

Not Your Mother's Will: Gender, Language, and Wills

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**NOT YOUR MOTHER’S WILL:
GENDER, LANGUAGE, AND WILLS**

KAREN J. SNEDDON*

“Boys will be boys, but girls must be young ladies” is an echoing patriarchal refrain from the past. Formal equality has not produced equality in all areas, as demonstrated by the continuing wage gap. Gender bias lingers and can be identified in language. This Article focuses on Wills, one of the oldest forms of legal documents, to explore the intersection of gender and language. With conceptual antecedents in pre-history, written Wills found in Ancient Egyptian tombs embody the core characteristics of modern Wills. The past endows the drafting and implementation of Wills with a wealth of traditions and experiences. The past, however, also entombs patriarchal notions inappropriate in Wills of today. This Article explores the language of the Will to parse the historical choices that remain relevant choices for today and the vestiges of a patriarchal past that should be avoided.

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I. INTRODUCTION

*Pickalittletalkalittlepickalittletalkalittle
Cheepcheepcheep talkalot pickalittlemore.*¹

These lines begin the song “Pick-a-Little” from *The Music Man*. Sung by female characters, the lyrics portray Marian the Librarian as a woman who “made brazen overtures to a man who never had a friend in this town till she came.”² The net result of the “relationship” being that “He left River City the / Library building but he / Left all the books

1. MEREDITH WILLSON, *THE MUSIC MAN* 73 (1958) (emphasis added) (music and lyrics by Meredith Willson based on a story by Meredith Willson and Frederick Lacey). The musical debuted on Broadway in 1957 and appeared on the silver screen in 1962. See Harriet Malinowitz, *Textual Trouble in River City: Literacy, Rhetoric, and Consumerism in The Music Man*, 62 *COLLEGE ENGLISH* 58 (1999). The musical has been revived a number of times on Broadway. In 2003, Matthew Broderick and Kristen Chenoweth starred in a television adaption of the musical.

2. WILLSON, *supra* note 1, at 75 (emphasis omitted). For an examination of cultural stereotypes of librarians, including Marian Paroo the Librarian in *The Music Man*, see Jeanine Williamson, *Jungian/Myers-Briggs Personality Types of Librarians in Films*, in *THE IMAGE AND ROLE OF THE LIBRARIAN* 47 (Wendi Arant & Candace R. Benefiel eds., 2003); see also Robert C. Berring, *Deconstructing the Law Library: The Wisdom of Meredith Willson*, 89 *MINN. L. REV.* 1381 (2005) (exploring the institution of the library, which is an institution that extends beyond the bounds of a physical building).

to / Her.”³ The musical of inheritance, gender, and rhetoric⁴ uses the onomatopoeic song to equate women’s language with clucking chickens.⁵ The song comments, although perhaps unintentionally, on the issue of whether there is such a category as “women’s language.” This song presents the historical interpretation of women’s speech as gossip, and hence speech that can easily be dismissed.⁶ Language use, language choices, and interpretations of language carry gender implications and are not restricted to conversation. Gender is a facet of all language use, including the language of the law. This Article specifically targets the legal document that continues to be an important legal document in the transmission of property: the Will. Although not all use of gendered language is inappropriate, deliberate choices need to be made to avoid perpetuating gender stereotypes and to appropriately reflect identity.⁷ As Professor Robin Lakoff observed, “Linguistic imbalances are worthy of study because they bring into sharper focus real-world imbalances and inequities.”⁸

The Will is one of the most personal legal documents an individual will ever create.⁹ The process of Will-making requires an individual to

3. WILLSON, *supra* note 1, at 76.

4. For an examination of gender and musicals, see CAROLYN WILLIAMS, GILBERT AND SULLIVAN: GENDER, GENRE, PARODY (2011); STACY ELLEN WOLF, A PROBLEM LIKE MARIA: GENDER AND SEXUALITY IN THE AMERICAN MUSICAL (2002).

5. Malinowitz, *supra* note 1, at 74. “Pick-a-little, Talk-a-Little” is also the title of an episode of HBO’s popular television series *Sex and City: Pick-a-Little, Talk-a-Little* (HBO television broadcast July 13, 2003). For an examination of feminism and *Sex and the City*, see HILARY RADNER, NEO-FEMINIST CINEMA: GIRLY FILMS, CHICK FLICKS AND CONSUMER CULTURE (2011); *READING SEX AND THE CITY* (Kim Akass & Janet McCabe eds., 2004).

6. See, e.g., Barbara L. Bernier, *Assimilation or Liberation: Post-Modern American Women—Speech and Property Law*, 9 ROGER WILLIAMS U. L. REV. 521, 546–48 (2004) (examining women’s speech in the context of Puritan America); Cheri Kramer, *Women’s Speech: Separate but Unequal?*, 60 Q.J. SPEECH 14 (1974) (explaining differences in linguistic competence).

7. See, e.g., Janet B. Parks & Mary Ann Robertson, *Attitudes Toward Women Mediate the Gender Effect on Attitudes Toward Sexist Language*, 28 PSYCH. WOMEN Q. 233, 238 (2004) (finding a correlation between the study participants’ attitudes toward women and the study participants’ views about the use of gender inclusive and gender neutral language).

8. ROBIN TOLMACH LAKOFF, *LANGUAGE AND WOMAN’S PLACE: TEXT AND COMMENTARIES* 69 (Mary Bucholtz ed., rev. and expanded ed. 2004); see also Bernier, *supra* note 6, at 562 (“[T]he legal discourse must be reformed to eliminate the masculine character of language within the law.”).

9. Even for a Will laden with the most technical of tax-related provisions, the Will is a personal document. The terms of the Will reflect ownership of particular assets and property interests, the presence (or absence) of particular relationships with individuals and organizations, and the values held by the testator through the gifts made and conditions

confront his or her mortality, to assess his or her life choices, and to contemplate his or her legacy.¹⁰ As a matter of interpretation and implementation, the testator's intent is the guiding polestar.¹¹ Yet as one of the oldest genres of legal writing, the Will has a legacy of its own, including a legacy of language choices and language imbalances. With conceptual antecedents in prehistory, written Wills found in Ancient Egyptian tombs embody the core characteristics of modern Wills and make Wills one of the oldest forms of legal documents in use today.¹² The past endows the drafting and implementation of Wills with a wealth of traditions and experiences. The past is also burdened with a legacy of patrimony.

For Wills drafted today to be implemented in the future, acknowledgment, identification, and understanding of the residual language of patrimony is necessary. Language use constructs reality.¹³ As renowned scholar Robin Lakoff wrote, "Language uses us as much as we use language."¹⁴ In addressing gender and language in Wills today, the following language frequently appears in Wills: "words of any gender shall include all genders."¹⁵ The declaration does not sweep

attached. See generally Karen J. Sneddon, *The Will as Personal Narrative*, 20 ELDER L.J. 355 (2013).

10. See generally Karen J. Sneddon, *Memento Mori: Death and Wills*, 14 WYOMING L. REV. 211 (2014).

11. See generally 80 AM. JUR. 2D *Wills* § 986 ("The intention of the testator is always the polestar in the construction of wills."); see also Scott T. Jarboe, Note, *Interpreting a Testator's Intent From the Language of Her Will: A Descriptive Linguistic Approach*, 80 WASH. U. L.Q. 1365 (2002) (explaining a technique for determining the testator's intent).

12. See generally FRANCIS LLEWELLYN GRIFFITH, *WILLS IN ANCIENT EGYPT* (London, Stevens & Sons, Ltd. 1898). As Professor Peter Tiersma observed, "The language of an average will or deed today is remarkably similar to equivalent documents made hundreds of years ago." Peter M. Tiersma, *Some Myths About Legal Language*, 2 LAW CULTURE & HUMAN. 29, 30 (2006); see also ALISON REPPY & LESLIE J. TOMPKINS, *HISTORICAL AND STATUTORY BACKGROUND OF THE LAW OF WILLS, DESCENT AND DISTRIBUTION, PROBATE AND ADMINISTRATION* (1928); *On the Origin and History of Wills* (pt. 1), 1 LEGAL REP. 223, 223-24 (1841).

13. See, e.g., GEORGE W. GRACE, *THE LINGUISTIC CONSTRUCTION OF REALITY* (1987); JOHN R. SEARLE, *THE CONSTRUCTION OF A SOCIAL REALITY* (1995); DALE SPENDER, *MAN MADE LANGUAGE* (1980).

14. LAKOFF, *supra* note 8, at 39.

15. E.g., THE FLA. BAR, *Legal Forms and Worksheets Relating to Estate Planning*, in LEGAL FORMS AND WORKSHEETS 15-1, 15-44 (2d ed. 2010). Another form suggests the following language: "As used in this will, the use of any particular gender or the plural or singular number is intended to include the other gender or number as the text of this Will may require." 16B NEW JERSEY PRACTICE SERIES: LEGAL FORMS § 59:10.50 (4th ed. 2009). Interpretation and precision problems arise when declaring one morphological category, like

away the residue of patrimony or the particular drafting choices and language use that reflect gender. This declaration also fails to acknowledge the deliberate use of gendered language that can be reflective of identity and self.

This Article considers gender, language, and Wills by exploring the vestigial language of a patriarchal past in an effort to promote deliberate use of gender inclusive language, avoid use of gender-biased language, and retain gendered language when appropriate. To provide context, Part II defines the term gender as a social construct. Part III explores the study of gender and language by examining what is referenced in the term “women’s language.” Part IV focuses on gender and the law by attributing the gender of law as historical and currently male. Part V focuses on the language of the Will to showcase the patriarchal legacy of the structural and language choices and automatic replication of gendered language. This specifically includes examination of (1) declaration of marital status to establish property rights, (2) naming practices for identifying the testator, (3) use of non-legally enforceable language, (4) selection of dispositive terms, and (5) use of feminized terms. The Will, although a document of the past, is written in the present—for the future. The Will must find a way to speak with a modern voice for all of the testators of today and tomorrow. To do that, the language of the Will must eschew gendered choices that perpetuate gender stereotypes and gender bias and incorporate gender inclusive language.

II. GENDER: A SOCIAL CONSTRUCT

The appropriate term is gender¹⁶—not sex. Gender is a social construct, not a direct reference to reproductive potential.¹⁷ As Professor Penelope Eckert and Professor Sally McConnell-Ginet

he, to include other morphological categories, like she and it. See PETER M. TIERSMA, *LEGAL LANGUAGE* 73 (1999).

16. For one consideration of the history of the term, see Joan W. Scott, *Gender: A Useful Category of Historical Analysis*, 91 *AM. HIST. REV.* 1053 (1986); see also Nancy J. Chodorow, *Gender as Personal and Cultural Construction*, 20 *SIGNS* 516 (1995).

17. PENELOPE ECKERT & SALLY MCCONNELL-GINET, *LANGUAGE AND GENDER* 10 (2003) (“Sex is a biological categorization based primarily on reproductive potential, whereas gender is the social elaboration of biological sex.”). The biological differences between men and women may not be as great as initially thought. ANNE FAUSTO-STERLING, *MYTHS OF GENDER: BIOLOGICAL THEORIES ABOUT WOMEN AND MEN* 12, 260–69 (2d ed. 1985) (noting that the asserted biological differences between men and women rests on inconclusive or flawed scientific studies).

described, gender is “performed”¹⁸ and is culturally, historically, and geographically specific.¹⁹

The word “gender” shares a common ancestor with the word “genre”²⁰ and can be thought of as relating to classification or grouping.²¹ The grammatical approach to gender is to classify three types of gender: masculine, feminine, and neutral.²² This grammatical understanding thus links gender with biological sex, a convention that is deeply ensconced in the English language.²³

As fixed as our conceptions of gender may seem, conceptions of gender evolve over time. For instance, pink was historically a color for male babies, blue for female babies.²⁴ Likewise, the categories of gender themselves change over time. For example, “[a]round 400 years ago, to be female was to be an inferior form of male. Now to be female means to be different or opposite to male. There may be a time in the future when male and female are just two of several sex/gender categorizations.”²⁵ Additional gender categories are already being

18. ECKERT & MCCONNELL-GINET, *supra* note 17, at 10; *see also* JUDITH BUTLER, UNDOING GENDER 1–5 (2004); DRESS AND GENDER: MAKING AND MEANING IN CULTURAL CONTEXT (Ruth Barnes & Joanne B. Eicher eds., paperback ed. 1993); Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 THEATRE J. 519 (1988); Mary Whisner, Note, *Gender-Specific Clothing Regulation: A Study in Patriarchy*, 5 HARV. WOMEN’S L.J. 73 (1982).

19. ANN WEATHERALL, GENDER, LANGUAGE, AND DISCOURSE 7 (2002); *see also* KARL S. GUTHKE, THE GENDER OF DEATH: A CULTURAL HISTORY IN ART AND LITERATURE 7–37 (1999) (exploring whether the face of death is male or female).

20. G.G. BOLICH, CONVERSING ON GENDER 8 (2007); *see also* Malgorzata Jedynak & Joanna Pytlarz, *The Issue of Gender in Multiple Language Acquisition*, 38 BRNO STUDIES IN ENGLISH 5, 6 (2012) (observing that “originally gender meant ‘sort’ or ‘kind’ of noun, from Latin *genus* denoting type of an object”).

21. *See generally* GEORGE LAKOFF, WOMEN, FIRE, AND DANGEROUS THINGS: WHAT CATEGORIES REVEAL ABOUT THE MIND (1987).

22. BOLICH, *supra* note 20, at 9; *see also* ANNE CURZAN, GENDER SHIFTS IN THE HISTORY OF ENGLISH (2003).

23. 3 GENDER ACROSS LANGUAGES: LINGUISTIC REPRESENTATION OF WOMEN AND MEN (Marlis Hellinger & Hadumond Bußmann eds., 2003) (explaining thirty languages); *see also* Jonathan David Bobaljik & Cynthia Levart Zocca, *Gender Markedness: The Anatomy of a Counter-Example*, 21 Morphology 141 (2011) (examining the morphological expression of gender across six language).

24. PHYLLIS BURKE, GENDER SHOCK: EXPLODING THE MYTHS OF MALE AND FEMALE 141 (1996); *see also* JO B. PAOLETTI, PINK AND BLUE: TELLING THE BOYS FROM THE GIRLS IN AMERICA (2012); JAN M. ZIOLKOWSKI, FAIRY TALES FROM BEFORE FAIRY TALES: THE MEDIEVAL LATIN PAST OF WONDERFUL LIES 118 (2007).

25. WEATHERALL, *supra* note 19, at 7 (citation omitted). Alfred, Lord Tennyson wrote that “Woman is the lesser man” in his poem “Locksley Hall.” ALFRED TENNYSON, *Locksley Hall*, in TENNYSON: A SELECTED EDITION 181, 190 (Christopher Ricks ed., rev. ed. 2007).

conceptualized.²⁶ In an interview with Dawn Dekle, the current president for the American University of Iraq stated that, as a “Western Woman,” she considered herself to be a “third gender.”²⁷ In a similar manner, the country of Germany is recognizing multiple gender categories by providing a third gender option on birth certificates for babies born with ambiguous genitalia, and recognizing the option not to specify a gender on a birth certificate.²⁸

As a social construct, gender is “produced by language and discourse.”²⁹ A working definition of gender developed by one scholar to show the multifaceted nature of the term is as follows: gender is “the set of experiential and presentational characteristics associated with and culturally arising from pairing with a particular sex.”³⁰ Gender may be socially defined through stereotypes with particular expectations about attributes, behaviors, and even values.³¹ As a result, language implications of gender matter.³² The use of gender-inclusive language

For an analysis of Aristotle’s view of women, including his definition of women as “mutilated male[s],” see Marianne Cline Horowitz, *Aristotle and Woman*, 9 J. HIST. BIOLOGY 183, 184, 203 (1976).

26. For an examination of the creation of multiple gender categories, see Dylan Vade, *Expanding Gender and Expanding the Law: Toward a Social and Legal Conceptualization of Gender That Is More Inclusive of Transgender People*, 11 MICH. J. GENDER & L. 253 (2005).

27. *Dekle First Female President at an Iraqi University* (NPR radio broadcast Oct. 2, 2013), available at <http://www.npr.org/2013/10/02/228197015/dekle-first-female-president-at-an-iraqi-university>, archived at <http://perma.cc/4YMX-K2D8>. The other two genders, in her opinion, were men and Iraqi women. *Id.*

28. Susan Donaldson James, *Is Baby Male or Female? Germany Offers Third Gender*, ABC News (Aug. 22, 2013), <http://abcnews.go.com/Health/Germany-offers-legal-gender-inter-sex-kids-undetermined/story?id=20029285>, archived at <http://perma.cc/ZM8T-9FFB>.

29. WEATHERALL, *supra* note 19, at 76. “Discourse” relates both to spoken language and written language. *Id.* at 77.

30. BOLICH, *supra* note 20, at 14 (emphasis omitted) (internal quotation marks omitted); see also SIMONE DE BEAUVOIR, *THE SECOND SEX* 281 (H.M. Parshley ed. & trans., Alfred A. Knopf 1993) (1949) (“One is not born, but rather becomes, a woman.”); Deborah Cameron, *Theoretical Debates in Feminist Linguistics: Questions of Sex and Gender*, in *GENDER AND DISCOURSE* 21, 22 (Ruth Wodak ed., 1997) (“[Y]ou may be born female, but you become the kind of social being your society defines as ‘a woman.’” (emphasis omitted)).

31. See Diane M. Turner-Bowker, *Gender Stereotypes and Descriptors in Children’s Picture Books: Does “Curious Jane” Exist in the Literature*, 35 SEX ROLES 461, 475 (1996); Rhonda Reaves, *“There’s No Crying in Baseball”: Sports and the Legal and Social Construction of Gender*, 4 J. GENDER, RACE & JUST. 283 (2001).

32. A recent study found that stereotypes about gender may be influencing perception of storm strength where storms with female names lead individuals to be less prepared for the storm than storms bearing male names. Jason Samenow, *Female-Named Hurricanes Kill More than Male Hurricanes Because People Don’t Respect Them, Study Finds*, WASH. POST, (June 2, 2014), <http://www.washingtonpost.com/blogs/capital-weather-gang/wp/2014/06/02/fe>

and gender-specific language must, therefore, be deliberate and not an unthinking, automatic replication of historical use.

