

A Feminist Perspective for Forensic Practice

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Despite recent social movements and increasing public awareness, gender disparities persist. These affect daily forensic and clinical practice by providing unexpected obstacles to women professionals and evaluatees who face centuries of established bias. State laws may conflict with professional ethics, women experts may be sidelined in important cases, pregnant substance users are prosecuted aggressively, and fetal personhood laws challenge the autonomy of competent adults. Such inequities call for a review of professional ethics and the common male-centered lens of traditional theory. Feminist thinking has played a key role in highlighting the way traditional views of autonomy and rights undervalue the narratives and perspectives of disadvantaged populations. Applying the cultural formulation, telling the full story, and taking a default position in favor of the vulnerable individual, this article advances intersectionality, positionality (narrative), and credibility for understanding the profession's interaction with women.

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Systematic exploitation of working women in the United States has recently given rise to the sweeping #MeToo and TimesUp movements.¹ At the 2018 Golden Globe Awards, Oprah Winfrey famously called out “Time’s Up” to those who sexually exploited actors seeking movie roles; and public figures from Hollywood to Wall Street joined the list of prominent figures saying “Me Too” when their colleagues reported harassment or abuse.² Political leaders from the U.S. Congress are joined by CEOs, journalists, and entertainment moguls in facing explosive charges of abuse of power. U.S. Representative Trent Franks, for example, allegedly approached women in his office to serve as a surrogate for his child, while news and entertainment magnates like Roger Ailes and Harvey Weinstein were accused of outright assault. Recently appointed Supreme Court Justice Brett Kavanaugh faced three accusers, while the U.S. President has almost twenty.³ Scholars and commentators are consistent in identifying gender norms and biases at the core of such egregious behavior.^{4–7}

The fields of psychiatry and law are not immune from the gender norms that influence professional life. Data on the presence of women in the court-

room reflect the inequities of society as a whole. For example, women attorneys are more likely to experience courtroom incivility, unprofessional forms of address, conflict in family life, comments about appearance, exclusion from politicking, and being mistaken for non-lawyers.⁸ Similarly, in medicine, female faculty are two and a half times more likely to perceive gender-based discrimination; approximately 50 percent report sexual harassment, slower career advancement, and lower pay.^{9,10,11}

In forensics, Ednie¹² noted early on that female experts are viewed as having less authority and power, are recruited less often by attorneys, and have difficulty finding referrals and mentors. More recently, Price *et al.*,¹³ recognizing that the number of female forensic experts had increased, found that women of the American Academy of Psychiatry and the Law were underrepresented in criminal work, traditionally a male-dominated field. Women in the survey also worked in fewer categories of forensic practice. Walters¹⁴ noted that women testified infrequently as a party's sole expert, accounting for just seven percent of solo appearances. “This skewed ratio,” he suggested, “may indicate that litigants feel testimony by women must be supplemented to satisfy the same evidentiary burden” (Ref. 14, p 636). Overall, jurors rate male experts as more likeable, believable, trustworthy, confident, and credible.¹⁵

Traditional ethics frameworks fail to capture these broad inequities or to explain the deeply ingrained

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cultural norms that bias the daily practice of forensic medicine. Approaches that elevate single principles or clusters of principles above others, or take perspectives with a distinct Western viewpoint, are insufficient in a world of diverse peoples, cultures, and genders. Indeed, a woman's voice can be drowned out by a language and culture of patriarchal values and traditions. Forensic authors themselves recognize this shift by moving toward ethics theories of cultural narrative, human rights, and social justice.^{16–18} It is no longer enough to adopt a traditional frame for the complex work of courtroom medicine.

The Inadequacy of Traditional Approaches

In the past three decades, medical ethics has been heavily guided by the principlism of Beauchamp and Childress.¹⁹ Adapted for forensic psychiatry by Paul Appelbaum in 1997, classic principles of autonomy, beneficence, non-maleficence, and justice were weighed or ordered to identify the most ethical outcome.²⁰ Although justice, for example, may restrict autonomy and cause harm by imprisoning a defendant, it is still highly valued in the social order; beneficence and autonomy may consequently take a back seat in the courtroom.

The problem arises when these concepts are applied in ways that treat a class of persons asymmetrically. When a woman seeks an abortion, for example, many jurisdictions require state-approved consent materials. In such cases, the values of the state, often based on the religious or world views of predominantly male representatives, outweigh contemporary principles of clinical practice like individualized treatment, patient-centered care, and trauma-informed practice.

