institution.[187] The requirement of unthinking loyalty to other officers seems deeply embedded in police culture. Male patrol officers, denying the existence of gender discrimination in a progressive midwestern police department, told researchers that when anyone joins the force, "we just want to know if you are a team player, if you keep your mouth shut, if you don't tattle to the brass, and if you can be counted on for backup."[188] Even assuming that the men intended to include basic competence in their evaluation, it seems remarkable that three of four stated grounds for inclusion and acceptance of women refer to assimilation into the existing culture rather than to performance on the job, and two of four relate to the often denied but often demonstrated code of silence.

Consider next the second set of liberal "difference" or "acceptance" feminists, who believe that the workplace can and should accept, accommodate, and even appreciate biological and perhaps some cultural differences between women and men, in order to achieve substantive equality in the real world. Because their theory is more closely linked to lived experience, their analytical model may fare better in some cases, especially those involving female biological characteristics, or caregiving choices or obligations, that the law too often has dismissed as irrelevant to work. Although these concerns are not necessarily implicated in encouraging or requiring the LAPD to employ more women to resist the internal culture of corruption and violence, working conditions that accommodate the biological distinctions between men and women and the cultural patterns of

187. *See id.* at 20 (providing examples of LAPD officers who were "subject to reprisals," "forced out of the Department," or resigned after reporting domestic violence or use of excessive force by other officers).

188. MILLER, *supra* note 1, at 175.

women's lives might be a small step back from the centripetal force of masculine culture.

Training and technology can minimize biological differences in size and strength that favor male job performance. Workplace rules in both form and practice can respect rather than evade laws against sexual harassment. Even a police department that provides day care for employees' children or that allows parents some flexibility in working hours need not let criminals run free because the officer's nanny did not arrive that morning. Anyone who has done work that must be done at a particular time and place not always specified in advance knows that scheduling can be ruthlessly autocratic or sensibly flexible. The employer and coworkers can choose to make it easy or difficult. Liberal difference or acceptance theory suggests a feminist argument for modest changes that make police work more attractive to women.

In addition, because liberal difference feminists do not believe that women must replicate male qualifications and performance to hold the same jobs, they may contend directly that some gender differences can improve the workplace. If women's cultures, experiences, and perspectives seem likely to raise the quality of the work accomplished and lessen its dangers, especially of serious dysfunctional behavior like violence and corruption, women need not abandon their strengths or redefine them as weaknesses to conform to gender stereotypes about the inexorable masculinity of police work. They can argue that women deserve the jobs precisely because, as women, they are more likely to maintain their integrity in situations that tempt men to perform in line with obstructive gender role expectations instead of professional standards.

They cannot argue this openly, however, because current structures of employment discrimination law formally demand either sex- and gender-blindness or justifications closely connected to significant biological differences.[189] A hiring strategy that openly prefers women because their gender (sex plus cultural) differences from men

189. Title VII, for instance, permits hiring decisions based on sex only if sex is a bona fide occupational qualification, narrowly defined. *See* Civil Rights Act of 1964, 42 U.S.C. § 2000e-1 (1994); United Auto Workers v. Johnson Controls, Inc., 499 U.S. 187 (1991) (rejecting broad "fetal protection" rules as unjustifiable).

will improve job performance by maximizing certain qualifications and characteristics is likely to fail the legal tests for sex discrimination because the employer could hire instead on the basis of those qualifications and characteristics rather than on the basis of gender or sex. One possible way around this legal obstacle would be for the LAPD to acknowledge its history and culture of sex discrimination, and to adopt hiring goals and workplace rules designed to raise the percentage of women as fast as possible and to overcome policemen's resistance to working on an equal basis with them. Another way would be for a court to require it.[190]

A more skeptical reading of liberal difference feminism, however, would suggest that under current law and under its own incompletely theorized[191] response to biological and cultural differences between women and men, the most that this theory can justify is an acceptance of some, mostly biological, female differences from the male norm and a legal determination either to disregard them in distributing social and legal benefits or to accommodate them, where possible and socially beneficial, in the workplace. Acceptance of women as equal-though-different partners in law enforcement may be a better justification for increasing the number and percentage of women officers than denial of genuine sex-specific differences and insistence that a woman can be "the best man for the job." But, alone, it is scarcely enough.

