

LANGUAGE, GENDER, AND LOUISIANA LAW: REMOVING GENDER BIAS FROM THE LOUISIANA CIVIL CODE

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I. INTRODUCTION¹

Almost all of the 2,178 articles of the Louisiana Civil Code—the state’s principal source of law—use solely masculine pronouns.² Yet contemporary research has made it increasingly

1. This Comment is dedicated to Professor A.N. Yiannopoulos for generously sharing his time and wisdom with me. I would like to thank Professor Nikolaos A. Davrados, whose enthusiastic appreciation and teaching of Civil Law inspired me to write this piece. I also wish to express my deepest gratitude to the 2017–2018 *Loyola Law Review* editors for their support and willingness to view the world through a gender-neutral lens.

2. See generally LA. CIV. CODE (2018); see also, e.g., LA. CIV. CODE arts. 485–90

clear that use of such masculine-gendered language, when intended and understood to reference both males and females, propagates stereotypes and biases against women and others who do not identify as male.³ As many state legislatures that have stopped using male-gendered language in recent years have recognized, removing language that excludes over half of the population from the law, which claims authority over all and is backed by the power of the government, is essential to promoting fairness and justice in society.⁴ This Comment argues that Louisiana must do the same.

Confronting the unmistakable divide between genders in the 1960s, the second-wave feminist movement sought to reduce gender discrimination by redefining women's role in society.⁵ Feminist activists inspired the beginnings of a marked shift in American attitudes by calling attention to the underlying gender issues in business, education, and even at home.⁶ Appearing to promote masculine superiority, the widespread use of masculine generics—or the use of words like “he” to refer to all people—became a topic of concern.⁷ Taking on a new territory of feminist reformation, many social scientists and psycholinguists set out to interpret the idiosyncrasies and effects of gender on the

(2018).

3. See generally Mykol C. Hamilton, *Using Masculine Generics: Does Generic He Increase Male Bias in the User's Imagery?*, 19 SEX ROLES 785–93 (1988); John Gastil, *Generic Pronouns and Sexist Language: The Oxymoronic Character of Masculine Generics*, 23 SEX ROLES 629, 630, 643 (1990); Janet B. Parks & Mary Ann Robertson, *Contemporary Arguments Against Nonsexist Language: Blaubergs (1980) Revisited*, 39 SEX ROLES 445, 461 (1998).

4. See, e.g., FLA. STANDING COMM. ON FAIRNESS & DIVERSITY, FLORIDA SUPREME COURT FINAL REPORT: PERCEPTIONS ON FAIRNESS & DIVERSITY IN THE FLORIDA COURTS (2008), <http://www.flcourts.org/core/fileparse.php/243/urlt/fairness-diversityreport.pdf>.

5. Ryan Bergeron, *'The Seventies': Feminism Makes Waves*, CNN (Aug. 17, 2015), <http://www.cnn.com/2015/07/22/living/the-seventies-feminism-womens-lib/> (“The changes [of the women's liberation movement] were so rampant that TIME awarded its ‘Man of the Year’ in 1975 to ‘American women.’”).

6. See generally Jennifer Tripp, *National Organization for Women*, LEARNING TO GIVE, <https://www.learningtogive.org/resources/national-organization-women> (last visited May 31, 2018).

7. “Masculine generics,” as used throughout this Comment, are synonymous with “masculine-gendered generics,” the “masculine rule,” and the “generic he,” all of which describe the use of exclusively masculine terminology to reference non-males or unknown or unspecified persons. See generally Janet S. Hyde, *Children's Understanding of Sexist Language*, 20 DEVELOPMENTAL PSYCHOL. 697 (1984) (citing W. Martyna, *What Does “He” Mean: Use of the Generic Masculine*, 28 J. COMM. 131, 131–38 (1978)).

normative lexicon of the English language.⁸ These studies produced a significant set of data that uncovered the deleterious effects of masculine language on humans' behavior and decisions.⁹ As a result, there is extensive interdisciplinary support showing that the negative consequences of masculine generics, including bias and discrimination on the basis of sex, warrant language reform.¹⁰

A movement towards the use of gender-neutral language, or terminology that avoids bias of a particular sex or social gender, has motivated many legislatures to letter laws free of masculine generics in recent years.¹¹ These legislatures have developed several techniques to avoid using masculine generics, and some states have even enacted statutes enforcing the use of gender-neutral language in all state law.¹² Despite this growing movement, many legal authorities continue to use masculine generics when drafting statutes, judicial opinions, and other legal documents.¹³

To an even greater extent, masculine generics remain heavily engrained in Louisiana law.¹⁴ The reason is twofold: (1) the legislature only amends a limited number of Civil Code articles each year, and (2) absent a statutory provision, the legislature is not required to use gender-neutral language in any legislation.¹⁵ With this in mind, this Comment offers a

8. Six experiments investigated the commonly expressed view that the pronoun he, when used generically, may lead individuals to think of males more often. See C.M. Cole & F.A. Hill, *Do Masculine Pronouns Used Generically Lead to Thoughts of Men?*, 9 SEX ROLES 737 (1983).

9. Jennifer L. Prewitt-Freilino et al., *The Gendering of Language: A Comparison of Gender Equality in Countries with Gendered, Natural Gender, and Genderless Languages*, 66 SEX ROLES 268, 270 (2011).

10. Peter Hegarty & Carmen Buechel, *Androcentric Reporting of Gender Differences in APA Journals: 1965–2004*, 10 REV. GEN. PSYCHOL. 377, 379 (2006) (stating that the American Psychological Association (APA) explicitly prohibited use of the generic “he” because it was androcentric and citing, as an example, the APA Publication Manual Task Force, 1977); see Prewitt-Freilino, *supra* note 9.

11. See Dylan Scott, *Gender-Neutral Language Written into State Laws, GOVERNING THE STATES AND LOCALITIES* (Apr. 2013), <http://www.governing.com/topics/politics/gov-gender-neutral-language-rewritten-into-state-laws.html>.

12. See *id.*

13. C. Marshall Thatcher, *What Is “Eet”? A Proposal to Add a Series of Referent-Inclusive Third Person Singular Pronouns and Possessive Adjectives to the English Language for Use in Legal Drafting*, 59 S.D. L. REV. 79, 80 (2014).

14. See LA. CIV. CODE (2018); see e.g., LA. CIV. CODE arts. 485–90 (2018).

15. The Louisiana House drafting manual does not provide any gender-neutral rules or instruction. See HOUSE LEGISLATIVE SERVS., LA. HOUSE OF

prescriptive framework for removing masculine generics from the entirety of the Civil Code—and ultimately all Louisiana law. Part II explains through linguistic theory and empirical research why masculine generics are detrimental to society. Part III follows with an assessment of other states' legislative drafting practices and their willingness to use gender-neutral language in state laws. As Louisiana has not yet joined these efforts, Part IV offers a four-step process for removing gender bias from the Civil Code by the year 2025. This Comment concludes with further recommendations for achieving gender-neutral language in all Louisiana law.

II. THE GRAMMATICAL GENDER DICHOTOMY IN THE ENGLISH LANGUAGE

In the context of language, gender is a grammatical feature that is “reflected in the behavior of associated words,” requiring nouns to agree with their surrounding adjectives, verbs, and other parts of speech.¹⁶ Gender thus creates a structural system that separates nouns into classes, often reflecting biological sex, which explains why many languages have masculine and feminine distinctions.¹⁷ There are three primary systems that classify how gender interacts with other grammatical parts of speech: (1) *genderless languages* lack any grammatical gender distinction within their noun systems; (2) *grammatical gender languages* are characterized by the assignment of a feminine, masculine, or neuter (meaning “neither”) gender to every noun; and (3) *natural gender languages* distinguish biological gender, or the sex, gender identity, or perceived sexual characteristics of a person, through pronouns like “he” and “she.”¹⁸

Because language systems are “culturally transmitted,” the conventional usages of language often adapt to the nuances of

REPRESENTATIVES, DRAFTING STYLE AND USAGE MANUAL (2015), <http://www.ncsl.org/Portals/1/Documents/relacs/manuals/2016LAHouseDraftingManual.pdf>. A published, public version of the *Louisiana Senate Legislative Drafting Manual* has not been made available to the public at the time this Comment was published.

