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ON PERIOD POVERTY

Victoria J. Haneman *

In the United States, the lives of women have been shaped by men with political power. Profoundly important issues that uniquely impact women have not received the attention deserved. These issues are pervasive. We live in a rape culture: one in three women will be a victim of physical violence by an intimate partner; one in six women are victims of attempted or completed rape; women aged sixteen to nineteen are four times more likely than the general population to be victims of sexual assault, attempted rape, or completed rape.¹ Less than 20% of employees have access to paid family leave.² A gender wage gap persists and women are paid 82 cents on every dollar paid to a man.³ Reproduction may increase the wages of men (by 6%) while decreasing the wages of women (4%).⁴ It is legal for young girls⁵ to be married to substantially older men in the vast majority of states.⁶ Women are far more likely to live in poverty in the United States.⁷ A worrying number of people believe⁸ married women are irrevocably

* Frank J. Kellegher Professor of Trusts & Estates, Creighton University School of Law. My heartfelt gratitude to research assistant Sarah K. Mielke for her attention to detail and impressive editing skill.

¹ *Victims of Sexual Violence: Statistics*, RAINN.ORG, <https://www.rainn.org/statistics/victims-sexual-violence> (last visited Mar. 20, 2021).

² *Paid Leave*, NAT'L P'SHIP FOR WOMEN & FAMS., <https://www.nationalpartnership.org/our-work/economic-justice/paid-leave.html> (last visited Mar. 20, 2021).

³ *Fact Sheet: America's Women and the Wage Gap*, NAT'L P'SHIP FOR WOMEN & FAMS. 1 (Sept. 2020), <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/americas-women-and-the-wage-gap.pdf> (highlighting that “[t]he gender wage gap is a measure of how far our nation still has to go to ensure that women can participate fully and equally in our economy”).

⁴ Michelle J. Budig & Melissa J. Hodges, *Statistical Models and Empirical Evidence for Differences in the Motherhood Penalty across the Earnings Distribution*, 79 AM. SOCIO. REV. 358, 359 (2014).

⁵ Between 2000 and 2010, 248,000 children were married in the United States. *Learn More: Child Marriage in the U.S.*, EQUALITY NOW, https://www.equalitynow.org/learn_more_child_marriage_us (last visited Mar. 20, 2021). At the federal level, 18 U.S.C. § 2243(c)(2) provides a defense to the crime of engaging in a sexual act with a minor when “the persons engaging in the sexual act were at the time married to each other.” 18 U.S.C. § 2243(c)(2). Thus, “at the federal level, child marriage is viewed as a valid defense to statutory rape.” See *Learn More: Child Marriage in the U.S.*, *supra* (adding that the law “allows an adult to engage in sexual activity with children as young as 12”).

⁶ Twenty-seven states have no minimum age at which a child can be married. Fraidy Reiss, *Why can 12-year-olds still get married in the United States?*, WASH. POST (Feb. 10, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/02/10/why-does-the-united-states-still-let-12-year-old-girls-get-married/>.

⁷ According to 2018 Census data, 56% of those living in poverty were women. Robin Bleiweis et al., *The Basic Facts About Women in Poverty*, CTR. FOR AM. PROGRESS (Aug. 3, 2020), <https://www.americanprogress.org/issues/women/reports/2020/08/03/488536/basic-facts-women-poverty/>.

⁸ “Kansas lawmakers are starting their second attempt in two years to repeal a law that allows husbands and

obligated to consent to sexual intercourse at any and all times,⁹ and around thirty states¹⁰ offer exemptions that may allow a husband to circumvent prosecution.¹¹ Women have vastly different legislative priorities and their voice in government is essential, and yet, women comprise only 20% of the Senate, 27% of the House of Representatives, and 31% of state legislative seats.¹²

Gender inequality touches women in ways that are often unconsidered and perhaps unintended—an interesting example being both law and norms applied to public restroom spaces. Bathroom law is a topic that deserves scholarly attention in that the ability to relieve oneself with dignity is arguably important for any country that prides itself as a global leader. Interestingly, restrooms in the United States¹³ seem to be evocative hotbeds of controversy: anti-transgender bathroom legislation hysterics; racial bias in prohibiting customer access to a restroom; and a shortage of public facilities in densely populated urban areas.¹⁴ But it is important to note that amidst swirling debate, the accessibility of toilet paper has never been raised.¹⁵

wives to sexually batter their spouse without fear of criminal consequences.” Jonathan Shorman, *Sexual battery of a spouse is legal in Kansas. Lawmakers are trying again to change law*, THE WITCHITA EAGLE (Jan. 28, 2020), <https://www.kansas.com/news/politics-government/article239678523.html>.