At first glance, cultural feminists, who openly celebrate what they perceive and define as characteristically feminine virtues of caring and connectedness, are in an excellent theoretical position to

190. *See* CHEMERINSKY REPORT, *supra* note 24, at 55 n.13 (stating that LAPD's history of discrimination "would justify gender-based remedies in order to comply with federal law," despite California state laws against affirmative action).

191. *See* Cass R. Sunstein, *Incompletely Theorized Agreements*, 108 HARV. L. REV. 1733, 1735-36 (1995) (suggesting that participants in legal controversies may resolve differences by agreeing on results and on "narrow or low-level explanations," rather than on "fundamental principle"). The difference or acceptance feminists characterized here do not necessarily agree even on their primary theoretical allegiance. Some of them might describe their own views as variants on cultural, radical, or postmodern, rather than liberal, feminism. *See generally* Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279 (1987) (proposing an "acceptance" model as a method of harmonizing gender differences with sex equality).

justify the hiring of women police officers as a remedial response to police misconduct. Their direct acknowledgment and support of such values, their demand for a theory of moral development that is both generous and complex enough to incorporate relational values as complete, coherent goals and ideals, rather than rungs part way up the moral ladder to discovery of hierarchically fixed principles and rights, leads to a theory of nondiscrimination that not only takes account of biology and gender but includes that account in our society's moral, political, and legal narratives of equality and justice. More specifically, cultural feminism can justify employing women along with or instead of men to enforce the law because they will treat criminals as errant—though sometimes dangerously deviant—members of the local, cultural, and national families, rather than as strangers to be exiled from the community with whatever force is necessary to re-establish social order and control. Cultural feminists can argue that women police officers are likely to put into practice their relational morality and their concern with maintaining and strengthening social networks, thereby reducing the alienation and anger that produce and characterize criminal socialization and criminal conduct. Women can work more effectively to detach potential criminals from antisocial alternate families like gangs because they understand and respect the human need for acceptance and nurturance within a community.

Cultural feminism also has some support in history. The original policewomen were early cultural feminists, in their insistence that women are better able to prevent crime and in their belief that cultural differences between men and women could be acknowledged and put to practical use in the joint enterprise of enforcing and administering criminal justice. Writer Joseph Wambaugh, the former police officer, echoed cultural feminists in suggesting that at least half the police force should be female because women generally perform better than men as communicators, listeners, and problem-solvers—the skills he considered most important for successful law enforcement.

Nonetheless, at least three problems remain unresolved. First, as an impartial observer might ask, what's love got to do with it? Although successful communities may sometimes wisely emulate idealized families by tempering justice with mercy, forgiveness, and

eventual return to the fold for even the most prodigal of sons or daughters, feminist policing is still law enforcement and women police officers are nonetheless enforcers of the laws. In its purest form, the cultural feminist justification risks isolating or trivializing women police officers, in their presumed role as nurturing caregivers, from central tasks like crime prevention, deterrence, detection, and arrest and detention of suspects—thus replicating the fate of the founding mothers of women's police work.

