

MIRROR, MIRROR ON THE WALL: DISNEY PRINCESSES' REFLECTIONS OF EQUAL PROTECTION

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Constitutional doctrine and public opinion often move in tandem, particularly in the area of equal protection decisions. The Supreme Court tends to use the clause to invalidate unreasonable or oppressive discrimination, where what is unreasonable or oppressive is determined not by the values of 1868 but by those of contemporary America. This Article offers a microstudy in applied constitutional theory by juxtaposing the development of the Supreme Court's sex discrimination jurisprudence and the evolution of Disney Princesses. The analysis expands beyond confirming that prevailing cultural norms inform Supreme Court decisions; it also offers insight into the limitations of constitutional sex equality doctrine and possible paths forward outside the Court.

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I. INTRODUCTION

“I’m not a princess. I am the daughter of the chief.”¹ Disney heroine Moana resents being called a princess, instead preferring the title “daughter of the chief.”² What is the difference? There is no way Moana could know, but her audience does: the title “princess,” particularly in the line of Disney movies of which *Moana* is the latest, carries with it a set of gendered roles and expectations.³ “Princess” can be defined in different ways—Moana’s companion, the trickster demigod Maui, responds that “[if] you wear a dress and have an animal sidekick, you’re a princess.”⁴ But the role may still constrain.

1. MOANA (Walt Disney Pictures 2016).

2. *Id.*

3. In this Article, we use the concepts of sex and gender in the way common in psychological literature. Sex refers to biological categories of male and female. Gender refers to culturally constructed categories of masculine and feminine. See, e.g., Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1, 2 (1995) (“gender [is] to sex what masculine and feminine are to male and female”). The distinction between the two, and the concepts themselves, have been criticized on various grounds. See generally JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990). We do not intend to enter the debate about the coherence of the distinction or concepts; we suggest only that they offer a useful way to trace the development of social attitudes as reflected in Supreme Court decisions and Disney movies.

What it means to be a princess has been explored extensively in both academic and popular literature. See, e.g., Dawn England et al., *Gender Role Portrayal and the Disney Princesses*, 64 SEX ROLES 555 (2011); PEGGY ORENSTEIN, *CINDERELLA ATE MY DAUGHTER: DISPATCHES FROM THE FRONT LINES OF THE NEW GIRLIE-GIRL CULTURE* (2011) (exploring how Disney princesses have fostered the premature sexualization of young women). The most explicit discussion in the movies comes in *Ralph Breaks the Internet*. RALPH BREAKS THE INTERNET (Walt Disney Pictures 2018).

4. MOANA, *supra* note 1; see Kristen Page-Kirby, *‘Moana’ Has Something Insightful to Say About the Whole ‘Disney Princess’ Thing*, WASH. POST (Nov. 23, 2016), <https://www.washingtonpost.com/express/wp/2016/11/23/moana-has-something-insightful-to-say-about-the-whole-disney-princess-thing/> (“That is, in fact, the most accurate description of Disney princesses ever written. For Disney,

Maui goes on to say, as if it follows logically, “you are not a wayfinder. You will never be a wayfinder.”⁵ Being a princess means not being other things. In contrast to wayfinders, who know where they are on the ocean by observation alone, princesses are told their place.

Moana does become a wayfinder, something that would have been unimaginable for the early Disney princesses.⁶ The basic concept of the princess—the girl at the center of the movie—has not changed, but the traits and roles expected of a female protagonist have.⁷ Attitudes toward and characterizations of fictional female characters “demonstrate women’s perceived importance and purpose in society at specific periods of time.”⁸ The princesses are “mirrors that reflect our culture’s shifting values,” and the evolution of their respective characters and storylines is dramatic.⁹ Specifically, the feminist evolution of Disney princesses demonstrates society’s changing views on what women can and should be.

A similar evolution has occurred in the Supreme Court’s sex discrimination jurisprudence, where pronouncements about the nature and destiny of women have likewise shifted over time. The parallels should not be surprising—it is a commonplace among law professors that Supreme Court decisions are affected by their historical and cultural context.¹⁰ Successful social movements “reshape constitutional common sense,” shifting the boundaries of what is constitutionally plausible and implausible.¹¹ This is particularly true of decisions under the Equal Protection Clause, where movements for equality based on race, sex, and sexual orientation have all pressed their case through the language of the Constitution and won recognition in Supreme Court decisions.¹²

Though some theories of constitutional interpretation struggle to explain the progress of the Supreme Court’s equal protection jurisprudence,¹³ the model this Article employs does so relatively

‘princess’ has just been shorthand for ‘girl at center of movie’ . . .”). Interestingly, Maui’s definition does not actually require that a princess be a girl.

5. MOANA, *supra* note 1.

6. *See generally id.*

7. Melinda Parks, *How Fourth-Wave Feminism Is Changing Disney Princesses*, Highbrow Mag. (Oct. 23, 2014, 1:10 PM), <https://www.highbrowmagazine.com/4388-how-fourth-wave-feminism-changing-disney-s-princesses>.

8. *Id.*

9. *Id.*

10. Jack M. Balkin, *How Social Movements Change (or Fail to Change) the Constitution: The Case of the New Departure*, 39 SUFFOLK U. L. REV. 27, 28 (2005).

11. *Id.*

12. *See* Jack M. Balkin, *Framework Originalism and the Living Constitution*, 103 NW. U. L. REV. 549, 574, 582, 593 (2009); A.C.L.U., *The Supreme Court and the 14th Amendment* (last visited Apr. 27, 2021), <https://www.aclu.org/issues/racial-justice/supreme-court-and-14th-amendment>.

13. Originalism, for instance, has notoriously struggled to explain *Brown v. Board of Education* and avoid endorsing *Dred Scott v. Sandford*. *See, e.g.*, John

easily. It takes the Equal Protection Clause to embody a consistent meaning: a ban on unjustified discrimination.¹⁴ The applications of this meaning change over time; when the Supreme Court is called upon to decide whether a given form of discrimination is justified or not, it will use contemporary standards, not those of 1868. That is not the only possible interpretation of the clause. The Supreme Court could also try to decide whether practices would have been thought justified in 1868. But this model of fixed meaning and changing application, we have suggested, is consistent with the original understanding and allows the clause to perform the function for which it was designed.

If this model of fixed meaning and changed application of the Equal Protection Clause is correct, the Supreme Court's equal protection jurisprudence should track some sort of cultural consensus about the appropriate treatment of particular groups—most notably racial minorities, women, and gays and lesbians, who have all made constitutional arguments backed by social movements.¹⁵ Cultural consensus can be measured in many ways, and different metrics might be more or less appropriate for different groups. Unsurprisingly, the effects of the feminist movements on Equal Protection Clause decisions have been studied at length.¹⁶ This Article focuses on sex and gender equality: it takes Disney princesses as a window into society's views about women.¹⁷ This is not frivolous.

T. Valauri, *As Time Goes By: Hermeneutics and Originalism*, 10 NEV. L.J. 719, 723 (2010) (“Originalism is embarrassed by reprehensible decisions with originalist elements, such as the *Dred Scott* case, while it implausibly proffers originalist justifications for universally accepted decisions, such as *Brown v. Board of Education*.”) (citing Robert A. Burt, *What Was Wrong with Dred Scott, What's Right About Brown*, 42 WASH. & LEE L. REV. 1 (1985)).

14. Early Supreme Court decisions interpreting the Equal Protection Clause frequently note that it bans not all discrimination, but only “invidious” discrimination. See generally Kermit Roosevelt III, *Constitutional Calcification: How the Law Becomes What the Court Does*, 91 VA. L. REV. 1649, 1676–77 (2005).

15. See Balkin, *supra* note 12, at 555.

16. See generally Balkin, *supra* note 10; William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062 (2002) (arguing that the twentieth century's shift toward constitutional protection of individual rights was driven by identity-based social movements); Reva B. Siegel, *Text in Contest: Gender and the Constitution from a Social Movement Perspective*, 150 U. PA. L. REV. 297 (2001) (drawing on the Equal Rights Act and the Nineteenth Amendment to demonstrate the use of textualism).

17. This Article focuses on the twelve princesses who are included in the official Disney Princess brand, as well as three princesses who are expected to join the brand in the upcoming years. See DISNEY PRINCESS, <https://princess.disney.com/> (last visited Apr. 7, 2021) (listing the twelve princesses who are currently included in the brand); Tricia Ennis, *No Prince Required: Moana and the Evolution of the Disney Princess*, SYFY WIRE (Feb. 8, 2017, 1:06 PM), <https://www.syfy.com/syfywire/no-prince-required-moana-and->

The princesses not only embody a view of what their creators think will appeal to audiences, they also have the power to shape culture. Snow White, the first Disney Princess movie, briefly held the record as the top-grossing sound picture.¹⁸ Today, “princess culture” is inescapable.¹⁹ *Frozen*, released in 2013, earned \$1.28 billion worldwide; became the all-time, best-selling Blu-ray disc; and subjected parents everywhere to endless repetitions of “Let It Go.”²⁰ For better or worse, the princesses are a powerful voice telling young children what it means to be female.

Analysis of the princesses does in fact pay off in important ways. It shows us powerful connections between law and popular culture—connections that persist over time, but stand out most strikingly in the late 1990s, as America grappled with the question of women in the military.²¹ It offers insight into the dilemmas of sex equality—both a vision of what progress might look like and a reminder of how incomplete it is.²² Finally, these insights suggest that without cultural change, sex discrimination, more than other types of discrimination, may present a situation in which legal remedies will inevitably fall short of equality. When it comes to sex equality, the princesses may in fact have more to offer than the Justices.

The case law and movies analyzed in this Article are divided into three eras: Classic, Renaissance, and Modern. First, the Classic Era spanned from 1937 to 1967.²³ Second, the Renaissance Era lasted

evolution-disney-princess (noting that Anna and Elsa are expected to join the brand). It also discusses princess-adjacent characters like Vanelllope von Schweetz from *Wreck-It Ralph* and a few live-action movies.

18. NEAL GABLER, *WALT DISNEY: THE TRIUMPH OF THE AMERICAN IMAGINATION* 277 (2007).

19. See William Cummings, *The ‘Princess Industrial Complex’ is Inescapable—Is That Bad for Girls?*, USA TODAY (Mar. 29, 2017, 12:38 AM), <https://www.usatoday.com/story/news/nation/2017/03/21/disney-princess-culture-effects/99247108/> (nothing that analyses of princess culture include differing views on its consequences for girls). Compare ORENSTEIN, *supra* note 3 (arguing that princess culture contributes to objectification and gender-role stereotyping), with JERRAMY FINE, *IN DEFENSE OF THE PRINCESS: HOW PLASTIC TIARAS AND FAIRYTALE DREAMS CAN INSPIRE SMART, STRONG WOMEN* (2016) (arguing that Disney movies can empower women).

20. *All-Time Best-Selling Blu-Ray Titles in the United States*, NUMBERS, <https://www.the-numbers.com/alltime-bluray-sales-chart> (last visited Apr. 27, 2021); *Frozen*, BOX OFFICE MOJO, https://www.boxofficemojo.com/title/tt2294629/?ref=bo_rl_ti (last visited Apr. 27, 2021) (displaying *Frozen*’s global box office numbers).

21. See *infra* Subpart III.C (discussing *Mulan* and Virginia Military Institute (“VMF”).

22. See *infra* Parts IV (discussing *Moana*) and V (noting that Disney princesses never have to deal with childcare).

23. This time period is typically broken up into the Golden Age, the Wartime Era, and the Silver Age, in order to highlight the absence of full-length movies during World War II. Amani Jones, *Disney Animation Has Gone Through 9*

from 1968 to 1999.²⁴ Finally, the Modern Era covers the twenty-first century, from 2000 to today.²⁵

During the Classic Era, women were subordinated as the inferior sex.²⁶ The princesses from the era—Snow White, Cinderella, and Aurora—reflect this characterization through their portrayal as weak women and bland characters who dream only of being saved by handsome princes.²⁷ Similarly, in the Classic Era's earliest cases, the Supreme Court refused to apply the Equal Protection Clause to protect women's rights, relying on the argument that women belonged in the home and needed special protection when they sought to leave it.²⁸

The second wave of feminism changed cultural views of women. The Classic Era model of the purely feminine princess was no longer tenable.²⁹ The Renaissance Era princesses—Ariel, Belle, Jasmine, Pocahontas, and Mulan—have some more masculine attributes.³⁰ They seek adventure and take active roles in their movies, providing stronger female role models and recognizing that women defy some former stereotypes.³¹ However, traditional notions of femininity remained during this era.³² The princesses still exist within patriarchal societies. Some are portrayed as feminine caretakers, others require princes to save them, and most are ultimately destined to marry princes.³³ In the legal field, from the 1970s to the 1990s, a series of Supreme Court decisions subjected sex-based classifications

Phases, and I'm Here for ALL of Them, ODYSSEY ONLINE (Aug. 3, 2020), <https://www.theodysseyonline.com/nine-eras-disney-animation>. Because no princess movies were released during the Wartime Era, and the Silver Age movies are remarkably similar to the Golden Age movies, these eras are collapsed here. Additionally, although the final princess movie of this era was released in 1959, the era typically includes all movies for which Walt Disney was involved in the production, prior to his death in 1966. *Id.*

24. This time period is typically divided into the Dark Age, from 1968 to 1989, and the Renaissance Era afterwards. *Id.* However, no princess movies were released during the Dark Age, and the feminist progress during the Dark Age aligns well with the Disney princesses of the 1990s. Therefore, they are combined here.

25. This time period is typically divided into the Post-Renaissance Era, from 2000 to 2009, and then 2010 to present. *Id.* They are considered one era here.

26. *See infra* Part II.

27. *See* SNOW WHITE AND THE SEVEN DWARFS (Walt Disney Pictures 1937); CINDERELLA (Walt Disney Pictures 1950); SLEEPING BEAUTY (Walt Disney Pictures 1959).

28. *See infra* Subpart II.A.

29. *See infra* Part III.

30. *See* THE LITTLE MERMAID (Walt Disney Pictures 1989); BEAUTY AND THE BEAST (Walt Disney Pictures 1991); ALADDIN (Walt Disney Pictures 1992); POCAHONTAS (Walt Disney Pictures 1995); MULAN (Walt Disney Pictures 1998).

31. *See supra* note 30.

32. *See infra* Subpart III.B.

33. *See infra* Subpart III.B.

to intermediate scrutiny.³⁴ Statutes that imposed sex-based distinctions based on stereotyped notions of women's role in society were struck down.³⁵ However, statutes that were based on biological differences or were facially neutral but had a disparate impact withstood this heightened review.³⁶ Laws that rewarded stereotypically male traits or activities were accepted.³⁷ The understanding of equality found in both the films and the Supreme Court's decisions is best described as granting women the opportunity to engage in masculine activities. Neither the Court nor the princesses questioned the existence of a gender-based hierarchy that privileged the masculine over the feminine.

The Modern Era brought a deeper understanding of women's equality. These princesses—Tiana, Rapunzel, Merida, Anna, Elsa, and Moana—are all strong and independent women with life goals and aspirations beyond gender stereotypes.³⁸ The princess-prince relationship becomes much less important to the stories, and the princesses become less gendered characters.³⁹ Some of the most recent movies suggest the possibility of the princess as a nongendered character who moves beyond the standard gender-based hierarchy or even inverts it.⁴⁰ At the same time, however, they show crucial aspects of discrimination that remain powerful obstacles to sex equality.⁴¹ This Article argues that these obstacles, and more generally the nature of sex discrimination, mean that neither the generally negative rights of the Constitution nor the positive rights of antidiscrimination statutes can produce full equality. What is required is a transformation of culture—and it is cultural artifacts like the Disney princesses that can achieve it.

34. *See infra* Subpart III.A.

35. *See infra* Subpart III.A.

36. *See infra* Subpart III.A.

37. *See infra* Subpart III.A.

38. *See* THE PRINCESS AND THE FROG (Walt Disney Pictures 2009); TANGLED (Walt Disney Pictures 2010); BRAVE (Walt Disney Pictures & Pixar Animation Studios 2012); FROZEN (Walt Disney Pictures 2013); MOANA, *supra* note 1.

39. *See supra* note 38.

40. *See infra* Part IV.

41. *See infra* Part IV.

II. THE CLASSIC ERA (1937–1967)⁴²A. *Cases: The Jurisprudence of Subordination*

The princess movies did not start until *Snow White*, in 1937.⁴³ Sex discrimination cases begin substantially earlier, and a convenient starting point for the Supreme Court's approach is found in Justice Bradley's concurring opinion in *Bradwell v. Illinois*.⁴⁴ There, Myra Bradwell challenged an Illinois law that excluded women from the practice of law.⁴⁵ The Court rejected her claim, without even a discussion of the Equal Protection Clause.⁴⁶ And Justice Bradley, in language that has become infamous, added:

The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.⁴⁷

Justice Bradley's concurrence is the antifeminist urtext, containing three essential principles against which we can measure the Supreme Court's jurisprudence and the evolution of the princesses. First, Bradley wrote, women are different from men. They possess feminine traits, notably a "natural and proper timidity and delicacy."⁴⁸ Second, this difference renders them incapable of performing masculine roles: it "unfits [them] for many of the occupations of civil life."⁴⁹ And last, the inability to operate like men in the public sphere indicates women's proper place: their "paramount destiny and mission . . . are to fulfill the noble and benign offices of wife and mother."⁵⁰

42. Some of the case law cited predates the founding of Disney and, therefore, the Classic Era. These cases are included in this Part because they reflect the same notions of femininity—namely, that women are weak and are destined to be homemakers—that permeated throughout this era.

43. *SNOW WHITE AND THE SEVEN DWARFS*, *supra* note 27.

44. 83 U.S. 130 (1872).

45. *Id.* at 131–33.

46. *Id.* at 137–39.

47. *Id.* at 141 (Bradley, J., concurring).

48. *Id.*

49. *Id.*

50. *Id.*

Early feminists, such as Elizabeth Cady Stanton, disagreed.⁵¹ In 1848, Stanton, Lucretia Mott, and others organized the Seneca Falls Convention, ushering in the era of activism often referred to as the first wave of feminism.⁵² First wave feminism focused on the right to vote, and in 1920, suffragists succeeded in obtaining ratification of the Nineteenth Amendment.⁵³ But winning the right to vote did not signify a social acceptance of broader equality. Through the Classic Era, the Supreme Court continued to uphold laws that explicitly discriminated against women based on purported differences between the sexes and support for traditional gender roles. According to the “separate spheres” or “breadwinner-homemaker” dichotomy of gender roles, it was the role of the weaker female sex to stay at home and tend to domestic activities, while men worked to financially support the family.⁵⁴ The Supreme Court accepted a variety of discriminatory laws, so long as the statutes at issue were not “purely arbitrary, oppressive or capricious.”⁵⁵ Statutes limiting women’s participation in male activities were seen as protective and justified.⁵⁶

Two main concerns of such laws were women’s bodies and fertility.⁵⁷ The statutes upheld in *Muller v. Oregon*,⁵⁸ *Miller v. Wilson*,⁵⁹ and *Bosley v. McLaughlin*⁶⁰ restricted the number of hours women could work on the justification that “women’s physical structure . . . justif[ies] special legislation restricting or qualifying the conditions under which she should be permitted to toil.”⁶¹ That is, women were naturally physically weaker than men, making working long hours injurious to their health.⁶² Additionally, women had the “burdens of motherhood,” which weakened them further.⁶³ The Supreme Court asserted that overwork is, therefore, a risk not only to women’s health, but also to the human race at large, “as healthy

51. Cynthia Noland Dunbar, *True Feminism: Identifying the Real Threats to Women*, 20 WM. & MARY J. WOMEN & L. 25, 27 (2013).

