

NOTES

A NOTE ON METHODS

1. David Garland, *What Is a “History of the Present”? On Foucault’s Genealogies and Their Critical Preconditions*, 16(4) PUNISHMENT AND SOC. (Oct. 3, 2014), <https://doi.org/10.1177/1462474514541711>. Garland reads Foucault to describe a genealogy as “a method of writing critical history: a way of using historical materials to bring about a ‘revaluing of values’ in the present day. Genealogical analysis traces how contemporary practices and institutions emerged out of specific struggles, conflicts, alliances, and exercise of power, many of which are nowadays forgotten.”
2. David Garland, *What Is a “History of the Present”? On Foucault’s Genealogies and Their Critical Preconditions*, 16(4) PUNISHMENT AND SOC. (Oct. 3, 2014), at 372.
3. Sheila Jasanoff writes that STS enables “new ways of querying how knowledge and belief are constructed, proof and evidence validated, meaning conferred on inanimate things, and material objects made to function in harmony with human bodies and collectives. Put differently, STS provides a distinctive gaze on modernity, and it does so by problematizing the productions of science (or, more broadly, knowledge) and technology in ways that complement the work of other disciplines without diminishing their contributions to social theory”. Sheila Jasanoff, *The Floating Ampersand*, 2 ENGAGING SCI., TECH., AND SOC. 227–237 (2016).
4. On background rules and distribution see generally Robert Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POLITICAL SCI. Q. 470–494 (1923); DAVID KENNEDY, *WORLD OF STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY* (2016). On a feminist distributional analysis, see Janet Halley, *Distribution and Decision: Assessing Governance Feminism*, in GOVERNANCE FEMINISM: AN INTRODUCTION (Janet Halley et al. eds., 2018). On law and distribution, see LIBBY ADLER, *GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM* (2018) and Karl Klare, *On Socialism and Critical Legal Theory*, LPE Blog, November 9, 2020.
5. See generally SADIYA HARTMAN, *WAYWARD LIVES, BEAUTIFUL EXPERIMENTS: INTIMATE HISTORIES OF RIOTOUS BLACK GIRLS, TROUBLESOME WOMEN, AND QUEER RADICALS* (2019).

INTRODUCTION: “WOMEN DON’T GET AIDS, THEY JUST DIE FROM IT”

1. Interview by Aziza Ahmed with Patricia Nalls, Executive Director, The Women’s Collective, in Washington, DC (2019).
2. Interview by Dr. Victoria Harden, Director, NIH (National Institutes of Health) Historical Office and the DeWitt Stetten, Jr. Museum of Medical Research and Dr. Caroline Hannaway, NIH Historical Consultant, with Thomas Quinn, Medical Doctor, Johns Hopkins Medical School, Baltimore, MD (Dec. 1996); CENTERS FOR DISEASE CONTROL, MORBIDITY AND MORTALITY WEEKLY REPORT (1982); Lawrence Altman, *Rare Cancer Seen in 41 Homosexuals*, N.Y. TIMES (July 3, 1981), www.nytimes.com/1981/07/03/us/rare-cancer-seen-in-41-homosexuals.html; James Curran & Harold Jaffe, *AIDS: The Early Years and the CDC’s Response*, 60 CDC: SUPPLEMENTS 64–69 (2011); see Lawrence Altman, *New Homosexual Disorder Worries Health Officials*, N.Y. TIMES (May 11, 1982), www.nytimes.com/1982/05/11/science/new-homosexual-disorder-worries-health-officials.html. Altman highlights that scientists are calling the disorder GRID – Gay Related Immunity Disorder. Gay Men’s Health Crisis, Records 1975–1978, 1982–1999 (on file with the New York Public Library Humanities and Social Sciences Library Manuscripts and Archives Division); George Oswald et al., *Attempted Immune Stimulation in “Gay Compromise Syndrome”*, 382 BRIT. MED. J. 1082 (1982). There was also conflation between gay identity and risk of HIV. In 1982, for example, the CDC stated that most cases of HIV had one of several identifiable “risk factors,” naming “male homosexuality” as one of them. *Morbidity and Mortality Weekly Report*, Sept. 24, 1982 (“Only a small percentage of cases have none of the identified risk factors male homosexuality, intravenous drug abuse, Haitian origin, and perhaps hemophilia A”); see Russell Robinson, *Racing the Closet*, 61 STANFORD L. REV. 1464 (2009) (discussing how Black men were implicated in public discussions on the spread of HIV); see generally Wendy Parmet, *Stigma, Hysteria, and HIV*, 38 HASTINGS CENTER REPORT 1 (2008).
3. John Langone, *Misunderstanding AIDS*, DISCOVER MAGAZINE (Dec. 1985); Collections of the Smithsonian’s National Museum of American History, division of Medicine and Science; PAULA TREICHLER, *HOW TO HAVE A THEORY IN AN EPIDEMIC: CULTURAL CHRONICLES OF AIDS* (1999).
4. LINDSAY KNIGHT, *UNAIDS: THE FIRST 10 YEARS* (2008). (“The doctors’ expectations for the conference were not met. Some participants aggressively refused to accept that HIV could be transmitted through heterosexual intercourse. ‘In a non-scientific way they were saying ... these men must be closet gays, and transmission from women to men is impossible,’ Piot recalled.”) MICHAEL FUMENTO, *THE MYTH OF HETEROSEXUAL AIDS* (1989) at 46.

5. Feminist legal scholars have long been arguing that feminists have transformative power in institutions. See Janet Halley et al., *From the International to the Local: Four Studies in Governance Feminism*, 29 HARV. J. L. AND GENDER 335 (2006). For work on law and expertise, see DAVID KENNEDY, *WORLD OF STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY* (2016). On risk, see ULRICK BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* (1992). See also TOM BAKER & JONATHAN SIMON, *EMBRACING RISK: THE CHANGING CULTURE OF INSURANCE AND RESPONSIBILITY* (2002); Sheila Jasanoff, *Songlines of Risk*, 8 ENVIRONMENTAL VALUES 135–152 (1999).
6. For scholarship about law and distribution, see DAVID KENNEDY, *WORLD OF STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY* (2016); Karl Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937–1941*, 62 MINN. L. REV. 265 (1978); Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 4 LEGAL STUD. F. 327 (1991); Janet Halley, *Distribution and Decision: Assessing Governance Feminism*, in GOVERNANCE FEMINISM: AN INTRODUCTION (Janet Halley et al. eds., 2018). For a critique of identity as a frame in legal reform projects, see Martha Fineman, *Equality and Difference – The Restrained State*, 66 ALA. L. REV. 609 (2015) (describing vulnerability theory as moving away from discrimination and toward thinking about power and privilege through institutions and relationships).
7. For debates on the role of law and social movements in social change, see generally Duncan Kennedy, *The Critique of Rights in Critical Legal Studies*, in LEFT LEGALISM, LEFT CRITIQUE (Wendy Brown and Janet Halley eds., 2002); JANET HALLEY et al., GOVERNANCE FEMINISM: AN INTRODUCTION (2018); Amna Akbar, Sameer M. Ashar, & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821 (2021); LIBBY ADLER, *GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM* (2018); KATHY ABRAMS, *OPEN HAND, CLOSED FIST: PRACTICES OF UNDOCUMENTED ORGANIZING IN A HOSTILE STATE* (2022); MICHAEL MCCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* (2004); GERALD ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2008); LUCIE WHITE & JEREMY PERELMAN, *STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY* (2010); Catherine Albiston, *The Dark Side of Litigation as a Social Movement Strategy*, 96 IOWA L. REV. BULLETIN 61 (2011); Gwendolyn Leachman, *From Protest to Perry: How Litigation Changed the LGBT Movement's Agenda*, 47 UC DAVIS L. REV. 1667 (2014);

- Veena Dubal, *Winning the Battle, Losing the War: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy*, WISCONSIN L. REV. 739 (2017); DOUG McADAMS, SIDNEY TARROW, & CHARLES TILLY, *DYNAMICS OF CONTENTION* (2001). On how gender, race, and class shape the possibilities of law reform for greater participation, see Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFFALO L. REV. 1 (1990); Scott Cummings, *Movement Lawyering*, 5 UNIVERSITY OF ILLINOIS L. REV. 1645 (2017); Lani Guinier & Gerald Torres, *Changing the Wind: Notes toward a Demosprudence of Law and Social Movements*, 123 YALE L. REV. 8 (2014); BRUCE ACKERMAN, *WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION* (2014).
8. See generally BEN HURLBUT, *EXPERIMENTS IN DEMOCRACY: HUMAN EMBRYO RESEARCH AND THE POLITICS OF BIOETHICS* (2016).
 9. For another discussion about the relationship between science and law, see Aziza Ahmed, *Medical Evidence and Expertise in Abortion Jurisprudence*, 41 AM. J. L. AND MED. 85 (2015). For an example of arguments for the separation of science and regulation, see Marcia McNutt et al., *The National Academies of Science, Engineering, and Medicine, Statement by NAS, NAE, and NAM Presidents on Report of Banned Words at CDC* (Dec. 2017), www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12182017.
 10. Sheila Jasanoff defines coproduction as “how knowledge-making is incorporated into practices of state-making, or of governance more broadly, and, in reverse, how practices of governance influence the making and use of knowledge ... Knowledge, in particular, is seen as crystallizing in certain ontological states – organizational, material, embodied – that become objects of study in their own right.” Like law and social movements scholars who focus on the constitutive relationship between law and its application, STS scholars are often interested in how scientific change happens or how we come to understand world-making. While there are divergent strands of STS, that of science, technology and society (ST&S), ST&S overlaps with legal scholars who are interested in the constitutive role of law – in other words, how the law creates the world around it. For ST&S scholars this insight means understanding that law and science constitute one another. Sheila Jasanoff, *The Idiom of Co-production*, in *STATES OF KNOWLEDGE: THE CO-PRODUCTION OF SCIENCE AND SOCIAL ORDER* (Sheila Jasanoff ed., 2004).
 11. The literature on the sociology of science and medicine offers a rich history of how social movements contribute to the shift in legal regulation for health. See generally ALONDRA NELSON, *BODY AND SOUL: THE BLACK PANTHER PARTY AND THE FIGHT AGAINST MEDICAL*

- DISCRIMINATION (2011); STEVEN EPSTEIN, *INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH* (2007).
12. My prior work touches on these themes. See generally Aziza Ahmed, *Medical Evidence and Expertise in Abortion Jurisprudence*, 41 AM. J. L. AND MED. 85 (2015).
 13. Sheila Jasanoff, *The Idiom of Co-production*, in STATES OF KNOWLEDGE: THE CO-PRODUCTION OF SCIENCE AND SOCIAL ORDER (Sheila Jasanoff ed., 2004).
 14. The social studies of science and medicine argue that science and knowledge production is not value-neutral, instead it emerges from our social world – law, activism, and science constitute one another. For a history of critical theories of science and technology, see generally Sheila Jasanoff, *A Field of Its Own: The Emergence of Science and Technology Studies*, in THE OXFORD HANDBOOK OF INTERDISCIPLINARITY (Robert Frodeman & Julie Thompson Klein eds., 2012). For a contemporary example of how STS has influenced legal scholarship, see Sally Engle Merry, *Measuring the World: Indicators, Human Rights, and Global Governance*, 52 CURRENT ANTHROPOLOGY S83 (2011); Kevin E. Davis, Benedict Kingsbury, & Sally Engle Merry, *Indicators as a Technology of Global Governance*, 46 L. & SOC'Y REV 71, 73–74 (2012). One of the leading scholars of feminist critiques of science is Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 FEMINIST STUD. 575 (1988).

1 “WE ARE NOT IMMUNE”: A NEW BRANCH OF THE FEMINIST WOMEN’S HEALTH MOVEMENT

1. James Feron, *Kathy Boudin Given 20 Years to Life in Prison*, N.Y. TIMES (May 4, 1984), www.nytimes.com/1984/05/04/nyregion/kathy-boudin-given-20-years-to-life-in-prison.html; David Gilbert, *From Weather Underground Activist to Life in Prison*, OPENDEMOCRACY (December 26, 2014), www.opendemocracy.net/en/transformation/from-weather-underground-activist-to-life-in-prison/.
2. Elizabeth Kolbert, *The Prisoner*, NEW YORKER (July 16, 2001), <http://archives.newyorker.com/?i=2001-07-16#folio=044>.
3. Interview by Aziza Ahmed with Kathy Boudin (phone), in New York, NY (2019).
4. MEMBERS OF THE ACE (AIDS COUNSELING AND EDUCATION) OF THE BEDFORD HILLS CORRECTIONAL FACILITY et al., *BREAKING THE WALLS OF SILENCE: AIDS AND WOMEN IN A NEW YORK STATE MAXIMUM SECURITY PRISON* 5 (1988). See also CELESTE WATKINS-HAYES, *REMAKING A LIFE: HOW WOMEN LIVING WITH HIV CONFRONT INEQUALITY* (2019) (documenting the story of other women who became activists out of this moment).

5. Kathy Boudin et al., *ACE: A Peer Education and Counseling Program Meets the Needs of Incarcerated Women with HIV/AIDS Issues*, 10 J. ASS'N NURSES AIDS CARE 90–98 (1999).
6. It is worth noting here that not much is known about the women in Bedford Women's Prison. The most developed account comes from GENA CORREA, *WOMEN AND AIDS: THE INVISIBLE EPIDEMIC* (1992).
7. GENA CORREA, *WOMEN AND AIDS: THE INVISIBLE EPIDEMIC* (1992).
8. For historical accounts of AIDS see generally RANDY SHILTS, *AND THE BAND PLAYED ON* (1988); DAVID FRANCE, *HOW TO SURVIVE A PLAGUE* (2016); DEBORAH GOULD, *MOVING POLITICS: EMOTION AND ACT-UP'S FIGHT AGAINST AIDS* (2009); CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* 96–97 (1999); CELESTE WATKINS-HAYES, *REMAKING A LIFE: HOW WOMEN LIVING WITH HIV CONFRONT INEQUALITY* (2019).
9. On background rules and distribution see generally Robert Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POLITICAL SCI. Q. 470–494 (1923); DAVID KENNEDY, *WORLD OF STRUGGLE: HOW POWER, LAW, AND EXPERTISE SHAPE GLOBAL POLITICAL ECONOMY* (2016). On a feminist distributional analysis see Janet Halley, *Distribution and Decision: Assessing Governance Feminism*, in *GOVERNANCE FEMINISM: AN INTRODUCTION* (Janet Halley et al. eds., 2018); LIBBY ADLER, *GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM* (2018).
10. See generally WENDY KLINE, *BODIES OF KNOWLEDGE: SEXUALITY, REPRODUCTION, AND WOMEN'S HEALTH IN THE SECOND WAVE* (2010); MICHELLE MURPHEY, *SEIZING THE MEANS OF REPRODUCTION* (2012).
11. Rebecca Dresser, *Seeking White, Male Body for Medical Research*, The Hastings Center (1992).
12. WENDY KLINE, *BODIES OF KNOWLEDGE: SEXUALITY, REPRODUCTION, AND WOMEN'S HEALTH IN THE SECOND WAVE* (2010); JENNIFER NELSON, *MORE THAN MEDICINE: A HISTORY OF THE FEMINIST WOMEN'S HEALTH MOVEMENT* (2015).
13. Framing theory – drawn from the sociology of social movements – is instructive in understanding the power of this feminist explanation. As described by sociologists of social movements Robert Benford and David Snow, frames allow individuals to interpret, assess, and experience their world through a specific explanatory lens. See Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 614–615 (2000). In the scholarship on law and social movements, Amy Kapczynski argues that framing is essential to understand transformations in intellectual property law. Amy

- Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 YALE L. J. 804 (2008).
14. See generally STEVEN EPSTEIN, *INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH* 17 (2007). Steven Epstein is careful to highlight the difference between the activist claim of exclusion and the reality that racial minorities had long been serving as research subjects. The biological underpinnings of “difference” activism by advocates for women and racial minorities creates the need to examine what Epstein calls “biopolitical citizenship,” or the desire for political participation in the context of “biomedical technologies and authorities reproducing and transforming practices of social stratification and exclusion – as well as the role of others in resisting those authorities.”
15. In her book, Alice Echols argues that nineteenth-century feminists deployed a similar argument – that women were both “same” and “different.” ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967–1975* (1989). On the fight against medical racism see ALONDRA NELSON, *BODY AND SOUL: THE BLACK PANTHER PARTY AND THE FIGHT AGAINST MEDICAL DISCRIMINATION* (2011).
16. The founding of the Our Bodies Our Selves collective and 1973 publication of the *Our Bodies Our Selves* work played an important role in generating information about women’s bodies. WENDY KLINE, *BODIES OF KNOWLEDGE: SEXUALITY, REPRODUCTION, AND WOMEN’S HEALTH IN THE SECOND WAVE* 1–5 (2010). This was the start of a new line of thinking about women’s health: That alongside the male scientific medical establishment, it was women who could speak to their own bodies.
17. Reva Siegel, *Abortion as a Sex Equality Right*, in *MOTHERS IN LAW: FEMINIST THEORY AND THE LEGAL REGULATION OF MOTHERHOOD* (Martha Fineman and Isabel Karpin eds. 1995); Reva Siegel, *Equality and Choice: Sex Equality Perspectives on Reproductive Rights in the Work of Ruth Bader Ginsburg*, 25 COLUM. J. GENDER & L. 63 (2013).
18. DEIRDRE OWENS COOPER, *MEDICAL BONDAGE: RACE, GENDER, AND THE ORIGINS OF AMERICAN GYNECOLOGY* (2017).
19. DEIRDRE OWENS COOPER, *MEDICAL BONDAGE: RACE, GENDER, AND THE ORIGINS OF AMERICAN GYNECOLOGY* (2017).
20. See Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 FEMINIST STUD. 581 (1988).
21. Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 FEMINIST STUD. 581 (1988).
22. Mary Jo Frug argued that sex differences are semiotic – “constituted by a system of signs that we produce and interpret” as “anatomically determined and psychologically predictable.” Mary Jo Frug, *A Postmodern*

- Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045 (1992). For feminist critique in the context of health activism, see Gillian Einstein & Margrit Shildrick, *The Postconventional Body: Rethorising Women's Health*, 69 SOC. SCI. & MED. 293, 294 (2009) (arguing that postmodernism has something to offer women's health practitioners, despite its "unalign[ment] with current women's health practice" in its present state).
23. Ellen Kuhlmann & Birgit Babitsch, *Bodies, Health, Gender: Bridging Feminist Theories and Women's Health*, 25 WOMEN'S STUD. INT'L F. 433, 434–435 (2002) (arguing that Judith Butler and Donna Haraway, amongst other scholars, pushed the limits of feminist understandings of the body, moving beyond binary frames).
 24. See generally DOROTHY ROBERTS, *FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE 21ST CENTURY* (2012); JONATHAN KAHN, *RACE IN A BOTTLE: THE STORY OF BIDIL AND RACIALIZED MEDICINE IN A POST-GENOMIC AGE* (2012).
 25. JENNIFER NELSON, *MORE THAN MEDICINE: A HISTORY OF THE FEMINIST WOMEN'S HEALTH MOVEMENT* 15–56 (2015).
 26. JENNIFER NELSON, *MORE THAN MEDICINE: A HISTORY OF THE FEMINIST WOMEN'S HEALTH MOVEMENT* 57–90 (2015).
 27. Reva Siegal argues that abortion liberalization was initially led by public health practitioners prior to feminist engagement in the issue. Feminists eventually turned to the issue of decriminalizing abortion with the view that the illegality of abortion was a symbol of an unjust and unequal society. Siegal goes on to argue that these feminist arguments, however, shaped the contour of the opposition to abortion as well. Reva Siegal, *Abortion and the "Woman Question": Forty Years of Debate*, 89 INDIANA L. J. 1367–1370 (2014).
 28. For histories of feminist intervention in law see generally LINDA GORDON, *THE MORAL PROPERTY OF WOMEN: A HISTORY OF BIRTH CONTROL POLITICS IN AMERICA* (2002); Deborah Dinner, *The Costs of Reproduction: History and the Legal Construction of Sex Equality*, 46 HARV. CIVIL RIGHTS-CIVIL LIBERTIES L. REV. 415 (2011); SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* (2011).
 29. There is a well-developed literature on the role of litigation in forwarding women's rights. In the context of reproductive rights, Robin West argues that there are costs to a strategy for reproductive rights focused on constitutional law in that the abortion rights are framed as negative rights and may undermine the reproductive justice demand that the state play a role in supporting pregnancy and family. In turn, the court-based strategy for achieving reproductive rights have "ill served"

- progressive politics. Robin West, *From Choice to Reproductive Justice: De-Constitutionalizing Abortion Rights*, 118 YALE L. J. 1394 (2009). Outside of the context of reproductive rights, Catherine Albiston notes that litigation strategies have the potential to “deradicalize and subtly reshape social movements in undesirable ways” and maintain the status quo. Catherine Albiston, *The Dark Side of Litigation as a Social Movement Strategy*, 96 IOWA L. REV. BULL. 61 (2011). Reva Siegal argues, in a related but different mode, that Supreme Court cases on reproductive rights have channeled debates on the topic. Reva Siegal, *Abortion and the “Woman Question”: Forty Years of Debate*, 89 INDIANA L. J. 1367–1370 (2014). Catharine MacKinnon offered an early critique of *Roe v. Wade*, arguing that it was the product of male supremacy and that its holding under privacy doctrine justified *Harris v. McRae*. Catharine MacKinnon, *Roe v. Wade: A Study in Male Ideology*, in ABORTION CONTROVERSY 25 YEARS AFTER (Louis Pojman ed., 1998) (“abortion’s availability is frames, and is framed by, the conditions under which men, worked out between themselves, will grant legitimacy to women to control the reproductive consequences of intercourse”). The role of Supreme Court decisions in delimiting counterarguments has become a key point of debate in the related field of law and sexuality. See Teemu Ruskola, *Gay Rights versus Queer Theory: What Is Left of Sodomy After Lawrence v. Texas*, 23 SOC. TEXT 235 (2005); Katherine Franke, *The Domesticated Liberty of Lawrence v. Texas*, 104 COLUM. L. REV. (2004); JANET HALLEY et al., GOVERNANCE FEMINISM: AN INTRODUCTION (2018).
30. LINDA GREENHOUSE, BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN’S SUPREME COURT JOURNEY (2006).
 31. The constitutional questions were controversial, however. Not just from the perspective of a progressive/conservative divide on abortion but amongst progressives. Feminist scholars raised important questions following *Roe*. Robin West, *From Choice to Reproductive Justice: De-Constitutionalizing Abortion Rights*, 118 YALE L. J. 1394 (2009).
 32. See KHIARA BRIDGES, THE POVERTY OF PRIVACY RIGHTS (2017) (discussing how constitutional law failed to protect the reproductive freedoms of poor women despite a robust commitment to the right of privacy). See Naomi Cahn & June Carbone, *The Blue Family Constitution*, J. AM. ACAD. MATRIM. LAWS. 529–530 (2022) (discussing the enforcement of the “class line” in reproductive rights). Instead, criminal law was often deployed in service of regulating the poor woman. Many of those subject to these criminal laws are women of color, especially Black and Latina women. See generally MICHELE GOODWIN, POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD (2020).

33. Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. AND CRIMINOLOGY (2009).
34. Interview by Lorretta Ross with Byllye Avery, Founder, the Black Women's Health Project, in North Hampton, MA (2005).
35. CATHY COHEN, THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS 96–97 (1999).
36. ALICE ECHOLS, DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967–1975 (1989).
37. ALICE ECHOLS, DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967–1975 244–245 (1989) (“cultural feminism held out the possibility that women could build a culture, a space, uncontaminated by patriarchy.”).
38. DEBORAH GOULD, MOVING POLITICS: EMOTION AND ACT-UP'S FIGHT AGAINST AIDS Kindle edition. (2009).
39. DEBORAH GOULD, MOVING POLITICS: EMOTION AND ACT-UP'S FIGHT AGAINST AIDS Kindle Location 108. Kindle edition. (2009).
40. DEBORAH GOULD, MOVING POLITICS: EMOTION AND ACT-UP'S FIGHT AGAINST AIDS Kindle location 116–117. Kindle Edition. (2009).
41. On identity, race, and fights for inclusion in medical care and research, see generally ALONDRA NELSON, BODY AND SOUL: THE BLACK PANTHER PARTY AND THE FIGHT AGAINST MEDICAL DISCRIMINATION (2013); RUHA BENJAMIN, PEOPLE'S SCIENCE: BODIES AND RIGHTS ON THE STEM CELL FRONTIER (2013); STEVEN EPSTEIN, INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH (2007).
42. The terms legal change “from below” or “bottom up” are widely used in law social movements scholarship. For two examples see Tomiko Brown-Nagin's description of a “bottom up” approach as “focused on activists as much as on the law and lawyers” and on the Supreme Court as well as lower courts. TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT 10–11 (2011). In the literature on law, human rights, and social movements the term “from below” has been used to describe how grassroots actors utilize human rights to mobilize social change. See Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito, *Law, Politics, and the Subaltern in Counter-Hegemonic Globalization*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito eds., 2005). In his critique of Gerald Rosenberg's book THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE, Michael McCann describes bottom-up analysis as “dispute-centered” studies of law that place emphasis on “social struggles” and center the role of nonjudicial actors as “practical legal agents.” Michael McCann, *Reform Litigation on Trial*, 17 L. AND SOC. INQUIRY 715 (1992).

43. Ruha Benjamin discusses a political sociology of science that considers political–scientific hybrids and social inclusion in science. RUHA BENJAMIN, *THE PEOPLE’S SCIENCE: BODIES AND RIGHTS ON THE STEM CELL FRONTIER* (2013).
44. See Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 614–615 (2000). (Explaining that the use of the verb framing “denotes an active, processual phenomenon that implies agency and contention at the level of reality construction.” In turn collective action frames are partly constructed to “negotiate a shared understanding of some problematic condition or situation ... in need of change.”)
45. The *Cosmopolitan* article ignited protests from the ACT UP Women’s Caucus who protested the article for propagating misinformation about AIDS. Interview by Sarah Schulman with Maxine Wolfe, activist, ACT UP Oral History Project in New York, NY (May 25, 2007); CAROLE CAMPBELL, *WOMEN, FAMILIES, AND HIV/AIDS: SOCIOLOGICAL PERSPECTIVE ON THE EPIDEMIC IN AMERICA* (1999).
46. MICHAEL FUMENTO, *THE MYTH OF HETEROSEXUAL AIDS: HOW A TRAGEDY HAS BEEN DISTORTED BY MEDIA AND PARTISAN POLITICS* (1990).
47. Documentation by Maxine Wolfe on History of Women’s Caucus (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 1).
48. Documentation by Maxine Wolfe on History of Women’s Caucus (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 1).
49. ACT UP, *Reproductive Rights and AIDS: The Connections*, in *Women, AIDS, and Activism* 199 (1990).
50. ACT UP, *Reproductive Rights and AIDS: The Connections*, in *WOMEN, AIDS, AND ACTIVISM* 199–201 (1990).
51. Interview by Sarah Schulman with Maxine Wolfe, activist, ACT UP Oral History Project, in New York, NY (May 25, 2007). (“When we carried our first signs about women, we were told by everybody that it was never going to be women. That’s what we were told. Everybody thought it was always going to be a really small number. There was no heterosexual transmission.”)
52. Linda Anderson and Samantha Winchester, *Off Our Backs* (Apr. 1988) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 2).
53. ACT UP, *Shea Stadium Women’s Action: As Told by Maxine Wolfe*, <https://actupny.org/diva/CBstory-shea.html>.
54. Interview by Sarah Schulman with Maxine Wolfe, activist, ACT UP Oral History Project, in New York, NY at 90 (May 25, 2007); ACT UP,

Shea Stadium Women's Action: As Told by Maxine Wolfe, <https://actupny.org/diva/CBstory-shea.html>.

55. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 18 (May 25, 2007). Many women who had HIV often sought support from gay men's groups and organizations.
56. Bedford Hills Correctional Facility, New York State Archives, www.archives.nysed.gov/creator-authority/bedford-hills-correctional-facility.
57. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 11 (May 25, 2007).
58. Jonathan Kagan et al., *A Brief Chronicle of the CD4 as a Biomarker for HIV/AIDS: A Tribute to the Memory of John F. Fahey*, 6 *IMMUNOPATHOLOGICAL DISEASES AND THERAPY* 55–64 (2015).
59. The World Health Organization did not require HIV testing until 2013.
60. The AIDS case definition has changed over time. The AIDS case definition in 1982 focused on men who have sex with men and included opportunistic diseases that were indicative of problems with the immune system. By 1985, HIV was found to be the cause of AIDS. In turn, the 1985 update to the case definition added more opportunistic diseases to the broader list. A person would have been found to have AIDS if they presented with one of these opportunistic infections and a positive serologic or virologic test. However, in the absence of test results, patients who met other criteria in the definition (presentation of an opportunistic disease known to cause AIDS) would still be categorized as having AIDS. The 1987 case definition specifies twenty-three AIDS-defining conditions associated with severe immune deficiency caused by HIV. It continued to allow practitioners to make a diagnosis of AIDS based on clinical observations rather than on the basis of a laboratory test. It did not include any severe manifestations of HIV as found in women. The revised definition released in 1993 held that a person had AIDS if they (1) had a CD4 count of 200 or below and (2) had one of an enumerated list of illnesses. The 2008 AIDS case definition required a person to have been diagnosed with an HIV test, a CD4 count of less than 200, a CD4 count of less than 14 percent of all lymphocytes, and/or the existence of an opportunistic infection. Today, due to advances in technology, the CDC uses algorithmic testing alongside clinical manifestations to confirm HIV diagnosis and categorize individuals into subtypes of HIV and stage of HIV infection. Centers for Disease Control and Prevention, *Revision of CDC Case Definition of Acquired Immunodeficiency Syndrome for National Reporting*, 34 *MORBIDITY & MORTALITY WEEKLY REP.* 373–375

- (1985); Centers for Disease Control and Prevention, *Revision of CDC Definition of Acquired Immunodeficiency Syndrome*, 36 MORBIDITY AND MORTALITY WEEKLY REPORT S1–15 (1987); Richard M. Selik et al., *Revised Surveillance Case Definition for HIV Infection – United States*, 2014, 63 MORBIDITY AND MORTALITY WEEKLY REP. 1 (2014).
61. CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* 124 (1999) (citing Gerald Oppenheimer, *Causes, Cases, and Cohorts: The Role of Epidemiology in the Historical Construction of AIDS*, in *AIDS: THE MAKING OF A CHRONIC DISEASE* 49–83 [Elizabeth Fee & Daniel Fox eds., 1992]).
 62. Terry McGovern, *S. P. v. Sullivan: The Effort to Broaden the Social Security Administration’s Definition of AIDS*, 21 FORDHAM URB. L. J. 1083, 1091–1093 (1994); see also M. Maiman et al., *Cervical Cancer as an AIDS Defining Illness*, 89 OBSTETRICS & GYNECOLOGY 76, 76–80 (1997). I am indebted to Terry McGovern for providing more detail about some of these key historical moments.
 63. CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* 123 (1999). Cohen is engaged with the work of Gerald Oppenheimer, see generally Gerald Oppenheimer, *Causes, Cases, and Cohorts: The Role of Epidemiology in the Historical Construction of AIDS*, in *AIDS: THE MAKING OF A CHRONIC DISEASE* (Elizabeth Fee & Daniel Fox eds., 1992).
 64. CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* 123 (1999).
 65. CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* 125 (1999).
 66. For a helpful primer on the distinction between the two, see Karen Tani, *Disability Benefits as Poverty Law: Revisiting the “Disabled State”*, 170 U. PA. L. REV. 1687, 1690–1691 (2022).
 67. Presumptive disability can be issued to a claimant who meets financial requirements and whose disability is contained on a specified list of disabling impairments. They are provided with immediate benefits as they await initial determinations on their applications. Presumptive disability determinations are made at local social security offices and the Office of Disability Determinations. They are paid for a maximum of three months. *S.P. v. Sullivan*, 90 Civ. 6294 (Plaintiff’s Memorandum of Law in Support of Class Certification at 6–7, Oct. 31, 1990).
 68. Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental Security Income, 102 Cong. 102–99 (1992) (Statement of Gwendolyn S. King, Commissioner of Social Security, US Department of Health and Human Services) (“The SSA’s first recognition of AIDS as disabling was in the July 1984 SS Ruling 84–19, ‘Evaluation of Acquired

Immune Deficiency Syndrome and corresponding Program Operations Manual Systems ('POMS') section DI 00401.537." *S.P. v. Sullivan*, 90 Civ. 6294 (Plaintiff's Memorandum of Law in Support of Class Certification at 6–7, Oct. 31, 1990). (a) ("Social Security Ruling 84–19 was superseded in October of 1986 by Ruling 86–20, an apparent recognition by the Secretary that increased medical knowledge regarding HIV infection required revised standards for evaluation of HIV related disability." "Social Security Ruling 86–20 expanded the number of opportunistic infections which would support a finding of AIDS, and added a section permitting a finding of disability based on AIDS Related Complex ('ARC')").

69. The definition of a disability in the Social Security Act is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than twelve months.
70. *S.P. v. Sullivan*, 90 Civ. 6294 (Plaintiff's Memorandum of Law in Support of Class Certification at 6–7, Oct. 31, 1990). (Describing the process for accessing disability: "Determinations of disability are made, in the first instance, by state agencies under contract with the Secretary. In New York state, the Office of Disability Determinations (ODD), an agency of the New York State Department of Social Services, is charged with making initial disability determinations. If the application is denied at the initial level, and claimant requests reconsideration, ODD is also charged with that determination. A claimant whose application has been denied at the initial and reconsideration levels by ODD may request a hearing before an administrative law judge (ALJ) employed by the Secretary, and if still dissatisfied may request review of the ALJ's decision before the Secretary's Appeals Council. Unlike initial and reconsideration determinations, 'presumptive' disability determinations can be made at local Social Security offices as well as by ODD, and are not subject to appeal. The Secretary enforces the federal policies, practices, standards, and procedures by reviewing the state's individual disability determinations and by overriding any such determination which the Secretary decides does not conform and by maintaining the power to assume the state agency's functions if he finds too high a rate of 'error' in its determinations. The Secretary issues various substantive policy statements and instructional materials which state agencies, such as the ODD in New York State, must use in disability determinations. The Secretary hires, trains, and issues instructional materials to the employees at Social Security's local offices who make initial determinations and decisions on presumptive disability determinations, as well as to the ALJs, Appeals Council members, and other Office of Hearings and Appeals employees who process disability

- cases and perform disability adjudications. Among the instructional materials issued by the Secretary to direct his employees in the application of the Secretary's policies, practices, standards, and procedures for making decisions about entitlement to disability benefits are a compilation known as the Program Operation Manual System ('the POMS') and Social Security Rulings. The POMS are not binding on adjudicators above the state agency level. Neither Social Security Rulings nor the POMS are subject to the notice and comment requirement of the Administrative Procedure Act or are published in the Federal Register. Upon information and belief, most claimants for disability benefits are unaware of the existence of the POMS and the Social Security Rulings.”)
71. This chapter deals with SSDI and SSI as administered by Health and Human Services. For an overview of how disability in SSDI and SSI relates to areas of disability law from an anti-discrimination perspective, see Chai Feldblum, *Definition of Disability under Federal Anti-Discrimination Law: What Happened – Why – And What Can We Do about It*, 21 BERKELEY J. EMP. & LAB. L. 91 (2000).
 72. The administrative state has long functioned to regulate sex and gender. For an excavation of how administrative law regulates sex and gender, see Jacob E. Gersen & Jeannie Suk Gersen, *The Sex Bureaucracy*, 104 CAL. L. REV. 881 (2016); Melissa Murray & Karen Tani, *Something Old, Something New: New Reflections on the Sex Bureaucracy*, 7 CAL. L. REV. ONLINE 122 (2016). On the regulation of sexuality through civil and administrative channels, see Melissa Murray, *Rights and Regulation: The Evolution of Sexual Regulation*, 116 COLUM. L. REV. 573 (2016). See Dean Spade, *Documenting Gender*, 59(1) HASTINGS L. J. 731 (2008).
 73. SP, MC, JM, LK, *PS on Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint (Oct. 1, 1990).
 74. SP, MC, JM, LK, *PS on Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 14 (Oct. 1, 1990). (“Although the APA generally requires publishing of proposed rules, and a period of notice and comment prior to the adoption of final rules, the Secretary invoked one of the Act’s exceptions which provides for dispensing with such procedures if they are unnecessary or contrary to the public interest. Thus, the secretary accepted notice and comment during the 60-day period from February 11–April 12, 1985, after adopting the interim regulations.”)
 75. SP, MC, JM, LK, *PS on Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 14 (Oct. 1, 1990).
 76. Protest Flyers (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).

77. Interview by Sarah Schulman with Linda Meredith, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 29 (March 10, 2013).
78. Meeting on the expansion of the AIDS Surveillance case definition, CDC 347 (1992).
79. Interview by Sarah Schulman with Linda Meredith, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 17 (March 10, 2013).
80. Background Briefings (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
81. Bail Records and Documentation of the Event (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
82. Bail Records and Documentation of the Event (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
83. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 18 (May 25, 2007).
84. Transcript of Dialogue with Fauci after Our Presentation (July 27, 1990) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6).
85. Transcript of Dialogue with Fauci after Our Presentation (July 27, 1990) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6 and Box 2, Folders 3 and 3A).
86. The primary ACT UP people involved with the conference advocacy and organizing were Linda Meredith, Melinda Daniels, and Lorrie Sprecher from ACT-UP DC and Risa Denenberg, Heidi Dorow, Garance Franke-Ruta, and Maxine Wolfe from ACT UP New York.
87. Letter from Linda Meredith to Anthony Fauci (July 27, 1990) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6).
88. Anthony Fauci Reply Letter (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6).
89. Anthony Fauci Reply Letter (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6).
90. The ACT UP Network Women's Issues Committee at the December ACTG Meetings (January 31, 1992) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 1).
91. *NIAID AIDS Agenda* (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6).
92. Founding Document (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22). Other members include Victoria Coffman, Camille Lore, Lorrie Sprecher, Wendy Sharp, Melinda Daniels, Linda Meredith, Ann Steinecke, and Sarah Wolfe.

93. Background Report (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22). In this document, in a section titled “Background on: Life Force ‘Women Fighting AIDS, Inc.,’” Life Force discusses that it gets support from the Bushwick Health Center, the Brooklyn AIDS Task Force, WARN, the SUNY Health Science Center at Brooklyn, the Caribbean Women’s Health Association, and the American Red Cross.
94. Phone Interview by Aziza Ahmed with Bylle Avery, Founder, National Black Women’s Health Project, in Cape Cod, Mass. (2019).
95. Background Report (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22). (“Training for these community educators includes an intensive study of current facts about HIV/AIDS, family planning, health care, reproductive health, sexually transmitted diseases, stress reduction, and safer sex techniques. Also included are education techniques for imparting information, group facilitation, group dynamics and active listening. Life Force educators are trained to network with appropriate health and social services for referrals and crisis intervention.” “A range of community service organizations, and public agencies offer support and cooperation to Life Force. Among them are the Bushwick Health Center, the Brooklyn AIDS Task Force, WARN, the SUNY Health Science Center at Brooklyn, the Caribbean Women’s Health Association, and the American Red Cross.”)
96. Interview by Sarah Schulman with Alexandra Juhasz, activist, ACT UP Oral History Project, in New York, NY (May 25, 2007). (“you couldn’t imagine one more, kind of, embodying everything different than what ACT UP was in Brooklyn AIDS Task Force. Brooklyn AIDS Task Force was an underfunded social service organization – staffed entirely by black women in some tawdry building that served, you know, a large number of Haitian people in Brooklyn at the time, that did support groups and HIV education and really nitty gritty stuff – getting people housing and public – getting them attached to entitlement programs they need to be attached to. And, it’s very much about serving an under – working class and under class population of people who were really needing services. It was like a band-aid – the Brooklyn AIDS Task Force was, but they had their pulse on a completely – their fingers on the pulse of another AIDS, another AIDS ... if you wanted to think about women and AIDS, you needed to be thinking about poverty, race in urban America. And, how was I going to cross that divide. And, that was a very different thing than thinking about what it meant to be a white gay man with AIDS. It just was like two different things – two different sets of concerns, two different questions. And, at certain times they intersected, and in a lot of times, they didn’t. It was really about, you know, a different set of social justice issues that are not addressed to this day.”)
97. Initially, organizing in the Black community on issues of AIDS came from Black LGBT organizations including the National Black Gay

- and Lesbian Leadership Forum and the National Taskforce on AIDS. CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* 97–103 (1999). Cohen documents how Black politicians got involved but their involvement was not consistent. For example, Black and Latino elected officials opposed a needle exchange program that would have benefitted Black and Latino communities. CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* 103 (1999).
98. It is not unusual to hear women diagnosed early in the HIV epidemic discuss seeking and receiving support from support groups of largely gay men. See, e.g., Jeff Berry, *One-on-One with Dawn Averitt Bridge*, *POSITIVELY AWARE* (July 2009); Mary Fisher & Dawn Averitt Bridge, *Leading Ladies*, *POZ* 34 (March 2010).
 99. *Implications of the Revised CDC Definition, Hearing Before the National Commission on AIDS*, 102nd Cong. (Dec. 10, 1991) (statement of Terry McGovern).
 100. LINDA SINGER, *EROTIC WELFARE: SEXUAL THEORY AND POLITICS IN THE AGE OF EPIDEMIC* 83 (1993).
 101. Important to note is that while the idea of exclusion generated feminist energy and cohesion in the context of regulatory change amongst women in organizations like ACT UP and beyond, it generated both alliances and conflict between men and women involved in AIDS activism. Lewis Grossman, *AIDS Activists, FDA Regulation, and the Amendment of America's Drug Constitution*, 42 *AM. J. OF L. & MED.* 687 (2016) (describing the support of men in ACT UP having women recognized as a risk group); interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 18 (May 25, 2007).