⁹ Danielle Kent, *Raped by my husband – Why sex when you’re married is not a “human right,”* COSMOPOLITAN (Apr. 11, 2019), <https://www.cosmopolitan.com/uk/reports/a27101740/marital-rape-husband-non-consensual-sex/>.

¹⁰ Raquel Kennedy Mergen & Elizabeth Barnhill, *Marital Rape: New Research and Directions*, VAWNET (Feb. 2006), <https://vawnet.org/material/marital-rape-new-research-and-directions>.

¹¹ “In North Carolina, a woman cannot withdraw consent and call subsequent actions rape.” Tess Sohngen, *11 Ridiculous, Sexist Laws That Still Exist in the US in 2017*, GLOB. CITIZEN (Sept. 11, 2017), <https://www.globalcitizen.org/en/content/sexist-laws-in-the-us-in-2017/>.

¹² *By the Numbers: U.S. Overview*, REPRESENT WOMEN, https://www.representwomen.org/current-women-representation#us_overview (last visited Mar. 20, 2021).

¹³ See J.Y. Chua, *Bathin in Controversy*, THE ATL. (June 2, 2017), <https://www.theatlantic.com/health/archive/2017/06/school-bathrooms-history/528978/> (recounting the central role of bathrooms in some of our nation’s great social movements, including the civil-rights movement of the 1950s, and the women’s rights movement of the 1970s).

¹⁴ In fact, American history is no stranger at all to a bathroom controversy: “Jim Crow laws and apartheid, for instance, dictated separate bathrooms for whites and non-whites. Women’s liberation also fueled debate over bathrooms . . . [and] opponents of the Equal Rights Amendment argued that its passage would spell an end to separate bathrooms for men and women.” Laurie Finke, *Burning Question: Bathroom Controversy*, KENYON ALUMNI MAG. (Fall 2016), <https://bulletin.kenyon.edu/article/burning-question-bathroom-controversy/>.

¹⁵ “I think it’s a matter of, what do we need to tend to our normal bodily functions? And menstruation is a normal bodily function that we have absolutely no control over. Again, I think that if men got periods, frankly I don’t think we’d be even having this discussion.” Nancy Kramer, *Toilet Paper is Free in Public Restrooms. Why Aren’t Tampons?*, WBUR (Apr. 25, 2018), <https://www.wbur.org/hereandnow/2018/04/25/tampons-public-restrooms>.

Toilet paper has important significance in this conversation. Decisions made by those who hold political and economic power dramatically shape law and society, and stakeholders have decided that public restrooms should supply toilet paper without charge. It is freely accessible so that no toilet-user need be concerned with using one sheet instead of three or toting a roll of paper around. Toilet paper is treated as a human need essential to hygiene, cleanliness, and comfort and it is freely and abundantly available in almost all c-suites, offices, buildings, and public facilities in the country. In stark contrast, instead of being characterized as a basic human (e.g. food, clean water), menstrual products have somehow been normatively sifted into the category of luxury. For women, an interest in cleanliness and hygiene is implicitly subordinated by a system that requires that one either always carries supplies with them, or alternatively, digs to find a quarter and then wrestles with a machine that is too often broken or empty. It is estimated that the average menstruating woman will spend \$1,773.33 over a lifetime on tampons alone.¹⁶

This normative mischaracterization has had cascading issues in the United States. While countries such as Scotland and New Zealand have opted to make all menstrual products free within schools, colleges and universities, thirty states in the U.S. have not yet eliminated their “tampon tax” (or sales tax charged on menstrual products).¹⁷ This arguably unconstitutional, illegal, sex discrimination generates an estimated \$150 million in tax revenue.¹⁸ To the extent value judgments are embedded within a tax statute, it is interesting to consider items exempt from taxation in those states with tampon taxes: fishing tournament registration fees (Tennessee), cotton candy (Iowa), zoo admission (Nebraska), tattoos (Georgia), private jet parts (Colorado), chewing gum (West Virginia), and fraternity meals (North Carolina).¹⁹ Further, menstrual hygiene products are not covered by national assistance programs such as the federal Supplemental

¹⁶ Jessica Kane, *Here’s How Much A Woman’s Period Will Cost Her Over A Lifetime*, HUFFPOST (Dec. 6, 2017), https://www.huffpost.com/entry/period-cost-lifetime_n_7258780.

¹⁷ Kaanita Iyer, *New Zealand schools will offer free menstrual products. Where is the US on period equity? Far behind, experts say.*, USA TODAY (Feb. 22, 2021), <https://www.usatoday.com/story/news/nation/2021/02/19/united-states-period-poverty-free-products-tampon-tax-new-zealand/6797036002/>.

