

# SCHOOLS, SAFETY, AND SEMANTICS: PROGRESS AND POSSIBILITIES FOR MENSTRUAL EQUITY

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*It is possible to menstruate for forty-six years without ever considering menstrual politics as a compelling intersectional sphere that embraces gender, race, class, health, and environmental concerns. It is not possible, however, to read Menstruation Matters: Challenging the Law's Silence on Periods and fail to grasp the scope of the policy problems and opportunities that menstruation presents.*

*This Review presents one lawyer-activist-reader's perspective on three distinct themes in the book: menstruation and education, the health and environmental aspects of menstruation, and menstrual politics as a site of intense semantic contestation. This grab sample of Menstruation Matters reflects my own areas of experience and expertise. It also demonstrates the book authors' impressive range as they explore well beyond their core disciplines of tax and constitutional law to present a lucid and comprehensive picture of the diverse issues that periods implicate.*

*I share with the authors a hope that the ever-growing movement for menstrual equity provides proof of concept for an expansive vision of human dignity and flourishing that benefits all of its constituent movements.*

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## INTRODUCTION

In 1885, the Association of Collegiate Alumnae devoted its inaugural

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research report to disproving a then-prevalent view: that higher education impairs a woman's vitality and fertility.<sup>1</sup> More than a century later, two healthy women with college degrees, law degrees, and biological children have written a book to dispel other damaging notions about women's reproductive apparatus. In *Menstruation Matters: Challenging the Law's Silence on Periods*, tax scholar Bridget Crawford and constitutional scholar Emily Gold Waldman explore and debunk menstrual myths that have for millennia harmed—and still harm—billions of women (and some trans men and nonbinary people) around the globe.<sup>2</sup>

One myth is that the natural biological act of menstruation is gross and shameful, justifying societal disgust and social segregation of menstruators. Another is that products meant to address the practical consequences of blood flow are luxuries rather than necessities, such that institutional providers of bathroom essentials may fail to supply them, regulators may tax them, and service agencies may fail to subsidize them. A third myth is that menstrual policies stand apart from the larger politics of gender, when they are in fact its quintessence.

As befits a field-defining book,<sup>3</sup> *Menstruation Matters* is multi-genre and highly textured, toggling among social movement reportage, doctrinal legal analysis, feminist theory, and tactical advice to advocates for “menstrual equity.”<sup>4</sup> It is clear, original, and rich in facts that surprise and inspire. These include the unlikely nation that has emerged as a menstrual policy innovator (Scotland)<sup>5</sup> and Supreme Court Justice Elena Kagan's precedent-setting provision of free tampons as Harvard Law School dean.<sup>6</sup>

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<sup>1</sup> ANNIE G. HOWES, ASS'N COLLEGIATE ALUMNAE, HEALTH STATISTICS OF WOMEN COLLEGE GRADUATES (1885) (on file with author) [hereinafter COLLEGIATE ALUMNAE HEALTH STATISTICS]. The Association was founded in 1882 to advance the interests of America's first generation of college-educated women. In 1921, the organization merged with the Southern Association of College Women to form the American Association of University Women. *Association of Collegiate Alumnae (U.S.)*, SOC. NETWORKS & ARCHIVAL CONTEXT, <https://snaccooperative.org/view/23625106> [<https://perma.cc/5RAL-N88L>].

<sup>2</sup> See generally BRIDGET J. CRAWFORD & EMILY GOLD WALDMAN, *MENSTRUATION MATTERS: CHALLENGING THE LAW'S SILENCE ON PERIODS* (2022) [hereinafter *MENSTRUATION MATTERS*] (discussing how menstrual myths and ignorance impact the law's response to menstruation-related issues).

<sup>3</sup> Although theirs is not the first book on menstruation written from a feminist and critical perspective, see, e.g., THE PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES (Chris Bobel et al. eds., 2020) (providing an overview of menstrual health and politics), Crawford and Waldman are the first to center the role of law in the quest for menstrual equity.

<sup>4</sup> This phrase is used throughout *MENSTRUATION MATTERS*. It was coined by Jennifer Weiss-Wolf, a leader in the U.S. campaign to repeal the tampon tax. *MENSTRUATION MATTERS*, *supra* note 2, at 16. The authors describe menstrual equity as the elimination of “menstruation-related barriers to full participation in all aspects of public life,” *id.* at ix, presenting it as a threshold issue in the larger movement for gender justice and a basic prerequisite for “human flourishing,” *id.* at 205.

<sup>5</sup> See *id.* at 72–73.