52. *Id.*

53. U.S. CONST. amend. XIX; Dunbar, *supra* note 51, at 27.

54. Ruth Bader Ginsburg & Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970s*, 1989 U. CHI. LEGAL F. 9, 14 (1989).

55. *Radice v. New York*, 264 U.S. 292, 296 (1924). *See also* Roosevelt III, *supra* note 14, at 1700 (“[T]he Court repeatedly asserted that the operative proposition behind the Equal Protection Clause was essentially a prohibition on invidious discrimination or a requirement that the government have a legitimate reason for differential treatment.”).

56. Eskridge, Jr., *supra* note 16, at 2115 (“[P]aternalistic politics of protection was highly successful, albeit ambiguously feminist.”).

57. *See infra* notes 58–65.

58. 208 U.S. 412 (1908).

59. 236 U.S. 373 (1915).

60. 236 U.S. 385 (1915).

61. *Muller*, 208 U.S. at 420.

62. *Id.* at 421.

63. *Id.*

mothers are essential to vigorous offspring.”⁶⁴ Therefore, “the physical well-being of woman becomes an object of public interest” and “in order to preserve the strength and vigor of the race,” the legislature was justified in restricting women’s work in a way that it did not—and legally could not—restrict men’s work.⁶⁵

Other laws purported to protect women from physical problems associated with their work hours.⁶⁶ Both *Hawley v. Walker*⁶⁷ and *Radice v. People of State of New York*⁶⁸ upheld statutes that restricted when women could work.⁶⁹ The law in *Radice* prohibited women from working overnight shifts because “night work is substantially and especially detrimental to the health of women.”⁷⁰ The Supreme Court’s discussion hits all of Justice Bradley’s notes: women are “more delicate organism[s]” and are unable to work at night without harm to “their peculiar and natural functions” of reproduction.⁷¹

The physical demands of labor were not the only threat from which legislatures thought women needed protection. In *West Coast Hotel v. Parrish*,⁷² the Supreme Court upheld a minimum wage for women, noting that “their bargaining power is relatively weak” and “they are the ready victims” of greedy businessmen.⁷³ Echoing the *Muller* Court’s concern for the vitality of the race, *West Coast Hotel* states that nothing “can be closer to the public interest than the health of women,” making their wages an appropriate subject for regulation.⁷⁴

64. *Id.*

65. *Id.* By contrast, the Court held that such restrictions on men’s employment violated men’s due process rights because they unduly interfered with men’s right to contract. *Lochner v. New York*, 198 U.S. 45 (1905). Businesses could be subjected to greater regulation if they were “affected with a public interest.” *Nebbia v. New York*, 291 U.S. 502, 514 (1924) (describing “affected with a public interest” as meaning “of public consequence, and affect[ing] the community at large”) (internal quotation omitted). One way of describing the *Muller* line of cases is as suggesting that, because of their reproductive capacity, women’s bodies are affected with a public interest. Just as it can set a price floor for milk to stabilize the market for a vital nutrient, the government can regulate women to protect “the vigor of the race.” This is of course in line with Justice Bradley’s suggestion that women’s mission and destiny are to serve as wives and mothers.

66. *See infra* notes 67–71 and accompanying text.

67. 232 U.S. 718 (1914).

68. 264 U.S. 292 (1924).

69. *Hawley*, 232 U.S. at 718; *Radice*, 264 U.S. at 294.

70. *Radice*, 264 U.S. at 294.

71. *Id.*

72. 300 U.S. 379 (1937).

73. *Id.* at 398.

74. *Id.*

Laws also guarded women from work that threatened their morals.⁷⁵ In *Goesaert v. Cleary*,⁷⁶ the Supreme Court upheld a state statute that prohibited women from working as bartenders unless they were the wife or daughter of the male bar owner.⁷⁷ The Court recognized that bartending by women may “give rise to moral and social problems,” so the legislature was within its protective authority to pass the statute.⁷⁸ The Court did not scrutinize the state’s belief that male bar ownership prohibited such problems; instead, it explained that, because the state could prohibit all women from bartending, it could prohibit only some women from bartending, so long as the state believed there was some justification for distinguishing between groups of women.⁷⁹

As the Supreme Court would later recognize, the purportedly paternalistic legislation of the Classic Era was not necessarily as benign or pro-woman as the Court’s discussion suggested.⁸⁰ What, after all, is the effect of limiting the hours or times of day women may work or of prescribing a minimum wage for them but not for men? (Further, what is the effect of requiring employers to set a lunch break during which women were not permitted to work, like the statute at issue in *Riley v. Commonwealth of Massachusetts*?)⁸¹ According to the Court, all of these restrictions were designed to protect women.⁸² And if they are competing only against other women for jobs, that may be true. (There is still, of course, something troubling about protecting women for the sake of their reproductive capacity, but let that pass for the moment.) But if the industry is one in which men work, the effect is to make women less attractive employees: they must be paid more and cannot work the same hours. Rather than *reflecting* real differences between the sexes, these laws *created* them. (This is strikingly true in *Bradwell* itself, where the primary justification put forward for the exclusion of women from the practice of law was a difference between the sexes that was purely a creation of state law: because she was a married woman, Myra Bradwell would not be capable of forming contracts with clients.)⁸³ The effect was to restrict women to activities coded as feminine and to exclude them from areas in which they might compete with men.

The common thread through the Court’s decisions is a belief that women belong in the domestic sphere, are not suited to masculine activities, and are important to society primarily by virtue of their

75. See *infra* text accompanying notes 76–79.

76. 335 U.S. 464 (1948).

77. *Id.* at 465.

78. *Id.* at 466.

79. *Id.*

80. See discussion *infra* Subparts III.A and IV.A.

81. 232 U.S. 671, 679 (1914).

82. See *supra* Part II.

83. *Bradwell v. State*, 83 U.S. 130, 139 (1873).

reproductive capacity—the three components of Bradley’s concurrence.⁸⁴ The princess movies of the Classic Era vividly illustrate all three elements.

B. Movies: Waiting for the Prince

Each of Disney’s first three full-length princess feature films—*Snow White and the Seven Dwarves* (1937),⁸⁵ *Cinderella* (1950),⁸⁶ and *Sleeping Beauty* (1959)⁸⁷—adheres to the same formula: a helpless, beautiful woman is the victim of circumstance until she is rescued by a brave, handsome prince.⁸⁸ For precisely that reason, they have been

84. *Id.* at 141–42 (Bradley, J., concurring).

85. *Snow White and the Seven Dwarfs* tells the story of a princess forced to run away after her evil stepmother attempts to have her murdered because of her superior beauty. She stumbles upon a cabin of dwarves and lives with them as their housemaid, dreaming of a prince saving her, until the stepmother prevails in her quest to defeat Snow White. Snow White falls into a deep sleep, only able to be woken by true love’s kiss. Luckily for Snow White, her beauty and singing abilities have previously attracted the attention of a handsome prince, who finds her glass coffin in the woods—she was too beautiful to be buried—and saves her. The two, naturally, live happily ever after. SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27.

86. In *Cinderella*, the title princess is forced by her evil stepmother, who is jealous of Cinderella’s beauty, to be a maid in her own home. Cinderella dreams of falling in love, and with the help of a fairy godmother, she sneaks into the kingdom’s ball, where the prince falls in love with her and her beauty. She must leave before the spell breaks at midnight; however, in her rush, she leaves the prince and her glass slipper behind. Enamored by her beauty, the prince searches the kingdom until he finds the woman whose foot fits the slipper. When Cinderella proves she was the mystery woman, the prince marries her, and Cinderella is saved from her life of housekeeping. CINDERELLA, *supra* note 27.

87. *Sleeping Beauty* stars Princess Aurora, who, at birth, is promised to marry a Prince Phillip. This arrangement is temporarily derailed, however, when the evil Maleficent—acting out of bitterness because she was not invited to the Princess’s christening—cursed the baby to fall into a deep sleep, to be awoken only by true love’s kiss, if she pricks her finger on a spinning wheel before she turns sixteen. Princess Aurora spends the next sixteen years in hiding under the protection of three fairies. The day before her sixteenth birthday, she is in the woods picking berries when she falls in love with a man who is attracted to her by her singing voice and beauty. However, Aurora must instead return to the castle, where Maleficent entrances her into pricking her finger and falling asleep. Luckily for Aurora, the man from the forest is the prince she is promised to marry, and he defeats Maleficent and awakens the princess with his kiss. SLEEPING BEAUTY, *supra* note 27.

88. See Parks, *supra* note 7 (recognizing that these three movies “share the same basic plot formula: a beautiful woman suffers because of circumstances out of her control and ultimately finds salvation in the love of a powerful man”); Ennis, *supra* note 17 (noting that the princesses spend the films “pining after” princes as “victims of circumstance” until they are saved); Megan Batt, *How the Disney Princess Movies Went from Fairy Tales to Feminism*, STUDY BREAKS (Apr. 25, 2018), <https://studybreaks.com/tvfilm/disney-princess-movies/> (“A helpless

highly criticized from a feminist perspective.⁸⁹ What they show us, though, is simply the same set of social attitudes on display in Classic Era Supreme Court decisions.⁹⁰

1. *Natural Timidity and Delicacy: Femininity as Weakness*

The movies of this era portray Snow White, Cinderella, and Aurora as submissive and weak women.⁹¹ The skills they display are domestic; the roles they can comfortably inhabit are limited to caretaker and love interest. Their personalities can be best described as “bland.”⁹² They are always polite and kind,⁹³ and they are obedient and submissive to superiors.⁹⁴ They are innocent young girls who are quite naïve when confronted with conflict.⁹⁵ (Feminist critics have called them “spineless.”⁹⁶) The princesses are also portrayed as emotional; each has a dramatic breakdown during which she collapses crying.⁹⁷ Empirical research studying the behavior of the princesses has concluded that these women exhibit 86 percent feminine behaviors, such as acting affectionate and fearful, and only

girl meets a handsome prince; the guy falls in love with girl because she’s pretty; the guy rescues the girl and they live happily ever after.”).

89. See Ennis, *supra* note 17 (noting the movies have “come under intense scrutiny from feminist critics”); Beatriz Serrano, *Here Are All Your Favorite Disney Princesses, Ranked from Least to Most Feminist*, BUZZFEED (Mar. 18, 2017), <https://www.buzzfeed.com/beatrizserranomolina/all-your-favorite-disney-princesses-ranked-from-least> (ranking Snow White, Cinderella, and Aurora as Disney’s least feminist princesses).

90. See Ennis, *supra* note 17 (“These early films suffered largely from the time in which they were created . . .”); Parks, *supra* note 7 (“Disney’s first three princess [] movies reflected a culture in which women had received political rights but still lacked the social equality and sexual autonomy that would come years later.”); Erich Schwartzel, *Beauty and the Backlash: Disney’s Modern Princess Problem*, WALL ST. J. (Nov. 17, 2018, 12:00 AM), <https://www.wsj.com/articles/beauty-and-the-backlash-disneys-modern-princess-problem-1542430801> (“The franchise, especially its older films, has been criticized for promoting outdated notions of femininity and damsel-in-distress narratives in which only a man can save the day.”).

91. SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; CINDERELLA, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

92. Joe Manduke, *Feminism and the Disney Princesses*, ARTIFICE (July 13, 2015), <https://the-artifice.com/feminism-disney-princesses/>.

93. AMY M. DAVIS, GOOD GIRLS AND WICKED WITCHES: WOMEN IN DISNEY’S FEATURE ANIMATION 101 (2007); Parks, *supra* note 7.

94. Parks, *supra* note 7.

95. See DAVIS, *supra* note 93, at 101–02.

96. Serrano, *supra* note 89.

97. Snow White cries in the woods when she runs away from home; Cinderella cries when she believes she will not be able to attend the ball; Aurora cries when she is told she cannot marry the man she met in the woods. SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; CINDERELLA, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

14 percent masculine behaviors, such as assertiveness.⁹⁸ Together, these personality traits represent the “characteristics of a traditionally feminine woman.”⁹⁹

Beyond their “one-dimensional” personalities lie the princesses’ greatest attributes: their beauty and domesticity.¹⁰⁰ Each princess is revered for her looks.¹⁰¹ Empirical studies have shown that, throughout the movies, each princess receives substantially more compliments on her looks than on her skills.¹⁰² Further, reflecting the role of women at the time, compliments on skill were often about each princess’s housekeeping skills.¹⁰³ For two of the princesses, Snow White and Cinderella, completing housework is an identifying aspect of their lives. As soon as Snow White enters the dwarfs’ cottage, she begins to clean, and she asks to live with the dwarfs in exchange for keeping house for them.¹⁰⁴ Cinderella’s entire life is spent cleaning, laundering, and cooking.¹⁰⁵ She does not leave the

98. England et al., *supra* note 3, at 558–59, 562. The study defined “masculine” and “feminine” behaviors based on traditional stereotypes reported in psychology literature. *Id.* at 558. Interestingly, when these princesses do exhibit assertiveness, it is towards children and animals, not adults. *Id.* at 560. Given this breakdown, then, it is not surprising that Walt Disney himself believed that women and men had significantly different attributes, with women featuring more emotional, domestic, and maternal characteristics. DAVIS, *supra* note 93, at 115–16. However, Disney did not believe women were naturally inferior to men for this reason; instead, he believed women’s and men’s strengths counterbalanced each other. *Id.* at 116.

99. Parks, *supra* note 7.

100. *Id.*

101. Manduke, *supra* note 92. In fact, for two of these princesses, their beauty is the cause of their conflict. Namely, Snow White’s evil stepmother demands she be killed because her magic mirror identified Snow White as “the fairest of them all,” and Cinderella is forced to live a life of servitude because her stepmother is jealous that her daughters are less beautiful than Cinderella. SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; CINDERELLA, *supra* note 27.

102. Snow White receives 83 percent of her compliments on her looks and no compliments on her skill. Cinderella receives 36 percent of her compliments on her looks and 18 percent on her skill. Aurora receives 58 percent of her compliments on her looks and 8 percent on her skill. Snow White received by far the highest percentage of compliments based on looks of all the princesses, and she and Aurora are two of only three princesses who receive more than half of their compliments on their looks. Kelsey Nowakowski, *For Princesses, the Question Remains: Who’s the Fairest?*, NAT’L GEOGRAPHIC MAG. (Jan. 2017), <https://www.nationalgeographic.com/magazine/2017/01/explore-disney-princess-ability-versus-beauty/>; Schwartzel, *supra* note 90.

103. See Ginsburg & Flagg, *supra* note 54, at 14 (discussing the “breadwinner-homemaker dichotomy” prevalent in the 1940s).

104. SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27. Notably, *Snow White* was released in 1939, before World War II necessitated women’s introduction into the labor force. Ennis, *supra* note 17.

105. CINDERELLA, *supra* note 27.

house except for chores, and her only friends, mice, help her complete her tasks.¹⁰⁶

The role of women in the home is cemented in dialogue throughout the movies as well.¹⁰⁷ In *Cinderella*, when the mice prepare Cinderella a dress for the ball, the male mice struggle to sew.¹⁰⁸ In response, the female mice take the needle and thread and tell the males to “[l]eave the sewing to the women.”¹⁰⁹ When Snow White discovers the dwarfs’ cabin in the woods, she comments on how messy it is and begins to say, “You’d think their mother would—” before gasping and theorizing, “Maybe they have no mother!”¹¹⁰ These comments reinforce the separate-spheres mentality of the era.

There are powerful female characters in the Classic Era movies, but they tend to be evil. It is almost an equation of the era: femininity plus power equals witch. The Evil Queen in *Snow White* has the powers of a witch—she has a magic mirror, changes shape with a potion, and creates a poison apple.¹¹¹ Maleficent, in *Sleeping Beauty*, is an evil fairy but similarly shows that femininity and power together produce evil.¹¹² The Fairy Godmother of *Cinderella* might seem an exception, but it is an exception that proves the rule. The wise, old woman is a recognized female archetype, but she is not particularly feminine. More specifically, she is not sexual.¹¹³ To be good, the films suggest, a sexual woman must be passive.

2. *Evidently Unfit: Plot Passivity*

The plot develops through these movies without the princesses’ efforts; they do not cause the conflict, and they do not resolve it.¹¹⁴ The conflict of the movies arises out of unfortunate circumstances to which each princess is a victim—Snow White’s stepmother orders someone to kill her, so she must run away; Cinderella’s stepmother does not allow her to attend the ball; Aurora is cursed as a child and entranced into pricking her finger to fall asleep.¹¹⁵ None of the women participate in furthering her own story. Instead, all wait around until the prince saves them—in fact, Snow White and Aurora

106. *Id.*

107. *See infra* Subpart II.B.2.

108. *CINDERELLA*, *supra* note 27.

109. *Id.*

110. *SNOW WHITE AND THE SEVEN DWARFS*, *supra* note 27.

111. *Id.*

112. *SLEEPING BEAUTY*, *supra* note 27.

113. *CINDERELLA*, *supra* note 27.

114. *See SNOW WHITE AND THE SEVEN DWARFS*, *supra* note 27; *CINDERELLA*, *supra* note 27; *SLEEPING BEAUTY*, *supra* note 27.