III. AN EXPLORATION OF THE CONCEPT OF WOMEN'S LANGUAGE

Professor Robin Lakoff, with the publication of her 1975 book *Language and Woman's Place*, sparked the academic study of language and gender.³³ Gender and language has become a multi-disciplinary topic of research.³⁴ Gender and language is most commonly studied and remarked upon in oral speech.³⁵ Although vocabulary, sentence syntax, and language patterns may exhibit enhanced differences compared to formal writing,³⁶ written language likewise reflects and is influenced by

male-named-hurricanes-kill-more-than-male-because-people-dont-respect-them-study-finds/, archived at <http://perma.cc/W2TF-FFTP> (referencing a study published in the *Proceedings of the National Academy of Sciences*); see also Jason Samenow, *Disbelieve, Shock and Skepticism: Hurricane Gender Study Faces Blowback*, WASH. POST (June 3, 2014), <http://www.washingtonpost.com/blogs/capital-weather-gang/wp/2014/06/03/disbelief-shock-and-skepticism-hurricane-gender-study-faces-blowback/>, archived at <http://perma.cc/JQ4C-8NMB>.

33. LAKOFF, *supra* note 8. The *Editor's Introduction* evidences the beginning of "the linguistic subfield of language and gender studies, as well as ushering in the study of language and gender in related disciplines such as anthropology, communication studies, education, psychology, and sociology," to the publication of Professor Lakoff's book. Mary Bucholtz, *Editor's Introduction* to LAKOFF, *supra* note 8, at 3, 3; see also ECKERT & MCCONNELL-GINET, *supra* note 17, at 1 (attributing the origin of the study of language and gender to Robin Lakoff's work).

34. E.g., BANU AKÇEŞE, *GENDER AND CRITICAL DISCOURSE ANALYSES: A STUDY OF THE NOVELS OF ROBERT HEINLEIN, URSULA LE GUIN, JOANNA RUSS AND SAMUEL DELANY* (2012); *THE HANDBOOK OF LANGUAGE AND GENDER* (Janet Holmes & Miriam Meyerhof eds., 2003) [hereinafter *HANDBOOK OF LANGUAGE AND GENDER*]; ALETTE OLIN HILL, *MOTHER TONGUE, FATHER TIME: A DECADE OF LINGUISTIC REVOLT* (1986); *LANGUAGE AND GENDER: INTERDISCIPLINARY PERSPECTIVES* (Sara Mills ed., 1995).

35. JENNIFER COATES, *WOMEN, MEN AND LANGUAGE: A SOCIOLINGUIST ACCOUNT OF GENDER DIFFERENCES IN LANGUAGE* (1986) (examining pronunciation); MARY CRAWFORD, *TALKING DIFFERENCE: ON GENDER AND LANGUAGE* (1995); DEBORAH TANNEN, *TALKING FROM 9 TO 5: WOMEN AND MEN IN THE WORKPLACE* (1994); see also Alicia Skinner Cook, Janet J. Fritz, Barbara L. McCornack & Cris Visperas, *Early Gender Differences in the Functional Usage of Language*, 12 *SEX ROLES* 909, 910, 913 (1985) (studying interactions of thirty-two preschool children and concluding that results were consistent with adult studies where males are more assertive and talk more than women in social contexts).

36. Shlomo Argamon, Moshe Koppel, Jonathan Fine & Anat Rachel Shimoni, *Gender, Genre, and Writing Style in Formal Written Texts*, 23 *TEXT: INTERDISC. J. STUDY DISCOURSE* 321 (2003); Anthony Mulac & Torborg Louisa Lundell, *Effects of Gender-Linked Language Differences in Adults' Written Discourse: Multivariate Tests of Language Effects*, 14 *LANGUAGE & COMM.* 299 (1994); Donald L. Rubin & Kathryn Green, *Gender-Typical Style in Written Language*, 26 *RES. TEACHING ENG.* 7 (1992).

gender.³⁷ As a consequence, the gender of language and the gender embedded in language use is a relevant topic of inquiry in all documents, including legal documents.³⁸

Professor Lakoff noted what she believed to be the defining characteristics of women's language.³⁹ She noted the use of (1) a "large stock of words related to their specific [women's] interests," such as a variety of words to note fine gradations of color, such as mauve, lilac, lavender, orchid, violet, and plum to describe shades of the color purple; (2) "empty" adjectives, such as divine, cute, and lovely; (3) question-like intonations and sentence structures, collectively referred to as "tag questions"⁴⁰; (4) "hedge" words and qualifiers, such as kinda, sorta, and perhaps;⁴¹ (5) intensive phrasing, such as extensive use of the word "so"; (6) hyper-correct grammar; and (7) super-polite forms of speech.⁴² She also asserted that "[w]omen don't tell jokes,"⁴³ apologize more than men, speak less frequently than men, and "*speak in italics*."⁴⁴

Professor Lakoff's observations have been challenged.⁴⁵ Some note that the speech characteristics identified by Professor Lakoff are limited

37. See generally CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

38. WEATHERALL, *supra* note 19, at 80 ("[G]ender is not just reflected in language but the concept of gender is itself constituted by the language used to refer to it.").

39. LAKOFF, *supra* note 8, at 78–81.

40. The following is an example of a tag question sentence structure: "It's a lovely day, isn't it?"

41. "It may just be me" is also a hedge phrase. E.g., Laura Gray-Rosendale, *Revising the Political in Basic Writing Structure*, 15 J. BASIC WRITING 24, 34–35 (1996) (noting use of the hedge phrase "It may just be me" in student critiquing groups).

42. LAKOFF, *supra* note 8, at 78–81; see also Kristin J. Anderson & Campbell Leaper, *Meta-Analyses of Gender Effects on Conversational Interruptions: Who, What, When, Where, and How*, 39 SEX ROLES 225 (1998); Nina Eliasoph, *Politeness, Power, and Women's Language: Rethinking Study in Language and Gender*, 32 BERKLEY J. SOCIOLOGY 79 (1987).

43. For an exploration of gender and humor, see LOOK WHO'S LAUGHING: GENDER AND COMEDY, VOLUME 1 (Gail Finney ed., 1994); Mary Crawford, *Gender and Humor in Social Context*, 35 J. PRAGMATICS 1413 (2003); see also Mary Crawford & Margo MacLeod, *Gender in the College Classroom: An Assessment of the "Chilly Climate" for Women*, 23 SEX ROLES 101, 113 (Aug. 1990) (finding that humor is used "significantly more" in the college classroom by male teachers than by female teachers).

44. LAKOFF, *supra* note 8, at 79–81 (emphasis added). Famed lifestyle guru Martha Stewart uses all of Professor Lakoff's characteristics of women's speech in both spoken and written language choices. Catherine Evans Davies, "*Women's Language*" and *Martha Stewart: From a Room of One's Own to a Home of One's Own to a Corporation of One's Own*, in LAKOFF, *supra* note 8, at 187, 188–92.

45. See, e.g., Janet Holmes, *Functions of You Know in Women's and Men's Speech*, 15 LANGUAGE SOCIETY 1 (1986).

to a particular demographic of women. Others note that the speech characteristics identified by Professor Lakoff are not observable in formal writing.⁴⁶ Nonetheless, as the *New York Times* bestselling book *Men Are from Mars and Women Are from Venus*⁴⁷ demonstrates, perceptions that men and women use language differently endure.⁴⁸ As phrased, the title of this book draws on stereotypes of men and women.⁴⁹ The book title places men and women on two different planets that stereotypically represent the genders. Men are aggressive, like Mars, the God of War.⁵⁰ Women are loving, like Venus, the Goddess of Love.⁵¹ An article published by the magazine *Mental Floss*

46. See generally ECKERT & MCCONNELL-GINET, *supra* note 17, at 1 (noting that men and women speak differently “because of fundamental differences in their relation to . . . language”); DEBORAH TANNEN, *YOU JUST DON’T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* (1990).

47. JOHN GRAY, *MEN ARE FROM MARS, WOMEN ARE FROM VENUS: THE CLASSIC GUIDE TO UNDERSTANDING THE OPPOSITE SEX* (paperback ed. 2012).

48. For an exploration of the veracity of the assertion that men and women communicate differently, see Susan Sprecher & Maura Toro-Morn, *A Study of Men and Women From Different Sides of Earth to Determine if Men Are From Mars and Women Are From Venus in Their Beliefs About Love and Romantic Relationships*, 46 *SEX ROLES* 131, 132 (2002) (finding that gender differences are exaggerated). For a consideration of the popularity of the book *Men Are from Mars and Women Are from Venus*, see Elizabeth Gleick, *Tower of Psychobabble*, *TIME*, June 16, 1997, at 68, 68–71. The catchy title may explain some of the book’s success. The title has been transplanted to a variety of disciplines. See, e.g., May L. Chin & Richard Rosenquist, *Sex, Gender, and Pain: “Men Are from Mars, Women Are from Venus . . .”*, 107 *ANESTHESIA & ANALGESIA* 4 (2008); Sam Joyner, *A Planetary Survey of Feminist Jurisprudence: If Men Are from Mars and Women Are from Venus, Where Do Lawyers Come From?*, 33 *TULSA L.J.* 1019 (1998).

49. For an analysis of gender stereotypes in children’s picture books, see Turner-Bowker, *supra* note 31, at 475 (finding that female characters were described as “beautiful, frightened, worthy, sweet, weak, and scared” whereas male characters were described as “big, horrible, fierce, great, terrible, furious, brave, and proud”). See also Christy Halbert & Melissa Latimer, “*Batting*” *Gendered Language: An Analysis of the Language Used by Sports Commentaries in a Televised Coed Tennis Competition*, 11 *SOCIOLOGY SPORTS J.* 298, 298 (1994) (analyzing the commentary of the 1992 televised “Battle of the Champions” Tennis Competition between Martina Navratilova and Jimmy Connors and finding “clear differences in naming practices, adjective and adverb use, amount and type of praise and criticism, and character flaws attributed to the players”).

50. KATHLEEN N. DALY REVISED BY MARIAN RENGEL, *GREEK AND ROMAN MYTHOLOGY FROM A TO Z*, at 89 (3d ed. 2009).

51. WEATHERALL, *supra* note 19, at 26 (noting the metaphorical language associated with women is often sexual). With female/male dichotomies, the word relating to females often assumes sexual overtures that are absent from the word relating to males, such as mistress/master. LAKOFF, *supra* note 8, at 58 (“[M]aster . . . refers to a man who has acquired consummate ability in some field, normally non sexual. But its feminine counterpart cannot be used in the same way. It is practically restricted to its sexual sense of ‘paramour.’” (emphasis omitted)).

offers five tips to determine the gender of an email's author.⁵² The tips include “[w]omen use adverbs to intensify their statements” and “[w]omen are prone to using multiple punctuation marks.”⁵³ These tips echo Professor Lakoff's observations, such as the use of intensive phrasing and empty adjectives.⁵⁴ As discussed in Part V of this Article, Professor Lakoff's observations about women's language surface when interpreting testamentary language.

IV. WHAT IS MINE IS YOURS: GENDER AND PROPERTY RIGHTS

The personification of justice may assume a female form,⁵⁵ but the law has a tradition of “natural male dominance.”⁵⁶ The following are just a few historical legal differences based on gender: the right to vote, the right to serve on juries, the right to retain a name upon marriage, the right to make a contract, and the right to make a Will.⁵⁷ Even though today women ostensibly have no restrictions on property ownership, women continue to earn less than men, have longer life expectancies, and, thus, less opportunity to accumulate property to transmit at death. The relationship between the patriarchal nature of the law and the practice of law has not gone unnoticed. Efforts have been undertaken and continue to be undertaken to address the androcentric nature of the

52. *Gender Detection Tips*, MENTAL FLOSS, Sept.–Oct. 2011, at 34.

53. *Id.* The other three tips to determine the gender of an email's author are (1) men use more “I” statements than women, (2) women use salutations to begin the email whereas men do not, and (3) women write more words per email than men. *Id.*; see also Alecia Wolf, *Emotional Expression Online: Gender Differences in Emoticon Use*, 3 CYBERPSYCHOL. & BEHAV. 827 (2000) (finding that emoticon use varies from same gender newsgroup to mixed-gender newsgroup).

54. See *supra* notes 40–42 and accompanying text.

55. For an exploration of the allegorical representation of justice, see I. Bennett Capers, *Blind Justice*, 24 YALE J.L. & HUMAN. 179 (2012); Dennis E. Curtis & Judith Resnick, *Images of Justice*, 96 YALE L.J. 1727 (1987); Ruth Weisberg, *The Art of Memory and the Allegorical Personification of Justice*, 24 YALE J.L. & HUMAN. 259 (2012). For a general exploration of allegorical representations, see MARINA WARNER, *MONUMENTS AND MAIDENS: THE ALLEGORY OF THE FEMALE FORM* (1985).

56. LEO KANOWITZ, *WOMEN AND THE LAW: THE UNFINISHED REVOLUTION* 1 (1969) (internal quotation marks omitted); see also GENDER PERSPECTIVE ON PROPERTY AND INHERITANCE: A GLOBAL SOURCEBOOK (2001); Ted N. Pettit, “Esquire” and *Discrimination in the Legal Profession*, HAW. B.J., June 1998, at 22 (asserting that the use of “esquire” is discriminatory in terms of both gender and class).

57. E.g., KANOWITZ, *supra* note 56, at 1; see also ROOT OF BITTERNESS: DOCUMENTS OF THE SOCIAL HISTORY OF AMERICAN WOMEN (Nancy F. Cott ed., 2d ed. 1996); JOAN HOFF, *LAW, GENDER, AND INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN* (1991).

law.⁵⁸ Task forces are constituted to study the issue of gender equality. For instance, in 2011, the Ohio Bar Association found gender discrepancies continue to exist in the practice of law.⁵⁹ Similarly, in 2012, a Blue-Ribbon Task Force on Gender Equity was appointed by the American Bar Association President Laurel B. Bellows to focus on compensation and a variety of workplace equity issues.⁶⁰

Because the Will is one of the oldest forms of legal documents,⁶¹ the Will, not surprisingly, bears the imprint of a patriarchal past. At its most basic definition, the Will is a legal instrument that facilitates the transmission of certain property upon the property owner's death.⁶² In terms of the mechanics of the transmission of wealth, the law favored male testators and male beneficiaries. Primogeniture, the practice of passing property exclusively or in great proportion to the oldest son, is a patriarchal system of succession.⁶³ Primogeniture was never a formal

58. See generally REGINA GRAYCAR & JENNY MORGAN, *THE HIDDEN GENDER OF THE LAW* (2d ed. 2002) (exploring Australian law and gender); see also JOHN M. CONLEY & WILLIAM M. O'BARR, *JUST WORDS: LAW, LANGUAGE, AND POWER* 63 (1998) ("As long as the dominant legal discourse is patriarchal, women will be talked about, thought about, and acted upon as subordinate to male interests.").

59. OHIO STATE BAR ASS'N, *REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE TO REVIEW GENDER FAIRNESS IN THE LEGAL PROFESSION* (2011), available at <https://www.ohiobar.org/General%20Resources/gender-report.pdf>, archived at <https://perma.cc/K2QC-VKNN>.

60. *Gender Equity Task Force*, A.B.A., http://www.americanbar.org/groups/women/gender_equity_task_force.html (last visited June 1, 2015), archived at <http://perma.cc/PRY6-EQVA>.

61. See, e.g., Julius A. Leetham, *Probate Concepts and Their Origins*, 9 WHITTIER L. REV. 763 (1988).

62. The Restatement defines a Will as

a donative document that transfers property at death, amends, supplements, or revokes a prior will, appoints an executor, nominates a guardian, exercises a testamentary power of appointment, or excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

RESTATEMENT (THIRD) OF PROP.: WILLS & OTHER DONATIVE TRANSFERS § 3.1 cmt. a (1998).

63. For an examination of the history of primogeniture, see EVELYN CECIL, *PRIMOGENITURE: A SHORT HISTORY OF ITS DEVELOPMENT IN VARIOUS COUNTRIES AND ITS PRACTICAL EFFECT* (London, John Murray 1895). A patriarchal legacy can also be seen in the application of various doctrines in the area of trusts and estates, such as the application of the undue influence doctrine. See generally Brian Alan Ross, *Undue Influence and Gender Inequity*, 19 WOMEN'S RTS. L. REP. 97 (1997); Carla Spivak, *Why the Testamentary Doctrine of Undue Influence Should Be Abolished*, 58 U. KAN. L. REV. 245 (2010); Veena K. Murthy, Note, *Undue Influence and Gender Stereotypes: Legal Doctrine or Indoctrination?*, 4 CARDOZO WOMEN'S L.J. 105 (1997).

requirement of the American law of succession.⁶⁴ Nevertheless, the practice of primogeniture was transplanted to the American colonies from Europe by “folk law” and custom.⁶⁵ The replication of a male-dominated pattern of succession may be part of the reason that historically women sought financial security through marriage,⁶⁶ rather than by pursuing occupations⁶⁷ or relying on inheritances.⁶⁸ Although

64. See generally George L. Haskins, *The Beginnings of Partible Inheritance in the American Colonies*, 51 YALE L.J. 1280 (1942). Under some American Indian traditions of succession, the youngest female child would inherit to the exclusion of brothers and older sisters. See generally Ernest Beaglehole, *Ownership and Inheritance in an American Indian Tribe*, 20 IOWA L. REV. 304, 305–08 (1935) (examining traditions of the Hopi); Teresa D. LaFramboise, Anneliese M. Heyle & Emily J. Ozer, *Changing and Diverse Roles of Women in American Indian Culture*, 22 SEX ROLES 455, 460 (1990) (identifying matrilineal inheritance patterns for people living in the Eastern Pueblos).

65. LAWRENCE M. FRIEDMAN, *DEAD HANDS: A SOCIAL HISTORY OF WILLS, TRUSTS, AND INHERITANCE* 21 (2009); MAX RADIN, *HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY* 407–09 (1936) (noting that although not a component of the American system of succession, the practice of primogeniture was replicated in patterns of succession, perhaps as a result of social norms); Carole Shammas, *English Inheritance Law and Its Transfer to the Colonies*, 31 AM. J. LEGAL HIST. 145 (1987); see also CAROLE SHAMMAS, MARYLYNN SALMON & MICHEL DAHLIN, *INHERITANCE IN AMERICA FROM COLONIAL TIMES TO THE PRESENT* (1987).

