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**Stuck between a Rock and a Meth Cooking Husband: What Breaking Bad's Skyler White Reaches about How the War on Drugs and Public Antipathy Constrain Women in Circumstance's Choices**

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**STUCK BETWEEN A ROCK AND A METH  
COOKING HUSBAND: WHAT *BREAKING BAD*'S  
SKYLER WHITE TEACHES US ABOUT HOW  
THE WAR ON DRUGS AND PUBLIC  
ANTIPATHY CONSTRAIN WOMEN OF  
CIRCUMSTANCE'S CHOICES**

Holly Jeanine Boux\* and Courtenay W. Daum†

*"Toe the line or you will wind up just like Hank"* – Walter White to his wife, Skyler<sup>1</sup>

*"If you start getting defensive, the DA will look at you differently"* – DEA Agent Hank Schrader to Skyler White, while trying to get her to testify against her husband<sup>2</sup>

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1. *Breaking Bad: Ozymandias* (AMC television broadcast Aug. 25, 2013).
2. *Breaking Bad: Buried* (AMC television broadcast Aug. 18, 2013).

## INTRODUCTION

As the above quotations illustrate, Skyler White, protagonist Walter White's wife in *Breaking Bad*, is stuck between her husband and the law. Skyler's increasing awareness of the dilemma in which her husband has placed her, and her attempts to contain the damage he has wreaked on her family are an important source of drama for the series. However, they also serve as a stark illustration of the double bind faced by thousands of real women who find themselves in similar situations. Described in the literature as "women of circumstance,"<sup>3</sup> women with similar obligations as Skyler find themselves incarcerated because the men in their lives persuade or coerce their participation in illicit drug activity.<sup>4</sup> Combined with the tactics employed by police and prosecutors in the War on Drugs, these women are forced to try and reconcile a long list of conflicting concerns. They must balance (1) how the legal system uses them as scapegoats and pawns, (2) their intimate relationships with dangerous drug operatives,<sup>5</sup> (3) the physical, financial and emotional wellbeing of their children and families, and (4) societal expectations about "good" women and female subservience. The combined effect of these intersecting forces

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3. Shimica Gaskins, Note, "Women of Circumstance" – *The Effects of Mandatory Minimum Sentencing on Women Minimally Involved in Drug Crimes*, 41 AM. CRIM. L. REV. 1533 (2004). Elsewhere in the literature, these women are referred to as "women in relationship." Eda Katharine Tinto, *The Role of Gender and Relationship in Reforming the Rockefeller Drug Laws*, 76 N.Y.U. L. REV. 906 (2001). Although these terms may be used interchangeably, in this article we will use the term "women of circumstance."

4. Gaskins, *supra* note 3, at 1533.

5. In this article, we focus on women who are in relationships with men who manufacture and/or sell illegal drugs. While committing "crimes is an autonomous choice for a good proportion of female offenders" we maintain this narrowed focus on women in these relationships rather than examining women offenders more generally. We do so in order to explore in-depth the constraints that operate on the specific subset of women whose dilemmas are usefully illuminated by *Breaking Bad*. Sarah Wynn, *Mean Women and Misplaced Priorities: Incarcerated Women in Oklahoma*, 27 WIS. J. L. GENDER, & SOC. 281, 287 (2012). As Goldfarb notes, "Undoubtedly, some women are co-equal participants in drug dealing with their partners. Others may act of their own accord and on their own behalf, operating as independent agents in the drug trade. Nonetheless, focusing on women whose partners are involved in the drug trade is a defensible choice, not only because it comprises one substantial subset of those who are serving drug sentences grossly disproportionate to their conduct. Such a focus is also defensible, because it is mindful of the criminological literature, both statistical and ethnographic, that reveals markedly different patterns of male and female involvement in drug crimes," Phyllis Goldfarb, *Counting the Drug War's Female Casualties*, 6 J. GENDER, RACE & JUST. 277, 291 (2002).

has led to the entrapment, marginalization and incarceration of tens of thousands of women of circumstance.<sup>6</sup>

In the series, the deleterious effects of these interconnected forces are not only revealed in the context of Skyler's relationships with her husband and law enforcement, but they are evident in her character's vilification by much of the viewing audience as well. In this article, we explore how *Breaking Bad* and the character of Skyler White effectively demonstrate the complicated dynamics of three related institutions—the legal system (and its practices), the family (and its concomitant obligations), and society (and its prevailing cultural expectations about women)—and how they combine to constrain women of circumstance and the choices available to them.

Part I begins with an analysis of how the criminal justice system functions as a patriarchal tool of the state to control and constrain the behavior of women of circumstance.<sup>7</sup> In the War on Drugs, patriarchy within the criminal justice system leads women to distrust law enforcement and the courts, and forecloses their access to assistance from a system that uses them as pawns in its pursuit of male drug operatives who are often these women's intimate partners. Part II examines how these legal constraints upon women of circumstance intersect with women's gendered roles in their families to eliminate viable options for extracting themselves from the tenuous situations that are not of their making. Ultimately, the legal bind discussed in Part I does not exist in a vacuum, but is preconditioned by the woman's family situation and this results in additional constraints on women of circumstance's choices. Finally, Part III examines how the wide acceptance of stereotypes about what is and what is not appropriate female behavior results in public antipathy toward wo-

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6. According to The Sentencing Project, in 2012, there were over 113,000 women incarcerated in federal and state prisons compared to just over 13,000 in 1980 and many of the women serving time in prison were convicted of drug-related offenses. In addition, the number of women in prison has been increasing at a rate fifty-percent higher than for men since 1980. THE SENTENCING PROJECT, FACT SHEET: TRENDS IN U.S. CORRECTIONS 4 (2014), available at [http://sentencingproject.org/doc/publications/inc\\_Trends\\_in\\_Corrections\\_Fact\\_sheet.pdf](http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf). The increase in the female prison population mirrors the growth of the War on Drugs during this period and demonstrates the pernicious effects this has on women. Similarly, the ACLU estimates that more than one million women are under the control of the criminal justice system including those incarcerated in federal and state prisons. AMERICAN CIVIL LIBERTIES UNION, *Facts About the Over-Incarceration of Women in the United States* (December 12, 2007), <https://www.aclu.org/womens-rights/facts-about-over-incarceration-women-united-states>.

7. See, e.g., BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012).

men involved with male drug operatives and works to substantiate the legal system's problematic treatment of these women. Importantly, these hegemonic beliefs about women's roles also stymie reforms geared at remediating the Scylla and Charybdis-like situation faced by women of circumstance. While theoretically illuminating, understanding the combined effect of these institutional, familial and social constraints is also of practical importance for reformers seeking to change a legal system that systematically ignores or preys upon the constraints that bind women of circumstance. Part IV offers mechanisms designed to affect meaningful reform in this area of the law.

While *Breaking Bad* is a fictional television show, analyses of its depiction of the constraints faced by Skyler White are useful in several ways. First, due to its popularity the series is able to demonstrate to millions of interested viewers how Skyler—and women like her—are problematically disadvantaged by being married to a drug dealer. In particular, an analysis of Skyler illustrates how women of circumstance are trapped and often punished by an inflexible legal system. Secondly, analysis indicates that tackling stereotypically gendered beliefs about women must be a salient consideration for those seeking to reform current drug sentencing structures and practices because these beliefs reinforce the problematic implementation of the legal framework established by the War on Drugs. Hegemonic beliefs about women's "proper" place also condition the type of public hatred leveled against Skyler White. These beliefs shape and reinforce the negative and unfair treatment that women of circumstance receive both inside and outside of the courtroom. As such, reforms aimed at ameliorating this situation and modifying the overly punitive legal structures that deleteriously affect these women must acknowledge and address these beliefs.

## I. THE ROCK: THE LEGAL SYSTEM

Fairly early in the series, Skyler White discovers her husband is heavily involved in making and dealing methamphetamine. Recognizing the threat this poses to her family, Skyler is faced with the choice of helping him conceal his behavior or reporting it to the police (or in her case, her brother-in-law Drug Enforcement Agency (DEA) Agent Hank Schrader). Throughout the remainder of the series, Skyler grapples with the consequences of her decision to protect Walter and the integrity of her family unit by involving herself in the illegal laundering of Walter's drug profits and implicating herself in his drug business. While intensely dramatic in *Breaking Bad*, Skyler's dilemma is an accurate representation of a bind regularly faced by many women. Evidence indicates that the

War on Drugs has a “particularly devastating impact on women.”<sup>8</sup> In 2012, women constituted 6.9 percent of the state and federal prison population in the United States. In New Mexico, where *Breaking Bad* is set, women comprise ten percent of the state inmate population.<sup>9</sup> While the number of males incarcerated in New Mexico prisons has remained relatively stable in recent years, a noteworthy trend is the significant increase in the number of female inmates in New Mexico’s prisons.<sup>10</sup> Furthermore, the percentage of the female prison population convicted of drug offenses in New Mexico is approximately thirty-five percent versus approximately twenty-seven percent for all U.S. state prisons.<sup>11</sup>

As noted in the American Civil Liberties Union’s (ACLU) publication *Caught in the Net*, women are increasingly caught up in the enforcement of drug laws and subject to harsh sentences despite their minimal involvement in drug crimes.<sup>12</sup> While additional research is needed to fully

8. PATRICIA ALLARD, *LIFE SENTENCES: DENYING WELFARE BENEFITS TO WOMEN CONVICTED OF DRUG OFFENSES* 25 (2002). See also Chieko M. Clarke, *Maternal Justice Restored: Redressing the Ramifications of Mandatory Sentencing Minimums on Women and Their Children*, 50 HOWARD L. J. 263, 266 (2006); Marne L. Lenox, *Neutralizing the Gendered Collateral Consequences of the War On Drugs*, 86 N.Y.U. L. REV. 280, 284 (2011); Wynn, *supra* note 5, at 283–84; ACLU, *supra* note 6; FATIMA GUNJA, AMERICAN CIVIL LIBERTIES UNION, *RACE AND THE WAR ON DRUGS* (2003), available at <https://www.aclu.org/files/FilesPDFs/ACF4F34.pdf>; BARBARA BLOOM, BARBARA OWEN, STEPHANIE COVINGTON & MYRNA RAEDER, NATIONAL INSTITUTE OF CORRECTIONS, *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* (2002), available at <http://www.nicic.org/pubs/2003/018017.pdf>; LAWRENCE A. GREENFELD & TRACY L. SNELL, UNITED STATES DEPARTMENT OF JUSTICE, *WOMEN OFFENDERS* (2000), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=568>; AMY E. HIRSCH, CENTER FOR LAW AND SOCIAL POLICY, “SOME DAYS ARE HARDER THAN HARD”: WELFARE REFORM AND WOMEN WITH DRUG CONVICTIONS IN PENNSYLVANIA (1999), available at <http://www.clasp.org/resources-and-publications/files/0167.pdf>; MARC MAUER, CATHY POTLER & RICHARD WOLF, THE SENTENCING PROJECT, *GENDER AND JUSTICE: WOMEN, DRUGS AND SENTENCING POLICY* (1999), available at [http://www.sentencingproject.org/doc/File/Drug%20Policy/dp\\_genderandjustice.pdf](http://www.sentencingproject.org/doc/File/Drug%20Policy/dp_genderandjustice.pdf).

9. NEW MEXICO SENTENCING COMMISSION, *NEW MEXICO PRISON POPULATION FORECAST: FY 2015-FY 2024* 4 (June 2014), available at <http://nmsc.unm.edu/reports/2014/new-mexico-prison-population-forecast-fy-2014-fy2023.pdf>.

10. According to the New Mexico Sentencing Commission, “the high count in FY 2014 (through May 2014) has been 698 female inmates, a 13.7% increase from the FY 2010 high. Moreover, there has been a significant upward trend in the percentage of females incarcerated in county jails in New Mexico. From 2010 to 2013, the percentage of female inmates incarcerated in county jails in New Mexico has increased from 12.9% to 16.7% of the total jail census.” *Id.* at 3.

11. *Id.* at 2.

12. LENORA LAPIDUS ET AL., AMERICAN CIVIL LIBERTIES UNION, *CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND CHILDREN* iii (2004),

explore women's uniquely constrained reality as they are pulled through the American drug enforcement system's legal structures, legal scholars have found that "federal courts around the country have seen an emergence of a new type of drug offender—women who are minimally involved in drug crime, but are disparately punished by the existing criminal justice system."<sup>13</sup> These scholars have persuasively illustrated how drug laws at both the state and federal level discriminate against women.<sup>14</sup> For example, Gaskins's studies have drawn attention to a crucial problem: women who play minor roles in drug conspiracies are susceptible to punishment under conspiracy and complicity laws but cannot benefit from related "substantial assistance" laws because they lack sufficient knowledge about their intimates' criminal enterprises to be of any assistance to prosecutors.<sup>15</sup> Others have criticized sentencing laws on similar grounds arguing that women sentenced for conspiracy receive punishments that are not commensurate with their alleged or actual involvement in drug crimes.<sup>16</sup>

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available at [https://aclu.org/files/images/asset\\_upload\\_file431\\_23513.pdf](https://aclu.org/files/images/asset_upload_file431_23513.pdf) ("Even when they have minimal or no involvement in the drug trade, women are increasingly caught in the ever-widening net cast by current drug laws through provisions such as conspiracy, accomplice liability, and constructive possession, which expand criminal liability to reach partners, relatives, and bystanders. Sentencing laws fail to consider the many reasons—including domestic violence, economic dependence, or dependent immigration status—that may compel women to remain silent or not report a partner or family member's drug activity to authorities. Moreover, existing sentencing policies, particularly mandatory minimum sentencing laws, often subject women to equal or harsher sentences than those imposed upon the principals in the drug trade, who are ostensibly the target of those policies.").