When Indiana convicted a woman of feticide in 2015 based on an antiquated 1979 law,²¹ the elevation of fetal rights over those of an adult failed the balancing approach of most traditional ethics schemes: rights of autonomous individuals are not usually outweighed by non-persons (the fetus or embryo). This is an outcome that can be traced to the landmark *Roe v. Wade* (1973)²² decision itself. Based on a woman's right to privacy, the U.S. Supreme Court decision in *Roe* required that any government infringement be justified by a compelling state interest—but only until fetal viability. Setting aside the debate over when viability occurs, *Roe* and its subsequent interpretations downplayed the agency of the person who was carrying the fetus to term. States like

Colorado and Mississippi have consequently faced, and defeated, repeated fetal personhood measures at the ballot box, measures that have sought to put fetal rights above those of the pregnant woman.

Critics have been clear that creating separate civil or constitutional rights for a fetus goes beyond the Supreme Court's decision in *Roe*, as well as other appellate precedents. Paltrow and Flavin, in their well-known 2013 study,²³ highlighted a range of related punitive actions against pregnant women in the United States, ranging from detention to incarceration. States could intervene if the woman acted to end a pregnancy, expressed the intention to end a pregnancy, suffered an unintentional loss of the pregnancy, or was unable to guarantee a healthy birth. This lengthy catalogue also identified forced medical interventions such as blood transfusions, vaginal exams, and cesarean surgery. Forensic authors have also highlighted the ethics problems associated with the use of restraints in pregnant incarcerated women, as well as detention of pregnant substance users.²⁴

Men are not immune from legal interventions related to their gender either: the Tender Years doctrine long cast mothers as the caregiving parent in custody disputes, submerging those qualities and attendant rights in fathers.²⁵ The risk that such societal designs are influenced by long-held, harmful generalities emphasizes the need for an alternative view of professional ethics.

A Historical Narrative of Feminism

Historical narrative is a powerful tool for identifying themes that affect professional ethics.^{26,27} It harnesses a retrospective view that identifies the harmful biases that social institutions take over time. Authors in forensic psychiatry have used the approach to unpack the historic and cultural influences of important case studies like “The Parable of the Black Sergeant,” and “Dr. Leo [and the Jewish defendant].”^{28,29} Psychiatrist and law professor Alan Stone did not have the tools of historical narrative or cultural formulation to describe the institutionalized racism facing his Sergeant, or the anti-Semitism facing Dr. Leo. Examining the historical narrative of feminism is consequently a useful tool for underscoring the themes that have been neglected by past commentators.

The First Wave of contemporary feminism in Europe and the United States is often thought to have arisen in the late 19th and early 20th centuries and

was led largely by white women of the upper classes. The focus on matters of inheritance and property rights, as well as women's suffrage, commonly excluded minority women.³⁰ The early suffragettes like Susan B. Anthony and Elizabeth Cady Stanton did highlight domestic violence in their writings, but they did not address in a substantive manner general matters pertaining to women's personal lives like contraception and abortion.³¹

The Second Wave³² was launched by women filling the employment demand created by the Second World War. The absence of hundreds of thousands of men was no small influence. Second Wave feminism coincided with the ongoing civil rights movement and recognized, to some extent, the disadvantages faced by black women who fought on the frontiers of race as well as gender. Different well-known schools of feminism arose from this period, especially Liberal Feminism,³³ which focused on equality between the sexes, and Radical Feminism, which viewed society as inherently patriarchal and sought fundamental change to eradicate female oppression.^{7,33}

While grounded in the Second Wave, Third Wave feminism of the 1990s sought to redefine what it meant to be a feminist. These advocates embraced individualism and diversity and introduced intersectionality to the discussion. Coined by legal scholar Kimberle Williams Crenshaw in 1989,³⁴ intersectionality identifies the overlap of multiple layers of oppression arising from gender, race, and class. This inclusiveness recognizes oppression wherever it exists, whether among persons with disabilities, persons of color, or any mistreated nondominant group. Moreover, it advances the classic dominant–nondominant distinction toward a language of humanity in general—toward an understanding of inequality that covers all those who are, or may become, marginalized.

The Third Wave formally includes race, sexual orientation, and the varying personal narratives of women. Notably for forensics, this era coincides with the introduction of Ezra Griffith's cultural formulation into mainstream professional practice.¹⁶ Built on the impressive data identifying the differential treatment of people of color by police and courts, it could be no surprise that multiple layers or themes of oppression would become a larger part of public, professional, and forensic discourse.