66. Women contributed to the fourteenth century economy of London through wealth transfers associated with marriage. BARBARA A. HANAWALT, *THE WEALTH OF WIVES: WOMEN, LAW, AND ECONOMY IN LATE MEDIEVAL LONDON* 6 (2007). The increasing tension of marriage and careers in the 1950s was explored in the movie *Mona Lisa Smile*. MONA LISA SMILE (Revolution Studios 2003) (starring Julia Roberts, Kirsten Dunst, and Julia Stiles). For a compilation of the oral histories of ninety-two women who were in their teens or twenties during the 1950s, see BRETT HARVEY, *THE FIFTIES: A WOMEN'S ORAL HISTORY* (1993). Chapter Three of the book is titled “Post-Doc or Paella?” and reflects the tension of family and career in the 1950s. *Id.* at 44–67. The ideal woman of the 1950s was represented in Disney's *Cinderella*, released in 1950. CINDERELLA (Walt Disney Productions 1950). Cinderella was “a young woman with a keen awareness that ‘matrimony was the object’ of female endeavor.” STEVEN WATTS, *THE MAGIC KINGDOM: WALT DISNEY AND THE AMERICAN WAY OF LIFE* 330 (1997); see also Amy M. Davis, *The ‘Dark Prince’ and Dream Women: Walt Disney and Mid-Twentieth Century American Feminism*, 25 HIST. J. FILM, RADIO & TELEVISION 213 (2005). Disney's Cinderella undertakes a more active role in her “happily ever after” in *Cinderella III: A Twist in Time* (released to DVD in 2007). CINDERELLA III: A TWIST IN TIME (DisneyToon Studios 2007). For the danger of treating modern girls as “princesses” or “divas,” see JEANE M. TWENGE & W. KEITH CAMPBELL, *THE NARCISSISM EPIDEMIC: LIVING IN THE AGE OF ENTITLEMENT* (2009).

67. Muriel Egerton, *Occupational Inheritance: The Role of Cultural Capital and Gender*, 11 WORK, EMP. & SOCIETY 263 (1997).

68. E.g., Hannah Alsgaard, *Rural Inheritance: Gender Disparities in Farm Transmission*, 88 N.D. L. REV. 347 (2012); see also AGNES R. QUISUMBING, JONNA P. ESTUDILLO & KEIJIRO OTSUKA, *LAND AND SCHOOLING: TRANSFERRING WEALTH ACROSS GENERATIONS* (2004); Daphna Hacker, *The Gendered Dimension of Inheritance: Empirical Food for Legal Thought*, 7 J. EMPIR. LEGAL STUD. 322 (2010) (finding evidence that

sons did not always inherit property to the exclusion of daughters, women may not have had the legal capacity to control their property, even inherited property.⁶⁹ For instance, during the nineteenth century, the wages of women were legally the property of the male head of household to which the woman was attached.⁷⁰ Even inherited property could legally become the property of the male head of household.⁷¹ As one nineteenth-century treatise cautioned,

It is always better in leaving a legacy to a married woman, of more than £200 in value, to insert the words “to her separate use free from the debts and independent of the control of her husband” as it will enable her to receive her legacy and have it invested in her own name independent of her husband, who will not be able without her consent to obtain possession of either the capital or the interest⁷²

“cultural patriarchal practices” relating to inheritance continue to exist); Shelly Kreiczer-Levy & Meital Pinto, *Property and Belongingness: Rethinking Gender-Biased Disinheritance*, 21 TEX. J. WOMEN & L. 119 (2011) (arguing that gender-biased disinheritance should be considered a violation of public policy); Shelly Kreiczer-Levy, *Religiously Inspired Gender-Bias Disinheritance—What’s Law Got to Do with It?*, 43 CREIGHTON L. REV. 669 (2010) (encouraging the re-assessment of inheritance patterns and traditions that favor male relatives).

69. See, e.g., MARYLYNN SALMON, WOMEN AND THE LAW OF PROPERTY IN EARLY AMERICA (1986); Martin Dribe & Christopher Lundh, *Gender Aspects of Inheritance Strategies and Land Transmission in Rural Scania, Sweden, 1720–1840*, 10 HIST. FAM. 293 (2005) (finding that, unlike common perception, daughters and sons-in-law often inherited the family farm, even when the decedent had living sons). But see Suzanne Desan, “War Between Brothers and Sisters”: *Inheritance Law and Gender Politics in Revolutionary France*, 20 FRENCH HIST. STUD. 597 (1997); see also Carla Spivack, *Law, Land, Identity: The Case of Lady Anne Clifford*, 87 CHI.-KENT L. REV. 393 (2012) (presenting a case study from seventeenth century England where a father bequeathed family lands to a son rather than a daughter and sparked a generation of legal wranglings).

70. Alice Kessler-Harris, *Legal Theory & Gendered History*, 19 COLUMBIA J. GENDER & L. 125, 129 (2010); see also NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN NINETEENTH-CENTURY NEW YORK (1982); H.J. Habakkuk, *Family Structure and Economic Change in Nineteenth-Century Europe*, 15 J. ECON. HIST. 1 (1955); Donna C. Schuele, *In Her Own Way: Marietta Stow’s Crusade for Probate Law Reform Within the Nineteenth-Century Women’s Rights Movement*, 7 YALE J.L. & FEMINISM 279 (1995); Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives’ Rights to Earnings, 1860–1930*, 82 GEO. L.J. 2127 (1994).

71. See generally Laura M. Padilla, *Gendered Shades of Property: A Status Check on Gender, Race & Property*, 5 J. GENDER RACE & JUST. 361, 363 (2002).

72. CORRIE HUDSON, A PRACTICAL GUIDE TO MAKING AND PROVING WILLS 37 (London, Waterlow & Sons Ltd. 1876). The treatise author continues,

a very great benefit to her should he happen to be of bad character, whereas should there be perfect confidence between the husband and wife, the later may of course

In the late-nineteenth century, Married Women's Property Acts, sometimes referred to as Married Women's Acts, were being passed by legislatures across the United States to address women's property rights.⁷³

Even though formal legal equality may exist with regard to property rights, women still, on average, have less access to economic opportunities, which in turn affects wealth accumulation.⁷⁴ A gender wage gap continues to exist.⁷⁵ Help-wanted advertisements are no longer segregated by gender,⁷⁶ and career opportunities for women may be more extensive than those available to *Mad Men's* Peggy Olson;⁷⁷

hand it over to him if she pleases; should the legacy however not exceed £ 200 in value it may be paid to her separate use and her receipt alone will be considered as a good discharge for the same without any words in the will to the effect.

Id. at 37–38.

73. E.g., Richard H. Chused, *Late Nineteenth Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures*, 29 AM. J. LEGAL HIST. 3 (1985); see also KATHLEEN ELIZABETH LAZAROU, *CONCEALED UNDER PETTICOATS: MARRIED WOMEN'S PROPERTY AND THE LAW OF TEXAS 1840–1913* (1986); Ellen Dannin, *Marriage and Law Reform: Lessons from the Nineteenth-Century Michigan Married Women's Property Acts*, 20 TEX. J. WOMEN & L. 1 (2010); Peggy Rabkin, *The Origins of Law Reform: The Social Significance of the Nineteenth-Century Codification Movement and Its Contribution to the Passage of the Early Married Women's Property Act*, 24 BUFF. L. REV. 683 (1975).

74. For information about women in the work force, see the U.S. Department of Labor, Women's Bureau. As outlined by its mission, the Women's Bureau

develops policies and standards and conducts inquiries to safeguard the interests of working women; to advocate for their equality and economic security for themselves and their families; and to promote quality work environments.

Women's Bureau: About Us, U.S. DEP'T LABOR, <http://www.dol.gov/wb/> (last visited June 1, 2015), archived at <http://perma.cc/4SF7-R4F3>.

75. Laurel Bellows, *President's Message*, A.B.A. J., June 2013, at 8 (“Dollar for Dollar: Gender inequity in pay diminishes women's prospects—and the law profession.”).

76. See generally Peter W. Kerman, *Sex Discrimination in Help Wanted Advertising*, 15 SANTA CLARA LAW. 183, 183 (1974) (stating that “the system of listing job openings by sex provides no service at all to a society striving to insure equal employment opportunity for both men and women”); Nicholas Pedriana & Amanda Abraham, *Now You See Them, Now You Don't: The Legal Field and Newspaper Desegregation of Sex-Segregated Help Wanted Ads 1965–75*, 31 LAW & SOC. INQUIRY 905, 919 (2006) (finding that the practice of publishing gender segregated help wanted advertisements was abandoned between 1971 and 1973).

77. For an examination of gender and *Mad Men*, see MAD MEN, MAD WORLD: SEX, POLITICS, STYLE & THE 1960S (Lauren M.E. Goodlad, Lilya Kaganovsky & Robert A. Rushing eds., 2013); MAD MEN, WOMEN, AND CHILDREN: ESSAYS ON GENDER AND GENERATION (Heather Marcovitch & Nancy Batty eds., 2012); Katixa Agirre, ‘Whenever a Man Takes You to Lunch Around Here’: *Tracing Post-Feminist Sensibility in Mad Men*, 4 CATALAN J. COMM. & CULTURAL STUD. 155 (2012).

however, career opportunities for women continue to be limited.⁷⁸ On average, women earn seventy-seven cents for every dollar earned by a man.⁷⁹ That wage gap translates to a loss of \$431,000 over the course of a career.⁸⁰ Also impacting wealth accumulation, women are filing for bankruptcy in record numbers.⁸¹ Longer life expectancy, limited occupational choices, and divorce rates⁸² translate into women dying with less property to dispose of than men.⁸³ This impact not only affects rates of testation but may be discerned in the language used to transmit property, as discussed in Part V.

V. THE INTERSECTION OF GENDER AND TESTAMENTARY LANGUAGE

Language is a structured system of signs used to form and convey meaning.⁸⁴ Language presents “a means of manipulating reality which has the potential to mislead, misguide or deceive.”⁸⁵ “Gender is

78. See ALICE KESSLER-HARRIS, *OUT TO WORK: A HISTORY OF WAGE-EARNING WOMEN IN THE UNITED STATES* (20th anniversary ed. 2003); ANNE WITZ, *PROFESSIONS AND PATRIARCHY* (1992); see also Marjorie Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 *UMKC L. REV.* 293 (2004).

79. John Light, *America's Perennial Gender Wage Gap*, MOYERS & CO. (Jan. 15, 2013), <http://billmoyers.com/2013/01/15/the-state-of-americas-gender-wage-gap/>, archived at <http://perma.cc/PT78-52W4>.

80. *Id.*

81. Elizabeth Warren, *What Is a Woman's Issue?: Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 *HARV. WOMEN'S L.J.* 19 (2002).

82. Karen C. Holden & Pamela Smock, *The Economic Cost of Marital Dissolution: Why Do Women Bear a Disproportionate Cost?*, 17 *ANN. REV. SOC.* 51 (1991); see also MARTHA ALBERTSON FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* (1991).

83. *E.g.*, Bernier, *supra* note 6, at 528 (asking the following question: “How can it be that women today are more educated and seemingly have had more opportunities than our foremothers, yet fail abysmally in the area of wealth creation and protection?”); Dalton Conley & Miriam Ryvicker, *The Price of Female Headship: Gender, Inheritance, and Wealth Accumulation in the United States*, 13 *J. INCOME DISTRIBUTION* 41 (2005); Carmen Diana Deere & Cheryl R. Doss, *The Gender Asset Gap: What Do We Know and Why Does It Matter?*, 12 *FEMINIST ECON.* 1 (2006).

84. ECKERT & MCCONNELL-GINET, *supra* note 17, at 60. For an exploration of law and language, see generally *THE OXFORD HANDBOOK OF LANGUAGE AND LAW* (Peter M. Tiersma & Lawrence M. Sloan eds., 2012); TIERSMA, *supra* note 15, at 9–35 (exploring the origins of legal language by considering the language inherited from the Celts, Angles, Saxons, Danes, and Norman French).

85. Sharon P. Larade & Johanne E. Pelletier, *Mediating in a Neutral Environment: Gender-Inclusive or Neutral Language in Archival Description*, 35 *ARCHIVARIA* 99, 100 (1993) (footnote omitted).

embedded in” language and the use of language.⁸⁶ By exploring specific provisions of gendered language in Wills, this Section urges the deliberate use of gender inclusive language, an avoidance of gender-biased language, and the retention of gendered language when appropriate.

To begin the exploration of testamentary language use, it is necessary to acknowledge that the language of the law itself⁸⁷ is male.⁸⁸ The ability to shape language “depends, among other things, on one’s apparent legitimacy to engage in that activity.”⁸⁹ Those who “engaged” in the making of the law and the practice of the law before the nineteenth century were exclusively men.⁹⁰ In 1869, an American woman was admitted to the bar.⁹¹ Women were not, however, admitted to the bar with any great degree of frequency until the late-twentieth century.⁹² For instance, in a 1970 article titled *Drafting a Modern Will*,

86. ECKERT & MCCONNELL-GINET, *supra* note 17, at 60.

87. For the foundational work in language and the law, see DAVID MELLINKOFF, *THE LANGUAGE AND THE LAW* (1963).

88. Karen Busby, *The Maleness of Legal Language*, 18 MANITOBA L.J. 191, 192 (1989) (arguing that “grammatical features of the legal register such as pronouns, generics, lexicon, semantics and syntax trivialize, exclude and devalue women and characteristics associated with women”); see also MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW* (1990); Lucinda M. Finley, *Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886 (1989); Mary Ellen Griffith, *Sexism, Language, and the Law*, 91 W. VA. L. REV. 125 (1988).

89. ECKERT & MCCONNELL-GINET, *supra* note 17, at 95.

90. See, e.g., SPENDER, *supra* note 13, at 143–44. “[P]ast men . . . had control over language (as philosophers, orators, politicians, grammarians, linguists, lexicographers . . .), so they encoded sexism into language to consolidate their claims for male supremacy.” WEATHERALL, *supra* note 19, at 3; see also ECKERT & MCCONNELL-GINET, *supra* note 17, at 9 (“Gender is embedded so thoroughly in our institutions, our actions, our beliefs, and our desires, that it appear to us to be completely natural.”); Laura L. Bierema, *The Role of Gender Consciousness in Challenging Patriarchy*, 22 INT’L J. LIFELONG EDUC. 3, 3 (2003) (“Organizations are primarily male-dominated . . .”).

91. Two women, Emma Haddock and B.A. Mansfield, were admitted to the Iowa State Bar in 1869. ROSE FALLS BRES, MAIDS, WIVES AND WIDOWS: THE LAW OF THE LAND AND OF VARIOUS STATES AS IT AFFECTS WOMEN 27 (1918). It was 1900 before a woman was admitted to the practice of law in any European nation. *Id.* at 29. For an exploration of the challenges faced by female lawyers in the nineteenth century, see MARY JANE MOSSMAN, *THE FIRST WOMAN LAWYERS: A COMPARATIVE STUDY OF GENDER, LAW AND THE LEGAL PROFESSION* (2006).

92. Sofia Adrogué, *The State of Our Profession—Reflections of Decades of Practice and a View into the Third Millenium*, HOUS. LAW., Mar./April 2000, at 10, 13 (setting the 1970s as the decade in which large numbers of women entered the legal profession). For an examination of gender and the medical profession, see WITZ, *supra* note 78; Julian Tanner &

the male author wrote the following advice and included a comment in the gendered division of labor in the law: "It is suggested that you photocopy this article and give it to your secretary. Have her number the forms consecutively, type each on a separate piece of 8½- by 11-inch bond paper, and then place them in a three-ring, looseleaf binder."⁹³

Today, law school admissions reflect that 46.8% of law students are female.⁹⁴ Even with a greater number of women attending law school,⁹⁵ the legal profession continues to be dominated by men.⁹⁶ Law firm

Rhonda Cockerill, *Gender, Social Change, and the Professions: The Case of Pharmacy*, 11 SOC. F. 643 (1996).

93. James M. Corcoran, Jr., *Drafting a Modern Will*, 16 PRAC. LAW. 13, 15 (1970). Tongue-in-cheek, Gerald Lebovits observed, "Perhaps one reason no one used *lawyerette* is that women were excluded from the profession when *ette* suffixes were popular." Gerald Lebovits, *He Said—She Said: Gender-Neutral Writing*, N.Y. ST. BAR ASS'N J., Feb. 2002, at 64, 64.

94. Statistics about law school enrollment are collected by the American Bar Association. AM. BAR ASS'N, FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER 1947–2011 (2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf, archived at <http://perma.cc/5YGS-CSWE>; see also Lauren A. Graber, *Are We There Yet? Progress Toward Gender-Neutral Legal Education*, 33 B.C. J.L. & Soc. Just. 45 (2013) (examining the law school performance gap between male students and female students at Boston College Law School); Paula Lustbader, *Painting Beyond the Numbers: The Art of Providing Inclusive Law School Admission to Ensure Full Representation in the Profession*, 40 CAP. U. L. REV. 71 (2012) (examining law school admissions and diversity). For perspectives of female law students in the 1980s and 1990s, see Sarah Berger, Angela Olivia Burton, Peggy Cooper Davis, Elizabeth Ehrenfest Steinglass & Robert Levy, "Hey! There are Ladies Here!," 73 N.Y.U. L. REV. 1022 (1998); Paula Gaber, "Just Trying to Be Human in this Place": *The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PENN. L. REV. 1 (1994); Joan M. Krauskopf, *Touching the Element: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311 (1994). For a perspective of female law students in the 2000s, see Felice Batlan, Kelly Hradsky, Kristen Jeschke, LaVonne Meyer & Jill Roberts, *Not Our Mother's Law School?: A Third-Wave Feminist Study of Women's Experiences in Law School*, 39 U. BALT. L.F. 124 (2009).

95. For discussions of current issues of women in law school and the legal profession, see THE GIRL'S GUIDE TO LAW SCHOOL, <http://thegirlsguidetolawschool.com> (last visited June 2, 2015), archived at <http://perma.cc/H4YR-NJXF>.

