#NOTME: A COMMONWEALTH FOR *MAN*KIND

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[C]ivic promiscuity that mixes the two sexes in the same tasks, in the same work cannot help but engender the most intolerable abuse.[1]

I. INTRODUCTION

The notion of the commonwealth is not a concept clearly articulated in sociological theory.[2] Yet, the underpinnings of the meaning of commonwealth rely on a set of assumptions about any given society made up of individuals with a shared goal.[3] The method by which individuals arrive at a collective well-being, or rather, identifying a model of a collective well-being defines the basis of early sociological theory, particularly for Emile Durkheim.[4] Durkheim is noted for, among other things, developing a sociological theory that argued for the human rights and dignity of individuals in order to ensure the functional workings of a complex and diverse society.[5] However, equally notable is *who* Durkheim excludes from this human rights paradigm: women.[6] This Article focuses on the modern-day legacy of Durkheim's theory, and, in particular, his view of women. It

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[1] Jean-Jacques Rousseau, EMILE, *reprinted in* 1 WOMEN, THE FAMILY, AND FREEDOM: THE DEBATE IN DOCUMENTS, 1750–1880, 43, 47 (Susan Groag Bell & Karen M. Offen eds., 1983) (1762).

[2] *See generally* PHILLIP SELZNICK, THE MORAL COMMONWEALTH: SOCIAL THEORY AND THE PROMISE OF COMMUNITY (rev. ed. 1994).

[3] *See, e.g.*, MICHAEL HARDT & ANTONIO NEGRI, COMMONWEALTH (2009).

[4] Durkheim is considered one of the founding fathers of sociology. He is credited with the positivist movement in sociology and having it viewed as a science capable of developing theory and knowledge in the same way as the hard sciences. ALAN SWINGEWOOD, A SHORT HISTORY OF SOCIOLOGICAL THOUGHT 97 (Macmillan 1984).

[5] "These moral ideals that define society include the ideals of equality, freedom, and justice. The specific moral code that translates these ideals is built around the inalienable rights of the individual; any disenfranchisement of an individual's human rights or any violation of an individual's human dignity is considered sacrilege and is a moral offence of the highest order. Furthermore, with society becoming more diverse, the respect, tolerance, and promotion of differences become important social virtues." Paul Carls, *Emile Durkheim*, INTERNET ENCYCLOPEDIA OF PHIL., https://www.iep.utm.edu/durkheim/ (last visited Mar. 20, 2019).

[6] *See generally* JENNIFER LEHMANN, DURKHEIM AND WOMEN (1994). Durkheim is rather unapologetic about the role of women in society even though he acknowledges the subservience of women really benefits men. Yet, biological determinism, not society, is responsible for this hierarchy.

argues that the framework, rationale, and language used to theorize women's role in society is still in use today to the detriment of women, despite significant political and legal advances for women.

Durkheim and his predecessors, such as Comte and Rousseau, who significantly influenced his theoretical underpinnings of society, are considered social liberals on all matters related to individual men operating within the social structures of any given society.[7] Remarkably, though, Durkheim, and his predecessors are decidedly socially conservative[8] when it comes to addressing what is known as the "woman question."[9] Indeed, Durkheim fully embraced a patriarchal society in which men are the crucial and capable actors who create a more sophisticated and cohesively moral society.[10] Women are not merely left out of the equation; they are relegated to a diagnosis of amoral, asocial beings devoid of significance.[11] Durkheim's diagnosis relies on biological determinism.[12] The nature of women as creatures different from men defines their traits as passive, lowly, primitive, intellectually inferior, and affective.[13] And therefore, the roles defined by biological determinism dictate that women are best suited for the private sphere, i.e., reproducing and caring for the family.[14]

This Article argues that a key legacy of the Durkheimian theory of society is that it gives permission for otherwise social liberals to join with social conservatives in endorsing, protecting, and rationalizing a patriarchal society that continues to subjugate women on the basis of a discourse of biological and social determinism.[15] This legacy did not cease to exist at the end of the twentieth century when the civil rights movement took hold.[16] Nor did it dissipate with the second or third wave of feminism.[17] In fact, this Article asserts that this legacy is thriving in the twenty-first century, even in the face, or perhaps most notably in response to the #MeToo movement and

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[7] *Id.* at 10–12.

[8] *Id.* at 87–91.

[9] *Id.* at 16.

[10] *Id.* at 7–20.

[11] As Lehmann writes, "Durkheim denies women's constitution all human abilities and their actions all human significance." *Id.* at 18.

[12] *Id.* at 40.

[13] *Id.*

[14] *Id.* at 33.

[15] It would be easy to assert that Durkheim was purely a product of his time, but as I discuss below in Part II, Durkheim's dehumanizing view of women was not universal to his male contemporary theorists. Durkheim was particularly conservative in his approach to the role of women in society. *Id.* at 22–29.

[16] *See, e.g.*, Bonnie Grabenhofer & Jan Erikson, *Is the Equal Rights Amendment Relevant in the 21st Century?*, NAT'L ORG. FOR WOMEN, https://now.org/resource/is-the-equal-rights-amendment-relevant-in-the-21st-century/ (last visited Mar. 20, 2019).

[17] *Id.*

related politically powerful interests directly related to women.[18] The continued effort to relegate women literally and figuratively to the private sphere and margins of the public sphere is quite intentional.

To that end, this Article is organized in three parts. Part II briefly introduces the framework of Durkheim's theory of society in order to contextualize the legitimacy of a patriarchal society. Part III briefly describes Durkheim's limited theoretical treatment of women, which serves also to further rationalize the necessity and legitimacy of a patriarchal society in his view. Part IV critiques this public/private segregation of men and women and discusses its legacy using a case study analysis of the #MeToo movement as evidence of the consequence of this hypocrisy and perverse assertion that such gendered apartheid is not just preferable or natural, but *necessary* for evolution and continued functioning of society. While this framework, rationale, and language is much more coded now, society, particularly even so-called liberal-leaning political and legal interests, continue to frame women and men in this biologically deterministic way in order to maintain and protect patriarchal social structures. This Article strives to demonstrate the ways in which both powerful left-leaning men *and* some women reify this biological determinism and in turn, perpetuate the exclusion of women as full and equal participants in the public sphere.

II. A BRIEF OVERVIEW OF DURKHEIM'S THEORY OF SOCIETY

Durkheim, considered one of the founding fathers[19] of sociology, may be said to have possessed the most interest in the question, broadly speaking, of how a commonwealth works.[20] He did not use the word "commonwealth," but rather sought to understand "society" as an entity in which individual citizens of that society exhibited the best of themselves through the expression of a collective conscience that was, in fact, the personality of society rather than any one individual.[21] Yet, these citizens of society, the individuals entitled to equality, justice, and dignity included men alone.[22] Men, according to Durkheim, will socialize and moralize themselves into a collective conscience—the makings of a functional interdependent society.[23]

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[18] *See* ME TOO., https://metoomvmt.org (last visited Feb. 28, 2019).

[19] SWINGEWOOD, *supra* note 4, at 97–117.

[20] *See id.*

[21] *See generally* EMILE DURKHEIM, THE DIVISION OF LABOUR IN SOCIETY (George Simpson trans., Free Press 1960) (1893).

[22] LEHMANN, *supra* note 6, at 22–25, 40.

[23] Durkheim was equivocal in the role of class and race in the hierarchy of society, but he was quite clear that women were incapable of operating in the public sphere. *Id.* at 25.