¹⁸ *Id.*

¹⁹ *30 states have until Tax Day 2021 to eliminate their tampon tax*, TAX FREE. PERIOD., <https://www.taxfreeperiod.com> (last visited Mar. 20, 2021).

Nutrition Assistance Program (i.e. SNAP aka food stamps) or the Women, Infants, and Children (WIC) Nutrition Program²⁰ and are among the least donated item to food pantries and shelters.²¹

Period poverty is a deeply troubling and important issue— notable both because it is a product of systemic gender subordination and also because of the number of people it impacts. The United Nations has declared period poverty a public-health, gender-equality, and human-rights issue.²² UNICEF, the United Nation’s Children Fund, estimates 1.8 billion girls, women and gender non-binary persons do not have accessibility to information and/or resources to manage a period in a dignified way.²³ It is not uncommon for those impacted to miss school or work, go without eating to purchase supplies, or use unsafe and potentially damaging substitutes²⁴ (e.g. socks, rags, bed linens, and ashes).²⁵ The World Bank estimates 10% to 20% of global schooldays are missed because of a lack of adequate facilities, accessibility to products, or stigma²⁶ and bullying.²⁷ It is estimated that one in ten undergraduates may suffer from period poverty, with the number increasing to one in five for first-generation

²⁰ Women have been known to illegally sell food stamps to purchase menstrual products. Seth Freed Wessler, *Timed Out on Welfare, Many Sell Food Stamps*, TYPE INVESTIGATIONS (Feb. 16, 2010) <https://www.typeinvestigations.org/investigation/2010/02/16/timed-welfare-many-sell-food-stamps/> (recounting the story of one single mother’s financial strain: “[W]ith no other source of income, Eva breaks the law, selling her food stamps to pay for the rent, phone bill, detergent and tampons.”); see also Jennifer Weiss-Wolf, *America’s Very Real Menstrual Crisis*, TIME (Aug. 11, 2015), <https://time.com/3989966/america-menstrual-crisis/> (warning of the serious, sometimes fatal, health risks associated with poor menstrual hygiene threatening those who cannot afford sanitary products).

²¹ Kate Ruder, *Tampons, Pads And Politics Mesh In New Push For Access to Menstrual Supplies*, KHN (Mar. 12, 2020), <https://khn.org/news/tampons-pads-and-politics-mesh-in-new-push-for-access-to-menstrual-supplies/>.

²² Weiss-Wolf, *supra* note 20.

²³ Kylie Schuyler, *The Devastating Consequences of Period Poverty for Girls*, GLOB. G.L.O.W. (July 16, 2020), <https://globalgirlsglow.org/the-devastating-consequences-of-period-poverty-for-girls/>.

²⁴ “For example, over 80% of menstruating women and girls in Bangladesh use inadequate materials (e.g. old cloth) instead of hygienic products such as pads or tampons.” Lauren F. Cardoso et al., *Period Poverty and Mental Health Among Women in the United States*, 21 BMC WOMEN’S HEALTH 1, 2 (2021).

²⁵ “[Poor menstrual hygiene] is linked to high rates of cervical cancer in India; in developing countries, infections caused by use of filthy, unwashed rags are rampant.” Weiss-Wolf, *supra* note 20; see also Schuyler, *supra* note 23.

²⁶ “[A]fter his raucous display at last week’s Republican debate, Donald Trump lashed out at Fox News moderator Megyn Kelly for questioning the litany of sexist insults he’s hurled over the years. His conclusion: she’s got ‘blood coming out of her wherever.’” Weiss-Wolf, *supra* note 20.

²⁷ See Schuyler, *supra* note 23 (citing the first Latin encyclopedia (73 AD), stating, “[c]ontact with [menstrual blood] turns new wine sour, crops touched by it become barren, grafts die, seed in gardens are dried up, the fruit of trees fall off, the edge of steel and the gleam of ivory are dulled, hives of bees die, even bronze and iron are at once seized by rust, and a horrible smell fills the air; to taste it drives dogs mad and infects their bites with an incurable poison”).