96. The cover story of a 2013 issue of the ABA's *Student Lawyer* was *Yes, Virginia, There Is Still Gender Bias in the Profession*. G.M. Filisko, *Yes, Virginia, There Is Still Gender Bias in the Profession*, A.B.A. STUDENT LAW., Apr. 2013, at 22; see also Phyllis D. Coontz, *Gender Bias in the Legal Profession: Women "See" It, Men Don't*, 15 WOMEN & POLITICS 1 (1995); Elizabeth H. Gorman, *Gender Stereotypes, Same-Gender Preferences, and Organizational Variation in the Hiring of Women: Evidence from Law Firms*, 70 AM. SOC. REV. 702 (2005); Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111 (1988); Patricia MacCorquodale & Gary Jenson, *Women in the Law: Partners or Tokens?*, 7 GENDER & SOCIETY 582 (1993); Paula A. Patton, *Women Lawyers, Their Status, Influence, and Retention in the Legal Profession*, 11 WM. &

management, the judiciary, the government, and even the Reporters of Uniform Acts and the Restatements reflect overwhelming male leadership.⁹⁷

To consider gender, language, and Wills, this Article focuses on forms. Forms retain vestiges of gendered language and serve as the basis for attorney-drafted Wills and self-drafted Wills.⁹⁸ This Section draws upon forms, both from form books and use of the forms in

MARY J. WOMEN & L. 173 (2005); Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001 (2002); Joe G. Baker, *The Influx of Women into Legal Professions: An Economic Analysis*, MONTHLY LAB. REV., Aug. 2002, at 14; Rebecca Korzec, *Gender Bias: Continuing Challenges and Opportunities*, LITIGATION, Spring 2003, at 14, 14 (positing that “the reason for the gender gap [in the legal profession] suffered by women lawyers today is that they are being pushed off the ladder in mid-career, at the same time their male counterparts are taking their largest strides”). Moreover, male bias may influence how non-lawyers view “real lawyers,” as shown by studies that reveal jurors’ views on female attorneys and male attorneys. See Mary Stewart Nelson, Student Article, *The Effect of Attorney Gender on Jury Perception and Decision-Making*, 28 LAW & PSYCHOL. REV. 177 (2004) (reviewing the literature on gender-bias and juries); see also Andrea Kupfer Schneider, Catherine H. Tinsley, Sandra Cheldelin & Emily T. Amanatullah, *Likeability v. Competence: The Impossible Choice Faced by Female Politicians, Attenuated by Lawyers*, 17 DUKE J. GENDER L. & POL’Y 363 (2010); Bryna Bogoch, *Courtroom Discourse and the Gendered Construction of Professional Identity*, 24 LAW & SOC. INQUIRY 329 (1999).

97. See generally Shirley S. Abrahamson, *Toward a Courtroom of One’s Own: An Appellate Court Judge Looks at Gender Bias*, 61 U. CIN. L. REV. 1209 (1993); Joyce S. Sterling & Nancy Reichman, *Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession*, 8 FIU L. REV. 515 (2013); Melissa L. Tatum, *The Path of Women in the Legal Academy: Gender, Race, and Culture*, 80 UMKC L. REV. 795 (2012); Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245 (2010); Daniell Sollars, Note, *Gender Balance in the Judiciary: Why Does It Matter?*, 36 WM. MITCHELL L. REV. 1721 (2010). For a historical examination of women in law firms, see Kaye, *supra* note 96; Judith L. Maute, *Writings Concerning Women in the Legal Profession, 1982–2002*, 38 TULSA L. REV. 167 (2002); S. Elizabeth Foster, Comment, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631 (1995); Note, *Why Law Firms Cannot Afford to Maintain the Mommy Track*, 109 HARV. L. REV. 1375 (1996). For an analysis of the continuing problems and concerns of women in law firms, see Theresa M. Beiner, *Some Thoughts on the State of Women Lawyers and Why Title VII Has Not Worked for Them*, 44 IND. L. REV. 685 (2011); Audrey Wolfson Latourette, *Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives*, 39 VAL. U. L. REV. 859 (2005); Lea E. Delossantos, Comment, *A Tangled Situation of Gender Discrimination: In the Face of an Effective Antidiscrimination Rule and Challenges for Women in Law Firms—What Is the Next Step to Promote Gender Diversity in the Legal Profession?*, 44 CAL. W. L. REV. 295 (2007).

98. See, e.g., Kirsten K. Davis, *Legal Forms as Rhetorical Transaction: Competency in the Context of Information and Efficiency*, 76 UMKC L. REV. 667, 667 (2011) (“Using legal forms, that is, using existing documents as a template for drafting, is an age-old lawyering practice.” (internal footnotes omitted)).

probated Wills, to showcase language choices.⁹⁹ The language suggested by form books and used in probated Wills show vestigial use of gendered language and gender biased language, which as a result, fails to use gender-inclusive language and gender-specific language in a manner that would resonate with modern testators.

A. Is It Miss or Mrs.?: Declaring Marital Status

*I, A B, of, [____], single woman . . .*¹⁰⁰

Because property rights of married women were historically restricted, women's Wills declared marital status. Under common law,¹⁰¹ husband and wife became "one person in law."¹⁰² The unity, known as coverture,¹⁰³ has derisively been described as becoming one person: the husband.¹⁰⁴ In the example above, the formbook presents the model introduction for a single woman, with the declaration of marital status in the introduction. This declaration both presents authority for the female testator's ability to make a Will and establishes her authority to dispose of certain property. In a similar manner, the following introduction establishes the female testator's somewhat limited rights due to her marital status: "IN THE NAME OF GOD, AMEN. I Mary Nokes, wife of John Nokes, of Hampstead, in the county of Middlesex, Esquire, do by this my writing, purporting to be my last will and testament, dispose of my estate and effects."¹⁰⁵

Even more description of the consequences of marriages is illustrated in the following language:

IN THE NAME OF GOD, AMEN. I Elizabeth Mills, now wife of John Mills, of the parish of Saint Margaret, Westminster, in the

99. Many of the examples in this Section are drawn from form books. Those examples that are not directly from form books nevertheless carry similar constructions.

100. JAMES SCHOUER, *A TREATISE ON THE LAW OF WILLS* 707 (Boston, Boston Book Co., 2d ed. 1892).

101. THOMAS BARRETT-LENNARD, *THE POSITION IN LAW OF WOMEN: A CONCISE AND COMPREHENSIVE TREATISE ON THE POSITION OF WOMEN AT COMMON LAW AS MODIFIED BY THE DOCTRINES OF EQUITY AND BY RECENT LEGISLATION* 1 (London, Waterlow & Sons Ltd. 1883).

102. See, e.g., 1 WILLIAM BLACKSTONE, *COMMENTARIES* *433, *442.

103. BLACK'S LAW DICTIONARY 446 (10th ed. 2014) [hereinafter BLACK'S].

104. See generally Claudia Zaher, *When A Woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture*, 94 *LAW LIBR. J.* 459 (2002).

105. EARDLEY MITFORD, *THE LAW OF WILLS, CODICILS AND REVOCATIONS* 65 (London, W. & J. Stratford 1796) (switching "f" to "s" to reflect modern typesetting).

county of Middlesex, Esquire, late Elizabeth Field, spinster, being sick and weak in body, but of sound and disposing mind, memory, and understanding, praised be God for the same, do hereby, in pursuance and exercise of the power and authority given and reserved to me, in and by the settlement made previous to my marriage with the said John Mills, and by force and virtue of all and every the power and powers, authority and authorities in me being, or enabling me thereto, make my last will and testament in manner following.¹⁰⁶

In the example, the introduction names the testator, the testator's husband, the testator's former status as a spinster, and establishes her current legal capacity. The introduction recites her authority to dispose of property by referencing the marriage settlement.

Marital status no longer is relevant for establishing capacity; however, marital status does impact a testator's ability to dispose of property by will. Property rights still are afforded by marriage. Dower and curtsy remained in the law in modified versions with the elective share,¹⁰⁷ which essentially requires a married individual to make certain provisions for his or her surviving spouse, subject to the terms of any marital agreement.¹⁰⁸ Often starting as the widow's share,¹⁰⁹ the elective share has attempted to become equally applicable to all genders.¹¹⁰ As a

106. MITFORD, *supra* note 105, at 67 (“*Will of a married Woman by Virtue of a Settlement made previous to her Marriage, disposing of Personal Estate.*”) (switching the “f” to “s” in the text example and form title to reflect modern typesetting).

107. Raymond C. O'Brien, *Integrating Marital Property into a Spouse's Elective Share*, 59 CATH. U. L. REV. 617 (2010); Lawrence W. Waggoner, *Uniform Probate Code's Elective Share: Time for a Reassessment*, 37 U. MICH. J.L. REFORM 1 (2003); Kevin R. Garrison, Comment, *The Ins and Outs of the Alabama Elective Share*, 58 ALA. L. REV. 1161 (2007) (exploring the gendered language of the elective share). For a historical exploration of dower, see George L. Haskins, *The Development of Common Law Dower*, 62 HARV. L. REV. 42 (1948) (tracing the origin of dower to Anglo-Saxon times).

108. See generally John H. Langbein & Lawrence W. Waggoner, *Redesigning the Spouse's Forced Share*, 22 REAL PROP. PROB. & TR. J. 303, 304 (1987) (identifying the purposes of elective share statutes). Similarly, community property rights prevents a married individual from disposing of his or her partner's interest in the community property. See generally Terry L. Turnipseed, *Community Property v. the Elective Share*, 72 LA. L. REV. 161 (2011).

109. For historical examinations of the “widow's share,” see George L. Haskins, *The Estate by the Marital Right*, 97 U. PENN. L. REV. 345 (1949); David Westfall, *Estate Planning and the Widow's Election*, 71 HARV. L. REV. 1269 (1958).

110. Kristine S. Knaplund, *The New Uniform Probate Code's Surprising Gender Inequities*, 18 DUKE J. GENDER L. & POL'Y 335 (2011); Joslyn R. Muller, Comment, *Haven't Women Obtained Equality? An Analysis of the Constitutionality of Dower in Michigan*, 87 U. DET. MERCY L. REV. 533 (2010).

consequence, a declaration of marital status continues to be a component of modern Wills. The following provision is a modern example of the “single woman” example at the beginning of this section. The provision reads: “I am not married. All of my children or other issue have died, as have all of my parents and grandparents. While I do have some distant collateral relatives now living, I have expressly omitted them from this Last Will and Testament.”¹¹¹ The recitation thus clarifies legal relationships that carry inheritance protections. Another form provides the range of options that may be included.

ARTICLE TWO: FAMILY STATUS

I declare that I am married. My *[husband/wife]*'s name is *[name of spouse]*. Any reference in this my Last Will and Testament to “my *[husband/wife]*” are to *[him/her]*. My *[husband/wife]* and I have *[number of children]* children of our marriage. *[OPTIONAL: The *[name/names]* of our *[child/children]**[is/are]* as follows: *[Names of children]*].¹¹²*

The following are additional examples of the options to describe family status:

Marital Status

I am single and have never been married.

or

1. I am a _____ *[widow or widower]*.
2. I was formerly married to _____ who died on _____ *[date]*.

or

1. I am single.
2. I was married to _____. The marriage was terminated by a _____ *[final divorce decree or decree dissolving the marriage or decree of annulment]* entered on _____ *[date]*, in the case of _____ v. _____, No. _____, in the _____ Court of _____, State of South Carolina.¹¹³

An acknowledgment of an upcoming marriage might also be acknowledged in the Will, as described in the following provision:

111. VARLEY H. TAYLOR, JR., 6A VERNON'S OKLAHOMA FORMS 2D: ESTATE PLANNING, form 4.9(2), at 168 (2002).

112. CHERYL C. MITCHELL & FERD H. MITCHELL, 26 WASHINGTON PRACTICE SERIES: WASHINGTON ELDER LAW AND PRACTICE § 2:6 (2013 ed. 2013).

113. 3 SOUTH CAROLINA LEGAL AND BUSINESS FORMS § 17:77 (1998) [hereinafter 3 S.C. FORMS].

I, _____ [name], of _____ [city], Indiana, being of sound and disposing mind and memory, do make, publish, and declare this to be my Last Will and Testament, and I hereby revoke all Wills and Codicils heretofore made by me. I hereby declare that on _____ [date], I will be marrying _____ [name of prospective spouse] who will at that time become my _____ [husband/wife] and one of my legal heirs at law. That in accordance with my forthcoming marriage to _____ [name of prospective spouse] I am hereby executing this Last Will and Testament and have referred to _____ [name of prospective spouse]¹¹⁴

As this section demonstrates, not all use of gendered language in Wills perpetuates gender stereotypes. Declaration of marital status is helpful in identifying property rights, which relates to the Will's function to transmit property rights upon death. As a consequence, these references to gender are not simply the vestiges of a patriarchal past but legally relevant information to be retained in Wills of today.

B. A Rose By Any Name: Identifying the Testator

I, _____ [testator], _____ [if known by other names, add: also known as: _____], _____ [if widow's will, add: formerly known as _____ (maiden name)], _____ years of age, residing at _____ [address], City of _____, County of _____, State of South Carolina, being of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence of any person, declare this to be my last will and testament, and I revoke and cancel all previous wills and codicils.¹¹⁵

The Will begins with an expression of gender by use of the testator's name and ends with the use of gendered pronouns in the attestation clause and self-proving affidavit.¹¹⁶ The introduction of a Will and the closing of a Will pair the first person singular "I"¹¹⁷ with the testator's

114. DIANE HUBBARD KENNEDY, 26 INDIANA PRACTICE SERIES: ANDERSON'S WILLS, TRUSTS AND ESTATE PLANNING § 3:8 (2014–2015 ed. 2014).

115. 3 S.C. FORMS, *supra* note 113, § 17:64 ("Unmarried person—With children—Entire estate to children—Alternatively to heirs at law").

116. See, e.g., Richard T. Rodgers, *Turning the Tables* (pt. 8), PERFECT LAW., Mar. 1995, at 12, 17 (observing that "the first [possible] indication of the testator's gender comes in the first paragraph" of the Will, the introduction).

117. See, e.g., Michał Głowiński, *On the First-Person Novel*, 9 NEW LITERARY HIST. 103 (1977) (Rochelle Stone trans.); Emiko S. Kashima & Yoshihisa Kashima, *Culture and Language: The Case of Cultural Dimensions and Personal Pronoun Use*, 29 J. CROSS-CULTURAL PSYCHOL. 461 (1998); Ramona Tang & Suganthi John, *The "I" in Identity*:

name. This pairing projects a personal identity. Consider, for example, the thought-provoking title of Isaac Asimov's book *I, Robot*.¹¹⁸ Famous for creating the laws of robotics, the short stories raise questions of humanity, identity, and personhood.¹¹⁹ These themes are alluded to by the title's use of first person singular followed by a name. In the Will, the use of first person and the name that follows the first person projects identity. That identity is gendered and requires deliberate choices by the testator as to the appropriate name, or names, to include.

A name is an "aspect of self, an anchor to selfhood."¹²⁰ To consider the gender implications of names, it is first necessary to parse the components of a name. In general, a name has five components: (1) title or honorific, (2) first name, (3) middle name, (4) surname, and (5) suffix. Not all of these components are used to identify the testator, but use of names references gender. Women in particular use different names in different contexts, all of which are a reflection of the self.¹²¹ All of the names could be included in the Will without undermining the legal function of the introduction to identify the testator, the nature of the document, and the testator's domicile at the date of the Will's execution. Exclusive use of the current legal name to identify the testator in the introduction obscures an opportunity to reflect the self.

Exploring Writer Identity in Student Academic Writing Through the First Person Pronoun, 18 ENG. FOR SPECIFIC PURPOSES (SUPP. 1) S23 (1999).

118. ISAAC ASIMOV, *I, ROBOT* (Bantam Dell, trade paperback ed. 2008) (1950). The three rules of robotics are (1) "a robot may not injure a human being, or, through inaction allow a human being to come to harm," (2) "a robot must obey the orders given it by human beings except where such order would conflict with the First Law," and (3) "a robot must protect its own existence as long as such protection does not conflict with the First or Second Laws." *Id.* at 37 (internal quotation marks omitted). Will Smith starred in a movie titled *I, Robot* that followed the journey of Sonny, a robot seeking recognition of his humanity. *I, ROBOT* (Twentieth Century Fox Film Corp. 2004) (starring Will Smith).

119. See generally Sue Short, *The Measure of a Man?: Asimov's Bicentennial Man, Star Trek's Data, and Being Human*, 44 EXTRAPOLATION 209 (2003); see also Mark Coeckelbergh, *You, Robot: On the Linguistic Construction of Artificial Others*, 26 AI & SOC'Y 61 (2011); Petra Gelhaus, *I, Medical Robot: On the Differences Between a Virtuous Doctor and a Good Robot*, 1 INT'L J. PERSON CENTERED MED. 301 (2011).

120. WEATHERALL, *supra* note 19, at 19; see also REINVENTING IDENTITIES: THE GENDERED SELF IN DISCOURSE (Mary Bucholtz, A.C. Liang & Laurel A. Sutton eds., 1999); Jonathan Herring, *The Power of Naming: Surnames, Children, and Spouses*, in 15 CURRENT LEGAL ISSUES: LAW AND LANGUAGE 310 (Michael Freeman & Fiona Smith eds., 2013).

121. Studies have identified the "name letter effect." TIM VALENTINE, TIM BRENNEN & SERGE BRÉDART, *THE COGNITIVE PSYCHOLOGY OF PROPER NAMES: ON THE IMPORTANCE OF BEING EARNEST* 8 (1996). The "name letter effect" refers to the phenomenon whereby individuals rate letters from their own name as more attractive than letters not in their own name. *Id.*

The declaration of intention is the goal of the Will's introduction. The inclusion of birth names, nick names, and professional names buttresses the declarative function of the introduction and reinforces the identity of the testator in a manner that is gender inclusive.

1. Titles and Honorifics

An individual's use of titles and honorifics project a conceptualization of identity. Because of the historically limited career opportunities and emphasis on marriage, titles and honorifics used in women's Wills are often related to marital status. For instance, even after her divorce from Prince Charles stripped Diana of "Her Royal Highness" title, she retained "Princess of Wales."¹²² The introduction of her Will includes use of the title: "I, DIANA PRINCESS OF WALES of Kensington Palace London W8 HEREBY REVOKE all former Wills and testamentary dispositions made by me AND DECLARE this to be my last Will which I make this first day of June one thousand nine hundred and ninety three."¹²³

Not as grandiose as an aristocratic title, honorific use also shows a representation of self. Two traditional honorifics are accorded to women: Miss and Mrs. both reference marital status and stem from the same word "mistress."¹²⁴ In contrast, the sole traditional honorific for men, Mr., does not reference marital status and is derived from the word "master."¹²⁵ Ms. was intended to provide a generic courtesy title for

122. JOY JONES DAYMON, *PRINCESS DIANA THE LAMB TO THE SLAUGHTER* 108 (2002) ("Diana was shorn of Her Royal Highness status, but she was allowed to keep her title of Princess of Wales.").

123. *Diana's Will: The Full Text*, CNNINTERACTIVE, <http://www.cnn.com/WORLD/9803/04/diana.will> (last visited June 2, 2015), *archived at* <http://perma.cc/W5CV-Y5BX>. For an exploration of reactions to Princess Diana's death, see William J. Brown, Michael D. Basil & Mihai C. Bocarnea, *Social Influence of an International Celebrity: Responses to the Death of Princess Diana*, 53 J. COMM. 587 (2003); Marguerite Helmers, *Media, Discourse, and the Public Sphere: Electronic Memorials to Diana, Princess of Wales*, 63 C. ENG. 437 (2001); C.W. Watson, *'Born a Lady, Became a Princess, Died a Saint': The Reaction to the Death of Diana, Princess of Wales*, ANTHROPOLOGY TODAY, Dec. 1997, at 3.