Durkheim asserted that society exists as an entity unto itself in which individuals are shaped by the constraints of the society in which they live.[24] Indeed, the collective conscience that emerges from society creates the moral framework from which males, the only sex fully developed morally and intellectually, behave for the good of themselves, but also, for the good of society.[25] Such a view runs contrary to Weber and other sociological and psychological points of view that assert it is individuals who actually shape society.[26] Interestingly, Durkheim viewed society as pre-existing and responsible for shaping individuals—however, he was referring only to males as active participants who can be shaped and civilized by society.[27]

Emile Durkheim's theory of sociology rests on one key concept: society is an organism that occurs independently from the individuals that operate in it.[28] In other words, society has its own reality.[29] Rousseau, a philosopher, in some ways informed Durkheim's thinking on this concept and legitimized for him the idea of sociology as a science, because if society is real, it can be studied.[30] Therefore, according to Durkheim, in order to understand individuals, one must understand the society from which they came.[31] But first, one must understand the meaning of society.[32] Of course, when Durkheim referred to the study of individuals, he was referring only to (mostly) men.[33]

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[24] DURKHEIM, *supra* note 21, at 202.

[25] *Id.* at 398.

[26] KENNETH D. ALLAN, EXPLORATIONS IN CLASSICAL SOCIOLOGICAL THEORY: SEEING THE SOCIAL WORLD 148 (Pine Forge Press 2d ed. 2010).

[27] LEHMANN, *supra* note 6, at 14.

[28] DURKHEIM, *supra* note 21, at 24.

[29] *See, e.g.*, Erik Malczewski, *Durkheim's Sui Generis Reality and the Central Subject Matter of Social Science*, 31 CURRENT PERSP. IN SOC. THEORY 161 (2013).

[30] Durkheim observed that Rousseau believed that individuals come together as social beings to form society, but what is formed is not a collection of the individuals' characteristics, but rather a society with its own characteristics. Society creates a "general will" that endures independent from any "individual will." Andrew Roberts, *Durkheim and Weber's Contrasting Imaginations*, SOC. SCI. HIST. FOR BUDDING THEORISTS, http://studymore.org.uk/ssh6.htm (last visited Mar. 21, 2019). Durkheim quoted Rousseau stating, society is "a moral entity having specific qualities distinct from those of the individual human beings which compose it." *Id.* (internal citation omitted). "For Rousseau, Durkheim says, 'society is nothing unless it be one, definite body, distinct from its parts.' He recognizes that the social order is 'an order of facts generically different from purely individual facts.'" *Id.* (internal citation omitted). It is important to note, however, that Rousseau was a "state of nature" philosopher whose main inquiry started with understanding individuals independent of the influences that society has on them. *Id.* Durkheim did not hold to this "state of nature" school of thought. *Id.*

[31] *Id.*

[32] DURKHEIM, *supra* note 21, at xxi.

[33] LEHMANN, *supra* note 6, at 22–27.

Durkheim borrowed from biology in defining society as a living, developing, and evolving organism.[34] He theorized that societies, like organisms, can be quite simplistic and evolve into complex creatures.[35] A defining feature of any society is what Durkheim coined "solidarity."[36] Solidarity is the set of phenomena that holds society together.[37] It is glue, if you will. Durkheim further elaborated on this concept of solidarity by articulating its two types, which correlated with how developed a society was.

The first type, mechanical solidarity, refers to the bond that joins more simplistic societies together.[38] A defining feature of a less complex society is that it tends to be more homogenous, in which individuals are similar in how they function for day-to-day subsistence.[39] For example, in an agrarian society, most individuals subsist on what they produce themselves.[40] These societies are cemented by their shared beliefs and value systems. However, Durkheim pointed out that bonds tend to be weaker in less developed societies that rely on mechanical solidarity, in large part because these societies tend to have less social interaction.[41] Moreover, the rule of law further demarks mechanical solidarity. Law in these societies is typically repressive or punitive, rather than restorative, given that the application of law serves a number of purposes in maintaining mechanical solidarity.[42]

First, a repressive law works to discourage individuals from acting in self-interest by ensuring harsh punishments will be meted out.[43] Second, repressive law makes clear that infraction of the rule of law harms society and preventing harm to society rather than the individual is the primary goal.[44] Third, the application of repressive laws defines the boundaries of community membership.[45] Those that break the law are deviant and viewed as outsiders.[46] By defining what is deviant, individuals have a shared purpose in not breaking the rules, expressing their agreed upon values, and ensuring society's survival and their own membership in that society.[47] But again,

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[34] DURKHEIM, *supra* note 21, at 190–91.
[35] *Id.* at 204–05.
[36] *Id.* at 16.
[37] *Id.* at 64.
[38] *Id.* at 181.
[39] *Id.*
[40] *See id.* at 180–81.
[41] *Id.* at 109.
[42] *Id.*
[43] *Id.* at 69.
[44] *Id.* at 71–72.
[45] *Id.* at 72–74.
[46] *Id.* at 74.
[47] *Id.* at 73.

Durkheim here is referring only to men's criminal propensity. Women could not share in this deviant behavior because of their less developed mental status.[48]

Ultimately, the rule of law encourages a social bond that is fairly weak in less complex societies.[49] Yet, underlying the rule of law is the idea that it is man who needs to be controlled from deviant behavior because only men are capable of engaging as social beings in society.[50]

Durkheim, again, stressed that this mechanical solidarity is what makes society an independent real organism separate from and pre-supposing the individuals who inhabit it.[51] In fact, Durkheim theorized that in history, in less developed societies, the men and women were more closely matched in their lack of development.[52] However, men possess a propensity for evolutionary development that women simply lack.[53] Society influences man whether it is more or less developed, and men respond in kind due to their propensity to become more civilized.[54] Men inherently have a greater capacity to become civilized because of their social, moral, and intellectual traits.[55] Women, on the other hand, are stagnant onlookers, doomed to their naturalistic, animalistic state.[56]

As societies develop in complexity, Durkheim wrote in *The Division of Labour*, a new type of solidarity develops.[57] This new type of solidarity is known as organic solidarity.[58] It does not replace mechanical solidarity, but rather builds upon it.[59] Indeed, Durkheim thought that mechanical solidarity was fundamental to the functioning of any society regardless of its level of complexity.[60] In other words, all societies, at their core, had agreed upon values and norms. However, Durkheim observed that as societies become more complex, the members of that society become more individualistic and

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[48] LEHMANN, *supra* note 6, at 82–83.

[49] Nasrullah Mambrol, *The Sociology of Emile Durkheim*, LITERARY THEORY & CRITICISM (May 10, 2017), https://literariness.org/2017/05/10/the-sociology-of-emile-durkheim/.

[50] *Id.*

[51] *Id.*

[52] LEHMANN, *supra* note 6, at 38–39.

[53] DURKHEIM, *supra* note 21, at 57–58.

[54] *See id.*

[55] *Id.*

[56] *Id.*

[57] *Id.* at 205.

[58] *Id.* at 181.

[59] Durkheim originally theorized that organic solidarity would supplant mechanical solidarity, but in later editions of *The Division of Labour*, he revised his thinking on this approach. Mambrol, *supra* note 49.

[60] *Id.*

diverse unlike their less developed predecessors.[61] But, this individualism does not weaken the solidarity of society, but rather strengthens it.[62] Durkheim noted that such an assertion appears as a paradox when he posed the question how individuals in a society can become more separate and different from one another, yet the society in which they dwell becomes stronger.[63] The answer lies in understanding the nature of organic solidarity.