<sup>6</sup> See *id.*

Among the angles from which the authors analyze menstrual matters, I here focus on the three discrete topics upon which I feel positionally and/or professionally qualified to comment: *Schools and Menstruation*<sup>7</sup> (drawing on my experiences as a teacher, menstruator, and mother of public-school-educated young women); *Menstruation, Health, and the Environment*<sup>8</sup> (drawing on expertise in chemicals policy and environmental regulation); and—drawing on decades of issue activism—the difficult language choices confronting advocates who pursue legal, political, and attitudinal progress towards menstrual equity.<sup>9</sup>

## I

### SCHOOLS AND MENSTRUATION: A CONSEQUENTIAL CONVERGENCE

In a science lab bathroom in the 1970s, a menstruator trembled in terror confronting her first-ever period. She lacked access to any supplies and found it fatally embarrassing to request them from her male instructor—even though it was commonplace for the lab to discuss its use of *sliced rat testicles* for microphotography. On a volleyball court three months later, the same student experienced severe cramps, making it impossible to complete the required running drills without vomiting. But their source was too private to reveal, even to a female coach. It was easier to simply quit the team.

Crawford & Waldman’s chronicle of shame, discomfort, and period-management mishaps where menstruation meets schooling makes plain that my own past experiences (above) are not unique, but widespread. And that tragically, they persist a half-century later. The demand for free menstrual products in schools has accordingly become central to the menstrual-equity movement.

The biggest challenge for those menstruating at school continues to consist of difficulty accessing menstrual products,<sup>10</sup> whether because menstruators are caught unaware by the start of their period, run out of supplies, or were never able to afford menstrual products in the first place, and even still when they confront restrooms that lack needed products. The consequences are striking: Crawford & Waldman summarize a recent “State of the Period” survey of one thousand menstruating U.S. teenagers, in which eighty-four percent reported that they had “missed class time or known someone who missed class time because of a lack of access to products.”<sup>11</sup>

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<sup>7</sup> *Id.* at ch. 3.

<sup>8</sup> *Id.* at ch. 7.

<sup>9</sup> The semantics of reform are a recurrent theme in *Menstruation Matters* rather than a topical chapter.

<sup>10</sup> See generally MENSTRUATION MATTERS, *supra* note 2, at ch. 3 (focusing on the need for free menstrual products in schools).

<sup>11</sup> *Id.* at 69 (citing STATE OF THE PERIOD: THE WIDESPREAD IMPACT OF PERIOD POVERTY ON U.S. STUDENTS 2 (1st ed. 2019), [https://cdn.shopify.com/s/files/1/0795/1599/files/State-of-the-Period-white-paper\\_Thinx\\_PERIOD.pdf?455788](https://cdn.shopify.com/s/files/1/0795/1599/files/State-of-the-Period-white-paper_Thinx_PERIOD.pdf?455788) [<https://perma.cc/NZ4P-686P>]).

These consequences are also quite regressive: A separate study revealed that students who could not afford menstrual products were nearly six times more likely to miss school or arrive late compared to those who could afford them.<sup>12</sup>

As with their treatment of many menstrual law reform issues, the authors rightly place most stock in legislation. Crawford & Waldman chronicle the role of local ordinances and state laws in progressive localities such as New York City, California, and Illinois in making free menstrual products available in schools. They describe the potential federalizing of such laws through the Menstrual Equity for All Act (introduced in 2019 and reintroduced in 2021), should it ultimately succeed in Congress. Sponsored by New York Representative Grace Meng—who emerges in the authors’ telling as a national menstrual equity superhero—this comprehensive bill would ensure ready access to free menstrual products in nearly all institutional settings and increase affordability of products by allowing individuals to purchase these products using pre-tax dollars.<sup>13</sup> Even as the bill languishes, its components are inspiring important (if piecemeal) change: The CARES Act of 2020, for example, permits holders of health care flexible spending accounts to claim menstrual products as a reimbursable medical expense.<sup>14</sup>

Crawford & Waldman also echo advocates’ point that making menstrual products freely available has “significant expressive value” beyond fulfilling menstrual needs.<sup>15</sup> They note that provision of tampons and pads in restrooms shows menstruators they are seen and cared for. I would add that provision of free products also opens an uncontroversial expressive channel that may prove practically helpful. California’s recently-enacted Menstrual Equity for All Act of 2021 not only requires that in public schools for grades six through twelve with forty percent or more of the student population at or below the poverty line, schools supply at least half of all bathrooms with menstrual products: It also requires that at least one such bathroom per school be a men’s bathroom.<sup>16</sup> Widespread public availability of such products can destigmatize periods in society at large by making their management visible and, by extension, a less awkward subject of conversation. Provision of menstrual products in men’s bathrooms has particular expressive value because it normalizes menstruation for men who would not otherwise routinely reflect on menstrual care. Finally, as a

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<sup>12</sup> *Id.* at 69–70 (citing Christopher A. Cotropia, *Menstruation Management in United States Schools and Implications for Attendance, Academic Performance, and Health*, 6 *WOMEN’S REPROD. HEALTH* 289, 296 (2019)).

<sup>13</sup> See Menstrual Equity For All Act of 2021, H.R. 3614, 117th Cong. (2021).

<sup>14</sup> MENSTRUATION MATTERS, *supra* note 2, at 31 (citing Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 3702, 137 Stat. 281, 416 (2020)).

<sup>15</sup> *Id.* at 59.