It is easy enough to maintain that laws can be best enforced by focusing on prevention and cure of the social and individual problems that lead to crime, on acquired and internalized knowledge of the community to be policed, on a minimum rather than a maximum show of force, and by combining this "feminine" sensitivity to crime and criminals with an uncompromising recognition that victims and potential victims deserve genuine, unhesitating, and decisive protection. The cultural stereotypes of successful motherhood—its combination of love and discipline—may be invoked to demonstrate that most women are capable of learning the appropriate skills and far more likely than men to know when and how to use them.[192]

But it may be harder to argue that women who embody this vision of law enforcement in practice will generally succeed in legitimating their authority and commanding respect. Feminist scholars have often noted that male-dominated culture is deeply ambivalent about motherhood and that men, consciously or not, often equate growing up male with separating from the sometimes sanctified, sometimes demonized mother whose nurturance, though originally necessary and desirable, becomes a hindrance to the achievement of independent manhood.[193] To justify the hiring of women as police

192. *See* APPIER, *supra* note 1, at 53. Appier discusses the "close . . . match between the idealized policewoman and the idealized mother [in] descriptions of policewomen's crime prevention work" in the 1920s. *Id.* This comment is not meant to ignore the serious restrictions on women's lives that the presumption of motherhood imposes. *See* LUKER, *supra* note 10, at 193-94 (describing modern abortion debate as "*a referendum on the place and meaning of motherhood*"; although "the embryo's fate . . . seems to be at stake, the abortion debate is actually about the meanings of *women's* lives"); Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1 (1993) (arguing that under patriarchy, all women are pressured to become mothers).

193. *See* CHODOROW, *supra* note 178, at 9 (asserting that motherhood cen-

officers, cultural feminism may need an auxiliary theory of female authority that depends on the capacity of women to negotiate or transcend differences between women and men that may limit, or be perceived as limiting, women's ability to lead, to guide, and if necessary to control, discipline, and punish[194] adults as well as children.

The relational emphasis of cultural feminism may also, somewhat paradoxically, suggest that women officers, as they reach significant numbers in the police force, will no longer conform to past and current statistics showing that they are far less likely to participate in, excuse, overlook, or condone police abuse and corruption. If women were less estranged from and more completely integrated into the law enforcement community, they might become more likely to accept and even conceal the transgressions of the men they work with—the surrogate professional family that is far more easy to identify, join, and nurture than the larger, more abstract, multilayered, dissonant, and discontinuous community of civilians to be protected and criminals to be restrained. Because cultural feminism focuses on the value of maintaining personal relationships, perhaps even at the occasional expense of principles, it may at least partially contradict the necessity for evaluation and judgment. The more a police force is culturally feminized, a skeptic might argue, the less likely it is to be rigorously self-critical, self-policing, and obdurately opposed to violating the constitutional and human rights whose preeminence is insistently questioned by cultural feminist theory.

Finally, the cultural feminist justification for hiring women police officers raises the same questions that have been directed at cultural feminism in general. The nurturing mother and the relational moralist are stereotypes that not all women—not even all mothers—actually exemplify. Cultural feminism risks inaccurately essentializing all or most women as different from all or most men in ways that

---

trally defines "social organization of gender" and reproduces male dominance).

194. Though punishment is not within the police officer's formal authority, the choice of whom to arrest under what circumstances begins the legal chain of consequences that may lead to formal imposition of criminal punishment. Threats of arrest and prosecution—along with the abusive processes that often accompany them—function as informal but widely recognized systems of punishment in American law and culture. One reason for reluctance to employ women as police officers is the patriarchal norm that assigns the task of serious punishment both within and outside the family to persons acting as fathers rather than as mothers.

have long been used to stigmatize and devalue women, and to imprison them in the limited expectations of a society that disregards similarities and exaggerates differences between the sexes and then translates these supposedly neutral facts from description to prescription. Women need not be rigorously classical liberals to seek the freedom and autonomy that cultural feminists tend to classify as male or to prefer rights to relationships in moral and legal decision-making, at least when dialogue or conversation fails and choices must be made. Women who value both rights and relationships, both reason and emotion, who recognize potential harmonies and conflicts, and who have the wisdom to strike a balance in particular cases without insisting on a gendered dichotomy, seem closer to the ideal, both as police officers and as human beings.