115. *SNOW WHITE AND THE SEVEN DWARFS*, *supra* note 27; *CINDERELLA*, *supra* note 27; *SLEEPING BEAUTY*, *supra* note 27.

are literally asleep as they wait for their princes to come.¹¹⁶ That, in the Classic Era movies, is the appropriate activity for a princess: dreaming of a prince.¹¹⁷

Resolution of the plot conflicts is the province of men—“woman’s protector and defender,” in Justice Bradley’s words.¹¹⁸ The princesses “rest upon and look to [men] for protection.”¹¹⁹ Princes solve their problems, allowing them to live happily ever after.¹²⁰

Additionally, the princesses are static characters who do not actively change or grow as their plot develops.¹²¹ This too reflects the separate spheres ideology. Male children grow out of minority and enter into society. But girls do not: even as women, they are subjected to regulation designed to ensure that they can fulfil their destinies as wives and mothers. (Strikingly, the statutes at issue in *Radice v. New York* and *West Coast Hotel v. Parrish*, regulated the working hours and wages, respectively, of women and children, subjecting the two groups to the same restrictions.)¹²²

3. *Paramount Destiny: Happily Ever After*

It is almost unnecessary to point out that the central concern of the movies of the Classic Era is whether and whom the princess will marry—whether she will end up with the prince. Of course, the happy ending requires that she does. Each princess finds (or is found by) her prince, and the movies end with the suggestion that this completes their stories. From then on, they live happily ever after.¹²³

C. *Connections: The Pedestal and the Cage*

The parallels between the judicial decisions and the movies of the Classic Era are striking. In each context, we can see Justice Bradley’s vision exerting a powerful effect: women are by nature different from

116. SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

117. Snow White sings an entire song, called “Someday My Prince Will Come,” dreaming about finding a prince to love her. Cinderella similarly sings a song with the lyrics “A dream is a wish your heart makes” before attending the ball for a chance to meet Prince Charming. Aurora also sings about wanting to fall in love with a man she met “once upon a dream.” SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; CINDERELLA, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

118. *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring).

119. *Muller v. Oregon*, 208 U.S. 412, 422 (1908).

120. *See* SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; CINDERELLA, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

121. *See* SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; CINDERELLA, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

122. *Radice v. New York*, 264 U.S. 292, 293–94 (1924); *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379, 386 (1937).

123. *See* SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; CINDERELLA, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

men, and consequently they have a different proper role; women are weaker, more fragile, and unsuited to the masculine world or masculine activities.¹²⁴ This is stated explicitly in the decisions that allow regulation of women's wages and hours on the grounds that unrestricted labor would compromise women's health and jeopardize their reproductive capacity, when such laws would be impermissible infringements on men's liberty of contract.¹²⁵ It is implicit in the movies' portrayal of the princesses as naïve, emotional, and unable to protect themselves. When the princesses display competence, it is in decidedly feminine activities: Snow White, for instance, cleans the dwarfs' house; Cinderella keeps house for her stepmother and stepsisters.¹²⁶ And, of course, the destiny and mission of the princesses is, as Justice Bradley said, "to fulfill the noble and benign offices of wife and mother."¹²⁷ The decisions are again more explicit. The reason that women's working conditions can be regulated more pervasively than men's is that the state has an interest in their fertility.¹²⁸ But the movies are clear, too. When the curtain falls, the princesses are paired with their princes, disappearing into the domestic sphere where they will be wives and mothers, happily ever after.¹²⁹

In the Classic Era, there is an obvious mutually reinforcing relationship between law and culture. The decisions support state attempts to require women to conform to the traditional understanding of women's roles; the movies tell girls (and boys) that this is what girls should aspire to. In both contexts, the strongly gendered and limited role is celebrated as desirable, appropriate, and fulfilling.¹³⁰ And for some women it may be. What neither the movies nor the decisions seem to realize is that other women might want something else out of life and that celebrating a traditional concept of womanhood unfairly limits their options. That was the insight expressed by the Court during the second wave of feminism, and promoted by the movies of that era: what looks like putting women on a pedestal may actually be confining them in a cage—the cage of

124. *See generally* *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring) (explaining that women's frailty inhibits them from practicing law, a masculine profession).

125. *Radice*, 264 U.S. at 295; *W. Coast Hotel*, 300 U.S. at 400.

126. *SNOW WHITE AND THE SEVEN DWARFS*, *supra* note 27; *CINDERELLA*, *supra* note 27.

127. *Bradwell*, 83 U.S. at 141 (Bradley, J., concurring).

128. *Radice*, 264 U.S. at 294; *W. Coast Hotel*, 300 U.S. at 394.

129. *See* *SNOW WHITE AND THE SEVEN DWARFS*, *supra* note 27; *CINDERELLA*, *supra* note 27; *SLEEPING BEAUTY*, *supra* note 27.

130. *See supra* Part II.

the domestic sphere.¹³¹ Whether and how women can break free from the domestic sphere is the defining question of the next era.

III. THE RENAISSANCE ERA (1968–1999)

After *Sleeping Beauty*, Disney took a three-decade hiatus from producing princess movies.¹³² Not coincidentally, those thirty years were a time of great social upheaval and reassessment of women's capacities and roles—they included the second wave of feminism.¹³³ And when the princesses returned, the second wave's dominant concerns—that women should be treated equally rather than confined to feminine activities—were notably on display.¹³⁴ During the Renaissance Era, Disney released five princess movies in nine years.¹³⁵ These movies, *The Little Mermaid* (1989),¹³⁶ *Beauty and the*

131. See *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (describing “romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage”).

132. Jeff Guo, *Researchers Have Found a Major Problem with ‘The Little Mermaid’ and Other Disney Movies*, WASH. POST (Jan. 25, 2016, 10:29 AM), <https://www.washingtonpost.com/news/wonk/wp/2016/01/25/researchers-have-discovered-a-major-problem-with-the-little-mermaid-and-other-disney-movies/>.

133. Sally Ann Drucker, *Betty Friedan: The Three Waves of Feminism*, OHIO HUMANS. (Apr. 27, 2018), <http://www.ohiohumanities.org/betty-friedan-the-three-waves-of-feminism/>.

134. See, e.g., Guo, *supra* note 132.

135. During that hiatus, the number of women working for Disney increased, and “the overall make-up of the Disney studio [] shifted from one of male-dominance to, if not full equality, at least a greater presence of women in leadership roles.” DAVIS, *supra* note 93, at 170.

136. *The Little Mermaid* tells the story of mermaid Ariel, who is fascinated with humankind and life on the land. Her father forbids her from visiting the water's surface to watch the humans, but she does so regardless and rescues Prince Eric from drowning. It is love at first sight, and Ariel makes a deal with the evil sea witch, Ursula, offering her voice in exchange for legs. Ariel must make the prince fall in love with her in three days or lose her soul forever. Although she finds Prince Eric, there is one problem—he does not recognize her without her voice. When Ariel makes some progress with Prince Eric, Ursula attempts to intervene, but the two defeat the sea witch. Ariel and Prince Eric wed and live happily ever after. *THE LITTLE MERMAID*, *supra* note 30.

Beast (1991),¹³⁷ *Aladdin* (1992),¹³⁸ *Pocahontas* (1995),¹³⁹ and *Mulan* (1998),¹⁴⁰ are significantly less formulaic than their predecessors.¹⁴¹

137. *Beauty and the Beast* stars Belle, an intelligent woman who longs for adventure outside of the small provincial town in which she and her inventor father live. Her father falls prisoner to an angry beast living in an enchanted castle. As a young prince, the selfish Beast had been cursed to live as a monster until he could learn to love. Belle offers herself in her father's place, and she and the Beast fall in love. When her father is attacked by the townspeople, the Beast frees Belle to save him. The townspeople then turn on the Beast, who nearly dies. However, Belle professes her love for him, returning him to his human state and setting up the happy ending. BEAUTY AND THE BEAST, *supra* note 30.

138. The only princess movie with a male title character, *Aladdin* is the story of a poor street rat who steals food to survive. Jasmine is a princess legally bound to wed a prince, but she rejects every suitor she meets. The two briefly meet and immediately connect—but Jasmine's father's sorcerer, Jafar, imprisons Aladdin, then tricks him into retrieving a magical lamp for him. Jafar's goal is to use the lamp's powers to become Sultan. Aladdin keeps the lamp for himself and wishes to become a prince in order to marry Jasmine. After some time, he begins to win her over. Eventually, Jasmine discovers he is not a prince, but rather the street rat she met before. Jafar makes one final attempt to become Sultan, and Aladdin and Jasmine defeat him together. The Sultan declares Jasmine need not marry a prince, allowing her to marry Aladdin instead. ALADDIN, *supra*, note 30.

139. *Pocahontas* is the story of a young Native American woman who is the daughter of her tribe's chief. The chief expects Pocahontas to marry the tribe's accomplished warrior, Kocoum, but Pocahontas believes her life has more in store for her. Her life quickly changes when Englishmen come to their land to develop it. The tribe is fearful of the foreign invaders, and all are forbidden from interacting with them. Nevertheless, Pocahontas falls in love with Englishman Captain John Smith. The two try to avoid conflict between their people, but violence appears imminent when Kocoum is shot and killed. Pocahontas diplomatically defuses the situation. However, her happy ending requires her to allow an injured John Smith to return to England for medical care, while she remains home to continue diplomatic relations with the settlers. POCAHONTAS, *supra*, note 30.

140. *Mulan* is an only child under immense pressure to marry in order to bring honor to her family, despite her lack of interest in becoming a wife. When her nation faces invasion, each family must send one male to join the army. Mulan secretly reports as her family's representative to protect her ailing father. She learns to fight alongside the other soldiers and is revered for her skill in defeating the invaders until her secret is exposed. Captain Li Shang leaves Mulan behind, and she discovers the invaders survived the battle and are heading to the imperial city. Mulan attempts to warn Shang, but he does not believe her until the attack begins. Mulan and the army then work together to defeat the invaders, and the emperor recognizes Mulan for her service. Mulan returns home, and Shang follows her under the pretext of returning her helmet. Mulan's family invites him to stay for dinner, suggesting Mulan and Shang end up together. MULAN, *supra*, note 30.

141. This Article primarily discusses the diversity of the princesses' characters and plot lines within this era, but it is also noteworthy that these princesses are ethnically diverse as well: Jasmine is Middle Eastern, Pocahontas

While all five princesses have some character traits in common, their personalities and stories are diverse.¹⁴² This reflects society's "drastically altered beliefs" about how women should act.¹⁴³ No longer were women merely pretty faces submitting to man's authority; women were now expected to have individual personalities. Equal protection case law reflected this change, as the Supreme Court established heightened review for cases involving sex-based classifications and rejected statutes based solely on gendered stereotypes.¹⁴⁴ A distaste for traditional assumptions about the relative traits and abilities of men and women is the leitmotif of the Court's case.¹⁴⁵

The princesses of the Renaissance Era are still largely feminine, as it is presumed most women are. They tend to take care of and even sacrifice themselves for men: whom and whether they marry remains a central plot concern.¹⁴⁶ Similarly, the case law focuses on women's reproductive capacity as a real biological difference justifying differential treatment of women. Justice Bradley's vision of the paramount destiny and mission of woman is still strongly on display.¹⁴⁷ Lastly, while the cases and movies suggest that some exceptional women should be allowed to participate in masculine activities—to cross to the privileged side of the gender hierarchy—none of them challenge the hierarchy itself. Men and women, the Court and the movies tell us, may not always fall on the masculine and feminine side of the dichotomy. But the valorization of the masculine and the devaluation of the feminine persist.

A. *Cases: Traditional Stereotypes Versus Real Biological Differences*

As our brief summaries of the movies above suggest, Renaissance Era princesses display some masculine traits and pursue goals other than marriage. In just the same way, the Supreme Court's decisions during this era reject classifications based on traditional views about the attributes or destinies of women. In *Reed v. Reed*,¹⁴⁸ for the first

is Native American, and Mulan is Asian. See *ALADDIN*, *supra* note 30; *POCAHONTAS*, *supra* note 30; *MULAN*, *supra* note 30.

142. Parks, *supra* note 7.

143. *Id.*

144. See *Craig v. Boren*, 429 U.S. 190, 197 (1976) (holding that statutory sex classifications were subject to intermediate scrutiny under the Fourteenth Amendment's Equal Protection Clause).

145. See *id.* at 198–99 (citing *Stanton v. Stanton*, 421 U.S. 7 (1975); *Taylor v. Louisiana*, 419 U.S. 522, 535 n.17 (1975)).

146. *THE LITTLE MERMAID*, *supra* note 30; *BEAUTY AND THE BEAST*, *supra* note 30; *ALADDIN*, *supra* note 30; *POCAHONTAS*, *supra* note 30; *MULAN*, *supra* note 30.

147. See *Bradwell v. Illinois*, 83 U.S. 130, 139, 141 (1873) (Bradley, J., concurring).

148. 404 U.S. 71 (1971).

time, the Court struck down a statute that facially distinguished between males and females.¹⁴⁹ Although the Court applied only rational basis review, it ruled that the Illinois statute, which automatically named men the administrator of estate over similarly situated women, violated the Equal Protection Clause because the discrimination between the sexes was not rationally related to the state's interest in administrative convenience.¹⁵⁰

In *Frontiero v. Richardson*,¹⁵¹ a plurality of the Court called for heightened scrutiny for sex-based classifications.¹⁵² The plurality acknowledged “our Nation has had a long and unfortunate history of sex discrimination.”¹⁵³ Sex-based discrimination was traditionally rationalized by an attitude of romantic paternalism: it protected women and assisted them in achieving their proper destiny.¹⁵⁴ Influenced by the feminist movement's critique of traditional gender roles, the plurality recognized that the “practical effect” of such regulation “put women, not on a pedestal, but in a cage.”¹⁵⁵

Feminists “argued that the widespread expectation that women would serve as the center of home and family life curtailed their educational and economic opportunities and deprived them of rights automatically accorded men, who were assumed to be (and often were) free from significant caregiving responsibilities.”¹⁵⁶ Ruth Bader Ginsburg, working with the American Civil Liberties Union's Women's Rights Project, recognized that “the law's differential treatment of men and women, typically rationalized as reflecting ‘natural’ differences between the sexes, historically had tended to contribute to women's subordination—their confined ‘place’ in man's world—even when conceived as protected of the fairer, but weaker and dependent-prone sex.”¹⁵⁷

In *Craig v. Boren*,¹⁵⁸ the Supreme Court articulated the current rule, intermediate scrutiny: “classifications by gender must serve important governmental objectives and must be substantially related

149. *Id.* at 76–77.

150. *Id.*

151. 411 U.S. 677 (1973).

152. *Id.* at 688. *Frontiero* was brought under the Due Process Clause of the Fifth Amendment because it was a federal policy. *Id.* at 679. The Court had reverse-incorporated the Equal Protection Clause of the Fourteenth Amendment to apply to the federal government through the Due Process Clause of the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954). Therefore, the same doctrine applies to sex discrimination cases brought under both clauses.

153. *Frontiero*, 411 U.S. at 684.

154. *Id.*; *Bradwell v. Illinois*, 83 U.S. 130, 141 (1873) (Bradley, J., concurring).

155. *Frontiero*, 411 U.S. at 684.

156. Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law*, 85 N.Y.U. L. REV. 83, 110 (2010) (internal quotations omitted).

157. Ginsburg & Flagg, *supra* note 54, at 11.

158. 429 U.S. 190 (1976).

to achievement of those objectives.”¹⁵⁹ Laws distinguishing on the basis of sex that served to reinforce gender stereotypes with no basis in legitimate differences between the sexes were now unconstitutional.¹⁶⁰ Applying intermediate scrutiny, the Court struck down a number of laws that reflected—and often reinforced—traditional gender-role stereotypes.¹⁶¹

*Stanton v. Stanton*¹⁶² struck down a state law that discriminated against women: the law ended child support obligations for daughters when they turned eighteen and for sons when they turned twenty-one.¹⁶³ The law was written under the presumption that daughters would marry young, while sons would attend college and marry later—an outcome that was probably made more likely if the sons received tuition money and the daughters didn’t.¹⁶⁴ The Court observed that “[w]omen’s activities and responsibilities [were] increasing and expanding” to include those previously reserved only for males, and women were no longer necessarily “destined solely for the home and the rearing of the family[.]”¹⁶⁵ The effect of the statute was to limit women’s financial ability to obtain an education compared to her male counterparts, furthering the “role-typing society has long imposed.”¹⁶⁶

*Weinberger v. Wiesenfeld*¹⁶⁷ featured a law whose immediate effect seemed to favor women. A provision of the Social Security Act¹⁶⁸ gave widows, but not widowers, benefits based on the earnings of a deceased spouse.¹⁶⁹ The purported justification was to allow widows to elect not to work in order to stay home and care for their children.¹⁷⁰ The consequence, however, was to give benefits for money earned by men (but not women) earned while alive. That differential treatment created an incentive for a heterosexual one-career couple to have the man work while the woman stayed home. As with sex-based minimum-wage or maximum-hour laws, the overall effect was to discourage female participation in the workforce.¹⁷¹

In *United States v. Virginia*,¹⁷² discussed in more detail below, the Supreme Court ruled that stereotypes about timidity and delicacy could not justify excluding women from the intensely masculine

159. *Id.* at 197.

160. *Id.*

161. *See infra* text accompanying notes 162–78.

162. 421 U.S. 7 (1975).

163. *Id.* at 8–9.

164. *Id.* at 10.

165. *Id.* at 14–15.

166. *Id.* at 15.

167. 420 U.S. 636 (1975).

168. Social Security Act, 42 U.S.C. § 402(g).

169. *Weinberger*, 420 U.S. at 637–38.

170. *Id.* at 648.

171. *Id.* at 648–49.

172. 518 U.S. 515 (1996).

environment of the Virginia Military Institute (“VMI”).¹⁷³ And, of course, in *Roe v. Wade*¹⁷⁴ the Supreme Court found constitutional protection for a woman’s choice to have an abortion.¹⁷⁵ While *Roe* was based on a right to privacy (and the expertise of presumptively male doctors),¹⁷⁶ *Planned Parenthood v. Casey*,¹⁷⁷ also decided during the Renaissance Era, framed the issue more in terms of equality, noting that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”¹⁷⁸

Despite some progress, the judicial decisions of the Renaissance Era have notable limitations, indicating that Bradley’s concurrence still had power.¹⁷⁹ First, the Court still accepted arguments that women’s bodies were proper subjects of regulation because of their reproductive capacity. While decisions of the era struck down laws based on nothing more than traditional gender stereotypes, the Court became much more deferential if the government could invoke a real biological difference between men and women.¹⁸⁰ The most common such difference is that women can get pregnant and give birth. Thus, distinctions based on pregnancy and childbirth often survived, despite the fact that these differences are also often the site of especially strong stereotypes.

The statute at issue in *Parham v. Hughes*¹⁸¹ imposed limitations on when fathers could sue for wrongful death of their illegitimate children; however, mothers were not subject to such limitations.¹⁸² Despite the facial distinction between the sexes that served to reinforce the notion that women are children’s caretakers, the Court ruled the statute was not invidiously discriminatory because women gave birth to the children, and so mothers and fathers were not similarly situated as parents.¹⁸³ Therefore, the Court reframed the statute. As opposed to differentiating women and men, the Court

173. *Id.* at 533–34.

174. 410 U.S. 113 (1973).

175. *Id.* at 164.

176. *See id.* at 163 (stating that the decision is left to the judgment of the physician, “in consultation with *his* patient . . .”) (emphasis added).

177. 505 U.S. 833 (1992).

178. *Id.* at 856. At other places, the *Casey* opinion seems to engage directly with Bradley’s statements about the destiny of woman. *See id.* at 852 (“The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.”).

179. *See generally* *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring); *supra* Subpart II.A..

