WHEN CUSTOM COLLIDES WITH THE RULE OF LAW:

The Gender Disparity Created by Louisiana's Trustee Assignments

By Theophile N. Kadia, Gabrielle A. Moore and Victoria I. Shillow



While there are many things that make Louisiana's legal system unique, the rule of law is not one of them. The rule of law is a principle that holds all persons, including the government, accountable to the law. It ensures that the law is applied equally and gives no preference to any group or individual. Most importantly, the rule of law requires the law to be known and accessible to all. Even with our civil law tradition, we yield to virtues of the rule of law.

In Louisiana, the rule of law provides for two sources of law — legislation and custom.[1] Legislation, the solemn expression of legislative will, is easy to recognize because it is publicly debated and ultimately recorded in codes and on websites. Custom is as prominent in Louisiana's legal landscape as legislation, but it has a much more clandestine existence. Custom results from practice repeated for a long time and is generally accepted as having acquired the force of law.[2] In the absence of legislation, custom is controlling.[3]

Custom is not some ornamental fixture in law. It has settled legal disputes before. In *Welcker v. Welcker,* a former husband sued seeking injunctive relief to prohibit his divorced wife from using his surname.[4] Because no express legislation existed to resolve this issue, the court turned to custom to equitably decide the case. The court found that it was customary for divorced women to be known by a combination of their Christian name, their family surname and their former husband's surname. This practice was generally acknowledged and accepted. Accordingly, the court held that the dissolution of marriage by divorce did not form a basis for the former husband's injunctive relief to prevent his former wife from using his last name. Thus, with custom and without legislation, the former wife could continue using her former husband's surname.

In *International River Center v. Kogos*, a hotel sued the bride to recover the unpaid balance of a wedding reception.[5] The bride filed a peremptory exception of no right or cause of action, stating that the goods and services were contracted by her parents, suggesting she should escape liability. Moreover, the bride contended that it was a common custom for the parents of the bride to pay for the wedding reception. In absence of express legislation, the court used custom to guide its decision, ultimately deciding that the bride's parents were liable for the costs of the reception.

But is there evidence of custom being used beyond judicial opinions? We conclude that there is.

As an extension of lessons on gender disparities and systemic discrimination, Professor Angela Allen-Bell assigned certain topics to students in her "Law and Racism" class at Southern University Law Center for further investigation. The students were asked to determine whether only justice-impacted males are allowed to act as trustees at certain governmental buildings, such as the State Capitol and the Governor's Mansion.[6] If so, was it the result of legislation or custom? It was easily determined that no rule or law mandated these assignments, but, through interviews with a range of credible sources and through document reviews, it was confirmed that the practice exists. It was determined that the male trustees act as cooks, janitors and assistants while on these governmental properties. Meanwhile, justice-impacted women are largely relegated to tasks on the grounds of the women's prison, such as cooking, cleaning, doing laundry or maintaining the grounds. The investigation revealed this to be a consistent practice over a long period of time.

While the state Constitution expressly says that no law shall arbitrarily, capriciously or unreasonably discriminate against a person because of sex, and that every person shall be free from arbitrary, capricious or unreasonable discrimination based on sex in access to public areas, accommodations and facilities, this custom, which appears to discriminate against women, exists in plain sight.[7]

This practice disadvantages Louisiana's justice-impacted women. Louisiana's justice-impacted women are often mothers, grandmothers, wives, sisters and/or caregivers.[8] Parole and pardons provide the pathway for them to return to those who need them. A male with references from governors, elected officials or state actors is inherently advantaged before the parole or pardon board. Another consideration that is persuasive before a pardon or parole board is a person's ability to sustain himself or herself post-release. These assignments offer a justice-impacted person the opportunity to maintain social skills needed to reenter society. All of this is at stake each time this custom continues.

Gloria (Mama Glo) Williams became known as the longest-serving female inmate in the state and the entire country. After 51 years in prison, the 76-year-old was granted parole in 2022. Perhaps Mama Glo would have seen freedom sooner if gender equality were practiced and not just written. She entered prison as a 25-year-old wife and mother of five. She was convicted and sentenced to life in prison in 1971, along with two other codefendants, for the murder of a shopkeeper in Opelousas, La. Williams' male codefendant was able to obtain a pardon in 1977 after working in the Governor's Mansion as a personal cook for Gov. Edwin Edwards. Mama Glo was never able to obtain such a position.

Louisiana's women lack the advantage these types of references present. As they fail to earn release through pardon or parole, they suffer, but so does the state. This custom contributes to mass incarceration by creating obstacles to the release of women who are not a threat to public safety. This means Louisiana's tax dollars are used to unnecessarily warehouse people instead of sustaining schools and roads and providing services that the public needs.

Moreover, this custom possibly conflicts with state and federal laws that do not allow state actors to engage in gender discrimination while acting under the color of law. Additionally, this custom undermines the rule of law and, in doing so, contributes to social unrest. Some officials offered fears of sexual abuse, sexual exploitation or sexual deviance as reasoning for limiting the justice-impacted women to the grounds of the prison and not giving them access to governmental buildings. The fear appears to arise from the thought that these women lack power to resist the powerful free person in these scenarios, or they hold

the power to entice a free person into a sexual tryst. This may be true, but just as true as when they are behind bars.