<sup>16</sup> CAL. EDUC. CODE § 35292.6(a) (West 2022).

practical matter, provision of products in unisex “men’s” restrooms ensures that any male-identifying students who menstruate can access needed products without traversing a potential political minefield to use a “women’s” restroom.<sup>17</sup>

In considering how far school districts and legislators may be willing to go to subsidize menstrual care absent a legal mandate, the authors’ analysis of associated hard costs yields my only quibble with this otherwise enlightening chapter. Crawford & Waldman present granular examples of school expenditures for product provision (ranging from roughly three dollars to twenty-nine dollars per year per student, depending on the school district)<sup>18</sup> without placing these expenditures in the larger context of school budgets. This comparison would be useful to advocates in presumably revealing menstrual product expenditures to be trivial.

More importantly, however, the authors do not discuss the financial *benefits* of reducing the high levels of menstruation-related absenteeism revealed by data they cite. In states such as my own, public-school funding is tied in significant part to the metric of “average daily attendance.”<sup>19</sup> Small expenses that increase the chance that students will show up to school are accordingly cash-flow positive. Discussing this connection would have served the authors’ cause because budget-based resistance to provision of free products is the most foreseeable obstacle to policy progress in this sphere. Thus, menstrual equity advocates would be wise to supplement the book’s useful data with their own, and prepare a cost-benefit case based on expected reductions in school absenteeism.

With respect to schools as a locus of menstrual progress, Crawford & Waldman are at their most creative in suggesting a role for federal administrative action under Title IX in promoting free menstrual product access. They propose that, at a minimum, the Department of Education should issue guidance “requiring *all* school districts to provide free menstrual products to *all* students.”<sup>20</sup> This would help ensure that students can participate fully in educational activities irrespective of sex and gender identity. Title IX could further be used, the authors suggest, to prohibit schools from requiring students to wear light-colored bottoms as part of a school uniform and to require that schools provide sufficiently frequent and

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<sup>17</sup> See *infra* Part III (discussing the importance of language in advocating for menstrual equity).

<sup>18</sup> MENSTRUATION MATTERS, *supra* note 2, at 65.

<sup>19</sup> California public schools are required by law to track average daily attendance (ADA) and report this to the State Department of Education (DOE) at specified intervals. The Department uses ADA to allocate funding to various school programs. See LEGIS. ANALYST’S OFF., THE 2022–23 BUDGET: UPDATE ON K–12 STUDENT ATTENDANCE 1 (2022).

<sup>20</sup> MENSTRUATION MATTERS, *supra* note 2, at 71. The authors note that although DOE could require this by regulation, “such an action likely would be challenged in court, on grounds that it crosses the line into new federal lawmaking without congressional involvement.” *Id.*

extended bathroom breaks for realistic accommodation of menstruators.<sup>21</sup> Because the Department may not assume this task unprompted, this discussion suggests a useful advocacy channel.

Is it really necessary to legislate or even to federalize the rules governing student bathroom breaks? In the absence of uniformly enlightened leaders, the answer appears to be: *Yes*. In 2020, for example, my law students were horrified to learn that some state bar examiners were banning students' menstrual products from bar exam rooms on the theory that these could somehow facilitate cheating.<sup>22</sup> The absurdity of treating an essential, intimate product as contraband was roundly mocked on Twitter, where one aspiring lawyer showed just how little legal doctrine a tampon can absorb:<sup>23</sup>



The absence of legal protection for toileting needs can even terminate a student's education. Consider this story, still vivid in the memory of a ninety-year-old:

It was 1953. I was one of the first two Black women enrolled at Harvard Law, both in that year. I knew I wanted to be a lawyer; I had announced

<sup>21</sup> *Id.* at 78–79.

<sup>22</sup> This policy fiasco is detailed in MENSTRUATION MATTERS, *id.* at 32, and is also a subject of one of the author's prior works. See Bridget J. Crawford, *Menstruation and the Bar Exam: Unconstitutional Tampon Bans*, 41 COLUM. J. GENDER & L. 63 (2021).

<sup>23</sup> LadyLawyerDiaries (@LadyLawyerDiary), TWITTER, (July 17, 2020, 1:06 PM), <https://twitter.com/ladylawyerdiary/status/1284172658469462020>, reprinted in Paul Caron, *Tampons and the Bar Exam*, TAXPROF BLOG (July 25, 2020), [https://taxprof.typepad.com/taxprof\\_blog/2020/07/tampons-and-the-bar-exam.html](https://taxprof.typepad.com/taxprof_blog/2020/07/tampons-and-the-bar-exam.html) [<https://perma.cc/7Q2T-WG6M>].

that at age 13. I came from a politically active family. My parents were very active in politics—it was dinner table conversation.

Specifically, I wanted to be a labor lawyer. I was very aware of unions, and the good I felt they were doing. Those ideas were reinforced when I was in college, because at Penn State many of the kids were from Pennsylvania coal mining families. I remember when the coal strikes started, school just emptied out. Those guys had to go home; they had no money. They went home from State, and most of them never came back.