13. Gaskins, *supra* note 3, at 1533.

14. *Id.* at 1534. See, e.g., Barbara Bloom, Barbara Owen & Stephanie Covington, *Women Offenders and the Gendered Effects of Public Policy*, 21 REV. POL'Y RES. 31 (2004); BLOOM ET. AL., *supra* note 8; BARBARA BLOOM, MEDA CHESNEY-LIND & BARBARA OWEN, CENTER ON JUVENILE AND CRIMINAL JUSTICE, REPORT: WOMEN IN CALIFORNIA PRISONS: HIDDEN VICTIMS OF THE WAR ON DRUGS (1994), available at [http://www.cjcr.org/uploads/cjcr/documents/women\\_in\\_california\\_prisons-hidden\\_victims\\_of\\_the\\_war\\_on\\_drugs.pdf](http://www.cjcr.org/uploads/cjcr/documents/women_in_california_prisons-hidden_victims_of_the_war_on_drugs.pdf); NATASHA A. FROST, JUDITH GRENE & KEVIN PRANIS, INSTITUTE ON WOMEN AND CRIMINAL JUSTICE, HARD HIT: THE GROWTH IN THE IMPRISONMENT OF WOMEN, 1977-2004 29-30 (2006), available at <http://csdp.org/research/HardHitReport4.pdf>.

15. Gaskins, *supra* note 3, at 1534.

16. Haneefah A. Jackson, Note, *When Love is a Crime: Why the Drug Prosecutions and Punishments of Female Non-Conspirators Cannot Be Justified By Retributive Principles*, 46 HOWARD L.J. 517, 519 (2003) ("Because conspiracy itself is a criminal offense, a woman who does little more than rent cars for interstate travel, allows a boyfriend to keep his belongings at her home, takes phone messages for her husband, or unwittingly hands him a role [sic] of aluminum foil may be deemed an active participant in a large scale conspiracy and subsequently charged with every criminal of-

Thus, a growing body of research suggests that the legal system utilizes expansive criminal liability and draconian sentencing laws, including mandatory prison or mandatory minimum sentences, to pressure and/or prosecute women in the War on Drugs. These laws, however, make little to no accommodations for the circumstances—often far beyond these women’s control—that govern these women’s situations. Skyler White’s interactions with the federal drug law enforcement infrastructure are emblematic of the struggles faced by many real women of circumstance and illustrate the complex and often lose-lose situations faced by many female intimates of male drug operatives. Though Skyler’s class and racial privileges differentiate her from many women of circumstance,<sup>17</sup>

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fense committed in furtherance of that conspiracy by any offender deemed a coconspirator.”).

17. As a white female professional (in the series, among other jobs, Skyler White worked as a bookkeeper for Beneke Fabricators) married to a high school teacher, Skyler benefits from both class and race privileges that do not pertain to many women of circumstance who are poor, uneducated or racial or ethnic minorities. Skyler’s privileges insulate her from many of the destabilizing and constraining forces that operate on most women of circumstance. According to the ACLU position paper *Race and the War on Drugs*, “[b]etween 1986 and 1996, the number of women incarcerated for drug offenses increased 888%. Overwhelmingly, most of these women come from poor backgrounds: 80% of imprisoned women report incomes of less than \$2000 in the year before the arrest. Minority women are especially targeted by drug war policies while pregnant or parenting. Black women during pregnancy, for instance, are 10 times more likely to be drug tested or reported to child welfare agencies than white women. Before this practice was struck down by the Supreme Court, one public hospital in South Carolina selectively drug tested pregnant black women and reported positive tests to police who then arrested them, forcing many to give birth in shackles before taking them to jail. The effects drug war policies have on children are devastating. Today, 1.6 million children have a father in prison and 200,000 children have a mother in prison. Black children are nearly 9 times more likely, and Latino children 3 times more likely to have a parent in prison than white children.” ACLU, *supra* note 8, at 3. Similarly, Bloom et al. note “nearly two-thirds of women confined in jails and prisons are African American, Hispanic or of other (non-white) ethnic origin, [while] nearly two-thirds of those on probation are white,” BLOOM ET. AL., *supra* note 8, at vi. Also, they note that “[o]ut of every 1,000 white women, approximately 5 will face a prison term. Fifteen of every 1,000 Hispanic women and 36 of every 1,000 African American women will be incarcerated at some point during their lifetime,” *Id.* at 11 (citation omitted). See also Graham Boyd, *Collateral Damage in the War On Drugs*, 47 VILLANOVA L. REV. 839 (2002); Kimberle W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race, and Social Control*, 59 UCLA L. REV. 1418 (2012); GREENFELD & SNELL, *supra* note 8; Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938 (1997). Further, these racial effects also are related to raced trends in poverty, as scholars studying the intersections of race, class, and incarceration have noted that “differential black involvement with criminal behavior is primarily traceable to differential black exposure to struc-

Skyler's discovery that she may be arrested and incarcerated because of the actions of her husband makes her an exemplar of the tens of thousands of women who discover that they are in the same situation with little legal recourse or protection.<sup>18</sup> Thus, Skyler White is a "classic [example] of how conspiracy laws unfairly impact those who are minimally involved in the underlying criminal actions."<sup>19</sup>

*A. Breaking Bad: Shining a Spotlight on Women of Circumstance*

*Breaking Bad* introduced many in its audience to various aspects of the drug trade including the complex pressures and constraints that act on the female intimates of drug operatives. Skyler's acts—first to conceal Walter's involvement in the drug trade, and then to hide her involvement in money laundering—demonstrate the constrained decision-making processes faced by many in her situation. Notably, throughout the course of *Breaking Bad*, viewers witnessed how Skyler's choices were narrowly constrained by the actions of her husband. She was not free to choose or reject being involved with illegal narcotics. Instead, Skyler's actions were limited and reactionary—as opposed to independent or proactive—and were largely conditioned on Walter's choices. Viewers see that Skyler is repeatedly put into impossible positions. On one hand, if she reports her husband, she will break up her family and risk prosecution for her involvement. On the other hand, if she goes along with the cover-up of Walter's methamphetamine activity to keep them both out of jail, she will become more involved and complicit in the illegal activity. Although these constraints may be clear to the viewing audience in the context of the Whites' fictionalized family life, the legal system fails to acknowledge or accommodate these realities. When evaluating how to charge and punish women of circumstance, the criminal justice system explicitly ignores how women such as Skyler are bound by the decisions of others. Conversely, it treats them as though they are completely autonomous individuals with the ability to make unrestricted choices and exercise free will about being involved in illegal activities. This disconnect between the legal system and women's realities manifests itself not only in the behavior of law enforcement officers during investigations, but also the decisions of prosecutors and judges related to the charging, prosecuting, and sentencing of women of circumstance.

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tural conditions of extreme poverty." Lawrence D. Bobo & Victor Thompson, *Racialized Mass Incarceration: Poverty, Prejudice, and Punishment*, in *DOING RACE: 21 ESSAYS FOR THE 21ST CENTURY* 322, 330 (Hazel R. Markus & Paula Moya, eds., 2010).

18. Gaskins, *supra* note 3, at 1533.

19. *Id.* at 1537.

*B. Elusive Choices and Empty Promises: The Limits of Cooperating with Law Enforcement*

*Breaking Bad* effectively illustrates how women of circumstance's choices are constrained from their earliest interactions with law enforcement. From the moment that law and drug enforcement agencies begin to investigate their partners or families, women are pressured to cooperate with the police and to turn on their partners. This reality is exemplified by a particularly notable exchange between Skyler and her DEA Agent brother-in-law Hank Schrader. Hank has just found out that Walter White is responsible for the influx of very pure blue methamphetamine in New Mexico. To facilitate the capture and prosecution of Walter, Hank confronts Skyler in a diner and immediately tries to turn her against her husband. While doing so he intermittently acknowledges and ignores the complexity of her predicament, and fails to recognize that she may not be able to, nor want to, turn on her husband. In trying to persuade her to provide information about Walter, Hank says to Skyler, “[l]ook I don’t know what he did to you to force you to keep his secrets, if he threatened you or what . . . the mind games he played, I don’t know if there was abuse, but I want you to know that you can be open with me. Don’t hold anything back.”<sup>20</sup> While encouraging her to turn Walter in, he seemingly recognizes that she likely was dragged into this situation against her will and that she may be a victim of domestic violence.<sup>21</sup> Yet, Hank fails to warn Skyler that opening up about Walter’s criminal enterprise may condemn her to significant jail time even if her complicity was coerced.

Indeed, the reasons women of circumstance have been convicted as accomplices to their partner’s drug-related activities are varied and often quite minimal.<sup>22</sup> Women have been sentenced to lengthy terms in jail for

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20. *Breaking Bad: Buried* (AMC television broadcast Aug. 18, 2013).

21. Indeed, in “Seven Thirty-Seven,” Walter White exhibits coercive sexual behavior in an encounter with his wife in their home’s kitchen. *Breaking Bad: Seven Thirty-Seven* (AMC television broadcast Mar. 8, 2009). This scene highlights Walter’s disregard for his wife’s desire to keep herself physically safe and apart from him and his increasingly volatile behavior. As observers have highlighted, this is just one example of how *Breaking Bad*’s “anti-hero clearly has a warped sense of family values, which we witness as he does things such as moving back into the house without Skyler’s consent.” Megan Cox, *Why Do Many “Breaking Bad” Fans Love Walter White But Hate Skyler?*, BITCH MAGAZINE (Sept. 25, 2013), <http://bitchmagazine.org/post/why-do-many-breaking-bad-fans-love-walter-white-but-hate-skyler>. Like Skyler, many women of circumstance are victims of domestic assault and/or sexual violence at the hands of their partners. This will be discussed further in Part II.D (Familial Constraints: Violence and Women of Circumstance) of this article.

22. Clarke outlined one such situation describing how a woman, “Pam,” who had never used or sold drugs “gave her boyfriend, Steve, a ride to a house where he sold

far less involvement than Skyler had in Walter's drug-related crimes. Thus, when Hank cautions Skyler against "holding anything back," he fails to acknowledge or make her aware of the dire consequences—ranging from imprisonment to losing custody of her children—that may result for her and her family if she does disclose information. Furthermore, while Hank alludes to the possibility that Walter may have abused Skyler, he proceeds to say "[b]ut that's all behind you. Starting now, you're done being his victim."<sup>23</sup> This statement underscores Hank's lack of interest in or awareness of the domestic dangers that Skyler (and her children) might face if Walter finds out that she provided law enforcement with information about his drug operation. From this exchange it is clear that once law enforcement begins to investigate Walter (even before arrests are made), Skyler is placed in an impossible position because she is forced to decide between lying to a law enforcement official or implicating her husband (and quite likely herself) in drug crimes. Either choice threatens to jeopardize the safety and wellbeing of her family.

The exchange in the diner between Skyler and Hank becomes even more chilling when she tells him that she wants a lawyer. He responds to her request for legal representation by attempting to assure her "no you don't,"<sup>24</sup> and then he goes on to say, "I am here to help you, but to do that I need your help" and "for your own good you need to get out ahead of this thing . . . if you start getting defensive, the DA will look at you differently."<sup>25</sup> While the decision to charge accomplices and family members in drug conspiracies is left to prosecutorial discretion,<sup>26</sup> research shows that "[w]omen's lives and circumstances surrounding drug charges

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seven kilograms of cocaine. Although Pam knew absolutely nothing of the sale, after their arrest Steve entered into a plea bargain with the prosecution for a lower sentence, and testified that Pam knew of the drug deal. Consequently, Pam received a ten-year mandatory minimum sentence, and two more years because Steve was carrying a concealed weapon. When Pam went to prison for twelve years without parole on drug charges, the Division of Family Services (DCFS) terminated her parental rights." Clarke, *supra* note 8, at 263–64 (internal footnotes omitted). The seven kilograms of drugs that sent "Pam" to prison in this example were far less than the amounts that Walter White manufactured in *Breaking Bad*. Even if Skyler was confident that Walter would not testify against her, as Steve did with Pam, she had no assurances that one or more of the many others involved in the conspiracy behind the manufacture and sale of Walter's blue methamphetamine would not implicate her in the huge range of crimes committed under the auspices of this enterprise. Thus, it is reasonable to assume that had Skyler not refused to talk to Hank, she too could have been imprisoned for a decade or more and lost custody of her children.