124. WEATHERALL, *supra* note 19, at 21; Annie Pauwels, *Linguistic Sexism and Feminist Linguistic Activism*, in HANDBOOK OF LANGUAGE AND GENDER, *supra* note 34, at 550, 566. Use of honorifics and the treatment of gender is evidenced by the title characters in the children's series by Roger Hargreaves: *Mr. Men* and *Little Miss*.

125. As Professor Robin Lakoff wrote, "To refer to a man as *Mr.* does not identify his marital status; but there is no such ambiguous term for women: one must decide on *Mrs.* or *Miss.*" LAKOFF, *supra* note 8, at 64.

women.¹²⁶ In other words, Ms. was intended to be the female counterpart to Mr., a generic title that was devoid of reference to marital status.¹²⁷ Although well intentioned, the title Ms. does not remove the bias in titles because Ms. still requires women to make a choice to use Ms. rather than Miss or Mrs. Mr. is the automatic title and requires no consideration of the inferences that others might draw from its use. As one scholar posits, there will only be equality when men have an honorific that reveals marital status.¹²⁸ As noted above, marital status may be declared directly in the Will. The use of the honorific then becomes not simply a declaration of marital status but a declaration of identity. For instance, a 1971 Will begins with the following: “I, MRS. TOMMIE WILLIAMS THARPE, of Macon, Georgia, hereby declare this to be my Will.”¹²⁹ In this example, inclusion of the honorific “Mrs.” before the testator’s name “Tommie Williams Tharpe” projects a persona.¹³⁰ Some testators may draw a sense of identity from the inclusion of an honorific; however, not all testators will.¹³¹ Never a default decision of a drafter, the title or

126. This use was highlighted in an American Girl book. MEGAN McDONALD, *MEET JULIE: AN AMERICAN GIRL* 14-15 (2007) (equating Ms. and Mr.).

127. For a study analyzing contemporary interpretations of the courtesy titles Mr., Mrs., Miss, and Ms., see Carol A. Lawton, Judith E. Owen Blackmore & Lesa Rae Vartanian, *The New Meaning of Ms.: Single, But Too Old for Miss*, 27 *PSYCHOL. WOMEN Q.* 215 (2003).

128. WEATHERALL, *supra* note 19, at 22.

129. Last Will and Testament of Mrs. Tommie Williamson Tharpe (Aug. 20, 1971) (signing name as “Mrs. Tommie Williamson Tharpe”) (on file with author); *see also* Last Will and Testament of Mrs. Frances M. Roberts (May 29, 1968) (signing name as “Mrs. Frances M. Roberts”) (on file with author).

130. *See generally* Jean M. Twenge, “Mrs. His Name”: *Women’s Preferences for Married Names*, 21 *PSYCHOL. WOMEN Q.* 417, 423-424 (1997) (finding that the selection of last name by women upon marriage was often based on either a sense of tradition or a conception of personal identity). The honorific “Mrs.” may be retained. For instance, mysterious heiress Huguette Clark retained the honorific “Mrs.” despite returning to the use of her maiden name Clark upon her divorce. MERYL GORDON, *THE PHANTOM OF FIFTH AVENUE: THE MYSTERIOUS LIFE AND SCANDALOUS DEATH OF HEIRESS HUGUETTE CLARK* 152 (2014).

131. Esther Williams, star of the aqua-musical, began her autobiography with a musing on her identity and wrote that she was “three different women who became Mrs. Leonard Kovner, Mrs. Ben Gage, and Mrs. Fernando Lamos” and was “[s]itting here today as the happy Mrs. Edward Bell.” ESTHER WILLIAMS WITH DIGBY DIEHL, *THE MILLION DOLLAR MERMAID* 10 (1999). Esther Williams died on June 6, 2013, at the age of 91. Aljean Harmetz, *Esther Williams, Swimming Champion Who Became a Movie Star, Dies at 91*, N.Y. TIMES (June 6, 2013), <http://www.nytimes.com/2013/06/07/movies/esther-williams-who-swam-to-movie-fame-dies-at-91.html?pagewanted=all&r=0>, archived at <http://perma.cc/BF8M-P3TE>.

honorific included in the Will should be a decision made by the particular testator.

2. First and Middle Names

The gender of a name is often only identifiable in the use of the first name or middle name.¹³² The revelation may be masked by a gender ambiguous name.¹³³ Similarly, some female testators may have male-orientated names. For instance, female authors use male pseudonyms¹³⁴—such as George Eliot,¹³⁵ Ellis Bell,¹³⁶ Isak Dinesen,¹³⁷ and James Triptree Jr.¹³⁸—or initials rather than gendered first names and middle names, such as S.E. Hinton¹³⁹ and J.K. Rowling.¹⁴⁰ In addressing the use of male pseudonyms in publishing, Penguin editor Anne Sowards observed in 2012, “It sometimes makes sense for a female author to use a pseudonym, particularly when the main characters are male, or when it’s a genre with a strong appeal to men, like military science fiction, certain types of fantasy or gritty thrillers.”¹⁴¹

132. For an examination of the constitutionality of name restrictions, including potential gender restrictions on the selection of first names, see Carlton F.W. Larson, *Naming Baby: The Constitutional Dimensions of Parental Naming Rights*, 80 GEO. WASH. L. REV. 159 (2011).

133. See, e.g., Cong Tang, Keith Ross, Nitesh Saxena & Ruichuan Chen, *What's in a Name: A Study of Names, Gender Inference, and Gender Behavior in Facebook*, in DATABASE SYSTEMS FOR ADVANCED APPLICATIONS 344 (Jianliang Zu, Ge Yu, Shuigeng Zhou & Rainer Uland eds., 2011) (basing findings of gender behavior and characteristics by classifying the first names of 1.67 million users in New York City); Annette U. Rickel & Lynn R. Anderson, *Name Ambiguity and Androgyny*, 7 SEX ROLES 1057 (1981) (exploring the relationship of first names, nick names, and self-concept).

134. See generally Charlotte Lytton, *Not Just J.K. Rowling: Best-Selling Female Authors with Male Monikers*, CNN (July 16, 2013), <http://www.cnn.com/2013/07/16/showbiz/not-just-jk-rowling-monikers>, archived at <http://perma.cc/BSE5-BVBS>.

135. Mary Ann Evans, under her pseudonym George Eliot, wrote *The Mill on the Floss* and *Middlemarch*.

136. Ellis Bell is the pseudonym used by *Wuthering Heights*' author Emily Bronte.

137. Isak Dinesen is the pseudonym of Karen Blixen, author of *Out of Africa*.

138. James Triptree Jr. is the pseudonym of science fiction writer Alice Bradley Sheldon.

139. Susan Eloise Hinton wrote the staple of middle school English classes: *The Outsiders*.

140. J.K. Rowling is the famed author of the *Harry Potter* books. Although the primary audience of the *Harry Potter* books is children, the world of Harry Potter has captivated adults too. See, e.g., THE LAW AND HARRY POTTER (Jeffrey E. Thomas & Franklin G. Snyder eds., 2010); HARRY POTTER AND INTERNATIONAL RELATIONS (Daniel H. Nexon & Iver B. Neumann eds., 2006).

141. Stefanie Cohen, *Why Women Writers Still Take Men's Names*, WALL ST. J., Dec. 6, 2012, <http://online.wsj.com/article/SB10001424127887324355904578159453918443978.h>

Rules of legal citation used to dictate the use of only a first initial and last name for authors of articles, with the end result of the rule being a concealment of gender.¹⁴²

3. Surnames

In Anglo-American cultures, naming practices reflect a patriarchal society.¹⁴³ Surnames, also called last names or family names, descend from the male line.¹⁴⁴ Even though women have choice of surnames, each choice bears implications. Upon marriage, women may retain surnames, hyphenate surnames,¹⁴⁵ use two surnames, or use the surname of their husbands.¹⁴⁶ A recent survey from *The Guardian* claimed that

tml, archived at <http://perma.cc/S8AN-JJP9> (quoting Penguin editor Anne Sowards). Ayn Rand, who started life as Alissa Rosenbaum in Russia, selected a name that was not only “ethnically hard to place” but also gender neutral. ANNE C. HELLER, AYN RAND AND THE WORLD SHE MADE 55 (2009). Rand’s two famous characters, Howard Roark from *The Fountainhead* and John Galt from *Atlas Shrugged*, are both male and may have contributed to some readers assuming the author’s gender to be male.

142. Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990). The author’s footnote on page 829 makes known her wish to use first names and last names to identify authors of all articles, in deviation from *The Bluebook* rules of 1990. *Id.* at 829 n.*. The author notes that the use of first names is one way in which women can distinguish themselves from their husbands and their brothers. *Id.* *The Bluebook* has since changed its rules to use first and last names for authors of articles. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 16.2, at 149 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).

143. WEATHERALL, *supra* note 19, at 19; Sally McConnell-Ginet, “What’s in a Name?” *Social Labeling and Gender Practices*, in HANDBOOK OF LANGUAGE AND GENDER, *supra* note 34, at 69. In addressing naming practices, one scholar wrote,

patronymics continue even to this day to hold considerable sway over Anglo-American naming. The law purports to respect private choice, but in fact strong social pressures mean many people do not feel the freedom to exercise that choice. A strong negative message about the nature of family life and gender relations within it is perpetuated.

Herring, *supra* note 120, at 327.

144. WEATHERALL, *supra* note 19, at 19; see also Yofi Tirosh, *A Name of One’s Own: Gender and Symbolic Legal Personhood in the European Court of Human Rights*, 33 HARV. J.L. & GENDER 247 (2010), summarized in *Annotated Legal Bibliography on Gender*, 17 CARDOZO J.L. & GENDER 717, 785 (2011) (characterizing Professor Tirosh’s article as asserting that the treatment of last names is “central to the creation and retrenchment of gender norms in societies the world over”).

145. Gretchen E. Gooding & Rose M. Kreider, *Women’s Marital Naming Choices in a National Representative Sample*, 31 J. FAM. ISSUES 681 (2010) (noting that married women holding a professional degree are five times more likely to use a “nonconventional surname,” which includes using hyphenated names, using two surnames, and retention of surname upon marriage).

146. WEATHERALL, *supra* note 19, at 20; see also David R. Johnson & Laurie K. Scheuble, *Women’s Marital Naming in Two Generations: A National Study*, 57 J. MARRIAGE

“50% of Americans think [a woman] . . . should be legally required to take . . . [her] husband’s name.”¹⁴⁷ The survey also asserts that “ten percent of the American public still thinks that [a woman] keeping . . . [her] name . . . [shows she isn’t] dedicated to . . . [the] marriage.”¹⁴⁸ Since the 1990s, there has been a decrease in women retaining their name upon marriage.¹⁴⁹

On occasion, women may use their husband’s first name too, as with “Mrs. Jake Smith,” which completely consumes the woman’s own identity.¹⁵⁰ In such use, the woman’s identity becomes “merely an extension of her husband or part of her husband’s estate.”¹⁵¹ Retaining a “maiden name” as a last name upon marriage is to continue to use a man’s last name, the father’s.¹⁵² In rare circumstances, men will change their surnames upon marriage or hyphenate their surnames. Some parents, however, may be choosing to use the surname of the mother,

& FAM. 724 (1995); Suzanne A. Kim, *Marital Naming/Naming Marriage: Language and Status in Family Law*, 85 IND. L.J. 893 (2010).

147. Jill Filipovic, *Why Should Married Women Change Their Names? Let Men Change Theirs*, GUARDIAN (Mar. 7, 2013, 11:19 AM), <http://www.theguardian.com/commentisfree/2013/mar/07/women-stop-changing-your-name-when-married>, archived at <http://perma.cc/NZR3-EZR6> (referencing the study).

148. *Id.* For an examination of the flaws of the survey, see Maggie Koerth-Baker, *Sloppy Statistics: Do 50% of Americans Really Think Married Women Should Be Legally Obligated to Change Their Names?*, BOINGBOING (Mar. 8, 2013, 10:52 AM), <http://boingboing.net/2013/03/08/sloppy-statistics-do-50-of-a.html>, archived at <http://perma.cc/PNZ3-RZ8E>.

149. Natasha Burton, *Why Are More Women Changing Their Names After Getting Married?*, COSMOPOLITAN (April 17, 2013, 1:42 PM), <http://www.cosmopolitan.com/celebrity/news/changing-last-name>, archived at <http://perma.cc/9HPW-P8Y6> (asserting that a woman changing her last name upon marriage shows “commitment and unity, rather than dependency or even patriarchy”). For an exploration of naming practices and gender, see Kif Augustine-Adams, *The Beginning of Wisdom Is to Call Things by Their Right Names*, 7 S. CAL. REV. L. & WOMEN’S STUD. 1 (1997).

150. LAKOFF, *supra* note 8, at 68; WEATHERALL, *supra* note 19, at 20; see also LAUREL THATCHER ULRICH, *GOOD WIVES* 7 (1st Vintage Books ed. 1991).

151. WEATHERALL, *supra* note 19, at 20. For an exploration of gender and family law in general, see Herma Hill Kay, *From the Second Sex to the Joint Venture: An Overview of Women’s Rights and Family Law in the United States During the Twentieth Century*, 88 CALIF. L. REV. 2017 (2000). For a cultural examination of the use of surnames and naming practices, see Yvonne M. Cheren Pacheco, *Latino Surnames: Formal and Informal Forces in the United States Affecting the Retention and Use of the Maternal Surname*, 18 T. MARSHALL L. REV. 1 (1992); K.M. Sharma, *What’s in a Name: Law, Religion, Islamic Names*, 26 DENV. J. INT’L L. & POL’Y 151 (1998).

152. WEATHERALL, *supra* note 19, at 20 (retaining of a maiden name likewise “perpetuates an androcentric naming practice”); see also Omi, *The Name of the Maiden*, 12 WIS. WOMEN’S L.J. 253 (1997) (asserting that the restrictions on a woman’s right to select her own surname and the surname of her children is discriminatory).

rather than automatically using the surname of the father.¹⁵³ This will begin to alter the patrilineal naming practice.¹⁵⁴

4. Suffixes

The most common suffixes are “Junior” and “Senior,” the use of which shows relationships between father and son. Although daughters may be named after mothers, no suffix is used to show the relationship. Thus, use of suffixes reflects a “patrilateral name inheritance,”¹⁵⁵ an inheritance that is not available to women.

Considering the individual components of a name is necessary to construct the identification of an individual. The identification of the testator is most clearly stated in the introduction of a Will. The introduction of the Will identifies the testator, the county and state of the testator’s domicile at the time of the Will’s execution, and the nature of the testamentary document.¹⁵⁶ The name used to identify the testator conveys the testator’s legal self and is generally considered to be the testator’s legal name as of the date of the Will’s execution.¹⁵⁷ However, the draftsman could include other names used by the testator, such as a maiden name, or a name used in business, or a name used socially, all of which may not be the legal name.¹⁵⁸ For example, the Will of modern

153. This practice is not a recent phenomenon. See Laura Anne Foggan, Note, *Parents’ Selection of Children’s Surnames*, 51 GEO. WASH. L. REV. 583 (1983) (examining the constitutionality of statutes and regulations of children’s surnames as a matter of birth).

154. The issue may arise upon the divorce of the parents. Shannon J. Kennedy-Sjodin, Keegan v. Gudahl: *The Child’s Surname as a New Bargaining Chip in the Game of Divorce*, 41 S.D. L. REV. 166 (1996); Merle H. Weiner, “We Are Family”: *Valuing Associationalism in Disputes over Children’s Surnames*, 75 N.C. L. REV. 1625 (1997).

155. Rex Taylor, *John Doe Jr.: A Study of His Distribution in Space, Time, and the Social Structure*, 53 SOC. FORCES 11 (1974). Regional differences appear in the naming practice with a greater likelihood of use in eastern states than in western states. *Id.* at 12–13.

156. See, e.g., Thomas L. Shaffer, *The Overture in a Well-Drawn Will*, PRACTICAL LAW., Jan 1968, at 45.

157. See, e.g., Corcoran, *supra* note 93, at 15. The author provides the following recommendation on naming:

In the introductory clause of the will, your client should use exactly the same name as in his real estate transactions, so no affidavit will be necessary to show that the testator and the owner are the same person. If the client usually calls himself by his middle name, it might be wise to say, for example, “John Kevin Corcoran, also known as Kevin Corcoran.”

Id.

158. Famed actress Natalie Wood, child-actress in *Miracle on 34th Street* and star of *Splendor in the Grass*, retained her legal name as Natasha Gurdin. SUZANNE FINSTAD, NATASHA: THE BIOGRAPHY OF NATALIE WOOD 34 (2001).

blond bombshell Anna Nicole Smith¹⁵⁹ reads, “I, VICKIE LYNN MARSHALL, also known as Vickie Lynn Smith, and Vickie Lynn Hogan, and Anna Nicole Smith, a resident of Los Angeles County, California, declare that this is my Will.”¹⁶⁰ These names all refer to the same person and may have been legal names used by Vickie Lynn Marshall over her lifetime. The listing of names also facilitates the practical work of the personal representative to identify the property rights accumulated for a lifetime. But the listing of the names in the introduction evidences the many personas the testator constructed during her life. One need not have lived a life like Anna Nicole Smith to use various names at different times that reference different aspects and phases of their lives.

C. *With Your Permission: Using Precatory and Expressive Language*

This is Ælfgifu’s request of her royal lord; she prays him for the love of God and for the sake of his royal dignity, that she may be entitled to make her will.

*Then she makes known to you, Sire, by your consent . . .*¹⁶¹

In describing the function of the Will, one scholar in 1840 wrote, “The law of very many societies has, therefore, given to the proprietor a right of continuing *his* property after *his* death . . .”¹⁶² Use of the masculine “his” reminds the reader of today that women have not always had the same access to testation as men or the legal capacity to execute a legally enforceable Will.¹⁶³ In the Middle Ages, a married woman could execute a Will to dispose of her property upon her death

159. For a consideration of feminism and femininity, see Cheryl B. Preston, *Baby Spice: Lost Between Feminine and Feminist*, 9 AM. U. J. GENDER SOC. POL’Y & L. 541 (2001).

160. *Anna Nicole Smith Will and Trust (1967–2007)*, TRUETRUST.COM, http://www.true-trust.com/Famous_Wills-and_Trusts/Anna_Nicole_Smith_Will.html (last visited June 2, 2015), archived at <http://perma.cc/CP76-HP6F>.