When I got to Harvard Law, I encountered much more discrimination on account of gender than race. I remember being bullied on the Harkness Common. A group of men surrounded me and said, “What are you doing here? You don’t have any business being here. You’re just taking up a place from some man who’ll have to support a family one day.”

When it was time for first year finals, I pulled an all-nighter studying. I was so stressed, it must have thrown off my cycle. So during one exam, I felt a gushing that I didn’t expect. I walked up to the proctor to ask to go use the bathroom. By that time I had already bled through my dress. It was so humiliating. But the proctor said I couldn’t leave. Even when I explained, he refused.

I left the classroom—because I had to—and never walked back into Harvard Law. I just couldn’t. Later, I petitioned for readmission, explaining what had happened. My petition was denied.<sup>24</sup>

## II

### MENSTRUATION, HEALTH, AND THE ENVIRONMENT: HIGH IMPACT, LOW SALIENCE

The stigma that surrounds menstruation extends to discussions and regulation of menstrual products themselves, with adverse consequences for human health and the environment. Tampons and menstrual pads touch some of the body’s most sensitive tissues for up to 500 menstrual cycles in a reproductive lifetime. Yet only two states (New York and California) require disclosure of menstrual product ingredients, and neither did so until 2019 and 2020, respectively.<sup>25</sup>

Similarly, although menstrual products contribute an enormous volume of waste to landfills and sewers, much of it single-use plastic, not until 2021 did any government entity take action to address the vast quantity of plastic

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<sup>24</sup> This is a condensed, minimally paraphrased, and anonymized excerpt from an interview with the “dropout” described. Interview with Anonymous, in Berkeley, Cal. (July 15, 2022) (de-identified notes on file with author). Happily, the interviewee’s intellectual potential was realized elsewhere: Twice spurned by Harvard Law, she ultimately completed a PhD and became an accomplished academic in another field.

<sup>25</sup> See MENSTRUATION MATTERS, *supra* note 2, at 164–66.

that tampon applicators in particular contribute to waterways and beaches.<sup>26</sup> Low public awareness of the health and environmental significance of menstruation management reflects the topic avoidance affecting menstrual issues generally. The existence of a chapter on physical impacts of menstrual products in *Menstruation Matters* is thus a major contribution to understanding and elevation of these issues.

#### A. *Chemicals of Concern in Menstrual Products*

Crawford & Waldman do a thorough job identifying sources of potential health risks that menstrual products pose for product users, including bacterial infection (e.g., toxic shock syndrome), rashes, and exposure to synthetic pesticides and hormone-disrupting chemicals.<sup>27</sup> The authors also describe how the absence of either pre-market product review by the Food and Drug Administration or a legal mandate for manufacturers to demonstrate safety has created a large data gap that legislators are only now beginning to fill.<sup>28</sup> Here, female legislators in statehouses and Congress have been particularly persistent on the topic of menstruators' "right to know."<sup>29</sup>

One toxic chemical in menstrual products that may pose exposure concerns is dioxin, a by-product of chlorine processing used to bleach paper products.<sup>30</sup> Another chemical of concern is nanosilver, an ingredient

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<sup>26</sup> Cf. *id.* at 163 (describing Mexico City's ban on sales of all tampons with plastic applicators); Jude Webber, *Tampons Vanish as Mexico City Takes Aim at Single Use Plastics*, FIN. TIMES (Feb. 12, 2021), <https://www.ft.com/content/46153ae4-264c-4976-b5ba-968fed9ab44> [https://perma.cc/ZYH6-W4GK].

<sup>27</sup> MENSTRUATION MATTERS, *supra* note 2, at 149–58.

<sup>28</sup> *Id.*

<sup>29</sup> Although never addressed directly, a recurrent theme in *Menstruation Matters* is the importance of representation: Almost every menstrual equity political victory has been scored by women in elected office. New York's right-to-know bill for tampon ingredients was introduced by Assemblymember Linda Rosenthal. *Id.* at 164. California's Menstrual Products Right to Know Act was introduced by Assemblymember Cristina Garcia. *Id.* at 165; see also Press Release, Cal. State Assembly Democratic Caucus, Menstrual Products Right to Know Act Signed by Governor, (Sept. 30, 2020), <https://asmdc.org/press-releases/menstrual-products-right-know-act-signed-governor> [https://perma.cc/3MMR-85DK]. It is also surely no coincidence that Mexico City's world-leading ban on plastic tampon applicators was imposed by its first elected female mayor. Leah Rodriguez & Adam Critchley, *Mexico City's Single-Use Plastic Ban Is Causing a Tampon Shortage*, GLOB. CITIZEN (Feb. 16, 2021), <https://www.globalcitizen.org/en/content/mexico-city-tampon-shortage-plastic-ban> [https://perma.cc/JV88-Q5NQ].