23. *Breaking Bad: Buried* (AMC television broadcast Aug. 18, 2013).

24. *Id.*

25. *Id.*

26. Gaskins, *supra* note 3, at 1545; Jackson, *supra* note 16, at 547.

are often not taken into account and women's blameworthiness, or lack thereof, is ignored."<sup>27</sup> Regardless of Hank's promises, Skyler's blamelessness (or his belief in it) may have little influence over the prosecutor. As such, Skyler is wise to ask for an attorney because, as a law enforcement officer, Hank does not determine if and when charges will be brought against her. Furthermore, research suggests that prosecutors are not inclined to go easy on women who cooperate at early stages of drug crime investigations.<sup>28</sup> As such, it is unclear whether Hank, as a DEA agent, has any leverage in protecting Skyler from prosecution. Yet he willingly gives that impression in an attempt to extract the information that he wants from Skyler.

In continuing this exchange in the diner, Hank relentlessly presses Skyler to cooperate and makes it implicitly clear that DEA protection is contingent on her cooperation with the arrest and prosecution of her husband. After producing a recording device Hank says "[b]efore we get you back to the house, I want to ask you to tell me everything you can . . . just try to be as detailed as you can."<sup>29</sup> While there are many moments throughout the series that reveal the constrained nature of Skyler's life, this conversation in particular highlights how the constraints she faces at home are exacerbated by the criminal justice system. Skyler cannot tell Hank "everything" because she knows that her participation in laundering the drug money earned by her husband makes her vulnerable to prosecution. Even if she essentially was forced to participate in these enterprises in order to avoid losing her family, husband, and home, she is still susceptible to criminal charges. Therefore, like many women of circumstance, Skyler is correct to be trepidatious as the benefits associated with cooperation are limited.

These costs of cooperating with police and prosecutors extend even to those women with no knowledge of or only tangential involvement in the criminal drug offenses committed by their partners. Regardless of the nature or depth of their involvement in drug crimes, women intimately involved with male drug operatives are vulnerable to prosecution as accomplices and conspirators. Essentially, women lacking *mens rea* can still

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27. Clarke, *supra* note 8, at 269.

28. In her analysis of prosecutorial treatment of women of circumstance, Jackson notes "[s]ince prosecutors decide whom to charge and with what to charge them, one is left to wonder why women who play nearly non-existent roles in drug offenses are being charged at all. While such charges are sometimes part of a strategy to pressure the woman into cooperating with the government, prosecutorial biases come into play and help determine who they see as criminal and why." Jackson, *supra* note 16, at 547 n.142.

29. *Breaking Bad: Buried* (AMC television broadcast Aug. 18, 2013).

be punished for the crimes committed by their male intimates. As Jackson explains, “[i]n a case where a woman’s interaction with her drug-dealing boyfriend consists of nothing more than the everyday interactions between intimate partners, the government can use conspiratorial drug laws to drag her into the narcotics prosecution.”<sup>30</sup> Though many argue that prosecution for accomplice liability requires intent, individuals that lack *mens rea* and have only knowledge of alleged crimes are frequently charged as accomplices in drug conspiracy cases. Thus, in practice these standards for accomplice liability ensnare women of circumstance<sup>31</sup> because “merely permitting drugs in the home, answering the door, or answering the telephone could establish that the wife or girlfriend was a knowing member of the conspiracy.”<sup>32</sup>

While in the diner Hank is unaware that Skyler is a co-conspirator. However, as a DEA agent he should know that even minimal involvement or awareness of Walter’s crimes have the potential to implicate Skyler. Hank, however, is focused on catching Walter regardless of the consequences for Skyler. He reassures her that he has “been around long enough to know”<sup>33</sup> that her best interests lie in cooperating with him and the prosecution; specifically telling her “your best interests and mine are the same.”<sup>34</sup> Sensibly, Skyler discerns that his interests do not align with hers, and she counters by telling Hank that his advice that she not consult with legal counsel seems based less on her best interests and more on his desire to “get Walt at all costs.”<sup>35</sup>

While Skyler’s involvement went far beyond mere knowledge of Walter’s crimes, generally speaking, a woman’s participation in a male intimate’s drug crimes tends to be substantively different and renders her less culpable than “the principal male dealer who purchases, prepares, and distributed the narcotics.”<sup>36</sup> Yet, the legal system is not predisposed to differentiate between Skyler and Walter or to acknowledge that Skyler is exemplary of many women who, “[u]nlike typical conspirators . . . find themselves involved in criminal activity because of social or cultural pressures, and their criminal activity is an uninvited and often unforeseen repercussion of choosing an intimate relationship.”<sup>37</sup> As such, the incentives to cooperate with drug and law enforcement officers are small and often

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30. Jackson, *supra* note 16, at 531.

31. *Id.* at 534.

32. Gaskins, *supra* note 3, at 1538.

33. *Breaking Bad: Buried* (AMC Television Broadcast Aug. 18, 2013).

34. *Id.*

35. *Id.*

36. Jackson, *supra* note 16, at 536.

37. Gaskins, *supra* note 3, at 1535.

quite risky for these women even when they are promised protection in exchange for cooperation.

In those instances when women want to cooperate in exchange for immunity from prosecution or reduced sentences, they may find that they are not offered these deals because they lack knowledge about the criminal enterprise. As Goldfarb explains, many women of circumstance are unlikely to be able to access potential sentence reductions because “the primary mechanism for sentencing flexibility in the current scheme derives from substantial assistance motions filed by the prosecution.”<sup>38</sup> The fact that many of these women live and operate at the margins of their intimates’ criminal enterprises limits their ability to benefit from cooperating with law enforcement. Even if Skyler did choose to cooperate with the DEA, her cooperation may not necessarily shield her from prosecution. While Skyler helped to launder drug money, she was not involved in the manufacture or distribution of Walter’s blue methamphetamine and lacks knowledge about the operations of the criminal enterprise beyond the financial aspects of Walter’s take-home pay. “Perversely, it is a woman’s subsidiary role in the drug trade that seals the coffin on her extensive sentence.”<sup>39</sup>

In addition to practical constraints on a woman’s cooperation with law enforcement, women may be motivated by a desire to protect their partners. In *Breaking Bad*, Hank continues the conversation in the diner by stating, “we need to help each other put that animal away.”<sup>40</sup> It is clear from this exchange that, despite Hank’s suspicions about possible abuse in the White home, he is failing to acknowledge how complex personal relationships and calculations inform Skyler’s range of choices as a woman of circumstance. Hank pitches himself as Skyler’s ally—we need to help *each other*. He makes Walter the “other”—their mutual enemy and an animal who needs to be put away—in his attempt to persuade Skyler to cooperate with the DEA’s investigation. For Hank, this seems to be a clear binary situation of good and evil, but reality is much murkier for Skyler. Hank fails to identify the myriad constraints operating on her including the possibility that she is emotionally tied to her family unit’s integrity, and that she does not see Walter as a one-dimensional monster. Not only is Hank encouraging her to possibly violate marital privilege<sup>41</sup>

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38. Goldfarb, *supra* note 5, at 294.

39. Lenox, *supra* note 8, at 288.

40. *Breaking Bad: Buried* (AMC Television Broadcast Aug. 18, 2013).

41. Given the limits of spousal privilege, if Skyler chose to confide in Hank it is not clear whether her knowledge would even be admissible in court because “[t]he adverse testimony privilege . . . precludes any testimony by one spouse that may adversely affect the interest of the other in proceedings that are criminal in na-

and implicate herself as a participant in a large criminal enterprise, but he is also pressuring Skyler to turn against her husband and the father of her children. While becoming a government informant or witness may seem like a logical choice for a woman facing a possible prison term, the reality is much more complex when the target of an investigation is a woman's spouse or partner. Thus, many women choose not to cooperate with law enforcement and risk jail time in order to protect their male intimates.<sup>42</sup>

Skyler White's interactions with Hank and the DEA in *Breaking Bad* demonstrate the predicament that many women of circumstance must navigate when interacting with law and drug enforcement agents investigating their male intimates. In practice, the opportunity to cooperate with the police is often rejected. Thus, astute law enforcement agents often utilize promises of protection, or threats of prosecution, to persuade women to comply with their investigations.

### *C. The Myth of Formal Equality: The Hazards of Gender-Neutral Drug Sentencing Policies*

Women of circumstance who are convicted of drug crimes confront draconian sentencing laws that demonstrate the patriarchal tendencies of the criminal justice system. Analysis shows that "women and children have proven they are no match for the government; they remain easy targets for drug war policies that place blame on women for making unpopular choices without paying any real attention to providing more than band-aid solutions to the underlying problems they face."<sup>43</sup> As extant legal research demonstrates, "the underlying reason for many women defendants' drug offenses is their involvement in an intimate relationship in which their partner uses or sells drugs,"<sup>44</sup> but the use of gender-neutral

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ture . . . [though a] controversial exception to the privilege has been for spousal testimony in cases in which the spouses are accused of being partners in crime." Milton C. Regan Jr., *Spousal Privilege and the Meanings of Marriage*, 81 V. L. REV. 2045, 2052–53 (1995). Further, and of particular note given the focus of this article, Regan "suggests that the most serious concern about the privilege is its disparate gender impact: the fact that in practice it operates largely to prevent wives from testifying against their husbands[.]" and thus operates as a further constraint on the legal bargaining chips available to the wives of drug manufacturers and dealers. *Id.* at 2051.

42. See, e.g., Nemika Levy-Pounds, *Beaten by the System and Down For the Count: Why Poor Women of Color and Children Don't Stand A Chance Against U.S. Drug-Sentencing Policy*, 3 U. ST. THOMAS L. J. 462, 473 (2006).

43. *Id.* at 494.

44. Tinto, *supra* note 3, at 908. Tinto goes on to note that "[m]any women become involved in drug activities as a result of being in a specific type of relationship; that is, being the girlfriend, wife, or live-in partner of a man involved in drug activity." *Id.* at 916. Also, Jackson argues that "[s]tudies indicate that the majority of women involved

mandatory sentencing laws eliminates consideration of these gendered circumstances. At the conclusion of *Breaking Bad*, Skyler has managed to elude prosecution for her involvement in Walter's drug operation. However, the likelihood that she will be criminally charged remains alive and is demonstrated by Walter's decision to share the location of Hank's body with her, explicitly for use as leverage with the DEA. Given the aforementioned limits on cooperating with law enforcement, if the series had continued, Skyler, like many real women of circumstance, may have found herself subject to the mandatory sentencing laws associated with the War on Drugs.<sup>45</sup>

Since the launch of the War on Drugs, the United States' prison population has increased substantially, in large part due to the mandatory sentencing laws that derive from drug policies in effect at the federal<sup>46</sup> and state levels. Two types of sentencing structures have contributed to this effect: mandatory imprisonment and mandatory minimum sentences. First, mandatory prison sentences for drug crimes have the effect of increasing the number of individuals sentenced to prison time, rather than to another form of punishment. This effect is evidenced by the increase in the number of individuals serving prison time for drug-related offenses from 41,000 in 1980 to 500,000 in 2011.<sup>47</sup> Federal law specifies that individuals conspiring to sell drugs shall be subject to mandatory *minimum* sentencing policies, not just mandatory prison time.<sup>48</sup> As such, in the eighteen-year period between 1986 and 2004 the average sentence for a released offender convicted of drug crimes increased from twenty-two months to sixty-two months.<sup>49</sup> While mandatory minimum sentencing laws apply to an array of criminal offenses, drug offenders have comprised the greatest portion of those sentenced under these guidelines. According to the U.S. Sentencing Commission, "[i]n fiscal year 1990, 91.1

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in narcotics conspiracy cases are not individuals who have sought out and affirmatively agreed to participate in drug offenses. Rather, they are usually intimately involved with principal male dealers, and their links to the so-called conspiracies are, rather than being actual links to criminal activity, based mostly on their ties to their intimate partners." Jackson, *supra* note 16, at 540.

45. According to the U.S. Sentencing Commission, "in fiscal year 2010, a mandatory minimum penalty applied in 83.1 percent (n=3,466) of drug cases involving methamphetamine." UNITED STATES SENTENCING COMMISSION, MANDATORY MINIMUM PENALTIES FOR DRUG OFFENSES 153 (2011), available at [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter\\_08.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_08.pdf).

46. 21 U.S.C. §§ 841, 960 (2006).