2 LITIGATING RISK: THE LAW AND POLITICS OF DISEASE IN THE ADMINISTRATIVE STATE

1. Terry McGovern, working with MFY Legal Services, recruited lawyers from Cardozo Bet Tzedek Legal Services, the Center for Constitutional Rights, and Lambda Legal Defense Fund to support the litigation efforts. *SP v. Sullivan*, 90 CIV. 6294 4 (1990).
2. Although this chapter focuses on the women's issues in the lawsuit, the class of plaintiffs could be broken down to four subclasses: women who were disabled by HIV-related illness, current and former intravenous drug users disabled by HIV-related illness, children who were disabled by HIV-related illness, and poor persons disabled by HIV-related illness. *SP v. Sullivan*, 90 CIV. 6294 4 (1990).

3. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 20 (May 25, 2007). (“The way I always tried to practice is, you can’t, you’re not going to win on just a lawsuit, if you’re talking about something that’s more about a social movement, as far as I’m concerned. And I think in some cases if the government really, really feels like it can ignore the population, the demonstrations may not be enough. And in this case, I think having to actually answer in court really shook them up. But the day that, one of the days that the federal court refused to dismiss the case, the government littered us with papers and tried to basically kind of outwork us; the judge in the case read from some *Times* article about a demonstration. And so they really, really worked together.”)
4. See also *Mathews v. Eldridge*, 424 U.S. 319 (1976).
5. Names were hidden and are fictionalized here. SP, MC, JM, LK, PS on *Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 19 (Oct. 1, 1990).
6. SP, MC, JM, LK, PS on *Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Amended Class Action Complaint at 25 (Oct. 29, 1990).
7. Plaintiff was a later addition to the class.
8. OFFICE OF TECHNOLOGY ASSESSMENT, THE CDC’S CASE DEFINITION OF AIDS: IMPLICATIONS OF THE PROPOSED REVISIONS (1992). See also SP, MC, JM, LK, PS on *Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 26 (Oct. 1, 1990).
9. SP, MC, JM, LK, PS on *Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 20 (Oct. 1, 1990).
10. Names were hidden and are fictionalized here. SP, MC, JM, LK, PS on *Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 19 (Oct. 1, 1990).
11. SP, MC, JM, LK, PS on *Behalf of Themselves and All Others Similarly Situated v. Sullivan*, 90 Civ. 6294, Complaint at 28 (Oct. 1, 1990).
12. The plaintiffs sought several other outcomes including payments of presumptive disability to all claimants with proof of HIV infection and a physician report stating that the claimant is unable to work.
13. SP, MC, JM, LK, PS on *Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 11 (Oct. 1, 1990); *S.P. v. Sullivan*, Amended Class Action Complaint; *S.P. v. Sullivan*, Document F at 15.
14. *S.P. v. Sullivan*, 90 Civ. 6294; APA 5 USC Sec. 551 set seq., Amended Class Action Complaint.

15. *SP, MC, JM, LK, PS on Behalf of Themselves and All Others Similar Situated v. Sullivan*, 90 Civ. 6294, Complaint at 11 (Oct. 1, 1990); *S.P. v. Sullivan*, Amended Class Action Complaint at 37–39.
16. Flyers and Notes (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22); Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 18 (May 25, 2007).
17. Image (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
18. Linda Meredith, Press Release (1990) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
19. Image (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
20. Interview by Sarah Schulman with Linda Meredith, activist, ACT UP Oral History Project, in New York, NY at 13–14 (Mar. 10, 2013).
21. Image (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
22. Image of Protest Flyer for HHS Action (Oct. 2, 1990) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
23. Image of Protest Flyer for HHS Action (Oct. 2, 1990) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
24. Other chants included: “Men with AIDS get benefits, just because they don’t have tits!” and “Women with AIDS won’t wait till later, we’re not your fucking incubator!”
25. The protests were funded by ACT UP and ACT UP members. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 18 (May 25, 2007). (“Well, they had money because they, the men who were members of ACT UP had a lot more money, certainly, than the clients I was seeing. So, yeah, the resources were incredible. That was the other thing that I didn’t, that I neglected to mention. The creativity, the press capabilities, talking about why the lawsuit was successful, you’re sitting on Avenue A, doing this lawsuit. And then Robin Hauser and Laurie Cotter come, and they’re the press people from ACT UP. And they sit with me for half an hour, and they write this press release. And then we file the lawsuit; we’re in Washington. And it’s on the front page of the New York Times. That was ACT UP. Those were, it was also that the lawsuit was credible, and for the first time, I think part of the strategy that was unique to the press was that they could speak to women who had gone through this training and could really describe the way in which they were being denied disability, not just, like, make this generalized complaint. But the level of resources that ACT UP

- brought to this thing was incredible. So you had people who had many, many resources, to begin with. So it brought everything to a whole new level.”)
26. ACT UP Documentation (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
 27. Documentation of Testimony (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
 28. Congressional Record, E3087, Oct. 2, 1990.
 29. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY (May 25, 2007).
 30. *Baltimore Sun*, Oct. 3, 1990 (Image).
 31. *USA Today*, Oct. 3, 1990 (Image).
 32. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
 33. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
 34. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
 35. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
 36. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25) (according to the ACT UP transcription, one CDC official stated, “I mean we’ll be able to do it – we can do it three years beyond, but when we start talking about changing the case definition we get a lot of screams from scientists, from all kinds of places, saying we can’t track trends every time you do this because it threw everybody apart for awhile”).
 37. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25). (Gary Noble: “Again, it gets back to the reason for changing that. There is a whole spectrum, all the way from reporting anyone with HIV infection, with or without symptoms, as you know, it can be based on CD4 cell counts, it could be based on any number of things, but if we did that we would be laughed out of the country for inflating the epidemic and the curve and simply trying to bring more money to AIDS research. There has to be a rationale.”)
 38. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25). (Bert Peterson, Women’s Health and Fertility, CDC: “That raises a concern because if we talk about case definition because if there is a woman who is infected today and has candida vulvar vaginitis today, and yet would we want to say that she has AIDS?”)

39. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
40. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
41. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25) (ACT UP: “I don’t think we can afford to wait for years for you to do the studies of causal relationships”).
42. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
43. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25). The quote differs slightly according to the source.
44. Transcription of Meeting by Activists (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folder 25).
45. ACT UP Demands for December 3rd Demonstration at the CDC (Chip Rowan) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22). (Note that ACT UP New York had a much longer list of demands. It sought the addition of a much longer list of opportunistic and indicator diseases with atypical outcomes in immunocompromised people. Its list included chronic pelvic inflammatory disease unresponsive to conventional therapy, repeat episodes of endometritis, salpingitis, tubovarian abscess leading to multiple pelvic adhesions and chronic pelvic pain, chronic refractory vaginal thrush, anal, vulvar, or vaginal condylomas, genital ulcers that are unresponsive to conventional therapy, and other health issues.)
46. ACT UP, WOMEN, AIDS, AND ACTIVISM VII (1990).
47. ACT UP, WOMEN, AIDS, AND ACTIVISM 6 (1990).
48. ACT UP, WOMEN, AIDS, AND ACTIVISM 6 (1990).
49. ACT UP, WOMEN, AIDS, AND ACTIVISM 9 (1990). (“White supremacy is a set of institutions (supported by a set of racist ideas) that ensures that white people continue to have access to the labor and other resources of the various communities of color. Political, economic, and cultural control of these communities is often necessary for this to occur. Violence against people of color and official tolerance of and/or initiation of such violence remain institutionalized practices that perpetuate racism. Violence against people of color is not only perpetrated by young white men on the street, it also reaches into the highest levels of our government. For example, despite undisputed statistical evidence that a Black person is four times as likely to receive the death penalty as a white person convicted of a similar crime, the U.S. Supreme Court found that the death penalty is ‘not inherently racist’ and does not violate the equal protection provision of the Fourteenth Amendment.”)

50. ACT UP, WOMEN, AIDS, AND ACTIVISM 32 (1990).
51. ACT UP, WOMEN, AIDS, AND ACTIVISM 33 (1990).
52. ACT UP, WOMEN, AIDS, AND ACTIVISM 39 (1990).
53. Reviews of ACT UP, *Women, AIDS, and Activism*: Merle Knight, *Review*, 7 (6) ON OUR BACKS 36 (July/Aug. 1991) and Maria Erlien, *Review*, SOJOURNER: THE WOMEN'S FORUM (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 8).
54. Merle Knight, *Review*, 7 (6) ON OUR BACKS 36 (July/Aug. 1991) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 8).
55. Maria Erlien, *Review*, SOJOURNER: THE WOMEN'S FORUM (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 8).
56. Donna Minkowitz, Village Voice (Feb. 19, 1991) (on file with author).
57. Meeting Flyers, Agendas, and Schedules (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 5A).
58. Meeting Flyers, Agendas, and Schedules (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 25).
59. Meeting Flyers, Agendas, and Schedules (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6A).
60. Meeting Flyers, Agendas, and Schedules (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6A).
61. Resignation Note (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6A (the person appointed as staff was Caitlyn Ryan)).
62. Meeting Flyers, Agendas, and Schedules (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6A).
63. Interview by Aziza Ahmed with James Curran, Dean, Emory School of Public Health, in Atlanta, GA (2019); Email communication between Aziza Ahmed and James Curran (June 7, 2025).
64. Documentation of Conference (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 25).
65. ACT UP, TREATMENT AND RESEARCH AGENDA FOR WOMEN WITH HIV INFECTION (1992).
66. ACT UP, TREATMENT AND RESEARCH AGENDA FOR WOMEN WITH HIV INFECTION (1992).
67. ACT UP, TREATMENT AND RESEARCH AGENDA FOR WOMEN WITH HIV INFECTION (1992).
68. Treatment and Research Agenda for Women with HIV Infection (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6A).
69. Treatment and Research Agenda for Women with HIV Infection (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 6A).

70. Interview by Aziza Ahmed with Ruth Berkelman, formerly with CDC, in Atlanta, GA (2019).
71. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 20–21 (May 25, 2007).
72. Social Security and AIDS Disability Act of 1991, H.R. 2299, 102nd Congress (1991).
73. *Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental Security Income*, 102nd Cong. 102–99 (1992) (statement of Constance Morella).
74. Letter from Constance Morella to Linda Meredith (Jan. 11, 1991) (Image) (on file with author).
75. Department of Health and Human Services, 56 C.F.R. 65,702 (1991).
76. Letter from Terry McGovern to Lorraine Novinski (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 3, Folders 19–22).
77. *Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental Security Income*, 102nd Cong. 102–99 (1992) (statement of Phyllis Sharpe).
78. The AMA often came out against the broadening of SSA benefits because it felt it was an encroachment of socialized medicine. KEITH WAILOO, *PAIN: A POLITICAL HISTORY* (2014).
79. *Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental Security Income*, 102nd Cong. 102–99 (1992) (statement of Lonnie Bristow).
80. *Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental Security Income*, 102nd Cong. 102–99 (1992) (statement of Gordan Nary, PAAC).
81. *Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental Security Income*, 102nd Cong. 102–99 (1992) (statement of Gwendolyn S. King, Commissioner of Social Security).
82. As noted by historian Keith Wailoo in his book *Pain: A Political History*, the SSA's claim to objectivity was a move to deny complaints in the context of a politically charged moment in which poor, sick individuals were accused of falsifying illness to get benefits. KEITH WAILOO, *PAIN: A POLITICAL HISTORY* 99 (2014).
83. *Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental*

- Security Income*, 102nd Cong. 102–99 (1992) (statement of Gwendolyn S. King, Commissioner of Social Security).
84. *Obstacles That Prevent Women and Children With HIV-Related Disabilities From Qualifying For Social Security Disability Insurance and Supplemental Security Income*, 102nd Cong. 102–99 (1992) (statement of Gwendolyn S. King, Commissioner of Social Security).
85. Phone Interview by Aziza Ahmed with James Curran, Dean, Emory School of Public Health, in Atlanta, GA (2019).
86. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY (May 25, 2007).
87. Phone Interview by Aziza Ahmed with James Curran, Dean, Emory School of Public Health, in Atlanta, GA (2019).
88. OFFICE OF TECHNOLOGY ASSESSMENT, THE CDC'S CASE DEFINITION OF AIDS: IMPLICATIONS OF THE PROPOSED REVISIONS I–4 (1992).
89. The OTA report acknowledges this quite explicitly. Office of Technology Assessment, The CDC's Case Definition of AIDS: Implications of the Proposed Revisions II-5 (1992). ("The new AIDS case definition is expected to increase the number of HIV infected persons considered to have AIDS. This increase in the number of AIDS cases will affect allocations of Federal funds and will have implications for the privacy of the individuals with AIDS whose names will be reported to the State and local health departments.") These issues were also reported in the press. See Gale Scott, *City Will Expand AIDS Definition: Move Could Nearly Double Caseload*, N.Y. *NEWSDAY* (Nov. 13, 1992).
90. Phone Interview by Aziza Ahmed with James Curran, Dean, Emory School of Public Health, in Atlanta, GA (2019).
91. Interview by Sarah Schulman with Maxine Wolfe, activist, ACT UP Oral History Project, in New York, NY at 90 (May 25, 2007).
92. Interview by Sarah Schulman with Terry McGovern, HIV Officer at the Ford Foundation, ACT UP Oral History Project, in New York, NY at 34 (May 25, 2007).
93. Hard copy of meeting transcription "Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC" at 3, Atlanta, GA (1992) (on file with author).
94. Hard copy of meeting transcription "Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC" at 5, Atlanta, GA (1992) (on file with author).
95. Hard copy of meeting transcription "Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC" at 17, Atlanta, GA (1992) (on file with author).

96. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 21, Atlanta, GA (1992) (on file with author).
97. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 21, Atlanta, GA (1992) (on file with author).
98. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 34, Atlanta, GA (1992) (on file with author).
99. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 66, Atlanta, GA (1992) (on file with author).
100. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 68, Atlanta, GA (1992) (on file with author).
101. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 38, Atlanta, GA (1992) (Peter Kerndt, Director of the AIDS Epidemiology Program at the Los Angeles County Department of Health Services, argued that expanding the definition would complicate disease surveillance) (on file with author).
102. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 203, Atlanta, GA (1992) (Kathryn Anastos, physician and Director of the HIV Primary Care Services at Bronx Lebanon Hospital in New York City) (on file with author).
103. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 209, Atlanta, GA (1992) (on file with author).
104. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 216, Atlanta, GA (1992) (on file with author).
105. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 72, 77, Atlanta, GA (1992) (on file with author).
106. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 300–301, Atlanta, GA (1992) (on file with author).
107. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 313, Atlanta, GA (1992) (on file with author).
108. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 313, Atlanta, GA (1992) (on file with author).

109. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 316, Atlanta, GA (1992) (on file with author).
110. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 332, Atlanta, GA (1992) (on file with author).
111. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 357, Atlanta, GA (1992) (on file with author).
112. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 360, Atlanta, GA (1992) (on file with author).
113. Hard copy of meeting transcription “Meeting on the Expansion of the AIDS Surveillance Case Definition, CDC” at 363–365, Atlanta, GA (1992) (on file with author). His comments also addressed the specific concerns raised by advocates around cervical cancer. He pointed out that the terminology itself was confusing with some advocates using CIN (cervical intraepithelial neoplasia) and dysplasia and others discussing grades of cancer.
114. Centers for Disease Control, 1993 *Revised Classification System for HIV Infection and Expanded Surveillance Case Definition for AIDS among Adolescents and Adults* (1993), www.cdc.gov/mmwr/preview/mmwrhtml/00018871.htm. The CDC also added pulmonary tuberculosis and recurrent pneumonia as advocated by activists. Terry McGovern, *S.P. v. Sullivan: The Effort to Broaden the Social Security Administration’s Definition of AIDS*, 21 FORDHAM URB. L. J. 1083, 1094 (1994); Emma Brick-Hezeau, *Who Gets a Say? Women and the AIDS Crisis*, 4 (2) WOMEN LEADING CHANGE: CASE STUDIES ON WOMEN, GENDER, AND FEMINISM 29–40 (2019) (documenting the relationship between Katrina Haslip and Terry McGovern and their struggle to change the definition of AIDS).
115. See OFFICE OF TECHNOLOGY ASSESSMENT, THE CDC’S CASE DEFINITION OF AIDS: IMPLICATIONS OF THE PROPOSED REVISIONS (1992) (highlighting that the issue was brought to the CDC’s attention by lawyers); see also Mireya Navarro, *Conversations: Katrina Haslip; An AIDS Activist Who Helped Women Get Help Earlier*, N.Y. TIMES (November 15, 1992), bit.ly/3FDpkt9. (“But by last month, when the Federal Centers for Disease Control announced plans to expand the AIDS definition, Ms. Haslip had nothing to hide ... she has talked about her infection at conferences, protests and in one-on-one outreach work. She has met with C.D.C officials in private, and berated them in public, as she doggedly pushed for the new definition that she says will help get women tested and the disease diagnosed early, when treatment is more effective.”)

116. Centers for Disease Control, *1993 Revised Classification System for HIV Infection and Expanded Surveillance Case Definition for AIDS among Adolescents and Adults* (1993), www.cdc.gov/mmwr/preview/mmwrhtml/00018871.htm.
117. Mireya Navarro, *Conversations: Katrina Haslip; An AIDS Activist Who Helped Women Get Help Earlier*, N.Y. TIMES (November 15, 1992), bit.ly/3FDpkt9; Obituary, *Katrina Haslip Dies; AIDS Worker Was 33*, N.Y. TIMES (December 3, 1992), bit.ly/41XzcFx.
118. Note that the CDC clarified that “The revised HIV classification system and the AIDS surveillance case definition are intended for use in conducting public health surveillance. The CDC’s AIDS surveillance case definition was not developed to determine whether statutory or other legal requirements for entitlement to Federal disability or other benefits are met. Consequently, this revised surveillance case definition does not alter the criteria used by the Social Security Administration in evaluating claims based on HIV infection under the Social Security disability insurance and Supplemental Security Income programs. Other organizations and agencies providing medical and social services should develop eligibility criteria appropriate to the services provided and local needs.” Centers for Disease Control, *1993 Revised Classification System for HIV Infection and Expanded Surveillance Case Definition for AIDS among Adolescents and Adults* (1993), www.cdc.gov/mmwr/preview/mmwrhtml/00018871.htm.
119. Statement of Katrina Haslip read by Brenda Goodman, The Expansion of the CDC Definition Press Conference, Oct. 28, 1992. Terry McGovern, Eulogy for Katrina Haslip, n.d.
120. Unlike in the United States, where blood tests were rolled out in the mid 1990s, the WHO definition was crafted for international use, in settings where serological testing was not available. The WHO didn’t require blood tests for HIV diagnosis globally until 2013 given the unavailability of tests.
121. World Health Organization, *Weekly Epidemiological Record* (1994). The *Weekly Epidemiological Record* highlights that the change followed a meeting convened by the WHO Global Programme on AIDS with the intended purpose of reviewing current case definitions for AIDS surveillance.