Radical feminists can offer the most straightforward reason for increasing the number and percentage of women police officers to fifty percent or more: to take the heavy boots of law enforcement off the iron feet of male oppressors and free the necks of women who are beginning to learn how not to be oppressed. Women then will rehumanize police work to further gender equality, instead of sexual oppression, and to destabilize and desexualize the prevalent police culture of masculine aggression that leads to violence and corruption. Radical feminism has no problem with gendered decision-making that helps women, and no interest in placating liberals and others who clamor for neutral standards. There are no neutral standards in radical feminist theory because men have always been the measure by which standards are set.[195] The proper use of law is to establish an equality on behalf of, and defined by, women and other victims of systems of social dominance.

The analysis is incomplete, partly because radical feminists tend to focus on strategies for limiting the power of men to hurt, silence, and degrade women, rather than on explanations of how women will wield government power if they ever get it, or whether they would behave differently, if at all, from men. It also fails to answer the question how a police force with more or less equal numbers of men and women will bridge the gender chasm that, from a radical

195. *See* MACKINNON, FEMINIST THEORY OF THE STATE, *supra* note 61, at 248.

feminist perspective, distances them from each other and from the possibility of compromise and cooperation. But the hope of social transformation is implied in the insistence on creative struggle here and now, with the legal and social materials at hand. When "substantive rights for women" replace abstractions that serve male experience, according to MacKinnon, "[t]heir authority would be the currently unthinkable: nondominant authority, the authority of excluded truth, the voice of silence" that will embody "women's point of view."[196] Beyond equality, we do not know what that voice will say.

A skeptic might argue that we do know that employing women is not sufficient to change recalcitrant social institutions. Gender is one of the most important identities and determinants in our lives, but it is not always the dispositive one. The others—race, class, work, family, sexual orientation, religion, politics, and, equally important, our individual selves as we discover and construct them over a lifetime—also affect how we think and feel. If for no other reason than that all of us are shaped by the complex interactions between identity and experience, it can be argued that most women are more like most men in most respects than they are different from them, and that all important differences between women and men are not based on male supremacy. If that is true, then the radical critique may disintegrate because it cannot prove that all or most power is significantly gendered or that gendered power is the primary explanation for the oppression of women in society or in any particular setting. In police work and other areas of criminal justice, empirical research so far shows that women on the job are not a catalyst for significant change. "Neither policing, nor prison work, nor law have been radically transformed or even become much kinder and gentler" even though more women are now involved in those activities.[197]

A radical feminist might reply, however, that women have found it difficult to resist "the gendered structure of occupations and

196. *Id.* at 248-49.

197. Britton, *supra* note 14, at 70-71; *see also* Jeffrey Toobin, *Women in Black*, NEW YORKER, Oct. 30, 2000, at 48, 54 (reporting that women judges in Harris County, Texas, many of them former prosecutors, enforce the death penalty just as relentlessly as men judges). "The evidence from Texas suggests that although diversity may serve some laudable goals—creating equal opportunities, dispelling stereotypes—it has had a minimal impact on the quality of justice meted out by the Texas courts." Toobin, *supra*, at 54.

organizations"[198] because they are part of the male-dominant culture that devalues women and because they join the work in progress. They have no other place to stand that would make it easier to move the world. Unless they can find or create an opportunity to restructure the work itself, they must develop the tactics of successful males, or they are likely to fail. But that does not mean that, if the chance of revolution is offered by circumstances or can be constructed with the knowledge gained, they would not take it. If the radical feminist justification for employing women as half of the police force is to improve the quality of justice, it relies on a hypothesis that is so far unproven. But if the rationale is to empower women as equal citizens by entrusting them with a difficult but necessary social task, to give them access and opportunity for performance of a job that has long been reserved to men and relentlessly gendered as hypermasculine, to encourage women to learn the job in order to find ways to transform or transcend it, then the radical feminist critique, as in the case of sexual harassment, may help us find ways to supplement or replace male dominance with female equality.