47. THE SENTENCING PROJECT, *supra* note 6, at 3.

48. See 21 U.S.C. §§ 846, 963 (2006).

49. THE SENTENCING PROJECT, *supra* note 6.

percent of defendants convicted of violating a statute carrying a mandatory minimum penalty were convicted of a drug trafficking offense[.] . . . In fiscal year 2010, 77.2 percent (n=15,356) of defendants convicted of violating a statute carrying a mandatory minimum penalty were convicted of a drug trafficking offense.”<sup>50</sup>

Ultimately, harsh sentencing laws have increased both federal and state prison populations. More than half of the federal prison population is comprised of individuals convicted of drug crimes and the number of individuals imprisoned for drug crimes at the state level has increased eleven-fold since 1980.<sup>51</sup> In New Mexico specifically, the growth in the female state prison population is being “driven by length of stay rather than new admits.”<sup>52</sup> As explained in the New Mexico Sentencing Commission’s Report on its female prison population, “[l]ong term trends show that the proportion of women incarcerated for violent or drug trafficking offenses has increased[.]” and that “violent and drug trafficking offenses are associated with longer prison stays relative to other offenses.”<sup>53</sup> These developments reflect the punitive approach the United States has taken to drug crime over the past several decades.<sup>54</sup>

While criticism of these sentencing laws abounds, the specific application of gender-neutral sentencing laws to women of circumstance has highly unequal, and clearly gendered, outcomes.<sup>55</sup> According to *The Sentencing Project*:

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50. UNITED STATES SENTENCING COMMISSION, CHANGES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 73 (2011), available at [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter\\_04.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_04.pdf)

51. THE SENTENCING PROJECT, *supra*, note 6.

52. NEW MEXICO SENTENCING COMMISSION, *supra* note 9, at 3.

53. KRISTINE DENMAN, LINDA FREEMAN AND NONA GRONERT, NEW MEXICO SENTENCING COMMISSION, NEW MEXICO’S FEMALE PRISONERS: EXPLORING RECENT INCREASES IN THE INMATE POPULATION: REPORT IN BRIEF 2 (2012), available at <http://nmsc.unm.edu/reports/2012/nm-female-prisoners-report-in-brief.pdf>.

54. See Marylee Reynolds, *The War on Drugs, Prison Building, and Globalization: Catalysts for the Global Incarceration of Women*, 20 NWSA JOURNAL 72, 77 (2008) (“America’s approach to crime and justice for the past several decades has been an increasingly punitive one; the war on drugs is a byproduct of this philosophy. Rising to a level of national security in the mid-1980s, the current drug war required the federalization and militarization of enforcement efforts.”); See also Bobo & Thompson, *supra* note 17; Peter M. Carlson, *Public Policy, Women, and Confinement: A Plea for Reasonableness*, 14 WM. & MARY J. WOMEN & L. 245 (2008); FROST ET AL., *supra* note 14; RANDALL KENNEDY, RACE, CRIME AND LAW (1997).

55. See generally Goldfarb, *supra* note 5; Jackson, *supra* note 16.

The number of women in prison, a third of whom are incarcerated for drug offenses, is increasing at nearly double the rate for men. These women often have significant histories of physical and sexual abuse, high rates of HIV infection, and substance abuse. Large-scale women's imprisonment has resulted in an increasing number of children who suffer from their mother's incarceration and the loss of family ties.<sup>56</sup>

To be clear, Congress instructed the U.S. Sentencing Commission to draft gender-neutral federal sentencing guidelines and as a result, the guidelines explicitly state that sex is not to be a factor in sentencing.<sup>57</sup> While gender-neutral sentencing guidelines eliminate opportunities for judges to resort to paternalistic tendencies and give female offenders reduced sentences, they also eliminate judicial discretion and the consideration of gendered circumstances in the sentencing of female offenders.<sup>58</sup> The result is that gender-neutral sentencing guidelines have the "unintended effect of punishing female non-conspirators unreasonably harsh in narcotics conspiracy cases."<sup>59</sup>

The consequences of these federal guidelines for women of circumstance are evident when judges must sentence individuals convicted of possessing certain quantities of drugs to mandatory minimum prison terms. For example, a woman who lives with a male drug operative may be charged with possession and sentenced to a mandatory jail sentence if there are drugs in their shared residence. Similarly, a woman who drives a male intimate in her vehicle may be charged as an accessory and sentenced to jail if he is delivering drugs. While mandatory minimum sentencing guidelines may work to the detriment of all individuals operating at the margins of drug markets and operations, they have a pronounced negative effect on women who occupy peripheral roles in the drug trade, but are treated as if they are central players.<sup>60</sup> The problem with this legis-

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56. *Women in the Justice System*, THE SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=138> (last visited Jan. 22, 2015). Focusing on a more regional level, Clarke argued that "the 'war on drugs' has had a huge impact on women. In New York alone, drug offenses accounted for 91% of the increase in the number of women incarcerated." Clarke, *supra* note 8, at 266.

57. Myrna S. Raeder, *Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines*, 20 PEPP. L. REV. 905, 906 (1993).

58. Jackson, *supra* note 16, at 540.

59. *Id.*

60. Goldfarb, *supra* note 5, at 292–93 ("[A] sentencing structure which treats offenders as fully responsible for a quantity of drugs to which they have a minimal connection can be fairly said to have pronounced effects on women as a group, even if its impact is not felt exclusively by women.").

lated “equality” is that it presumes that males and females are equally situated in the drug economy and fails to account for the “many women whose criminal behavior and history, as well as family responsibilities, cannot easily be shoehorned into a punitive pro-prison model for sentencing males assumed to be violent and/or major drug dealers.”<sup>61</sup> Nor is this solely a problem with federal drug laws. In New York, “Rockefeller Drug Laws” have led to a large increase in the number of women sentenced to prison for state drug offenses.<sup>62</sup>

Importantly, those studying this issue have found that these gendered outcomes have not been merely accidental, but that they clearly demonstrate the patriarchal nature of the American legal system. The current sentencing laws and policies are tantamount to gender subordination, and “[a]s presently constituted, the system under which women are sentenced ignores most features of women’s situations and women’s blameworthiness, yet labels that system gender-neutral.”<sup>63</sup> As such, a major problem with these laws, and one of the reasons that they are so problematic for women of circumstance, is that they do not take the context of a woman’s involvement and how these circumstances are profoundly gendered into account.<sup>64</sup> Ignoring the context and circumstances under which a woman becomes involved in drug crimes “has the unduly harsh effect of punishing a female non-conspirator to a severe prison sentence for her association with a principal male dealer.”<sup>65</sup>

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61. Raeder, *supra* note 57, at 906.

62. Tinto, *supra* note 3, at 908.

63. Goldfarb, *supra* note 5, at 294. *See also* Lenox, *supra* note 8, at 288 (noting “[t]he highly patriarchal organization of society at large is reflected in the drug economy: The majority of women serving time for drug offenses played an ancillary role in the drug trade”).

64. In theory, the safety valve provision may allow eligible defendants to receive a break on mandatory minimum sentences. In 2010, 35 percent of women convicted of a federal drug offense subject to a mandatory minimum sentence benefitted from the safety valve provision, and an additional 19.7 percent benefitted from a combination of the substantial assistance and safety valve provisions. UNITED STATES SENTENCING COMMISSION, *supra* note 45. That said, many individuals do not qualify for the safety valve provision in sentencing. This is because “[i]n order to fall within the provision a defendant must (1) not have more than one criminal history point, as determined under the Sentencing Guidelines; (2) not have possessed a firearm in connection with the offense; (3) not have participated in an offense that resulted in death or serious bodily injury to any person; (4) not be a leader, organizer, or supervisor of others in the offense; and (5) truthfully provide to the government all information the defendant has concerning the offense or offenses that were part of the same course of conduct no later than the time of the sentencing hearing.” Gaskins, *supra* note 3, at 1546.

65. Jackson, *supra* note 16, at 540.

This is not to suggest that women should not be held to account for their criminal activities. Rather, it draws attention to the fact that by the time Skyler and Hank are discussing Walter's crimes in the diner, her choices are largely constrained by a gender-neutral drug enforcement system and the legal actors operating within its boundaries. These policies fail to consider the complex circumstances that lead women to implicitly or explicitly commit drug crimes. Subsequently, the legal system's embrace of formal equality exploits the significant inequities that exist and condition the lives of women of circumstance. This enables players within the criminal justice system to manipulate power imbalances and the system itself to achieve their goals in the War on Drugs.<sup>66</sup> Before Skyler even sits down with Hank, she knows that she cannot turn to the criminal justice system to help her. The information she could provide would be either *too little* (she cannot provide detailed information about Walter's criminal enterprise), or *too much* (her money laundering will implicate her in Walter's crimes). Either outcome would prove too dangerous for her family. Additionally (and distinctly from the pressure from Hank), she does not know how Walter will respond if he learns that she is cooperating with law enforcement. In this way, *Breaking Bad* introduces viewers to the dilemma faced by women such as Skyler who are intimately involved with drug operatives and, because of circumstances beyond their control, are implicated in drug crimes and subject to harsh penalties.<sup>67</sup> The series demonstrates how a legal system that should protect these women instead constrains and narrows their available options to impossible or undesirable choices.

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66. As Tinto explains, this is "not to suggest that women should escape punishment for criminal acts or that women cannot make their own choices, but rather to highlight the complexities involved in women's decisions to commit drug crimes, and, ultimately, to argue that these complexities should affect their criminal sentences. . . . Recognizing that there are societal influences on a woman's choice to commit a crime does not take away her 'free will.' Instead, it is an acknowledgment that, in many instances, her will is not completely free." Tinto, *supra* note 3, at 920.

67. Further, even if she did not receive a long sentence, she could have lost everything other than her freedom if she was convicted: "Because the drug war has been fought on many fronts, [the penalties for engaging in heterosexual relationships with men engaged in drug activity] include not just conviction but eviction, forfeiture of jointly held property, loss of student financial aid, and a lifetime ban on welfare benefits." Goldfarb, *supra* note 5, at 280. Thus, "[a]s a result of the War on Drugs, women have been disproportionately affected by the civil sanctions resulting from felony drug convictions. These sanctions signify additional penalties resulting from an arrest, prosecution, or conviction, which are independent of the criminal sentence imposed." Lenox, *supra* note 8, at 281.

## II. THE HARD PLACE: THE CONSTRAINTS OF FAMILY

Beyond demonstrating the poor treatment women of circumstance receive once they are caught in the legal system, *Breaking Bad* provides viewers with insight into the binds women face before they are brought to the attention of the system. Preexisting familial conditions constrain the choices available to these women once law enforcement enters the picture. As noted above, these preexisting conditions are generally ignored, or exacerbated, by the legal system, despite the fact that they profoundly shape these women's involvement with the drug trade. In *Breaking Bad*, viewers see that Skyler is trapped by a patriarchal law enforcement system that offers a binary choice—whether or not to cooperate with authorities—where either option could ultimately result in her and/or her husband's imprisonment, the destruction of her family unit, and the confiscation of her home and family assets.

Despite these grim circumstances, these two choices paint an incomplete picture of the nature of the constraints that shape Skyler's life and govern her choices. Skyler is married to a man who is simultaneously a violent criminal, the father of her children, and the primary breadwinner for the family. For many women who are dependent on drug-dealing mates, it is virtually impossible for them to leave their male partners because of their very limited economic, social, and family alternatives.

The position of racial and class privilege that Skyler occupies gives her fictional character more flexibility and freedom than is often available to women facing similar legal issues. Thus, while the storyline of this key character importantly highlights the familial and personal constraints that operate on women of circumstance, her utility as an archetype is limited because these positions of relative privilege have important implications for the resources available to her and her family and subsequently how she is treated by the legal system. To that end, Part II examines how women of circumstance's choices are limited by systemic domestic structures and their gendered familial and parental obligations, which exist in a raced and classed social and political environment.

### *A. Intersectionality and the Limits of Using Skyler White as an Archetype for Women of Circumstance*

While the character of Skyler is a riveting example of how similarly-situated women have very few choices available to them once their partners decide to enter the world of illegal drugs, her particular circumstances are unrepresentative of many women of circumstance in the United States because of the relative class and racial privileges from which she benefits. For instance, while the "vast majority of women incar-

cerated for drug offenses are women of color,”<sup>68</sup> Skyler is White. This fact, combined with her family’s middle class status, likely contributed to Walter and Skyler’s ability to elude government detection for so long. In reality, those without her class and racial privileges would have been less able to avoid legal scrutiny because of the state’s monitoring of many of these women and their families. Women of color are more likely to be subject to legal supervision and intervention because the economic insecurity felt by many of these women and their families shapes a reality where “[t]he statistics are exceedingly bleak for indigent women of color. . . . Because poor women of color are under greater government supervision—by public hospitals, welfare agencies, and probation officers—their drug use is more likely to be detected and reported.”<sup>69</sup> In addition, once charged with drug crimes, these women confront sentencing laws that are problematic from not only a gendered, but also from a raced and classed perspective as well.<sup>70</sup> Indeed, “[o]ne of the most egregious effects of current drug-sentencing policy is the fact that it serves to reinforce both racial and socioeconomic inequities within the criminal justice system for women of color. Women of color face unique challenges under current drug-sentencing policy that cannot be ignored if justice is the ultimate goal.”<sup>71</sup> Thus, the particulars of Skyler’s life are somewhat anomalous compared to many women of circumstance.