<sup>30</sup> Dioxin is a highly toxic byproduct of certain chemical processes, including chlorine bleaching of pulp and paper products. *Learn About Dioxin*, U.S. ENV'T PROT. AGENCY (Sept. 6, 2022), <https://www.epa.gov/dioxin/learn-about-dioxin> [https://perma.cc/L98T-RGTK]. Increasing consumer concern about the potential for dioxin in tampons has led some manufacturers to advertise their products as "free from elemental chlorine." This phrase tendentiously suggests that the products are chlorine-free, when instead they simply use chlorine in compounded form. The Food and Drug Administration (FDA) has confirmed that all tampons lawfully on the U.S. market



increasingly incorporated into consumer products to combat odor that has already been proven both to be toxic to aquatic organisms and to penetrate vaginal tissue and reach the bloodstream.<sup>31</sup> Other chemicals of concern in menstrual products include a wide variety of synthetic fragrance chemicals that can cause acute skin irritation, yeast infection, and bacterial vaginosis.<sup>32</sup>

Ingredient disclosure requirements are an admittedly weak form of consumer product regulation when compared to ingredient bans or limitations (which the Food and Drug Administration imposes on processed foods<sup>33</sup>), or holistic pre-market review of product composition (as the Environmental Protection Agency performs on pesticides<sup>34</sup>). Transparency requirements have nonetheless proven more potent than the paragraph of polysyllabic, fine-point type on product labels might suggest. Ingredient disclosure laws—and product labeling laws in particular—allow aware consumers to avoid unsafe ingredients at retail, enable advocacy organizations to mount pressure campaigns that persuade manufacturers to eliminate chemicals of concern and retailers to blacklist certain product chemicals, and facilitate scientific research on products' health effects.<sup>35</sup> In large part because of the data-gathering and political mobilization that disclosure mandates facilitate, product manufacturers strenuously resist

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“today” are now made without elemental chlorine. *The Facts on Tampons—and How to Use Them Safely*, U.S. FOOD & DRUG ADMIN. (Sept. 30, 2020), <https://www.fda.gov/consumers/consumer-updates/facts-tampons-and-how-use-them-safely> [<https://perma.cc/PG2H-CAB8>]. Although the FDA further asserts that manufacturers' abandonment of elemental chlorine use obviates any health concerns pertaining to dioxin levels, *see id.*, some menstrual health advocates disagree, *see, e.g.*, Meghan Telpner, *Tampons: The Dioxin Glyphosate Vagina Cocktail*, MEGHAN TELPNER BLOG (Feb. 17, 2022), <https://www.meghantelpner.com/blog/tampons-the-dioxin-glyphosate-vagina-cocktail> [<https://perma.cc/KUF8-76GN>] (explaining that elemental-chlorine-free bleaching still releases elemental chlorine atoms and, therefore, dioxin). For this reason, eco-conscious manufacturers such as Seventh Generation instead disinfect tampon fibers with non-chlorine methods. *See Look for Labels: The Importance of Ingredient Education*, SEVENTH GENERATION (Feb. 21, 2018), <https://www.seventhgeneration.com/blog/look-labels-importance-ingredient-education-your-personal-care-routine> [<https://perma.cc/J84N-TJKE>] (stating that Seventh Generation products are made “without chemicals containing chlorine”).

<sup>31</sup> MENSTRUATION MATTERS, *supra* note 2, at 153.

<sup>32</sup> *Id.* at 153, 166.

<sup>33</sup> *See, e.g.*, *Color Additives in Food*, U.S. FOOD & DRUG ADMIN. (Apr. 29, 2019), <https://www.fda.gov/food/food-additives-petitions/color-additives-food> [<https://perma.cc/KD7M-R52U>] (describing FDA authority over color additives in processed foods).

<sup>34</sup> *See About Pesticide Registration*, U.S. ENV'T PROT. AGENCY (Feb. 15, 2022), <https://www.epa.gov/pesticide-registration/about-pesticide-registration> [<https://perma.cc/5QR2-6GU4>] (describing the EPA's process for evaluating pesticide safety prior to allowing market entry).

<sup>35</sup> *See generally* Claudia Polsky & Megan Schwarzman, *The Hidden Success of a Conspicuous Law: Proposition 65 and the Reduction of Toxic Chemical Exposures*, 47 *ECOLOGY L.Q.* 823 (2021) (discussing these effects of California's Proposition 65 “right to know” law and of chemical ingredient disclosure laws more generally).

them.<sup>36</sup>

### B. *Environmental Impacts of Menstrual Product Disposal*

On the ecosystemic front, societal unease surrounding menstrual products has hampered efforts to address the large contribution of tampon applicators to the plastics pollution crisis in the world's oceans. First, embarrassment about disposing of applicators in public view leads many users to flush applicators down the toilet despite contrary instructions on product packaging and in toilet stalls. This is particularly likely to occur where individual stalls lack receptacles for menstrual product disposal. Then, when storm-induced sewer overflows cause tampon applicators to bypass waste treatment plants, policymakers shy away from addressing the resulting plastic pollution.