180. *Compare* *Reed v. Reed*, 404 U.S. 71, 76 (1971), *with* *Michael M. v. Superior Ct. of Sonoma County*, 450 U.S. 464, 471–73 (1981), *and* *Parham v. Hughes*, 441 U.S. 347, 355 (1979).

181. 441 U.S. 347 (1979).

182. *Id.* at 348–49.

183. *Id.* at 355.

distinguished between fathers who had legitimated their children and fathers who had not.¹⁸⁴ The statute was, therefore, subject to the lower standard of rational basis review and was upheld.¹⁸⁵ Critically, the Court failed to recognize that this statute enforced the presumption that mothers care for their children, while fathers do not. As Justice White explained in dissent, it is not fair to deny fathers recovery based on the stereotype that they are uninvolved in the children's lives and, therefore, unaffected by the children's deaths.¹⁸⁶ Accordingly, such laws continued to promote the stereotype that women were children's primary caretakers.

More strikingly, in *Michael M. v. Superior Court of Sonoma County*,¹⁸⁷ the Supreme Court considered a California statutory rape law that criminalized sex with a female under the age of eighteen who was not the perpetrator's wife.¹⁸⁸ Despite recognizing that "[t]he statute thus makes men alone criminally liable for the act of sexual intercourse," the Court upheld the legislation.¹⁸⁹ It explained that the law was based on the biological fact that only women can get pregnant, which served as a strong enough deterrent for young women to abstain from sex, whereas young men needed the additional threat of criminal prosecution.¹⁹⁰

Looking past the "real biological differences" justification, Justice Brennan argued this was not, in fact, the actual basis for the statute. In dissent, he explained:

[T]he law was initially enacted on the premise that young women, in contrast to young men, were to be deemed legally incapable of consenting to an act of sexual intercourse. Because their chastity was considered particularly precious, these young women were felt to be uniquely in need of the State's protection. In contrast, young men were assumed to be capable of making

184. *Id.* at 356.

185. *Id.* at 357.

186. *Id.* at 366 (White, J., dissenting).

187. 450 U.S. 464 (1981).

188. *Id.* at 466.

189. *Id.* at 466, 475-76.

190. *Id.* at 471-73. *Michael M.* is a disturbing case for many reasons. Justice Blackmun (who had been hailed as a feminist hero since his opinion in *Roe*, eight years earlier) commented in a concurring opinion that the case was "an unattractive one to prosecute at all" based on the facts that the girl did not know Michael before the incident, that she had been drinking, and that she "appears not to have been an unwilling participant in at least the initial stages of the intimacies . . ." He then quoted her testimony at the preliminary hearing, where she said that she told Michael to stop and he hit her in the face until she stopped resisting; that is, the crime that was being prosecuted was, according to her testimony, a violent rape. That any of this could have seemed exculpatory in 1981, especially to a Justice considered a feminist, is astonishing.

such decisions for themselves: the law therefore did not offer them any special protections.¹⁹¹

The inseparability of real biological differences and gendered stereotypes, coupled with the Court's willingness to accept pretextual justifications, meant that laws based on traditional gender norms frequently survived intermediate scrutiny. The consequence was a legal regime that invalidated a fair amount of discriminatory regulation of the economic arena but still allowed states to regulate women's sexuality on the basis of their potential destiny as mothers.¹⁹²

Second, the Supreme Court upheld statutes that were not facially discriminatory but had a disparate impact on women.¹⁹³ The statute at issue in *Personnel Administrator of Massachusetts v. Feeney*¹⁹⁴ mandated veterans who qualified for state civil service jobs receive priority over any qualified nonveterans.¹⁹⁵ The plaintiff, a nonveteran woman, argued that, because the overwhelming majority of veterans are men, the practical effect of the statute was to exclude women from consideration for civil service jobs.¹⁹⁶ The Court disregarded this disparate impact and emphasized that the statute itself is gender-neutral and, in fact, also disadvantaged nonveteran men.¹⁹⁷ The appropriate test was then to ask whether the purpose behind the statute was discriminatory.¹⁹⁸ Because the purpose of the statute was to reward and assist veterans, not to disadvantage women, the statute was upheld.¹⁹⁹

But is disparate impact so anodyne? One might think that laws that award benefits mostly to men, but only to a minority of men, are unlikely to be tools of sex discrimination. Most men are not veterans. If those men do not think that veterans actually deserve preferential treatment, they have sufficient political power to prevent enactment of such preferences.²⁰⁰ So we can be relatively confident that this

191. *Id.* at 494–96 (Brennan, J., dissenting).

192. The potential reach of real biological difference as a justification can be seen from the way in which it previously underlay a host of restrictions that now seem absurd. Nineteenth-century treatises, for instance, regularly warned that educating women would interfere with their fertility. See *United States v. Virginia*, 518 U.S. 515, 536 n.9 (1996).

193. See *infra* notes 194–99 and accompanying text.

194. 442 U.S. 256 (1979).

195. *Id.* at 259.

196. *Id.*

197. *Id.* at 267–69, 275.

198. *Id.* at 276.

199. *Id.* at 265, 281.

200. By contrast, laws that burden only women, but not all women, should be considered more suspect. A subset of women has less political power than women in general.

preference reflects not just a desire to give benefits to men rather than women but a real belief that military service should be rewarded.

But even if what is being valorized is not sex, it might still be gender. Military service is socio-culturally associated with the typical masculine identity in American culture. And a society that systematically values masculine traits and activities—which are defined in part by the fact that they are mostly the province of men—might still end up repeatedly enacting preferences that award almost all of their benefits to men.²⁰¹

What are the justifications for the veterans' preference? Serving in the military can disrupt schooling and career advancement.²⁰² It exposes servicemembers to dangers, which they face for the collective good of the nation.²⁰³ But is military service the only activity with these characteristics? Pregnancy, childbirth, and caring for infants

201. This is not simply because women choose not to engage in masculine activities, although they might. It is because masculine activities, by definition, do not include a large percentage of women. This is effected in part by excluding women from such activities: for a long time, women were excluded from much of the military. (Indeed, like Myra Bradwell, Karen Feeney found herself disadvantaged in competition with men because of a disability the government had imposed on her: the reason she was not a veteran was that the law had stopped her. She had attempted to enlist in World War II but failed because the law required women (but not men) below the age of 18 to obtain their parents' consent.) And it is effected in part by changing the gender coding of activities: as women enter a field, it becomes less masculine. (As the case of Myra Bradwell shows, this has happened with the practice of law.) See *Pers. Adm'r. of Mass. v. Feeney*, 442 U.S. 256, 269–71 (1979); *Bradwell v. Illinois*, 83 U.S. 130, 132–33, 139 (1873). Conversely, as men enter a field, it becomes less feminine—as generational shifts produce more men who participate in childcare, for instance, that activity is no longer coded as exclusively feminine. An interesting piece of evidence for this thesis can be found by examining television commercials for childcare products. Initially, these advertisements showed women performing activities coded as feminine. As more men began to engage in them, advertisements started to show men cleaning and taking care of children. At first, however, the men were bad at these tasks—because the only way to retain masculinity while performing a feminine task was to be bad at it. But as the tasks became less strongly gendered, the men in the ads got better, because being good at a less gendered task is still consistent with masculinity. See Tara Walker & Harsha Gangadharbatla, *Dadvertising: The Rise of Involved Fatherhood in Contemporary American Advertising*, 20 *ADVERT. & SOC'Y Q.*, no. 4, 2019, <https://muse.jhu.edu/article/745988>. This is not to suggest that men perform an equal share of domestic work; they do not. See Claire Cain Miller, *Why Women, but Not Men, Are Judged for a Messy House*, *N.Y. TIMES* (June 11, 2019), <https://www.nytimes.com/2019/06/11/upshot/why-women-but-not-men-are-judged-for-a-messy-house.html>.

202. Glen H. Elder, Jr., *War Mobilization and the Life Course: A Cohort of World War II Veterans*, *SOCIO. F.*, Summer 1987, at 449, 456–57.

203. See Susanne Sreedhar, *In Harm's Way: Hobbes on the Duty to Fight for One's Country*, in *HOBBS TODAY: INSIGHTS FOR THE 21ST CENTURY* 209, 210 (S. A. Lloyd ed., 2012).

have similar disruptive effects on education and climbing the corporate ladder.²⁰⁴ And while service in World War II carried substantially greater risk of death than pregnancy, that is not true of all combat service. The risk of death in Desert Storm, for instance, was actually lower than in pregnancy.²⁰⁵ Nor is violent death a concern unique to the military: pregnant women face a significantly higher risk of homicide, usually at the hands of men they know.²⁰⁶ The enactment of a preference for veterans, rather than mothers, may have something to do with the fact that military service is coded as masculine and motherhood as feminine. Gender dichotomies are hierarchical.

The importance of this point will come out even more strongly in the case of VMI.²⁰⁷ Because the VMI case provides such a close parallel to the movie *Mulan*, we postpone the analysis to Subpart III.C, below, where we discuss the common themes of the cases and the movies, and the limitations of the Renaissance Era's understanding of equality. The discussion thus far has sought to develop the basic theme of the Court's Renaissance Era cases: differential treatment of men and women may be based on real biological differences, but not on traditional gender role stereotypes. Women cannot be presumed incapable of masculine activities, and if they are capable, they must be allowed.²⁰⁸

B. *Movies: Exceptional Women Having It All*

The princess movies of the Renaissance Era are best described as stories of self-discovery in which the princess has an adventurous experience, changes in some way, and falls in love.²⁰⁹ Each princess

204. Frank F. Furstenburg, Jr., *The Social Consequences of Teenage Parenthood*, FAM. PLAN. PERSP., July–Aug. 1976, at 148, 158.

205. World War II featured 291,557 battle deaths from among 16,112,566 U.S. servicemembers, a 1.8 percent rate. See DEPT. VETERAN'S AFFS., OFF. PUB. AFFS., AMERICA'S WARS (Nov. 2020), https://www.va.gov/opa/publications/factsheets/fs_americas_wars.pdf. Maternal deaths in the U.S. in 2014 were 23.8 per one hundred thousand live births, or .024 percent, seventy-five times lower. See Marian F. McDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues*, 128 OBSTETRICS & GYNECOLOGY 447, 452 (2016). Desert Storm, however, featured a total death rate of .006 percent (even among servicemembers deployed to the Gulf, Desert Storm saw a .02 percent death rate, lower than maternal mortality in 2014). See DEPT. VETERAN'S AFFS., *supra* note 205.

206. See, e.g., Jennifer A. Brobst, *The Prospect of Enacting an Unborn Victims of Violence Act in North Carolina*, 28 N.C. CENT. L.J. 127, 136 (2006) (“The leading cause of death of pregnant women is homicide by a domestic violence partner”).

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

208. See *supra* Subpart II.A and accompanying footnotes.

209. Each of these princesses has what we refer to as an “adventurous experience,” though not all go on an adventure outside of their known home.

faces a conflict that is, in part, the result of her own choices. Subsequently, they each play an active role in resolving that conflict, instead of passively waiting for a prince to save them like their Classic Era predecessors.²¹⁰ Still, all of the princesses except Pocahontas end their respective movies by living happily ever after with their prince.²¹¹

1. *Diverse by Nature: Masculine Characteristics*

The Renaissance Era princesses exist in two categories: rebellious natural-born princesses and good daughters who are not royal by birth.²¹² The women in the rebellious category—Ariel, Jasmine, and Pocahontas—reject the plans their fathers have set for them in favor of adventure. Ariel, a mermaid, defies her father's command to stay away from humans; Jasmine sneaks out of her palace, declaring, "I can't stay here and have my life lived for me"; and Pocahontas begins a love affair with English settler John Smith, whom her father has ordered her to avoid.²¹³ In contrast, the princesses in the "good daughter" category—Belle and Mulan—play a more traditional feminine role. Their plot conflicts arise because their selflessness drives them to risk their own lives to protect their fathers.²¹⁴

All of the princesses display personalities more complex and less stereotypically feminine than those of the Classic Era.²¹⁵ They exhibit more masculine characteristics than the previous princesses, such as assertiveness, bravery, and independence, and fewer feminine characteristics.²¹⁶ Specifically, they are less sensitive, less nurturing, and less emotional.²¹⁷ Additionally, unlike the similar personalities of all three Classic Era princesses, these women each have identifiable character strengths: Ariel is curious;²¹⁸ Belle is

Jasmine, for example does try to escape at the beginning of the movie, but she spends the majority of the movie within the palace. *See ALADDIN, supra* note 30. Pocahontas also never leaves her tribe's land. *See POCAHONTAS, supra* note 30.

210. *See supra* note 30.

211. *See supra* note 30.

212. *See DAVIS, supra* note 93, at 176, 189.

213. *See THE LITTLE MERMAID, supra* note 30; *ALADDIN, supra* note 30; *POCAHONTAS, supra* note 30.

214. *See BEAUTY AND THE BEAST, supra* note 30; *MULAN, supra* note 30.

215. *See supra* Subpart II.B.

216. In this era, 58 percent of the characteristics exhibited by the princesses are traditionally feminine, while 42 percent are traditionally masculine. England et al., *supra* note 3, at 561–62.

217. *See id.*

218. McKenzie Barber, *Disney's Female Gender Roles: The Change of Modern Culture 15* (Nov. 24, 2015) (honors thesis, Indiana State University), <http://scholars.indstate.edu/handle/10484/12132>.

intelligent;²¹⁹ Jasmine is independent;²²⁰ Pocahontas is wise;²²¹ and Mulan is brave.²²² Physically, Belle is the only princess who wears a traditional princess dress throughout her movie.²²³ While this is due, in part, to the diverse nature of the princesses, it demonstrates another way in which princesses do not fit into traditional notions of femininity. For example, Mulan's military uniform is a symbol of her liberation; the hanfu garment she wears to the Matchmaker symbolizes the pressure she is under to conform to society's expectations of her as a woman and future wife. Conversely, her military uniform allows her to escape the expectations and carve her own path, proving to herself that she is not restrained by society.²²⁴

Intellectually, these five princesses are freethinking,²²⁵ resourceful,²²⁶ and curious.²²⁷ They are true to themselves, and none are submissive to men.²²⁸ Each has her own beliefs and adamantly

219. DAVIS, *supra* note 93, at 192.

220. *See id.* at 182.

221. Parks, *supra* note 7.

222. *See* England et al., *supra* note 3, at 564.

223. Plotting explains some of the absence of the traditional ball gown. Ariel is a mermaid who cannot wear a typical dress until she has legs, Jasmine and Pocahontas wear garments traditional of their cultures, and Mulan must wear the functional military uniform as part of her disguise. But the gown is a powerful signifier. *See* Benjamin Hine et al., *From the Sleeping Princess to the World-Saving Daughter of the Chief: Examining Young Children's Perceptions of 'Old' versus 'New' Disney Princess Characters*, 7 SOC. SCIS. 161, 165 (2018) (observing that, in an empirical study of how children perceive princesses, those wearing "less obviously princess-like garments," including Ariel, Pocahontas, and Mulan, were less likely to be perceived as princesses by children). Its diminished role in Renaissance Era movies typified second wave feminism's desire to attain equality by abandoning traditional femininity. As discussed later, the Modern Era has a slightly different take on equality, which attempts not to escape feminine signifiers but to elevate them. Fittingly, the live-action *Beauty and the Beast* from 2017 modifies the costume: Belle keeps the gown but loses the corset and trades her heels for boots. Like Moana, she also declares "I'm not a princess." *See* Cara Kelly, *Emma Watson's Belle Ditches the Corset and Princess Title in 'Beauty and the Beast'*, USA TODAY, (Mar. 6, 2017, 1:17 PM) <https://www.usatoday.com/story/life/entertainthis/2017/03/06/emma-watson-belle-ditches-corset-and-princess-title-beauty-and-beast/98693938/>.

Interestingly, Emma Watson won MTV's first gender-neutral acting award for her performance as Belle. Hilary Lewis, *MTV Movie & TV Awards: Asia Kate Dillon Presents Gender-Neutral Acting Award to Emma Watson*, HOLLYWOOD REP. (5:31 P.M. PDT, May 7, 2017), <http://www.hollywoodreporter.com/news/mtv-movie-tv-awards-asia-kate-dillon-presents-gender-neutral-acting-award-emma-watson-1000935>.

224. *See* Peggy Orenstein, *What's Wrong with Cinderella*, N.Y. TIMES (Dec. 24, 2006), <https://www.nytimes.com/2006/12/24/magazine/24princess.t.html>.

225. Manduke, *supra* note 92.

226. Orenstein, *supra* note 224.

227. DAVIS, *supra* note 93, at 177.

228. *See id.* at 176.

stands by them, even when challenged. For example, when Mulan's father steps forward to accept his summons to join the military, Mulan argues to the messenger that it is unfair for him to risk his health in battle when he is already a decorated veteran.²²⁹ The messenger ignores Mulan and instead tells her father, "You would do well to teach your daughter to hold her tongue in a man's presence."²³⁰ Mulan does not learn to stay quiet; following her sense of what is just, she takes her father's place in the military.²³¹

2. *No Longer Unfit: Active Plotting*

These princesses do not submit to authority, and several of them actively rebel against it. Unlike the Classic Era princesses, who found themselves embroiled in conflict simply because of their beauty, Renaissance Era princesses create the conflicts that drive their stories.²³² Specifically, their rebellious nature leads them to follow their own dreams instead of submitting to their fathers' orders. Ariel's curiosity for humankind and belief that she loves Prince Eric leads her to make the contract with Ursula that requires her to make Prince Eric fall in love with her.²³³ Jasmine's refusal to marry leads her to run away from the palace, where she meets Aladdin, ultimately resulting in his pursuit of her.²³⁴ Pocahontas defies her father's orders to avoid the English settlers and instead begins an affair with John Smith, eventually leading to the confrontation between the tribe and the Englishmen.²³⁵

Another characteristic connecting the princesses and women of the era is discontent with the simple lives they are expected to lead.²³⁶ Ariel is fascinated by humans and wants to live on land; Belle feels stifled in her small village and sings that she "want[s] much more than this provincial life"; Jasmine "hate[s] being forced into" the marriage that the law requires; after Pocahontas's father tells her he wants her to marry, she fears doing so will force her to change herself; Mulan struggles to connect her own identity with familial pressure to assume her role as a wife.²³⁷ The women are adventurous in pursuing their dreams of life beyond their own communities, recognizing that American women have new opportunities to do the same.²³⁸ And for

229. MULAN, *supra* note 30.

230. *Id.*

231. *Id.*

232. *See* THE LITTLE MERMAID, *supra* note 30; ALADDIN, *supra* note 30; POCAHONTAS, *supra* note 30.

233. THE LITTLE MERMAID, *supra* note 30.

234. ALADDIN, *supra* note 30.

235. POCAHONTAS, *supra* note 30.

236. *See generally supra* note 30.

237. *See supra* note 30.

238. DAVIS, *supra* note 93, at 218.

most of these princesses, those dreams do not involve falling in love or being rescued.