16. Anna Kibort & Greville G. Corbett, GENDER, GRAMMATICAL FEATURES (January 7, 2008), <http://www.grammaticalfeatures.net/features/gender.html> (citing CHARLES F. HOCKETT, A COURSE IN MODERN LINGUISTICS 231 (1958)).

17. Jenny Audring, *Gender as a Complex Feature*, 43 LANGUAGE SCIENCES 5 (2014).

18. See Benjamin D. Wasserman & Allyson J. Weseley, *¿Qué? Quoi? Do Languages with Grammatical Gender Promote Sexist Attitudes?*, 61 SEX ROLES 634, 635 (2009).

human behavior, societal development, and systematic change.¹⁹ This is particularly evident in the English language, which began as a grammatical gender system and evolved into a natural gender system.²⁰ Like many other natural gender systems, the English language provides pronouns, i.e., third-person personal pronouns, to reference people of male and female genders. This category of pronouns uses “he,” “she,” or “it,” depending on the biological gender of the antecedent noun: *he*, when the antecedent is male or embodies male characteristics; *she*, when the antecedent is female or embodies female characteristics; or *it*, when the antecedent is inanimate or intangible. The absence of a neutral, third-person singular pronoun in the English language eventually gave rise to the generic, or default, use of masculine pronouns in contexts where the biological sex of a person was not male or when gender was unknown or unspecified.²¹

A. LINGUISTIC PRESCRIPTIVISM: THE MASCULINE RULE

Beginning as early as the 1700s, linguists and grammarians who had long recognized a need for prescriptive grammar, or an informal set of rules suggesting how a language “*should* or *ought* to be used,” advocated that “he” be used to reference everyone.²² This solution has since proven to be problematic. It is now well-established that masculine generics have a tendency to cause inaccurate, misleading, or ambiguous statements, and official policies and guidelines have subsequently condemned their use.²³ Consider this statement, for example: “The average American thinks *he* should exercise more often.” In this sentence, the word “American” is genderless and can reference both male and female persons. Yet, under the masculine rule, “he,” the antecedent of the genderless term, “American,” is used even though the term definitively means male. After reading this sentence, one could make the following flawed conclusions: (1)

19. JOHN ALGEO, *THE ORIGINS AND DEVELOPMENT OF THE ENGLISH LANGUAGE: SIXTH EDITION* 10 (6th ed. 2010).

20. *Id.*

21. See Ann Bodine, *Androcentrism in Prescriptive Grammar: Singular ‘They’, Sex-Indefinite ‘He’, and ‘He or She’*, 4 *LANGUAGE IN SOCIETY* 2, 129 (Aug. 1975); see also Gastil, *supra* note 3 (explaining that the “generic he” is the use of “he” to generically refer to both males and females).

22. Amy Reynolds, *Understanding Prescriptive vs. Descriptive Grammar*, UNIV. OF N.C. CHAPEL HILL, <http://amyrey.web.unc.edu/classes/ling-101-online/tutorials/understanding-prescriptive-vs-descriptive-grammar/> (last visited Nov. 9, 2017); Donald MacKay, *Psychology, Prescriptive Grammar, and the Pronoun Problem*, 35 *AM. PSYCHOLOGIST* 444, 445 (May 1980).

23. Hegarty & Buechel, *supra* note 10, at 378.

males think they should exercise more, (2) only males are concerned about their health, or (3) the “average” American is male.

The prescriptive use of the masculine rule dates to the early beginnings of the English language. Some scholars suggest that *androcentricism*—or the belief that males are superior within the gender hierarchy—inspired this rule.²⁴ This view, where male is declared the default gender and all gender differences are attributed to the female, was encoded into early grammar principles: “Linguistically, human beings were to be considered male unless proven otherwise.”²⁵ Prescribed to tones of androcentricism, a seventeenth-century text describing pronoun and antecedent agreement posited, “The Relative agrees with the Antecedent in gender, number, and person The Masculine gender is *more worthy* than the Feminine.”²⁶

Further, linguists also suggest that “he” evolved as prescriptive rule after the early grammarians began to reject the customary usage of “they” as a singular pronoun.²⁷ In 1850, the British Parliament signified its departure from the use of “they” when it passed an act legally replacing “he or she” with “he.”²⁸ The new rule explained that “words importing the masculine gender shall be deemed and taken to include females.”²⁹ As a result, the male pronoun has become exceedingly more ubiquitous than the female, and there are simply more words to express male reality than there are to describe a female view.³⁰ The byproduct is striking: “he” is the eleventh most commonly used English word, yet “she” ranks forty-sixth.³¹

24. Bodine, *supra* note 21, at 133; see Hegarty & Buechel, *supra* note 10, at 377.

25. Bodine, *supra* note 21, at 133.

26. *Id.* at 134 (quoting J. POOLE, THE ENGLISH ACCIDENCE (1646)) (emphasis added).

27. *Id.* at 129.

28. *Id.* at 133 (“This virtual explosion of condemnation of singular ‘they’ culminated in an Act of Parliament in 1850, which legally replaced ‘he or she’ with ‘he’. The Act clearly reveals a recognition that specification of both gender (for pronouns) and number (for pronouns and concrete nouns) is obligatory in English, even when such information is irrelevant to the communication.”).

29. *Id.* at 136.

30. Susan Knutson, *Challenging the Masculine Generic*, 2 CONTEMPORARY VERSE 76, 78 (1988).

31. Hegarty & Buechel, *supra* note 10, at 378 (citing MELVYN BRAGG, THE ADVENTURE OF ENGLISH: THE BIOGRAPHY OF A LANGUAGE 7 (2003)).

B. REPLACING THE MASCULINE RULE WITH GENDER-NEUTRAL LANGUAGE

The masculine rule faced little criticism until the feminist movement took hold between the 1960s and 1980s.³² It was against this backdrop that studies began to address the lexical asymmetry produced by the use of the masculine generics like “he” and “his.”³³ Empirical evidence gathered from these studies suggest that masculine pronouns (1) position male as the superior gender and indicate a preference for the masculine over the feminine,³⁴ (2) produce a disproportionate number of masculine images in the minds of receivers,³⁵ and (3) influence the views and attitudes of all genders.³⁶ These studies have exposed a range of deleterious effects caused by the masculine rule: subtle sexism, gender bias, and gender inequality.³⁷

One such study measured the tendency of the generic “he” to evoke images of males by asking undergraduate students to read various sentences aloud and to then describe the images that came to mind.³⁸ For example, one student read, “The average American believes he watches too much TV,” and then followed with a description of what he envisioned: “a *guy* sitting on a couch with a remote control. T.V.’s sitting in front of *him*.”³⁹ The pattern was the same for both male and female students—sentences using the masculine “he” produced mostly male images.⁴⁰ The generic “he” appeared to bias the reader toward imagining primarily male subjects.⁴¹

Another study assessed first, third, and fifth graders’ understanding of masculine generics.⁴² One part of the study asked children to correct sentences such as, “The average kid

32. See, e.g., Bodine, *supra* note 21, at 133, 142 n.4, 143; Bergeron, *supra* note 5.

33. See Hegarty & Buechel, *supra* note 10, at 379.

34. Gastil, *supra* note 3; see also Hyde, *supra* note 7.

35. See Bodine, *supra* note 21; Hamilton, *supra* note 3; V. Kidd, *A Study of the Images Produced Through the Use of the Male Pronoun as the Generic*, 1 MOMENTS IN CONTEMP. RHETORIC AND COMM. 25 (1971).

36. See MacKay, *supra* note 22; see also Alleen P. Nilsen, *Sexism in Children’s Books and Elementary Teaching Materials*, in SEXISM AND LANGUAGE 161 (1977).

37. See Hamilton, *supra* note 3.

38. Gastil, *supra* note 3, at 639.

39. *Id.* at 634.