Some authors identify a Fourth Wave of feminism beginning in 2012.³⁵ This period mirrors advances in cultural sensitivity and communication by using technology, the Internet, and social media to spread the call for justice. Identification of violence against women, sexual harassment, workplace discrimination, body shaming, sexist imagery, and assaults on public transportation increasingly relied on social media and online petitions for communication and organizing. For forensic psychiatry, the connection to social goals advocated in this issue of *The Journal* by Richard Martinez may well be part of this development.³⁶ Choosing recognizable social goals and purposes for the community, as Martinez does, is also advanced by feminist writers like Finn MacKay,⁷ whose goals include equal pay, affordable child care, equal representation, and the end of violence against women. Martinez's social goals for forensic psychiatry are closely aligned with such aspirations.

Cultural bias can be easily identified in this historical narrative, a narrative that ultimately calls for equality for all, not just for women. We contend that this intersectional story evolved in a way that now informs psychiatry and law in important ways. Specifically, it addresses the bias against the "tainted witness," the woman, or indeed any witness, who offers an account that contradicts the established world view.⁵

Leigh Gilmore's tainted witness is relevant for many forensic settings. Whether it is Anita Hill (who in her Senate testimony accused Supreme Court nominee Clarence Thomas of sexual harassment),⁵ Susan Estrich (the presidential campaign manager and political commentator who was raped as a student),³⁷ or Nafissatou Diallo (who was attacked by International Monetary Fund chair Dominique Strauss-Kahn in a New York hotel room),³⁸ contemporary professional ethics recognizes how the nondominant individual is diminished by a predictably dismissive response. Anita Hill's staunch narrative faced ignominious attempts to undermine it, and Susan Estrich's report of rape was undercut when police did not take her seriously. According to Gilmore,⁵ these are the established, biased paradigms that create society's tainted witness: "We don't really know what happened," or "It's he-said-she-said," are the defaults that diminish women's voices. For forensic experts who evaluate pregnant women, rape victims, victims of harassment, and women in general, this history requires professional redress.

The collective concern of many feminist writers remains the elimination of group and individual oppressions, especially the silencing of women's voices.^{39–40} The overuse of civil and criminal statutes against pregnant women of color and economic disadvantage, for example, resonates strongly with forensic psychiatry's concern with vulnerable groups in court.^{16,18} It is one area where forensic experts can give voice to the vulnerable—especially since Griffith's cultural formulation recognizes the narrative of all nondominant groups, not just those of color.

In exploring how the feminist perspective informs forensic psychiatry, we turn next to the barriers that signal the need for specific ethics tools to augment current professional practice.

Themes That Modernize Traditional Values

A Possible Gender Divide Between Values

For some, a core problem for women's rights has been that traditional ethics focuses on the so-called masculine values of autonomy, free will, justice, and rights. Alison Jaggar, in her seminal work "Feminist Ethics"⁴¹ notes that traditional ethics value culturally masculine traits like independence and autonomy while underrating culturally feminine traits like "interdependence, community, and connection." In this view, "male" ways of moral reasoning that emphasize rules, rights, universality, and impartiality are favored over "female" ways of moral reasoning that emphasize relationships, responsibilities, particularity, and partiality. This entrenched bias is a problem for a field that has now turned toward transgender identity and non-gender conformity, but remains tied to a tradition that leaves the woman's experience or narrative out of common ethics language.

An example in the international literature is the practice of marking peace-making success by the cessation of hostilities, an arguably masculine perspective given that war-fighters and political leaders are largely men. Disarmament consequently takes precedence over dismantling the social constructs of violence against women and children embedded in fractured societies.⁴² Damaging constructs like child marriage, patrilinear property ownership, tolerance of abuse, lack of contraception, and failure to educate girls are left in place.

The male–female divide signaled in language and values is evident in various aspects of forensic practice. For example, there are fewer federal prisons for

women, leading to incarceration farther away from home. This has a greater impact on women, their children, and their families. Mothers who lived with their minor children in the month before arrest are three times more likely to report living in a single-parent household than in a two-parent home, making them more economically vulnerable.⁴³ More than 60 percent of women in state prisons have a child under the age of 18 years.⁴⁴ Highlighting these factors in forensic policy discussions is critical if forensic professionals are to consider the woman's perspective.