161. *The Will of Ælfgifu*, in ANGLO-SAXON WILLS 20, 21 (Dorothy Whitelock ed. & trans., 1930); see also Mary Louise Fellows, *Æthelgifu’s Will as Hagiography*, in WRITING WOMEN SAINTS IN ANGLO-SAXON ENGLAND 82 (Paul E. Szarmach ed., 2013). For a summary of women’s lives and activities during Anglo-Saxon times, see generally G.F. BROWNE, THE IMPORTANCE OF WOMEN IN ANGLO-SAXON TIMES (1919).

162. *On the Origin and History of Wills*, *supra* note 12, at 223 (emphasis added).

163. Coverture limited a married woman’s ability to execute a valid Will. A single woman over a defined age, usually the age of majority, and a widow were able to execute valid Wills. DOROTHY A. MAYS, WOMEN IN EARLY AMERICA: STRUGGLE, SURVIVAL, AND FREEDOM IN A WORLD 422 (2004).

so long as she had “the possession of [a] . . . license of her husband.”¹⁶⁴ The license was granted solely in her husband’s discretion.¹⁶⁵ A notation of this permission thus often appeared in the Wills of the Middle Ages.¹⁶⁶ The use of precatory language and expressive language in modern Wills may relate back to the female testator’s use of this permissive language. Language that is precatory or expressive labors under a similar characterization of “women’s language” akin to the use of “empty adjectives,” “hedge words,” and “intensifiers.”¹⁶⁷ The minimization of the value of precatory language and expressive language by draftspersons and courts may reveal gender biased interpretations based on the historical use of precatory and expressive language by female testators.

Precatory language is language included in a Will that does not create a legal obligation.¹⁶⁸ The precatory language expresses a wish or a hope about the potential use or distribution of property. Likewise, expressive language does not create legally enforceable obligations, but rather conveys a message, expression, or opinion, such as the articulation of a reason behind a gift.¹⁶⁹ An early-twentieth-century form book includes the following sample provision that uses precatory language and expressive language:

I give my wife ___ all my wearing apparel, watches, jewelry, and other personal effects of a similar nature, to be hers absolutely, although I trust she will keep of them whatever she may desire as

164. Richard H. Helmholz, *Married Women’s Wills in Later Medieval England*, in *WIFE AND WIDOW IN MEDIEVAL ENGLAND* 165, 166 (Sue Sheridan Walker ed., 1993); see also MICHAEL M. SHEEHAN, *THE WILL IN MEDIEVAL ENGLAND: FROM THE CONVERSION OF THE ANGLO-SAXONS TO THE END OF THE THIRTEENTH CENTURY* 234 (1963).

165. SHEEHAN, *supra* note 164, at 236.

166. Generally, permissive language is used by those who do not have authority to speak. Bernier, *supra* note 6, at 551 (“Since the powerful were the only ones whose voices could be heard, when a woman spoke she was docile, in essence requesting permission from the powerful to speak.”).

167. See *supra* Part III about “women’s language.”

168. E.g., Lela P. Love & Stewart E. Sterk, *Leaving More Than Money: Mediation Clauses in Estate Planning Documents*, 65 WASH. & LEE L. REV. 539, 578–80 (2008).

169. E.g., Mark Glover, *A Therapeutic Jurisprudential Framework of Estate Planning*, 35 SEATTLE U. L. REV. 427, 458–61 (2012); Deborah S. Gordon, *Reflecting on the Language of Death*, 34 SEATTLE U. L. REV. 379 (2011); Karen J. Sneddon, *Speaking for The Dead: Voice in Last Wills and Testaments*, 85 ST. JOHN’S L. REV. 683 (2011).

keepsakes, and will give the rest to such of our children as she sees fit.¹⁷⁰

According to a modern study conducted by Professor Alyssa DiRusso, women are more likely than men to include precatory language in Wills.¹⁷¹ Desire, request, hope, and wish are examples of precatory words: words that do not create legally enforceable obligations but shares a wish of the testator.¹⁷² Expressive language, in contrast, provides supplemental language to property or to explain a provision in a Will. Because precatory language and expressive language appear to be included more in the Wills of women than the Wills of men, the use may reflect the perpetuation of gender stereotypes about gender appropriate language or could be a legacy of testamentary access or a combination of both.

While the extent to which precatory language and expressive language is used remains unclear, the initial reaction to including precatory language or expressive language reflects a potential bias. Because the Will's probate transforms the personal document into a publically-accessible document, lawyers are right to urge deliberate choices in language. However, initial reactions to precatory language and expressive language are tinged with dismissal of "non-technical language" as "mere fluff." Inaccurate language or language likely to spark litigation relates to all language choices in a Will, whether technical, dispositive, boilerplate, precatory, mandatory, or expressive. The reaction to precatory language and expressive language may relate to unconscious characterization of non-binding language as "women's language" and binding language, the legal language, as "men's language." The dismissive reaction trivializes the function of precatory language and expressive language. Precatory language and expressive language are thus characterized like the superfluous use of intensive phrasing, empty adjectives, and hedge words identified by Professor Robin Lakoff as "women's language."¹⁷³

No clear evidence establishes that precatory language and expressive language are more likely to produce litigation than "technical"

170. GEORGE W. THOMPSON, *THE LAW OF WILLS AND MANNER OF THEIR DRAFTING, EXECUTION, PROBATE AND CONTEST* § 764, at 595 (1916).

171. Alyssa A. DiRusso, *He Says, She Asks: Sex, Language, and the Law of Precatory Words in Wills*, 22 *WIS. WOMEN'S L.J.* 1 (2007).

172. *E.g.*, DiRusso, *supra* note 171, at 7.

173. *See supra* notes 40–42 and accompany text.

language.¹⁷⁴ Further studies may reveal that the concern may be unfounded, as with the traditional assumption that holographic Wills create litigation.¹⁷⁵ What should be clear is the reason for selecting particular language. The testator's range of language options, from legally enforceable to precatory and expressive, should thus be presented to the testator, rather than summarily dismissed by lawyers as "non-technical."

D. More Than A Matter of Trifles: Structuring Dispositive Provisions

Another legacy of the Will's history may be a reliance on particular forms of dispositive provisions. As noted above, primogeniture was observed in particular geographic areas of United States by custom and community convention.¹⁷⁶ This Section considers the gender implications that may affect the testator's decision to include specific bequests and even influence the decision to include testamentary trusts in his or her Will. These choices may be a product of assumptions by the draftspersons, the perpetuation of form language, and gendered societal expectations. As with all choices, the choices should be deliberate.

If Wills are performative and reflective of the self, gendered identities may influence the nature and number of bequests in the Will. Women are stereotyped¹⁷⁷ as caring about "trifles."¹⁷⁸ Women are

174. See, e.g., Gordon, *supra* note 169; Stephen Clowney, *In Their Own Hand: An Analysis of Holographic Wills and Homemade Willmaking*, 43 REAL PROP. TR. & EST. L.J. 27 (2008).

175. Clowney, *supra* note 174. More women than men execute holographic Wills. *Id.* at 44. These Wills, contrary to popular perception, are not harbingers of litigation. Access and cost may influence female testators' decisions to execute a holographic Will. *Id.* The extent to which female testators may be drawn to holographic Wills in an effort to create a document more reflective of the self, one that includes precatory language and expressive language, is unclear.

176. See *infra* notes 63–65 and accompanying text.

177. "Stereotypes are powerful and enduring and are often maintained through self-fulfilling prophecies." Turner-Bowker, *supra* note 31, at 461.

178. *Trifles* is the title of the play by Susan Glaspell about two women who hide evidence of a wife's murder of her husband. SUSAN GLASPELL, *Trifles*, in PLAYS BY SUSAN GLASPELL 35 (C.W.E. Bigsby ed., 1987). The evidence revealed to the audience is a "mere trifle" that is overlooked by the male police officers. The play was adapted into the short story "A Jury of Her Peers." SUSAN GLASPELL, *A Jury of Her Peers*, in HER AMERICA: "A JURY OF HER PEERS" AND OTHER STORIES 81 (Patricia L. Bryan & Martha C. Carpentier eds., 2010). For an analysis of the play, see Elaine Hedges, *Small Things Reconsidered: Susan Glaspell's "A Jury of Her Peers"*, 12 WOMEN'S STUD. 89 (1986). For interpretations of the story and considered uses of the story in the law school classroom, see Marina Angel,

presumed to remember birthdays, send thank you notes, and bestow compliments.¹⁷⁹ Stereotypes become norms that members of society “orient to.”¹⁸⁰ This orientation may influence the dispositive provisions of Wills, in terms of the number of specific bequests and the language used to express the bequests.

As a legal instrument, the Will began as a series of specific bequests.¹⁸¹ The evidence of transcribed Anglo-Saxon Wills reveals detailed, itemized lists of possessions, such as horses and swords.¹⁸² In the Middle Ages, residuary clauses were still unusual provisions.¹⁸³ As Professor Frederick Pollock and Professor Frederic William Maitland described Medieval Wills, “The horses are given away one by one; so are the jewels; so are the beds and quilts, the pots and pans.”¹⁸⁴ During this time, married women may have been given their husbands’ permission to only dispose of personal property.¹⁸⁵ Accordingly, the typical Will of a female testator included the disposition of a number of items of personal effects and other items of personal property to a variety of friends and family members.¹⁸⁶ Even when the residuary clause became common in Wills, female testators continued to include in their Wills a number of specific bequests to a variety of individuals.¹⁸⁷

Teaching Susan Glaspell’s A Jury of Her Peers and Trifles, 53 J. LEGAL EDUC. 548 (2003); Sara D. Schotland, *When Ethical Principles and Feminist Jurisprudence Collide: An Unorthodox Reading of “A Jury of Her Peers,”* 24 ST. JOHN’S J. LEGAL COMMENT. 53 (2009); see also Patricia L. Bryan, *Stories in Fiction and in Fact: Susan Glaspell’s A Jury of Her Peers and the 1901 Murder Trial of Margaret Hossack*, 49 STAN. L. REV. 1293 (1997); Hedges, *supra*.

179. See, e.g., Eileen Fischer & Stephen J. Arnold, *More than a Labor of Love: Gender Roles and Christmas Gift Shopping*, 17 J. CONSUMER RES. 333 (1990).

180. ECKERT & MCCONNELL-GINET, *supra* note 17, at 86–87 (emphasis omitted).

181. See, e.g., ANGLO-SAXON WILLS, *supra* note 161 (presenting a series of translated Anglo-Saxon Wills).

182. ANGLO-SAXON WILLS, *supra* note 161; see also Brenda Danet & Bryna Bogoch, *From Oral Ceremony to Written Document: The Transitional Language of Anglo-Saxon Wills*, 12 LANGUAGE & COMM. 95 (1992).

183. 2 FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I*, at 339 (2d ed. 1903) (“The medieval will is characterized by the large number of its specific bequests.”).

184. *Id.*

185. Helmholz, *supra* note 164, at 165.

186. E.g., MITFORD, *supra* note 105, at 67. The form “Will of a married Woman by Virtue of a Settlement made pursuant to her Marriage, disposing of Personal Estate” presents a series of monetary gifts to a husband, brother, female cousin, niece, and nephew. *Id.* (italics omitted) (switching the “f” to “s” to reflect modern typesetting).

187. See generally MAYS, *supra* note 163, at 422.

In characterizing the Wills of women during the colonial America, one scholar wrote,

Women provided more generous bequests to their daughters. They were more likely than men to leave offerings to friends, grandchildren, and distant relatives. It has been suggested that men were primarily interested in capitalizing their estate for future generations by preserving the bulk of the inheritance in a few large parcels, whereas women preferred to divide the estate among people who had been meaningful in their lives.¹⁸⁸

This dispositive pattern has been interpreted as demonstrating that women were more likely to recognize individual personal relationships while men were more likely to prize economic viability and cohesion. For example, the following sample provision appears in an early twentieth century form book:

I do give and bequeath to my niece, A. B., my gold watch, my melodeon, my black ear-rings, one set silver teaspoons (second choice), my cashmere shawl, my brown silk dress, and the interest of twenty-five hundred dollars, to be paid annually by my executor. I also give her all my mourning clothes.¹⁸⁹

The form provision references the gender of the testator through the nature and description of the gifts to the niece: the black earrings, the cashmere shawl, and the brown silk dress. The same form book provides a sample provision of gifts of personal and household effects to a wife, but no sample provision of gifts of personal and household effects to a husband.¹⁹⁰

The pattern of dispositions appeared to continue, as evidenced by Professor Kristine Knaplund's study of patterns of testation in 1893 Los Angeles.¹⁹¹ Professor Knaplund found that "[w]omen were more likely [than men] to include children and other" relatives as beneficiaries

188. *Id.*

189. THOMPSON, *supra* note 170, § 765, at 595. A melodeon is a musical instrument that is similar to the concertina. See generally MARION JACOBSON, SQUEEZE THIS! A CULTURAL HISTORY OF THE ACCORDION IN AMERICA 175, 210 (2012).

190. THOMPSON, *supra* note 170, § 661, at 562. For an examination of the use of stereotyped gender provisions in prenuptial agreement drafting manuals, see Leah Guggenheimer, *A Model Proposal: The Feminomics of Drafting Premarital Agreements*, 17 WOMEN'S RTS. L. REP. 147, 160 (1996).

191. Kristine S. Knaplund, *The Evolution of Women's Rights in Inheritance*, 19 HASTINGS WOMEN'S L.J. 3 (2008).

under their Wills.¹⁹² Men were more likely than women to give all or most of their property to their spouses, even to the exclusion of children and other relatives.¹⁹³ Form books buttress this conclusion by providing example provisions, such as the following language from a nineteenth-century form book: “I give, devise, and bequeath unto my dear wife, Emily Jane, all my real and personal estate of every description.”¹⁹⁴ Modern form books frequently present forms with all property going to the surviving spouse.¹⁹⁵ Life expectancy and testation may influence the decision to include specific bequests. On average, women have a life expectancy of eighty-six and men have a life expectancy of eighty-four.¹⁹⁶ Historically, the life expectancy between genders showed a greater disparity.¹⁹⁷ Men may have created Wills that gave all the property to their surviving spouses knowing that, or with the expectation that, their wives would make the ultimate disposal of the remaining property to a variety of individuals using a series of specific bequests.¹⁹⁸ As one author generalized in 1970, “Many older women with no family (and usually with estates that do not exceed \$2,000) want to leave each memento they own to a different person.”¹⁹⁹ Male testators do certainly include specific bequests in their Wills. For instance, the Will of W.C. Fields is filled with specific bequests from “wood baskets by [the] fireplace” to birdcage stands to “one set of gold dishes in [the] closet,” as he systematically gifts a series of objects to

192. *Id.* at 39.

193. *Id.*

194. HUDSON, *supra* note 72, at 33.

195. *E.g.*, HENRY J. MALOUF, DONALD J. MALOUF & ALEX E. NAKOS, 16 WEST’S LEGAL FORMS: ESTATE PLANNING § 8.7 (4th ed. 2005) (“Part IV—Wills for Married Persons With Nontaxable Estates . . . Chapter 8—Wills for Married Person Without Children . . . § 8.7—Will for Married Person Without Children—All to Surviving Spouse with Contingent Bequest to Named Beneficiaries or UTMA Custodianship for Any Minor Beneficiary”).

196. *Calculators: Life Expectancy*, SOC. SECURITY, <http://www.ssa.gov/planners/lifeexpectancy.htm> (last visited June 3, 2015), *archived at* <http://perma.cc/4J2K-RCE2>.

197. Bill Briggs, *American Men Finally Closing the Longevity Gender Gap*, NBCNEWS.COM (May 21, 2012 9:23 AM), http://www.nbcnews.com/id/47466204/ns/health-mens_health/t/American-men-finally-closing-longevity-gender-gap/, *archived at* <http://perma.cc/85PM-SXQZ>.

198. See *supra* note 188 and accompanying text for an example of such a provision for personal effects.

199. Corcoran, *supra* note 93, at 20.

various individuals in his life.²⁰⁰ But the perception remains that women should, and often do, provide for more specific bequests in their Wills than men would provide in their Wills.

Forms contain other dispositive provisions that appear to be influenced by gender. A sample provision of a gift of a business to a son and a sample provision “[c]onfirming [a] daughter’s right to a deposit in her name in a savings bank” appear in an early-twentieth-century form book.²⁰¹ Some modern form books continue to endorse gendered recommendations, such as a form that limits a daughter’s ability to appoint property to her husband.²⁰² The form book does not present a similar sample provision to limit a son’s ability to appoint property to his wife. In a less obviously gendered manner, when forms recommend children as beneficiaries or fiduciaries, the forms present first sons and then daughters as options.²⁰³ Some form books do attempt to confront gender stereotypes, such as a form book that includes the following sample specific bequest: “I give my motorcycle to my daughter, MARY DOE, but MARY must pay any indebtedness I may owe for said motorcycle’s purchase.”²⁰⁴

Even when forms do not reveal visible gendered recommendations and guidance, testators may be steered toward gender appropriate dispositive choices as a result of lawyer recommendations, perceived traditions, familial expectations, and social norms. The continuation of these gendered choices and a legacy of patrimony may take the form of the use and design of testamentary and inter vivos trusts.

The rise of trusts in estate planning is sometimes portrayed as a relatively recent phenomenon. Trusts date back to the Statute of Uses with much of modern trust law coming from nineteenth-century

200. *W.C. Fields—Last Call for Alcohol*, in HERBERT E. NASS, *WILLS OF THE RICH AND FAMOUS* 93, 96–97 (1991). Other specific bequests included gifts of a “blue Angora knit robe” and an “electric refrigerator on wheels.” *Id.*

201. THOMPSON, *supra* note 170, §§ 665–66, at 563.

202. 9 NICHOLS CYCLOPEDIA OF LEGAL FORMS ANNOTATED § 217:1893 (2013).

203. See, e.g., MICHAEL P. MCELROY, 3 HORNER PROBATE PRACTICE AND ESTATES *WITH FORMS* § 60:81 (4th ed. 2005) (“Joint will—Of parents—Providing that son or daughter shall in all events receive certain property”); JAY E. GRENIG, 4 WISCONSIN LEGAL FORMS § 29:215 (2015 ed. 2015) (“Subject matter and description—Devise of percentage of appraised value of entire estate”); 20B AM. JUR. LEGAL FORMS 2D *Wills* § 266.492 (2008) (“Installment bequest conditioned on regular church attendance”).