3 EXPERIMENTS IN RISK: CLINICAL TRIALS AND WOMEN

1. For an in-depth discussion on the political and scientific questions that surrounded AZT see STEVEN EPSTEIN, *IMPURE SCIENCE: AIDS, ACTIVISM, AND THE POLITICS OF KNOWLEDGE* 198–199 (1996).
2. Name was changed to protect privacy.

3. See Memorandum on the FDA's Proposed Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs from Theresa M. McGovern, Martha S. Jones, and Martha Davis, *The HIV Law Project et al.* 2 (Oct. 18, 1993) (on file with author).
4. See generally JENNIFER NELSON, *MORE THAN MEDICINE* (2015); WENDY KLINE, *BODIES OF KNOWLEDGE: SEXUALITY, REPRODUCTION AND WOMEN'S HEALTH IN THE SECOND WAVE* (2010).
5. STEVEN EPSTEIN, *INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH* 17 (2007). Epstein introduces the inclusion-and-difference paradigm as an example of what he terms a biopolitical paradigm. He describes this paradigm as building on "Peter Hall's concept of the policy paradigm and Michel Foucault's characterization of biopolitics, I define biopolitical paradigms and frameworks of ideas, standards, formal procedures, and unarticulated understandings that specify how concerns about health, medicine, and the body are made the simultaneous focus of biomedicine and state policy." Epstein further argues that we cannot presume that "[k]nowledge doesn't travel across categories of identity" even as we appreciate the positive effect of "improving medical research by making it more inclusive." See STEVEN EPSTEIN, *INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH* 2 (2007). Epstein's work is helpful to understand how an identitarian approach to knowledge production meant that feminists were making the claim that "social identities correspond to relatively distinct kinds of bodies" which required seeing these sexed and raced bodies were, in their "embodied states," medically incommensurable.
6. See generally Rebecca Dresser, *Wanted Single, White Male for Medical Research*, 22 (1) *THE HASTINGS CENTER REPORT* 24–29 (1992).
7. See Marion Banzhaf et al., *The Politics and Practice of the Feminist Health Movement and How It Relates to the AIDS Movement*, *THE ACT UP WOMEN'S CAUCUS WOMEN AND AIDS HANDBOOK OR A REASSESSMENT OF REALITY* (1990) (on file with author) (describing how feminist activism in AIDS stems from the feminist movement prior to do actions specifically focused on women and to incorporate a perspective on women into other actions you might organize).
8. See generally RAYMOND A. SMITH & PATRICIA D. SIPLON, *DRUGS INTO BODIES: GLOBAL AIDS TREATMENT ACTIVISM* (2006); LEWIS GROSSMAN, *CHOOSE YOUR MEDICINE: FREEDOM OF THERAPEUTIC CHOICE IN AMERICA* (2021).
9. As documented by many scholarly accounts, in some of their most famous actions, ACT UP demanded treatments, conducted die-ins, and were arrested targeting agency officials. For descriptions of AIDS activism, see DEBORAH GOULD, *MOVING POLITICS: EMOTION AND ACT UP'S FIGHT AGAINST AIDS* (2009).
10. FDA, [bit.ly/4jtPqgY](https://www.fda.gov/oc/2017/04/2017-04-14-act-up).

11. See Ruth Merkatz et al., *Women in Clinical Trials of New Drugs: A Change in Food and Drug Administration Policy*, 329 NEW ENGLAND J. MEDICINE 292–293 (1998).
12. See Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs, 58 Fed. Reg. 39406 (July 22, 1993), www.fda.gov/media/75648/download.
13. LEWIS GROSSMAN, CHOOSE YOUR MEDICINE: FREEDOM OF THERAPEUTIC CHOICE IN AMERICA (2021).
14. Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs, 58(139) Fed. Reg. 39406–39416 (July 22, 1993).
15. *West German Thalidomide Maker Offers \$27-Million Settlement*, N.Y. TIMES (Jan. 27, 1970), www.nytimes.com/1970/01/27/archives/west-german-thalidomide-maker-offers-27million-settlement.html; see, e.g., *Thalidomide: Britons Launch Legal Case*, BBC (June 5, 2014), www.bbc.com/news/uk-27708295; Ben Hirschler, *Thalidomide Victims Seek Compensation*, 50 Years on, REUTERS (Apr. 3, 2008), <http://bit.ly/3RbRH4o>.
16. Placing the clinical trial in a political and economic context, see generally MELINDA COOPER & CATHERINE WALDBY, *CLINICAL LABOR: TISSUE DONORS AND RESEARCH SUBJECTS IN THE GLOBAL BIOECONOMY* (2014). On the role of tort litigation in the context of clinical trial litigation, see generally E. Haavi Morreim, *Litigation in Clinical Research: Malpractice Doctrines versus Research Realities*, 32 J. L. MED. & ETHICS 474 (2004).
17. See SARAH SCHULMAN, *LET THE RECORD SHOW: A POLITICAL HISTORY OF ACT UP NEW YORK, 1987–1993* 564 (2021). See LEWIS GROSSMAN, CHOOSE YOUR MEDICINE: FREEDOM OF THERAPEUTIC CHOICE IN AMERICA 162–186 (2021); see also Michael Specter, *How ACT UP Changed America*, NEW YORKER (June 21, 2021), www.newyorker.com/magazine/2021/06/14/how-act-up-changed-america.
18. See Rita Rubin, *Collaboration and Conflict: Looking Back at the 30-Year History of the AIDS Clinical Trial Groups*, 314 J. AM. MED. ASS'N 2604 (2015).
19. See LEWIS GROSSMAN, CHOOSE YOUR MEDICINE: FREEDOM OF THERAPEUTIC CHOICE IN AMERICA 162 (2021).
20. STEVEN EPSTEIN, *INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH* (2007).
21. See STEVEN EPSTEIN, *INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH* (2007) (on the fight to include women and minorities in clinical trial research); see also Marcia Inhorn & K. Lisa Whittle, *Feminism Meets the “New” Epidemiologies: Toward an Appraisal of Antifeminist Biases in Epidemiological Research on Women’s Health*, 53 SOC. SCI. & MED. 553 (2001); see generally WOMEN’S HEALTH, POLITICS, AND POWER (Elizabeth Fee & Nancy Krieger eds., 1994).

22. Nancy Krieger & Glen Margo, *Women and AIDS: Introduction*, 21 (1) INT'L J. HEALTH SERVS. 127–130 (1991); see also NANCY KRIEGER & GLEN MARGO, *AIDS: THE POLITICS OF SURVIVAL* (1994).
23. See Ruth Merkatz, *Inclusion of Women in Clinical Trials: A Historical Overview of Scientific and Ethical Issues*, 27 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 78 (1998).
24. Maxine Wolfe & Iris Long, *Women and Clinical Trials*, in THE ACT UP WOMEN'S CAUCUS WOMEN AND AIDS HANDBOOK OR A REASSESSMENT OF REALITY 48 (Illith Rosenblum and Maria Maggenti, and the ACT UP Organization, 1998) (on file with author). Maxine Wolfe writes: "We hope this handbook has provided useful information about the situation in the AIDS crisis. We also hope the information will motivate you to do actions specifically focused on women and to incorporate a perspective on women into other actions you might organize."
25. 1988 FDA ACT UP Pamphlet (on file with author).
26. 1988 FDA ACT UP Pamphlet (on file with author).
27. Maxine Wolfe & Iris Long, *Women and Clinical Trials*, in THE ACT UP WOMEN'S CAUCUS WOMEN AND AIDS HANDBOOK OR A REASSESSMENT OF REALITY 48 (Illith Rosenblum and Maria Maggenti, and the ACT UP Organization, 1998) (on file with author).
28. Maxine Wolfe & Iris Long, *Women and Clinical Trials*, in THE ACT UP WOMEN'S CAUCUS WOMEN AND AIDS HANDBOOK OR A REASSESSMENT OF REALITY 48 (Illith Rosenblum and Maria Maggenti, and the ACT UP Organization, 1998) (on file with author). ("Women may be excluded, de facto, because no support services are provided. Many women with AIDS are the sole support and caretaker of their children ... As far as we know, there are no drug trials which provide child-care or money to obtain childcare services.")
29. Maxine Wolfe & Iris Long, *Women and Clinical Trials*, in THE ACT UP WOMEN'S CAUCUS WOMEN AND AIDS HANDBOOK OR A REASSESSMENT OF REALITY 51 (Illith Rosenblum and Maria Maggenti, and the ACT UP Organization, 1998) (on file with author).
30. Gina Kolata, *AIDS Research on New Drugs Bypasses Addicts and Women*, N.Y. TIMES (Jan. 5, 1988).
31. FDA, Center for Drug Evaluation and Research, *Guideline for the Format and Content of the Clinical and Statistical Sections of an Application* (July 1988), www.fda.gov/media/71436/download.
32. FDA, Center for Drug Evaluation and Research, *Guideline for the Format and Content of the Clinical and Statistical Sections of an Application* (July 1988), www.fda.gov/media/71436/download.
33. The ACT UP Network Women's Issues Committee at the December ACTG Meetings (Jan. 31, 1992) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 1).

34. The ACT UP Network Women's Issues Committee at the December ACTG Meetings (Jan. 31, 1992) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 1).
35. Maxine Wolfe & Iris Long, *Through the Eye of a Needle: Women's Access to Drug Treatments through Clinical Trials*, in THE ACT UP WOMEN'S CAUCUS WOMEN AND AIDS HANDBOOK OR A REASSESSMENT OF REALITY 48 (Illith Rosenblum and Maria Maggenti, and the ACT UP Organization, 1998) (on file with author).
36. Maxine Wolfe wrote that a "staff person told us it finally happened, 10 years into this epidemic, because '25 AIDS activists sat in his office and he got scared to death.'" The ACT UP Network Women's Issues Committee at the December ACTG Meetings (Jan. 31, 1992) (on file with Lesbian Herstory Archive, Maxine Wolfe Collection, Box 2, Folder 1). See Maxine Wolf, ACT UP Network Women's Issues Committee Meetings with NIAID (National Institutes of Allergy and Infectious Diseases) Epidemiology Branch (Dec. 3 and 6, 1991) (on file with author).
37. See Ruth Merkatz, *Inclusion of Women in Clinical Trials: A Historical Overview of Scientific and Ethical Issues*, 27 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 78 (1998).
38. Barbara Mikulski, for example, inspired numerous congresspeople to take up the cause of clinical trial inclusion and proposed the Women's Health Equity Act of 1990 S.2961 101st Congress (1989–1990).
39. FDA Oral History Program, Final Edited Transcript, Oral History Interview with Ruth B. Merkatz, PhD, RN, FAAN (Oct. 16, 2019), www.fda.gov/media/165295/download?attachment at 14. ("The men with HIV were very well organized, and they had a lot of money. The women with HIV, for the most part, were very poor women who were ... contracting HIV through sharing needles and through sexual transmission. There was one group however, that was organized and headed by a very dynamic woman by the name of Terry McGovern – this was the HIV Law Project – and they started demanding that there be changes made in getting women into clinical trials.")
40. See Ruth Merkatz et al., *Women in Clinical Trials of New Drugs: A Change in Food and Drug Administration Policy*, 329 NEW ENGLAND J. MED. 292, 292–293 (1998); see also M. Pearl et al., *Women in US Government Clinical Trials*, 3866 8TH INT'L CONF. ON AIDS (1992).
41. The FDA and GAO reports frequently interchange sex and gender.
42. Government Accountability Office, *Women's Health: FDA Needs to Ensure More Study of Gender Differences in Prescription Drugs*, GAO HRD 93–17, Oct. 29, 1992.
43. See Stephen W. Nicholas & Elaine J. Abrams, *Boarder Babies with AIDS in Harlem: Lessons in Applied Public Health*, 92 AM. J. PUB. HEALTH 163 (2002); see also Jane Gross, *Babies to Have AIDS Center in Harlem*,

- N.Y. TIMES B1 (May 8, 1987), www.nytimes.com/1987/05/08/nyregion/babies-to-have-aids-center-in-harlem.html.
44. See CAROLE A. CAMPBELL, WOMEN, FAMILIES, AND HIV/AIDS: A SOCIOLOGICAL PERSPECTIVE ON THE EPIDEMIC IN AMERICA 39 (1999).
45. See CAROLE A. CAMPBELL, WOMEN, FAMILIES, AND HIV/AIDS: A SOCIOLOGICAL PERSPECTIVE ON THE EPIDEMIC IN AMERICA 39 (1999).
46. See CAROLE A. CAMPBELL, WOMEN, FAMILIES, AND HIV/AIDS: A SOCIOLOGICAL PERSPECTIVE ON THE EPIDEMIC IN AMERICA 39 (1999).
47. SARAH SCHULMAN, LET THE RECORD SHOW: A POLITICAL HISTORY OF ACT UP NEW YORK, 1987–1993 564–565 (2021).
48. Laurie Garrett, *AZT Treatment for Babies*, NEWSDAY (Oct. 17 [ND]). On the question of race and clinical trials at the FDA, see JONATHAN KAHN, RACE IN A BOTTLE: THE STORY OF BiDiL AND RACIALIZED MEDICINE IN A POST-GENOMIC AGE (2014); Dorothy Roberts, *What's Wrong with Race-Based Medicine?: Genes, Drugs, and Health Disparities*, 12 (1) MINN. J. L., SCI. & TECH. 1–21 (2011); see also STEVEN EPSTEIN, INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH 203–232 (2007). See generally Dorothy Roberts, *What's Wrong with Race-Based Medicine?: Genes, Drugs, and Health Disparities* 12 Minn. J.L. Sci & Tech 1 (2011).
49. See SARAH SCHULMAN, LET THE RECORD SHOW: A POLITICAL HISTORY OF ACT UP NEW YORK, 1987–1993 564–565 (2021).
50. Interview by Sarah Schulman with Tracy Morgan, activist, ACT UP Oral History Project, in New York, NY at 44–45 (May 25, 2007).
51. SARAH SCHULMAN, LET THE RECORD SHOW: A POLITICAL HISTORY OF ACT UP NEW YORK, 1987–1993 564–565 (2021) (Interview with Marion Banzhaf).
52. SARAH SCHULMAN, LET THE RECORD SHOW: A POLITICAL HISTORY OF ACT UP NEW YORK, 1987–1993 564–565 (2021) (Interview with Marion Banzhaf).
53. Interview by Sarah Schulman with Tracy Morgan, activist, ACT UP Oral History Project, in New York, NY at 44–45 (May 25, 2007).
54. SARAH SCHULMAN, LET THE RECORD SHOW: A POLITICAL HISTORY OF ACT UP NEW YORK, 1987–1993 564–565 (2021) (Interview with Tracy Morgan).
55. See STEVEN EPSTEIN, IMPURE SCIENCE: AIDS, ACTIVISM, AND THE POLITICS OF KNOWLEDGE 291 (1996). As noted by Steven Epstein in his writing on the ACTG 076 trial, the contestation brought to the fore questions of what kinds of expertise should matter. In the context of ACTG 076, competing claims to expertise were being made: AIDS activists – members of ACT UP's Treatment and Data Committee – had become sophisticated in the science of AIDS.

56. SARAH SCHULMAN, *LET THE RECORD SHOW: A POLITICAL HISTORY OF ACT UP NEW YORK, 1987–1993* 568 (2021).
57. See generally STEVEN EPSTEIN, *IMPURE SCIENCE: AIDS, ACTIVISM, AND THE POLITICS OF KNOWLEDGE* 291 (1996).
58. Terry McGovern (HIV Law Project), Martha Davis (NOW Legal Defense) and Alma Gomez (American Civil Liberties Union), Citizen's Petition, Dec. 15, 1992 (on file with author).
59. Citing to *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982).
60. See LEWIS GROSSMAN, *CHOOSE YOUR MEDICINE: FREEDOM OF THERAPEUTIC CHOICE IN AMERICA* 19 (2021); see also Lewis Grossman, *AIDS Activists, FDA Regulation, and the Amendment of America's Drug Constitution*, 42 (4) AM. J. L. AND MED. 1 (2016).
61. The choice framing that took hold in feminism would be later critiqued by scholars including Dorothy Roberts, *Reproductive Justice, Not Just Rights*, DISSENT (Fall 2015), www.dissentmagazine.org/article/reproductive-justice-not-just-rights/.
62. FDA Oral History Program, Final Edited Transcript, Oral History Interview with Ruth B. Merkatz, PhD, RN, FAAN (Oct. 16, 2019), www.fda.gov/media/165295/download?attachment. (“I wasn’t angry at them – I empathized with them, but I was angry at the system. For me, it didn’t require that kind of action to make me realize we had to do something because the facts were obvious, but still, it was very dramatic.”)
63. FDA Oral History Program, Final Edited Transcript, Oral History Interview with Ruth B. Merkatz, PhD, RN, FAAN (Oct. 16, 2019), www.fda.gov/media/165295/download?attachment.
64. See Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs, 58 Fed. Reg. 39406 (July 22, 1993).
65. See Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs, 58 Fed. Reg. 39406 (July 22, 1993).
66. See Ruth Merkatz et al., *Women in Clinical Trials of New Drugs: A Change in Food and Drug Administration Policy*, 329 NEW ENGLAND J. MED. 292–293 (1998) (“The most likely causes of differences in pharmacokinetics between women and men and among women are variations in body size and composition and the effects of hormones”); see also Lori Allessie & Colleen M. Gallagher, *Pregnancy and Protection: The Ethics of Limiting a Pregnant Woman’s Participation in Clinical Trials*, 2 J. CLINICAL RSCH. & BIOETHICS 1 (Aug. 2011), www.ncbi.nlm.nih.gov/pmc/articles/PMC3158978/.
67. Ruth Merkatz et al., *Women in Clinical Trials of New Drugs: A Change in Food and Drug Administration Policy*, 329 NEW ENGLAND J. MED. 292, 293 (1998).

68. Ruth Merkatz et al., *Women in Clinical Trials of New Drugs: A Change in Food and Drug Administration Policy*, 329 NEW ENGLAND J. MED. 294 (1998).
69. FDA Oral History Program, Final Edited Transcript, Oral History Interview with Ruth B. Merkatz, PhD, RN, FAAN (Oct. 16, 2019), www.fda.gov/media/165295/download?attachment.
70. FDA Oral History Program, Final Edited Transcript, Oral History Interview with Ruth B. Merkatz, PhD, RN, FAAN (Oct. 16, 2019), www.fda.gov/media/165295/download?attachment.
71. See Memorandum on the FDA's Proposed Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs from Theresa M. McGovern, Martha S. Jones, and Martha Davis, The HIV Law Project et al. 6 (Oct. 18, 1993) (on file with author).
72. Memorandum on the FDA's Proposed Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs from Theresa M. McGovern, Martha S. Jones, and Martha Davis, The HIV Law Project et al. 6–7 (Oct. 18, 1993) (on file with author).
73. Memorandum on the FDA's Proposed Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs from Theresa M. McGovern, Martha S. Jones, and Martha Davis, The HIV Law Project et al. 7 (Oct. 18, 1993) (on file with author).
74. See Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs, 58 Fed. Reg. 39406 (July 22, 1993). (“[E]xcept in the case of trials intended for the study of drug effects during pregnancy, clinical protocols should include measures that will minimize the possibility of fetal exposure to the investigational drug. These would ordinarily include providing for the use of a reliable method of contraception (or abstinence) for the duration of drug exposure (which may exceed the length of the study), use of pregnancy testing (beta HCG) to detect unsuspected pregnancy prior to initiation of study treatment, and timing of studies (easier with studies of short duration) to coincide with, or immediately follow, menstruation.”)
75. See Memorandum on the FDA's Proposed Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs from Theresa M. McGovern, Martha S. Jones, and Martha Davis, The HIV Law Project et al. 2, 16 (Oct. 18, 1993) (on file with author). (“[T]he 1993 Guideline is not an adequate response to the Citizen's petition, as it fails to mandate the inclusion of women in clinical trials; it fails to mandate a by-gender analysis of drug response; it fails to eliminate gender specific protocol criteria and, in fact, encourages the use of such criteria; it fails to mandate the completion of animal reproduction studies prior to human testing; it fails to identify the criteria used in determining fetal toxicity; it fails to mandate an adequate

- analysis of male mediated effects; it fails to require the FDA to halt trials restricting the access of women and it fails, in totality, to change the FDA policy of discriminating against women in the clinical trial process.”)
76. Letter from Ruth B. Merkatz, Director of the Office of Women’s Health, U.S. Food and Drug Admin. & Theresa Toigo, Deputy Director of the Office of AIDS and Special Health Issues, U.S. Food and Drug Admin., to Mary Lucey, ACT UP Women’s Caucus (Oct. 12, 1994) (on file with author).
 77. See Memorandum from Theresa M. McGovern, Nat’l Task Force on AIDS Drug Development to Donna Shalala, Secretary, U.S. Depart. Of Health and Human Services (July 19, 1994) (on file with author) (“The Department of Health and Human Services, the National Institutes of Health (NIH), and the Food and Drug Administration (FDA) all discriminate against women with HIV in the research setting”).
 78. See Ruth Merkatz et al., *Women in Clinical Trials of New Drugs: A Change in Food and Drug Administration Policy*, 329 NEW ENGLAND J. MED. 292, 293 (1998). (“We recognize and are very concerned by the lack of full participation of HIV-infected women in trials of drugs for HIV/AIDS. This underrepresentation cannot be attributed to FDA restrictions because FDA has never recommended gender-based restrictions in life-threatening illnesses.”)
 79. Letter from Linda A. Suydam, Interim Deputy Commissioner for Operations, U.S. Food & Drug Admin. to Theresa M. McGovern, AIDS Service Center HIV Law Project et al., at 17 (Oct. 27, 1994), RE Docket No. 92P-0494 (on file with author).
 80. See Letter from Linda A. Suydam, Interim Deputy Commissioner for Operations, U.S. Food & Drug Admin. to Theresa M. McGovern, AIDS Service Center HIV Law Project et al. (Oct. 27, 1994), RE Docket No. 92P-0494 (on file with author).
 81. See Letter from Linda A. Suydam, Interim Deputy Commissioner for Operations, U.S. Food & Drug Admin. to Theresa M. McGovern, AIDS Service Center HIV Law Project et al. (Oct. 27, 1994), RE Docket No. 92P-0494 at 6 (on file with author).
 82. See Letter from Linda A. Suydam, Interim Deputy Commissioner for Operations, U.S. Food & Drug Admin. to Theresa M. McGovern, AIDS Service Center HIV Law Project et al. (Oct. 27, 1994), RE Docket No. 92P-0494 (on file with author).
 83. See Letter from Linda A. Suydam, Interim Deputy Commissioner for Operations, U.S. Food & Drug Admin. to Theresa M. McGovern, AIDS Service Center HIV Law Project et al. (Oct. 27, 1994), RE Docket No. 92P-0494 at 15 (on file with author).