The civil commitment of pregnant women who use substances may be another outgrowth of the male–female divide. In states like Wisconsin, South Dakota, and Minnesota,⁴⁵ patriarchal exercises of *parens patriae* doctrine over competent adults raise the same fundamental concerns of women's agency as fetal personhood statutes. Following the 1997 prosecution of Cornelia Whitner by the state of South Carolina for using crack cocaine during pregnancy, critics like Burdge⁴⁶ noted that child abuse prosecutions of pregnant women are intrusions into a woman's privacy. This case notably extended child abuse protections to a viable fetus, paving the way for numerous charges against pregnant women, including drug trafficking, child abuse, child endangerment, attempted murder, and murder. As noted by Paltrow and Flavin,²³ many states employ civil commitment and mandatory substance abuse treatment of pregnant women. In these developments, the agency and autonomy of the person carrying the fetus are subordinated to the classic male values of rights and police power.

Likewise, the use of the diminished-capacity defense in a sex crime may perpetuate sexual mythology. That a sexual impulse cannot be controlled has little basis in mental health scholarship, with the idea that conduct can be overwhelmed by a woman's allure dating to ancient times: the Sirens of Homer's *Odyssey* led men to their deaths, and the enchantress Circe turned love-sick men into beasts.⁴⁷ Salome's Dance of the Seven Veils famously earned her the head of John the Baptist; indeed, the modern *femme fatale* is an extension of this ethos.⁴⁸

While the diminished-capacity defense has been increasingly rejected by courts, researchers have noted that inherent bias comes into play long before court proceedings. A Minnesota analysis of more than 1,000 sexual assault cases from 2015 and 2016 revealed that police are less likely to interview wit-

nesses, assign cases to a detective, or forward them to a prosecutor when the victim is intoxicated. Furthermore, when a victim is intoxicated, prosecutors charge someone only eight percent of the time, compared with 15 percent when the victim is sober. Of the cases where the victim was drinking, only one in 20 sexual assaults resulted in a conviction, which is half the overall conviction rate for sexual assault.⁴⁹ Treating women differently in language and culture may consequently echo in contemporary forensic practice.

Beyond the Divide

It may be clear that discrepancies in how women are treated by society are often based in cultural stereotypes. Authors like Rosemarie Tong agree that any narrow focus on feminine values perpetuates societal stereotypes like that of the “good woman” who adheres to societal expectations.⁵⁰ Critics of social stereotypes seek to move away from the male–female distinction because it may discourage women from seeking non-traditional roles. For example, liberal feminists believe that the primary cause of women’s subordination is a set of social norms and formal laws that make it hard for women to succeed in the public world. Similarly, critics of feminine-based values believe that linking women with caring, for example, may promote the view that women are in charge of caring or that, because women can care, they should care no matter the cost.⁵¹ In the courts, the risk may be that women are treated more harshly when they are not nurturing or maternal. For these writers, it may be an inherently sexist argument: women need not be characterized by feminine values and cemented into society’s traditionally feminine roles.

Consequently, mainstream views of feminist ethics that distinguish male and female values have been criticized for stereotyping women. Although ethics-of-care proponents point out the ways in which girls problem-solve differently than boys, using more communal solutions, the danger may lie in ignoring the influences that lead to such dissimilar decision-making. The French philosopher Simone de Beauvoir, in her groundbreaking 1949 book *The Second Sex*, offered a more modern view of cultural determination when she wrote, “One is not born, but rather becomes, a woman” (Ref. 52, p 301).

Today, even major corporations, some of society’s more historically conservative institutions, realize that engaged consumers of all genders lead to concrete

benefits, especially profits. The abandonment by more than 50 advertisers of Fox News personality Bill O’Reilly after sexual harassment allegations⁵³ is only the most recent example of the increased sensitivity to workplace behavior. Forensic commentators have increasingly underscored the interconnectivity of all moral relationships in defining what is right, not simply those relationships that affect one group or another.^{54,55} The idea that moral actors exist in relationship to numerous stakeholders only strengthens society with its emphasis on collaboration and communal goals. The entire social enterprise may consequently be better served by communal thinking than by a distinction between male and female values.

Indeed, movements for equal access to power, pay, and opportunity appear to have accepted a focus on values that emphasize community, intersection, and interconnectivity. After all, as Griffith and others have indicated,^{16–18} families, agencies, and communities cannot function without incorporating multiple views. Social psychology research is clear that wider input and engaged stakeholders enrich group decision-making.^{56,57} A classic example is the success achieved by Mothers Against Drunk Driving (MADD), who lobbied in the 1980s for the National Minimum Drinking Age Act. MADD involved families, communities, schools, and legislators in a cross-sectional movement that accounted for all involved stakeholders.⁵⁸ Independence, autonomy, and justice were no more sufficient for MADD than they were for Griffith as he advocated for changing a flawed legal system.