Because postmodern feminists resist gender essentialism and determinism, their justification for hiring more women police officers, is necessarily, like their theory, pluralistic and open-ended. On a practical level, postmodern feminists, rejecting any across-the-board commonality, would expect some women to excel at talking and listening to people in the community, other women to display ingenuity and resolve in solving crimes, and still others to replicate and reinforce both the good and the bad in the male culture that surrounds them. They would expect some women to fail or lose interest in police work and move on to another job, and some to find ways to transform police work into a social institution that takes account of women's stories—to make it a source of feminine or androgynous, rather than masculine, identity and social power. Postmodern feminists would endorse hiring women as half of the police force to widen the range of possibilities in women's work and women's lives, to empower women by giving them more opportunities for leadership, to change society by giving it more opportunities to recognize and respect women as leaders, and to change law enforcement

198. Britton, *supra* note 14, at 71.

through new perspectives on the laws being enforced and on the processes of enforcement.

Because postmodern legal feminists see gender as constantly constructed, reconstructed, and deconstructed by the flow of events in society and in the lives and experiences of all men and women, they are likely to view the process of re-gendering even hypermasculinized police work as open to intervention by legal and other feminist discourse—not just through the commands of positive law like antidiscrimination statutes or interpretations of the Constitution, but also through the ways in which law resonates within our individual and social consciousness to change our attitudes and our conduct. To some extent, postmodern feminist theory is meta-narrative, a story or a set of stories about other stories that other feminist legal theories and feminist legal narratives tell about women and men. It suggests both that none of them is fully true and that all of them are partially true, if only because they represent some of the many possible voices of women situated in particular lives, jobs, and societies and asking themselves whether law or legal discourse is a useful resource for changing or challenging the social narrative that dominates their world.

Postmodern legal feminism is subject to the criticism that in its insistence on the contingent and the particular, on the multiple and discontinuous identities in individual experience, it may dismantle or diffuse the category of women, the sex that has been subordinated, silenced, and denied equal rights, and thus may interfere with efforts to remedy sexual inequality. Men seem to know who women are, or who counts as women, when constructing male privilege and female disadvantage. Society and law know where women live, how to find us, and how to lose and exclude us. Postmodern legal feminism risks submerging the social, legal, and economic reality of gender-based injustice, in talking about words, discourses, and texts instead of using more popular, accessible, and legally approved ways of speaking to demand substantive change in specific legal practices, including law enforcement, that have excluded or marginalized women in the real world. In a legal system dominated by categorical, often binary thinking, it can be argued that women need to recognize themselves as integrated identities, subjects who can speak plainly about themselves, and who can demand recognition and rights in words that can

be heard and understood, not just by legal decision-makers, but by other women and men who would join the feminist enterprise if we learn how to speak to them in their language.

For critical race feminists and critical white feminists, who often criticize other feminists for failing to take sufficient account of racism, the inclusion of police women of color is necessary to replace sexual oppression with equal justice. African American women, Asian American women, Latinas, and other racial or ethnic minority women may respond with anger and dismay to the whiteness of sexism as reflected in other feminist theories, and to the ways in which feminist theory has sometimes obliterated the importance of race and class, and described the sexism experienced by upper-middle-class white women as though it were universal. By not talking about race, by assuming that race is secondary, by separating race from sex and gender, even by ghettoizing black or other minority women's feminism as a subgenre, rather than as a necessary part of feminist rebellion and critique, feminist theories can make whiteness invisible and perpetuate white privilege and supremacy. This phenomenon is openly reflected in the suggestion in this Essay that half of the police force should be women, without specification of race as well as gender. A police force that was fifty percent white women would neither reflect the demographics of Los Angeles nor be likely to address the complex hypermasculinity of police work, in which factors of race, class, and sexual orientation combine with gender to construct intersecting patterns of male dominance and female submission or exclusion.