84. See Letter from Linda A. Suydam, Interim Deputy Commissioner for Operations, U.S. Food & Drug Admin. to Theresa M. McGovern, AIDS Service Center HIV Law Project et al. (Oct. 27, 1994), RE Docket No. 92P-0494 at 9 (on file with author).
85. See Letter from Linda A. Suydam, Interim Deputy Commissioner for Operations, U.S. Food & Drug Admin. to Theresa M. McGovern, AIDS Service Center HIV Law Project et al. (Oct. 27, 1994), RE Docket No. 92P-0494 (on file with author).
86. Report on Meeting with David Kessler, Sept. 9, 1994. The meeting included David Kessler, representatives from ACT UP NY, Los Angeles, Philadelphia, Karyn Pena from Housingworks, Michelle Lopez from the Community Constituency Group, and Virge Parks from San Francisco.
87. Centers for Disease Control, Mortality and Morbidity Weekly, Recommendations of the U.S. Public Health Service Task Force on the Use of Zidovudine to Reduce Perinatal Transmission of Human Immunodeficiency Virus (Aug. 5, 1994).
88. See also STEVEN EPSTEIN, *INCLUSION: THE POLITICS OF DIFFERENCE IN MEDICAL RESEARCH* 85 (2007) (discussing the use of *International Union, United Automobile Workers v. Johnson Controls* in the citizen's petition). For a discussion of clinical research and gender see also Karen H. Rothenberg, *Gender Matters: Implications for Clinical Research and Women's Health Care*, 32 HOUS. L. REV. 1201 (1996).
89. J. R. Steinberg, B. E. Turner, B. T. Weeks et al., *Analysis of Female Enrollment and Participant Sex by Burden of Disease in US Clinical Trials between 2000 and 2020*, 4 (6) J. AM. MED. ASS'N NETWORK OPEN e2113749 (2021).

4 SEX BARGAINS

1. For a discussion on the role of gender in law reform strategies at the World Bank, see Kerry Rittich, *The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT* (David M. Trubek & Alvaro Santos eds., 2006).
2. Richard A. Posner & Tomas J. Philipson, *Optimal Regulation of AIDS* 1 (Coase-Sandor Inst. for L. & Econ., Working Paper No. 6, 1992).
3. Marcia C. Inhorn & K. Lisa Whittle, *Feminism Meets the "New" Epidemiologies: Toward an Appraisal of Antifeminist Biases in Epidemiological Research on Women's Health*, 53 SOC. SCI. & MED. 553–567 (2001).
4. JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* 28 (2008) (describing feminist theories of sex and sexuality).

5. For a description of this moment, see generally ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967–1975* (1989).
6. For a description of this moment, see generally ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967–1975* (1989).
7. The reasons for this success, however, are contested. Two questions dominate this discussion. Was feminism absorbed, changed, and spit out by a broader social and economic system that prioritized individual responsibility and liberal values at the cost of structural solutions? In this telling, feminists were innocent bystanders. Or were feminists active participants in a broader social and economic project that would come to disenfranchise so many?
8. KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (Kindle Location 328). Kindle Edition. (2008).
9. Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *FEMINIST THEORY* 515 (1982). (“Sexual objectification is the primary process of the subjection of women. It unites act with word, construction with expression, perception with enforcement, myth and reality. Man fucks woman. Subject verb object.”) Discussing the role of sexual violence in the feminist movement, see generally KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (Kindle Location 380). Kindle Edition. (2008).
10. KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (Kindle Location 329). Kindle Edition. (2008). Later, MacKinnon would use the war metaphor to describe partner violence “as a form of domestic captivity or sexual terrorism.” Catharine A. MacKinnon, *Women’s September 11th: Rethinking the International Law of Conflict*, 47 *HARV. INT’L L. J.* 1 (2006).
11. National Organization of Women, History of Marches and Mass Actions, www.now.org/history/history-of-marches-and-mass-actions.
12. KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (Kindle Location 305). Kindle Edition. (2008).
13. ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967–1975* (1989).
14. For a discussion on the turn toward criminal law to address social issues, see generally JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2007).

15. Mimi Kim, *Dancing the Carceral Creep: The Anti-Domestic Violence Movement and the Paradoxical Pursuit of Criminalization, 1973–1986* (Inst. for the Study of Societal Issues, Working Paper, Oct. 14, 2015).
16. Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103rd Congress (1993–1994).
17. AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN’S LIBERATION IN MASS INCARCERATION* (2021).
18. Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1880–2000*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* (David Trubek & Alvaro Santos eds., 2006). The women’s rights movement was one of many identity-based struggles that emerged inside of what Duncan Kennedy describes as the Third Globalization in which an “identity/rights complex” that was distinctly “Unitedstatesean” in character began to emerge globally.
19. SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006); *see also* PEGGY ANTROBUS, *THE GLOBAL WOMEN’S MOVEMENT* (2006); U.N. Secretary-General, *Report of the World Conference of the International Women’s Year*, U.N. Doc. E/CONF.66/34 (1976).
20. *See generally* JEAN QUARTAERT, *ADVOCATING DIGNITY: HUMAN RIGHTS MOBILIZATIONS IN GLOBAL POLITICS* (2010).
21. For a history of feminist organizing on sexual violence in international law and the consequences of this activism, *see* JUTTA M. JOACHIM, *AGENDA SETTING, THE UN, AND NGOS: GENDER VIOLENCE AND REPRODUCTIVE RIGHTS* (2007); KAREN ENGLE, *THE GRIP OF SEXUAL VIOLENCE IN CONFLICT* (2020); *see also* Ali Miller, *Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection*, 7 (2) *HEALTH AND HUMAN RIGHTS* 16–47 (2004).
22. JUTTA M. JOACHIM, *AGENDA SETTING, THE UN, AND NGOS: GENDER VIOLENCE AND REPRODUCTIVE RIGHTS* (Kindle Location 96). Kindle Edition. (2007).
23. A key movement at the center of debates on law and health was the burgeoning literature on health and human rights. *See generally* Sofia Gruskin, *What Are Health and Human Rights?*, 363 *LANCET* 329 (2004); JONATHAN MANN et al., 1 *HEALTH AND HUMAN RIGHTS* 6 (1994); Daniel Tarantola & Sofia Gruskin, *The Recognition and Evolution of the HIV and Human Rights Interface: 1981–2017*, in *RESEARCH HANDBOOK ON GLOBAL HEALTH LAW* (Gian Luca Burci & Brigit Toebe eds., 2018).
24. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 3–4 (1993). It was not the first time law and economics

had taken on sex. RICHARD A. POSNER, *SEX AND REASON* (Kindle Location 1304). Kindle Edition. (1992). (“The model of rational sexual behavior emphasizes the varied goals of sex, the costs of sexual search, and the nature of marriage – whether companionate or noncompanionate – as critical determinants of sexual practices and attitudes, along with urbanization and, above all, the occupational and financial situation of women. Sex, in other words, is the product of cost-benefit analysis, albeit as costs and benefits are understood in the context of marriage cultures (i.e., whether people are in love when they marry) and the broader cultural context. Loving one’s spouse, in the case of companionate marriage, for example, could alter the demand for extramarital sex.”) The publication of *Sex and Reason* and *Private Choices and Public Health* produced commentary from legal scholars, particularly feminist and gender scholars. See Martha Albertson Fineman, *The Hermeneutics of Reason: A Commentary on Sex and Reason*, 25 CONN. L. REV. 503 (1992); William Eskridge Jr., *A Social Constructionist Critique of Posner’s Sex and Reason: Steps toward a Gaylegal Agenda*, 102 YALE L. J. 333 (1992). Posner replied to some of these commentators in several articles including this one, Richard Posner, *The Radical Feminist Critique of Sex and Reason*, 25 CONN. L. REV. 515 (1992). There were also feminist reviews of *Private Choices and Public Health*, see, for example Kimberly Christensen, *Economics without Money; Sex without Gender: A Critique of Philipson and Posner’s Private Choices and Public Health: The AIDS Epidemic in an Economic Perspective*, 4 (2) FEMINIST ECONOMICS 1–24 (1998) (drawing on feminist economics to show that the “neoclassical assumptions of their model are erroneous”).

25. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 16 (1993).
26. RICHARD A. POSNER, *SEX AND REASON* (Kindle Location 83). Kindle Edition. (1992).
27. Richard A. Posner & Tomas J. Philipson, *Optimal Regulation of AIDS* 1 (Coase-Sandor Inst. for L. & Econ., Working Paper No. 6, 1992) at 1.
28. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 31 (1993).
29. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* (1993).
30. Posner and Philipson define utility maximization: “[U]tility’ refers to the subjective welfare of the actor and ‘expected’ to the presence of uncertainty, which may make the choice – for example, unsafe sex – that

- was best ex ante (that is, when made) a poor choice ex post (after it is made). Rationality implies nothing more, really, that suiting means to ends, whatever those ends may be.” TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 8 (1993).
31. In turn, the epidemic “although not exclusively, [is] the consequence of voluntary decisions by persons of different HIV infection status to have unshielded sexual intercourse with each other.” TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 31 (1993).
 32. As opposed to what they call voluntary “partner observed” HIV testing. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 94 (1993).
 33. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 89–93 (1993).
 34. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 89 (1993).
 35. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 88–89, 147 (1993) (“All things considered, the prudent conclusion is that testing, whether voluntary or mandatory, is, unless universal or close to it, as likely to increase the spread of AIDS as to curtail it”).
 36. Nan Hunter, *Complications of Gender: Women and HIV Disease*, in *AIDS AGENDA: EMERGING ISSUES IN CIVIL RIGHTS* 7 (NAN HUNTER & WILLIAM B. RUBENSTEIN EDS. 1992).
 37. For a description of the dominance frame in feminism, see Kathy Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 305–376 (1995).
 38. RICHARD POSNER, *SEX AND REASON* (Kindle Location 411). Kindle Edition. (1992).
 39. RICHARD POSNER, *SEX AND REASON* (Kindle Location 418). Kindle Edition. (1992).
 40. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 76–77 (1993). (“We expect the relative preference for safe sex by women compared to men to be greater among blacks than among whites, since black men, constituting the pool from which black women choose the vast majority of their sexual partners, have a higher infection rate than white men. If, however, a woman has few alternatives in the market for sexual relationships, a man may be able to compensate

her at very low cost to himself – perhaps just by being willing to have a relationship with her – for acceding to his request for risky sex. Because black women have poorer options in the dating and marriage markets than white women, we expect black women to be more willing to accept such compensation.”)

41. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 98 (1993).
42. Tomas J. Philipson & Richard A. Posner, *The Microeconomics of the AIDS Epidemic in Africa*, 12 *POPULATION AND DEV. REV.* 836 842–843 (1995). (“We have been discussing the demand for safe sex chiefly among men and must now consider more carefully the demand conditions on the other side of the sexual exchange. In our book we ascribed the very high prevalence of AIDS among black compared to white women in the United States (almost ten times higher) to the poor bargaining position of black women vis-a-vis black men. The ratio of marriageable black men to marriageable black women is abnormally low in the United States, implying that a black woman will often have to offer a net transfer to a black man to induce marriage or any other form of long-term sexual relationship. That net transfer might take the form of forgoing insistence that the man use a condom, a use to which many men are averse. Superficially, the bargaining position of African women might seem more favorable. Polygyny increases the effective demand for women as wives; and as a result of the prevalence of migrant labor, many African cities and towns have a very high ratio of men to women. Nevertheless, because of legal disabilities and pervasive discrimination, the African woman’s bargaining position appears on balance to be very poor. For example, migrant workers are not looking for wives since they often will have left a wife at home, and restrictions on women’s employment may largely confine unmarried women’s job opportunities to prostitution. The prevalence of prostitution may provide an additional explanation for why, even though women are more susceptible to becoming infected with the AIDS virus in heterosexual intercourse than men, and even though male homosexual intercourse and (mostly male) intravenous drug use are not important sources of HIV transmission in Africa, as many African men as African women are HIV-positive. Since prostitutes have a much larger number of sexual partners on average than do promiscuous men, a small number of prostitutes can infect a large number of men even though the disease is more easily transmitted from men to women than vice versa.”)
43. TOMAS J. PHILIPSON & RICHARD A. POSNER, *The Microeconomics of the AIDS Epidemic in Africa*, 12 *POPULATION AND DEV. REV.* 835–848 (1995).
44. TOMAS J. PHILIPSON & RICHARD A. POSNER, *The Microeconomics of the AIDS Epidemic in Africa*, 12 *POPULATION AND DEV. REV.* 843 (1995).

45. Martha Ainsworth & A. Mead Over, *Confronting AIDS: Public Priorities in a Global Epidemic* (World Bank Report No. 17285, Oct. 31, 1997) at 105–106. Emphasis added.
46. TOMAS J. PHILIPSON & RICHARD A. POSNER, *PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE* 6 (1993).
47. For an example of this type of study, see Omar Galárraga et al., *The Disproportionate Burden of HIV and STIs among Male Sex Workers in Mexico City and the Rationale for Economic Incentives to Reduce Risks*, 17 (1) J. INT'L AIDS Soc'y 19218 (2014).
48. Jason Jackson & Aziza Ahmed, *Race, Risk and Personal Responsibility in the Response to COVID-19*, 121 COLUM. L. REV. 57–58 (2021). (“As the sub-fields of information economics and behavioral economics grew in the 1980s and 1990s, so did the idea that an alternative approach to addressing public health crises, like obesity or diabetes, would be to improve the decision-making ability of individuals. Behavioral economics challenged the idea of a purely rational individual, instead arguing that people were rational within certain bounds shaped by social factors including systematic bias or the interplay of psychological forces. Taking behavioral economics seriously meant challenging the notion of a purely rational individual and rethinking the role of regulation in helping people make optimal decisions.”) See also Lindsay F. Wiley et al., *Health Reform Reconstruction*, 55 UC DAVIS L. REV. 657 (2021) (identifying individualism, fiscal fragmentation, privatization, and federalism as fixtures in healthcare reform that have undermined a social-justice-oriented vision of healthcare).
49. Frances E. Olsen, *The Myth of State Intervention in the Family*, in *LAW AND FAMILIES* (Helen Rhoades ed., 2006).
50. Marcia C. Inhorn, *Feminism Meets the “New” Epidemiologies: Toward an Appraisal of Antifeminist Biases in Epidemiological Research on Women’s Health*, 53 SOC. SCI. & MED. 553 (2001); see generally *WOMEN’S HEALTH, POLITICS, AND POWER* (Elizabeth Fee & Nancy Krieger eds., 1994).
51. Jeanette Ickovics & Judith Rodin, *Women and Aids in the United States: Epidemiology, Natural History, and Mediating Mechanisms*, 1 HEALTH PSYCH. 11, 1 (1992).
52. Jeanette Ickovics & Judith Rodin, *Women and Aids in the United States: Epidemiology, Natural History, and Mediating Mechanisms*, 1 HEALTH PSYCH. 11, 1 (1992).
53. Priscilla Ulin, *African Women and Aids: Negotiating Behavioral Change*, 34 SOC. SCI. & MED. 63–73 (1992).
54. Suzanne Maman et al., *The Intersections of HIV and Violence: Directions for Future Research and Interventions*, 50 SOC. SCI. & MED. 459 (2000).

55. See, e.g., Charlotte. Watts et al., *Women, Violence and HIV/AIDS in Zimbabwe*, 5 SAfAIDS NEWS 2 (1997); Suzanne Maman et al., *The Intersections of HIV and Violence: Directions for Future Research and Interventions*, 50 SOC. SCI. & MED. 459 (2000); Kyung-Hee Choi et al., *Sexual Harassment, Sexual Coercion, and HIV Risk among U.S. Adults 18–49 Years*, 2 AIDS AND BEHAVIOR 2, 33–40 (1998).
56. D. Durevall & A. Lindskog, *Intimate Partner Violence and HIV in Ten Sub-Saharan African Countries: What Do the Demographic and Health Surveys Tell Us?*, 3 LANCET GLOBAL HEALTH E34–E43 (2015).
57. The stakes were described in a *Lancet* editorial by Sunita Kishor, then Director of the Demographic Health Surveys Program, a US Agency for International Development-funded population data collection initiative. Kishor described the reaction of gender-based advocates to a published study by Guy Harling and co-researchers that found no significant association between HIV status and experience of intimate partner violence:

When [Guy] Harling and colleagues' article was first published in 2010, the equivalent of a shocked silence fell across the gender-based violence community. The study had found no significant association between women's HIV status and their experience of intimate partner violence in all of the sub-Saharan African and three other countries for which Demographic and Health Survey data were available. The timing of publication of the report could not have been worse. *Despite strong evidence of the negative effects of intimate partner violence on several aspects of women's reproductive health, it was not until intimate partner violence was judged to be a risk factor for HIV that the gender-based violence community had finally gained traction in obtaining international commitment for the elimination of intimate partner violence.* In fact, it was during this period that the community had finally been able to propose to the UNAIDS-led HIV Monitoring and Evaluation Reference Group that intimate partner violence in the past 12 months become the UN General Assembly Special Sessions indicator to monitor the goal of gender inequality reduction. Although the proposed indicator was finally accepted, Harling and colleagues' report had very nearly derailed these efforts.

The Kishor editorial demonstrates the material importance of retaining the link between VAW and HIV as central to feminists in order to gain support of the international community. The necessity of proving an association between gender-based violence (GBV) and HIV not only validated the feminist project, but also legitimated the interests of anti-GBV advocates as a broader human rights and development issue. See Sunita Kishor, *Intimate Partner Violence and HIV: Clearing Up the Confusion*, 3 LANCET E4-E5 (2015).