Feminist thinkers have certainly relied on ideas like justice and autonomy in the past. In fact, the arguments for equality and justice led to major victories for women in voting, work, inheritance, and reproductive rights. But broader communitarian and collectivist approaches like MADD’s parallel recent movements in ethics that take more communal views of scarce resources, education, politics, and health policy. The community is increasingly responsible for the proper use of limited resources like health dollars, police details, or even water.⁵⁹

Relational Autonomy

A framework of feminist ethics that may join communitarianism in repairing the male–female divide is called relational autonomy. As a traditional ethics concept, autonomy derives from an individual’s sense of self, will, and independence. As we have

seen, however, much feminist ethics stresses the interdependence of factors in the individual's narrative and society's recognition of them. These must technically be in place before a person can make an autonomous decision.

Tong and Williams,⁶⁰ and indeed Jaggar⁴¹ and Brennan⁶¹ before them, note that the default "autonomous moral agent" in moral philosophy is an otherwise unencumbered, abstract decision-maker who is understood to be a man. The decision-maker comes to a decision that is not otherwise burdened by the messy contextuality of life. This narrow construct necessarily excludes the narratives of women, racial and sexual minorities, and the economically disadvantaged. Feminists argue that true autonomy cannot occur among gender-driven stereotypes that have historically led women to choose self-abnegation or excessive deference to the wishes of others.⁶²⁻⁶⁴

Martha Nussbaum,⁶⁵ for example, has described the powerful influence of context among Indian women in abusive marriages. These women make the seemingly autonomous choice to remain in abusive marriages, considering it their lot in life. This "adaptive preference formation," as she defines it, may lead women to participate in decisions that cause them physical or psychological harm. Prostitution and genital mutilation are other poignant examples. A choice made in oppressive circumstances and influenced by powerful and illegitimate external factors is not autonomous.

Ironically, this can be true of hard-won abortion choices as well. In a deeply patriarchal India, male children are valued over females. When laws cracked down on the practice of infant exposure (allowing female babies to die by withholding care or exposing them to the elements), women underwent sex-determining ultrasounds to abort female fetuses. The problem was so severe that the Indian government banned ultrasounds for sex determination; nonetheless, some states maintained heavily skewed male-to-female ratios.⁶⁶ Thus, even when women have the choice under law, cultural pressures can affect whether they actually exercise it. This is an area where forensic experts can use cultural formulation to enrich traditional approaches to capacity assessment. Is the choice truly autonomous? Taking into account the economic and social dependence of evaluatees adds an important theme to forensic evaluation.

Similarly in the West, the objectification of women is a classic example of how women make

seemingly autonomous choices, even as they remain tied to specific views of body image and beauty. The rise of eating disorders is among the outcomes linked to social biases commonly reflected in Western media and entertainment.⁶⁷ Feminist thinkers like Bartky have called choices and behavior shaped by oppressive societal forces "deformed desires,"⁶⁸ the societal pressures that shape women's views of their bodies are examples of these distorted choices.

Advocacy for more diverse representation in the workplace and in the media, and improved workplace harassment standards, are areas where forensic policy-makers can advance an autonomy that is truly relational and communitarian—not one that exploits traditional bias.

Abusive marriages, aborted female fetuses, and eating disorders are among the societal outcomes that, like self-abnegation and adaptive preference formation, highlight the need for more nuanced thinking about autonomy, decision-making, and accountability. Forensic experts assessing these capacities may use this idea of relational autonomy to explore the covert influences on patient choice. It is not a stretch of current forensic ethics to see cases from multiple perspectives, address the cultural context, and account for the expert's bias. In fact, the "habits and skills of the ethical practitioner" (Ref. 54, p 432) model in the forensic literature already asks experts to use self-reflection, be sensitive to vulnerable evaluatees, and strive for objectivity to guard against covert influence.¹⁶

Tools for Applying a Feminist Perspective

The agency of vulnerable evaluatees remains a potent concern for forensic practice. How do practitioners achieve fairness and completeness? How do they value women or other oppressed groups? How do they identify true liberation, true voices, and true choice?

One way to advance professional ethics toward a fair, contextually informed model is by incorporating narrative into the work. Described as "positionality" by MacKay and others,^{7,69} narrative is another tool for expanding the professional's perspective. Identified for forensic practice by Griffith¹⁶ in his call for cultural formulation, telling the full story is ideal for any number of forensic reasons.