Organic solidarity is based on the dependence male members of society have on one another, as the active members of society.[64] Organic solidarity emerges from the divisions of labor that naturally occur as a society increases in complexity.[65]As male individuals become more specialized in the type of labor that they engage in, they become more dependent on each other to meet their basic needs and maintain the continued functioning of society.[66] What a male individual may have been able to achieve in a less complex society without having to rely on others, is not possible in a complex society.[67] The complex society is higher functioning in that it can produce and achieve more because the individuals within are capable of more sophisticated labor.[68] But, with increased specialization of labor, men are no longer able to independently achieve all the tasks necessary to function on a daily basis. In that sense, males must rely on each other and each persons' specialized labor function in order to survive as individuals and as a society.[69]

Finally, specialized labor, in theory, creates opportunities for all men to develop skills based on their individual talents. Durkheim thought this interdependence would lead to greater social interactions among a society's male members.[70] Unlike mechanical solidarity, organic solidarity would lead

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[61] Malczewski, *supra* note 29.

[62] *Id.*

[63] *Id.*

[64] Mambrol, *supra* note 49.

[65] Durkheim viewed the development of more complex societies as part of the natural order. In less developed societies, individuals engaged in the same type of labor for survival. Competition for resources would naturally ensue. Specialization was an essential strategy for combatting competition. Specialization of labor could only occur in more complex societies that had what Durkheim referred to as moral and material density. In addition, it is important to note that even in societies with organic solidarity, women are not differentiated in the way men are. The division of labor occurs with men, but not women. Their roles remain the same as they were in a less complex society. LEHMANN, *supra* note 6, at 74–93.

[66] Durkheim was inspired by the economist Adam Smith in developing the ideas behind *The Division of Labour*. However, unlike Smith, Durkheim did not see the division of labor emerging from an "invisible hand" of the economy because of individual self-interest. Rather, Durkheim saw the division of labor as a pre-existing condition, if you will, that permeated all aspects of society from the political to the economic to the bureaucratic and judicial. Mambrol, *supra* note 49.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

to greater social bonds and shared values and norms precisely because of these increased social interactions.[71] Indeed, these social interactions occurred in the male domain—the public sphere—while women toiled in greater isolation in the private sphere.[72]

Timing, however, is everything, according to Durkheim. He cautioned that individuals did not exist first with particular multifaceted functions and then organize into a more complex society.[73] Instead, Durkheim maintained that society exists *sui generis*, then the division of labor emerges as society becomes more complex. This new more sophisticated labor becomes a unifying purpose of society.[74] From there, males take on specialized roles and become increasingly differentiated within this organism, but are always constrained by mechanical and organic solidarity.[75] It is through this approach, Durkheim argued, society forms individuals; individuals do not form society.[76]

These tenets really define the social liberalism components of Durkheim's theory of society. A crucial component of his social liberal capitalistic theory was individualism.[77] Individuals, specifically males, have innate abilities and skills that they can develop. Toward that end, class or race as categories should not be defining features of what individual males can achieve.[78] Instead, each man should choose his specialized role in society based on his unique talents.[79] This individualism and diversity did not reduce unity within society. On the contrary, it led to the integrating layers of mechanical and organic solidarity.[80]

Let us explore how mechanical and organic solidarity work hand in hand. Mechanical solidarity operates from two important components. The first is an agreed upon set of beliefs and values. The second is action based on those beliefs and values—in other words, practices and rituals that reify the beliefs and values. In any given society, those values play out in a series of vignettes from the way men interact with each other on a daily basis in the public sphere. In other words, a social life exists in society, but it is created from the mechanical and organic solidarity vis á vis males interacting in an agreed

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[71] *Id.*

[72] Durkheim saw this segregation as a critical piece of work. DURKHEIM, *supra* note 21, at 60.

[73] SWINGEWOOD, *supra* note 4, at 104–05.

[74] *Id.*

[75] *Id.* at 113–14.

[76] *Id.* at 118.

[77] LEHMANN, *supra* note 6, at 30–31.

[78] However, Durkheim was unambiguous in his theoretical assertion that women did not share these characteristics or abilities. *Id.* at 8.

[79] SWINGEWOOD, *supra* note 4, at 104–05.

[80] *Id.*

upon manner within that society. These values and practices came from mechanical solidarity but continue to be passed down from generation to generation, even in complex societies, serving as the rules of engagement for interdependent transactions.[81]

Essentially, the values that emerge and track generationally allow for organic solidarity to flourish. According to Durkheim, male dependence on each other in the public sphere, via organic solidarity, requires interactions of a predictable nature. The agreed upon values that serve as unwritten norms in daily social interactions allows not only individual males but society as a whole, to develop a collective or common conscience.[82] Again, Durkheim viewed this common conscience as not the sum of the individual male consciences, but an entity unto itself. Society is greater than the sum of its parts and it is passed on and expressed through generations of male interactions.[83] Women play no role in the development of this collective conscience, according to Durkheim, because they do not have the moral or social capacity to do so.[84]

Durkheim also noted that as societies become more complex, the rule of law also changes from repressive to restitutive.[85] Because the social bond among individual males is greater in more complex societies, the purpose of law evolves from defining the boundaries of society and forming a collective identity around punishment, as required in mechanical solidarity, to restoring the individual male harmed by the lawbreaker.[86] Restitutive law focuses on the increased understanding of individual interdependence and social interactions.[87]

For example, Durkheim used the institution or social phenomenon of religion as a vehicle to study solidarity and collective conscience.[88] Religion, while not the only institution that expresses or informs the common conscience, offered Durkheim a prime research tool as a social institution for examining differences in societies and those societies' effects on the individual males existing within. Durkheim explained that in studying society as an organism, "social facts" would become evident.[89] These social facts,

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[81] *Id.*

[82] KENNETH SMITH, ÉMILE DURKHEIM AND THE COLLECTIVE CONSCIOUSNESS OF SOCIETY: A STUDY IN CRIMINOLOGY 12 (Anthem Press 2014).

[83] *Id.* at 22.

[84] LEHMANN, *supra* note 6, at 32–33.

[85] Mambrol, *supra* note 49.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] Durkheim wrote: "[W]e can formulate and delimit in a precise way the domain of sociology. It comprises only a limited group of phenomena. A social fact is to be recognized by the power of external

like society itself, exist independently from individuals.[90] They are like the living currents that pass through an organism.[91] In this case, they are the rules that organize society.[92] In fact, individual males are constrained in their actions by these social facts. This point is key to Durkheim's theory that society forms individual males but individuals do not shape society.[93] Durkheim viewed religion as a key institution that both reflected social facts, reified the values of society, and created shared meaning and goals amongst its male members through its symbolism and artifacts.[94]

In perhaps his most famous study, Durkheim used the correlation between suicide rates and the type of religion to which individual males adhered, to explore how social facts influence individual behavior.[95] On the one hand, religion is an expression of mechanical solidarity.[96] The rituals and practices of religion that people engage in reify the values and beliefs of that social organism—i.e., society.[97] In studying rates of suicide, Durkheim observed that the rates of suicide do not appear to vary much from year to year.[98] He argued that suicide, if truly an individual act, should change greatly from year to year based on the varied mental states of individuals at any given time.[99] However, Durkheim found that the rates vary based on certain other conditions, i.e., societal conditions, such as religious membership or economic conditions.[100] Durkheim compared the rates of suicide in subgroups where people did not participate in church membership with groups that did. In addition, he compared subgroups like Roman Catholic

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coercion which it exercises or is capable of exercising over individuals, and the presence of this power may be recognized in its turn either by the existence of some specific sanction or by the resistance offered against every individual effort that tends to violate it." Roberts, *supra* note 30 (citing EMILE DURKHEIM, RULES OF SOCIOLOGICAL METHOD 10 (1895)). Moreover, "[a] social fact is every way of acting, fixed or not, capable of exercising on the individual an external constraint; or again, every way of acting which is general throughout a given society, while at the same time existing in its own right independent of its individual manifestations." *Id.* (citing DURKHEIM, *supra*, at 13). The propensity for societies to marry more, have more children, etc. are examples of social facts. Individuals are not making these decisions on their own. Rather, they are influenced by the society and social institutions in which they inhabit.