40. See *id.* at 635–36.

41. *Id.* at 639.

42. Hyde, *supra* note 7, at 697.

likes to play football with ____ friends.”⁴³ The blank was replaced with “his,” “her,” “his or her,” or “their.”⁴⁴ The children marked “he” wrong only 6% of the time but found “she” wrong 39% of the time.⁴⁵ In like manner, fourteen children objected to the use of “her” or “his or her” in the sentence, declaring that girls could not play football.⁴⁶ Only one girl challenged the use of “his” in the sentence, arguing that girls, too, could play football.⁴⁷ This study illustrates how children are more inclined to envision a male when they see or hear “he” in gender neutral contexts.⁴⁸

Acknowledging the revelatory nature of language, the Greek moralist Plutarch wrote, “In words are seen the state of mind and character and disposition of the speaker.”⁴⁹ The proposition that language can shape thought is infused within the widely accepted theory of *linguistic relativity*—an idea that language can “reflect and preserve existing social structures and influence perceptions of reality.”⁵⁰ The findings from another study supported the linguistic relativity hypothesis after participants completed sentences using either masculine or generic pronouns and then assigned a first name to the person described in the sentence.⁵¹ When using masculine pronouns in generic contexts, participants were more inclined to assign the person a male name.⁵² Although the masculine pronouns were used generically, the data indicates that masculine generics can eliminate or reduce cognitive representations of women.⁵³

More evidence points to the real-world implications of masculine generics, where females are more unlikely to apply for jobs using masculine language in their job descriptions.⁵⁴ One

43. Hyde, *supra* note 7, at 699.

44. *Id.*

45. *Id.* at 700.

46. *Id.*

47. *Id.*

48. Hyde, *supra* note 7, at 705.

49. PLUTARCH, PLUTARCH'S MORALS (Arthur R. Shiletto trans.) (1898).

50. Wasserman & Weseley, *supra* note 18, at 634; Hamilton, *supra* note 3, at 795 (explaining that linguistic relativity, or the Whorfian hypothesis, asserts that “languages are not simply a reflection of culture, or of the behaviors, cognitions, or attitudes of their speakers, but instead actually help shape them, by allowing or encouraging certain thoughts and discouraging others”).

51. Hamilton, *supra* note 3, at 787, 789.

52. *Id.* at 795.

53. See Pat K. Chew & Lauren K. Kelley-Chew, *Subtly Sexist Language*, 16 COLUM. J. GENDER & L. 643 (2007).

54. Sandra L. Bern & Daryl J. Bem, *Does Sex-Biased Job Advertising “Aid and*

study found that only 5% of female participants applied for a traditionally male job when male generics were used in its description, whereas 25% of women applied when it was described using gender-neutral language.⁵⁵

The results of another study suggest that gender has the power to influence criminal trial verdicts.⁵⁶ A student jury observing a mock murder case was given various definitions of self-defense using the words “he,” “he or she,” or “she.”⁵⁷ When the students were asked to determine whether a woman had acted in self-defense, only five of the participants who read the description with “he” acknowledged self-defense, whereas sixteen who read “he or she” found self-defense, and eleven with “she.”⁵⁸ These findings suggest that male generic wording in legal proceedings can affect perceptions of an individual’s guilt or innocence. In this case, the stakes are even higher: language may have the power to determine life or death.

In the context of law, a professor from the University of Pittsburgh School of Law detected patterns of masculine generics in thousands of written works by judges, lawyers, and legal scholars.⁵⁹ The research revealed a persistent use of male-gendered words such as *chairman*, *businessman*, and *congressman*—each indicating a specific role in society associated with status and power.⁶⁰ Although not directly tested in the study, the professor suggested that legal professionals may instinctively imagine men rather than women in these roles and therefore use the male-gendered title to meet their expectations.⁶¹ When legal professors use masculine generics, it “unintentionally sends exclusionary messages to female students, reinforces the use of subtly sexist language among all students, and inhibits progress toward a more gender-equal educational and professional environment.”⁶²

Abet” Sex Discrimination?, 5 J. APPLIED SOCIAL PSYCHOL. 6, 6–18 (1973).

55. Bern & Bem, *supra* note 54.

56. M.C. Hamilton et al., *Jury Instructions Worded in the Masculine Generic: Can a Woman Claim Self-Defense When “He” Is Threatened?*, in THE WOMEN AND LANGUAGE DEBATE: A SOURCEBOOK 340, 340–47 (Camille Roman et al. eds., 1992).

57. *Id.* at 341–42.

58. *Id.* at 344.

59. Chew & Kelley-Chew, *supra* note 53, at 643.

60. *Id.* at 675–76.

61. *Id.*

62. *Id.* at 668.

If readers are more likely to envision males when reading masculine generics, than in the same line of thinking, students who study law marked by the same masculine language may be more inclined to visualize men—at the exclusion of women—with the right to own property, execute contracts, or obtain a fair trial by jury. These studies show that the use of masculine generics can reinforce a view that positions women beneath men, even if that view exists in the subconscious.

The former deputy counsel who managed judicial selection under President Barack Obama proposed:

While judges will not necessarily consider a case differently because of their background—they are sworn to uphold the law and precedent—when the men and women who deliver justice look more like the communities they serve, there is greater confidence in our justice system overall.⁶³

A similar comparison can be drawn: when the law looks more like the communities it serves, there is greater confidence in the law overall. In a country and state where females represent a larger percent of the population, gender-neutral language more accurately reflects reality.⁶⁴ A former Georgia trial court judge, also concerned with gender bias undermining the integrity of judicial system, explained that “[l]anguage conveys the norms, values, beliefs, and perceptions that help ensure an ordered social environment.” When language leaves out half of the population, he wrote, “then surely something is awry.”⁶⁵

For these reasons, most scholars, academic and editorial institutions, and professional organizations, including the American Psychological Association (APA) and Associated Press (AP), have denounced the use of masculine generics and

63. Christopher Kang, *Editorial: President Obama, Nominate the First Asian-American Supreme Court Justice*, NBC NEWS (Feb. 14, 2016), <http://www.nbcnews.com/news/asian-america/editorial-president-obama-nominate-first-asian-american-supreme-court-justice-n518496>.

64. Julia Smirnova & Weiyi Cai, *See Where Women Outnumber Men Around the World (And Why)*, WASH. POST (Aug. 19, 2015), https://www.washingtonpost.com/news/worldviews/wp/2015/08/19/see-where-women-outnumber-men-around-the-world-and-why/?utm_term=.0ad90834f59a; see also *QuickFacts Louisiana*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/22> (last visited May 31, 2018).

65. Judith D. Fischer, *The Supreme Court and Gender-Neutral Language: Splitting La Difference*, 33 WOMEN'S RTS. L. REP. 218, 224 (quoting William B. Hill Jr., *A Need for the Use of Nonsexist Language in the Courts*, 49 WASH. & LEE L. REV. 275, 276 (1992)).

recommend using gender-neutral language instead.⁶⁶ The Publication Manual of the APA provides that “[s]exist bias can occur when pronouns are used carelessly, as when the masculine pronoun he is used to refer to both sexes or when the masculine or feminine pronoun is used exclusively to define roles by sex.”⁶⁷ These guidelines recommend using alternatives such as making nouns or pronouns plural and replacing a pronoun with a noun.⁶⁸ Further, in 2017, the lead editor for the AP Stylebook formally announced the association’s adoption of “they” as a singular pronoun, recognizing that “the spoken language uses ‘they’ as singular,” and finding a “need for a pronoun for people who don’t identify as a ‘he’ or a ‘she.’”⁶⁹ A prominent LGBTQ advocate thought the change afforded greater representation of the gender spectrum: “Those [who] have non-binary identities often are not represented or erased.”⁷⁰

Similarly, during the 1988 American Bar Association (ABA) Annual Meeting, the association adopted a resolution that called on the ABA and all members of the legal profession to “eliminate overt and subtle barriers to women’s full integration and equal participation in all aspects of the legal profession,” while making clear that “[g]ender biased language is one of those barriers.”⁷¹ Realizing that some would find the change unnecessary, the report continued,

[E]xtensive research by experts in linguistics and communication has demonstrated conclusively that gender biased language is neither trivial nor harmless and that the misunderstanding and confusion it generates is widespread. . . . Within the legal profession itself there is substantial evidence that gender biased language has negative consequences for women.⁷²

66. Gastil, *supra* note 3, at 629.

67. AM. PSYCHOLOGICAL ASS’N, PUBLICATION MANUAL OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION 73–74 (6th ed. 2010).