Although the princesses are portrayed as beautiful young women, their beauty is not their defining characteristic. Instead, many of them have skills that are highlighted as well.²³⁹ For example, Belle is an avid reader who frequently borrows books from the local bookstore and later teaches the Beast to read.²⁴⁰ Similarly, Mulan develops physical strength and ingenuity, exceling at the military training drills and becoming the first soldier to climb to the top of the wooden pole in the training camp.²⁴¹ With the exception of Belle, less than half of the compliments these princesses receive are on their beauty.²⁴² Pocahontas and Mulan, the last two princesses of this era, receive more compliments on skill than beauty.²⁴³ This change resonates throughout the princesses' stories as well, reflecting society's changing belief that women have valuable qualities besides their beauty, just as men do.

An important shift in the plot of these princess movies is that none of princesses wait around for their princes to rescue them; society recognizes women can take active roles in their own destinies.²⁴⁴ In *The Little Mermaid*, after Ursula transforms Ariel's father into a polyp, Ariel charges at Ursula, calling her a "monster."²⁴⁵ Then, when Ursula tries to kill Prince Eric with her trident, Ariel grabs the trident and aims it away from him, saving his life.²⁴⁶ During the climax of *Beauty and the Beast*, Belle herself is not in danger and does not need rescuing.²⁴⁷ Instead, she saves both her father, by confronting Gaston, and the Beast, by teaching him love.²⁴⁸ In *Aladdin*, Jasmine works with Aladdin to steal the lamp back from Jafar.²⁴⁹ Pocahontas convinces her tribe to release John Smith and

239. See generally *supra* note 30.

240. *BEAUTY AND THE BEAST*, *supra* note 30.

241. *MULAN*, *supra* note 30.

242. Ariel received 44 percent of her compliments on her looks and 28 percent on her skills. Nowakowski, *supra* note 102. Belle received 67 percent of her compliments on her looks and 17 percent on her skills. *Id.* Jasmine received 46 percent of her compliments on her looks and no compliments on her skills. *Id.* Pocahontas received 18 percent of her compliments on her looks and 36 percent on her skills. *Id.* Mulan received 25 percent of her compliments on her looks and 42 percent on her skills. *Id.*

243. *Id.*

244. See DAVIS, *supra* note 93, at 171 ("Unlike the earlier films, in which the heroine's honor was depicted and proven simply through her goodness and acquiescence, the heroines of Disney's animated films of this period show their integrity through their actions, rather than through their inaction.").

245. *THE LITTLE MERMAID*, *supra* note 30.

246. *Id.*

247. *BEAUTY AND THE BEAST*, *supra* note 30.

248. *Id.*

249. *ALADDIN*, *supra* note 30.

make a peace offering to the settlers, serving as a diplomat between the two groups.²⁵⁰ Mulan first destroys most of the Hun army with an avalanche. She then rushes to the Imperial City to warn that some Huns are still alive and help the Chinese soldiers thwart their oncoming attack.²⁵¹ Echoing Mulan's impersonation of a man, the soldiers disguise themselves as concubines to get past the Huns. Subsequently, Mulan defeats the Hun leader with fireworks.²⁵²

3. *Destiny: The Same Old Story*

Unlike their predecessors, these princesses' primary goal throughout their stories is not always merely to marry a prince.²⁵³ Jasmine, Pocahontas, and Mulan reject the conventional path to marriage that is offered to them.²⁵⁴ While their stories do end with an express or implied marriage, there is another, unrelated, conflict that propels the story. Jasmine and Aladdin face a villain, Jafar, whose goal is to overthrow Jasmine's father.²⁵⁵ The antagonist in *Mulan*, likewise, aims to conquer China; he is not (unlike the wicked stepmother in *Snow White* or Maleficent in *Sleeping Beauty*) simply trying to interfere with the protagonist's romantic destiny.²⁵⁶

For Ariel and Belle, by contrast, the central plot question is whether a romantic relationship with a prince will develop—whether Ariel can make Eric fall in love with her without her voice, and whether the Beast can make Belle fall in love with him despite his

250. POCAHONTAS, *supra* note 30.

251. MULAN, *supra* note 30.

252. *Id.* Importantly, while the male soldiers present themselves as women, they do not acquire any feminine attributes—they are implausible women—and they do not use femininity to prevail. *Id.* Mulan, by contrast, does become masculine when she dresses as a man, and it is her masculine attributes—bravery and prowess in physical combat—that allow her to triumph. *Id.*

253. Ariel is somewhat of an exception to this statement because the resolution to her story requires her to make Prince Eric fall in love with her to get her voice back. THE LITTLE MERMAID, *supra* note 30. However, Ariel's interest in pursuing Prince Eric stems from her fascination with humankind. *Id.* Therefore, although Ariel's goals are more romantically driven than the other princesses of this era, she maintains other motivations for her actions. *Id.*

254. In *Aladdin*, Jasmine rejects a series of potential husbands because she believes it is unfair that she must marry a man she does not love. ALADDIN, *supra* note 30. Pocahontas chooses love with John Smith over a marriage to Kocoum against her father's wishes. POCAHONTAS, *supra* note 30. When Mulan sees herself as a bride, she sings about how her reflection does not represent how she feels inside, and she is noticeably uncomfortable and awkward in presenting herself to the Matchmaker. MULAN, *supra* note 30.

255. ALADDIN, *supra* note 30.

256. MULAN, *supra* note 30; SNOW WHITE AND THE SEVEN DWARFS, *supra* note 27; SLEEPING BEAUTY, *supra* note 27.

hideous form.²⁵⁷ Still, their plots are recognizably different from those of the Classic Era. Ariel's attraction to Eric is part of a broader desire for independence and novelty, and Belle is not seeking love at all—she stays with the Beast to save her father.²⁵⁸

For all the progress from the Classic Era, however, the Renaissance Era movies still fall noticeably short of picturing a world of equality. While the rebellious princesses reject their fathers' orders in favor of following their own dreams, ultimately, these adventures are “at least sanctioned, if not rewarded by the patriarchies in which [they] live.”²⁵⁹ Neither Ariel nor Jasmine manages to defeat the adversary herself; the decisive blow is struck by the prince.²⁶⁰ In the climactic battle with Ursula, Ariel falls to the bottom of the whirlpool Ursula creates. Prince Eric is left to stab Ursula with his boat to kill her and save Ariel.²⁶¹ Likewise, Jafar traps Jasmine in an hourglass, where she must wait while Aladdin cleverly defeats Jafar by tricking him into becoming a genie and trapping him in a lamp.²⁶² Therefore, even with these efforts by the princesses, the perception that men are more capable than women still lingers.

Similarly, neither princess is able to win her prince without her father's approval and assistance.²⁶³ After Ariel becomes a mermaid again at the end of her movie, it is King Triton who transforms her back into a human.²⁶⁴ Only with his blessing is she able to live out her dream of being human.²⁶⁵ Jasmine and Aladdin love each other, but the law requires her to marry a prince. Jasmine's father must change the law to allow her to marry Aladdin.²⁶⁶

The “good daughter” princesses are perhaps even more problematic because they sacrifice themselves for their fathers, taking on a stereotypical caregiver/nurturer role. Belle does so at the cost of her own dreams: she is not going to see the world if she is a prisoner in the Beast's castle, and while there she plays the feminine role of taming and civilizing a man.²⁶⁷ Mulan, by contrast, finds adventure in her sacrifice and does so by adopting masculine characteristics. But her foray into the masculine world is brief. Once the Huns are defeated, she refuses the offer of a position at the

257. THE LITTLE MERMAID, *supra* note 30; BEAUTY AND THE BEAST, *supra* note 30.

258. THE LITTLE MERMAID, *supra* note 30; BEAUTY AND THE BEAST, *supra* note 30.

259. DAVIS, *supra* note 93, at 219.

260. THE LITTLE MERMAID, *supra* note 30; ALADDIN, *supra* note 30.

261. THE LITTLE MERMAID, *supra* note 30.

262. ALADDIN, *supra* note 30.

263. THE LITTLE MERMAID, *supra* note 30; ALADDIN, *supra* note 30.

264. THE LITTLE MERMAID, *supra* note 30.

265. *Id.*

266. ALADDIN, *supra* note 30.

267. BEAUTY AND THE BEAST, *supra* note 30.

Imperial Court, returns home, and presents the sword the Emperor gave her (which she had taken from the defeated Hun leader) to her father. Her destiny, the movie implies, is to marry Li Shang.²⁶⁸ Like most of the Renaissance Era princesses, she shows that women can have it all—masculine adventure and feminine married life—but not at the same time. Very clearly, those things come in sequence, and marriage is the end of the adventure.²⁶⁹

Lastly, as discussed in more detail in the following Subpart, *Mulan*'s vision of equality is fatally flawed.²⁷⁰ *Mulan* shows us the difference between sex and gender. (Briefly, we will use those terms in the following way: sex is a biological category, based on physical differences between men and women.²⁷¹ Sex-based distinctions, we will suggest, are not inherently hierarchical. Gender, by contrast, is a cultural construct that codes traits or activities as masculine or feminine.²⁷² And unlike sex, a gender distinction is—at least in our world—usually hierarchical. The masculine is valued; the feminine is devalued.) The point of *Mulan* is that women can have masculine traits, crossing over to the privileged side of the masculine-feminine gender hierarchy.²⁷³ That may be a step in the right direction—it is probably better than the Classic Era view that all women are necessarily feminine.²⁷⁴ But it leaves the gender hierarchy in place. It is not a path to full equality.

C. *Connections: Sex Equality, Gender Hierarchy*

The movies and case law of the Renaissance Era display both the progress and limitations of society's attitudes towards women. As a general matter, both the movies and the case law suggested that women could defy societal expectations and aspire to a broader range of activities than those within the domestic sphere. Sex, by itself, was not a limit: women could engage in masculine activities. And in many situations—unless a real biological difference was present—the government was required to treat men and women the same.

But does allowing women the opportunity to be masculine produce equality? Does treating men and women identically do so? Not necessarily, we will suggest: not always, and in particular not if the world remains structured around male norms and the masculine remains hierarchically superior to the feminine. These points come

268. *MULAN*, *supra* note 30.

269. *See generally id.*

270. *See infra* Part IV.

271. *Gender, Women and Health: What Do We Mean by "Sex" and "Gender"?*, WORLD HEALTH ORG., <https://web.archive.org/web/20170130022356/http://apps.who.int/gender/whatisgender/en/> (last visited Apr. 27, 2021).

272. *Id.*

273. *See generally* *MULAN*, *supra* note 30.

274. *See supra* Part II.

out in a case and a movie that present striking parallels: *United States v. Virginia* and *Mulan*.²⁷⁵

As of 1996, the Commonwealth of Virginia operated a number of institutions of higher education. The schools were co-educational, with the exception of VMI, which was all male.²⁷⁶ VMI offered a unique educational experience based on a military model and an “adversative” method of instruction that emphasized physical hardship, mental stress, lack of privacy, and strict regulation of behavior.²⁷⁷ VMI was a highly successful institution, with a close-knit and loyal body of alumni. In 1989, a female high school student complained to the United States Department of Justice (“DOJ”) about VMI’s exclusion of women.²⁷⁸ The DOJ filed suit in 1990.²⁷⁹

At the district court level, Virginia prevailed with the Classic Era argument that women were fundamentally different from men and unsuited for the adversative method of VMI.²⁸⁰ Offering VMI’s distinctive opportunity to men, the district court stated, simply brought diversity to an otherwise coeducational Virginia system. “VMI truly marches to the beat of a different drummer,” the district judge wrote, “and I will permit it to continue to do so.”²⁸¹

That ruling did not survive appeal: the Fourth Circuit noted the obvious point that providing a unique educational benefit to men and not women was not equal treatment.²⁸² Virginia had three options, the Fourth Circuit ruled: it could cut VMI off from state funding, admit women, or create an equal option for women.²⁸³ Virginia chose the last of these, working with Mary Baldwin College to create the Virginia Women’s Institute for Leadership (“VWIL”).²⁸⁴ VWIL shared the same stated mission as VMI—to produce “citizen-soldiers.”²⁸⁵ It differed, however, in its material resources and method of instruction. The task force charged with designing the program (“expert[s] in the field of educating women at the college level . . . drawn from Mary Baldwin’s own faculty and staff”) rejected the military model as “wholly inappropriate” for an all-female school.²⁸⁶ Instead, they chose a “cooperative method which reinforces self-esteem.”²⁸⁷ The district

275. 518 U.S. 515 (1996); *MULAN*, *supra* note 30.

276. *Virginia*, 518 U.S. at 515.

277. *See id.* at 515, 520–22.

278. *See id.* at 523.

279. *Id.*

280. *United States v. Virginia*, 766 F. Supp. 1407, 1413 (W.D. Va. 1991).

281. *Id.* at 1415.

282. *United States v. Virginia*, 976 F.2d 890, 898–99 (4th Cir. 1992).

283. *Id.* at 900.

284. *See* Liza Mundy, *It Couldn’t be the Same Thing as VMI*, WASH. POST (Jan. 10, 2011, 11:23 PM), <https://www.southcoasttoday.com/article/19970824/news/308249968>.

285. *See* *United States v. Virginia*, 518 U.S. 515, 526 (1996).

286. *United States v. Virginia*, 852 F. Supp. 471, 476 (W.D. Va. 1994).

287. *Id.*

court and Fourth Circuit both found that VWIL satisfied Virginia's equal protection obligations.²⁸⁸ The district judge returned to the theme of his earlier opinion. "If VMI marches to the beat of a drum," he wrote, "then Mary Baldwin marches to the melody of a fife and when the march is over, both will have arrived at the same destination."²⁸⁹

Not so, the Supreme Court concluded.²⁹⁰ VWIL was actually an inferior institution.²⁹¹ This conclusion was based, in part, on a consideration of objective metrics: the VWIL faculty had fewer PhDs and were paid lower salaries; the students had lower SAT scores.²⁹² But it was also based on the sense that VWIL's educational method was in some way lesser.²⁹³ The Court reasoned that VWIL students, "[k]ept away from the pressures, hazards, and psychological bonding characteristic of VMI's adversative training . . . will not know the 'feeling of tremendous accomplishment' commonly experienced by VMI's successful cadets."²⁹⁴

So VMI was required to admit women.²⁹⁵ Initially, the school refused to change its physical fitness requirements. Female cadets were expected to do the same number of pullups and pushups as male cadets, despite the fact that a requirement tailored for the male population impacted women differently.²⁹⁶ Constitutionally, this was permissible: because the requirement had not been chosen in order to

288. See *United States v. Virginia*, 44 F.3d 1229, 1241 (4th Cir. 1995); *Virginia*, 852 F. Supp. at 473.

289. *Virginia*, 852 F. Supp. at 484.

290. See *Virginia*, 518 U.S. at 519.

291. See *id.* at 557.

292. *Id.* at 526.

293. See *id.* at 548–51.

294. *Id.* at 549.

295. See Paul M. Barrett & Phil Kuntz, *VMI Must Admit Women Cadets or Become Private, Justices Rule*, WALL ST. J. (June 26, 1996), <https://www.wsj.com/articles/SB835804068306667000>.

296. The requirement was "sixty situps and five pullups in two minutes, and a one and one half mile run in twelve minutes." Katharine T. Bartlett, *Unconstitutionally Male?: The Story of United States v. Virginia* n.80 (Duke L. Scholarship Repository Working Paper, Paper No. 12, 2010), http://scholarship.law.duke.edu/working_papers/12. VWIL, adopting a set of requirements deemed "comparable" by the district court, see *United States v. Virginia*, 852 F. Supp. 471, 496 (W.D. Va. 1994), set them at "twenty-eight pushups in two minutes, sixty full-body sit-ups in two minutes, a flexed arm hang of at least fifteen seconds, and a one-and-one half mile run in just under fourteen minutes and thirty seconds." *Id.* at n.103. At the end of the first year in which women were admitted to VMI, 96 percent of male students passed the pull-up requirement, while only 30 percent of female students did. Bartlett, *supra* note 296, at n.205.

achieve the disparate impact, it received only rational basis review.²⁹⁷ But federal antidiscrimination law is more demanding than the Constitution, and once DOJ began a Title IX investigation, VMI adopted different fitness norms for female cadets.²⁹⁸

Women also faced hazing and harassment.²⁹⁹ The first female student admitted to the Citadel, South Carolina's all-male military school, entered alone and dropped out within a week.³⁰⁰ VMI admitted thirty or more women in the first two years following integration.³⁰¹ And while the early female students were greeted with hostility, conditions seem to have improved. The number of female students per class has recently been near sixty, out of about three hundred applicants.³⁰² (VWIL, which still exists, received nine hundred fifty applications for fifty-five positions in 2019.)³⁰³ Still, one might ask: Is providing a unique educational experience to a student body that is consistently close to 90 percent male really equality?

From the Supreme Court's perspective, the answer appears to be yes. The anti-stereotyping principle that animates the Renaissance Era case law tells us that government may not make assumptions about the relative capacities and preferences of men and women, especially if those assumptions reflect or perpetuate traditional gender norms and roles. Treating men and women identically is equality—no matter what that treatment is.³⁰⁴

The shortcomings of this approach are evident even if we think only about sex, as the application of VMI's fitness requirements to female students shows. Men and women do in fact differ on a population basis, and a fitness requirement designed to encourage students to be in, say, the top 10 percent of the population in terms of pull-up ability will set a different number for men and women.³⁰⁵ But if we think about the VMI case through the lens of gender, things become clearer.

297. See *Washington v. Davis*, 426 U.S. 229, 242–48 (1976) (holding a classification that has a disparate impact, absent a showing of discriminatory purpose, is subject to rational basis review).

298. OCR Complaint No. 11-08-2079, Letter of Findings 1–2, May 9, 2014.

299. See Bartlett, *supra* note 296.

300. *1st Woman to Enter the Citadel Talks About Brief Time There*, FOX NEWS (Mar. 4, 2018), <https://www.foxnews.com/us/1st-woman-to-enter-the-citadel-talks-about-brief-time-there>.

301. Bartlett, *supra* note 296.

302. Chris Floyd, *504 Matriculants Enter the Rat Line*, VA. MIL. INST. (Aug. 19, 2017), <https://www.vmi.edu/news/headlines/2017-2018/504-matriculants-enter-the-rat-line.php>.

303. MARY BALDWIN UNIV., <https://marybaldwin.edu/vwil/> (last visited Apr. 27, 2021).

304. See *supra* Part III.

305. See Tara Parker Pope, *Why Women Can't Do Pull-Ups*, N.Y. TIMES (Oct. 25, 2012, 12:01 AM), <https://well.blogs.nytimes.com/2012/10/25/why-women-cant-do-pull-ups/>.