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] Durkheim went so far as to say that the worshipping of God was akin to worshipping society itself. EMILE DURKHEIM, SUICIDE: A STUDY IN SOCIOLOGY 303–04 (George Simpson ed., John A. Spaulding trans., Free Press 1966) (1897).

[95] *Id.* at 272.

[96] *Id.* at 287.

[97] *Id.* at 288.

[98] *Id.* at 562.

[99] *Id.* at 269.

[100] *Id.* at 261.

communities and Protestant communities to determine if different rates of suicide existed within religious communities.[101] He drew three conclusions from his findings.

First, church membership offered some protection against suicide. Suicide rates were lower among groups of individuals who belonged to and participated in church.[102] This phenomenon made sense because religion manifested community, and Durkheim saw community participation as essential to a male human being's existence. In other words, males, as social beings, understood the meaning of their life, by social interactions in society—by belonging and interacting in groups.[103] Thus, church membership offered that sense of meaning and inoculated against an individual's propensity toward suicide.[104]

Second, Durkheim observed that the rates of suicide also differed within religions.[105] For example, Catholics tended to have lower suicide rates than Protestants.[106] Durkheim asserted that these differences could not be attributed to individual characteristics, but rather to social facts.[107] Specifically, recall that external to individuals were social facts that influenced their behavior. The Protestant religion tended to emphasize individualism and self-reliance more so than the Catholic Church. Therefore, members of the former religion experienced fewer social ties and access to community in times of crisis.[108] On the other hand, the Catholic Church emphasizes the creation of community and service to others.[109] Social connection is a key function of Catholicism.[110] Interestingly, this trend remains today.[111]

Remarkably, Durkheim analyzed female behavior in this study. He observed gendered differences in suicide rates even within religion and church membership.[112] Indeed, men, across all categories, were more likely to commit suicide than women.[113] However, married women were more likely to commit suicide than married men, and single men were more likely

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[101] *Id.* at 273.
[102] *Id.* at 303.
[103] *Id.* at 286.
[104] *Id.*
[105] *Id.* at 279.
[106] *Id.* at 282.
[107] *Id.* at 283.
[108] *Id.* at 304.
[109] *Id.* at 684.
[110] *Id.* at 155–59.
[111] Benno Torgler & Christoph Schaltegger, *Suicide and Religion: New Evidence on the Differences Between Protestantism and Catholicism*, 53 J. FOR THE SCI. STUDY OF RELIGION 316, 318 (2014).
[112] DURKHEIM, *supra* note 94, at 117.
[113] *Id.* at 121.

to commit suicide than single women.[114] For Durkheim, these differences were easily understood within his framework where women were biologically lesser individuals than men. For Durkheim, suicide reflected the degree of civilization present in social groups.[115] The more civilized a group of men, the more likely that suicide exists in that society. Men are social beings where social forces impact them, such as isolation and alienation (an effect of divorce that puts men, but not women at risk) and therefore, more susceptible to the vagaries of taking one's own life.[116] Conversely, as women are less developed, non-social beings, they are not sensitive to the same risks of isolation and alienation as single women. However, his explanation does not offer a compelling rationale for the married women's greater rate of suicide over married men.[117]

Lastly, Durkheim was well aware that social alienation was a risk for men as societies became more complex.[118] While increased production, efficiency, skill, and opportunity came with more advanced societies, so did the threat of normlessness.[119] Agreed upon norms that did not guard against self-interest and competition would lead to inequality, exclusion from the labor force, lack of shared goals, and disaffection.[120] Durkheim viewed the division of labor as a necessary but insufficient way of achieving the social order.[121] He believed that the State could play a central role in enforcing the norms that accounted for fairness, human dignity, equality, and justice (for men).[122] But again, Durkheim's concern for human dignity did not extend to women.

Likewise, Durkheim explored what happens when these social ties breakdown, weaken, or simply disappear because individuals no longer find community membership—i.e., they feel alienated from the community.[123] Durkheim referred to this social problem as "anomie"—roughly translated as normlessness.[124] The consequence is social alienation. He observed that in times of great social upheaval or rapid social change where a society's shared norms, values, beliefs, and laws are weakened or no longer relevant, a

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[114] *Id.* at 139–52.
[115] *Id.* at 34.
[116] *Id.* at 174.
[117] *Id.*
[118] *Id.* at 354–56.
[119] *Id.* at 354.
[120] *Id.*
[121] *Id.* at 356–57.
[122] *Id.*
[123] *Id.* at 167–68.
[124] *Id.* at 169–70.

vacuum exists.[125] And in this vacuum, the social actor, a male, does not have the guidance needed to understand his place and meaning in society.[126] Culture creates societal adhesion, but culture is dependent on an agreed upon understanding of norms.[127] When that agreement dissipates, both mechanical and organic solidarity are at risk.[128] A lack of attachment in society is a social force that can have a direct impact on each male's individual psyche in society.[129] But at the risk of exhaustive repetition, Durkheim simply did not see females as able to experience anomie.[130]

To address the mitigation of anomie, Durkheim turned to what he referred to as subgroups in society.[131] Durkheim viewed subgroups as essential mediators in creating purpose and membership within the larger society.[132] What is quite extraordinary, is the way in which Durkheim framed women as capable of playing a role in the subgroup known as "family."[133] It is here we see women's main purpose: to assuage men's desire for interaction and purpose within the private sphere.[134] At the same time, Durkheim declared that women did not have those same wants and desires because of their less than human development. In reality, women, under Durkheim's theory, were men's companions in the way dogs are: benevolent observers of, not actors in, society.

In sum, Durkheim believed fundamentally that males could not be understood without first understanding society.[135] Society shaped men. And as society grew more complex with the division of labor, men became more civilized while women were left behind. However, the division of labor as an organizing principle of society also required the division of the sexes, requiring that women operate in a subordinate role in order for society to function.[136] The theoretical rationalization for a patriarchal society in which women are delineated as the inevitable lesser, as pre-ordained by nature, is explored in the next section.

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[125] *Id.* at 170–71.

[126] *Id.* at 171–72.

[127] *Id.* at 172–73.

[128] *Id.*

[129] *Id.*

[130] LEHMANN, *supra* note 6, at 83.

[131] Barbara G. Cashion, *Durkheim's Concept of Anomie and Its Relationship to Divorce*, 55 SOC. & SOC. RES. 72, 73 (1970).

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] *See generally* Herbert Bynder, *Emile Durkheim and the Sociology of the Family*, 31 J. OF MARRIAGE & THE FAM. 527 (1969).

[136] *Id.* at 529–30.