68. *Id.*

69. Brooke Sopelsa, *AP Stylebook Embraces ‘They’ as Singular, Gender-Neutral Pronoun*, NBC NEWS (March 27, 2017), <http://www.nbcnews.com/feature/nbc-out/ap-stylebook-embraces-they-singular-gender-neutral-pronoun-n7339076>.

70. *Id.*

71. ANDREW C. HECKER & HILLARY RODHAM CLINTON, AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES 1 (1989), https://www.americanbar.org/content/dam/aba/marketing/women/gender_neutral_language.authcheckdam.pdf (adopted on Feb. 6, 1989).

72. *Id.*

Furthermore, language reform has progressed—to a certain extent—in the legal context. The male-centric term “reasonable man” has been replaced by the gender-neutral alternative, “reasonable person.” This shift in terminology followed an intense debate concerning the implications of gender in the outcome of a case, particularly in matters of sexual harassment.⁷³ Consequently, the use of “reasonable person” dramatically increased—to such a degree that “reasonable person” was used 96% of the time in law review articles, judicial opinions, and other legal text between 2004 and 2006, while “reasonable man” has become nearly obsolete.⁷⁴

Among these solutions, other gender-neutral alternatives, such as “congressperson,” “businessperson,” and “humankind,” replace the traditionally masculine terms “congressman,” “businessman,” and “mankind.” Similarly, writers can be gender neutral by substituting the gendered pronouns “he” and “she” with the indefinite pronouns “one” and “it.” Other linguistic guidance has offered other unconventional alternatives to the traditional singular personal pronouns: *ze* and *zeir*.⁷⁵ These terms, while gender-neutral, have not yet been widely or formally adopted: “One of the biggest problems facing the adoption of a new gender-neutral pronoun is the lack of unity and organization among supporters of the idea.”⁷⁶ Hundreds of new words have been proposed, but a vast majority of those words were eventually abandoned by all but their inventors.⁷⁷

Gender neutral alternatives strive to eliminate gender bias, or the “predisposition or tendency to think about and behave toward people mainly on the basis of their sex.”⁷⁸ While such language restructuring may not completely eradicate gender bias, most scholars and linguists agree that gender-neutral

73. See generally Ann C. McGinley, *Reasonable Men?*, 45 CONN. L. REV. 1 (2012).

74. Chew & Kelley-Chew, *supra* note 53, at 672.

75. *Manual on Usage and Style*, R. 6.01, at 57 (Texas Law Review, 13th ed. 2015) (“A person who identifies as a certain gender should be referred to using the pronouns appropriate for that gender. Additionally, some people choose personal pronouns that differ from traditional usage [examples using created pronouns such as *ze* and *zeir*, or using *they* and *their* for a singular person]. If the subject of a sentence has expressed a clear pronoun preference, follow it. Add a brief footnote explaining the pronoun usage if reader confusion is a concern.”).

76. *The Need for a Gender-Neutral Pronoun*, GENDER NEUTRAL PRONOUN BLOG (Apr. 24, 2017), <https://genderneutralpronoun.wordpress.com/tag/ze-and-zir/>.

77. See *id.* For this reason, more uncommon approaches to pronoun replacements are omitted from this Comment’s proposal.

78. *Id.*

terminology will at least *reduce* bias.⁷⁹

III. CONVENTIONS ON STYLE: GENDER-NEUTRAL PRINCIPLES AS AN EMERGING STANDARD AMONG THE STATES

Rationalizing the use of masculine generics, the Civil Code explains,

The masculine gender comprehends the two sexes, whenever the provision is not one, which is evidently made for one of them only: Thus, the word man or men includes women; the word son or sons includes daughters; the words he, his and such like, are applicable to both males and females.⁸⁰

One of the early applications of masculine generics appears in the Louisiana Civil Code of 1870: “A contract is an agreement, by which one person obligates *himself* to another, to give, to do or permit, or not to do something, expressed or implied by such agreement.”⁸¹ The article did not include “herself,” although Louisiana law at that time allowed women to enter some forms of contracts.⁸² While article 1761 did not expressly include the word “herself,” the law nevertheless applied to both genders.⁸³

The masculine generic disappeared from the article upon its revision in 1985: “A contract is an agreement by two or more *parties* whereby obligations are created, modified, or extinguished.”⁸⁴ While this article eventually became gender neutral, only a small number of articles undergo revisions each year.⁸⁵ First, revisions to the Civil Code have primarily focused on “specific areas of interest . . . to replace obsolete rules,” which

79. Mykol C. Hamilton, *Masculine Bias in the Attribution of Personhood*, 15 PSYCHOL. WOMEN QUARTERLY 393 (1991).

80. LA. CIV. CODE art. 3506(1) (2018).

81. LA. CIV. CODE art. 1761 (1870); *cf* LA. CIV. CODE art. 1906, as revised by Acts 1984, No. 331, § 1, eff. Jan. 1, 1985 (emphasis added).

82. See Nina Nichols Pugh, *The Evolving Role of Women in the Louisiana Law: Recent Legislative and Judicial Changes*, 42 LA. L. REV. 1571 (1982).

83. *Id.*

84. LA. CIV. CODE art. 1906 (2018) (reproducing the substance of Civil Code article 1761 of 1870 but not changing the law) (emphasis added).

85. *Changes Effected by the 2017 Regular Session to the Civil Code*, LA. STATE LEGISLATURE, <https://www.legis.la.gov/Legis/CitatorIndex.aspx?sid=17RS&lbid=CC> (last visited May 31, 2018) (listing six Civil Code article amendments); *Changes Effected by the 2016 Regular Session to the Civil Code*, LA. STATE LEGISLATURE, <http://www.legis.la.gov/Legislegis.la.gov/Legis2018> (listing twelve Civil Code article amendments).

has led to a process of revising individual titles and chapters of the Civil Code.⁸⁶ Further, opportunities to amend articles are limited: the legislature only meets for non-fiscal matters in even-numbered years, unless an extraordinary session is called.⁸⁷ This explains, at least in part, why masculine generics are still prevalent throughout the Civil Code.

A. GENDER-NEUTRAL LANGUAGE GUIDELINES IN STATE LEGISLATIVE DRAFTING MANUALS

Most lawmakers agree that bill drafting is a crucial step in the legislative process: “Bills not only must be in the proper legal form but also must be in clear, simple, and unambiguous language, avoiding contradictions and confusion and expressing in unmistakable terms the intent of the author and the Legislature.”⁸⁸ To achieve these results, every state legislature, as well as both chambers of Congress, has a legislative services office that assists in bills drafting.⁸⁹ Most of these offices also publish official legislative drafting manuals, which provide format, grammar, and style rules.⁹⁰

The 2013 National Conference of State Legislatures reported that approximately half of the states have taken steps at varying degrees to statutorily require all official language be gender-neutral, and thirty-three states have contextualized these principles within their legislative drafting manuals.⁹¹ But the drafting manual guidelines, and the degree to which they

86. A.N. Yiannopoulos, *The Civil Codes of Louisiana*, 1 CIV. L. COMMENT. 1, 20–22 ¶¶ 60–64 (2008).

87. *Compare* LA. CONST. art. III, § 2(3)(a) (“All regular sessions convening in even-numbered years shall be general in nature . . .”) with § 4(b) (“During any session convening in an odd-numbered year, no matter . . . shall be introduced or considered unless its object is to enact the General Appropriation Bill; enact the comprehensive capital budget; make an appropriation; levy or authorize a new tax; increase an existing tax; levy, authorize, increase, decrease, or repeal a fee; dedicate revenue; legislate with regard to tax exemptions, exclusions, deductions, reductions, repeals, or credits; or legislate with regard to the issuance of bonds.”), and § (B) (“The power to legislate [in an extraordinary session] shall be limited, under penalty of nullity, to the objects specifically enumerated in the proclamation.”)