What Virginia was doing before the lawsuit was not just providing an educational opportunity to men. It was providing a *masculine* single-sex opportunity. (VMI was an extraordinarily gendered environment, designed, in the words of *Mulan*, to “make a man out of you.”)³⁰⁶ It is thus not entirely surprising that, challenged to come up with an all-female counterpart, Virginia decided to create a gendered option for them, too. The development of VWIL was not, it is important to understand, an exercise in bad faith. The program was constructed by a task force from Mary Baldwin, which had been operating as an all-female school for over a hundred years.³⁰⁷ Creating an all-female school with an adversative method similar to VMI’s—a masculine, all-male school—would have been a strange thing to do. While a nongendered option was plausible, the Mary Baldwin experts evidently felt that a program tailored to women would be more effective.³⁰⁸ The failure to attain equality, however, followed inevitably.

As Paul Bender, arguing for the United States put it, Virginia had created “a single sex institution for men that’s designed as a place to teach manly values . . . and a single sex institution for women . . . that is openly, expressly, deliberately designed to teach women womanly values, feminine values.”³⁰⁹ The problem was that while distinctions based on sex are not necessarily hierarchical,³¹⁰ gender-based distinctions are. This is a contingent fact about social meaning, which can change over time. But in our society, it is true: generally speaking, the masculine is valued and the feminine is devalued. A feminine, all-female school will never be seen as the equal of a masculine all-male school.

What is the solution? The Supreme Court’s answer was to say that women should be admitted to VMI.³¹¹ That fits with the anti-stereotyping principle: women, at least some women, can be masculine, and sex provides no reason to confine them to feminine roles. But allowing some exceptional women to attend VMI and

306. See Bartlett, *supra* note 296 (“The adversative system . . . was deliberately and pervasively gendered.”); MULAN, *supra* note 30.

307. See *Virginia Women’s Institute for Leadership: History*, MARY BALDWIN UNIV., <https://marybaldwin.edu/vwil/> (last visited Apr. 27, 2021) (describing the task force’s creation).

308. *Virginia Women’s Institute for Leadership (VWIL)*, STAUNTON MILITARY ACADEMY ALUMNI FOUNDATION, <http://sma-alumni.org/virginia-womens-institute-leadership-vwil/> (last visited Apr. 27, 2021).

309. Transcript of Oral Argument at 10, *United States v. Virginia*, 518 U.S. 515 (1996) (No. 94-1941, 94-2107).

310. Single-sex bathrooms, for instance, are not generally understood as reflecting a sex-based hierarchy. Racial distinctions, by contrast, are closer to gender—they seem to carry an inescapable hierarchy. Hence while sex-segregated education may be constitutionally acceptable, it seems unlikely that racially segregated education ever could be.

311. *United States v. Virginia*, 518 U.S. 515, 519 (1996).

thereby cross to the privileged side of the gender hierarchy does very little to undermine or dismantle that hierarchy.³¹² The masculine is still privileged, and the student body of VMI is still almost 90 percent male.³¹³

Exactly the same problem arises with attempts to view *Mulan* as a story of equality. *Mulan* forcefully separates sex and gender. When the movie's prince, Captain Li Shang, sings "I'll Make a Man Out of You," he is singing (he believes, and the law requires) to an all-male audience.³¹⁴ He is describing gender, not sex; he is assuming that they are men and promising to make them masculine. (The line that contains the title demonstrates this: it is "*Mister*, I'll make a man out of you.")³¹⁵ And that is what the training montage that accompanies the song shows, as the recruits, Mulan among them, acquire masculine traits and abilities.³¹⁶ Mulan becomes masculine—she is the one who first conquers some of the physical challenges, the one who destroys most of the Hun army with an avalanche, and the one who defeats the Hun leader in single combat.³¹⁷ But none of that disturbs the gender hierarchy of China, and in fact it makes no difference to Mulan herself. After initial rejection when she is discovered to be a woman, she is ultimately accepted and offered a place in the man's world of the Emperor's cabinet. But she declines it, returns home, and gives the Hun leader's sword—the token of masculinity she has won³¹⁸—to her father. Her story ends with marriage to Li Shang.³¹⁹

312. Inclusion of women does make an environment less masculine. Virginia's arguments over the extent to which inclusion of women would require changes to VMI are best seen as a proxy for this point. Justice Scalia's dissent strikes the same note: he laments what he evidently sees as the death of VMI's code of the gentleman, without ever saying a word as to why inclusion of women will end it. *Id.* at 601–03 (Scalia, J., dissenting). The answer, of course, is that gentlemen are not just the opposite of boors or knaves; they are defined in large part in opposition to ladies. See also PHILIPPA STRUM, *WOMEN IN THE BARRACKS: THE VMI CASE AND EQUAL RIGHTS 109* (2002) ("If women could perform well . . . how could [success] continue to function as evidence of manhood?").

313. *Quick Facts*, VA. MIL. INST., <https://www.vmi.edu/about/quick-facts/> (last visited Apr. 27, 2021).

314. *MULAN*, *supra* note 30.

315. *Id.*

316. "Be a man," the chorus urges, "swift as the coursing river . . . with all the force of a great typhoon . . . with all the strength of a raging fire . . . mysterious as the dark side of the moon." *Id.*

317. Again, a live-action movie makes the same point. In a climactic moment of *G.I. Jane*, Demi Moore's character tells her commanding officer, who is role-playing as an adversary, "suck my dick," claiming not just a masculine identity but male anatomy. *G.I. JANE* (Caravan Pictures 1997).

318. Mulan initially takes the sword, disarming the Hun leader by grasping his sword in the folds of her fan and pulling it away from him. The symbolism is evident. *MULAN*, *supra* note 30.

319. *MULAN II* (Walt Disney Pictures 2005).

Equality requires something more than allowing some women to be masculine. It requires either an erosion of gender, so that the distinction becomes less significant, or a subversion of the hierarchy, so that the devalued feminine is elevated to a place of equality. This is what third wave feminism³²⁰ saw, and it is reflected in the modern Disney movies. As we will see, though, it is harder to find a place for this insight in Supreme Court decisions. Some kinds of discrimination may not be reachable by law.

IV. MODERN ERA (2000–PRESENT)

The basic theme of the Renaissance Era understanding of equality, both in the Disney movies and in the Supreme Court's decisions, was anti-stereotyping.³²¹ Women, at least some women, were capable of engaging in traditionally masculine activities and should not be excluded simply because of their sex. This was a step forward from the Classic Era, but it neither reduced the salience of gender nor challenged the pervasive gender-based hierarchy.³²² Modern movies, by contrast, do both. Indeed, they move further towards a vision of equality than the Supreme Court has.

Following its success in the Renaissance Era, Disney released five more princess movies in the twenty-first century. They are *The*

320. *The Third Wave of Feminism*, BRITANNICA, <https://www.britannica.com/topic/feminism/The-third-wave-of-feminism> (last visited Apr. 27, 2021).

321. *See supra* Part III.

322. *See generally supra* Part II.

Princess and the Frog (2009),³²³ *Tangled* (2010),³²⁴ *Brave* (2012),³²⁵ *Frozen* (2013),³²⁶ and *Moana* (2016).³²⁷ Continuing the trend of the

323. In *The Princess and the Frog*, Tiana works hard in New Orleans as a waitress, saving money to open her own restaurant. Her childhood friend Charlotte, who is the Mardi Gras princess, throws a party in honor of the visiting Prince Naveen. The voodoo doctor Facilier turns Naveen into a frog, and he must kiss a princess to break the spell. Facilier turns Naveen's greedy valet, Lawrence, into Naveen. At the party, frog Naveen sees Tiana and believes she is a princess, so he kisses her, accidentally transforming her into a frog as well. The two journey through the bayou to Mama Odie, who tells Naveen he must kiss a real princess to turn them both back into humans. The two believe Charlotte, as Mardi Gras princess, can save them. During the adventure, Naveen and Tiana fall in love, but neither tells the other until they reach the parade. Charlotte agrees to kiss Naveen to save him, but it is too late. Midnight has passed, and she is no longer the Mardi Gras princess. Naveen and Tiana marry as frogs, and once Tiana becomes Naveen's wife, she is a princess and breaks the spell. They return to New Orleans, where Tiana opens her restaurant. THE PRINCESS AND THE FROG, *supra* note 38.

As the first Black princess, Tiana offered the possibility of an exploration of racism or intersectional feminism. Perhaps out of a desire to avoid controversy, Disney did not take up the possibility. Tiana spends most of the movie as a frog, which makes the analysis of race somewhat harder. *See generally* Emilie Snedevig Hoffman, *Diversity Dissected: Intersectional Socialization in Disney's Aladdin, Mulan, and The Princess and the Frog*, 5 LEVIATHAN: INTERDISC. J. ENGLISH. 60, 65, 104 (2019).

It has been noted, though, that the nonwhite princesses tend not to get the classic happy ending of living as princesses. Tiana's "palace" is a restaurant. Mulan goes home. Pocahontas stays with her people. We could view this as a broadening of the concept of happily ever after, which is what Disney presumably wants. But it remains a troubling point of contrast that the white princesses—Rapunzel, Merida, and Elsa—all do end up assuming royal roles. *See* Lauren Dundes & Madeline Streiff, *Reel Royal Diversity? The Glass Ceiling in Disney's Mulan and Princess and the Frog*, 6 SOCIETIES 35, 4, 10, 11 (2019).

324. In *Tangled*, Mother Gothel kidnapped Princess Rapunzel as a baby because her hair has magic healing powers that can keep Mother Gothel young forever. Mother Gothel keeps Rapunzel hidden in a secret tower, where Rapunzel watches lanterns illuminate the sky each year on her birthday. The lanterns are from her palace, where her parents mourn her kidnapping. Flynn Rider is a felon wanted for stealing a crown from the castle, and he discovers Rapunzel's tower while on the run. Rapunzel steals the crown from him and offers to return it only if he takes her to see the lanterns. Flynn Rider begrudgingly agrees. Mother Gothel finds them and tells Rapunzel that Flynn Rider is using her. She gives Rapunzel the crown to test Flynn Rider and see if he leaves her once he gets it back. Rapunzel gives Flynn Rider the crown, and the two continue their journey. They fall in love and watch the lanterns rise. Flynn Rider leaves Rapunzel to give his coconspirators the crown, but they kidnap him. Rapunzel believes he left her, so she returns with Mother Gothel to the tower. Rapunzel realizes she is the lost princess and confronts Mother Gothel. Flynn Rider arrives at the tower to save Rapunzel, but Mother Gothel stabs him. Rapunzel agrees to live with Mother Gothel forever if she allows her to heal Flynn Rider, but he cuts off her hair, meaning she has no value as a prisoner to Mother Gothel. Mother Gothel

Renaissance Era, these princesses' characters and plots are diverse. Some of them are rebellious like the Renaissance princesses, but all have definite goals they are striving to achieve.³²⁸ Tiana has worked hard for years to open her own restaurant, while Rapunzel dreams

trips out the window and dies. Rapunzel cries because she believes she cannot save Flynn Rider but then discovers her tears also have healing powers. The two return to the palace, where Rapunzel is reunited with her parents. TANGLED, *supra* note 38.

325. *Brave's* Princess Merida is a skilled archer and the future queen of her clan in medieval Scotland. To fulfill her duties, she must marry the son of an ally clan's leader. Merida fights with her mother because she does not want to marry, runs away, and discovers a witch in the woods. Merida asks the witch for a spell to change her fate, and the witch gives Merida a cake for her mother. The cake turns her mother into a bear, and the only way to reverse it is to "mend the bond torn by pride." As an accomplished bear hunter, Merida's father attempts to hunt her mother, and Merida must protect her. Eventually, Merida reconciles her differences with her mother and reverses the spell. The two agree Merida does not yet have to marry. BRAVE, *supra* note 38.

326. In *Frozen*, Princess Elsa has magical powers that create ice and snow from her hands. She was close with her sister, Princess Anna, until an accident with her powers drove Elsa into hiding. At Elsa's coronation as queen, Anna believes she has fallen in love at first sight with Prince Hans. She asks Elsa for her blessing to marry him, Elsa says no, and a fight ensues. Elsa loses control of her powers and runs away, leaving the kingdom frozen in permanent winter. Anna chases after her and, with the help of an ice harvester named Kristoff and a snowman named Olaf, finds Elsa. Elsa is upset at what she has done to the kingdom and strikes Anna, freezing her heart. Anna, Kristoff, and Olaf run to Kristoff's troll friends for help, but the only way to save Anna is through an act of true love. Anna returns to the castle so Hans can save her, but Hans admits he was leading Anna on so he could kill both sisters and become king. He locks Anna in a room to die and tells the dignitaries Elsa is dead, so only he is left to become king. Olaf frees Anna, and Anna sees Hans about to kill Elsa. Anna jumps in between them but becomes fully frozen. Elsa thaws Anna with her sisterly love, which is an act of true long strong enough to save Anna. Elsa ends the winter. Anna realizes Kristoff is in love with her, and the two live happily ever after. FROZEN, *supra* note 38.

327. The title character in *Moana* is the daughter of the chief of her Polynesian island. She is fascinated with the sea, but her people do not venture beyond the reef. When the village's harvest begins to rot, Moana's grandmother explains that the goddess Te Fiti once gave the island life, but it became a dangerous place when the demigod Maui stole Te Fiti's heart. The ocean presented Moana with the heart of Te Fiti when she was a child, meaning Moana is the one chosen to return it. Moana sails to find Maui for his assistance on the journey. The two sail to Te Fiti's island but are attacked by a lava monster, Te Kā. They are defeated, and Maui leaves Moana. Moana returns to Te Kā, which she realizes is Te Fiti without her heart. Maui returns to Moana, Moana returns the heart to the monster, and Te Fiti heals the ocean. When she returns home, she teaches her people to sail and become voyagers. MOANA, *supra* note 1.

328. THE PRINCESS AND THE FROG, *supra* note 38; TANGLED *supra* note 38; BRAVE *supra* note 38; FROZEN *supra* note 38; MOANA, *supra* note 1.

about seeing the lanterns up close.³²⁹ Merida wants to change her fate so that she does not have to marry.³³⁰ Elsa is learning to conceal her powers and control her emotions, while Anna wants to experience the world beyond her castle.³³¹ Moana wants to save her people and restore the island's food sources.³³²

But Modern Era movies also go beyond the Renaissance Era vision of equality as something exceptional women achieve (temporarily) by adopting masculine traits. In this era, gender does not play a significant role in the princesses' lives. They do not conform to gendered stereotypes, and they are more concerned with career goals than marriage. When a love relationship is central to the plot, it is often not between a princess and a prince. And rather than disappearing into motherhood and domesticity, several princesses are positioned to become rulers of their respective lands.³³³

The decisions of the Modern Era also go further than Renaissance Era decisions in rejecting gendered stereotypes, particularly those related to parenthood.³³⁴ Law also shifted in another way. Increasingly, the cases featured not equal protection challenges to discriminatory statutes but private rights of action created under Congress's section 5 power. Section 5 authorizes Congress to pass prophylactic legislation that is more protective against gender discrimination than the Equal Protection Clause itself.³³⁵ The Court showed a deeper understanding of sex discrimination in recognizing the range of problems Congress might legislate against. The fact that the Court's main role shifted from intervening against government action to approving legislative interventions suggests, however, that it may be reaching the limits of what the Constitution and the Court can do.³³⁶

329. THE PRINCESS AND THE FROG, *supra* note 38; TANGLED, *supra* note 38.

330. Stephanie Medley-Rath, *What Exactly Makes Merida "Brave"?*, LEARN SOCIO. (June 26, 2013), <http://stephaniemedleyrath.com/2013/06/26/what-exactly-makes-merida-brave/>.

331. See Drea Letamendi, *The Psychology of Elsa from Frozen*, FANDOM: MOVIES, DISNEY, ANIMATION (Nov. 18, 2019), <https://www.fandom.com/articles/psychology-frozen-2-elsa>.

332. See Adrian Baker Swicegood III, *The Cultural Significance and Symbolism of the Film "Moana"*, ELON U. (Apr. 19, 2018), <https://blogs.elon.edu/geo1311803/2018/04/26/the-cultural-significance-and-symbolism-of-the-film-moana/>.

333. Batt, *supra* note 88; see also Schwartzel, *supra* note 90 (quoting a former Disney executive as saying Disney has "tried to make the princesses more independent and to have more of a voice").

334. See *infra* Subpart IV.A.

335. U.S. CONST. amend. XIV, § 5.

336. See *infra* Subpart IV.A.

A. *Cases: Limited Progress*

Third wave feminism recognizes that simply allowing some women to cross to the masculine side of a gender-based hierarchy does not produce equality.³³⁷ Instead, it is necessary to erode the hierarchy by decreasing the significance of gender or to subvert it by valorizing the feminine. An anti-stereotyping principle is not enough.³³⁸ But how can this understanding find a voice in Supreme Court decisions?

Only to a limited extent, is the answer. In some Modern Era cases, the Supreme Court has moved forward by being more skeptical of arguments based on real biological difference.³³⁹ *Sessions v. Morales-Santana*³⁴⁰ featured “a gender-based differential in the law governing acquisition of U.S. citizenship by a child born abroad, when one parent is a U.S. citizen, the other, a citizen of another nation.”³⁴¹ Fathers and married mothers had to live in the United States for five years prebirth to transmit citizenship, while unwed mothers needed only one year prebirth.³⁴² The Court recognized that the government had constructed the statute with a “now untenable” assumption in mind: that an “unwed mother is the natural and sole guardian” of a child born outside wedlock.³⁴³ Men and married women were required to show significant ties to the United States out of concern for the impact of a mother’s or husband’s loyalty to a foreign country.³⁴⁴ But children of unmarried American women were presumed to grow up uninfluenced by their foreign fathers.³⁴⁵

The Supreme Court rejected this framework. It opined that “[u]nderlying this apparent design is the assumption that the alien father of a nonmarital child born abroad to a U.S.-citizen mother will not accept parental responsibility.”³⁴⁶ That “assumption conforms to the long-held view that unwed fathers care little about, indeed are strangers to, their children.”³⁴⁷ Such “lump characterizations” violated the Equal Protection Clause, and so the Court struck down the statute.³⁴⁸

337. See Michelle Sidler, *Living in McJobdom: Third Wave Feminism and Class Inequity*, in *THIRD WAVE AGENDA: BEING FEMINIST, DOING FEMINISM* 25, 36–37 (Leslie Heywood & Jennifer Drake eds., 1997).

338. See Kathleen Iannello, *Women’s Leadership and Third-Wave Feminism*, in *GENDER AND WOMEN’S LEADERSHIP: A REFERENCE HANDBOOK* 70, 71–72 (Karen O’Connor ed., 2010).

339. See *infra* notes 341–76 and accompanying text.

340. 137 S. Ct. 1678 (2017).

341. *Id.* at 1686.

342. *Id.*

343. *Id.* at 1690–91.

344. *Id.* at 1692.