III. DURKHEIM'S THEORETICAL TREATMENT OF WOMEN

First, Durkheim's work is particularly ripe for criticism because of his theoretical perspective of women as lesser creatures.[137] A feminist critique of Durkheim notes his disdain for feminist theory on society's workings and most notably, his entrenched belief in social determinism. Durkheim was adamant that biology offered an indisputable explanation for gendered differences, which translated to the natural division of labor.[138] Not surprisingly, this division of labor defined women as naturally subordinate to men.[139] Indeed, the very functioning of society demanded that women be subordinate to men.[140]

We might start with the question did Durkheim consider all members of society in developing his theory of social conscience and solidarity? The answer, of course, is yes, he did, but not in equal measure.[141] At the time Durkheim began writing his theory of society, he was puzzling through the seismic shift that had occurred in the early part of the twentieth century: the Industrial Revolution. The mode of production had shifted from the family to the factory. As stated, Durkheim saw this as a natural development for society. But the focus of his analysis was on males because males were the members of the family who shifted from farm work at home to selling their labor in factories.[142]

Recall, Durkheim was concerned that any society that shifted to organic solidarity due to a more complex society needed to address issues of self-interest.[143] This new interdependence among workers did not necessarily discourage self-interest.[144] He observed that self-interest could harm certain members of society because others may not engage in fair labor practices or offer fair pay.[145] Such a result would create social disintegration. Durkheim cautioned that the State must step in and regulate against this individualistic tendency toward self-interest at society's expense.[146] He repeatedly wrote

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[137] *See* Nancy L. Wityak & Ruth A. Wallace, *Durkheim's Non-social Facts About Primitives and Women*, 51 SOC. INQUIRY 61, 65 (1981).

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *See generally* Karen M. Offen, *Defining Feminism: A Comparative Historical Approach*, 14 SIGNS: J. OF WOMEN IN CULTURE & SOC'Y 119 (1988); CAROLE PATEMAN, THE SEXUAL CONTRACT (1988).

[142] However, we know that women and children of lower social classes also sold their labor in factories. Maxine Berg, *Women's Work and the Industrial Revolution*, REFRESH, Spring 1991, at 1, 1–4.

[143] R. A. SYDIE, NATURAL WOMEN, CULTURED MEN: A FEMINIST PERSPECTIVE ON SOCIOLOGICAL THEORY 25–27 (UBC Press 2011) (1987).

[144] *Id.* at 27.

[145] *Id.* at 27–28.

[146] *See id.* at 31–32.

about the needs for a healthy society to have equality and fairness—but, disturbingly, these protections extended only to men.[147]

Durkheim was able to reconcile his disconnect between concern for fairness and equality for men and women. The subordinate role of women in society in which their primary duties involved unpaid labor and servitude was pre-ordained.[148] As noted, biology provided the answer.[149] While Durkheim acknowledged that the societal dictate that women play an inferior role to that of men actually benefitted men, he also theorized that the natural differences in disposition and skills between the genders meant that women were destined to take on the role of nurturer and remain in the domestic domain.[150] Indeed, the inherent limitations of women left no other choice. That human rights within the home, such as equality, generally, or paid labor for domestic work, specifically, did not apply to women did not concern Durkheim. Indeed, he theorized the natural order of things demanded this gendered division of labor.[151]

In addition, Durkheim did not address the risks for women in experiencing a lack of social cohesion, a lack of shared goals, a lack of social interaction, or a sense of anomie.[152] Similarly, Durkheim resisted acknowledging that social determinism is more an excuse for arguing that women must remain in a subordinate role than an empirical testable hypothesis.[153] In fact, Durkheim exhibited antipathy towards feminist critique of social theory.[154] He wrote that feminist theory was unscientific, misguided, and a misconception of society, which was, in his view, an immutable organism with social structures that dictated social facts.[155] Suggestions such as allowing for divorce as a way to remedy the social institution of marriage was far too radical because it incorrectly asserted

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[147] *Id.*

[148] *Id.* at 32.

[149] *Id.*

[150] Durkheim noted in his study of suicide that married women committed suicide at a greater rate than married men or single women. However, Durkheim was not particularly concerned with this issue because of the primitive nature of women and their inability to feel the social effects of marriage and society generally. LEHMANN, *supra* note 6, at 36–38.

[151] *Id.*

[152] *Id.*

[153] Feminists wrote that social determinism failed to acknowledge the sense of agency that individuals had over their own lives despite the dictates of social institutions. *See generally* JOAN B. LANDES, WOMEN AND THE PUBLIC SPHERE IN THE AGE OF THE FRENCH REVOLUTION (1988); Jennifer M. Lehmann, *Durkheim's Women: His Theory of the Structures and Functions of Sexuality*, 11 CURRENT PERSP. IN SOC. THEORY 141 (1993).

[154] Jennifer M. Lehmann, *Durkheim's Response to Feminism: Prescriptions for Women*, 8 SOCIOLOGICAL THEORY 163, 163–64 (1990).

[155] Incidentally, he felt the same way about socialism. He viewed both feminism and socialism as "pseudo-solutions." *Id.* at 163.

social institutions, such as marriage, are fatally flawed.[156] Indeed, social institutions, like organs of a body, can have ailments requiring attention, but such institutions cannot be fundamentally changed.[157] In fact, according to Durkheim, feminists failed to recognize that social institutions would affect the members of society differently.[158] Yet, Durkheim seemed only concerned with how males were affected by social structures.[159] Moreover, because he believed that biology presupposed the natural division of labor for women and men, differential gendered experiences were not even worthy of study largely because Durkheim did not view women as actual actors in society.

In contrast to other liberal thinkers who influenced Durkheim, like Rousseau and Comte, Durkheim took a notably more dehumanizing view of women.[160] They agreed on the public/private dichotomy and the division of the sexes, but Durkheim went further in that dichotomy.[161] The public and private spheres also represented the dichotomy of the social and biological functions in society.[162] The private sphere focused on biological functions.[163] And, because women were asocial, it made sense that they were only capable of biological functions such as reproduction.[164] Durkheim, unlike social progressives and even conservative thinkers of the time, did not see women as capable of having any role in society.[165] Others theorized that during this time of social upheaval, and the shift to an industrial capitalist economy, men, acting in the public sphere, would be susceptible to self-interest and materialism.[166] Women, in a key and complimentary role to men, could, albeit within marriage and family only, socialize and moralize men to behave morally and collectively in the economic and political spheres.[167] But Durkheim did not see it that way; only men could socialize, moralize, and educate other men in all realms of society.[168]

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[156] *Id.*

[157] *Id.* at 180.

[158] *Id.* at 163.

[159] This criticism is not limited to Durkheim. The founding "fathers" of sociology were white, Eurocentric males. The theoretical models that they developed concerned themselves with the male experience. Indeed, women are still operating within this limited theoretical worldview, constrained by the vocabulary and theorems to explain a feminist experience in society. *See* TERRY R. KANDAL, THE WOMAN QUESTION IN CLASSICAL SOCIOLOGICAL THEORY 6 (1988).

[160] LEHMANN, *supra* note 6, at 14–15.

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] *Id.* at 16.

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] *Id.* at 15.

On the other hand, while liberal thinkers saw all of *male* humankind as capable of achievement within society if given the opportunity, conservatives relegated these capabilities only to men of a certain race, nationality, or social class.[169] Durkheim was rather vague on this point, but much less so when it came to gender.[170] Recall, Durkheim's theory of society relied on immutable social facts. Here, he asserted three corollaries in regard to women. First, women are asocial and incapable of being socialized.[171] Second, women are psychologically, morally, and intellectually inferior to men.[172] Third, the prior two social facts dictate the segregation and subordination of women.[173] He used "scientific" rationales—i.e., biological ones—to legitimize this paradigm of women's natural, inherent inferiority.[174] What is most compelling (and disturbing) is that unlike conservatives who saw women as possessing some value, and indeed, put their theoretical focus on sexual differences, Durkheim focused on sexual inequalities and in particular, women's complete lack of significance to society.[175] In doing so, he cast women as no more than cells in the social organism that is society. Women reproduce—they create the social actors, males, who alone, can participate in society.[176] As Lehmann writes, in casting women in this biological role, dehumanizing them in essence, Durkheim banished them from society as an entirely different species from men.[177]

History, however, is replete with the damaging effects of relying on biological determinism as a basis for treating people differently or accepting it as the basis for social determinism.[178] Yet, Durkheim's theory rests on a supposition that men are the only relevant actors in society because they are the only capable actors in society. And, as the father of the scientific study of

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[169] *Id.*

[170] *Id.* at 17.