While Skyler’s sustained and largely successful attempts to launder Walter’s drug proceeds were good entertainment for the viewing audience, the events depicted in *Breaking Bad* are not an accurate portrayal of those most often caught up in these problematically gendered—but

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68. Goldfarb, *supra* note 5, at 293. According to the ACLU: “Over the past two decades, the number of women in prison increased at a rate nearly double that of men. Women of color are disproportionately affected: African-American women are more than three times as likely as white women to be incarcerated, and Hispanic women are 69 percent more likely.” Lenora M. Lapidus, *End the 40 Year War on Drugs*, AMERICAN CIVIL LIBERTIES UNION (June 8, 2011), <https://www.aclu.org/blog/criminal-law-reform/war-drugs-war-women-and-families>. See also discussion *supra* note 17.

69. Lenox, *supra* note 8, at 289.

70. See Gabriel J. Chin, *Race, the War on Drugs and the Collateral Consequences of Criminal Conviction*, 6 THE JOURNAL OF GENDER, RACE AND JUSTICE 253, 255 (2002) (describing the effects of statutory penalties—specifically disenfranchisement—on racial and ethnic minorities convicted of drug crimes). See also, Marc Mauer & David Cole, Opinion, *Five Myths about Incarceration*, WASH. POST, June 17, 2011, [http://www.washingtonpost.com/opinions/five-myths-about-incarceration/2011/06/13/AGfIWvYH\\_story.html](http://www.washingtonpost.com/opinions/five-myths-about-incarceration/2011/06/13/AGfIWvYH_story.html) (discussing how laws prohibiting drugs in school zones disadvantage the urban poor because of high density residential patterns). See also ACLU, *supra* note 8; KENNEDY, *supra* note 54.

71. Levy-Pounds, *supra* note 42, at 480.

also raced and classed—drug enforcement policies and actions. Were they real people, instead of a television family, the White family’s longstanding ability to hide its criminal activity from the police would likely have been at least partially the result of its relative race and class privileges rather than just because of Skyler’s wily investment in a car wash.<sup>72</sup> In New Mexico, where the White family was living and engaging in these criminal enterprises, non-Hispanic Whites comprise 40% of the state population but only 31% of the prison population. In contrast, Hispanics constitute 46% of the population and 52% of prisoners, African-Americans constitute 2% of the population and 6% of prisoners, and Native Americans constitute 9% of the population and 11% of prisoners.<sup>73</sup>

The reality is that law enforcement officers find drugs where they look for them and police officers often focus more attention and resources on lower-income neighborhoods and those heavily populated by racial and ethnic minorities, as opposed to middle-class neighborhoods with predominately White populations. This practice helps to explain the high rate of drug arrests in poor communities. Racial disparities are most prevalent in drug-related law enforcement despite the fact that Whites and African-Americans use and sell drugs at similar rates.<sup>74</sup> As such, the evidence suggests that individuals such as Walter and Skyler are able to benefit from their race and class privileges to elude detection by law enforcement.

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72. That being said, because Walter is involved in drug-related activities, Skyler is not shielded from his crimes as is often the case for the wives of white-collar criminals. More specifically, “while the mates of drug dealers and mates of men accused of white-collar crime equally receive the benefits of tainted money, mates of drug dealers usually live at the scene of criminal activity. Therefore, some women who are poor may be sucked into crime, whereas richer women who associate with white-collar felons do not face sacrificing their relationships in order to remain crime-free.” Raeder, *supra* note 57, at 978.

73. *New Mexico Profile*, PRISON POLICY INITIATIVE, <http://www.prisonpolicy.org/profiles/NM.html> (last visited Feb. 2, 2015).

74. Mauer & Cole, *supra* note 70. (“In 2003, black men were nearly 12 times more likely to be sent to prison for a drug offense than white men. Yet, national household surveys show that whites and African Americans use and sell drugs at roughly the same rates. African Americans, who are 12 percent of the population and about 14 percent of drug users, make up 34 percent of those arrested for drug offenses and 45 percent of those serving time for such offenses in state prisons. . . . Inner-city, open-air drug markets are easier to bust than those that operate out of suburban basements, and numerous studies show that minorities are stopped by police more often than whites. For example, a Center for Constitutional Rights study found that 87 percent of the 575,000 people stopped by the police in New York City in 2009 were African American or Latino.”).

Further, Skyler had many other resources—including access to credit and a supportive family—that she could have drawn upon had she decided to leave Walter and cooperate with law enforcement. Unfortunately, this strong social support network is not present for many women of circumstance, and this void may shape women's decisions about whether or not to cooperate with the prosecution of their partners. Though her options were sharply limited by the patriarchal legal system, Skyler retains more viable options (including leaving Walter without forgoing a roof over her and her children's heads) than those available to many other women. These limitations are amplified for women residing in those communities that are already feeling the burden of heavy drug enforcement and the subsequent strains on social networks and financial reserves.<sup>75</sup> While *Breaking Bad* illuminates the gendered personal, familial and financial constraints that condition the choices available to women of circumstance, it is imperative to acknowledge that the War on Drugs has a particularly detrimental effect on poor women, women of color, and their families and communities.

*B. Breaking Bad: Highlighting Constraints Originating in the Home*

*Breaking Bad* draws attention to the personal and familial constraints that operate individually or collectively to condition the choices available to women of circumstance. These constraints include a woman's desire to (1) protect her partner or spouse and/or children and family from criminal detection and prosecution, (2) limit threats to financial and housing security, and (3) avoid acts or threats of violence to family members. While some may ridicule or question Skyler for staying in a relationship and home with a drug operative when leaving Walter and removing her children from an increasingly dangerous situation appear to be viable options, there are often very logical reasons behind such a decision. Explanations for why women stay include drug and alcohol addiction, fear of physical and sexual assault, power dynamics and dependency within the relationship, and a desire to make the relationship work for the sake of the family unit.<sup>76</sup>

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75. Goldfarb, *supra* note 5, at 279–80 (“As men were removed in droves, particularly from low income communities of color, to become prisoners of war in the drug war’s prisons, women in the community became even more disproportionately burdened with providing and caring for those who stayed behind, and to the extent possible, also caring for the incarcerated person with even more limited personal and financial resources for doing so. This has been among the deepest and most frequently overlooked consequences of the drug war in women’s lives.”).

76. *Id.* at 292.

In particular, Goldfarb's explanation that a woman may stay because she is married to the father of her children captures how social and legal norms about marriage can operate as a form of social regulation that discourages women from leaving their spouses.<sup>77</sup> In Skyler's case, the writers of *Breaking Bad* are especially effective at demonstrating how her response to discovering Walter's drug enterprise, and her ultimate decision to involve herself in laundering his drug money, are conditioned and motivated by a desire to protect her family, including Walter. One of the series' most infamous lines—when Skyler says “someone has to protect this family from the man that protects this family”—demonstrates how this dynamic is at play in *Breaking Bad*.<sup>78</sup>

Skyler's desire to protect her family is evidenced early in Season 4 (“Bullet Points”) when she gets involved in negotiating for the purchase of the A1 Car Wash to launder Walter's drug money. Skyler's decision to participate in the acquisition of the car wash was a reaction to Walter's extravagant and reckless spending of the proceeds of his drug operation, which she feared would attract the attention of the authorities. Thus, Skyler's decision to get involved in a money laundering operation was not a voluntary or proactive choice to enter into and engage in illegal activities, but rather an attempt to clean up Walter's mess and minimize the risk to the family as a result of Walter's choices. As such, Skyler does not freely enter into criminal activities whereas Walter exercised a choice to get involved (or not) in the manufacture of drugs. Walter's decisions have conditioned Skyler's options because his choices—made autonomously without Skyler's involvement—put the White family at risk.

The distinction between Skyler's “choice” to participate in a money laundering operation, and Walter's choice to manufacture and distribute methamphetamines is further demonstrated when Skyler works with Walter to build an alibi for their extra household income. Skyler prepares “bullet points”<sup>79</sup> to explain to DEA agent Hank how the White family now has enough money to buy a car wash. Skyler tells Walter that “[w]e need this story to be solid and sympathetic, and most of all, completely

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77. Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 V.A. L. REV. 1901, 1904 (2000) (“In the domain of marriage . . . law and social norms have been intricately interwoven to form a complex scheme of social regulation. Traditional law reinforced and prescribed both gender norms and commitment norms in marriage. Gender norms prescribed hierarchical and differentiated roles for husbands and wives, while commitment norms defined marriage as a cooperative relationship of lifelong obligation.”).

78. *Breaking Bad: Cornered* (AMC television broadcast Aug. 21, 2011).

79. The title of this episode, “Bullet Points,” is drawn from this scene.

believable,”<sup>80</sup> and that “[w]e want them to understand why you could do something so stupid.”<sup>81</sup> Yet, despite the fact that she is doing this to protect her family from the choices Walter has made which put their family at risk, Walter resists preparing with Skyler. Instead, he acts disinterested and bored. When she says that he did something “so stupid” he glares at her, indicating his disagreement with her assessment that it was “so stupid” that he started manufacturing methamphetamines and bringing drug money into their home. This exchange illustrates how Skyler is in a legal quagmire not of her own making, but also that she is stuck between a rock and a hard place within her own home as she is forced to decide between one of two options. She can either allow Walter to spend recklessly, which increases the likelihood the authorities will notice their newfound wealth, or she can speak out against this behavior and in the process anger her husband and son and alienate the very people she is jeopardizing her own wellbeing and safety to protect. Her frustration at this situation is made clear in one particular instance when, in the context of discussing Walter’s purchase of a car for their son, she tells Walter that to their son “I’m just the bitch mom who wouldn’t cut you any slack.”<sup>82</sup> Though her prevention of Walter’s extravagant spending is really for the family’s collective good, because of the lies she is forced to tell her children in order to keep the peace in her home and her husband out of jail they are unable to discern her true motives and instead she is framed as “the bitch.”

### *C. Familial Constraints: Financial Limits on the Autonomy of Women of Circumstance*

As was previously noted, many women of circumstance are far more constrained by the way racial prejudices and economic conditions shape their available options than Skyler was in the series. As far as conditions within their families are concerned, these women’s behavior is often profoundly limited by threats or the practice of violence against them and their children, by raced and classed state monitoring and punishment, and by strict financial limitations. From a financial perspective, Skyler has access to more resources and support than most women of circumstance. Clarke’s research on this topic shows

[m]ost of the women in jail for non-violent crimes such as drug charges come from a low socioeconomic status and have found themselves in an unhealthy relationship. These women lack eco-

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80. *Breaking Bad: Bullet Points* (AMC television broadcast Aug. 7, 2011).

81. *Id.*

82. *Id.*

conomic and social power to overcome their circumstances, experience trauma in some point of their lives, and then give in or just give up.<sup>83</sup>

As such, many of these women are not in a position to extricate themselves from their relationships because their limited resources constrain their options. Because women of circumstance often have few reliable financial resources and face the choice between staying in a relationship or a shared home with a drug criminal and risking the unknown for themselves and their families, “it is difficult to imagine homelessness, financial instability, or domestic abuse as more attractive options than staying with a drug-dealing partner.”<sup>84</sup> While these descriptions problematically strip women of their agency, they accurately reflect how many women of circumstance discover that they have been made a party to drug crimes but are unable to leave their partners because they have no financial alternatives. Frequently, they stay out of financial necessity.

The Whites faced a significant financial crisis related to Walter’s cancer treatment at the start of the series (which is one of the reasons that Walter decides to manufacture methamphetamine in the first place). Despite this period of financial hardship, Skyler’s relative racial and class privileges, combined with a strong social support network, mitigate many of the constraints that the legal system places on her. In contrast, the financial constraints that operate on many women of circumstance condition the choices they make when interacting with the legal system as well as those they make in their relationships. Because individuals convicted of drug crimes are often barred from public assistance programs, poor women who depend on the programs may go to great lengths to avoid their own or their partner’s detection by law enforcement. Individuals can be excluded from qualifying for government benefits under federal programs such as Temporary Assistance for Needy Families, Medicaid, and public housing if they have been convicted of a drug crime or if they have been incarcerated.<sup>85</sup> According to the ACLU,

Women also are affected by policies targeting members of their families who are involved in the criminal justice system. For example, women who live in public housing may be evicted if a member of their household engages in criminal activity, and people with

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83. Clarke, *supra* note 8, at 270.

84. Gaskins, *supra* note 3, at 1548.

85. See BLOOM ET. AL., *supra* note 8; Lapidus, *supra* note 68.

criminal histories are frequently denied admission to public housing in the first place.<sup>86</sup>

Thus, when given the choice to cooperate with law enforcement investigations of their intimates' alleged drug crimes, it is no surprise that many women choose to remain silent, although these circumstances go unacknowledged by the system itself.