88. Emmett Asseff, *The Louisiana Legislative Council*, 16 LA. L. REV. 706 (1956).

89. Grace E. Hart, *State Legislative Drafting Manuals and Statutory Interpretation*, 126 YALE L.J. 438, 451 (2016).

90. *Id.*

91. Rachel La Corte, *Gender-Neutral Language Bill Signed by Gov. Inslee*, ASSOCIATED PRESS (Apr. 23, 2013), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2013/04/washington_gender-neutral_lang.html; see Hart, *supra* note 89, at 464 n.153 (2016); Scott, *supra* note 11.

embrace gender-neutral language, vary. At least sixteen drafting manuals discuss the masculine rule, but only two mention opposition of its use.⁹² The Illinois drafting manual explains: “For most of this State’s history, the use of masculine pronouns . . . in the statutes was customary. In recent years, however, gender neutrality . . . has become customary.”⁹³ The Florida Senate drafting manual also affords “deference to contemporary style,” and advises drafters to “avoid gender-specific pronouns when possible.”⁹⁴ The Pennsylvania drafting manual is the only state that still prefers “he” or “his” over gender-neutral language.⁹⁵

Some drafting manuals recommend, but do not require, gender-neutral language.⁹⁶ For example, the Texas legislature warns that masculine pronouns are “subject to criticism as an example of sex bias, and for that reason gender-neutral language is *preferred* in drafts of legislative documents.”⁹⁷ New Jersey provides a narrower approach. Its manual stipulates that bills proposing to supplement existing law “*should* be written in gender neutral language” but does not require gender-neutral language in existing laws or in bills seeking to amend existing laws.⁹⁸ Other manuals, like Alaska’s, require all legislation to be written as gender-neutral: “The requirement is to draft without any pronouns that denote gender unless referring to a specific individual.”⁹⁹ Similarly, the Colorado drafting manual requires the use of gender-neutral language in all legislative measures, including bills, amendments, resolutions, memorials, and

92. The fifteen states include Arkansas, Delaware, Hawaii, Iowa, Kentucky, Louisiana, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, and Texas, in addition to the Florida Senate. Hart, *supra* note 89, at 491; see also ILL. LEGISLATIVE REFERENCE BUREAU, ILLINOIS BILL DRAFTING MANUAL 211–12 (2012), <http://www.ilga.gov/commission/lrb/Manual.pdf>.

93. ILL. LEGISLATIVE REFERENCE BUREAU, *supra* note 92.

94. FLA. STATE OFFICE OF BILL DRAFTING SERVS., MANUAL FOR DRAFTING LEGISLATION 12 (2009), <http://guides.law.fsu.edu/legdrafting>.

95. PA. CODE § 15.116 (through Pa. Bulletin, Vol. 48, Num. 2, dated Jan. 13, 2018; except Title 10, which is current through Pa. Bulletin, Vol. 48, Num. 1, dated Jan. 6, 2018) (“The phrases ‘he or she’ and ‘his or hers’ should be avoided in a statute when referring to a person affected by a statute. The word ‘he’ or ‘his’ is preferred.”).

96. TEX. LEGISLATIVE COUNCIL, TEXAS LEGISLATIVE COUNCIL DRAFTING MANUAL 107 (revised Jan. 2017), <http://www.tlc.state.tx.us/docs/legref/draftingmanual.pdf>.

97. *Id.*

98. OFFICE OF LEGISLATIVE SERVS., N.J. STATE LEGISLATURE, BILL DRAFTING MANUAL 39 (Sept. 1994), <http://dspace.njstatelib.org:8080/xmlui/bitstream/handle/10929/24778/15141994c.pdf?sequence=1&isAllowed=y>.

99. ALASKA LEGISLATIVE AFFAIRS AGENCY, MANUAL OF LEGISLATIVE DRAFTING 65 (2017), <http://w3.legis.state.ak.us/docs/pdf/DraftingManual.pdf>.

proposals for legislation.¹⁰⁰

A few manuals even go as far as to oppose statutory instruction. Contradictory to a statutory canon of construction (“words of one gender include the other gender”),¹⁰¹ the Minnesota drafting manual requires all legislation to be written as gender neutral.¹⁰² The Minnesota revisor’s office, which is responsible for drafting and reviewing bills for the legislature, even reserves the editorial authority to “remove gender-specific words that are not essential to meaning.”¹⁰³

On the national front, the U.S. House of Representatives and Senate drafting manuals require bill writers to use gender-neutral language.¹⁰⁴ Denying the U.S. Code’s rule on words denoting gender (“words importing the masculine gender include the feminine”),¹⁰⁵ the House drafting manual asserts that the U.S. Code’s rule is “*no longer followed*.”¹⁰⁶ The House further instructs drafters to use gender-neutral language wherever possible,¹⁰⁷ and the Senate drafting manual offers the same approach.¹⁰⁸

Additionally, California, Hawaii, Maine, Rhode Island, Vermont, Florida, and New York have removed masculine generics from their state constitutions, and lawmakers in Delaware, Illinois, Iowa, Minnesota, Nevada, Nebraska, New

100. “All bills, amendments, resolutions, memorials, and proposals for legislation to be introduced in the General Assembly shall use gender-neutral style, avoiding male or female gender terms except in those instances in which a gender-specific term is applicable only to members of one sex or in instances where an exemption is provided for in guidelines or standards.” OFF. OF LEGISLATIVE LEGAL SERVS., COLO. GEN. ASSEMBLY, COLORADO LEGISLATIVE DRAFTING GUIDE 5-26 (2009), <https://leg.colorado.gov/sites/default/files/drafting-manual-20160628.pdf>.

101. MINN. STAT. § 645.08(2) (2013).

102. MINN. STAT. §§ 3C.03(2) & 3C.05(1) (2013); *see also* OFFICE OF THE REVISOR OF STATUTES, MINN. LEGISLATURE, MINNESOTA’S REVISOR MANUAL 297 (2013), <https://www.revisor.mn.gov/office/2013-Revisor-Manual.pdf> (referencing MINN. STAT. § 645.08 (2013)).

103. *Id.* at 297.

104. OFFICE OF THE LEGISLATIVE COUNSEL, U.S. HOUSE OF REPRESENTATIVES, HOUSE LEGISLATIVE COUNSEL’S MANUAL ON DRAFTING STYLE 3 (1995); OFFICE OF THE LEGISLATIVE COUNSEL, U.S. SENATE, LEGISLATIVE DRAFTING MANUAL 6 (1997).

105. 1 U.S.C. § 1 (2012).

106. U.S. HOUSE OF REPRESENTATIVES, *supra* note 104, at 61 (emphasis added).

107. *Id.*

108. U.S. SENATE, *supra* note 104, at 6 (“Use gender-neutral terms. The preferred method is to repeat the noun rather than use a personal pronoun (or ‘he/she’ or ‘his/her.’).”).

Hampshire, and Wyoming are considering similar revisions.¹⁰⁹ In a revision involving 170 amendments, the New York Senate was one of the first legislatures to eliminate all exclusively masculine terms from its state constitution.¹¹⁰ Incorporating gender-neutral pronouns and replacing words like “chairmen” with “chairpersons” did not substantively change New York law, but it did produce an unnecessarily complex reading of one amendment: “The governor shall hold hearings thereon at which the governor may require the attendance of heads of departments and their subordinates.”¹¹¹ To be clear, one need not sacrifice style and form when making language gender-neutral. Some revisionary techniques, as this Comment will propose, can help avoid such redundancy and verbosity.