58. For an example of how women were treated as vectors in the biological literature, see Markus W. Vogt et al., *Isolation of HTLV-III/LAV from Cervical Secretions of Women at Risk for Aids*, 327 LANCET 525 (1986); C. B. Wofsy et al., *Isolation of AIDS-Associated Retrovirus from Genital Secretions of Women with Antibodies to the Virus*, 1 LANCET 527 (1986).
59. As later described by Jennifer Higgins, the idea of women's increased vulnerability grew as it was analogized to other sexually transmitted infections which were known to have different rates of transmission between men and women. Jennifer A. Higgins, Susie Hoffman & Shari L. Dworkin, *Rethinking Gender, Heterosexual Men, and Women's Vulnerability to HIV/AIDS*, 100 AM. J. PUB. HEALTH 435 (2010).
60. See generally ROYAL TROPICAL INSTITUTE, South Africa AIDS Information Dissemination Service, and World Health Organization, *FACING HIV, AIDS, STDs: A GENDER BASED RESPONSE* 10 (1995).
61. U.N. Secretary-General, *Report of the Fourth World Conference on Women*, U.N. Doc. A/CONF.177/20/Rev.1 (1996). Italics added.
62. U.N. Secretary-General, *Declaration of Commitment on HIV/AIDS: Global Crisis – Global Action* (June 25–27, 2001).
63. U.N. Secretary-General, *Declaration of Commitment on HIV/AIDS: Global Crisis – Global Action*, (June 25–27, 2001).
64. G.A. Res. S-26/2 (Aug. 2, 2001).
65. Thomas C. Quinn & Julie Overbaugh, *HIV/AIDS in Women: An Expanding Epidemic*, SCIENCE (2005). doi: [10.1126/science.1112489](https://doi.org/10.1126/science.1112489). Italics added.
66. Writing on how feminist ideas travel between countries and within human rights discourse includes SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006); MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998); Karen Engle, *Feminism and Its (Dis) contents: Criminalizing Wartime Rape in Bosnia Herzegovina*, 99 AM. J. INT'L L. 778–816 (2005); Inderpal Grewal, *Transnational America: Feminism, Diaspora, Neoliberalisms* (2005); see generally Ali Miller, *Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection*, 7 (2) HEALTH AND HUM. RTS. 16–47 (2004).
67. Examples of cost–benefit analysis of HIV include: USAID, *COST-BENEFIT ANALYSIS OF HIV WORKPLACE PROGRAMMES IN ZAMBIA* (2007), http://pdf.usaid.gov/pdf_docs/PNADK430.pdf; Steven D. Pinkerton, David R. Holtgrave, & Frederick R. Bloom, *Cost-Effectiveness of Post-Exposure Prophylaxis Following Sexual Exposure to HIV*, 12 AIDS 1067 (1998); Andrew Creese et al., *Cost-Effectiveness of HIV/AIDS*

- Interventions in Africa: A Systematic Review of the Evidence*, 359 LANCET 1635–1642 (2002).
68. As described by Shari Dworkin, a researcher at the Institute for Development Studies, the dominance feminist AIDS narrative produced a specific idea about women and AIDS: “She is the leading lady in the AIDS epidemic. She was under the surface, hidden, but finally emerged, rushed forward with newfound breath, born into existence with twin shoves: first, feminism; next epidemiological fathomability and visibility. She appeared in 1993 as vulnerable.” Shari Dworkin, *Commentary: Who Is Epidemiologically Fathomable in the HIV/AIDS Epidemic? Gender, Sexuality, and Intersectionality in Public Health*, 6 CULTURE, HEALTH & SEXUALITY 615 (2005).
 69. Elizabeth Fee & Nancy Krieger, *Understanding AIDS: Historical Interpretations and the Limits of Biomedical Individualism*, 83 AM. J. PUB. HEALTH 1477–1486 (1993).
 70. For critical perspectives on feminism, see Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1 (2002). For additional writing on feminism, feminist debates, and the domestic violence movement, see Aya Gruber, *The Feminist War on Crime*, 92 (3) IOWA L. REV. 741 (2006); Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFFALO CRIM. L. REV. 801–860 (2001); Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J. L. GENDER 53 (2017); Deborah Weissman, *VAWA @ 20: The Politics of Pretext: VAWA Goes Global*, 18 CUNY L. REV. 37 (2014); RASHMI GOEL & LEIGH GOODMARK, *COMPARATIVE PERSPECTIVES ON GENDER VIOLENCE: LESSONS FROM EFFORTS WORLDWIDE* (2015); Patricia Erwin, *Exporting U.S. Domestic Violence Reforms: An Analysis of Human Rights Frameworks and U.S. “Best Practices”*, 3 FEMINIST CRIMINOLOGY 188–206 (2006). For a critical perspective on legal reforms in the context of sexual violence in conflict, see KAREN ENGLE, *THE GRIP OF SEXUAL VIOLENCE IN CONFLICT: FEMINIST INTERVENTIONS IN INTERNATIONAL LAW* (2022). For critical perspectives on criminal law in reproductive rights, see DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION AND THE MEANING OF LIBERTY* (1997); MICHELE GOODWIN, *POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD* (2020).
 71. For a discussion on how framing issues as bad actors and aggrieved victims undermines structural responses, see Allegra McLeod, *Exporting U.S. Criminal Justice*, 29 YALE L. & POL’Y REV. 83, 92 (2010). McLeod is drawing on JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2007).

72. HUMAN RIGHTS WATCH, *JUST DIE QUIETLY: DOMESTIC VIOLENCE AND WOMEN'S VULNERABILITY TO HIV IN UGANDA* (2003), www.hrw.org/reports/2003/uganda0803/uganda0803.pdf.
73. For a discussion on the production of identity in the context of AIDS, see Shari Dworkin, *Commentary: Who Is Epidemiologically Fathomable in the HIV/AIDS Epidemic? Gender, Sexuality, and Intersectionality in Public Health*, 7 (6) *CULTURE, HEALTH & SEXUALITY* 7 615–623 (2005).
74. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 1089 Stat. 1796 Section 40503(c) (1994).
75. See, e.g., Nicholas Kristof, *Moonshine or the Kids?*, N.Y. TIMES (May 22, 2010), www.nytimes.com/2010/05/23/opinion/23kristof.html; Nicholas Kristof and Sheryl WuDunn, *The Women's Crusade*, N.Y. TIMES (Aug. 17, 2009), www.nytimes.com/2009/08/23/magazine/23Women-t.html.
76. Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (2000).
77. Mimi Kim, *Dancing the Carceral Creep: The Anti-Domestic Violence Movement and the Paradoxical Pursuit of Criminalization, 1973–1986* (Inst. for the Study of Societal Issues, Working Paper, Oct. 14, 2015). Kimberlé Crenshaw notes the disconnect from the police, see Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241–1299, 1257 (1991); Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (2000). Kimberlé Crenshaw noted that it was necessary to acknowledge tensions within communities of color – including those between anti-racist organizing and advocacy on violence against women – given that anti-racist advocacy produced outcomes that could worsen the situation of women. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241–1299, 1257 (1991).
78. See AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION* (2021).
79. Carole S. Vance, *Pleasure and Danger: Toward a Politics of Sexuality*, in *Pleasure and Danger* (Carole S. Vance ed., 1984).
80. For a description of competing feminist views on sexuality and their origins, see UMMNI KHAN, *VICARIOUS KINKS* (2014); GAYLE S. RUBIN, *DEVIATIONS: A GAYLE RUBIN READER* (2011).
81. See generally Ali Miller, *Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection*, 7 (2) *HEALTH AND HUM. RTS.* 16–47 (2004) (describing how women's vulnerability to violence became an accepted feature of human rights activism while economic justice as a means of addressing violence against women was sidelined).

82. Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990). (“I argue that their work, though powerful and brilliant in many ways, relies on what I call essentialism – the notion that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience. The result of tendency toward gender essentialism, I argue, is not only that some are silenced in order to privilege others (for this is an inevitable of categorization, which is necessary both for human community and political movement), but that the voices that are silenced to be the same voices silenced by the mainstream legal voice of People – among them, the voices of black women.”)
83. Nina Harawa, *Incarceration, African Americans, and HIV: Advancing a Research Agenda*, 100 J. NAT’L MED. ASS’N 57 (2008).
84. CATHY COHEN, *THE BOUNDARIES OF BLACKNESS: AIDS AND THE BREAKDOWN OF BLACK POLITICS* (1999).
85. Paula Braveman & Sofia Gruskin, *Poverty, Equity, Human Rights and Health*, 81 BULLETIN OF THE WORLD HEALTH ORGANIZATION 539–545 (2003).
86. Many of the critiques by feminists levied against the AIDS response came from outside of AIDS organizing. In global advocacy this was exemplified by the women’s group DAWN (Development Alternatives for Women in a New Era). DAWN theorized gender with specific attention to “class, race, and nation.” It sought to fight oppression on a global scale with an emphasis on critiquing dominant economic policies, but with specific attention to location and its impact on poor women. *See, generally*, GITA SEN & CAREN GROWN, *DEVELOPMENT, CRISIS, AND ALTERNATIVE VISIONS* (1985).
87. CELESTE WATKINS-HAYES, *REMAKING A LIFE: HOW WOMEN LIVING WITH HIV CONFRONT INEQUALITY* (2019) (describing the ways in which women living with HIV and AIDS activists created a social safety net against an environment hostile to health).

5 THE SEX WARS COME TO AIDS: RISK AND CONSENT

1. The story of Ashabai is taken from an article by Aziza Ahmed & Meena Seshu, *We Have the Right Not to Be Rescued*, 1 ANTI-TRAFFICKING REV. 149 (2012). Names were changed to protect privacy. Parts of this chapter reproduce and draw on Aziza Ahmed, *Feminism, Power, and Sex Work in the Context of HIV/AIDS*, 34 Harvard Journal of Law and Gender 225 (2011); Aziza Ahmed & Meena Seshu, *We Have the Right Not to Be Rescued*, 1 ANTI-TRAFFICKING REV. 149 (2012); Aziza Ahmed, *Trafficked? AIDS, Criminal Law and the Politics of Measurement*, 70 U. Mia. L. Rev. 96 (2015); Aziza Ahmed, *Addressing HIV/AIDS at the*

- Intersection of Anti-Trafficking and Health Law and Policy*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR, AND MODERN DAY SLAVERY (Prabha Kotiswaran ed., 2017); Aziza Ahmed, *Transnational Legal Orders and Global Health*, in THE HANDBOOK OF TRANSNATIONAL LAW (Peer Zumbansen ed., 2021).
2. Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1664 (2010).
 3. Michael L. Rekart, *Sex-Work Harm Reduction*, 366 LANCET 2123, 2123 (2005).
 4. For a description of feminist positions on criminal law, sex work, and trafficking, see Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER 335, 338 (2006).
 5. Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER 335, 338 (2006). (Abolitionist feminists do not support the prosecution of sex workers.)
 6. The driving rationales behind the Acts shifted over time and are difficult to isolate. As argued by Judith Walkowitz, the Acts may have been driven by concerns over sexuality in the Victorian period as well as venereal disease. JUDITH WALKOWITZ, *PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE* 70 (1980).
 7. The Acts applied to “military stations, garrison and seaport towns.” Margaret Hamilton, *Opposition to the Contagious Diseases Acts, 1864–1888*, 10 (1) ALBION: A QUARTERLY JOURNAL CONCERNED WITH BRITISH STUDIES 14–27, 14 (1978); The Contagious Diseases Prevention Act 1864, 27 & 28 Vict. c. 84 & 85, §§ 12–14 (U.K.). The Contagious Diseases Acts, 1866/1869 Sections 15–16 (where the 1866 Act states: “Where an information on oath is laid before a justice by a superintendent of police, charging to the effect that the informant has good cause to believe that a woman therein named is a common prostitute ... The justice present, on oath being made before him substantiating the matter of the information to his satisfaction, may, if he thinks fit, order that the woman be subject to periodical medical examinations ... for the purpose of ascertaining at the time of each such examination whether she is affected with a contagious disease”).
 8. Margaret Hamilton, *Opposition to the Contagious Diseases Acts, 1864–1888*, 10 ALBION: A QUARTERLY JOURNAL CONCERNED WITH BRITISH STUDIES 14–27, 14 (1978).
 9. As argued by Walkowitz, statistics produced about venereal disease amongst soldiers played a large role in justifying the CDAs. JUDITH

- WALKOWITZ, PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE 75 (1980).
10. Margaret Hamilton, *Opposition to the Contagious Diseases Acts, 1864–1886*, 10 ALBION: A Q. J. CONCERNED WITH BRIT. STUD. 14, 16 (1978); see ASHWINI TAMBE, CODES OF MISCONDUCT: REGULATING PROSTITUTION IN LATE COLONIAL BOMBAY 52 (2009).
 11. Margaret Hamilton, *Opposition to the Contagious Diseases Acts, 1864–1886*, 10 ALBION: Q. J. CONCERNED WITH BRIT. STUD. 14, 16 (1978); see ASHWINI TAMBE, CODES OF MISCONDUCT: REGULATING PROSTITUTION IN LATE COLONIAL BOMBAY 52 (2009).
 12. JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI 13 (2014).
 13. Jeremy Waldron, *Mill on Liberty and on the Contagious Diseases Acts*, J. S. MILL'S POLITICAL THOUGHT 14 (Nadia Urbinati & Alex Zakaras eds., 2007) (quoting Josephine Butler).
 14. JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI 14 (2014).
 15. JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI (2014) (explaining that although there was common ground between the Christian Purity movement and Butler's LNA, the religious actors were motivated by the desire to protect female innocence rather than to enact a feminist politics); see also JUDITH WALKOWITZ, PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE 34 (1980).
 16. JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI 16 (2014) (exploring how Mill's opposition to the CDAs mandates a closer examination of Mill's harm principle).
 17. ASHWINI TAMBE, CODES OF MISCONDUCT: REGULATING PROSTITUTION IN LATE COLONIAL BOMBAY 31 (2009).
 18. ALLAN BRANDT, NO MAGIC BULLET: A SOCIAL HISTORY OF VENEREAL DISEASE IN THE UNITED STATES SINCE 1880 35 (1985).
 19. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration*, 105 COLUM. L. REV. 641, 661 (2005); Pub. L. No. 43–141, 18 Stat. 477 (1875).
 20. ASHWINI TAMBE, CODES OF MISCONDUCT: REGULATING PROSTITUTION IN LATE COLONIAL BOMBAY 52 (2009). (“In Europe and North America, the turn of the twentieth century was marked by a moral panic about white women being transported to brothels in colonies. This panic was expressed first through the idiom of ‘white slavery’ and then through laws against ‘trafficking.’ The antitrafficking measures in Europe and North America such as the 1910 Mann Act gained emotive weight from the image of violated white women.”) Tambe further notes that much of the anxiety around white slavery rooted in sex work

- in the colonies, including the migration of women to India to earn money from British settlers and military stationed in the country. See ASHWINI TAMBE, *CODES OF MISCONDUCT: REGULATING PROSTITUTION IN LATE COLONIAL BOMBAY* 53 (2009). *see also* JESSICA R. PLILEY, *POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI* 15 (2014).
21. See JESSICA R. PLILEY, *POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI* 2 (2014); ASHWINI TAMBE, *CODES OF MISCONDUCT: REGULATING PROSTITUTION IN LATE COLONIAL BOMBAY* 52 (2009).
 22. 18 U.S. Code § 2421 Mann Act. For a critical history of the Mann Act see JESSICA R. PLILEY, *POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI* 13 (2014).
 23. International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 98 U.N.T.S. 101, *amended by* the Protocol signed at Lake Success, New York, May 4, 1949 [hereinafter Convention for Suppression of White Slave Traffic].
 24. International Convention for the Suppression of Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415, *amended by* a Protocol approved by the General Assembly on Oct. 20, 1947, 53 U.N.T.S. 13 [hereinafter Traffic in Women and Children Convention]. The conventions increasingly emphasized the welfare of the victims, controlling crime, and immorality.
 25. ALLAN BRANDT, *NO MAGIC BULLET: A SOCIAL HISTORY OF VENEREAL DISEASE IN THE UNITED STATES SINCE 1880* 37 (1987); *see also* Alex Smolak, *White Slavery, Whorehouse Riots, Venereal Disease, and Saving Women: Historical Context of Prostitution Interventions and Harm Reduction in New York City during the Progressive Era*, 28 (5) *SOCIAL WORK IN PUBLIC HEALTH* 496–508 (2013).
 26. ALLAN BRANDT, *NO MAGIC BULLET: A SOCIAL HISTORY OF VENEREAL DISEASE IN THE UNITED STATES SINCE 1880* 74–75 (1987).
 27. For a sampling of books on the ideas, disagreements, and politics of feminist organizing, see ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967–1975* (2019); JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2006); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* (2002); WENDY KLINE, *BODIES OF KNOWLEDGE: SEXUALITY, REPRODUCTION AND WOMEN'S HEALTH IN THE SECOND WAVE* (2010); SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* (2011).
 28. For a history of debates on agency and coercion in feminist legal theory, see generally Kathy Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 *COLUM. L. REV.* 326–330 (1995); *see also* Carole

- S. Vance, *Pleasure and Danger: Toward a Politics of Sexuality*, in *PLEASURE AND DANGER* (Carole S. Vance ed., 1984); UMMNI KHAN, *VICARIOUS KINKS: S/M IN THE SOCIO-LEGAL IMAGINARY* (2014).
29. Some, like Andrea Dworkin, felt that prostitution could only be abusive. Andrea Dworkin, *Prostitution and Male Supremacy*, 1 MICH. J. GENDER AND L. 1, 3 (1993) (“I am talking to you about prostitution per se, without more violence, without extra violence, without a woman being hit, without a woman being pushed. Prostitution in and of itself is an abuse of a woman’s body”). Catharine MacKinnon, a leading feminist legal theorist, wrote in this period that “investigations reveal ... pornography, and prostitution as not primarily abuses of physical force, violence, authority, or economics ... they are abuses of women; they are abuses of sex.” CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 113 (1989). In her book *Female Sexual Slavery* Kathleen Barry writes of women in prostitution: “These women and girls are victims of female sexual slavery. Some have escaped; others have not. When it is organized, female sexual slavery is a highly profitable business that merchandises women’s bodies to brothels and harems around the world.” KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* 41 (1984).
 30. UMMNI KHAN, *VICARIOUS KINKS: S/M IN THE SOCIO-LEGAL IMAGINARY* (2014).
 31. In *The New York Times*, Kathleen Barry declared: “[Prostitution is] like Black slavery in the nineteenth century, you have to begin to imagine that it would not exist ... and eventually you get rid of it.” Judy Klemserud, *A Personal Crusade against Prostitution*, N.Y. TIMES (June 24, 1985), [bit.ly/3Ym9YQe](https://www.nytimes.com/1985/06/24/garden/a-personal-crusade-against-prostitution.html).
 32. Charlotte Bunch on Behalf of herself, Kathleen Barry, and Shirley Castley to Priscilla Alexander (Nov. 2, 1982) (Harvard Schlesinger Archive, COYOTE Archives, Series XIV, Forder 765).
 33. Letter from Charlotte Bunch on behalf of herself, Kathleen Barry, and Shirley Castley to Priscilla Alexander (Nov 2, 1982) (Harvard Schlesinger Archive, COYOTE Archives, Margo St. James Files, Series XIV, Folder 765). The dates and references in the letters suggest that some are missing from the archive, though the conversation is continuous.
 34. Carole S. Vance, *Pleasure and Danger: Toward a Politics of Sexuality*, in *PLEASURE AND DANGER* (Carole S. Vance ed., 1984); Heather Love, *Diary of a Conference on Sexuality*, 1982, 17 GLQ: J. GAY AND LESBIAN STUD. 49–51 (2011).
 35. Letter from Charlotte Bunch on behalf of herself, Kathleen Barry, and Shirley Castle to Margo St. (1982) (Harvard Schlesinger Archive, COYOTE Archives, Margo St. James Files, Series XIV, Folder 765). The dates and references in the letters suggest that some are missing, though the conversation is continuous.