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.* at 1695, 1700–01. The government also argued this statutory scheme is designed to prevent stateless children, but the Court rejected that justification

The appeal to the “real biological difference” of women’s childbearing no longer has the talismanic power it did in earlier eras, when it could be used to uphold wage and hour restrictions, or even limits on education. But it is still powerful. In *Nguyen v. INS*,³⁴⁹ the Supreme Court considered a statute regulating citizenship for children born outside the United States to unmarried parents, only one of whom was an American citizen.³⁵⁰ The statute “impose[d] different requirements for the child’s acquisition of citizenship depending upon whether the citizen parent [was] the mother or the father.”³⁵¹ The Court ultimately held that the statute was consistent with equal protection guarantees because it was tailored to serve an important government interest.³⁵² That interest was ensuring the “child and the citizen parent have some demonstrated opportunity or potential to develop” a meaningful relationship that provides a connection to the United States.³⁵³ Biologically, the mother had this potential through “the very event of birth,” while the father did not.³⁵⁴ The Court ruled that imposing additional requirements on fathers was substantially related to this goal.³⁵⁵ The Court emphasized that a perfect fit was not required, and Congress chose “an easily administered scheme” here.³⁵⁶

The Court has shown no signs of reconsidering its disparate impact doctrine, which allows a gender-based hierarchy to inflict sex-based inequality. And while it has explicitly denounced paternalistic legislation, it still seems receptive to arguments that women need to be protected from making bad decisions.³⁵⁷ Most notably, in *Gonzales*

because the government did not provide evidence that statelessness concerns prompted the different physical-presence requirements or show “the risk of statelessness disproportionately endangered the children of unwed mothers.” *Id.* at 1696.

349. 533 U.S. 53, 53 (2001). *Miller v. Albright*, 523 U.S. 420, 423 (1998), challenged the same statute as *Nguyen*, but there was no majority opinion in the case. The plurality upholding the statute had only two Justices, while four Justices would have resolved the case on justiciability grounds. *See id.* at 445–46 (O’Connor, J., concurring) (arguing that the plaintiff did not have standing to pursue her claim); *id.* at 453 (Scalia, J., concurring) (“The complaint must be dismissed because the Court has no power to provide the relief requested: conferral of citizenship on a basis other than that proscribed by Congress.”). The remaining three Justices dissented on the merits. *See id.* at 460 (Ginsburg, J., dissenting).

350. *Nguyen*, 533 U.S. at 56.

351. *Id.* at 56–57.

352. *Id.* at 58–61.

353. *Id.* at 64–65.

354. *Id.* at 65.

355. *Id.* at 69.

356. *Id.* at 69–70.

357. *See generally* *Gonzales v. Carhart*, 550 U.S. 124 (2007).

v. Carhart,³⁵⁸ a case upholding a federal ban on certain methods of performing abortions, Justice Kennedy invoked the figure of a woman regretting her decision when she learned the details of the procedure, stating:³⁵⁹

While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form.³⁶⁰

The most encouraging judicial pronouncements come not from direct challenges under the Equal Protection Clause but from suits under Title VII of the Civil Rights Act,³⁶¹ Title IX of the Education Amendments,³⁶² and other statutes guaranteeing equal protection for all genders.³⁶³ Interpretation of these statutes relates to constitutional interpretation because some applications rely on Congress's section 5 power to enforce the Fourteenth Amendment.³⁶⁴ In upholding statutes such as the Family and Medical Leave Act ("FMLA"),³⁶⁵ the Supreme Court has had occasion to discuss sex discrimination.³⁶⁶

*Nevada Department of Human Resources v. Hibbs*³⁶⁷ involved a challenge to the FMLA, passed under Congress's section 5 power, which guaranteed twelve weeks of paid medical leave per year to

358. *Id.*

359. *Id.* at 159–60.

360. *Id.* at 159–60. See generally Reva B. Siegel, *Dignity and the Politics of Protection: Abortion Restrictions Under Casey/Carhart*, 117 YALE L.J. 1694 (2008) (discussing "woman-protective" arguments for abortion restrictions).

361. See, e.g., *Hishon v. King & Spalding*, 467 U.S. 69, 71–73 (1984) (holding that a law firm violated Title VII of the Civil Rights Act when it discriminated against a female associate on the basis of her sex).

362. See, e.g., *Cannon v. Univ. of Chicago*, 441 U.S. 677, 694–696, 709 (1979) (determining that a private cause of action for sex discrimination exists under Title IX of the Education Amendments).

363. See Sandra Day O'Connor, *Portia's Progress*, 66 N.Y.U. L. REV. 1546, 1552 (1991) (noting that more recent cases before the Court have arisen under "statutes such as Title VII rather than of the equal protection clause"). Recent noteworthy cases brought under Title VII legislation include *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), and *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

364. Franklin, *supra* note 156, at 152.

365. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654.

366. See *Nevada Dept. of Human Res. v. Hibbs*, 538 U.S. 721, 736–37 (2003).

367. 538 U.S. 721 (2003).

eligible employees, regardless of sex, to care for ill family members.³⁶⁸ “The FMLA aim[ed] to protect the right to be free from gender-based discrimination in the workplace.”³⁶⁹ “Congress determined, ‘Historically, denial or curtailment of women’s employment opportunities has been traceable directly to the pervasive presumption that women are mothers first, and workers second. This prevailing ideology about women’s roles has in turn justified discrimination against women’”³⁷⁰ That discrimination “created a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver”³⁷¹ In order to prevent employers from relying on this “invalid gender stereotype[],” Congress required the same benefits to be offered to men and women.³⁷²

In upholding the statute, the Court finally “acknowledged the gap between formal and substantive equality” and “recognized what the women’s movement had been arguing for decades: if a workplace is designed with men in mind, and its terms and conditions suited only for workers who cannot become pregnant and have limited caregiving responsibilities, then the deck is already stacked against” women.³⁷³ While earlier cases recognized women could hold jobs (sometimes, so long as they conformed to male norms), this case recognized that women might have difficulty competing not simply because of inherent differences but because of demands and expectations placed on them by society and intimate partners.³⁷⁴ *Hibbs* shows an awareness that identical treatment does not necessarily produce equality, and neither does allowing women to enter male domains only if they act like men. Accordingly, *Hibbs* comes close to expressing the insights of third wave feminism.

But, of course, the Court did not write the FMLA and did not impose it as a constitutional requirement. The mere fact that the

368. *Id.* at 724, 726–27.

369. *Id.* at 722.

370. *Id.* at 736 (citing *The Parental and Medical Leave Act of 1986: J. Hearing Before the Subcomm. on Lab.-Mgmt. Rels. & the Subcomm. on Lab. Standards of the H. Comm. on Educ. & Lab.*, 99th Cong. 100 (1986)).

371. *Id.*

372. *Id.* at 730. Instead, Congress could have chosen to mandate equality between men and women in the administration of leave benefits, but this would have given employers the option to offer no family leave at all. See Franklin, *supra* note 156, at 152. However, such a policy would deter women from working for employers who did not offer leave, failing to solve the problem at hand. *Id.* (citing *Hibbs*, 538 U.S. at 738, 734).

373. Franklin, *supra* note 156, at 152.

374. See, e.g., *Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Johnson Controls*, 499 U.S. 187, 204 (1991) (“[W]omen as capable of doing their jobs as their male counterparts may not be forced to choose between having a child and having a job.”); cf. *Hibbs*, 538 U.S. at 729, 731–32, 737–38.

Court's most far-reaching discussions of sex discrimination occur in cases involving challenges to antidiscrimination laws, rather than attempts to enforce the Constitution, suggests that we may be reaching the limits of what the Court and the Constitution can do.

B. Movies: Break the Patriarchy

In contrast to the Renaissance Era movies, which showed some exceptional women briefly rising to the privileged side of a gender-based hierarchy before falling back into marriage,³⁷⁵ Modern Era movies actually attack the hierarchy. They reduce the salience of gender, valorize the feminine, and show us female protagonists whose destiny is not to disappear into the domestic sphere.³⁷⁶

1. De-gendering

Unlike their predecessors, Tiana, Rapunzel, Merida, Anna, Elsa, and Moana do not fit the traditional stereotype of the “good woman.” As a group, they are assertive, athletic, adventurous, and smart.³⁷⁷ Empirical studies observe that they exhibit nearly equal displays of masculine and feminine behavior and argue that princesses have become androgynous.³⁷⁸ For the first time, all the princesses of this era receive more compliments on their skill than their beauty, and none receives more than a third of their compliments on looks.³⁷⁹ They represent four of the six princesses complimented the most on skill and the least on appearance.³⁸⁰

As individuals, each has a central character trait that is not traditionally feminine. Tiana is extraordinarily hard-working. As revealed in the flashback to her childhood at the beginning of the movie, her dream is to open her own restaurant, and during the

375. See discussion *supra* Subpart III.B.3.

376. See *supra* notes 323–27 and accompanying text.

377. Benjamin Hine et al., *The Rise of the Androgynous Princess: Examining Representations of Gender in Prince and Princess Characters of Disney Movies Released 2009–2016*, 7 Soc. Scis. 245, 252 tbl.1 (2008).

378. *Id.* at 251 (“The masculine behavior percentage for princesses was not significantly different to 50%, suggesting that both masculine (52.6%) and feminine (47.7%) accounted for close to half of overall princess behavior.”); see also Hine et al., *supra* note 223, at 164 (conducting a study on how children perceive Moana and Aurora and reporting that the “results showed that participants did not attribute feminine . . . and masculine characteristics . . . to [Moana’s] character at significantly different levels Overall, these results suggest that children identify a much more androgynous and balanced gender profile for Moana, and a more feminine profile for Aurora”).

379. Nowakowski, *supra* note 102. This analysis did not include Moana, and it analyzed Anna, not Elsa, as the princess from *Frozen*.

380. Schwartzel, *supra* note 90. This analysis also did not include Moana, and it analyzed Anna as the princess from *Frozen* as well.

movie, she works two jobs to save money for it.³⁸¹ Rapunzel is somewhat of a Renaissance woman; she is skilled at painting, mapping the stars, reading, playing instruments, and playing chess.³⁸² Merida is, of course, brave in attempting to change her fate.³⁸³ She is also an exceptionally skilled archer who out-competed all her male suitors to win her own hand in marriage.³⁸⁴ Elsa is portrayed, literally and figuratively, as cold. She is Anna's only living relative, but she is not warm towards Anna until the end of the movie, and she does not attempt to play a parental role for her.³⁸⁵ She is the opposite of the female caretaker model. Anna is fiercely brave and protective of Elsa, which leads her to venture into the wild alone to save Elsa.³⁸⁶ Moana is strong-willed. She refuses to avoid the ocean, despite her father demanding she do so, and eventually ventures out beyond the reef without his permission to save her island.³⁸⁷

The Modern Era princesses are also significantly more independent and rely less on princes to solve their conflicts than those in the previous eras.³⁸⁸ Tiana works hard by herself to save money

381. THE PRINCESS AND THE FROG, *supra* note 38. One of the most telling differences between this movie and the earlier movies is the development between Cinderella's wish and Tiana's wish. When Cinderella wished on a star, she sang an entire song about wanting to be rescued. CINDERELLA, *supra* note 27. When Tiana wished on a star, she wished for her own restaurant. Then, Tiana's father reminded her, "[T]hat old star can only take you part of the way. You gotta [sic] help it along with hard work of your own." THE PRINCESS AND THE FROG, *supra* note 38. Not only does Tiana have bigger dreams than someone saving her, but also she is taught from a young age that she must work to make her dreams reality. This lesson teaches children to be active in achieving their goals, a much more modern message than Cinderella's.

382. TANGLED, *supra* note 38.

383. BRAVE, *supra* note 38; *see also* Barber, *supra* note 218, at 20 ("[Merida] goes after her own destiny and seeks it, instead of sitting around and waiting for it to happen.").

384. BRAVE, *supra* note 38. Moana is also athletic, quickly learning to become a master sailor. Hine et al., *supra* note 223, at 162. Unlike Mulan, these princesses do not need to pretend to be men in order to exhibit masculine traits. And unlike *Mulan*, *Brave* shows the effect of a masculine princess on traditional gender roles. Tradition awards the princess to the manliest suitor. *Brave* asks the question: What if the princess herself is the most manly? The answer it offers is that she wins control of her destiny. Like *Mulan*, however, *Brave* preserves the gender hierarchy.

385. FROZEN, *supra* note 38.

386. *Id.* Anna is admittedly a slight exception here. Although she is brave and protective, she is also portrayed as a naive girl who, after being trapped in her castle for years, is excited to explore the outside world. This leads her to believe she has fallen in love at first sight with a man who is actually using her. *Id.*

387. MOANA, *supra* note 1.

388. *See* Andrew Pulver, *How Disney's Princesses Got Tough*, GUARDIAN (May 26, 2016, 12:40 AM), <https://www.theguardian.com/film/2016/may/26/has-disney->

for her restaurant, and she turns down Facilier's dark magic offer to pay for it.³⁸⁹ While Rapunzel does rely on Flynn Rider's worldly experience to travel to the palace, they are otherwise fairly equal partners throughout the movie.³⁹⁰ At the end of the movie, Rapunzel seems to embrace the same feminine role as Belle did, sacrificing her freedom to save a man. She agrees to live with Mother Gothel forever if she allows Rapunzel to save the injured Flynn Rider.³⁹¹ But Flynn does not accept her sacrifice as his due; instead, he cuts off Rapunzel's hair so that Mother Gothel will free her, even if it means Rapunzel cannot save him.³⁹² It is only together that they then defeat Mother Gothel. In *Brave*, Merida does not have a love interest helping to break the spell on her mother.³⁹³ She and her mother, with some help from her younger brothers, resolve the conflict themselves.³⁹⁴ After Elsa runs away in *Frozen*, Anna unhesitatingly follows her.³⁹⁵ When Hans tries to stop her and then to go with her, she refuses his help and takes off alone.³⁹⁶ Even when Kristoff is with Anna, he serves more as her guide than her partner in accomplishing the goal; for example, Anna goes into the ice castle alone to talk to Elsa.³⁹⁷ Moana also does not have a love interest, though she sails with Maui throughout the movie.³⁹⁸ Ultimately, it is Moana who realizes the lava monster Te Kā is the goddess Te Fiti and returns Te Fiti's heart.³⁹⁹ In this way, each of these princesses plays a larger role in their plots than princesses of the earlier eras.

finally-given-up-on-princesses ("All have featured self-reliant female protagonists . . . in stories where male agency has been eliminated or largely sidelined.").

389. THE PRINCESS AND THE FROG, *supra* note 38.

390. TANGLED, *supra* note 38.

391. *Id.*

392. *Id.*

393. BRAVE, *supra* note 38.

394. *Id.*

395. FROZEN, *supra* note 38.

396. *Id.*

397. *Id.*

398. MOANA, *supra* note 1.

399. *Id.* Another important development through the eras is the way in which the princes and princesses defeat the villains. In *Sleeping Beauty*, Prince Philip kills Maleficent by stabbing her in the heart. SLEEPING BEAUTY, *supra* note 27. Similarly, Prince Eric kills Ursula in *The Little Mermaid* by driving the bow of his boat through her heart. THE LITTLE MERMAID, *supra* note 30. However, in *Moana* the princess herself defeats the villain, and she does so not by killing the villain but by understanding the villain's problem and restoring her heart. MOANA, *supra* note 1. Additionally, in *Frozen*, Elsa saves Anna by thawing her frozen heart through an act of sisterly love, as opposed to a kiss from a prince. FROZEN, *supra* note 38. In this way, the modern female princesses—acting without their male counterparts' help—are able to solve their conflicts through peaceful means, teaching a lesson in understanding and compassion as opposed to violence.

2. *Femininity as Power*

As discussed above, one way in which the Modern Era movies move beyond those of the Renaissance Era is by presenting the princesses as less gendered characters. Moana's story could be told just as easily about a male protagonist: there is nothing distinctively feminine or female about her. In sharp contrast to Mulan, who temporarily crosses over to the privileged side of a strong and persistent gender hierarchy, Moana transcends the masculine/feminine divide.⁴⁰⁰

The second way in which the Modern Era movies display progress is by subverting the gender hierarchy. Femininity is no longer associated with weakness. Sometimes, it is a source of great strength.

Perhaps the only way in which Moana exhibits gender comes at the end of the movie, when she and Maui confront the lava monster Te Kā. Maui, after some equivocation, comes to Moana's aid: he is going to fight by her side.⁴⁰¹ This is brave and loyal—it is masculine—but, as the movie makes clear, it is also doomed. Maui is willing to fight, but he is going to die. Moana, by contrast, chooses a feminine solution. Rather than attacking Te Kā, she reaches out with understanding, undoing the damage that Maui earlier inflicted when he stole Te Fiti's heart and restoring her to her true state.⁴⁰²

In *Tangled*, most of the sources of power are feminine signifiers.⁴⁰³ The magic that starts the story comes from a flower. The magic is used to heal the queen of Corona and it is transferred into Rapunzel, the child she bears.⁴⁰⁴ When Rapunzel first encounters Flynn, she knocks him out with a frying pan. Later, she repeatedly saves Flynn and herself—first by appealing to the humanity of a group of ruffians and reminding them of their dreams, then through the magic of her long hair. At the end of the movie, it is revealed that her tears have magic power too.⁴⁰⁵ Flowers, childbirth, a frying pan, long hair, tears—all of these are coded feminine, but in the Modern Era they carry strength, not weakness.

In *Frozen*, Elsa is one of the most powerful characters in any Disney movie. But the power does not come at the expense of her femininity; in fact, the song “Let it Go”—the breakout hit of the movie—is about how showing her true feelings generates power.⁴⁰⁶ Elsa rejects social constraints—she refuses to “be the good girl you always have to be.” But that is not a feminine role; the mantra “conceal, don't feel” is a very masculine trope and the equation of

400. Compare MULAN, *supra* note 30, with MOANA, *supra* note 1.

401. Aficionados of science-fiction tropes will recognize this as a parallel to Han Solo returning to help Luke destroy the Death Star in *Star Wars*.