The stories of incarcerated women, for example, like that of women whose reproductive decision-making is restricted by feticide laws, require an understanding of personal and historical narrative. The greater impact of

incarceration on women requires that forensic professionals take the women's positionality into account, provide gender-sensitive evaluation, and conduct a thorough exploration of risks and mitigating factors. If forensic ethics is moving toward dignity, compassion, and social goals as some have suggested,^{17,26,36} a kind of transparent social advocacy that exposes systemic problems may be required.

Both forensic and clinical practitioners can explore the individual's place in the community, in the workplace, in the capacity to earn money independently, in the family structure, and in the responsibilities for child-care. These are all areas where inherent disadvantages have influenced choice and can affect voluntariness and accountability.

Being more thorough in evaluating the perspective or positionality of evaluatees, as Griffith has counseled,⁷⁰ is another means of recognizing and exploring the inequities that alter one's circumstances. Practitioners who do not account for the experience of those facing discrimination inevitably interpret outcomes through the same old cultural and historical lens. This is not consistent with contemporary ethical and cross-cultural practice. Being thorough joins positionality as another useful practice for overcoming inherent bias.

Defaulting in favor of the vulnerable individual, however, may be the ultimate approach to overcoming the bias of historical forces. Advocated by forensic commentators who recognize the disadvantage of the vulnerable individual controlled by a social institution (e.g., a court, prison, or hospital), defaulting in favor of the defendant's truthfulness, credibility, and narrative can be a potent counterweight to centuries of biased thought. It is akin to the usual presumptions of innocence and competence, or to the reasonable-doubt standard for criminal cases. Forensic practitioners can start from an original position of skepticism about the system, then check with collaterals, verify records, and explore the data that support the vulnerable individual. This is both a rigorous preparation for cross-examination and a recognition of the vulnerable individual in the control of a flawed social institution.

Liberal feminists are chief among those who maintain that the primary cause of women's inequality is the lack of laws that support their advancement.²⁸ Even when non-discrimination rules are codified, their application may be weak or

ineffectual. The notorious Brock Turner case, for example, in which the 20-year-old Mr. Turner received a six-month sentence for raping an unconscious woman, is consistently criticized for its leniency and perpetuation of white privilege.⁷¹ This case illustrates how, despite California's sexual assault laws, inherent bias played out in the context of embedded discrimination when the judge appeared to treat an unconscious victim differently from a conscious one and a white person differently from people of color.⁷¹

Authors such as Susan Sherwin have characterized this absence of female agency as an "invisibility" in making decisions that affect their lives.⁷² In fact, Diana Meyers traces this lack of agency back to the traditional socialization of women into non-leadership roles—roles that rob them of autonomy.⁷³ For the medical profession, this is evident in American Association of Medical Colleges data, which indicate that women make up only 14 percent of permanent medical school department chairs and only 12 percent of deans.^{74,75} The American Association of University Professors is among those who identify a difficult culture for women leaders starting in graduate school:⁷⁶ despite earning more than half of all graduate degrees, women faculty are less likely than men to hold full-time positions, and women are under-represented in tenured positions. Women CEOs compose only 6 percent of Fortune 500 companies and 8 percent of the Fortune 100.⁷⁷ There are only 23 female senators in the U.S. Senate; indeed, only 52 women have served in the Senate since 1789.⁷⁸ Thus, women are often missing a seat at the table in discussions that involve them. This is a significant disadvantage in exercising moral agency and has a clear impact on the interpretation of laws and policies that affect them.

Conclusion

The need for representation, thoroughness, and positionality ultimately underscores the default position in favor of the vulnerable individual. It is a standard that opposes the common model of the autonomous male decision-maker devoid of context. Feminist theory consequently supports those forensic evaluations that recognize there is no authentic decision-making without history and perspective.^{13,32} The application of feminist thought demonstrates that forensic cases cannot easily be resolved in favor of the lone nondominant individual, espe-

cially if professionals and institutions maintain traditional ethics affected by centuries of partiality.

At the height of the Hollywood and Wall Street harassment allegations, and before his recent support of Justice Kavanaugh, U.S. Senate Majority Leader Mitch McConnell said simply, “I believe the women.”⁷⁹ His statement reflected a view that overcomes the model of the tainted witness who cannot be trusted to testify or make her own decisions. Practitioners in the social forum of the courts have the opportunity to say this too.

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