The multidimensional experiences and perspectives of women of color are lost not only when "white, straight, and socioeconomically privileged [women] claim to speak for all of us," but also when white women or women of color express or act on the belief that race can be essentialized either separately or along with sex, to produce a single voice for each combined category of race and gender.[199] For

199. *See* Harris, *supra* note 82, at 255. Lesbian feminists may justifiably argue that a complete account of anti-essentialist feminism should include a recognition of sexual orientation as a significant, sometimes dispositive factor, both in how women define themselves in opposition to male dominance, and in how they are perceived and evaluated on the job. In Susan L. Miller's sociological study of gender in an unusually diverse police force, involving significant numbers of both straight and lesbian women, a few male patrol officers

critical race feminists, and for critical white feminists who seek to renounce white supremacy, it is not enough to add that, of course, policewomen of color should be sought, employed, and trained for positions of leadership along with white women. It is important also to recognize that different women of color will see prejudice from different perspectives, even within racial groups, and that their opposition to male hegemony may differ from that of white women for many reasons, including experiences of domination and devaluation, sometimes by men of color, that seldom form part of white women's stories of sexual inequality. To exaggerate the point, while white feminists sought cultural approval to leave their children and seek careers in the early 1960s, most black women had no choice but to work in order to feed and house themselves and their children. Black women were disproportionately denied, not the opportunity to work, but the opportunity to choose whether to work or to stay home. Even if the more precise comparison is between women of the same socioeconomic class, the stories of women's lives are likely to vary along racial lines as well. On a topic that may seem trivial, but that affects many women, Angela Harris observes that "the ideology of beauty concerns not only gender but race."[200] The complicated hierarchy of skin color that divides African American women among themselves has no clear analog in the experience of most white women.[201]

Critical race and critical white feminists therefore may argue that women of color should be hired as police officers because they are women of color who deserve to hold jobs that for too long have been gendered male and reserved primarily for white men, because they offer additional perspectives of general value to law enforcement, and because they are more likely to understand the combined race and gender dynamics of crime in general or of particular crimes

---

nonetheless conceded that among themselves they classify women police officers as "'bitch,' 'dyke,' 'whore,' or 'prude' . . . . Similar stereotypes or categories did not exist for men." MILLER, *supra* note 1, at 177. Among these four stereotypic, female-gendered epithets, "dyke" stands out as the only one that refers primarily to sexual identity. The other three imply heterosexuality and stigmatize women on the basis of additional characteristics.

200. *Id.* at 260.

201. *See id.* at 260-61. African American women and men both experience this hierarchy, though not in exactly the same way. For both sexes, it has functioned as a social and an economic barrier, and as a source of pain, sadness, and anger.

which have different causes and patterns within different racial and ethnic groups.[202] But, even more than the argument for hiring policewomen because they are women,[203] the argument for hiring women of color because of their race or ethnicity challenges the ostensibly neutral structure of constitutional analysis, especially equal protection claims, of statutory antidiscrimination law, and, more fundamentally still, of the moral and legal imperatives upon which they are based. It is, in effect, to make claims to affirmative action and to forward-looking remedies[204] that would help to construct a more just and equal society—a claim that the current Supreme Court has been unwilling to hear. By continuing to insist that sex or race-based classification—rather than exclusion, stigma, subordination, or oppression—is the identifying characteristic that triggers constitutional and statutory prohibitions on discrimination,[205] the Court reinforces the legal invisibility of white dominance and ensures that it will continue. The struggle to transform the law to take women seriously

202. *See id.* at 261-63. For black women, rape is "as deeply rooted in color as in gender. . . . [T]he paradigm experience of rape for black women has historically involved the white employer in the kitchen or bedroom as much as the strange black man in the bushes." Moreover, white law has seldom functioned to protect black women from rape, "since black women were considered promiscuous by nature." *Id.* at 262.

203. The challenge is "even more" because the Supreme Court's equal protection jurisprudence subjects governmental race-based decisions to a higher level of judicial scrutiny than sex-based decisions. *Compare* Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995) (strict scrutiny), *with* United States v. Virginia, 518 U.S. 515 (1996) (intermediate scrutiny).