As many states increasingly move towards stricter gender-neutral requirements, four states have already comprehensively revised their entire bodies of law. Beginning a line-by-line revision process in 1993, Florida was one of the earliest adopters of this movement.¹¹² A commission for the Florida Supreme Court conducted a study that found gender-exclusive language contributed to a “widespread atmosphere of bias against women in the judicial system.”¹¹³ To minimize existing gender bias in the judicial system, the subcommittee implored state lawmakers to replace gender-specific language with gender-neutral language in existing laws and to adopt rules requiring gender-neutral language in future legislation.¹¹⁴ Following this recommendation, the Florida House of Representatives unanimously voted to remove gender-specific terms from the 3.7 million words that make up Florida’s 20,000 statutes.¹¹⁵ All Florida law became

109. Darryl McGarth, *Six State Constitutions Use Gender-Neutral Wording*, WOMEN’S ENEWS (Dec. 9, 2001), <http://womensenews.org/2001/12/six-state-constitutions-use-gender-neutral-wording/>.

110. James C. McKinley Jr., *Voters to Decide on Gender-Neutral Constitution*, N.Y. TIMES, May 15, 2001, at B6.

111. N.Y. CONST. art. VII, § 1.

112. Katy Steinmetz, *Down the Manhole: State Officials Grapple with Gender-Neutral Language*, TIME MAG. (Feb. 5, 2013), <http://swampland.time.com/2013/02/05/down-the-manhole-state-officials-grapple-with-gender-neutral-language/>; John Kennedy, *State to Make Statutes Gender-Neutral*, SUNSENTINEL (Feb. 11, 1993), http://articles.sun-sentinel.com/1993-02-11/news/9301080938_1_gender-bias-change-tradition-gender-specific.

113. Steinmetz, *supra* note 112.

114. FLA. SUPREME COURT, REPORT OF THE FLA. SUPREME COURT GENDER BIAS STUDY COMM’N 40 (1990).

115. Terms such as “he” were changed to “he or she” and “she or he” throughout statutory text. Kennedy, *supra* note 112.

gender neutral after final revisions in the late nineties.¹¹⁶

Beginning in 1983, Washington required the use of gender-neutral language in all new legislation.¹¹⁷ Three decades later, the Washington legislature passed a bill requiring the removal of all gender-exclusive language in laws passed before 1983.¹¹⁸ Answering the criticism of the comprehensive revision, state senator Jeanne Kohl-Welles explained that the revision would actually save time and “reduce staff workload for years to come.”¹¹⁹ She further explained that the revisers were previously required to update language in any pre-1983 statute that was amended by a new bill; therefore, “updating all the pre-1983 statutes proactively and uniformly . . . removes the need to update them individually each time a new law is passed.”¹²⁰ Nearly 3,500 articles were revised to remove gender-exclusive terms.¹²¹ Washington completed its revision in six years and was the fourth state—following Florida, North Carolina, and Illinois—to completely eliminate masculine generics from its legislative text.¹²²

B. TO THE DETRIMENT OF ITS CITIZENS, LOUISIANA RESISTS REFORM

As made clear by the legislative drafting manuals, gender-neutral writing has evolved into a best practice among most jurisdictions. While a group of states has already begun to comprehensively revise their state constitutions—and even all their state laws—Louisiana’s position remains unchanged. The most recent Louisiana House drafting manual offers no mention in favor or in opposition of gender-neutral writing.¹²³

Despite the growing number of states that have eliminated masculine generics from their state constitutions, statutes, and other official documents, the Louisiana legislature has yet to

116. Steinmetz, *supra* note 112.

117. Jeanne Kohl-Welles, *Guest: The Backlash Over Making State Laws Gender Neutral*, SEATTLE TIMES (May 14, 2013), <http://www.seattletimes.com/opinion/guest-the-backlash-over-making-state-laws-gender-neutral/>.

118. *Id.*

119. *Id.*

120. *Id.*

121. Laura L. Myers, “*Penmanship*” Is Now ‘*Handwriting*’ as Washington State Removes Gender Bias in Statutes, REUTERS (Apr. 22, 2013), <http://www.reuters.com/article/us-usa-gender-neutral-idUSBRE93M00V20130423>.

122. *Id.*

123. *See generally* LA. HOUSE OF REPRESENTATIVES, *supra* note 15.

review, much less comprehensively revise, the Civil Code or other state law since 2014. In 2014, the Louisiana State legislature reviewed the need for gender-neutral language in Louisiana law when a bill requested the Louisiana State Law Institute (the “Law Institute”) to “review and evaluate terminology denoting gender that is currently contained in Louisiana law [and] propose alternative gender-neutral terminology to be used prospectively by the Legislature of Louisiana when enacting or amending legislation.”¹²⁴ Upon a hearing of the bill during the Civil Law and Procedure Committee meeting, one representative argued against the need for the study.¹²⁵ She raised concerns that the legislature may forget to be inclusive when writing legislation and “accidentally leave women out.”¹²⁶ She also feared that the study would “waste the Law Institute’s time.”¹²⁷ In an impromptu response, a member of the Law Institute who was in attendance stated that the institute would review the request notwithstanding an act compelling it to do so.¹²⁸ Upon this information, the committee voted to involuntarily defer the bill, which prevented any further consideration of the matter in the 2014 legislative session.¹²⁹

While the 2014 bill never made it beyond the committee hearing, it appears that neither the legislature, nor the Law Institute, has revisited the topic since. Even worse, Louisiana government resisted progress—yet again—when it struck down Governor John Bel Edwards’s 2016 proposal requiring equal pay for females employed by private businesses.¹³⁰ At last, it came as no surprise that just weeks before the commencement of the 2017 Regular Session, Bloomberg placed Louisiana last among the fifty states in its national gender-equality ranking.¹³¹

124. H.R. Con. Res. 18, 2014 Reg. Sess. (La. 2014) (involuntarily deferred).

125. *Hearing Before the Subcommittee on Civil Law and Procedure*, 2014 Reg. Sess. (Apr. 8, 2014), http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2014/Apr_2014/0408_14_CL (statement of Rep. Landry).

126. *Id.*

127. *Id.*

128. *Id.*

129. When the author of the bill requests that an instrument be reported, but the committee votes to defer it, the instrument is involuntarily deferred. No legislative instrument that is involuntarily deferred can be rescheduled for a hearing by the committee without a favorable two-thirds vote by the members of the committee present and voting. LA. HOUSE OF REPRESENTATIVES r. 6.10 (B)(2).

130. Julia O’Donoghue, *Louisiana House Rejects Equal Pay Bill Backed by John Bel Edwards*, NOLA.COM (May 19, 2016) http://www.nola.com/politics/index.ssf/2016/05/louisiana_equal_pay_defeated.html.

131. *Id.* (referencing Vincent Del Giudice et al., *Vermont, Maryland Are No. 1 in*

Louisiana remains, in many respects, ambivalent to the harsh consequences of gender disparity throughout the state—men represented 84.7% of the total number of elected state representatives and senators in 2018,¹³² and men made up 69.2% of all Louisiana state judges in 2016.¹³³ Even worse, in 2014, Louisiana ranked forty-ninth in the country for its earnings gap, thirty-fourth for its female unemployment rate gap, and forty-first for its political empowerment.¹³⁴ Despite these statistics, the Louisiana State Legislature has previously recognized the need for gender equality, as demonstrated by the enactment of the Louisiana Equal Pay for Women Act and protections guaranteed by the Louisiana Constitution.¹³⁵ Yet, these policies are simply not enough to solve for these issues—nor are they adequate to erase the gender bias existing in the constructs of Louisiana law.

In an introduction to the first study of gender bias in the federal courts, Justice Sandra Day O'Connor warned, "When people perceive . . . bias in a legal system, whether they suffer from it or not, they lose respect for that system, as well as for the law."¹³⁶ Joining the concern of gender-based discrimination undermining the judicial system, many state supreme courts formed special committees to identify the causes of such gender bias and recommend methods to eliminate it.¹³⁷ As many of these

Bloomberg Equality Rankings, BLOOMBERG (March 8, 2017), <https://www.bloomberg.com/graphics/2017-gender-equality/> (The study used male-female median pay ratios, female labor-force participation, education, health coverage, and poverty levels as a basis for its ranking).