204. JEROME IRA SOLKOFF, 18A WEST’S LEGAL FORMS: ELDER LAW § 4.208 (3d ed. 2005) (presenting the sample First Codicil to the Last Will and Testament of John Doe).

developments.²⁰⁵ The following sample provision from a nineteenth-century form book creates a trust to manage the testator's jewelry for the benefit of his surviving wife:

I ALSO give to my said wife the use of all my jewels and pearls, usually worn by herself, during her widowhood; and upon the marriage or decease of my said wife, which shall first happen, I give the same jewels and pearls to the said E. A. and G. C., their executors administrators and assigns, upon trust that they permit and suffer them to be used and enjoyed by the person or persons, who, from time to time, shall, by virtue of the limitations to be continued in settlement so to be made as aforesaid . . .²⁰⁶

As Professor Fellows outlined, the spendthrift trust in particular draws from the “manliness/unmanliness” dichotomy of the nineteenth century.²⁰⁷ The Qualified Terminable Interest Trust (“QTIP”) reflects the same “manliness” characteristic of control of property.²⁰⁸ Due to life expectancies, QTIPs are more frequently created for female spouses with the ultimate disposition of the trust property then being directed by the deceased male spouse.²⁰⁹ This use has sparked explorations of trusts and gender.²¹⁰ For instance, Professor Wendy Gerzog characterizes

205. See James Barr Ames, *The Origin and Use of Trusts*, 21 HARV. L. REV. 261, 270–74 (1908); E.W. Ives, *The Genesis of the Statute of Uses*, 82 ENG. HIST. REV. 673 (1967); Austin W. Scott, *The Trust as an Instrument of Law Reform*, 31 YALE L.J. 457 (1922); see also Mary Louise Fellows, *Spendthrift Trusts: Roots and Relevance for Twenty-First Century Planning*, 50 REC. ASS'N B. CITY N.Y. 140 (1995).

206. 2 WILLIAM ROBERTS, A TREATISE ON THE LAW OF WILLS AND CODICILS 523–24 (London, Joseph Butterworth & Son, 3d ed. 1826) (“No. 27 Bequest of Jewels, &c.”).

207. Fellows, *supra* note 205, at 142–44, 150, 166–67. For a summary of masculinities analysis, see MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH (Frank Rudy Cooper & Ann C. McGinely eds., 2012); Richard Collier, *Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law, and Gender*, 33 HARV. J.L. & GENDER 431 (2010); Nancy E. Dowd, *Asking the Man Question: Masculinities Analysis and Feminist Theory*, 33 HARV. J.L. & GENDER 415 (2010).

208. Fellows, *supra* note 205, at 167–68.

209. See generally Richard Schmalbeck & Jay A. Soled, *Many Unhappy Returns: Estate Tax Returns of Married Decedents*, 21 VA. TAX REV. 361, 374–76 (2002).

210. E.g., Joseph M. Dodge, *A Feminist Perspective on the QTIP Trust and the Unlimited Marital Deduction*, 76 N.C. L. REV. 1729 (1998); Wendy C. Gerzog, *Estate of Clack: Adding Insult to Injury, or More Problems with the QTIP Tax Provisions*, 6 S. CAL. REV. L. & WOMEN'S STUD. 221 (1996); Wendy C. Gerzog, *Solutions to the Sexist QTIP Provision*, 35 REAL PROP. PROB. & TR. J. 97 (2000); Wendy C. Gerzog, *The Marital Deduction QTIP Provisions: Illogical and Degrading to Women*, 5 UCLA WOMEN'S L.J. 301 (1995); Mary Moers Wenig, “Taxing Marriage,” 6 S. CAL. REV. L. & WOMEN'S STUD. 561, 572 (1997) (characterizing QTIP trusts as the new federal law of dower). For an examination

QTIP provisions as “degrading to women and sexist for two reasons: (1) they treat women as the invisible member of a marital unit; and (2) they implicitly equate giving an income interest to women with giving them the property itself.”²¹¹

The history of dispositive provision and trusts should inform the choices made today. As Professor Fellows notes, “historical doctrinal developments implicate our estate planning strategies in subtle, but pervasive, ways.”²¹² The assumptions made by the draftspersons, the suggested blanks of the forms, and the expectations of society may steer the testator toward particular choices. Those choices may reference the wealth of traditions and past experiences, but the past should not dictate the present.

E. No More — Trixes: Abandoning Executrix and Testatrix

*I do hereby nominate and appoint my said wife, and my said brother Edward Wilmot, executrix and executor, of this my will.*²¹³

A patriarchal past is apparent in testamentary language no more directly than with the continued use of the word “executrix” and “testatrix” in Wills. The feminized form of “executor” and “testator” are problematic because the use of feminized “assumes the male as the norm.”²¹⁴ Today, women have the same rights of testation as men, and women are as capable as serving as executors as men.²¹⁵

Form books from the eighteenth, nineteenth, and early twentieth centuries use “executrix” and “testatrix.”²¹⁶ A form book written by a

of gender and the creation of the joint income tax return, see Carolyn C. Jones, *Split Income and Separate Spheres: Tax Law and Gender Roles in the 1940s*, 6 L. & HIST. REV. 259 (1988).

211. Wendy C. Gerzog, *The Illogical and Sexist QTIP Provisions: I Just Can't Say It Ain't So*, 76 N.C. L. REV. 1597, 1598 (1998).

212. Fellows, *supra* note 205, at 169.

213. MITFORD, *supra* note 105, at 84–85 (“*A Will, devising Freehold and Leasehold Estates to his Wife for Life, and afterwards to his Brother in Fee, and other Matters.*”) (switching the “f” to “s” in the text example and form title to reflect modern typesetting).

214. See Larade & Pelletier, *supra* note 85, at 102.

215. The U.S. Supreme Court has held that a state statute giving preference to men to serve as executors violates the Equal Protection Clause of the U.S. Constitution. *Reed v. Reed*, 404 U.S. 71, 76–77 (1971).

216. See, e.g., ROBERTS, *supra* note 206, at 393 (“I nominate and appoint my said wife, M. B., sole executrix of this my last will and testament”); THOMPSON, *supra* note 170, § 1097, at 736 (“I appoint my wife _____, during her widowhood, and my son _____, and _____ of _____, to be executrix and executors and trustees of this my will; but if my wife should marry again, she should thereupon cease to be an executor or trustee of my will”).

male attorney and a female attorney published in 1967 provides sample language that reads,

I hereby nominate and appoint my said Wife, Jane Doe, as
Executrix of this Will and Testament

I hereby nominate and appoint my Husband, John Doe, as
Executor of this Will and Testament²¹⁷

Today, use of the gendered terms of “executrix” and “testatrix” continues, despite widespread denouncing of the gendered terms.²¹⁸ Although forms using the terms may be mechanically replicated, the lingering uses of these terms, whether inadvertent or intentional, perpetuate gender stereotypes.

Presenting the definition of “testator” and the potential use of “testatrix,” two authors wrote, “Testator (or, if you still are living in the dark ages in which gender-based distinctions in terminology were popular, testatrix) refers to a person who makes a will.”²¹⁹ Black’s Law Dictionary classifies the use of “executrix” and “testatrix” as archaic.²²⁰ Style manuals urge, “When possible, avoid using . . . titles that have increasingly archaic feminine suffixes (such as *-ess*, *-ette*, or *-ix*) or that use *man* as a suffix or prefix.”²²¹ The Uniform Probate Code uses the

217. WILLIAM D. ROLLISON & ELIZABETH D. ESHELMAN, FORMS FOR WILLS AND ESTATE PLANNING §§ 8-1 to -2, at 226 (1967) (emphasis added).

218. Heir/heiress is another example of gendered dichotomies that arise in the estate planning context. “Heiress” has a negative, derisive connotation. The term gives rise to the image of Consuelo Vanderbilt, one of the Gilded Era American heiresses who used their wealth to marry into the British peerage. See generally MARIAN FOWLER, IN A GILDED CAGE: FROM HEIRESS TO DUCHESS (1993). The term also gives rise to image of reality-TV star and socialite Paris Hilton. See PARIS HILTON WITH MERLE GINSBERG, CONFESSIONS OF AN HEIRESS: A TONGUE-IN-CHIC PEEK BEHIND THE POSE (2004); see also Kristján Kristjánsson, *Hiltonism, Hedonism and the Self*, 3 ETHICS & EDUC. 3 (2008); Reginald Mombrun, *Let's Protect Our Economy and Democracy from Paris Hilton: The Case for Keeping the Estate Tax*, 33 OHIO N.U. L. REV. 61 (2007).

219. JEFFREY N. PENNELL & ALAN NEWMAN, ESTATE AND TRUST PLANNING 4 (2005) (emphasis omitted). These authors similarly characterize use of the terms “executrix” and “administratrix” as archaic. *Id.* at 5.

220. BLACK’S, *supra* note 103, at 692, 1703. The dictionary further provides that, “[i]n modern usage, a person who leaves a will is called a testator regardless of sex.” *Id.* at 1703.

221. BRYAN A. GARNER WITH JEFF NEWMAN & TIGER JACKSON, THE REDBOOK: A MANUAL ON LEGAL STYLE 277 (2d ed. 2002). The authors use the following examples of words to avoid: administratrix, executrix, testatrix, draftsman, workman. *Id.*; see also ANNE ENQUIST & LAUREL CURRIE OATES, JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER 151 (2d ed. 2005) (“Avoid feminizing a word with a suffix, for example, ‘actress,’ ‘executrix,’ ‘testatrix.’ Such endings suggest that it is nonstandard for women to fill certain roles.”); KEVIN D. MILLARD, DRAFTING WILLS, TRUSTS, AND OTHER

gender neutral term “personal representative” and defines the personal representative as an “executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.”²²² The Uniform Probate Code likewise avoids use of “testatrix” and provides that the term “testator” “includes an individual of either sex.”²²³

Despite the model from the Uniform Probate Code and the urging of style manuals, pervasive use of these terms continues. Some references are historical. For instance, casebook authors repudiate use of the term.²²⁴ Nonetheless, the presence of court opinions using antiquated terms in the casebooks contributes to the perpetuation of their modern use as students absorb the terms.²²⁵ Even modern opinions may reference the terms when quoting an older opinion for support and

ESTATE PLANNING DOCUMENTS: A STYLE MANUAL 34 (2006) (“Forget the outmoded distinctions between testator and testatrix, executor and executrix, administrator and administratrix.”); DANIEL B. EVANS, WILLS, TRUSTS, AND TECHNOLOGY: AN ESTATE AND TRUST LAWYER’S GUIDE TO AUTOMATION 102 (2d ed. 2004) (“Use ‘testator’ and ‘executor’ to refer to both men and women.”).

222. UNIF. PROBATE CODE § 1-201(35) (amended 2010); *see also* FLA. BAR, FLORIDA WILLS (FOR MODEST ESTATES), POWERS OF ATTORNEY, AND HEALTH CARE ADVANCE DIRECTIVES 1 (2007) (urging use of the term “personal representative”).

223. UNIF. PROB. CODE § 1-201(53) (amended 2010).

224. *See, e.g.*, JESSE DUKEMINIER & ROBERT H. SITKOFF, WILLS, TRUSTS AND ESTATES 44 (9th ed. 2013). As the authors highlight,

In this book, we do not use the Latin suffix indicating feminine gender for women playing roles in our cast: testator, executor, and administrator. Although *testatrix*, *executrix*, and *administratrix* are still in current fashion, other *-trix* forms either have disappeared from use (e.g., *donatrix*, *creditarix*) or would sound odd to the contemporary ear (e.g., *public administratrix*). And, of course, it does not matter whether the person in a given role is a man or a woman.

Id.; *see also* WAYNE M. GAZUR & ROBERT M. PHILLIPS, CASE STUDIES IN ESTATE PLANNING WITH ABRIDGED STUDENT FORMS 130 (2004) (recommending use of the term “executor”); THOMAS L. SHAFFER, CAROL ANN MOONEY & AMY JO BOETTCHER, THE PLANNING AND DRAFTING OF WILLS AND TRUSTS 36, 220, 268 (5th ed. 2007) (advising use of the term “executor” and the term “testator”).

225. *E.g.*, DUKEMINIER & SITKOFF, *supra* note 224, at 275. The case book includes an excerpt of the case of *In re Strittmater’s Estate*, 53 A.2d 205 (N.J. 1947). The issue was whether the “testatrix,” Louisa Strittmater suffered under an insane delusion that would invalidate her Will. *In re Strittmater’s Estate*, 53 A.2d at 205. Louise Strittmater’s insane delusion was considered to be a “morbid aversion to men.” *Id.* (internal quotation mark omitted). Louisa Strittmater had bequeathed her property to the National Women’s Party. For an analysis of the gender bias in the opinion, see Amy D. Ronner, *Does Golyadkin Rally Have a Double? Dostoevsky Debunks the Mental Capacity and Insane Delusion Doctrines*, 40 CAP. U. L. REV. 195, 219–21 (2012).

carry forward the gendered language through the quoted language.²²⁶ The terms may be reproduced in headnotes, even when not used in the court's opinion, reflecting an outmoded system of categorization.²²⁷ But the terms "executrix" and "testatrix" appear in modern cases, statutes, forms, handbooks, or commentaries.²²⁸

Court opinions from New York²²⁹ to Texas²³⁰ to California²³¹ use the term in the recitation of the facts, holding, or the reasoning. The Mississippi Code²³² and the Alabama Code²³³ use the term "testatrix" — so do the Delaware Code,²³⁴ the Oklahoma Code,²³⁵ and the Washington

226. *E.g.*, *Adler v. Adler*, No. 10-P-1760, 2013 WL 2450576, at *4, 988 N.E.2d 876 (Mass. App. Ct. June 7, 2013) (unpublished table decision) (quoting a 1948 case); *Rouner v. Wise*, No. WD75305, 2013 WL 3880150, at *5 (Mo. Ct. App. July 30, 2013) (quoting a 1963 case); *Gallagher v. Estate of Stepfield*, No. 2012CA00191, 2013-Ohio-3113, ¶ 12 (Ct. App. July 15, 2013) (quoting a 1984 case).

227. *E.g.*, *Estate of Kester v. Rocco*, 117 So. 3d 1196 (Fla. Ct. App. 2013) (appearing in headnote 5 and headnote 8); *Boucek v. Boucek*, 305 P.3d 597 (Kan. 2013) (appearing in headnote 6); *Edery v. Edery*, 73 A.3d 1229 (Md. Ct. Spec. App. 2013) (appearing in headnote 4).

228. *E.g.*, LOUIS S. SHUNTICH, *THE ESTATE PLANNING TODAY HANDBOOK* 145 (2003) (using "executor/executrix"); *see also* 3 GEORGE M. TURNER, *REVOCABLE TRUSTS* app. 47 (5th ed. 2005) (using the gender inclusive term "child" in form specific bequests but using the gendered term "son" for sample language nominating an executor); SUSAN B. KOHN & DENISE M. PILIÉ, 2 *LOUISIANA PRACTICE SERIES: LOUISIANA CIVIL PRACTICE FORMS* § 15:9, at 375 (2011 ed. 2011) ("LAST WILL AND TESTAMENT OF [[NAME OF TESTATOR]]/[NAME OF TESTATRIX]").

229. *In re Estate of Lewis*, 978 N.Y.S.2d 527, 532 (App. Div. 2014).

230. *In re Estate of Gibbons*, 451 S.W.3d 115, 118 (Tex. Ct. App. 2014).

231. *In re Estate of Ben-Ali*, 157 Cal. Rptr. 3d 353, 359 (Ct. App. 2013).

232. Mississippi Code section 91-5-1 provides:

Every person eighteen (18) years of age or older, being of sound and disposing mind, shall have power, by last will and testament, or codicil in writing, to devise all the estate, right, title and interest in possession, reversion, or remainder, which he or she hath, or at the time of his or her death shall have, of, in, or to lands, tenements, hereditaments, or annuities, or rents charged upon or issuing out of them, or goods and chattels, and personal estate of any description whatever, provided such last will and testament, or codicil, be signed by the testator or *testatrix*, or by some other person in his or her presence and by his or her express direction. Moreover, if not wholly written and subscribed by himself or herself, it shall be attested by two (2) or more credible witnesses in the presence of the testator or *testatrix*.

MISS. CODE ANN. § 91-5-1 (2004) (emphasis added), *quoted in In re Estate of Thomas*, 122 So. 3d 111, 116 (Miss. Ct. App. 2013).

233. *E.g.*, ALA. CODE § 43-8-175 (LexisNexis 1991).

234. *E.g.*, Delaware Code title 12, section 321 provides:

The descent or devolution of the estate, real or personal, of a married person who, before the marriage, has made a last will and testament and has not made

Code.²³⁶ Probate court manuals use the term “executrix” and “testatrix.”²³⁷ The term “testatrix” even appears in a 2011 issue of the ABA’s *Probate & Property Magazine*.²³⁸ In the “Keeping Current” section, a case summary alternatively describes the testator as “testator” and the testator as “testatrix.”²³⁹ The referenced case did not use the term “testatrix.”²⁴⁰ Whether a result of editorial oversight or a deliberate attempt to use both terms in a show of interchangeability, the use of “testatrix” is problematic.

Use of the terms is problematic because labels matter. For example, the use of masculine generics demonstrates the power of labels.²⁴¹ The term “masculine generics” refers to the use of “man,” “men,” and “he”

provision for the married person’s spouse by will or otherwise, shall be subject to the following rights of the surviving husband or widow:

(1) If the testator leaves a widow, she shall have the same part of his estate, real and personal, as she would have been entitled to if he had died intestate;

(2) If the testatrix leaves a husband, he shall have the same part of her estate, real and personal, as he would have been entitled to if she had died intestate.

DEL. CODE ANN. tit. 12, § 321 (2007).

235. OKLA. STAT. tit. 60, § 175.3.B (2010 & Supp. 2014) (defining “trustor” as “the maker, creator, donor, settlor, grantor, of a trust and the testator or *testatrix* of a will containing trust provisions” (emphasis added)).

236. WASH. REV. CODE § 11.12.030 (2014) (“Every person who shall sign the testator’s or *testatrix*’s name to any will by his or her direction shall subscribe his or her own name to such will and state that he or she subscribed the testator’s name at his or her request” (emphasis added)).

237. *E.g.*, PROBATE COMM. OF THE TENN. CLERKS OF COURTS CONFERENCE, PROBATE GUIDE: A GUIDE FOR CLERKS SERVING COURTS WITH PROBATE JURISDICTION 5 (2012), http://www.tncourts.gov/sites/default/files/docs/probate_manual_final_0.pdf, archived at <http://perma.cc/UM7P-2CXP>.