Statistics establish a high incidence of sexual or gender exploitation of female inmates at the hands of those employed inside correctional facilities.[9] They can also be harmed by other justice-impacted persons. In 2022, a transgender female inmate impregnated two fellow inmates in a women's prison in New Jersey.[10] Furthermore, male trustees can become involved in offenses of a sexual nature as they fulfill their trustee duties. In 2018, a Rapides Parish trustee was caught in the parish courthouse having intercourse with a courthouse employee.[11] Additionally, in 2012, a Louisiana trustee admitted to impregnating an 11-year-old girl while out on assignment.[12]

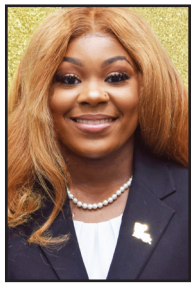
Instead of making gender inequality and gender disparity a custom, the better practice would be to make equity a custom. State officials could fashion a trustee policy that treats all justice-impacted people comparably, particularly considering Louisiana's status as the mass incarceration capital. That policy should properly vet potential trustees, strongly consider risks associated with assignments, attempt to mitigate or prevent them, and hold individual violators accountable. Until then, justice-impacted women will remain prisoners to custom, as the rule of law sits in the guard tower looking down with disapproval.

FOOTNOTES

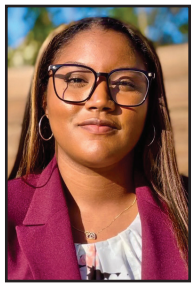
1. La. Civ. C. arts. 1-2.
2. La. Civ. C. art. 3.
3. La. Civ. C. art. 4.
4. *See*, Welcker v. Welcker, 342 So.2d 251, 253 (La. App. 4 Cir. 1977), *writ denied sub nom*. Welker v. Little, 343 So.2d 1077 (La. 1977).
5. *See*, Int'l River Ctr. v. Kogos, 516 So.2d 1327, 1329 (La. App. 4 Cir. 1987).
6. This does not suggest all justice-impacted men are assigned to these buildings. It suggests it is an option for some men, but never an option for women.
7. La. Const. art. I, §§ 3, 12.
8. The Global Role of Women, Global Volunteers, *https://globalvolunteers.org/global-role-of-women* (last visited on Nov. 25, 2022).
9. *See, e.g.*, Allen J. Beck and Ramona R. Rantala, Sexual Victimization Reported by Adult Correctional Authorities, 2009-11 (2014), Bur. Justice Statistics ("In 2011, correctional administrators reported 8,763 allegations of sexual victimization in prisons, jails and other adult correctional facilities. About half (51%) involved allegations of nonconsensual sexual acts or abusive sexual contacts of inmates with other inmates, and half (49%) involved staff sexual misconduct or sexual harassment directed toward inmates."); Stacy M. Brown, "Senate Finds Employee-on-Inmate Sex Abuse in Federal Prisons," Wash. Informer, *www.washingtoninformer.com/senate-finds-employee-on-inmate-sex-abuse-in-federal-prisons/* (Dec. 21, 2022) ("Brenda V. Smith, a law professor at the American University's Washington College of Law, said women in every penal system in the United States, including the federal system, have experienced . . . physical and sexual abuse.").
10. Tat Bellamy Walker, "N.J. trans prisoner who impregnated 2 inmates transferred to men's facility," *www.nbcnews.com/nbc-out/out-news/nj-trans-prisoner-impregnated-2-inmates-trans-ferred-mens-facility-rcna38947* (last accessed Dec. 3, 2022).
11. KLFY 10 News. "Rapides Parish trustee, woman caught having sex in courthouse," *www.klfy.com/top-stories-news/rapides-parish-trustee-woman-caught-having-sex-in-courthouse/* (last accessed Nov. 26, 2022).
12. "Louisiana Trustee Impregnates 11-Year-Old," Prison Legal News. *www.prisonlegalnews.org/news/2012/may/15/louisiana-trustee-impregnates-11-year-old-trustee-program-cancelled/* (last accessed Nov. 26, 2022).



Theophile N. Kadia is a 2023 JD candidate at Southern University Law Center and a Pro Bono Project intern at the Baton Rouge Bar Foundation. He is secretary of the Health Law Society and a research assistant for immigration law. (theophile.kadia@sulc.edu)



Gabrielle A. Moore is a 2023 JD candidate at Southern University Law Center. She is the SULC 3L Class president and an active member on the Board of Student Advisors, the Community Service Committee and the Wellness Committee. (gabrielle.moore01@sulc.edu)



Victoria I. Shillow is a 2023 JD candidate at Southern University Law Center. She is a member of the Black Law Students Association, the Tureaud Chapter of Phi Alpha Delta Law Fraternity International and the SULC Juvenile Law Clinic, and a law clerk at the Louisiana Department of Transportation and Development. (victoria.shillow@sulc.edu)

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