132. *Member Demographics*, LA. HOUSE OF REPRESENTATIVES, http://house.louisiana.gov/H_Reps/H_Reps_ByDemographicProfile.aspx (last visited Jan. 23, 2018); *Membership Statistics*, LA. STATE SENATE, <http://senate.la.gov/Senators/Data.asp> (last visited Jan. 23, 2018).

133. Salmon A. Shomade & Sally J. Kenney, *Gender and Racial Diversity of Judges*, LA. STATE BAR ASS'N (Oct. 2016), http://llwc.louisiana.gov/pdf/2016/GenderAndRacialDiversityOfLAJudges_Oct2016.pdf.

134. Renita D. Young, *Louisiana Ranks 40th for Women's Equality, Study Shows*, NOLA.COM (Aug. 24, 2016), http://www.nola.com/business/baton-rouge/index.ssf/2014/08/louisiana_among_worst_states_f.html; *accord Women in State Legislatures 2016*, RUTGERS (2016), <http://www.cawp.rutgers.edu/women-state-legislature-2016> (According to the Rutgers Center for American Women and Politics, Louisiana ranks among the bottom ten states for its percentage of women lawmakers.).

135. LA. STAT. ANN § 23:661–69 (Supp. 2018); *see also* LA. CONST. art. 1, § 3 ("No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.").

136. Sandra Day O'Connor, *The Quality of Justice*, 67 S. CAL. L. REV. 759, 760 (1994).

137. *See, e.g., Gender Bias in the Courts of the Commonwealth Final Report*, 7 WM. & MARY J. WOMEN & L. 705, 786 (2001); Missouri Task Force on Gender and Justice,

committees proposed, a concentrated focus on gender-equality—to include gender-neutral language in laws—is precursory to fairness and equality in society.¹³⁸ For example, in a 400-page report, the Georgia Commission on Gender Bias in the Judicial System identified “a perception that gender bias affects the judicial system and those making use of the system,”¹³⁹ and recommended the revision of all “pattern jury instructions, bench books, court forms and documents, court rules and judicial opinions, orders and correspondence so as to eliminate language that is gender biased.”¹⁴⁰ Above all, the people look to the law to instruct on fairness and equal treatment. Louisiana must do more.

IV. A COMPREHENSIVE REVISION: PROMOTING CONSISTENCY, UNIFORMITY, AND EQUALITY IN LOUISIANA LAW

The late Professor A.N. Yiannopoulos, a leading civil law scholar and reviser of the Louisiana Civil Code, recognized that changes in society often necessitate the revision of laws, explaining that other countries with comparable legal heritage share the need for revision because “civil codes in force in these places are no longer responsive to the need[s] of society.”¹⁴¹ Equipped with an understanding of gender-neutral language, its absence from Louisiana law, and the impact it has on Louisiana and its citizens, this Part turns to a solution. Until Louisiana adopts gender-neutral principles that remove gender bias from all Louisiana law, the law will remain a system of inequity. The only solution is a comprehensive revision of the Civil Code, followed by a revision of all Louisiana law.

Report of the Missouri Task Force on Gender and Justice, 58 MO. L. REV. 485, 657–58 (1993); *Report of the Special Committee on Race and Ethnicity to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias* *Special Committee on Race and Ethnicity*, 64 GEO. WASH. L. REV. 189, 196 (1996).

138. See e.g., FLA. STANDING COMM. ON FAIRNESS & DIVERSITY, *supra* note 4 (The Florida Commission on Gender Bias attributed twenty-one initiatives that have that have resulted in “vast improvements in equity within the justice system,” including the adoption of “gender-neutral language in the statutes, rules of court procedure, and court publications.”).

139. GA. COMM’N ON GENDER BIAS IN THE JUDICIAL SYS., GENDER AND JUSTICE IN THE COURTS: A REPORT TO THE SUPREME COURT OF GEORGIA BY THE COMMISSION ON GENDER BIAS IN THE JUDICIAL SYSTEM 93–94 (1991).

140. William B. Hill Jr., *A Need for the Use of Nonsexist Language in the Courts*, 49 WASH. & LEE L. REV. 275, 278 (1992).

141. A.N. Yiannopoulos, *supra* note 86, at 19 ¶ 58.

A. A FOUR-STEP APPROACH: A PRESCRIPTIVE FRAMEWORK TO REVISION AND REFORM

“If there is a profession that demands of its practitioners a reverence and respect for the power of the written and spoken word, then surely it must be the law.”¹⁴² This Comment proposes that the official law reform agency of the state, the Law Institute, recommend improvements to the Civil Code that would remove masculine generics in all codal articles. To take on an assignment such as this, the Law Institute should have precise editing guidelines to efficiently manage a large-scale revision. The vast set of gender-neutral rules and style recommendations from other states should serve as a model for the Law Institute. Further, a comprehensive revision would enable the Law Institute to propose edits in a consistent and uniform manner, and reduce the appearance of arbitrary, differentiated revision styles made by differing revisers. Most importantly, a revision style guide will allow for more efficiency during the lawmaking process.

Thus, this Comment proposes a manageable approach to removing all gender bias in existing and future Louisiana law through a four-step process:

First, the Law Institute’s Aleatory Contracts and Signification of Terms Committee,¹⁴³ which considers the style and form of recommended legislation, should comprehensively review all existing Civil Code articles for gendered language and subsequently make revision recommendations for replacing all gendered language with gender-neutral language by the 2025 Regular Session.

Second, upon receipt of the revisions, the legislature should thereafter pass three resolutions enacting: (1) the Law Institute’s comprehensive revision of the Civil Code, (2) the incorporation of Law Institute’s gender-neutral style rules¹⁴⁴ into the Louisiana Legislative Drafting Manual and require the rules be used in all future bill drafting, and (3) a constitutional amendment requiring

142. Hill, *supra* note 140, at 275–76.

143. Olivier Moréteau, *The Louisiana Civil Code in French: Translation and Retranslation*, 9 J. CIV. L. STUD. 228, 257 (2016) (“The committee is responsible for style and semantics review of drafts proposed by other committees before they are sent to the Institute Council for final approval, and then to the legislature for adoption. Its mission is to identify lexical contradictions and propose more appropriate wording.”).

144. The style rules referenced are provided below.

that all future bills be drafted using gender-neutral terms.

Third, the legislature must also repeal Civil Code article 3506(1) because it is no longer customary to use masculine terms to describe both genders.

Finally, the legislature should propose legislation requiring the removal of gendered language from all existing Louisiana statutes and constitutional provisions. All existing laws using gendered language should be made gender-neutral by a date designated by the legislature.

Under this proposal, the Aleatory Contracts and Signification of Terms Committee would oversee the Civil Code revisions, and very little, if any, governmental funding would be appropriated to this project.¹⁴⁵ The mission of the Law Institute, as chartered by its purpose, is to “consider needed improvements” in the law and to make recommendations, periodically propose changes in the law deemed necessary to “modify or eliminate *antiquated and inequitable rules of law*,” and to bring Louisiana law into “harmony with *modern conditions*.”¹⁴⁶

Louisiana lawmakers have raised concerns about the cost and time needed for a comprehensive revision. While a reasonable concern, the associated costs would be inconsequential because the Law Institute is made up of elected, yet uncompensated, members. Funding appropriated to the Law Institute is used for research and clerical assistance, which is made “in the payment of nominal honoraria,” or in the form of gratuity.¹⁴⁷

Furthermore, the Louisiana legislature amended less than ten Civil Code articles in 2017 and less than fifteen in 2016.¹⁴⁸ At this rate, it would take the legislature over 100 years to make the entire Civil Code gender neutral. While this calculation does not include the number of articles that have already been revised or

145. LA. STAT. ANN. § 24:203 (2017) (“The members of the council shall serve without any compensation for services as such.”).