college students.²⁸

What can and should be done today to address the issue of period poverty? It has been said that “power springs up between men when they act together and vanishes the moment they disperse.”²⁹ It is long past time for a culture change.³⁰ To that end, men cannot unilaterally establish a gender-differentiated hygiene management baseline that implicitly requires women to bear the expense of deviation from the baseline. As women become more visible and gain political and economic power, it becomes even more important that these women use their voices to assist those who may be living in poverty and implicitly less invisible. It falls upon every woman to advocate for access. This means advocating to normalize free and easily accessible menstrual products in *all* restrooms (because men also menstruate).³¹ It may mean going to the c-suite of your workplace to provide information about Hooha, a smart tampon dispenser that one texts for a free tampon.³² For educators, it may mean setting up a corner of one’s office with free products if none are made available by the administration in the restrooms.³³ It means normalizing period talk to reduce stigma. It means supporting political candidates who will work to eliminate tampon taxes. And if an unused balance remains in your flexible spending account at year-end,³⁴ it means using

²⁸ Anagha. Srikanth, *1 in 5 first-generation college students are experiencing period poverty*, THE HILL (Feb. 16, 2021), <https://thehill.com/changing-america/respect/equality/539070-one-in-five-first-gen-college-students-are-experiencing>.

²⁹ Amy Allen, *Feminist Perspectives on Power*, STAN. ENCYC. OF PHIL. (July 7, 2016), <https://plato.stanford.edu/entries/feminist-power/>.

³⁰ “The conversation is changing because young, active, progressive women are standing up for each other and saying, ‘I have access to these products; you should, too’” Ruder, *supra* note 21.

³¹ Sophie Wilson, *We must include trans men and non-binary people when we talk about periods—here’s why*, VOGUE (June 10, 2020), <https://www.vogue.in/wellness/content/we-must-include-trans-men-and-non-binary-people-when-we-talk-about-periods-heres-why>. “Language is only one aspect in the fight for period equality. There are practical challenges that need to be overcome, too; people who use men’s public bathrooms and get periods do not have access to sanitary bins or dispensers.”; *Id.*

³² HOOHA, <https://hooha.is> (last visited Mar. 20, 2021).

³³ Other countries have fully embraced such initiatives: “Boxes and bags of individually wrapped pads have popped up outside bathrooms in at least 338 schools and colleges across China.”; Tiffany May & Amy Chang Chien, *‘Stand by Her’: In China, a Movement Hands Out Free Sanitary Pads in Schools*, N.Y. TIMES (Nov. 9, 2020), <https://www.nytimes.com/2020/11/09/world/asia/china-period-shame-universities.html>; “The pads were part of a broader effort to increase access to a product that not all students can afford, and to strip away the shame surrounding a natural bodily function that has long been stigmatized, according to organizers of a grass-roots campaign called Stand by Her.” *Id.*

³⁴ Menstrual products were not eligible for reimbursement through flexible spending accounts as a medical expense not covered by insurance until March 27, 2020 when the CARES Act was passed to deliver Coronavirus assistance. See *FAQs on Newly FSA-Eligible Over-the-Counter (OTC) Medicine and Feminine Care Products*, FSA STORE, <https://fsastore.com/cares-act-faqs> (last visited Mar. 20, 2021).

that balance to purchase menstrual products that may be donated to local homeless shelters or food banks. It also means purchasing your own products from a menstruation capitalist who is aware of the issue and takes verified action to give back.³⁵ And with an eye towards global issues, it means supporting companies offering innovative products designed to address this global health crisis—with notable examples being Fly (a four-step method to make inexpensive pads) and Flo (a \$3 wash-and-dry device to clean reusable pads discretely and with less water).³⁶

Most importantly, as we draw our conversation full circle back to toilet paper, it means not accepting a world of norms that have largely been articulated and defined by men. To the extent that poverty, as a general matter, weighs more heavily upon women, it is important to recognize that a seemingly insignificant decision such as stocking a bathroom with menstrual products is one piece in a broader mosaic of inequitable decisions that collectively create a significant burden.³⁷ Challenging established practices that create structural inequity is essential to create an agenda of transformative change.

³⁵ See generally Victoria J. Haneman, *Menstrual Capitalism, Period Poverty, and the Role of the B Corporation*, COLUM. J. GENDER & L. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3778969 (last visited Mar. 20, 2021) (discussing the manipulative capitalist hold on the uterine waste market, and the need for higher expectations for menstruation capitalists).

³⁶ Mary Kate Langan, *2 Revolutionary Products That Fight Period Poverty*, THE BORGEN PROJECT (July 1, 2020), <https://borgenproject.org/fighting-period-poverty/>.

³⁷ Across all adult age ranges, women are far more likely to be living in poverty than men. *2019 Annual Social and Economic Supplement: Poverty Rates by Age and Sex*, U.S. CENSUS BUREAU, <https://www.census.gov/content/dam/Census/library/visualizations/2019/demo/p60-266/Figure10.pdf> (last visited Mar. 20, 2021).