#### *D. Familial Constraints: Violence and Women of Circumstance*

In those situations in which women want to and are financially capable of leaving, experienced or threatened domestic violence may limit their choices.<sup>87</sup> Domestic violence inhibits a woman's ability to leave a relationship and it conditions the choices available to her in her family life. A notable exchange between Skyler and Walter (that the viewer later discovers was faked to throw off the authorities) brought this reality home for many *Breaking Bad* viewers. Nearing the end of the series (in "Ozymandias"), Walter kidnaps his and Skyler's young daughter Holly, and threatens Skyler's safety, telling her, "[t]oe the line or you will wind up just like Hank."<sup>88</sup> Though the viewers learn in the next episode that this was not a genuine kidnapping—Walter did not intend to harm nor abscond for the long term with Holly, but rather hoped to mislead the

86. Lapidus, *supra* note 68. "In 2002 alone, the U.S. Department of Housing and Urban Development reported that 46,657 applicants for conventional, project-based public housing were denied admission because of 'one strike' criteria (the policy of excluding people with criminal records from public housing). Advocates believe the number of people actually denied housing is, in fact, far higher, because would-be applicants are often turned away by housing officials before they even fill out an application." *Id.*

87. Notably, these "[w]omen offenders are often victims of crime at the same time that they choose to [or are coerced to] commit a crime," making their home life and personal situations especially precarious and the criminal justice system's decision to charge domestic violence victims as accomplices and co-conspirators in their abusers' drug crimes especially galling. Tinto, *supra* note 3, at 920. See also BLOOM ET AL., *supra* note 8 (noting that incarcerated women tend to face life circumstances which are specific to their gender including sexual abuse, sexual assault, and domestic violence); CAROLINE WOLF HARLOW, UNITED STATES DEPARTMENT OF JUSTICE, PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS, (1999), available at <http://www.bjs.gov/content/pub/pdf/parip.pdf> (reporting that a history of domestic abuse among the incarcerated segment of the population is more likely than in the general population); Angela Browne, Brenda Miller & Eugene Maguin, *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, 22 INT'L J. OF LAW & PSYCHIATRY 301 (1999); B. Kathleen Jordan, William E. Schlenger, John A. Fairbank & Juesta M. Cadell, *Prevalence of Psychiatric Disorders Among Incarcerated Women*, 53 ARCH. OF GEN. PSYCHIATRY 513 (1996).

88. *Breaking Bad: Ozymandias* (AMC television broadcast Sept. 15, 2013).

DEA about Skyler's involvement in his drug crimes—violence of this nature is a real threat for many women. Additionally, even the temporary trauma inflicted on women like Skyler and children like Holly may have consequences. These women understand that if they do not behave as told they may risk their safety as well as that of their children and other family members who may be hurt or killed either by their partner or his associates. These fears and threats dissuade women from cooperating with legal authorities because they “have the increased risk of putting themselves and families in danger by revealing information.”<sup>89</sup>

While episodes such as “Ozymandias” highlight that Walter was a physical threat to Skyler, mental abuse and threats of violence need not be explicit in order to constrain women's behavior. This is made abundantly clear in *Breaking Bad* where the threat of familial violence is a pervasive undercurrent in the series, and is made evident in several memorable moments. For example, in Season 4 (“Problem Dog”), Walter sets the sports car he bought on fire rather than returning it to the dealership like Skyler wanted because she believed it was too ostentatious and risked attracting the attention of the authorities.<sup>90</sup> This is a violent and threatening gesture aimed at Skyler, and it directly undermines both her efforts to keep the family intact and her requests that Walter contain the manifestations of his illegal behavior. By the fifth season (“Live Free or Die”), Skyler is clearly afraid of Walter when she directly tells him “I'm scared of you.”<sup>91</sup> Later in the same season (“Fifty-One”), the extent of Skyler's predicament and the cumulative effects of the mental abuse she has suffered are clear when she and Walter argue about her decision to send their children to live with her family because she fears for their safety. Walter demands that she bring the children home and asks for her plan. She responds

I don't know! This is the best I could come up with, okay? I will count every minute that the kids are away from here, away from you, as a victory. But you're right. It's a bad plan. I don't have any of your magic, Walt. I don't know what to do. I'm a coward. I can't go to the police. I can't stop laundering your money. I can't keep you out of this house. I can't even keep you out of my bed. All I can do is wait. That's it. That's the only good option. Hold on, bide my time, and wait.<sup>92</sup>

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89. Gaskins, *supra* note 3, at 1547.

90. *Breaking Bad: Problem Dog* (AMC television broadcast Aug. 28, 2011).

91. *Breaking Bad: Live Free or Die* (AMC television broadcast July 15, 2012).

92. *Breaking Bad: Fifty-One* (AMC television broadcast Aug. 5, 2012).

When Walter asks her, “Wait for what? What are you waiting for?” Skyler replies, “For the cancer to come back.”<sup>93</sup> In this exchange, it becomes clear that Skyler is mentally defeated. She believes that she and her children are trapped by Walter’s choice to continue his drug-related activities, and that the only way that they will ever be free is when Walter dies. Taken together, these episodes of *Breaking Bad* are reflective of the ways in which legitimate experiences and fears of violence affect the choices of women of circumstance.

In addition to constraining the options available to women of circumstance in their personal and familial lives, threats and fears of violence condition their cooperation with legal authorities as well. Indeed, many women fear that “snitching” on their male intimates, or violating community norms by cooperating with law enforcement, may draw the wrath of other drug operatives and/or community members and jeopardize their own safety as well as that of their families.<sup>94</sup>

While Skyler’s situation seems dire, the reality is often much worse for actual women of circumstance. While flashbacks on *Breaking Bad* suggest a relatively peaceful and happy home life for the White family prior to Walter’s cancer, research suggests that many women of circumstance “were traumatized from the beginning, and may easily fall victim to the wiles of a cunning drug dealer who doubles as a so-called loved one.”<sup>95</sup> Women suffering from drug and alcohol problems or histories of domestic and/or sexual abuse are likely to be especially vulnerable and less able to break away from abusive intimates or resist overtures to participate in drug crimes.

Ultimately, based on familial and material constraints, we see that women of circumstance are not free to make the same choices about whether to become involved with illegal drug activity as their male intimates.<sup>96</sup> This difference in autonomy is clearly indicated by the different ways that Walter and Skyler describe their involvement in these activities. In Season 5 (“Felina”), Walter concludes, “I did it for me. I liked it. I was good at it.”<sup>97</sup> In contrast, Skyler states, “I never wanted any of this.”<sup>98</sup>

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93. *Id.*

94. Levy-Pounds, *supra* note 42, at 475.

95. Clarke, *supra* note 8, at 270.

96. Moreover, male partners that create these situations seem to know women have no other choices. Walter indicates that he is aware that Skyler has limited means to escape from the situation he created when he asks her: “How are you going to save our kids from this terrible environment?” *Breaking Bad: Fifty-One* (AMC television broadcast Aug. 5, 2012).

97. *Breaking Bad: Felina* (AMC television broadcast Sept. 29, 2012).

98. *Breaking Bad: Problem Dog* (AMC television broadcast Aug. 28, 2011).

Walter exercised his choice, and Skyler was forced to respond to it. Like Skyler, women of circumstance in the real world find that their options have been sharply limited by the actions of their partners. Ultimately, these familial conditions work to further constrain their behavior in their interactions with the legal system. Despite these constraints, women are often the ones who bear the heaviest legal penalties for being involved in the illegal drug trade because the formal gender equality written into these laws does not account for the unequal and gendered circumstances of their lives.

### III. BEYOND THE ROCK AND THE HARD PLACE: PUBLIC IGNORANCE OF AND ANTIPATHY TOWARD WOMEN OF CIRCUMSTANCE

Beyond the legal and familial conditions that structure women of circumstance's choices, social conditions and norms also shape the treatment these women receive and the choices available to them. Despite the increased attention focused on the plight of women of circumstance, these individuals remain trapped between a rock and a hard place because American society is deeply ambivalent about the autonomy of women of circumstance. This reality is exemplified by the public animosity directed at the fictitious television character Skyler White. In light of this phenomenon, Part III expands our focus to an examination of how cultural expectations about female subservience substantiate both (1) the legal system's highly gendered treatment of drug crime,<sup>99</sup> and (2) the family-originating constraints that condition women's available options once they encounter the legal system. We do so by turning a critical lens on *Breaking Bad's* audience, and upon Skyler's lightning rod status in popular culture.

As evidenced by the numerous "I Hate Skyler White" websites and blogs in existence, and by death threats made against actress Anna Gunn who portrays the character,<sup>100</sup> Skyler White is possibly one of the most hated characters in television history. The public vitriol towards Skyler demonstrates several things. Firstly, it is evidence that the general public is largely ignorant of her complex situation as the wife of a drug lord. Moreover, it reveals deep-seated cultural predispositions about women

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99. See Nancy D. Campbell, *Regulating "Maternal Instinct": Governing Mentalities of Late Twentieth-Century Drug Policy*, 24 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 896, 916 (1999).

100. See Anna Gunn, *I Have a Character Issue*, THE NEW YORK TIMES (August 23, 2013), [http://www.nytimes.com/2013/08/24/opinion/i-have-a-character-issue.html?\\_r=0](http://www.nytimes.com/2013/08/24/opinion/i-have-a-character-issue.html?_r=0).

who deviate from the behavioral expectations for “good” women. By refusing to abide by the prevailing cultural narratives that coercively frame women as subservient to patriarchal systems (including both the family and the legal system) in favor of a much more complicated and nuanced narrative, Skyler inspires “venomous rage”<sup>101</sup> among many *Breaking Bad* viewers. This rage reflects public antipathy towards this singular character, but also towards the many women who deviate from hegemonic and gendered cultural stereotypes. In particular, Skyler seems to reap the scorn of those who reject her decision to exercise some control over her own destiny when at times she steps outside of women’s subservient/secondary roles to men.<sup>102</sup>

The massive public reaction to Skyler implicates the sociocultural expectations that condition the legal environment and, ultimately, shape the possibilities and likelihood that these environments can become more sensitive to women of circumstance’s limited options. Thus, while this exploration of the public’s derision of the character of Skyler White is theoretically illuminating, it is also of critical practical importance. Reformers seeking to change a legal system that systematically ignores the binds that trap women of circumstance can utilize this analysis to expose flaws in the existing legal model. This section begins with an examination of how public hatred of Skyler reflects cultural expectations about women’s roles as wives and mothers—and disdain for the fact that the character challenges the myth of the subservient woman and wife—and then proceeds to analyze how these cultural expectations shape Skyler’s interactions with law enforcement.

### *A. Culture and Gendered Expectations: “Good” Women and Notions of Subservience*

As a mother and wife, and yet also an individual, Skyler is subject to competing expectations and gendered stereotypes about her behavior, which is the case for many women of circumstance as well. In order to be a “good” wife, Skyler is expected to stand by her husband as he works to support his family—even if this involves backing him up when he engages

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101. Jen Chaney, *Why We You Hate Skyler White*, *ESQUIRE: THE CULTURE BLOG* (September 5, 2013), <http://www.esquire.com/blogs/culture/why-you-hate-skyler-white>.

102. Skyler’s character does not need to step very far outside the ideal cultural trope of a proper wife to be resoundingly condemned. For many viewers “almost immediately, Skyler committed the cardinal sin of the stereotypical awful wife: She was a nag.” *Id.* As the series continued and Skyler’s character moved beyond “nagging” to outright making decisions that Walter did not favor, the intense criticism of Skyler only grew. *See id.*

in illegal activity. Conversely, as a “good” mother, she is expected to be a moral compass and to place her children’s interests above all others. Both stereotypes are founded upon the assumption that a “good” woman will sacrifice her own interests and wellbeing for that of her husband or her children. The tension between these options is illustrated by the competing demands placed on Skyler, and her vacillation between the choices, throughout the series. For Skyler, the choice she is presented with is to prioritize the integrity of her nuclear family by staying with Walter, or to prioritize her children’s safety by moving them out of his destructive path. Missing from these choices is an option that would allow Skyler to exercise absolute autonomy. In contrast, Walter clearly possesses and exercises this type of autonomy as exemplified by his ability to flee to New Hampshire to avoid arrest. Due to her constrained circumstances, Skyler is unable to freely pursue alternate courses of action.<sup>103</sup> Ultimately, Skyler rejects these binaries and rather than choose between two socially constructed gendered stereotypes—be a good wife or a good mother—she charts her own course in favor of a more complex arrangement within the confines of her situation.

Throughout the series, Skyler’s attempts to assert her autonomy—e.g., giving money to Ted, criticizing Walter for his excessive spending, sending their children to live with her family—precipitate public uproar. The viewing public has posted and shared vitriolic comments about Skyler White in numerous *Breaking Bad* related forums including Facebook community pages,<sup>104</sup> blogs, AMC Network message boards, and various news outlets. The intense hatred expressed towards Skyler White by members of the viewing public even morphed into death threats against Anna Gunn, the actress who portrays the character of Skyler, and led her to take steps to maintain her safety.<sup>105</sup> A *New York Times* Op-Ed written by Gunn highlighted postings on the AMC message boards including statements such as “[c]ould somebody tell me where I can find Anna Gunn so I can kill her?”<sup>106</sup> A large part of the vitriol directed at Skyler reflects the fact that she is perceived as “a ball-and-chain, a drag, a shrew, an ‘annoying bitch wife.’”<sup>107</sup> Essentially, the public hates Skyler

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103. *Breaking Bad: Granite State* (AMC television broadcast Sept. 22, 2013).