As a result, notwithstanding robust data indicating that applicators can be more abundant sources of beach litter than either single-use plastic bags or drinking straws,<sup>37</sup> *not a single state or nation has to date banned plastic tampon applicators*, and only one locality has done so.<sup>38</sup> Plastic bags and straws, in contrast, have been consistently in the news and in regulatory crosshairs. Each has consequently now been banned in numerous cities, states, and nations around the globe.<sup>39</sup> *Menstruation Matters* ably describes two interrelated problems—topic avoidance<sup>40</sup> and menstrual product waste<sup>41</sup>—that help explain such a conspicuous regulatory gap.<sup>42</sup>

<sup>36</sup> Cf. MENSTRUATION MATTERS, *supra* note 2, at 163–66 (describing the legislative compromises with industry necessary for passage of “menstrual-product-disclosure laws” in New York and California).

<sup>37</sup> *Reducing Marine Litter: Action on Single Use Plastics and Fishing Gear*, at 11 tbl.2, COM (2018) 340 final (May 28, 2018), [https://ec.europa.eu/environment/circular-economy/pdf/single-use\\_plastics\\_impact\\_assessment.pdf](https://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_impact_assessment.pdf) [<https://perma.cc/QF7M-PRHK>].

<sup>38</sup> In 2021, Mexico City banned the sale of tampons with plastic applicators. See Webber, *supra* note 26; MENSTRUATION MATTERS, *supra* note 2, at 162. Mayor Claudia Sheinbaum Pardo was sharply criticized for the suddenness of the ban given the limited availability of plastic-free applicator tampons in that place and time. *Id.* at 163; see also Webber, *supra* note 26; Rodriguez & Critchley, *supra* note 29. However, this represents a problem of implementation rather than conception. Plastic-free applicator tampons were already widely available elsewhere in 2021, and their market presence continues to grow. This suggests that the Mexico City ban is ripe for replication so long as regulators give due attention to market-transition planning.

<sup>39</sup> See, e.g., Douglas Lober, *Understanding Plastic Bag Bans Around the World* [INFOGRAPHIC], REUSETHISBAG.COM (July 29, 2021), <https://www.reusethisbag.com/articles/plastic-bag-bans-worldwide> [<https://perma.cc/7MDY-TW87>]; Stephanie Osmanski, *A Running List of Cities, Restaurants, and Hotels That Have Banned Plastic Straws*, GREEN MATTERS (Jan. 5, 2021, 5:04 PM), <https://www.greenmatters.com/p/where-are-plastic-straws-banned> [<https://perma.cc/VG4N-FQQ4>].

<sup>40</sup> See MENSTRUATION MATTERS, *supra* note 2, at 21.

<sup>41</sup> See *id.* at 158–60.

<sup>42</sup> See, e.g., Vaishnavi Singh, *Menstrual Waste Disposal: India's 'Silent' Problem*, FEMINISM IN INDIA (May 22, 2020), <https://feminisminindia.com/2020/05/22/menstrual-waste-disposal->



*Eco-activist Ella Daish poses with a sculpture made from 1,200 plastic Tampax applicators retrieved from waterways and beaches in the United Kingdom. The sculpture is part of her anti-plastics advocacy directed at manufacturer Johnson & Johnson.<sup>43</sup>*

Whereas plastic-applicator tampons pose a particular threat to the marine environment, menstrual pads harm the terrestrial one. On land, the hundreds of pounds of menstrual pad waste generated over a menstruator's lifetime are typically buried in designated landfills, makeshift dumps, or any available soil, where pads can take centuries to degrade.<sup>44</sup> In some settings, pads are burned, and their plastic constituents emit dioxin and other hazardous chemicals.<sup>45</sup> Here, too, public silence has failed to incentivize

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indias-silent-problem/ [https://perma.cc/9VPT-2FAQ] ("In urban areas [in India], where even sanitary napkins are wrapped in more secrecy than the 'routine' leers of men, we often prefer to simply throw away the waste instead of discussing or caring about its disposal due to the stigma around the conversation.").

<sup>43</sup> Ella Daish (@ella\_daish) TWITTER (Dec. 21, 2020, 03:56 AM), [https://twitter.com/ella\\_daish/status/1340944123478609920?s=46&t=iN5Uj8TaQHjwgF7wudycOQ](https://twitter.com/ella_daish/status/1340944123478609920?s=46&t=iN5Uj8TaQHjwgF7wudycOQ); see also Jennifer Rankin, *Here's Something You Can't Ignore, Says Tampon Plastics Activist*, GUARDIAN (Nov. 15, 2021, 1:00 PM), <https://www.theguardian.com/environment/2021/nov/15/here-something-cant-ignore-tampon-plastics-ella-daish> [https://perma.cc/MJ5B-E7FB].

<sup>44</sup> See MENSTRUATION MATTERS, *supra* note 2, at 158 ("Conventional pads may take between five hundred and eight hundred years to biodegrade.").