36. Kathy Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 326–330 (1995); see also Carole S. Vance, *Pleasure and Danger: Toward a Politics of Sexuality*, in *PLEASURE AND DANGER* (Carole S. Vance ed., 1984) (Vance challenges dominance feminist thinking on sex and sexuality in *Pleasure and Danger*). UMMNI KHAN, *VICARIOUS KINKS: S/M IN THE SOCIO-LEGAL IMAGINARY* (2014).
37. Presentation by Gail Pheterson and Margo St. James, *Sex Workers Make History: 1985 & 1986 – The World Whores' Congress*, www.walnet.org/csis/groups/icrse/brussels-2005/SWRights-History.pdf.
38. Presentation by Gail Pheterson and Margo St. James, *Sex Workers Make History: 1985 & 1986 – The World Whores' Congress*, www.walnet.org/csis/groups/icrse/brussels-2005/SWRights-History.pdf.
39. Presentation by Margo St. James and Gail Pheterson, *Sex Workers Make History: 1985 & 1986 – The World Whores' Congress*, www.walnet.org/csis/groups/icrse/brussels-2005/SWRights-History.pdf (describing how Priscilla Alexander attended the conference in Rotterdam).
40. Kathleen Barry, Charlotte Bunch, and Shirley Castley, *International Feminism: Networking against Female Sexual Slavery: Report of the Global Feminist Workshop to Organize against Traffic in Women*, Rotterdam, the Netherlands, Apr.6–15, 1983 at 29.
41. International Committee for Prostitutes' Rights, *World Charter for Prostitutes' Rights: International Committee for Prostitutes' Rights February 1985*, Amsterdam, 37 SOCIAL TEXT 183–185 (1993).
42. Presentation by Margo St. James and Gail Pheterson, *Sex Workers Make History: 1985 & 1986 – The World Whores' Congress*, available at www.walnet.org/csis/groups/icrse/brussels-2005/SWRights-History.pdf.
43. International Committee for Prostitutes' Rights, *World Charter for Prostitutes' Rights: International Committee for Prostitutes' Rights February 1985*, Amsterdam, 37 SOCIAL TEXT 183–185 (1993).
44. See, for example, William Rubenstein, *Law and Empowerment: The Idea of Order in the Time of AIDS*, 98 YALE LJ, 982 (1988) (exploring the legal dimensions of HIV/AIDS).
45. CRIMINAL LAW, PHILOSOPHY AND PUBLIC HEALTH PRACTICE (Adrian M. Viens, John Coggon, & Anthony S. Kessel eds., 2013).
46. J. Stan Lehman et al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, 18 AIDS & BEHAVIOR 997, 998, 1002 (2014).
47. Larry Rohter, *Haitians with H.I.V. Leave Cuba Base for Lives in U.S.*, N.Y. TIMES (June 15, 1993), www.nytimes.com/1993/06/15/us/haitians-with-hiv-leave-cuba-base-for-lives-in-us.html.
48. See, e.g., David Robinson, Jr., *AIDS and the Criminal Law: Traditional Approaches and a New Statutory Proposal*, 14 HOFSTRA L. REV. 91, 99 (1985–1986). (“Prostitution may be a more efficient mode of transferring

the AIDS virus than most noncommercialized sexual encounters; prostitutes are often intravenous drug abusers, and multiple partners of prostitutes present greater opportunities for spreading the prostitutes' infections. Moreover, previously-deposited semen may itself be contacted by subsequent male patrons in the course of a prostitute's work. Thus, deterrence of some behavior which risks spreading AIDS could be attempted through vigorous enforcement of laws against prostitution and patronizing prostitutes.")

49. See Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 614–615 (2000) (explaining that the use of the verb “framing” “denotes an active, processual phenomenon that implies agency and contention at the level of reality construction.” In turn collective action frames are partly constructed to “negotiate a shared understanding of some problematic condition or situation ... in need of change”).
50. MELISSA HOPE DITMORE, WHEN SEX WORK AND DRUG USE OVERLAP: CONSIDERATIONS FOR ADVOCACY AND PRACTICE 9 (2013).
51. G. Alan Marlatt, *Harm Reduction: Come as You Are*, 21 (6) ADDICTIVE BEHAVIORS 779 (1996).
52. G. Alan Marlatt, *Harm Reduction: Come as You Are*, 21 (6) ADDICTIVE BEHAVIORS 779, 782 (1996); Laura Flanders, Dr. Jocelyn Elders: Marijuana, Masturbation and Medicine, NATION: HEALTHCARE POLICY (Oct. 20, 2010), www.thenation.com/blog/155500/dr-joycelyn-elders-marijuana-masturbation-and-medicine#.
53. Philip J. Hiltz, Jonathan Mann, AIDS Pioneer, Is Dead at 51, N.Y. TIMES (Sept. 4, 1998), www.nytimes.com/1998/09/04/us/jonathan-mann-aids-pioneer-is-dead-at-51.html.
54. Jonathan M. Mann & Kathleen Kay, *Confronting the Pandemic: The World Health Organization's Global Programme on AIDS, 1986–1989*, 5 AIDS S221, S226 (1991).
55. Gail Pheterson, *Not Repeating History*, in A VINDICATION OF THE RIGHTS OF WHORES 3, 4–5 (Gail Pheterson ed., 1989).
56. Michael L. Rekart, *Sex-Work Harm Reduction*, 366 LANCET 2123, 2123 (2005).
57. See MELISSA HOPE DITMORE, WHEN SEX WORK AND DRUG USE OVERLAP: CONSIDERATIONS FOR ADVOCACY AND PRACTICE 9 (2013).
58. See generally MELISSA HOPE DITMORE, WHEN SEX WORK AND DRUG USE OVERLAP: CONSIDERATIONS FOR ADVOCACY AND PRACTICE (2013) (applying harm-reduction principles to address the harms of sex work).
59. Michael L. Rekart, *Sex-Work Harm Reduction*, 366 LANCET 2124–2125 (2005).
60. See Melissa Ditmore, *Sex Work, Trafficking and HIV: How Development Is Compromising Sex Workers' Human Rights*, in DEVELOPMENT WITH A BODY:

SEXUALITY, HUMAN RIGHTS & DEVELOPMENT (Andrea Cornwall, Sonia Corrêa & Susan Jolly eds., 2008). This support resulted in a deep alliance between sex positive feminists and sex workers, providing a movement based on theory and lived experience.

61. See, e.g., Network for Sex Worker Projects, www.nswp.org.
62. *Making Sex Work Safe*, NSWP, www.nswp.org/page/making-sex-work-safe.
63. *Making Sex Work Safe*, NSWP, www.nswp.org/page/making-sex-work-safe.
64. KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* 99 (1995). (“At the time, Butler was not only the first woman but also the most radical, in a feminist sense, to challenge prostitution The weakness of Butler’s campaign lay not in her outrage nor in her organizing skills but in her strategy. Instead of campaigning against prostitution as customer abuse of women, Butler confined her campaigns to action against third-party coercion by pimps and state regulation. In opposing state regulation, she refrained from action in relation to ‘freely chosen’ prostitution at a time when its industrialization made the women and the sex an ordinary commodity. Instead, by accepting the emerging concept of ‘forced prostitution,’ which referred to the young girls and women found on the street and forced to undergo medical exams only to be registered as prostitutes, Josephine Butler in her campaigns also had to implicitly accept that there was a prostitution that was not ‘forced.’ At that time, most of society considered prostitution to be harmful. Therefore, Butler’s position likely seemed to be making inconsequential distinctions between free and forced prostitution in the 1860s, a century before Western society became so thoroughly sexualized through pornography and the media.”)
65. KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* (Kindle Location 1595). Kindle edition. (1995).
66. KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* (Kindle Location 1602). Kindle edition. (1995).
67. KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* (Kindle Location 153). Kindle edition. (1995).
68. Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1664 (2010).
69. KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* (Kindle Location 236). Kindle edition. (1995).
70. For writing on carceral feminism, see Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 (1) SIGNS:

- J. WOMEN IN CULTURE AND SOC'Y 45–71 (2010) (coining the term); see generally AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION* (2020).
71. Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 750 (2007).
 72. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (2000).
 73. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1470 (2000) Sec. 103(9).
 74. The general definition of sex trafficking includes all commercial sex work. In order to qualify for services, however, you must be a victim of a severe form of sex trafficking defined to include force, fraud, or coercion. Victims of Trafficking and Violence Protection Act of 2000 §103(8)(A) & (B). (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1470 (2000) Sec. 103(8)–(9).
 75. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1481 (2000) Sec. 108(2).
 76. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Dec. 23, 2003, 2237 U.N.T.S. 319, 343–45, 349. (“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”)
 77. For a description of the negotiations, see generally Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. AND GENDER 335 (2006); JO DOEZEMA, *Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation*, 14 (1) SOC. & LEGAL STUD. 61–89 (2005); ANNE GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN*

- TRAFFICKING (2010); Marjan Wijers, *How We Got Here: The Story of the Palermo Protocol on Trafficking*, OPEN DEMOCRACY (Feb. 11, 2021), www.opendemocracy.net/en/beyond-trafficking-and-slavery/how-we-got-here-story-palermo-protocol-trafficking/. For an analysis of the language of the protocol and its interpretation, see Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76 (2012); GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, HUMAN RIGHTS STANDARDS FOR THE TREATMENT OF TRAFFICKED PERSONS (1999).
78. Jo Doezeema, *Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation*, 14 (1) SOC. & LEGAL STUD. 61, 80 (2005).
 79. Kathleen Barry here discusses her evolution: “[T]he abolitionist position does not concern itself with prostitution as long as women are not forced. In 1979, in *Female Sexual Slavery*, I took an abolitionist position regarding individual women in prostitution, recommending policy that would recognize that as long [as] a woman can freely leave prostitution at any time she chooses, neither individuals nor the state should interfere with her personally. In 1983, I argued that it is possible to ‘accept the abolitionist position for individuals but feminism requires that in exposing patriarchal power we must separate the individual from the institution which controls her, and that we examine the institution of prostitution as a product of male domination, of sexual violence and enslavement.’ However, individuals cannot be separated from the institutions. More importantly, this position perpetuates the false distinction between ‘free’ and ‘forced’ prostitution, which assumes that prostitution itself is not damaging to women and therefore is not a form of sexual exploitation. By the mid 1980s, I had reformulated my position on prostitution law, having recognized that decriminalization is necessary and appropriate only for prostitute women, not customers.” KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 238 (1995).
 80. United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Leadership Act), P.L. 108–25 (2003).
 81. Penelope Saunders, *Prohibiting Sex Work Projects, Restricting Women's Rights: The International Impact of the 2003 U.S. Global AIDS Act*, 7 HEALTH & HUM. RTS. 179, 182 (2004).
 82. Penelope Saunders, *Prohibiting Sex Work Projects, Restricting Women's Rights: The International Impact of the 2003 U.S. Global AIDS Act*, 7 HEALTH & HUM. RTS. 179, 182 (2004).
 83. Penelope Saunders, *Prohibiting Sex Work Projects, Restricting Women's Rights: The International Impact of the 2003 U.S. Global AIDS Act*, 7 HEALTH & HUM. RTS. 179, 182 (2004).
 84. Jonathan Cohen & Tony Tate, *The Less They Know the Better: Abstinence-Only HIV/AIDS Programs in Uganda*, 14 REPROD. HEALTH MATTERS 174, 174–178 (2006).

85. John W. Dietrich, *The Politics of PEPFAR: The President's Emergency Plan for AIDS Relief*, 21 *ETHICS & INT'L AFF.* 277, 289 (2007). Advocates and AIDS activists advocated to reverse these amendments. They succeeded in removing the application of the global gag rule, but the remainder of the restrictions were applied to AIDS funding.
86. Penelope Saunders, *Prohibiting Sex Work Projects, Restricting Women's Rights: The International Impact of the 2003 U.S. Global AIDS Act*, 7 *HEALTH & HUM. RTS.* 179, 186 (2004).
87. Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 *U. PA. L. REV.* 1655, 1664 (2010).
88. United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Leadership Act), P.L. 108–25 (2003). (“The sex industry, the trafficking of individuals into such industry, and sexual violence are additional causes of and factors in the spread of the HIV/AIDS epidemic. One in nine South Africans is living with AIDS, and sexual assault is rampant, at a victimization rate of one in three women. Meanwhile in Cambodia, as many as 40 percent of prostitutes are infected with HIV and the country has the highest rate of increase of HIV infection in all of Southeast Asia. Victims of coercive sexual encounters do not get to make choices about their sexual activities.”) The Act exempted the Global Fund to Fight AIDS, Tuberculosis and Malaria; the WHO, International AIDS Vaccine Initiative; and any “United Nations agency” from its requirements.
89. Michael L. Rekart, *Sex-Work Harm Reduction*, 366 *LANCET* 2123, 2123 (2005).
90. See World Health Organization et al., *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach*, 16 (Dec. 2012), <https://tinyurl.com/3vwhn57k>.
91. See World Health Organization et al., *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach*, 16 (Dec. 2012), https://iris.who.int/bitstream/handle/10665/77745/9789241504744_eng.pdf?sequence=1.
92. Letter from the Christian Dental and Med. Ass'n to Former President George W. Bush (Aug. 4, 2005) (on file with author).
93. See Noy Thrupkaew, *Beyond Rescue: The Campaign against Forced Prostitution Works When It Addresses Victims' Needs*, *NATION* (Oct. 8, 2009), www.thenation.com/article/archive/beyond-rescue/; see, e.g., Priya Shetty, *Profile: Meena Saraswathi Seshu: Tackling HIV for India's Sex Workers*, 376 *LANCET* 17, 17 (2010); see also Joanna Busza, *Having the Rug Pulled from under Your Feet: One Project's Experience of the US Policy Reversal on Sex Work*, 21 *HEALTH POL'Y PLAN* 329, 329 (2006).

94. USAID Reply Brief, Case 1:05-cv-01604-EGS.
95. Parts of this analysis are pulled from Aziza Ahmed, *Transnational Legal Orders and Global Health*, in *THE HANDBOOK OF TRANSNATIONAL LAW* (Peer Zumbansen ed., 2021).
96. Brief for AIDS Action et al. as Amici Curiae, *DKT v. USAID*, 477 F.3d 758 (D.C. 2007) (No. 05-01604).
97. Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1664 (2010).
98. *Trafficking of Women and Children in E. Asia and Beyond: A Review of U.S. Pol’y: Hearing before the S. Subcomm. on East Asian and Pacific Affairs of the S. Comm. on Foreign Relations*, 108th Cong. 1 (2003) (statement of Donna Hughes, Professor and Carlson Endowed Chair in Women’s Studies, Univ. of Rhode Island).
99. *Trafficking of Women and Children in E. Asia and Beyond: A Review of U.S. Pol’y: Hearing before the S. Subcomm. on East Asian and Pacific Affairs of the S. Comm. on Foreign Relations*, 108th Cong. 1 (2003) (statement of Donna Hughes, Professor and Carlson Endowed Chair in Women’s Studies, Univ. of Rhode Island) at 2–3 (“In the House, Representative Chris Smith has been successful in adding an amendment to the Global HIV/AIDS bill (H.S. 1298) that will prevent funds from this Act being used to provide assistance to any group that does not have a policy explicitly opposing prostitution and sex trafficking”).
100. Government’s Reply Brief in Support of Motion to Dismiss, *DKT v. USAID*, 477 F.3d 758 (D.C. 2005) (No. 05-01604).
101. Brief for Coal. Against Trafficking in Women et al. as Amici Curiae Supporting Respondents, *AOSI v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006) (No. 05-8209).
102. Brief for Coal. Against Trafficking in Women et al. as Amici Curiae Supporting Respondents, *AOSI v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006) (No. 05-8209) at 2 (“The United States has compelling reasons to decide that its funds are better spent on organizations whose approach will in the long run be far more effective”).
103. Brief for Coal. Against Trafficking in Women et al. as Amici Curiae Supporting Respondents, *AOSI v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006) (No. 05-8209) at 5.
104. Brief for Coal. Against Trafficking in Women et al. as Amici Curiae Supporting Respondents, *AOSI v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006) (No. 05-8209) at 3. The brief includes other examples of abolitionist feminist reasoning: “The prostitution and sex trafficking industry, whether legal or illegal, brings physical and mental devastation upon the persons – mostly female, and mostly young – whose bodies are bought and sold for sexual use. Individuals living in prostitution or emerging

from prostitution exhibit symptoms of mental and emotional trauma at levels that are comparable to the mental health injuries sustained by survivors of combat or rape. This harm to mental health, typically accompanied by serious harm to physical health, is readily explained upon examination of conditions in the sex industry. Prostitution within that industry is an experience that is saturated in violence and coercion, both physical and sexual.”

105. Brief for AIDS Action et al. as Amici Curiae Supporting Plaintiff-Appellees, *AOSI v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006) (No. 05-8209).
106. *AOSI v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006).
107. *AOSI v. USAID*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006).
108. United States Agency for International Development, *Acquisition and Assistance Policy Directive*, 72 Fed. Reg. 41,076 (July 26, 2007).
109. Henry Waxman and Barbara Lee, *Comments on RIN-0991-AB60 Organizational Integrity of Entities Implementing Leadership Act Programs and Activities*, Notice of Proposed Rulemaking (Dec. 22, 2009).
110. 74 Fed. Reg. 61096 (November 23, 2009).
111. Letter from the Ctr. for Health and Gender Equity and Hum. Rights Watch to Kathleen Sebelius, Secretary, U.S. Dep’t of Health and Hum. Svcs., *Comments on Office of Global Health Affairs’ Regulation on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities*, Notice of Proposed Rulemaking (Dec. 23, 2009) (on file at www.pledgechallenge.org/documents/commentary/20091223.CHANGE_HRW_Comments.pdf).
112. Letter from 21 Humanitarian, Public Health, and Human Rights Organizations to Kathleen Sebelius, Secretary, U.S. Dep’t of Health and Hum. Svcs., *Comments on Office of Global Health Affairs; Reg. on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities*, Notice of Proposed Rulemaking (Dec. 23, 2009) (on file at www.brennancenter.org/page/-/Justice/AJLawsuits/20091223.Groups_Comments.pdf).
113. Letter from 21 Humanitarian, Public Health, and Human Rights Organizations to Kathleen Sebelius, Secretary, U.S. Dep’t of Health and Hum. Svcs., *Comments on Office of Global Health Affairs; Reg. on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities*, Notice of Proposed Rulemaking (Dec. 23, 2009) (on file at www.brennancenter.org/page/-/Justice/AJLawsuits/20091223.Groups_Comments.pdf).
114. Letter from 170+ Individuals and Grassroots Orgs. to Kathleen Sebelius, Secretary, U.S. Dep’t of Health and Hum. Svcs., *Comments on Office of Global Health Affairs’ Reg. on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities*, Notice of Proposed

- Rulemaking* (Dec. 23, 2009) (on file at www.brennancenter.org/page/-/Justice/CourtCases/20091223.Grassroots_comments.pdf).
115. Organizational Integrity of Entities That Are Implementing Programs and Activities Under the Leadership Act, 75 Fed. Reg. 18, 760 (Apr. 13, 2010) (codified at 45 C.F.R. pt. 89).
 116. “Given the numerous factual situations that may arise, the Department has deliberately adopted a case-by-case approach in this area, recognizing that circumstances in some countries may make it difficult for organizations to satisfy some of the factors demonstrating objective integrity and independence. The Department also plans to work with recipients to address individual questions regarding the separation criteria, and to help remedy violations before taking enforcement action. We believe these steps will ensure recipients have adequate channels for engaging in protected speech while still adhering to the requirement of the Leadership Act that recipient organizations be opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children.” Organizational Integrity of Entities That Are Implementing Programs and Activities Under the Leadership Act, 75 Fed. Reg. 18, 760 (Apr. 13, 2010) (codified at 45 C.F.R. pt. 89).
 117. *See Alliance for 13 Open Soc. Int’l, Inc. v. U.S. Agency for Int’l Dev.*, 651 F.3d 218 (2d Cir. 2011).
 118. Brief for UNAIDS as Amicus Curiae Supporting Petitioners, *Alliance for the Open Society Institute v. United States Agency for International Development*, 133 S. Ct. 2321 (2013).
 119. Brief for UNAIDS as Amicus Curiae Supporting Petitioners, *Alliance for the Open Society Institute v. United States Agency for International Development*, 133 S. Ct. 2321 (2013). The layering of international and national law both on the side of the aid-giving and aid-receiving countries is an example of transnational law. Peer Zumbansen, *Where the Wild Things Are: Journeys to Transnational Legal Order, and Back*, 1 UC IRVINE J. OF INT’L TRANSNAT’L AND COMPAR. L. 161 (2016). In their book, Terence Halliday and Gregory Shaffer define transnational legal order as a “collection of formalized legal norms and associated organizations and actors that authoritatively order the understanding and practice of law across national jurisdictions.” They describe transnational legal orders as having the following three characteristics: “(1) seek to produce order in an issue area that relevant actors construe as a ‘problem’; (2) are legal insofar as they adopt legal form to address the problem, their norms are produced or conveyed in connection with a transnational body or network, and they directly or indirectly engage national legal bodies; and (3) are transnational insofar as they transcend and permeate state boundaries in one way or another.” TERENCE HALLIDAY & GREGORY