402. MOANA, *supra* note 1.

403. TANGLED, *supra* note 38.

404. *Id.*

405. *Id.*

406. FROZEN, *supra* note 38.

feelings with power is a valorization of the feminine. Indeed, one of the first things Elsa does with the powers she releases is create a fabulous ice gown.⁴⁰⁷

In earlier eras, this combination of femininity and power would have made Elsa a witch.⁴⁰⁸ But the Modern Era rejects that equation. *Maleficent*, a 2014 live-action retelling of *Sleeping Beauty*, makes the point more strongly. In the original *Sleeping Beauty*, Maleficent is effectively a witch—she is an evil fairy, noticeably more feminine than the good fairies, who resemble Cinderella’s Fairy Godmother.⁴⁰⁹ In the live-action version, Maleficent is still powerful, feminine, and sexual—she is played by Angelina Jolie—but the confluence of these attributes does not make her evil.⁴¹⁰ There is no inherent problem, the movie suggests, with a powerful, feminine figure. The problem is that men fear her power and try to steal it from her. In a scene that evokes date rape, Stefan drugs Maleficent and cuts off her wings. The resolution comes when Aurora frees the wings from the cage in which Stefan has placed them and they return to Maleficent. Whole again, she regains her full power.⁴¹¹

3. *True Love and Marriage—or Not*

Where the films of the Classic Era assumed that the question of whether and whom the princess would marry was the central element of the plot, Renaissance Era films gave their protagonists other things to do. Typically, they took on protective roles. Mulan fought the Huns; Belle, Jasmine, and Ariel all rescued their fathers. Marriage was still an important concern, however. The Renaissance Era films questioned the standard prince/princess pairing mostly by suggesting that the princess might find happiness with someone her father initially disapproved of (Jasmine, Ariel, Pocahontas) or someone who initially appeared hostile (Belle).⁴¹² Still, virtually without exception, the princesses end up with princes, and the love relationship plays an important role in the story.⁴¹³

407. *Id.*

408. Indeed, when Elsa’s powers are revealed, the Duke of Weselton declares that she is a monster, prompting her flight. A major plot strand of the movie involves the question of whether such a powerful woman can be part of society. Ultimately, Elsa realizes that love (a feminine trait) is the key to controlling her powers and returns as the queen of Arendelle. *Id.*

409. *SLEEPING BEAUTY*, *supra* note 27.

410. *MALEFICENT* (Walt Disney Productions 2014).

411. *Id.*

412. *See supra* Part III.

413. Pocahontas does not end up with John Smith, but the romantic relationship between them, and the question of whether Pocahontas should be with Smith or her father’s preferred suitor, is central to the movie.

Most Modern Era movies take a very different view.⁴¹⁴ Marriage is important in *Brave*, but it is something that Merida is resisting—not, like Jasmine, Ariel, or Pocahontas, because she loves someone her father does not approve of, but because she doesn't want to get married yet.⁴¹⁵ In that regard, she is more like Mulan, but unlike Mulan, Merida does not put aside her masculine abilities and get married. The resolution of the marriage plot is that henceforth the firstborn of the clan will marry whom they want, when they want. In *Moana*, the love plot is simply absent.⁴¹⁶ And while *Frozen* does pair Anna with Kristoff, it does so only after rejecting the Classic Era love story. Early in the movie, Anna finds love at first sight with the handsome Prince Hans. Or so she thinks—it turns out that Hans is evil and only after power. (In addition to this implicit rejection of the Classic Era trope, *Frozen* gives an explicit one. When Hans and Anna tell Elsa that they want to get married, she responds, “I’m sorry, I’m confused” and then, “You can’t marry a man you just met.”)⁴¹⁷

While some Modern Era movies do feature conventional heterosexual love relationships, they are not presented as necessarily the most important relationships. In *Frozen*, Anna needs an act of true love to thaw the shard of ice in her heart, which is slowly killing her by turning her to ice.⁴¹⁸ The movie first offers a standard “true love’s kiss” interpretation of the salvation and suggests that Hans can

414. *Tangled* has a love plot reminiscent of the Renaissance Era and similar to *Aladdin*: the princess ends up with a lovable rogue instead of a prince. It differs, though, in that the romance between Rapunzel and Flynn emerges gradually and organically, whereas *Aladdin*'s attempt to win Jasmine begins early in the movie and generates plot, rather than arising from it. As Batt notes, “the relationship between the princesses and their love interests tend to be more realistic and egalitarian.” Batt, *supra* note 88.

415. Compare BRAVE, *supra* note 38, with THE LITTLE MERMAID, *supra* note 30, ALADDIN, *supra* note 30, and POCAHONTAS, *supra* note 30.

416. It is absent, too, in *Ralph Breaks the Internet*, which contains perhaps the most self-conscious engagement with the problematic idea of the Disney Princess. In *Ralph Breaks the Internet*, Vanellope von Schweetz, a video game character, finds herself in a room with the Disney Princesses. “I’m a princess too,” Vanellope says. The princesses start listing the various things that confer that status, beginning with the anodyne (magic hair, magic hands, the ability to talk to animals) and moving on to more problematic ones (“Were you poisoned? Cursed? Kidnapped or enslaved?”). “I have to assume you made a deal with an underwater sea witch where she took your voice in exchange for a pair of human legs,” says Ariel. “No. Good lord, who would do that?” asks Vanellope. She responds to Snow White’s question about whether she’s had true love’s kiss with “Ew, barf.” The crucial question, it turns out, is one that Rapunzel asks: “Do people assume all your problems got solved because a big strong man showed up?” “Yes,” Vanellope answers. “What is up with that?” And the princesses chorus in unison “She is a princess.” RALPH BREAKS THE INTERNET (Walt Disney Pictures 2018).

417. FROZEN, *supra* note 38.

418. *Id.*

provide it. Being evil, he of course refuses. Kristoff tries, but Anna turns away from him to save Elsa from Hans.⁴¹⁹ This selfless act turns out to be her salvation; the true love relationship is not between Anna and Kristoff but between the sisters, Anna and Elsa. In exactly the same way, *Maleficent* revises the true love's kiss trope. As in the original version, the good fairies find a prince to awaken Aurora from her enchanted slumber. But this time his kiss is ineffective. True love's kiss turns out not to come from a prince, or a man at all; it is a kiss on the forehead bestowed by Maleficent, a mother figure.⁴²⁰

C. *Divergence: The Limits of Law*

While the movies are free to range widely, courts are constrained in what they can do. They decide cases brought to them by parties, applying law they do not make. While the Supreme Court does have some generative power with respect to the Constitution—it regularly announces new rules of constitutional law—the Constitution only binds the government.⁴²¹ That is important, but it is not sufficient for social change. The Supreme Court's most impressive performance, we have said, comes in the course of interpreting the FMLA. But that is a statute, and the norms the Court sets out are not ones it could impose on its own. Put more generally, the Court's ability to actively move society toward equality is quite limited. We can formalize this insight to some extent by discussing different forms of sex discrimination and by comparing it to other forms of discrimination.

We can distinguish between three different types of discrimination that women might face. First, and most obvious, is government discrimination: laws prescribing differential treatment for men and women.⁴²² The exclusion of women from the practice of law, at issue in *Bradwell*, is an example.⁴²³

This type of discrimination can be addressed by the Constitution, and to a substantial extent, it has been. Explicit differential treatment of men and women is rarely permissible under the Court's

419. *Id.*

420. Both these movies substitute intrafamilial relationships between women for the standard prince/princess romance. *Brave* does too, though in a slightly different way. Where an earlier movie might have set up a prince and princess as a romantic pair and then followed them through obstacles to a happy ending, *Brave* does that with Merida and her mother. The central emotional plot strand of the movie is whether they can reconcile and resolve their conflict.

421. Nicholas Quinn Rosenkranz, *The Objects of the Constitution*, 63 STAN. L. REV. 1005, 1008–09 (2011).

422. See also William Y. Chin, *Proxy Discrimination: The Misuse of Government Actors as Proxies to Racially Discriminate Against People of Color*, 9 TENN. J. RACE, GENDER, SOC. JUST. 1, 3 (2019) (discussing government discrimination against people of color).

423. *Bradwell v. Illinois*, 83 U.S. 130, 139 (1872).

current jurisprudence.⁴²⁴ Some classifications do survive based on the real biological difference justification, and the Court has been unwilling to intervene against disparate impact laws and policies, so it would be premature to claim victory.⁴²⁵ But government discrimination has proven relatively amenable to remediation through constitutional interpretation—more so, at least, than the other types of discrimination we have considered.⁴²⁶

The second type of discrimination is societal discrimination: differential treatment that is not imposed or required by law but is produced by the actions of other private individuals.⁴²⁷ The experience of Supreme Court Justice Sandra Day O'Connor, who graduated third in her class at Stanford Law School and was offered only secretarial positions at law firms, is an example.⁴²⁸ Because the Constitution generally restrains only the government, private discrimination typically falls beyond its purview.⁴²⁹ (The main exception to this principle arises when the government deliberately and selectively fails to protect individuals from other individuals, which can in some circumstances give rise to an equal protection claim.⁴³⁰) Law, if enforced, can offer protection, and a variety of antidiscrimination statutes do mitigate the effects of societal

424. See Suzanne B. Goldberg, *Equality Without Tiers*, 77 SO. CAL. L. REV. 481, 508 (2004).

425. See *supra* notes 148–91, 357–60 and accompanying text.

426. See *supra* notes 361–74 and accompanying text.

427. See K. G. Jan Pillai, *Societal Discrimination and the Equal Protection Clause of the United States Constitution*, 14 GEO. MASON U. CIV. RTS. L.J. 1, 1 (2004); Note, *Bakke and Weber: The Concept of Societal Discrimination*, 11 LOY. U. L.J. 297, 297–98 (1980).

428. See Zachary A. Kramer, *The New Sex Discrimination*, 63 DUKE L.J. 891, 952 (2014).

429. U.S. CONST. amend. XIV, § 1. Robert J. Glennon, Jr. & John E. Nowak, *A Functional Analysis of the Fourteenth Amendment "State Action" Requirement*, 1976 SUP. CT. REV. 221, 222 n.1 (1976).

430. See generally *Romer v. Evans*, 517 U.S. 620 (1996) (abrogating a Colorado law that “nullifie[d] protections for this targeted class [gay and lesbian individuals] in all transactions in housing, sale of real estate, insurance, health and welfare services, private education, and employment”). Attempts to use the failure to protect argument to protect women have, however, typically failed. Courts have rejected it in dismissing suits against police departments for treating violence between intimates less seriously than violence between strangers. See *Hynson v. City of Chester*, 864 F.2d 1026 (3d Cir. 1988). The Supreme Court rejected it as a justification for the Violence Against Women Act. See *United States v. Morrison*, 529 U.S. 598, 619–27 (2000); see generally Kermit Roosevelt III, *Bait and Switch: Why United States v. Morrison is Wrong About Section 5*, 100 CORNELL L. REV. 603 (2015) (arguing that the equal protection discussion in *United States v. Morrison* is rhetorically flawed).

discrimination against women.⁴³¹ Again, the victory is far from complete, but it is relatively clear that law can promote equality by forbidding discrimination. It is also clear that law is performing that function to some extent, though the relevant actors are legislatures rather than courts.

Government discrimination and societal discrimination are common to most movements for equality; the movements for racial and sexual orientation equality have fought similar battles. But there is a feature of the relationship between the sexes that distinguishes it from race and sexual orientation. Women who form families tend to form them with men. This means that women are exposed to a third form of discrimination, largely unique to women, which we call intimate discrimination.⁴³² This is differential treatment by an intimate partner, rather than the government or society at large.⁴³³ At one extreme, it is the phenomenon of domestic violence. While violence can occur in any relationship, and any

431. See, e.g., Equal Pay Act, 29 U.S.C. § 206(d)(1); Family and Medical Leave Act, 29 U.S.C. § 2612(a)(1); Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e–2.

432. It means other things, too, which we do not attempt to explore here in great detail. We suggest, though, two possibilities to consider. First, because women are pervasively integrated into men's families, the attitudes that underlie sex discrimination have to be attitudes that men can hold about women they love—their mothers, sisters, and daughters. That explains, perhaps, why sex discrimination tended to be justified by romantic paternalism more than the purely derogatory stereotypes more often found in the context of race or sexual orientation discrimination. This differing set of attitudes may seem less noxious, but just for that reason they have proven harder to dislodge—as evidence, one can look to Disney's treatment of its own past. Movies like *Beauty and the Beast* and *Mulan* are willing to show sexism, in the form of the boorish Gaston and the song "A Girl Worth Fighting For." And in *Ralph Breaks the Internet*, Disney is even willing to consider the sexism inherent in its portrayals of older princesses. But in each case, the tone is comedic: sexism is played for laughs. It is misguided, but not evil. (Gaston is the villain of *Beauty and the Beast*—and, interestingly, the first male villain of a princess movie—but "A Girl Worth Fighting For" is sung by Mulan's fellow soldiers.) One cannot imagine a similarly light-hearted treatment of racism, much less Disney making fun of its own past in the same way. And what that means, of course, is that sexism is still more socially acceptable.

Second, the fact that women who form families tend to form them with men means that the economic interests of individual women are often tightly bound up with those of particular men—especially if the household features a "traditional" division of labor in which the man is the primary breadwinner. Women in such households may not find their interests advanced by steps that facilitate women's participation in the economic life of the nation; in fact, their interests may be harmed. The economic interdependence of women and men is probably one explanation for the relative lack of solidarity among women, measured in terms of voting behavior and views on abortion.

433. Elizabeth F. Emens, *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1309–12 (2009).

person can be perpetrator or victim, it is overwhelmingly more common for men to assault women.⁴³⁴

Law can do something about this kind of intimate discrimination, and in theory, it does.⁴³⁵ But there is a more pervasive version of intimate discrimination that law can do very little to redress, which is the continued adherence, even in progressive two-career couples, to traditional gender norms about the division of labor within a household. Women who are paired with men tend to do much more work at home than the men do, and this pattern increases with the presence of children.⁴³⁶ A male partner who expects or encourages his female partner to do more work at home is a powerful drag on her career prospects.⁴³⁷

Preventing governmental and societal discrimination will not stop intimate discrimination, as the example of parental leave shows. The FMLA now requires employers to offer a minimum, equal unpaid leave to both men and women.⁴³⁸ This improves matters. An absence

434. See generally Molly Dragiewicz & Yvonne Lindgren, *The Gendered Nature of Domestic Violence: Statistical Data for Lawyers Considering Equal Protection Analysis*, 17 AM. U. J. GENDER SOC. POL'Y & L., 229, 245–57 (2009).

435. The marital rape exception no longer exists, for instance, although that is less an affirmative step than the absence of overt discrimination. It is still the case that women have a hard time getting protection from domestic violence through the legal system.

436. See, e.g., Olga Khazan, *Emasculated Men Refuse to Do Chores—Except Cooking*, ATLANTIC (Oct. 24, 2016), <https://www.theatlantic.com/health/archive/2016/10/the-only-chore-men-will-do-is-cook/505067/>.

437. It is perhaps not a coincidence that the first two female Supreme Court Justices, Sandra Day O'Connor and Ruth Bader Ginsburg, had children while the second pair, Elena Kagan and Sonia Sotomayor, do not. When Ronald Reagan was looking for the first woman to place on the high court, he probably wanted someone who conformed to traditional gender norms and would hence be less threatening. Justice Ginsburg benefited from an extraordinarily supportive husband who at times put his career second to support her. See, e.g., Carol Pressman, *The House that Ruth Built: Justice Ruth Bader Ginsburg, Gender and Justice*, 14 N.Y.L.S. J. HUM. R. 311, 312–13 (1998). The most recent appointment, Amy Coney Barrett, has seven children and was presented by supporters as proof that women can have it all. Her success was accomplished, a Notre Dame colleague noted, with “more than ten times the median household income and a third adult to assist with the caretaking.” Abby Palko, *My Experience as a Working Mother at Notre Dame Was Much Different From Amy Coney Barrett's*, SLATE (Oct. 22, 2020, 1:57 PM), <https://slate.com/human-interest/2020/10/motherhood-at-notre-dame-catholicism.html>. Typically, however, a woman with children is at a significant competitive disadvantage not only against men but also against women who do not have them.

438. Family and Medical Leave Act, 26 U.S.C. § 2612(a)(1) (providing for unpaid parental leave to “eligible employees” but not specifically delineating between men and women).

of leave often made women lose their jobs when they had children.⁴³⁹ Leave that was available to women but not men is another example of a law purportedly benefitting women that in fact held them back: it meant that women, but not men, would take the leave and fall behind their male competitors. Leave that is available to both men and women is more equal in theory, but in practice it has similar effects: women tend to take it, and men do not.⁴⁴⁰ We could imagine mandatory parental leave for both men and women, but this still will not produce equality unless it is coupled with a requirement that men share the burdens of childcare equally. And that is impossible to enforce: we have reached the limits of what law can do.⁴⁴¹

V. CONCLUSION: THE PATH FORWARD

What could produce a more equitable division of labor within family units? Changes that erode the traditional gender norms that produce the inequity—changes not in law, but in culture. One force that might do this is same-sex marriage. The children of same-sex couples do not see traditional gender norms informing the division of labor within their household. They might be expected to absorb more truly egalitarian values: the sons of same-sex couples might become partners who are more willing to support women's careers. (In this sense, same-sex marriage might indeed pose a threat to some kind of traditional marriage—a marriage that is traditional in its conformity to gender norms.)

439. 29 U.S.C. § 2601(b)(5) (“[D]ue to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men.”); *see also* *Coleman v. Ct. App. of Md.*, 566 U.S. 30, 51–53 (2012) (Ginsburg, J., dissenting) (chronicling the FMLA’s legislative history and noting that “[m]any pregnant women have been fired when their employer refused to provide an adequate leave of absence”) (quoting H.R. REP. NO. 99-966, pt. 2, at 22 (1986)).

440. Nathaniel Popper, *Paternity Leave Has Long-Lasting Benefits. So Why Don't More American Men Take It?*, N.Y. TIMES (June 11, 2019), <https://www.nytimes.com/2020/04/17/parenting/paternity-leave.html>.

441. William Giraldi wrote an astonishingly unselfconscious account of his paternity leave, entitled “This Brat’s for You,” in which he notes that although “the university made me sign a document that swore I’d be incurring more than 50 percent of parental duties” his wife’s “apparent willingness and capacity to do almost everything” meant that he spent the nine months “trying not to be bored while not writing a novel that was coming due” and drinking heavily. *See* William Giraldi, *This Brat’s for You*, BAFFLER (Oct. 2014), <https://thebaffler.com/odds-and-ends/brats>. Giraldi, a newspaper profile notes, “grew up in a family dominated by men, and by their perceptions of what it means to be a man.” James Sullivan, *Inside a Man’s World, in Manville*, BOS. GLOBE (June 19, 2016, 10:00 PM), <https://www.bostonglobe.com/lifestyle/2016/06/19/inside-man-world-manville/M2aQvhHMN61XklRQmpLINO/story.html>.

But the other force is simply the depictions of gender roles that children encounter in popular culture. And here, the princesses have a lot of power. Movies that emphasize the importance of emotional relationships between women, that show femininity as powerful, that erode the salience of gender—these are things that can move culture forward. At this point, the princesses may have more to offer than the Justices.⁴⁴²

442. That is not to say that the path is easy. One of the drawbacks of even the Modern Era princess movies is that they all concern the lives of their protagonists before marriage, before children. Moana and Vanellope offer examples of a nongendered hero, but it would be considerably harder to submerge gender if they married a man and had children. Once a woman becomes a wife and a mother, gender roles press themselves on her with an entirely new force. Unfortunately, from the equality perspective, happily ever after is the biggest lie of all. In the Classic Era, it made sense for princesses to disappear into motherhood and domesticity. The challenge for equality now is finding a way for women to have children with men while not suffering so many adverse consequences.