104. For instance, the Facebook Community site, “I Hate Skyler White,” <https://www.facebook.com/SkylerWhiteYuck?fref=ts> (accessed September 19, 2014) has 31,731 “likes,” and the Facebook Community site “Fuck Skyler White,” <https://www.facebook.com/pages/Fuck-Skyler-White/413832498673993> (accessed September 19, 2014) has a comparable 31,558 “likes.”

105. Gunn, *supra* note 100.

106. *Id.*

107. *Id.*

because she fails to meet its gendered stereotypes of a “good” wife who is subservient to her husband.<sup>108</sup> While societal expectations about marriage and gender roles within marriage have changed somewhat in recent decades, the reality remains that “marital commitment and gender norms traditionally were the subject of broad social consensus, and couples could expect community monitoring of their performance and censure for violations.”<sup>109</sup> Despite progress toward gender equity, public monitoring of and expectations about the role of the “good” wife continue to govern women’s behavior. As such, Skyler’s deviation from this norm of “good” uxorial behavior subjects her to public hatred.

Even though Skyler would likely never have chosen to become involved with or married to a drug dealer, when she unexpectedly does find herself married to a producer and distributor of methamphetamines it is clear from harsh criticisms of her behavior that viewers expected her to accept Walter’s choices as her marital fate. In this way, gender norms “have tended to reinforce women’s dependency, and to structure marriage as a relationship that serves the interests of husbands, but subordinates that of wives.”<sup>110</sup> Thus, even though Walter’s behavior is reckless, dangerous, and places his family in harm’s way, the viewing audience seems to empathize with his desire to provide financial security to his family. Conversely, they perceive Skyler’s anger towards Walter as disloyal because she is not deferring to his choices for the family. These audience reactions conform to and support hierarchical gendered spousal norms:

The husband was the head of the household, with primary authority over its resources, location, and general governance decisions. . . . The “good” wife and mother devoted her efforts to serving her family’s needs, subordinating her own interests and

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108. Interestingly, public comments and popular press musings do not align with how the creator of *Breaking Bad* understands the character. *Breaking Bad* creator Vince Gilligan discussed the animosity towards Skyler when asked about the public’s assessment that “Skyler White is seen by some as this henpecking woman who stands in the way of all of Walt’s fun.” Lane Brown, *In Conversation: Vince Gilligan on the End of Breaking Bad*, NEW YORK MAGAZINE (May 20, 2013), <http://www.vulture.com/2013/05/vince-gilligan-on-breaking-bad.html>. Gilligan replied: “Man, I don’t see it that way at all. . . . [I]n the early days she was the voice of morality on the show. She was the one telling him, ‘You can’t cook crystal meth.’ She’s got a tough job being married to this asshole. . . . People are griping about Skyler White being too much of a killjoy to her meth-cooking, murdering husband? She’s telling him not to be a murderer and a guy who cooks drugs for kids. How could you have a problem with that?” *Id.*

109. Scott, *supra* note 77, at 1922.

110. *Id.* at 1908.

preferences, while the “good” husband equated his family’s interests with the fulfillment of his individual wage earner goals.<sup>111</sup>

If we consider Walter’s behavior from the perspective of social norms about marriage, he is living up to male-gendered expectations. To many viewers, this makes Walter the more sympathetic character. In contrast, because she is profoundly constrained by the situation in which Walter has placed her, Skyler is trapped between competing normative social expectations: she must try to balance the obligations that are imposed on wives (where the expectation is that she should be deferential to her husband) while concurrently fulfilling those placed on mothers (where the imperative is to keep her children safe). In order to protect her family (including Walter), Skyler is often forced to undermine or directly go against Walter’s family governance decisions because they likely would have resulted in the Whites being caught by the DEA or Internal Revenue Service for overspending and/or investing in businesses that attracted the attention of law enforcement (e.g., the Laser Tag center). As such, Skyler repeatedly must choose which social norm of wife/motherhood she wants to uphold at the cost of having to violate another.

Because Skyler is operating within this broader sociocultural context, when she takes explicit action to protect her children—such as temporarily moving them into the home of their uncle, DEA agent Hank Schrader, and his wife—the public’s condemnation of her actions comes not from a mere dislike of the television character, but from far more socio-culturally entrenched beliefs about family. A large swath of the audience vilifies Skyler because she violates the traditional societal norm of being a deferential wife. The viewing audience seemingly has no sympathy for her plight, and instead has an “overwhelming and misogynizing distaste for Skyler”<sup>112</sup> because of the privileged position of male gendered roles that lead viewers to “identify with her husband’s malignant ambitions”<sup>113</sup> over the complexity of Skyler’s situation. By projecting unreasonable expectations onto women trapped by circumstances beyond their control, and then punishing them for failing to meet those impossible and often competing expectations, these stereotypes operate as a social means of controlling women’s behavior and punishing women who stray from gendered norms. As Vince Gilligan, the creator of *Breaking*

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111. *Id.* at 1914.

112. William Brennan, *Skyler White Is the Best Character on Breaking Bad*, SLATE.COM (August 9, 2013, 6:20 PM), [http://www.slate.com/blogs/browbeat/2013/08/09/skyler\\_on\\_breaking\\_bad\\_final\\_episodes\\_skyler\\_white\\_is\\_the\\_show\\_s\\_best\\_character.html](http://www.slate.com/blogs/browbeat/2013/08/09/skyler_on_breaking_bad_final_episodes_skyler_white_is_the_show_s_best_character.html).

113. *Id.*

*Bad*, stated, “I think the people who have these issues with the wives being too bitchy on *Breaking Bad* are misogynists, plain and simple.”<sup>114</sup>

But “wife” is not the only role in which Skyler’s character is cast. “On AMC’s *Breaking Bad*, Skyler White (Anna Gunn) plays many roles: the wife of Walt, the show’s meth-cooking, empire-seeking chemist; [and] the barrier protecting her children from said chemist.”<sup>115</sup> Reflecting her complicated familial obligations, while Skyler is roundly criticized for failing to show “proper” deference to Walter she is simultaneously subject to additional criticism because she fails to put her children’s physical safety above all other interests. Thus, another common public criticism leveled at Skyler is that she subjects her children to living in the home of a drug lord and in doing so prioritizes her own interests over the absolute well-being of her children. Skyler’s decision to stay with Walter is not understood as an attempt to fulfill the culturally mandated role of being a “good” wife, but rather antagonistic viewers decry the decision as an act of self-interest motivated by her greed. This juxtaposition can be viewed as follows: “If she tells Walter to stop dealing drugs, she’s a nagging harpy [and a bad wife]; if she decides to support Walter’s drug kingpin aspirations, she’s a hypocritical gold digger [and a bad mother].”<sup>116</sup> Yet, this public criticism of Skyler for failing to leave Walter is problematic. In Season 3 (“No Mas”) Skyler explicitly investigates the possibility of obtaining a divorce from Walter.<sup>117</sup> However, in doing so, Skyler realizes that divorcing Walter may be more detrimental than remaining with him because she could be charged, convicted, and imprisoned for drug crimes that she (originally) had no knowledge of and subsequently be separated from her children. Thus, Skyler’s reason for staying in the marriage may be self-preservation and not greed, but this “gold-digger” discourse demonstrates how she is once again subject to cultural expectations that women put the interests of others—especially their children—above their own interests or risk public scorn.

The Skyler character provides a useful window into how the hegemonic sociocultural tropes of being a “good” wife and mother constrain women and subject them to resounding criticism if they do not live up to these high and sometimes conflicting requirements. Yet the reality is that social norms about appropriate gendered behavior affect all women. Both inside and outside the fictional world of *Breaking Bad* these norms

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114. Brown, *supra* note 108.

115. Brennan, *supra* note 112.

116. Marion Johnson, Mad Men, *Megan Draper and the Skyler White Effect*, HUFFINGTON POST (Apr. 3, 2013), [http://www.huffingtonpost.com/marion-johnson/mad-men-feminism\\_b\\_3005489.html](http://www.huffingtonpost.com/marion-johnson/mad-men-feminism_b_3005489.html).

117. *Breaking Bad: No Mas* (AMC television broadcast Mar. 21, 2010).

function to constrain women's autonomy when they become wives and girlfriends. However, these constraints are exacerbated when women become mothers, as "[t]hrough motherhood . . . women assume an indelible moral identity and incur or disavow various caregiving obligations."<sup>118</sup> This move into motherhood has specific consequences for women's autonomy, as "the scope of socially condoned autonomy with respect to motherhood is far less extensive than it initially appears to be."<sup>119</sup> Good mothers are supposed to be completely self-sacrificing, whereas "'bad' mothers expose the dark underside of an essentialist view of motherhood: if mother-love and self-sacrifice are the natural expressions of maternity, then anger, violence, and even the mildest acts involving choosing of one's own needs over those of the child are not only wrong but unnatural, even monstrous."<sup>120</sup> These cultural expectations about "good" versus "bad" mothers, however, fail to account for the constraints imposed on Skyler and other women of circumstance, but understanding them helps to reveal why the *Breaking Bad* audience is so critical of a woman who "is attempting to negotiate a livable existence for herself in highly unusual circumstances."<sup>121</sup>

Rather than recognize that Skyler is constrained by the legal system's treatment of women of circumstance, as well as a myriad of systemic familial constraints, the public draws on ingrained sociocultural expectations and seeing that she is not measuring up to all of them—even when simultaneously being a "good" wife and a "good" mother would require her to take opposite actions—blames Skyler for her inability to be all things to all people and chastises her for exercising any autonomy. This "deflection of responsibility for structural problems onto figures that embody them is central to the regulatory apparatus of public policy in liberal democratic capitalist societies. In the 'governing mentalities' of illicit drug policy, individual women who lack maternal instincts are discursively constructed as responsible for economic erosion and social disintegration."<sup>122</sup> In this way, women are blamed for finding themselves in circumstances that are beyond their ability to control. In the event

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118. Diana Tietjens Meyers, *The Rush to Motherhood: Pronatalist Discourse and Women's Autonomy*, 26 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 735, 735 (2001).

119. *Id.* at 736.

120. Samira Kawash, *New Directions in Motherhood Studies*, 36 SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY 969, 983 (2011).

121. Alyssa Rosenburg, *Stop Hating the Wives: In Defense of Breaking Bad's Skyler White*, SLATE.COM (July 16, 2012), [http://www.slate.com/blogs/xx\\_factor/2012/07/16/skyler\\_white\\_and\\_breaking\\_bad\\_stop\\_hating\\_tv\\_wives.html](http://www.slate.com/blogs/xx_factor/2012/07/16/skyler_white_and_breaking_bad_stop_hating_tv_wives.html).

122. Campbell, *supra* note 99, at 896. The extent to which drug policy works to control women and mothers is exemplified by law enforcement's pursuit, arrest and

these conditions require women to deviate from cultural expectations, they are then condemned for exercising what little autonomy they still possess within their highly constrained circumstances. In reproduction of these broader sociocultural narratives inscribed upon women in the real world, Skyler is criticized for being a bad wife and a bad mother. The reality, however, is that her decision to stay with Walter (opening herself up to criticism of being a bad mom) while refusing to defer to all of his demands and behaviors (opening herself up to accusations of being a bad wife) reflects the complex situation she is navigating. An analysis of the viewing public's assessment of Skyler, however, indicates an unwillingness to accept her efforts to achieve multiple goals including keeping her husband and herself out of jail while at the same time keeping her children at home with both of their parents.

### *B. Cultural Expectations Condition Women's Interactions with the Legal System*

While sociocultural expectations about women explain the public's negative reaction to the character of Skyler White on *Breaking Bad*, they also explain the legal system's treatment of women like Skyler. Thus, understanding the role that these expectations play in shaping the constraints upon women of circumstance's choices is also instructive for developing an understanding about why the legal system is so hostile towards these women. By ignoring the ways that being wives and mothers limit these women's options in powerfully gendered ways, the legal system's gender-blind treatment of them essentially reproduces public ignorance of their situation. However, since this antipathy is manifested as the coercive power of the state, women who are unwilling or unable to meet these loaded cultural expectations can often be subjected to the loss of their freedom or parental rights.

Cultural expectations are a central determinant of how the War on Drugs has been fought, as “[d]rug policy works primarily as a disciplinary formation because most of us are kept in line through informal social controls and the symbolic aspects of the drug laws.”<sup>123</sup> Thus, beyond the tangible material conditions that structure women of circumstance's choices, social conditions and norms also shape how they interact with the legal system, and ultimately these social strictures can thwart the already limited autonomy of women of circumstance.<sup>124</sup> An examination of

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detainment of pregnant crack users and mothers using crack during the 1980s and 1990s. See also KENNEDY, *supra* note 54.

123. Campbell, *supra* note 99, at 911.

124. Meyers, *supra* note 118, at 755.

how law enforcement officers and prosecutors treat these women exposes a double standard. Contemporary society professes to value the identities of wife and mother,<sup>125</sup> but when these female identities exist alongside a spouse or partner who is a drug operative, the legal system expects women to be able to immediately disassociate from their male intimates.<sup>126</sup> In this way, sociocultural expectations about subservient women manifest themselves in unique ways for women of circumstance.