<sup>45</sup> Rajanbir Kaur, Kanwaljit Kaur & Rajinder Kaur, *Menstrual Hygiene, Management, and Waste Disposal: Practices and Challenges Faced by Girls/Women of Developing Countries*, J. ENV'T & PUB. HEALTH, No. 1730964, Feb. 2018, at 4 (2018).

waste-management innovation.

As of this writing, a lone start-up in Pune, India appears to represent the leading edge of disposal technology solutions, even though it has yet to commercialize its eco-friendly “SaniBin.”<sup>46</sup> Although Crawford & Waldman do not separately discuss the problem of pad disposal, their tampon-related observation is on-point: “The absence of . . . public service ads and visual reminders, combined with likely low levels of consumer awareness of environmental waste associated with disposable menstrual products generally, contribute to the lack of momentum for a popular movement for [more sustainable] menstrual products.”<sup>47</sup>

*Menstruation Matters* contains a particularly astute and useful discussion of the power of institutional procurement strategies to induce improvements in the safety and environmental attributes of menstrual products.<sup>48</sup> Proof of concept can be found in America’s successful (if non-universal) transition from virgin to recycled-content paper for office printers and copiers. Several decades ago, federal government procurement specifications for thirty percent recycled content in office printer paper<sup>49</sup> transformed the nationwide paper market by guaranteeing large-scale institutional purchase of environmentally preferable paper. Today, federally compliant paper is readily available in box stores for purchase by all, supplied by numerous brands, and generally cost-comparable to virgin paper.

The authors propose that if institutional purchasers such as governments and companies were to adopt a “Sustainable Menstrual Products Procurement Policy,” they could have a similar market-forcing effect.<sup>50</sup> Indeed, one might go a step further. Market transformation could be rapid if health and environmental product specifications were incorporated into legislation (rather than merely agency regulation) that also required large institutions, like school districts, to provide free products. Marrying a sustainability dimension to an equity dimension would surely make menstrual-product-reform legislation a heavy political lift. But it would also greatly increase the mobilizing power of the forces of reform, by bringing

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<sup>46</sup> See Roshini Muthukumar, *Pune Startup’s Innovation Breaks Down Used Sanitary Pads Without Burning Them*, BETTER INDIA (Sept. 2, 2020), <https://www.thebetterindia.com/237000/sanitary-pads-waste-recycling-ecofriendly-disposal-landfills-burning-ros174> [<https://perma.cc/U5GJ-YQ88>] (describing the eco-friendly sanitary waste disposal system developed by a Pune-based startup). The SaniBin uses chemical and mechanical methods to break down sanitary pads, diverting them from landfills and incinerators and yielding reusable materials. *Id.*

<sup>47</sup> MENSTRUATION MATTERS, *supra* note 2, at 163.

<sup>48</sup> See *id.* at 168–71.

<sup>49</sup> Cf., *Copier Paper*, U.S. GEN. SERVS. ADMIN. SUSTAINABLE FACILITIES TOOL, <https://sftool.gov/greenprocurement/green-products/11/paper-office-products/1417/100-recycled-content-copier-paper/0> [<https://perma.cc/44BH-HSSN>] (Mar. 11, 2021) (noting the “minimum content of 30% postconsumer fiber” in federal procurement guidelines).

<sup>50</sup> See MENSTRUATION MATTERS, *supra* note 2, at 169–70.

environmental and health advocates into partnership with gender and economic equity proponents to enlarge the red tent.

### III

#### FROM MENSTRUAL DISADVANTAGE TO EQUITY: WALKING THE SEMANTIC TIGHTROPE

To remove menstruation-related barriers to full and universal societal participation, issue activists must immediately grapple with thorny issues of naming. The relationship between words and power, the difficult moral and strategic calls inherent in selecting a vocabulary for advocacy, and the descriptive insufficiency of the English language all pose lexical challenges for those wishing to challenge menstrual discrimination. Describing the power of language in social change-making generally, Rebecca Solnit writes:

You can use the power of words to bury meaning or to excavate it. If you lack words for a phenomenon, an emotion, a situation, you can't talk about it, which means that you can't come together to address it, let alone change it. . . . This may be particularly true of feminism, a movement focused on giving voice to the voiceless and power to the powerless.<sup>51</sup>

These conundrums are still more intense where, as with menstruation, the topic itself is taboo. Indeed, the anodyne phrase “menstrual equity” may be new even to many progressive readers, as novel terminology circulates faster within advocacy sub-communities than within broader alliances and society at large. As such, activists should be mindful that referring to “menstruators” rather than “women” to describe the most frequent objects of period-related discrimination may be jarring to policymakers already squeamish about any discussion of menstruation. This tactical choice should thus be made with eyes open.<sup>52</sup> Likewise, describing the needs of “people who menstruate”<sup>53</sup> may alienate potential supporters who react to the conspicuous decision to avoid the word “women,” but who could perhaps be brought on-side by vaguer rhetorical invocation of, for example, “a need for menstrual products and accommodation.”