- SHAFFER, *TRANSNATIONAL LEGAL ORDERS* (2015). I have developed this further in Aziza Ahmed, *Transnational Legal Orders and Global Health*, in *THE OXFORD HANDBOOK OF TRANSNATIONAL LAW* (Peer Zumbansen ed., 2021).
120. Brief for Coalition Against Trafficking in Women and Others as Amicus Curiae Supporting Petitioners, *Alliance for the Open Society Institute v. United States Agency for International Development*, 133 S. Ct. 2321 (2013).
 121. 45 C.F.R. Part 89 (2014). (“U.S. organizations that are prime recipients or sub recipients of Leadership Act HIV/AIDS funds are not required to have a policy explicitly opposing prostitution and sex trafficking. The Department of Health and Human Services applies the requirement of the Leadership Act that organizations have a policy explicitly opposing prostitution and sex trafficking only to foreign organizations, including foreign affiliates of United States organizations, whether prime recipients or sub-recipients, unless exempted by the Act or implementing regulations.”)
 122. *Sex Work and HIV/AIDS: UNAIDS Technical Update*, UNAIDS 10, 15 (2002), http://data.unaids.org/publications/IRC-pub02/jc705-sexwork-tu_en.pdf.
 123. *Sex Work and HIV/AIDS: UNAIDS Technical Update*, UNAIDS 10, 15 (2002), http://data.unaids.org/publications/IRC-pub02/jc705-sexwork-tu_en.pdf. Emphasis added.
 124. *Sex Work Tool Kit*, WHO, <http://who.arvkit.net/sw/en/contentdetail.jsp?ID=204&d=sw.11>; Context: *Key Principles*, WHO (Nov. 7, 2010), www.who.int/hiv/topics/vct/sw_toolkit/context/en/index4.html; *New Online Tool Kit on HIV/AIDS Prevention for Sex Workers: GTZ, WHO and Sex Work Networks Share Information and Lessons Learned*, WHO (Nov. 11, 2004), www.who.int/mediacentre/news/releases/2004/pr80/en/print.html.
 125. Context: *Key Principles*, WHO (Nov. 7, 2010) www.who.int/hiv/topics/vct/sw_toolkit/context/en/index4.html.
 126. See generally Avni Amin, Cheryl Overs, & Penelope Saunders, *Violence against Women and HIV/AIDS: Critical Intersections – Violence against Sex Workers and HIV Prevention*, WORLD HEALTH ORGANIZATION 3 (2005), <https://shorturl.at/frRR3> (“Criminalization of sex work contributes to an environment in which, violence against sex workers is tolerated, leaving them less likely to be protected from it”).
 127. *International Guidelines on HIV/AIDS and Human Rights*, OFFICE OF U.N. HIGH COMM’R FOR HUM. RTS. & UNAIDS 30 (2006), <https://shorturl.at/HJwfz>.
 128. *International Guidelines on HIV/AIDS and Human Rights*, OFFICE OF U.N. HIGH COMM’R FOR HUM. RTS. & UNAIDS 238 (2006), http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf.

129. See *Rep. of the Global Technical Consultation on HIV and Sex Work*, UNAIDS, U.N. Population fund (“UNFPA”) & Nat’l STD/AIDS Programme of the Ministry of Health of Brazil (2006) (on file with author).
130. See *Rep. of the Global Technical Consultation on HIV and Sex Work*, UNAIDS, U.N. Population fund (“UNFPA”) & Nat’l STD/AIDS Programme of the Ministry of Health of Brazil, at 17–18 (2006) (on file with author).
131. See *Rep. of the Global Technical Consultation on HIV and Sex Work*, UNAIDS, U.N. Population fund (“UNFPA”) & Nat’l STD/AIDS Programme of the Ministry of Health of Brazil (2006) (on file with author).
132. Anna-Louise Crago, *The Curious Sex Worker’s Guide to the UNAIDS Guidance Note on HIV and Sex Work*, <https://swannet.org/the-curious-sex-workers-guide-to-the-unaid-guidance-note-on-hiv-and-sex-work/>.
133. Anna Louise Crago, *The Curious Sex Worker’s Guide to the UNAIDS Guidance Note on HIV and Sex Work*, <https://swannet.org/the-curious-sex-workers-guide-to-the-unaid-guidance-note-on-hiv-and-sex-work/>.
134. See UNAIDS Guidance Note on HIV and Sex Work (2007), www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf.
135. UNAIDS Guidance Note on HIV and Sex Work (2007), www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf.
136. Joint U.N. Programme on HIV/AIDS (UNAIDS), *UNAIDS Guidance Note on HIV and Sex Work*, at 8 (Mar. 2009), <https://shorturl.at/rqHGT>.
137. UNAIDS Guidance Note on HIV and Sex Work, at 5 (2009), www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf.
138. UNAIDS Advisory Group on HIV and Sex Work & Global Working Group on HIV and Sex Work Policy, GLOBAL NETWORK OF SEX WORK PROJECTS, www.nswp.org/unaid-advisory-group.
139. UNAIDS Advisory Group on HIV and Sex Work & Global Working Group on HIV and Sex Work Policy, GLOBAL NETWORK OF SEX WORK PROJECTS, www.nswp.org/unaid-advisory-group.
140. UNAIDS Advisory Group on HIV and Sex Work, PAOLO LONGO RESEARCH INITIATIVE, www.plri.org/story/unaid-advisory-group-hiv-and-sex-work.
141. UNAIDS Guidance Note on HIV and Sex Work (2012), www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf.

142. UNAIDS Guidance Note on HIV and Sex Work, at 6 (2012), www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf.
143. UNAIDS Guidance Note on HIV and Sex Work, at 6 (2012), www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf.
144. UNAIDS Guidance Note on HIV and Sex Work, at 6 (2012), www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf.
145. UNAIDS Guidance Note on HIV and Sex Work, at 15 (2012).
146. *Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. HUM. RIGHTS OFF. OF THE HIGH COMMISSIONER FOR HUM. RIGHTS, www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx.
147. Anand Grover (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/14/20 at 29 (Apr. 27, 2010). (“Historically, sex work has been criminalized in two major ways. First, through the criminalization of the selling of sexual services, with the imposition of penalties upon sex workers themselves. Second, through the criminalization of various practices around sex work: these include, but are not limited to, keeping a brothel; recruiting for or arranging the prostitution of others; living off the proceeds of sex work; solicitation; and facilitating sex work through the provision of information or assistance. Although the former is not directly criminalized in many States worldwide, sex workers are nonetheless treated as criminals where activities around sex work are criminalized, or through the use of other pre-existing laws (not specific to sex work) to harass, intimidate or justify the use of force against sex workers. Examples include the use of vagrancy or public nuisance laws to detain or arrest street sex workers, or the use of laws prohibiting homosexual acts in relation to male and transgender sex workers.”)
148. I served on the Technical Advisory Group to the Commission.
149. United Nations Development Program, *Global Commission on HIV and the Law*, available at <https://hivlawcommission.org/report/>.
150. UNAIDS Programme Coordinating Board, *Report of the Thirty-Fifth Meeting of the Programme Coordinating Board*, UNAIDS/PCB (35)/14.24 rev. 1, at 79 (Dec. 11, 2014), www.unaids.org/sites/default/files/media_asset/20141211_35PCB%20StigmaDiscrimination_rev.pdf.
151. UNAIDS Programme Coordinating Board, *Report of the Thirty-Fifth Meeting of the Programme Coordinating Board*, UNAIDS/PCB (35)/14.24

- rev. 1, at 79 (Dec. 11, 2014), www.unaids.org/sites/default/files/media_asset/20141211_35PCB%20_StigmaDiscrimination_rev.pdf.
152. United Nations Development Program, Global Commission on HIV and the Law, 99, available at <https://hivlawcommission.org/report/>.
 153. World Health Organization, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach*, at 8 (Dec. 2012), bit.ly/3En4yOc.
 154. World Health Organization, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach*, at 8 (Dec. 2012), http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf.
 155. World Health Organization, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach*, at 8 (Dec. 2012), http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf.
 156. World Health Organization, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach*, at 8 (Dec. 2012), http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf.
 157. World Health Organization, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach*, at 8 (Dec. 2012), http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf.
 158. Melissa Ditmore & Penelope Saunders, *Sex Work and Sex Trafficking*, 1 SEXUAL HEALTH EXCHANGE 15 (1998).
 159. See, e.g., J. Gupta et al., *History of Sex Trafficking, Recent Experiences of Violence, and HIV Vulnerability among Female Sex Workers in Coastal Andhra Pradesh, India*, 114 (2) INT'L J. GYNAECOLOGY AND OBSTETRICS 101–105 (2011); Jay Silverman et al., *HIV Prevalence and Predictors of Infection in Sex-Trafficking Nepalese Girls and Women*, 298 (5) J. AM. MED. ASS'N 536–542 (2007).
 160. J. Silverman et al., *HIV Prevalence and Predictors among Rescued Sex-Trafficked Women and Girls in Mumbai, India*, 43 J. ACQUIRED IMMUNE DEFICIENCY SYNDROME 588 (2006); J. Gupta et al., *History of Sex Trafficking, Recent Experiences of Violence, and HIV Vulnerability among Female Sex Workers in Coastal Andhra Pradesh, India*, 114 (2) INT'L J. GYNAECOLOGY AND OBSTETRICS 101–105 (2011).
 161. J. Gupta et al., *History of Sex Trafficking, Recent Experiences of Violence, and HIV Vulnerability among Female Sex Workers in Coastal Andhra Pradesh, India*, 114 (2) INT'L J. GYNAECOLOGY AND OBSTETRICS 101–105 (2011).

162. J. Silverman et al., *HIV Prevalence and Predictors among Rescued Sex-Trafficked Women and Girls in Mumbai, India*, 43 J. ACQUIRED IMMUNE DEFICIENCY SYNDROME 588 (2006).
163. S. Goldenberg et al., *Exploring the Context of Trafficking and Adolescent Sex Industry Involvement in Tijuana, Mexico: Consequences of HIV Risk and Prevention*, 21 (4).
164. J. Silverman et al., *Associations of Sex Trafficking History with Recent Sexual Risk among HIV-Infected FSWs in India*, 18 (3) AIDS AND BEHAV. 555–561 (2014).
165. *HIV and Sex Workers*, LANCET (July 23, 2014), www.thelancet.com/series/hiv-and-sex-workers; Kate Shannon et al., *Global Epidemiology of HIV among Female Sex Workers: Influence of Structural Determinants*, 385 LANCET 55, 63, 65, 66 (2015) (explaining that decriminalizing sex work in Vancouver, India, and Kenya “would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade”).
166. The Lancet, *Sex Workers and HIV – Forgotten and Ostracized*, 380 LANCET 188 (2012).
167. Lucy Platt et al., *Associations between Sex Work Laws and Sex Workers’ Health: A Systematic Review and Meta-analysis of Quantitative and Qualitative Studies*, 15 (12) PLOS MEDICINE (Dec. 11, 2018), [10.1371/journal.pmed.1002680](https://doi.org/10.1371/journal.pmed.1002680).

CONCLUSION: GOVERNING THE UNKNOWN: LEGAL–SCIENTIFIC SETTLEMENTS

1. See generally ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* (1992) (discussing risk, knowledge, and governance).
2. The idea of “political settlements” is discussed in development studies scholarship. In his work on the governance of economic development, for example, Mushtaq Khan writes of political settlements: “A political settlement emerges when the distribution of benefits supported by its institutions is consistent with the distribution of power in society, and the economic and political outcomes of these institutions are sustainable over time.” Mushtaq H. Khan, *Political Settlements and the Governance of Growth-Enhancing Institutions*, https://eprints.soas.ac.uk/9968/1/Political_Settlements_internet.pdf. Khan further elaborates on the concept of political settlements describing that the framework addresses the differences in how “policies and institutions that worked well in some contexts appeared to achieve much poorer results in others” in the first instance and how “different policies and institutions appeared to be effective in solving similar problems in different contexts.” The idea of political settlements “addresses these questions by

- arguing that the way institutions work in practice depends on the responses of the organizations operating under these institutions.” Mushtaq H. Khan, *Introduction: Political Settlements and the Analysis of Institutions*, 120 AFR. AFFS. 509 (2018). The idea of political settlement is resonant with the idea of “institutional settlements” introduced by Henry Hart and Albie Sacks. See HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS* 4 (William N. Eskridge, Jr. & Philip P. Frickey eds., 1994). Hart and Sacks understand an institutional settlement as “express[ing] the judgment that decisions which are the duly arrived at result of duly established procedures of this kind ought to be accepted as binding upon the whole society unless and until they are duly changed.” An institutional settlement, as described by John Manning, “presumes that in order to avoid ‘chaos’ and ‘advance the larger purposes’ of the polity, society ‘establish[es] ... regularized and peaceable methods of decision.”” John Manning, *Without the Pretense of Legislative Intent* 130 HARV. L. REV. 2397, 2413 (2017). Later Manning describes institutional settlements as the “proposition that fights about interpretation theory are really fights about the different actors’ complex institutional roles and relationships.” John Manning, *Without the Pretense of Legislative Intent* 130 HARV. L. REV. 2397 (2017). For additional discussion on institutional settlements, see Richard H. Fallon, *Arguing in Good Faith about the Constitution: Ideology, Methodology, and Reflective Equilibrium*, 84 U. CHI. L. REV. 125, 126–127 (2017); see also Charles L. Barzun, *The Forgotten Foundations of Hart and Sacks*, 99 VA. L. REV. 1 (2013) (discussing the foundations of legal process theory). Legal process theory developed by Hart and Sacks and within which the idea of institutional settlements emerges has been subject to many critiques. See, e.g., Duncan Kennedy, *Utopian Rationalism in American Legal Thought: A Critique of the Hart & Sacks Legal Process Materials* (Harv. Pub. L., Working Paper No. 23–44, 2023).
3. See generally Sheila Jasanoff, *The Idiom of Co-production*, in *STATES OF KNOWLEDGE: THE CO-PRODUCTION OF SCIENCE AND SOCIAL ORDER* (Sheila Jasanoff ed., 2004).
 4. Janet Halley, *Distribution and Decision: Assessing Governance Feminism*, in *GOVERNANCE FEMINISM: AN INTRODUCTION* (Janet Halley et al. eds., 2018) (describing how to do a distributional analysis).
 5. To understand how law and economics contributed to the push toward individual responsibility, see Aziza Ahmed & Jason Jackson, *Race, Risk and Personal Responsibility in the Response to COVID-19*, 121 COLUMBIA L. REV. 57 (2021). For writing on state responsibility during COVID, see Gregg Gonsalves, *Welcome to the You Do You Pandemic*, NATION (Sept. 1, 2023), www.thenation.com/article/society/covid-surge-response-ignored/; Amy Kapczynski & Gregg Gonsalves, *The New Politics of Care*, BOS. REV. (Apr. 27, 2020), www.bostonreview.net/articles/gregg-gon

- salves-amy-kapczynski-new-deal-public-health-we-need/; Elizabeth Fee & Nancy Krieger, *Understanding AIDS: Historical Interpretations and the Limits of Biomedical Individualism*, 83 (10) AM. J. PUB. HEALTH 1477–1486 (1993) (discussing how the biomedical model furthers individualism in the AIDS response).
6. On the shift toward criminal law, see generally JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2007). Discussing the role of the courts in furthering “penal welfare,” see Aya Gruber, Amy J. Cohen, & Kate Mogulescu, *Penal Welfare and the New Human Trafficking Intervention Courts*, 68 FLA. L. REV. 1333 (2016). On the demise of the welfare state and rise of the law and order society, see Stuart Hall, *Drifting into a Law and Order Society: The 1979 Cobden Trust Human Rights Day Lecture [1980]*, in *SELECTED WRITINGS ON RACE AND DIFFERENCE* (Paul Gilroy & Ruth Wilson Gilmore eds., 2021).
 7. For discussion on the impact of feminism inside of institutions, see generally JANET HALLEY ET AL., *GOVERNANCE FEMINISM: AN INTRODUCTION* (2018); JANET HALLEY ET AL., *GOVERNANCE FEMINISM: NOTES FROM THE FIELD* (2019).
 8. See generally Donna Haraway, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, 14 FEMINIST STUD. 581 (1988) (describing feminist engagement in critiques of science and knowledge).
 9. Ian Hacking, *Making Up People*, in *RECONSTRUCTING INDIVIDUALISM: AUTONOMY, INDIVIDUALITY, AND THE SELF IN WESTERN THOUGHT* 165 (Thomas C. Heller, Morton Sosna, & David Willberg eds., 1985); see also GOWRI VIJAYAKUMAR, *AT RISK: INDIAN SEXUAL POLITICS AND THE GLOBAL AIDS CRISIS* (2021) (thinking about the question of sexual identity in the AIDS response and the stakes of being defined as “at risk”).
 10. Stephen Phillips & Michelle Williams, *Confronting Our Next National Health Disaster – Long Haul COVID*, 385 NEW ENGLAND J. MED. (2021); Felicity Callard & Elisa Perego, *How and Why patients Made Long Covid*, 268 SOC. SCI. & MED. 11342 (2021). On the question of race and COVID, see Patricia Williams, *The Endless Looping of Public Health and Scientific Racism*, in *ASSESSING LEGAL RESPONSES TO COVID-19* (Scott Burris et al. eds., 2020).
 11. Alex Rushforth et al., *Long Covid – The Illness Narratives*, 286 SOC. SCI. & MED. 11432 (2021); Kenton Kaplan & Emily Mendenhall, *Framing Long Covid through Patient Activism in the United States: Patient, Provider, Academic, and Policymaker Views*, 350 SOC. SCI. & MED. 116901 (2024); Elisa Perego & Felicity Callard, *Patient-Made Long Covid Changed COVID-19 (and the Production of Science, Too)* (Feb. 9, 2021), <https://osf.io/preprints/socarxiv/n8yp6>.

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13. Donna Lu, *They Can’t Ignore Us Anymore: Five Women on Long COVID and Medical Misogyny*, GUARDIAN (Oct. 18, 2022), www.theguardian.com/society/2022/oct/18/long-covid-women-symptoms-medical-misogyny; Catherine Villanueva Gardner, *Feminist Bioethics Perspectives on “Long-COVID Syndrome”*, 15 (1) IJFAB: INT’L J. FEMINIST APPROACHES TO BIOETHICS 189–191 (2022).
14. Letter from Delta Airlines to Rochelle Walensky, Director, Ctrs. for Disease Control and Prevention (Dec. 21, 2021) (on file with author).
15. Niraj Chokshi & Lauren Hirsch, *Delta Air Lines and a Union Spar over Isolation Periods for Sick Workers*, N.Y. TIMES (Jan. 12, 2022), at B6-L., www.nytimes.com/2022/01/11/business/delta-flight-attendants-union-isolation-covid.html?searchResultPosition=1.
16. Lawrence Gostin, I. Glenn Cohen, & Jeffrey P. Koplan, *Universal Masking in the United States: The Role of Mandates, Health Education, and the CDC*, 324 (9) J. AM. MED. ASS’N 837–838 (2020) (describing the patchwork of masking laws and regulation of masks); Dannagal Young et al., *The Politics of Mask-Wearing: Political Preferences, Reactance, and Conflict Aversion during COVID*, 298 Soc. Sci. & MED. 114836 (2022) (discussing the politics of masking).
17. In 2003, concern about the Bush administration pandering to its base led Representative Henry Waxman to investigate. See Minority Staff of H.R. Comm. on Gov’t Reform, 108th Cong., Rep. on Content of Federally Funded Abstinence-Only Education Programs (2004); Advocate.com Editors, *Bush Administration Slammed for Deleting Info from CDC Condom Fact Sheet*, ADVOCATE (Dec. 20, 2002), www.advocate.com/health/health-news/2002/12/20/bush-administration-slammed-deleting-info-cdc-condom-fact-sheet-7264; Editorials Address Controversy over Bush Administration’s Deletion, Alteration of Condom, Abortion Information on Government Web Sites, KFF HEALTH NEWS (Jan. 7, 2003), <https://kffhealthnews.org/morning-breakout/dr00015363/>; Robert Walgate, *Bush’s AIDS Plan Criticised for Emphasising Abstinence and Forbidding Condoms*, 329 BRIT. MED. J. 192 (2004).