204. *See generally* Kathleen M. Sullivan, *Sins of Discrimination: Last Term's Affirmative Action Cases*, 100 HARV. L. REV. 78, 80 (1986) (writing that the Supreme Court "has approved affirmative action only as precise penance for specific sins of racism" committed by a specific government or private actor subject to constitutional equal protection or statutory antidiscrimination law, and not as "a paradigm that would look forward rather than back, justifying affirmative action as the architecture of a racially integrated future"). Justice Stevens, dissenting in *Wygant v. Jackson Board of Education*, 476 U.S. 267, 314 (1986), used police work as an example: "[I]n a city with a recent history of racial unrest, the superintendent of police might reasonably conclude than an integrated police force could develop a better relationship with the community and thereby do a more effective job of maintaining law and order than a force composed only of white officers."

205. *E.g.*, Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995); City of Richmond v. Croson, Inc., 488 U.S. 469 (1989).

inevitably requires feminists to oppose not only gendered privilege and oppression but racism as well.

IV. CONCLUSION

Although the different feminist legal theories and their variations do not tell the same stories about women or offer the same justifications for engaging them in the important public work of law enforcement, the strands of theory can be woven together into a pattern of strategic argument. Police departments in general, and the Los Angeles Police Department in particular, should seek to fill at least half their positions with women because women are the same as men. To leave them out or limit their participation is to deny them opportunities for meaningful work, for authority and decision-making, for challenge, risk, and reward that have long been open to men, and to deny society the opportunity to benefit from their competitively demonstrated, fairly judged, equal or superior merit. "Sex classifications," Justice Ginsburg wrote, "may be used . . . to promote equal employment opportunity, [and] to advance full development of the talent and capacities of our Nation's people."[206] Police departments should employ women officers because they are almost the same as men, except for biology and cultural differences engendered by biology, which change the patterns of their lives and the perspectives they bring to work but do not disqualify them from effectively enforcing the law and may give them a deeper understanding of how to police both women and men. Police departments should employ women officers because women are culturally different from men, less confined by hierarchical structures of thought and work, able simultaneously to wield coercive governmental authority and to weave bonds of human connection with the subjects of law enforcement, to police others with humanity, restraint, judgment, and compassion, and to treat other officers, the public, and criminal suspects with dignity and respect.

Women police officers are valuable, even necessary, to the reconstruction of social justice and the establishment of social order because male domination of women through sex and violence is a central and causative factor in male crime, especially violent crime.

206. *Virginia*, 518 U.S. at 533.

Women can counteract the system of male dominance because they have no incentive to keep a method of social organization that has failed "to advance full development of [their] talent and capacities" and prevents them from seeking new systems of law, order, and justice based on "nondominant authority"[207] and sex equality without sexual oppression. Police officers who are women of color are valuable and necessary, because racism is often inextricably interwoven with sex and gender and because racial minority women have different experiences and perspectives from white women and men of color as well as white men. Policewomen of color are uniquely situated to identify and untangle the pathology of white racism and male sexism, and to generate a system of justice that transcends racism and sexism without obliterating or discounting race and sex. Policewomen of color are equally situated with all other women and men in deserving the opportunity both to enforce the law and to transform the law and the system of criminal justice.

Women police officers who represent a wide variety of experiences and cultures are valuable and necessary, because women are both the same as men and different from them, because the hypermasculine gendering of police work has led to corruption, excessive force, and extreme violence that harms everyone in society, as individuals and as groups, and threatens to destroy the social order it ostensibly establishes and enforces. Calling in the Girl Scouts is one important way that we can lessen the violence, increase the peace, and re-establish trust between police officers and the communities where they work. Women police officers are, or can be, the vanguards of a peaceful but powerful transformation of law enforcement and police culture. As Rampart reminds us, it has long since been time to begin.

207. MACKINNON, FEMINIST THEORY OF THE STATE, *supra* note 61, at 249.