Crawford & Waldman traverse the minefield of semantic contestation carefully and thoughtfully. They acknowledge that “terms and language are

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<sup>51</sup> Rebecca Solnit, *Rebecca Solnit: Our Words Are Our Weapons*, GUERNICA MAG. (June 2, 2014), <https://www.guernicamag.com/rebecca-solnit-our-words-are-our-weapons-2> [https://perma.cc/YA53-56T5].

<sup>52</sup> Crawford and Waldman do not use the term “menstruators” but quote others doing so. *See, e.g.*, MENSTRUATION MATTERS, *supra* note 2, at 111 (quoting Margaret Johnson); *id.* at 131 (quoting an anonymous internet commentator).

<sup>53</sup> Crawford and Waldman use this phrase sparingly. *See, e.g., id.* at 12 (“In the effort to combat stigma, shame, and discrimination, the voices of all *people who menstruate* should be amplified.”) (emphasis added); *id.* at 21 (“*People who menstruate* often themselves contribute to taboos around menstruation, by using euphemisms to describe it.”) (emphasis added).

always changing” to both impel and reflect social change. Their book uses “inclusive language that recognizes that biology, sex, and gender are not coextensive terms.”<sup>54</sup> And, where practically useful, they endorse (as do I) the use of terms and frames in advocacy that reflect a “temporary and contingent” essentialism.<sup>55</sup> This they describe as a tentative embrace of essentialism for attainment of a specific legal or policy outcome, as distinguished from “a lack of awareness or a desire to exclude.”<sup>56</sup>

Additionally, as the authors explain, legal causes of action predicated on gender discrimination may foreclose (or make risky) the deployment of trans-inclusive language and the issue framing it implies. In a chapter on “Menstruating While Male,” the authors describe the Hobson’s choice presented by litigating menstrual equity under legal paradigms that presume gender is obvious, binary, and immutable from birth, and that make it “most straightforward . . . to characterize unfavorable treatment of menstruation as a form of discrimination against women.”<sup>57</sup> They also provide advice for simultaneously presenting claims of menstruation-based discrimination as rooted in sex discrimination, and doing so in sufficiently inclusive terms that any legal victory benefits all who menstruate.<sup>58</sup>

Here, the evolution in verbiage for box-store aisle descriptors and packaging for period products may offer a useful lesson in low-friction social progress. In a move surely much discussed in corporate offices (and perhaps also focus groups), retail chains and product manufacturers have in recent years made iterative progress in removing stigma and promoting inclusion with respect to period supplies. A store aisle may initially be redesignated from a “sanitary products” or “feminine hygiene” aisle to a “feminine products” aisle to eliminate the connotation that menstruation is a form of uncleanness.<sup>59</sup> A subsequent rewording may make it a “menstrual products” aisle, to decouple gender and menstruation.<sup>60</sup> This move towards neutral, descriptive, non-euphemizing language helps to destigmatize and normalize transgender men and nonbinary people who menstruate. And importantly, it does so without in any way denying that menstruation is a defining and shared life experience for nearly all women that contributes to their group identity and subordination.

Because language functions as both description and action—to name is

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<sup>54</sup> *Id.* at 11.

<sup>55</sup> *Id.* at 12.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 132.

<sup>58</sup> *See id.* (discussing the tension between “the most straightforward legal strategy [of] characteriz[ing] unfavorable treatment of menstruation as a form of discrimination against women” and advocates’ simultaneous desire “not [to] pathologize or ‘other’ trans, gender-nonbinary, and genderqueer people by leaving them out of the discussion”).

<sup>59</sup> *See id.* at 140 (describing action taken by New Zealand supermarket chain Countdown).

<sup>60</sup> *See id.*

to claim—there are no easy answers here. But in surveying the semantic landscape and identifying where we may find or offer safe harbor, Crawford & Waldman have increased the prospects for productive conversation.

#### CONCLUSION

*Menstruation Matters* is both a logical extension and broadening of the feminist-academic project launched a century and a half ago by the Association of Collegiate Alumnae. Results from the Association’s survey of female college graduates proved conclusively what to modern Americans is self-evident: “[T]he female graduates of our colleges and universities do not seem to show, as the result of their college studies and duties, any marked difference in general health from the average health likely to be reported by an equal number of women engaged in other kinds of work . . . .”<sup>61</sup>

We can hope that in the not-distant future, gendered propositions that are today contested will likewise seem self-evident: that practical, affordable, and dignified management of essential bodily functions (including menstruation) is a basic human right and warrants legal protection; that allowing market access for consumer goods (including menstrual products) that contain nonessential, known-harmful ingredients is terrible public policy; that prudishness should not prevent us from naming, shaming, and holding liable the manufacturers of any of the single-use plastics (including, tampon applicators) that will soon *in toto* outweigh fish in the world’s oceans; and that advocates whose rhetorical frames can expand our vision without deepening division are essential guides in the journey from *is* to *could be*. If this generation reaches those distant destinations, it will surely owe a debt to the smart and careful map that is *Menstruation Matters*.

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<sup>61</sup> COLLEGIATE ALUMNAE HEALTH STATISTICS, *supra* note 1, at 78.