[171] *Id.*

[172] *Id.* at 15.

[173] *Id.*

[174] For example, Durkheim relied on the size of the female crania relative to a male crania as evidence of the primitive and limited evolutionary capacity of women. *Id.* at 147 n.5. Lehmann also writes about the irony of Durkheim, a founding social theorist, relying on biological determinants, to explain the primitive nature of women. *Id.* at 151.

[175] Conservative thinkers viewed women as possessing moral or emotional strength as a counterpart to men's intellectual and physical strength. In addition, they saw these strengths as essential to the functionality of the family unit. Furthermore, they viewed the family unit as especially crucial to society. In other words, conservative thinkers ascribed at a minimum a social, educational, or moralistic role to women as participants in society. Women were not necessarily devalued as much as segregated by structure and function. *Id.* at 17–18.

[176] *Id.* at 39–41.

[177] *Id.* at 38.

[178] *See, e.g.*, Howard Zinn, A PEOPLE'S HISTORY OF THE UNITED STATES (New ed. 2003).

society, the credibility and consequences of his positivist theoretical paradigm remain unshakably present in our discourse.[179] Lehmann notes:

> Had Durkheim excluded any other human group from society, from socialization, from civilization, from modernity—from humanity—not only actually but also potentially . . . , perhaps it would not have taken a century for scholars to recognize and criticize his position. Had Durkheim unambiguously and overtly claimed Europeans, or "primitives" or workers or men could never be social and could never, therefore, aspire to morality, mentality, modernity—humanity—and should always, therefore, be relegated to a "separate sphere," excluded from "public" political, economic, and cultural life, perhaps his entire theoretical edifice would have been examined more careful and more critically.[180]

To be sure, Durkheim, alone, is not to blame. But in the context of understanding the commonwealth, of developing a liberal socio-theoretical understanding of society, women were not just left out of it, Durkheim dehumanized them. And yet, his liberal theoretical approach is given incredible credence in the academic and scientific community writ large.[181]

In the next section, I will analyze the effects of the Durkheimian paradigm of women in the context of the current #MeToo movement. I use this movement as it is a diverse, female-driven political, legal, and economic event. The revelations from, and reaction to, this movement, a year on, provide a compelling case study for feminism's protracted attempt toward equality.[182] But what makes it most interesting, is the exposure of the dehumanizing behavior of so-called "liberal" men who allegedly championed women.[183]

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[179] As Lehmann writes, the concern here is that while Durkheim rejected scientific racism, he was "unambiguous and perfectly overt in his condemnation of women as inherently, essentially, universally, and eternally Other: different and inferior, biological rather than social, homogeneous rather than differentiated, primitive rather than modern, animal rather than human, outside society . . . ." LEHMANN, *supra* note 6, at 118. It is remarkable because Durkheim existed in a world where women had participated in the French Revolution, where feminism was flourishing, and his peers took a different more nuanced theoretical view of women.

[180] *Id.*

[181] *See, e.g.*, Galen Watts, *Did Emile Durkheim Foresee Today's Chaos?*, SOC. SCI. SPACE (Nov. 13, 2018), https://www.socialsciencespace.com/2018/11/did-emile-durkheim-foresee-todays-chaos/; STJEPAN MEŠTROVIC, THE COMING FIN DE SIÈCLE: AN APPLICATION OF DURKHEIM'S SOCIOLOGY TO MODERNITY AND POSTMODERNISM (Routledge 2011) (1991).

[182] *See, e.g.*, Rebecca Solnik, *Feminists Have Solely Shifted Power: There's No Going Back*, GUARDIAN (Mar. 8, 2018), https://www.theguardian.com/commentisfree/2018/mar/08/feminists-power-metoo-timesup-rebecca-solnit.

[183] Anna North et al., *A Sexual Assault Allegations List*, VOX (Jan. 9, 2019), https://www.vox.com/a/sexual-harassment-assault-allegations-list/eric-bauman.

IV. #METOO AND THE LEGACY OF A SCIENTIFIC BASIS FOR FEMALE DEHUMANIZATION

The legacy of using biology to explain social determinism is that it is a two-edged sword against women. It is both delegitimizing and legitimizing. On the one hand, it is used to explain why women are subordinate—and why the patriarchal society is not only inevitable, but necessary. However, biology is also used to explain and forgive male oppression of women. And (liberal) men and feminists reify this approach. First, men's reaction to the #MeToo movement came from a place of entitlement. Second, the reaction to the larger question of how to confront sexually harassing behavior in the workplace (or the home) was ignored until a certain type of demographic spoke up. Third, the strategic response was to address the "bad apples" rather than confront the social structures that permit such behavior. Fourth, the critique of #MeToo has turned the accusers into villains and turned their own language against them and women bought into this approach.

As Marx noted, who does not want power?[184] And once you get it, why would you give it away?[185] Men, almost all over the world, enjoy considerable power over women, regardless of race, caste, class, nationality, or ethnicity.[186] The power most men hold exists in the running of society generally, but, specifically, men covet sex, either biologically, psychologically, or socially.[187] However, sex is not a resource that they control access to unilaterally.[188] Therefore, men leverage other areas of power over women to gain access to sex.[189] This power can come in the form of violence, economic resources, or political power, to name a few. And it is difficult to imagine a male feeling more threatened than by an accusation of misconduct that could result in the elimination of other areas of power.

Justice Brett Kavanaugh's reaction in his Senate confirmation hearings last September[190] really crystalized the sense of entitlement men feel about

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[184] *See* Donald McQuarie & Marc Spaulding, *The Concept of Power in Marxist Theory: A Critique and Reformulation*, 16 CRITICAL SOC. 3 (1989).

[185] *Id.*

[186] *See, e.g.*, *Men and Masculinities*, INT'L CTR. FOR RES. ON WOMEN, https://www.icrw.org/issues/men-and-masculinities/ (last visited Jan. 19, 2019).

[187] *Id.*

[188] *See* Eva Lefkowitz et al., *How Gendered Attitudes Relate to Women's and Men's Sexual Behaviors and Beliefs*, 18 SEXUALITY & CULTURE 833 (2014); Roy F. Baumeister & Kathleen D. Vohs, *Sexual Economics: Culture, Men, and Modern Sexual Trends*, 49 SOC'Y 520 (2012).

[189] Catherine Hakim, *The Sugar in His Tea: Sexuality, Patriarchy, and Sexual Politics*, 3 SOCIOLOGICA 1, 18 (2016).