238. *Keeping Current*, PROB. & PROP., Nov./Dec. 2011, at 30.

239. *Id.*

240. *Levin v. Levin*, 60 So. 3d 1116 (Fla. Dist. Ct. App. 2011)

241. WEATHERALL, *supra* note 19, at 14. “[M]asculine generics, are the grammatically correct way to generally refer to an unspecified person or to a group of people. But of course such words are also masculine-specific terms and can be interpreted as excluding women.” *Id.*; see also Pat K. Chew & Lauren K. Kelly-Chew, *Subtly Sexist Language*, 16 COLUM. J. GENDER & L. 643, 646 (2007) (finding the continued use of masculine generics by judges, lawyers, and legal scholars); Judith D. Fischer, *Framing Gender: Federal Appellate Judges’ Choices About Gender-Neutral Language*, 43 U.S.F. L. REV. 473 (2009) (finding that appellate decisions show more use of gender-neutral language, but continued use of gendered language); Leslie M. Rose, *The Supreme Court and Gender-Neutral Language: Setting the Standard or Lagging Behind*, 17 DUKE J. GENDER L. & POL’Y 81, 82 (2010) (finding that the opinions of the U.S. Supreme Court continue to use masculine generics).

to refer to both men and women.²⁴² Masculine generics are not the natural default of language.²⁴³ Masculine generics developed in the eighteenth century and their use was “the result of specific efforts by particular grammarians in the past” rather than a natural process of language development.²⁴⁴ Studies have revealed that the use of masculine generics conjures images of men only.²⁴⁵ In consequence, use of masculine generics perpetuates an androcentric perspective, a perspective that excludes women individually and women collectively.²⁴⁶ While the use of masculine generics has declined, masculine generics continue to be used.²⁴⁷

Similar to how the use of masculine generics reinforces the male norm, use of feminized terms reinforces a male norm. Using feminized terms conveys that the role is less important, such as use of the term “laundress,” or that the role is typically a male role, such as use of the

242. See, e.g., Mykol C. Hamilton, Barbara Hunter & Shannon Stuart-Smith, *Jury Instructions Worded in the Masculine Generic: Can A Woman Claim Self-Defense When He Is Threatened?*, in *THE WOMEN AND LANGUAGE DEBATE: A SOURCEBOOK* 340 (Camille Roman, Suzanne Juhasz & Cristanne Miller eds., 1994); see also RENATA FOX & JOHN FOX, *ORGANIZATIONAL DISCOURSE: A LANGUAGE-IDEOLOGY-POWER PERSPECTIVE* 162 (2004); John Gastil, *Generic Pronouns and Sexist Language: The Oxymoronic Character of Masculine Generics*, 23 *SEX ROLES* 629 (1990).

243. See Ann Bodine, *Androcentrism in Prescriptive Grammar: Singular ‘They,’ Sex-Indefinite ‘He,’ and ‘He or She,’* 4 *LANGUAGE & SOC.* 129 (1975).

244. WEATHERALL, *supra* note 19, at 14 (citing Bodine, *supra* note 243).

245. *Id.* at 26–27; see also Mark E. Johnson & Seana Dowling-Guyer, *Effect of Inclusive vs. Exclusive Language on Evaluation of the Counselor*, 34 *SEX ROLES* 407 (1996); Elizabeth Wilson & Sik Hung Ng, *Sex Bias in Visual Images Evoked by Generics: A New Zealand Study*, 18 *SEX ROLES* 159 (1988); Mary Whitman Kuhner, *The Problem with Masculine Generics: Their Use in Comprehension* (1981) (unpublished Ph.D. dissertation, The Ohio State University) (on file with University Microfilms International).

246. Hamilton et al., *supra* note 242, at 340; see also VAL DUMOND, *THE ELEMENTS OF NONSEXIST USAGE: A GUIDE TO INCLUSIVE SPOKEN AND WRITTEN ENGLISH* 24 (1990); WEATHERALL, *supra* note 19, at 29; Wendy Martyna, *Beyond the “He/Man” Approach: The Case for Nonsexist Language*, 5 *SIGNS* 482 (1980). But see Ralph Slovenko, *Nonsexist Language—Empowering Women, Dethroning Men*, 35 *J. PSYCHIATRY & L.* 77 (2007). In a similar manner, the absence of particular terms demonstrates an androcentric perspective.

247. See, e.g., Pedro A. Fuertes-Olivera, *A Corpus-Based View of Lexical Gender in Written Business English*, 26 *ENG. FOR SPECIFIC PURPOSES* 219 (2007) (finding widespread use of gender-neutral language when analyzing the use of courtesy titles and masculine generics in ten million word corpus of written Business English derived from business journals, press releases, and financial reports from around the world). For instance, the absence of an “equivalent of sir to use in addressing a female manager” reflects the absence of women in “high institutional positions” in history. ECKERT & MCCONNELL-GINET, *supra* note 17, at 53 (emphasis omitted).

“aviatrix.”²⁴⁸ Gendered terms bear the patronizing sting of Hawkman’s female counterpart being named Hawkgirl—not Hawkwoman.²⁴⁹

Use of the terms “executrix” and “testatrix” reveals a lingering gender bias. For instance, in 1907, an attorney spoke to law students and remarked, “Sometimes the testator makes a foolish choice of his executors. A woman is often useless”²⁵⁰ The characterization of unusualness is not supported by broad consideration of history.²⁵¹ In the thirteenth century, women served as executors.²⁵² In the seventeenth and eighteenth centuries, husbands generally nominated their wives to serve as their executors.²⁵³ Only in the mid-eighteenth and nineteenth century did nominating a woman to serve as executor become increasingly uncommon.²⁵⁴ A number of factors may have contributed to the decrease in female nominations. Decreasing infant mortality

248. See, e.g., WEATHERALL, *supra* note 19, at 90. Queen Mary, mother of famed abdicator Edward VIII, called infamous Mrs. Wallis Simpson “an adventuress.” J. BRYAN III & CHARLES J.V. MURPHY, *THE WINDSOR STORY* 242 (1979). Femininized terms that are being masculinized are also problematic. For example, the term “nurse” has been developed to a male nurse. The term’s use reveals a gender bias and a negative characterization of the individual serving in the profession. E.g., Wang Fu Fang & Lu Gu Sun, *Inheritance Plus Innovation. On Revision of The English–Chinese Dictionary*, 20 INT’L J. LEXICOGRAPHY 1, 32–33 (2007) (addressing the development and use of the term “nurse”); William B. Muirhead, *On Reflection: Wistful Thinking*, 87 POSTGRADUATE MED. J. 160, 160 (2011) (noting the stigma underlying the term “nurse,” which “rhymes with ‘purse,’” and “the apparent incongruity of a man in a career that is heavily reliant on the stereotypically female traits of being caring and emotive”); see also Christine L. Williams, *The Glass Escalator: Hidden Advantages for Men in the “Female” Professions*, 39 SOC. PROBS. 253 (1992) (exploring male representation in the fields of nursing, librarianship, elementary education, and social work).

249. See, e.g., MIKE MADRID, *THE SUPERGIRLS: FASHION, FEMINISM, FANTASY, AND THE HISTORY OF COMIC BOOK HEROINES* 12–13 (2009). The 1930s and 1940s marked the creation of male–female superhero pairings with unequal powers and names, such as Rocketman and Rocketgirl and Doll Man and Doll Girl. *Id.* at 12–14. For a further analysis of gender and comic book heroes, see LILIAN S. ROBINSON, *WONDER WOMAN: FEMINISMS AND SUPERHEROES* (2004); Kaysee Baker & Arthur A. Raney, *Equally Super?: Gender-Role Stereotyping of Superheroes in Children’s Animated Programs*, 10 MASS COMM. & SOC. 25 (2007); Carol A. Stabile, “Sweetheart, This Ain’t Gender Studies”: *Sexism and Superheroes*, 6 COMM. & CRITICAL/CULTURAL STUD. 86 (2009).

250. John Marshall Gest, *Practical Suggestions for Drawing Wills*, 55 AM. L. REG. 465, 501 (1907) (address given to students in the Department of Law at the University of Pennsylvania on October 16, 1907).

251. Empirical studies about nomination practices would be valuable studies to undertake.

252. SHEEHAN, *supra* note 164, at 179.

253. MAYS, *supra* note 163, at 422.

254. *Id.*

resulted in more children living to adulthood and providing more potential options for the nomination of personal representatives.²⁵⁵ Increasing variety and complexity of business structures and financial devices may have promoted the nomination of business colleagues.²⁵⁶ At the same time, the ensconcing of women in the domestic sphere, the Victorian female ideal being “the angel of the house,”²⁵⁷ may have contributed to the social inappropriateness of nominating women to serve in role that would entail involvement with the courts and businesses.²⁵⁸ Like use of the term “executrix,” use of the term “testatrix” emphasizes the unusualness of a female testator that may not be reflective of historical practices, certainly not recent history. Today, there is no clear evidence that women are less likely to execute a Will, execute fewer Wills over their lifetime, or be nominated to serve as personal representatives.²⁵⁹

Form books endorse gender bias. A nineteenth-century form book includes a sample provision that nominates a son to serve as an executor and a provision that nominates a son-in-law to serve as executor.²⁶⁰ No sample provision nominating a daughter is included in the form book.²⁶¹ The inclusion of gendered nominations and the 1907 observation above seems ridiculous today, but the continued use of “executrix” reinforces the stereotype of the extraordinariness of a woman serving in that trusted role.²⁶²

One text asserts that “[t]he term ‘executrix’ for female executors was once common but is rarely used today.”²⁶³ Another states that the -trix suffixes are “archaic and rarely are seen outside of clumsy documents written by lawyers who are scared to change anything found in a form

255. *Id.*

256. *Id.*

257. See generally SUFFER AND BE STILL: WOMEN IN THE VICTORIAN AGE (Martha Vicinus ed., 1972).

258. MAYS, *supra* note 163, at 422.

259. For a consideration of modern dynamics of testation, see generally Reid Kress Weisbord, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. REV. 877 (2012); Alyssa A. DiRusso, *Testacy and Intestacy: The Dynamics of Wills and Demographic Status*, 23 QUINNIPIAC PROB. L.J. 36 (2009).

260. SCHOULER, *supra* note 100, at 704.

261. *Id.* at 705.

262. For a broad exploration of all types of fiduciaries, see TAMAR FRANKEL, FIDUCIARY LAW (2011).

263. WILLIAM M. MCGOVERN, SHELDON F. KURTZ & DAVID M. ENGLISH, WILLS, TRUSTS AND ESTATES 8 (4th ed. 2010).

book.”²⁶⁴ Further, the author urges drafters to “[b]e bold and join the twenty-first century.”²⁶⁵ In 2012, the Ohio Legislature sent a bill to the Governor of Ohio with revisions to the state probate code that included changes to gender neutral language.²⁶⁶ These efforts are important and demonstrate that the language has not yet been systematically and completely updated.

Testamentary language may reference history, but the use of language should reflect modern practices. Using non-sexist language has not, and will not, directly translate into a non-sexist society.²⁶⁷ Nevertheless, words are power, as has been seen in the analysis of language in corporate culture and corporate law.²⁶⁸ The chairman has become the chair.²⁶⁹ The reasonable man has become the reasonable person.²⁷⁰ The prudent man has become the prudent investor.²⁷¹

264. EVANS, *supra* note 221, at 102.

265. *Id.*

266. AIDA S. MONTANO, OHIO LEGISLATIVE SERV. COMM’N, BILL ANALYSIS: AM. S.B. 124, 129TH GENERAL ASSEMBLY (AS PASSED BY THE SENATE), <http://www.lsc.state.oh.us/analyses129/s0124-ps-129.pdf>, archived at <http://perma.cc/F2XY-CN2V>.

267. See, e.g., WEATHERALL, *supra* note 19, at 10, 12.

268. See generally DOUGLAS M. BRANSON, NO SEAT AT THE TABLE: HOW CORPORATE GOVERNANCE AND LAW KEEP WOMEN OUT OF THE BOARDROOM (2007); Christine Sgarlata Chung, *From Lily Bart to Boom-Boom Room: How Wall Street’s Social and Cultural Response to Women Has Shaped Securities Regulation*, 33 HARV. J.L. & GENDER 175 (2010); Symposium, *People of Color, Women, and the Public Corporation*, 79 ST. JOHN’S L. REV. 887 (2005); Symposium, *Women and the “New” Corporate Governance*, 65 MD. L. REV. 301 (2006).

269. E.g., Comm. on Corporate Laws, ABA Section of Bus. Law, Report, *Changes in the Model Business Corporation Act—Proposed Amendments to Chapters 8 and 10 Relating to Voting by Shareholders for Election of Directors*, 61 BUS. LAW. 399, 406 n.17 (2005) (noting that the Model Business Corporation Act was being reviewed to ensure gender-neutrality in the entirety of the Act). Janet Yellen is now the first female Chair of the Federal Reserve. Martin Crutsinger, *Yellen Favors Gender-Neutral Title of Fed ‘Chair,’* AP BIG STORY (Jan. 21, 2014, 2:40 PM), <http://bigstory.ap.org/article/yellen-favors-gender-neutral-title-fed-chair>, archived at <http://perma.cc/4ZXZ-WXV6>; Janet McFarland, *Janet Yellen’s First Piece of Policy: A Title Change*, GLOBE & MAIL (Feb. 3, 2014, 7:07 PM), <http://www.theglobeandmail.com/report-on-business/international-business/us-business/yellens-first-piece-of-policy-a-title-change/article16676197/> (last updated Feb. 3, 2014, 7:39 PM), archived at <http://perma.cc/X79D-89N2>.

270. See, e.g., Leslie Bender, *A Lawyer’s Primer and Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 20–25 (1988); Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398 (1992); Ronald K.L. Collins, *Language, History and the Legal Process: A Profile of the “Reasonable Man,”* 8 RUTGERS-CAMDEN L.J. 311 (1977); Dolores A. Donovan & Stephanie M. Wildman, *Is the Reasonable Man Obsolete? A Critical Perspective on Self-Defense and Provocation*, 14 LOYOLA L.A. L. REV. 435, 435 n.1 (1981).

Gender-neutrality, or perhaps more appropriately gender inclusiveness, is “about thinking and writing in a nondiscriminatory way.”²⁷² Accordingly, it is time for the “executrix” to become “the personal representative”²⁷³ and the “testatrix” to become the “testator” in all opinions, statutes, forms, handbooks, and commentaries.

VI. CONCLUSION

In February 1944, the Georgia Bar Journal included an advertisement by the Trust Company of Georgia.²⁷⁴ The text of the advertisement reads:

Over 35% of the trust accounts handled by the Trust Company were placed with us by women.

In many cases women placed their accounts with us at the suggestion of their attorneys. No one realizes better than an attorney that the average woman is not well suited to assume the responsibilities usually attendant upon handling property. With a trust or an agency we can assume the supervision of necessary business details under the direction of yourself and your client.

271. Arthur B. Reinwald, *Trustee vs. Beneficiary*, 16 HAW. B.J. 145, 151 (2013) (referencing the Uniform Prudent Investor Act that transformed the “prudent man” to the “prudent investor”). For an examination of the use of the prudent investor standard, see Philip J. Ruce, *The Trustee and the Prudent Investor: The Emerging Acceptance of Alternative Investments as the New Fiduciary Standard*, 53 S. TEX. L. REV. 653 (2012); Stewart E. Sterk, *Rethinking Trust Law Reform: How Prudent is Modern Prudent Investor Doctrine?*, 95 CORNELL L. REV. 851 (2010).

272. Gerald Lebovits, *Do's, Don'ts, and Maybes: Legal Writing Dos'—Part II*, N.Y. ST. B. ASS'N J., June 2007, at 64, 53; see also Donald L. Rubin, Kathryn Greene & Deidra Schneider, *Adopting Gender-Inclusive Language Reforms: Diachronic and Synchronic Variation*, 13 J. LANGUAGE & SOC. PSYCHOL. 91 (1994) (studying individual adoption of gender inclusive language by examining public speeches of male business leaders from 1960 to 1988 and reviewing two writing tasks performed by male and female college students).

273. As one form book defined, “Depending on sex, the personal representative is called an executor or executrix.” PAUL DOUGLASS, GUIDE TO PLANNING THE FARM ESTATE WITH CHECKLISTS AND FORMS 324 (1979). Because gender is not relevant to the identified role, a gender distinction is not appropriate. The same reasoning relates to use of “administratrix.” “Personal representative” should be used to reference both executors and administrators as both a gender-inclusive and more descriptive term for non-lawyer testators and beneficiaries.

274. Trust Co. of Ga., Advertisement, *A Woman's Choice*, 6 GA. B.J. 245 (1944). The Trust Company of Georgia and Sun Bank of Orlando merged to form SunTrust in 1985. SUNTRUST BANKS, INC., HISTORICAL HIGHLIGHTS (2004), https://www.suntrust.com/docs/pdf/newsroom/history_highlights.pdf, archived at <https://perma.cc/BK36-4YYN>.

If certain of your clients can utilize this service to your advantage and theirs we shall welcome the opportunity to discuss the subject with you.²⁷⁵

An advertisement like the Georgia Trust Company's that characterizes women as less able would not appear in any media today, certainly not in a bar journal. No one would print "the average woman is not well suited to the responsibilities usually attendant upon handling property," let alone insinuate that an attorney would endorse such a statement. Nevertheless, the expression cannot be so easily dismissed as a sentiment of a bygone era. The law was created as a patriarchal system. Despite reforms and best intentions, vestiges of a patriarchal system still linger, especially in the language of the law.

This Article explored the intersection of gender and testamentary language to root out language entombed in typically-used testamentary vocabulary that bears the mark of a patriarchal past while validating the use of some gendered language appropriate for a Will of today. For example, establishing marital status may be helpful in identifying property rights, yet other uses of gendered language are not appropriate in the Will. Continued use of "executrix" and "testatrix," for instance, perpetuate gender stereotypes. The dismissal of the potential value of precatory language and expressive language in Wills may be traced to its historical use by female testators and its modern equation to empty adjectives, intensifiers, and hedge words. Likewise, societal forces and expectations may be exerting influence on particular dispositive choices. Wills are prisms through which societal norms and values are refracted. The most personal of legal documents, the Will's language must reflect modern standards and practices to speak for the testators of today in a manner that is deliberately gender-inclusive and deliberately gender-specific as required by the particular circumstance.

275. Trust Co. of Ga., *supra* note 274, at 245. The advertisements was titled "A Woman's Choice," and the accompanying illustration was a knitting project resting atop an open book. *Id.*