146. LA. STAT. ANN. § 24:204 (2017).

147. See J. Denson Smith, *Foreword*, LA. STATE LAW INST. (Dec. 15, 1977), <http://www.lsl.org/foreword>.

148. *Changes Effected by the 2017 Regular Session to the Civil Code*, LA. STATE LEGISLATURE, <https://www.legis.la.gov/Legis/CitatorIndex.aspx?sid=17RS&lbid=CC> (last visited May 31, 2018) (listing six Civil Code article amendments); *Changes Effected by the 2016 Reg. Sess. to the Civil Code*, LA. STATE LEGISLATURE, <http://www.legis.la.gov/Legis/CitatorIndex.aspx?sid=16RS&lbid=CC> (last visited on May 31, 2018) (listing twelve Civil Code article amendments).

articles that are already gender neutral, it is a rough estimation of how long it will take to revise the entire Civil Code notwithstanding an intentional wholesale revision. Yet, the early Civil Code redactors transformed the 1808 Digest into the Louisiana Civil Code of 1825, comprising of 3,522 articles—about one and one-half times more than the 1808 Digest.¹⁴⁹ There were more than 423 amendments to the 1808 Digest, 1746 additions, and 276 deletions.¹⁵⁰ The redactors also translated the 1825 Code from French to English in its entirety.¹⁵¹ The redactors completed the project in three years.¹⁵² Certainly modern revisers—with word processing and other technology at their disposal—could undertake a similar scope of revision at a comparable or even expedited rate.

B. SETTING THE STANDARD: GENDER-NEUTRAL LANGUAGE IN ALL FUTURE LEGISLATION

The following table is a set of recommended rules that achieve gender-neutral language. These rules are modeled after other state legislative drafting manuals and provide guidelines that have proven most successful. Further, these rules seek to avoid redundancy and circumlocution as much as possible.

149. A.N. Yiannopoulos, *supra* note 86, at 12 n.27.

150. *Id.* at 12 n.27.

151. *Id.* at 13 ¶ 39.

152. *Id.* at 11 ¶ 32.

Rule ¹⁵³	Example ¹⁵⁴	Application ¹⁵⁵
1. Substitute the pronoun with a noun. In most cases, repeat the subject of the sentence or the word that would have been the pronoun's antecedent reference. ¹⁵⁶	A possessor in good faith acquires the ownership of fruits he has gathered. ¹⁵⁷	A possessor in good faith acquires the ownership of fruits he the possessor has gathered.
2. Omit nonessential pronouns. ¹⁵⁸	The owner may make works on, above, or below the land as he pleases, and draw all the advantages that accrue from them, unless he is restrained by law or by rights of others. ¹⁵⁹	The owner may make any works on, above, or below the land as he pleases and draw all the advantages that accrue from them, unless he is restrained by law or by rights of others.
3. Substitute a masculine possessive pronoun with an article, such as "a," "an," or "the." ¹⁶⁰	He is bound to keep them and at his option to pay to the possessor either the cost of the materials and of the workmanship, or their current value, or the enhanced value of the immovable. ¹⁶¹	He The owner is bound to keep them and at his the option to pay to the possessor either the cost of the materials and of the workmanship, or their current value, or the enhanced value of the immovable.
4. Restructure or rewrite the sentence to remove the pronoun altogether. ¹⁶²	The possessor, whether in good or in bad faith, may retain possession of the thing until he is reimbursed for expenses and improvements which he is entitled to claim. ¹⁶³	The possessor, whether in good or in bad faith, may retain possession of the thing until he <u>is reimbursed for entitled expenses and improvements which he is entitled to claim.</u>

Purposefully omitted from this guide are rules requiring "he"

153. These recommended rules are modeled after the Colorado, Virginia, and Florida rules.

154. Words and phrases in bold italics denote gendered language.

155. The recommended revisions are presented in a form that graphically displays the applied changes as follows: (1) underlined text is new matter, and (2) deleted text is ~~struck through~~.

156. COLO. GEN. ASSEMBLY, *supra* note 100, at 5-28-29 ("Repeat the subject of the sentence or the word that would have been the pronoun's antecedent reference. In some instances the possessive noun may be repeated.").

157. See LA. CIV. CODE art. 486 (2018).

158. COLO. GEN. ASSEMBLY, *supra* note 100, at 5-29 ("Substitute a noun for the pronoun.").

159. See LA. CIV. CODE art. 490 (2018).

160. See *Manual on Usage and Style*, R. 6.02(b), at 58 (Texas Law Review, 13th ed. 2015).

161. See LA. CIV. CODE art. 496 (2018).

162. ME. STATE LEGISLATIVE OFFICE OF THE REVISOR OF STATUTES, MAINE LEGISLATIVE DRAFTING MANUAL 9 (2016), <http://legislature.maine.gov/uploads/originals/draftman2016-1.pdf> ("Sometimes the best choice is to recast the sentence completely, especially if it is long.").

163. LA. CIV. CODE art. 529 (2018).

to be replaced with “he or she” and “his” with “his or her.” Many states cautioned that this application is too verbose and is unnecessary for achieving gender neutrality.¹⁶⁴ Further, research has indicated that neutralization of terms—not female word visibility or simply adding “she” to “he”—plays a larger role in gender equality.¹⁶⁵ Some states, such as Alabama, permit the use of “they,” “them,” and “their” to describe singular nouns because the plural pronouns are gender-neutral.¹⁶⁶ However, many states agree that this application is “a misguided way to achieve gender neutrality,” concluding that the pairing of a plural pronoun and a singular noun is never acceptable.¹⁶⁷

Unless the legislature requires all future laws to be gender neutral, gendered language may arise—intentionally or unintentionally—in future pieces of legislation. If future legislation passes with gendered language, an additional amendment seeking to revise the same piece of legislation would certainly follow. Unless all future laws are required to be written as gender neutral, the revision process may never end and result in an egregious amount of wasted time and effort. A law preventing the passage of legislation containing gendered language, such as the one proposed at the outset of this section, would prevent this.

In addition, the incorporation of gender-neutral language would render Civil Code article 3506(1) meaningless, as there would be no need to explain that any mention of “he” also refers to “she.” Further, the existence of this article could cause confusion after the Civil Code has been revised to remove gendered language. A future reader, when reading the provision against a genderless Civil Code, would surely be puzzled if no gendered language existed.

V. CONCLUSION

At the celebration of the Sesquicentennial of the Civil Code, a Louisiana professor described the body of laws as a “living and durable monument to those who created it.”¹⁶⁸ As with all living

164. Office of the Code Reviser, *Bill Drafting Guide 2017*, WASH. STATE LEGISLATURE (2017), http://leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx.

165. ALGEO, *supra* note 19, at 573.

166. *Drafting Style Manual*, ALA. LEGISLATURE SERVS. AGENCY, http://lsa.state.al.us/lrs/style_manual.aspx (last visited May 31, 2018).

167. ILL. LEGISLATIVE REFERENCE BUREAU, *supra* note 94, at 212.

168. John T. Hood Jr., *The History and Development of the Louisiana Civil Code*,

documents, the Civil Code can sustain updates, changes, and adjustments when the need arises. As this Comment contends, the need for a comprehensive revision of the Civil Code has become paramount. The growing understanding of the impact of gender-based bias in language has inspired a widespread movement to implement formal procedures that prevent the use of masculine generics. Despite recent commitments to gender-neutral policies made by other state legislatures, the masculine rule remains widespread throughout Louisiana law.

Adoption of this Comment's proposal would eliminate the gender bias in Louisiana law and instead model equitable principles in the contexts of gender. Further, implementation of the solution offered by this Comment is congruent with the steps taken by the U.S. Congress, numerous state legislatures, and the ABA to implement the use of gender-neutral language within the legal system. The principles recommended herein establish uniformity within the law and are essential to carrying out gender protections already in place today. As a growing number of states continue to eliminate masculine generics from their laws, Louisiana must take the same step forward. If Louisiana has any intention of reducing the gender disparity that pervades this state, change must first begin with the letter of the law.

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