This “effect of culture on the law”<sup>127</sup> is evident in Hank’s first attempt to finesse Skyler to turn Walter in to the DEA. As discussed in Part I, when Hank approaches Skyler to let her know that he has learned that Walter is a major methamphetamine dealer he explicitly draws upon hegemonic assumptions about women’s subservience in the private realm by suggesting that Walter threatened or abused Skyler and telling her that she “is done being his victim.”<sup>128</sup> Hank relies on sociocultural expectations about the weak position that women occupy in their marriages and homes to pressure Skyler to turn Walter in to the DEA. Yet, if Skyler had been persuaded by Hank and turned Walter in, she would have been violating sociocultural expectations about what it means to be a “good” wife. Reflecting the power of these beliefs and their broad acceptance:

[M]any women see cooperating with authorities as the ultimate form of betrayal in a relationship. This is especially so if the male involved in drug-related activity is the woman’s husband or significant other, or the father of the woman’s children. She may not see her potential freedom from incarceration as being worth abandoning the principles of family life and stability, even if her view of those structures differs widely from the view of mainstream Americans.<sup>129</sup>

Both Skyler’s refusal to cooperate with law enforcement (which violates norms about what being a “good” citizen involves) and the above findings that demonstrate how prevalent these beliefs are among women themselves reveal how stereotypes about appropriate female behavior shape both how women perceive their own roles and how others perceive women. As such, the expectations of prosecutors and law enforcement officers that women will suddenly deviate from their indoctrinated gender roles and turn their partners into law enforcement are farfetched.

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125. *Id.*

126. *See Gaskins, supra* note 3, at 1536.

127. Regan, *supra* note 41, at 2050.

128. *Breaking Bad: Buyout* (AMC television broadcast Aug. 19, 2012).

129. Levy-Pounds, *supra* note 42, at 474.

Underlying Hank's assumptions that Skyler is a victim is a seeming ignorance of the possibility that Skyler possesses or exercises autonomy in her marriage and home. This reflects a curious incongruity in the legal system's treatment of women of circumstance. Hank's comments suggest that Skyler is a victim of her circumstances, had no hand in shaping them, and thus may be entitled to less harsh treatment than an autonomous woman. However, the legal system's avowed gender-neutral approach prevents such awareness from actually being applied. In contrast with this idea that women of circumstance have *no* autonomy to make decisions, Skyler is not wholly subservient. Over the course of the series she takes many steps to protect her family including establishing and monitoring the money laundering operation and pushing back when Walter's irrational spending decisions threatened to expose the drug enterprise. Nevertheless, Skyler's choices are severely constrained by her family obligations and the necessity that she be a "good" wife and mother. The legal system's failure to recognize that she is unable to truly exercise her free will out of fear for her own safety and the safety of her children demonstrates how drug laws work to punish women regardless of whether they abide by or step outside of their gender roles. As Jackson explains:

[T]hese laws seem to embrace the theory that "birds of a feather flock together"; thus a defendant may rightfully be convicted for the crimes of her boyfriend because only an unrighteous woman would be involved with a criminal in the first place. While this may be a justifiable moral position, it is a faulty legal position, as the law purports to hold every woman liable only for her own crimes and not for the crimes of those around her.<sup>130</sup>

Accordingly, women who find themselves in intimate relationships with drug operatives get what is coming to them. In order to counter this assumption, it is not enough to work to change legal technicalities and statutes. Instead, it is necessary to challenge and undermine the widespread sociocultural beliefs about appropriate behavior for women that underlie and condition the legal system, and inform the behavior of lawmakers and actors within the criminal justice system.

In much the same way that many legal scholars have argued that the selective enforcement of drug laws and draconian sentencing provisions have been deployed as a tool to systemically regulate racial and ethnic minorities,<sup>131</sup> these same laws and policies have been utilized to the detri-

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130. Jackson, *supra* note 16, at 537.

131. While much has been written on this topic, for an especially useful review of this issue see Chin, *supra* note 70, at 255; KENNEDY, *supra* note 54.

ment of women charged with drug crimes—especially women of color. While a discussion of whether these laws, as created and applied, are intended to have these raced and gendered consequences is beyond the scope of this article, it is clear that current federal and state laws have created a drug enforcement system that “fails to take the promise of equality seriously.”<sup>132</sup> In this way, current drug enforcement policies are both predicated on outmoded gender stereotypes and simultaneously reify these sociocultural expectations in ways that work to the detriment of women of circumstance.

#### IV. WOMEN’S AUTONOMY AND LEGAL REFORM

As a result of *Breaking Bad*’s riveting drama and incredible popularity, over the course of sixty-two episodes of the television show, the myriad legal, familial and social constraints faced by Skyler White were brought to the attention of millions of viewers. For those Americans, including state and federal legislators, who are absolutely unaware of the constraints that operate on women of circumstance, the character of Skyler White provides a useful lens for examining the reality of women’s lives when they are intimately involved with male drug operatives. At the same time, however, the loud and hateful public backlash against her character draws attention to the systemic biases that underlie the familial constraints faced by these women as well as the legal system’s problematic treatment of women of circumstance; the latter of which is grounded in the same sociocultural beliefs that constrain their options before they become entangled in the criminal justice system.<sup>133</sup> In this way, *Breaking Bad* and viewers’ reactions to the drama occurring therein draw attention to the myriad of deeply ingrained beliefs that undermine attempts to reform the legal system. In light of these obstacles, real legal reform must begin with an explicit determination of the extent to which gendered stereotypes and sociocultural expectations about “good” women inform the current War on Drugs so that the legal system’s problematic replication of these sociocultural beliefs can be explicitly challenged.

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132. Mauer & Cole, *supra* note 70.

133. Other female television characters that have instigated massive negative and misogynistic public backlashes because they exercise autonomy in their marriages, push back against gendered stereotypes about “good” wives, and challenge their philandering, dishonest and sometimes criminal spouses include Carmela Soprano (wife of Tony Soprano on HBO’s *The Sopranos*), Betty Draper (wife of Don Draper AMC’s *Mad Men*), and Abby Donovan (wife of Ray Donovan on Showtime’s *Ray Donovan*).

As demonstrated throughout this article, the intransience of sociocultural norms regarding male and female sex roles is exhibited by both the legal and familial constraints that operate on the Skyler White character and women like her. These stereotypes work across society in a multitude of ways, but they are especially problematic as they are manifested in the legislative process and the legal system's treatment of women of circumstance. Evidence of the impact of these stereotypes is present from the first contacts women of circumstance have with law enforcement, through prosecutorial decisions, and the sentences handed down by judges which result in women of circumstance being stereotypically judged and imprisoned. In order to mitigate the War on Drugs' effect on women of circumstance, it is imperative that legal reforms account for the unique constraints operating on women like Skyler. Specifically, these women of circumstance are constrained by an acute absence of choices in their relationships and in the legal system. As such, reforms should focus on granting women the autonomy that Skyler strove hard to obtain, yet for which she was so vilified. As Meyers explains, "a feminist view of autonomy must acknowledge that oppression impedes autonomy without stripping women of the autonomy that they have managed to wrest from a patriarchal, racist, heterosexist, class-stratified world."<sup>134</sup> A feminist view of autonomy begins with the recognition that women are people in their own right who are entitled to equal treatment. This fact should be the foundation of any efforts to remedy the War on Drugs' unequal treatment of those captured in its net, as opposed to revising gender-blind policies that maintain a superficial veneer of formal equality that is profoundly unequal as applied or passing legislation that privileges women's relational status and value as mothers or wives at the cost of their liberty.

In order to accomplish legal reforms that acknowledge and empower women's autonomy, women's experiences and perspectives need to be (1) incorporated into the legislative process and (2) factored into the application of laws. Specifically, lawmakers need to research and educate themselves and the public about the reality of women's experiences,<sup>135</sup> and craft legislation that accounts for the various and continuous inequities that inform many women's lives and situate women

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134. Meyers, *supra* note 118, at 739.

135. Raeder, *supra* note 57, at 912. *See also* Tinto, *supra* note 3, at 908 (discussing continued concern related to considerations informing the legislative process and noting "[c]urrent debates over reform are devoid of any in-depth discussion of how the Laws affect women whose drug crimes took place within the context of an intimate relationship and whether their sentences, which are given without consideration of this context, are justified. Such discussion is a much needed component of the broader debate about reform of the Laws.").

and men differently in the War on Drugs.<sup>136</sup> In addition, while legal reform must account for the ways in which women's experiences are gendered, it must also take into consideration how socioeconomic status and race and ethnicity factor into women's treatment by the criminal justice system in the War on Drugs.<sup>137</sup>

In light of the conditions under which women of circumstance actually live and operate, attempts to revise conspiracy laws must remedy current policies that "treat low-level female offenders and the most culpable co-conspirators in exactly the same manner, while failing to consider the importance of personal relationships in weighing culpability for the acts of the conspiracy."<sup>138</sup> In addition, Congress and state legislatures must revisit gender-neutral mandatory sentencing guidelines that fail to account for the different contexts in which men and women become involved in drug crimes<sup>139</sup> and that are ineffective in deterring criminal activity as well.<sup>140</sup> Despite a desire to eliminate opportunities for judicial paternalism, the experiences of women of circumstance in the nearly

136. Recent congressional efforts to reform sentencing laws do not explicitly address how these laws discriminate against women. As reported on March 11, 2014, the "Smarter Sentencing Act," does not mention women, gender, female(s), wife, or spouse. See Smarter Sentencing Act of 2014, S. 1410, 113th Cong. (2014).

137. See Jackson, *supra* note 16, at 541 n.126 ("[O]ne must at least wonder why the wives and intimate partners of the defendants in America's recent chain of corporate corruption cases have not been hauled in on conspiracy charges. Rarely will a white collar criminal's wife be convicted of participating in his scheme based on her utilization of the illegal funds that he receives, her economic benefit from his illegal activity, or her presumed knowledge of his illegal activities based on the fact that he would not be able to afford his lifestyle with his legally earned income. Yet, these are all factors that prosecutors have used to prove a wife or girlfriend's participation and/or knowledge of a principle [sic] male dealer's criminal activity. Clearly, this country's out-of-control 'War on Drugs,' and the intolerant punitive mentality that accompanies it, combined with the social and economic bases present in our society play a major role in which women we choose to punish for their husband/boyfriend's actions and why.").

138. Gaskins, *supra* note 3, at 1539.

139. Reynolds, *supra* note 54, at 88 (citations omitted) ("Women frequently become involved in drug crimes because of economic need or they are coerced, forced, or duped into using, selling, or transporting drugs due to their fear of, financial dependence on, or intimate attachment to, a male drug trafficker. This context should be considered when judges impose sentences, but it is not.").

140. Mauer & Cole, *supra* note 70 ("Harsher sentences also offer little deterrence: When people consider committing crimes, they may think about whether they will be caught, but probably not about how harshly they will be punished. In 1999, the Institute of Criminology at Cambridge University reviewed studies of deterrence and sentencing and found no basis 'for inferring that increasing the severity of sentences generally is capable of enhancing deterrent effects.'").

thirty years since the passage of the Anti-Drug Abuse Act of 1986,<sup>141</sup> have evidenced that

[T]he goal of eliminating gender bias in sentencing cannot be attained simply by legislating gender neutrality in sentencing. Just as no one would deny that differences in male and female physiology have consequences in such contexts as pregnancy, health, strength, and longevity, so too the gendered nature of crime and familial relationships should be considered as legitimate factors in sentencing.<sup>142</sup>

In addition to reforming sentencing laws, the use of drug courts as alternative venues “would do much for the incarceration rate of women, taking into account the needs of the whole person.”<sup>143</sup> Finally, national and state governments need to move away from punitive approaches to drugs in favor of drug prevention and drug treatment programs.

## CONCLUSION

While *Breaking Bad* aired, millions of viewers watched Walter’s exploits unfold and witnessed how his choices and actions affected his wife Skyler by conditioning and constraining her choices. While most of “the media presents a picture of incarcerated women that focuses on violence and does not discuss the extent to which these women are nonviolent offenders, victims, mothers, substance abusers, and in need of mental health treatment,”<sup>144</sup> *Breaking Bad* effectively demonstrated the dilemmas faced by women of circumstance. Further, it initiated an important discussion about how these constraints do not just emerge from a solitary character’s choices, but rather that they are reflective of and conditioned by broader societal beliefs about women’s roles as wives and mothers in patriarchal sociocultural institutions including the family and the legal system. As such, Skyler White and *Breaking Bad* provide us with a useful lens through which to view how sociocultural expectations intersect with the War on Drugs and public antipathy to constrain women of circumstance’s choices.

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141. 21 U.S.C. § 841 (2012).

142. Raeder, *supra* note 57, at 921.

143. Wynn, *supra* note 5, at 299.

144. *Id.* at 289.