[190] Jacob Pramuk, *Sen. Lindsey Graham Explodes in Defense of Kavanaugh: This Is an 'Unethical Sham,'* CNBC (Sept. 27, 2018), https://www.cnbc.com/2018/09/27/lindsey-graham-defends-brett-kavanaugh-amid-christine-blase-ford-accusation.html.

owning power in society generally, but also the power over access to women. Women are not humans after all. Sex is a resource—a commodity. Justice Kavanaugh screamed, cried, and commiserated with the male senators about how he was the victim in this play.[191] Senator Lindsey Graham joined him in the sense of outrage.[192] And here is where act one comes into fruition: ultimately, Kavanaugh was approved as a United States Supreme Court Justice;[193] just as Donald Trump, accused at least twelve times of sexual assault was voted in as President.[194]

Society starts from a place where men are entitled to this power first and foremost and then decides whether something so egregious has occurred that the power should be stripped or eroded. As women are not equal to men, not really fully human, but rather a sexual commodity, our response is twofold: one, we develop a narrative that mitigates the male attempt to access the resource called sex. In this case, the narrative surrounding Justice Kavanaugh was "boys will be boys."[195] Biological determinism means men cannot control their desire for sex and therefore, they are entitled to it.[196] Thus, social determinism means that they should not be punished for it. Second, Justice Kavanaugh's reaction to being stripped of power to which he was entitled, turned him from a victim into a hero. The emotional outburst became emblematic of what a lot of men were feeling: the #MeToo movement had gone too far.[197]

It is no surprise that the #MeToo movement gained traction with a white, famous, wealthy woman, Rose McGowan, in 2017.[198] When, in fact, an African American social activist, Tarana Burke, coined the phrase "Me Too" back in 2006.[199] Centuries of sexual abuse in the workplace, be it the field,

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[191] *Id.*

[192] *Id.*

[193] Jill Abramson, *The Brett Kavanaugh Travesty Will Breed a Formidable Backlash*, GUARDIAN (Oct. 7, 2018), https://www.theguardian.com/commentisfree/2018/oct/07/thbrett-kavanaugh-travesty-formidable-backlash.

[194] *Id.*

[195] Megan Garber, *The Kavanaugh Allegation & the Logic of "Boys Will Be Boys,"* ATLANTIC (Sept. 17, 2018), https://www.theatlantic.com/entertainment/archive/2018/09/brett-kavanaugh-and-the-revealing-logic-of-boys-will-be-boys/570415/; Nsikan Akpan, *In Kavanaugh Debate, "Boys Will Be Boys" Is an Unscientific Excuse for Assault*, PBS (Sept. 20, 2018), https://www.pbs.org/newshour/science/why-boys-will-be-boys-is-an-unscientific-excuse-for-assault.

[196] *See* Amia Srinivasan, *Does Anyone Have the Right to Sex?*, 40 LONDON REV. OF BOOKS 1 (2018).

[197] Tim Marcin, *Men, Supported by Trump, Have Started to Respond to #MeToo by Claiming Their Own Victimhood*, NEWSWEEK (Oct. 14, 2018), https://www.newsweek.com/men-respond-metoo-movement-claiming-victimhood-trump-very-scary-comments-1168867.

[198] Halle Kiefer, *Rose McGowan Calls Out 'Faux Liberals,' 'Losers,' and 'Douchebags' of Hollywood Time's Up Movement*, NEW YORK: THE CUT (Oct. 8, 2018), https://www.thecut.com/2018/10/rose-mcgowan-calls-out-douchebags-losers-of-times-up.html.

[199] Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES (Oct. 20,

the Equal Employment Opportunity Commission office, the factory floor, the fast food restaurant, or the home, did not garner the sense of urgency that #MeToo did. Women of color had spoken up for centuries.[200] They suffer the double-jeopardy of dehumanization from both race and gender. They have reported sexual harassment claims, experienced domestic violence, and survived sexual assaults more so than any other group of women.[201] Yet, none of this mattered until men saw a threat—specifically an economic threat—and responded in a way that would not result in the elimination of their power.

Journalists investigated and broke the story about Harvey Weinstein.[202] Prior to this story, companies dealt with high profile harassers who were making money for the company by paying big settlements.[203] However, these media companies faced a different calculus once the news about Weinstein became public. They needed to gauge the economic hit that would be associated with an initial public outcry. While not necessarily a conspiratorial monopolistic approach, companies faced with these unrelenting exposés chose a "bad apple" approach. Rather than refer the matter to the criminal justice system or even litigate as a civil matter, these media companies chose to remove the "bad apple."[204] One can easily imagine the conference calls with the crisis managers in which the goal is to manage the optics—and the best optics are to just get rid of the "cad."[205]

2017), https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html.

[200] Allyson Hobbs, *Personal History: One Year of #MeToo: The Legacy of Black Women's Testimonies*, NEW YORKER (Oct. 10, 2018), https://www.newyorker.com/culture/personal-history/one-year-of-metoo-the-legacy-of-black-womens-testimonies; Charisee Jones, *When Will MeToo Become Wetoo? Some Say Voices of Black Women, Working Class Left Out*, USA TODAY (Oct. 5, 2018), https://www.usatoday.com/story/money/2018/10/05/metoo-movement-lacks-diversity-blacks-working-class-sexual-harassment/1443105002/.

[201] *Violence Against Women in the United States: Statistics*, NAT'L ORG FOR WOMEN, https://now.org/resource/violence-against-women-in-the-united-states-statistic/ (last visited Mar. 20, 2019); Susan Green, *Violence Against Black Women—Many Types, Far-reaching Effects*, INST. FOR WOMEN'S POL'Y RES. (July 13, 2017), https://iwpr.org/violence-black-women-many-types-far-reaching-effects/; *Women of Color Network Facts & Stats: Domestic Violence in Communities of Color*, WOMEN OF COLOR NETWORK (June 2006), https://www.doj.state.or.us/wp-content/uploads/2017/08/women_of_color_network_facts_domestic_violence_2006.pdf.

[202] Brent Lang, *How New York Times Reporters Broke Hollywood's Biggest Sexual Harassment Story*, VARIETY, https://variety.com/2017/biz/features/new-york-times-harvey-weinstein-report-megan-twohey-jodi-kantor-1202637948/ (last visited Mar. 20, 2019).

[203] *Id.*

[204] *The List: Celebrities Accused of Sexual Misconduct*, MORNING CALL (Sept. 25, 2018), https://www.mcall.com/entertainment/mc-harvey-weinstein-impact-list-of-men-accused-of-sexual-misconduct-20171129-story.html.

[205] Sarah Almukhtar, Michael Gold & Larry Buchanan, *After Weinstein: 71 Men Accused of Sexual Misconduct and Their Fall from Power*, N.Y. TIMES (Feb. 8, 2018), https://www.nytimes.com/interactive/2017/11/10/us/men-accused-sexual-misconduct-weinstein.html; Jill Disis, *The Media Men Who Have Been Accused of Sexual Misconduct*, CNN (Nov. 30, 2017),

There seemed to be an unspoken rule. Everyone knew that a lot of men had engaged in the same type of behavior, but someone had to take the fall for the good of manhood (and the company's bottom line). In actuality, it ended up being more than eliminating a bad apple. It was about getting rid of the symptom without interrogating the cause of the illness. The fact of the matter is that U.S. society has long had social structures in place to address sexually inappropriate actions. The judicial system is the most obvious. However, these social structures were designed to protect, not punish male aggression. They were designed to reinforce the narrative of the unreliable lesser than female.[206]

To allow these allegations their full due would mean to allow them to play out in social structures that were vulnerable to the prying eyes of investigative reporters. Certainly, shocking stories of college rape in which the aggressor was sentenced minimally had received some journalistic attention in the past.[207] However, this time, the stories were unrelenting. People were keeping track and making lists.[208] Advertisers were pulling out from the shows and companies where the accused worked.[209] Thus, economics dictated in almost all cases, removal first, and maybe an internal investigation later.[210]

As stated, the accusations kept coming and the media exposure was unrelenting. That is when the crisis managers and other men with significant power developed a new approach to respond to the #MeToo movement. They cast themselves as the victims and the accusers as the villains.[211] And some became outspoken and re-emerged to complain or commodify their victimhood.[212] An all-out moral panic developed following the classic model:

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https://money.cnn.com/2017/11/29/media/media-men-accused-of-sexual-misconduct/index.html.

[206] Jia Tolentino, *One Year of #MeToo: What Women's Speech Is Still Not Allowed to Do*, NEW YORKER (Oct. 10, 2018), https://www.newyorker.com/news/our-columnists/one-year-of-metoo-what-womens-speech-is-still-not-allowed-to-do.

[207] Claire Cohen, *Judge Who Gave Stanford Sex Attacker Brock Turner 6 Month Jail Sentence Is Recalled from the Bench*, TELEGRAPH (June 6, 2018), https://www.telegraph.co.uk/women/life/judge-gave-stanford-sex-attacker-brock-turner-6-month-jail-sentence/.

[208] Almukhtar, *supra* note 205.

[209] *Id.*

[210] *Id.*

[211] Marcin, *supra* note 197; Jack Tomaszewski, *Fact-checking the #MeToo Sexual Harassment Allegations. How Many of Them Are True and Fair?*, MEDIUM (Aug. 16, 2018), https://medium.com/@jtomaszewski/fact-checking-the-metoo-sexual-harassment-allegations-how-many-of-them-are-true-and-fair-e7d89a7f1452; Ephrat Livni, *There's a Problem at the Heart of #MeToo—Here's How to Solve It*, QUARTZ (Oct. 14, 2018), https://qz.com/1422215/metoo-backlash-will-2019-be-the-year-of-men/; Tolentino, *supra* note 206.

[212] Tolentino, *supra* note 206; Audrey Carlsen et al., *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*, N.Y. TIMES (Oct. 29, 2018), https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html.

(1) Women are dangerous; (2) Men's lives are being destroyed; (3) It could happen to your son![213] Notably, mothers were doing the heavy lifting behind this narrative.[214] In doing so, they reinforced the patriarchy.

To be sure, the #MeToo movement was hitting with a blunt instrument. The nature of the accusations seemed to have no influence on the outcome. The accusations all seemed to result in the same consequence—careers destroyed—regardless of the nature or nuance of the accusation.[215] But again, one must ask, who was in power making the choice to respond by removing the accused from the workplace? Such a reaction, as noted above, comes as no surprise.

Once the moral panic set in, and the villains and victims were recast, the people in power (mostly men) turned their gaze to the social structure under attack: the workplace. They reframed the problem as one in which men were at risk from unreliable, angry, emotional, vindictive women. (You can almost hear Durkheim saying, "I told you so.") Rather than interrogate the structural underpinnings that allow men to engage in such behavior toward women, because to do so would relegate power in the workplace to someone other than men, their solution focused on how to protect men while diminishing any gains women had made.[216] Companies have started to engage in gender segregation in the workplace[217]—not to protect women from the biologically driven, uncontrolled sexual urges of their male counterparts (which, as discussed, appears forgivable, if not permissible)—but rather to protect *men* from women who might accuse them of such acts. Such an approach reinforces the idea that men are entitled to a workplace in which they are free to act in ways that may make women uncomfortable or possibly fearful. It also serves to remind society that women are interlopers in the public sphere and need to be controlled. And finally, it reinforces the notion that women belong in the private sphere. It allows men to control women in the very way Durkheim advocated.

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[213] Emily Wax-Thibodeaux, *'Think of Your Sons': What Parents Can Do About Sexual Assault in the #MeToo Era*, WASH. POST (Oct. 5, 2018), https://www.washingtonpost.com/nation/2018/10/05/think-your-sons-what-parents-can-do-about-sexual-assault-metoo-era/?noredirect=on&utm_term=.aff62664ab5f; Aja Romano, *How a Mom's "This Is My Son" Anti-Feminist Brag Went Viral—And Completely Backfired*, VOX (Oct. 9, 2018), https://www.vox.com/2018/10/9/17955402/this-is-my-son-meme-himtoo-metoo-pieter-hanson; *But see*, Georgina Rannard, *Brett Kavanaugh Accusations: Are Young Men in America Scared?*, BCC (Oct. 4, 2018), https://www.bbc.com/news/world-us-canada-45738409.

[214] Wax-Thibodeaux, *supra* note 213.

[215] Kyle Smith, *A Male Backlash Against #MeToo Is Brewing*, N.Y. POST (Feb. 3, 2018), https://nypost.com/2018/02/03/a-male-backlash-against-metoo-is-brewing/.

[216] *See generally id.*

[217] *Id.*

Most discouraging, however, is the discourse used by women who critique the #MeToo movement. As noted above, without question, the accusations and consequences operate with little distinction—but did the accusers really decide the consequences their perpetrators faced? Of course, many accusers may have little regard for the consequences having experienced years of pent up rage, humiliation, and frustration, but it is unclear how involved the accusers were in the policy to hastily remove the accused. In some ways, the narrative may have escaped the accusers entirely. It could be the reason why the new organization #TimesUp was created to confront the structural challenges with workplace harassment.[218]

Katie Roiphe points out how any female criticism of the #MeToo movement creates a backlash against those females.[219] Yet, she focuses on the emotions of these accusers, asking whether people in that state should be formulating policy.[220] Such a trope reinforces the idea that women are emotional, and in turn, unreliable and lesser. After all, Justice Kavanaugh exhibited outrage that is difficult to compare to the emotions of the #MeToo accusers, yet not only did that make him a hero, it got him on the Court. By criticizing women who have been silenced for too long for the manner in which they choose to express their narratives around this issue, Roiphe and others who do have compelling points, only serve to reify the patriarchy.[221]

V. CONCLUSION

Perhaps a more constructive approach is to contemplate why women are not given a greater sense of agency in the sexuality/resource transaction. Roiphe and others, such as Caitlin Flanagan, wonder if the women of today's modern #MeToo movement of zero tolerance are weak and voiceless.[222] The question is how does zero tolerance get expressed? Some point to a generational divide in which female Babyboomers and GenXers knew that they were responsible for protecting themselves against male aggression.[223]

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[218] TIME'S UP, https://www.timesupnow.com/about_times_up (last visited Feb. 16, 2019).

[219] Katie Roiphe, *The Other Whisper Network: How Twitter Feminism Is Bad for Women*, HARPER'S (Mar. 2018), https://harpers.org/archive/2018/03/the-other-whisper-network-2/.

[220] *Id.*

[221] *Id.* Roiphe, ironically, complains about being shouted down by feminists while at the same time questioning the way the movement has conducted itself and reacted to criticism.

[222] Caitlin Flanagan, *The Humiliation of Aziz Ansari: Allegations Against the Comedian Are Proof that Women Are Angry, Temporarily Powerful—And Very, Very Dangerous*, ATLANTIC (Jan. 14, 2018), https://www.theatlantic.com/entertainment/archive/2018/01/the-humiliation-of-aziz-ansari/550541/.

[223] Sheila Weller, *#MeToo's Generational Divide*, TIME (Mar. 12, 2018), http://time.com/5195952/metoo-generational-divide/.

However, other research shows no such divide exists.[224] Women need to be humanized. And part of that humanization means voicing what is and is not acceptable behavior loudly and often both individually in micro-level interactions with men, and at a macro level, as a society developing a policy that shifts the culture around workplace harassment and equality of women. It will not occur with gender-based segregation or silence or infighting. Women are not homogenous, and therefore, dissent must be expressed and acknowledged.

[224] Anna North, *The #MeToo Generation Gap Is a Myth*, VOX (Mar. 20, 2018), https://www.vox.com/2018/3/20/17115620/me-too-sexual-harassment-sex-abuse-poll.