Tulsa Law Review

Volume 46
Issue 1 *Symposium: Catharine MacKinnon*

Fall 2010

Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality

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CLOSE ENCOUNTERS OF THREE KINDS: ON TEACHING DOMINANCE FEMINISM AND INTERSECTIONALITY

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I am pleased to be a part of this symposium honoring Catharine MacKinnon's groundbreaking work as a feminist theorist, legal advocate, and global activist. This invitation not only presents the opportunity to examine the interface between dominance theory and intersectionality, but also the occasion to delve further into the vexed rhetorical politics surrounding feminism and antiracism.

By now the fact that there has been a contested relationship between antiracism and feminism is almost axiomatic.[1] Yet as with most things that have become matters of common knowledge, there is a risk that generalizations can metastasize into hardened conclusions that obscure rather than illuminate important dynamics among people, theories, and movements.

This interpretive rigidity is often evident whenever I reference MacKinnon's work favorably in presentations that explore intersectionality and antidiscrimination law. Listeners often register surprise that MacKinnon would occupy any constructive space in the conceptual universe of intersectionality. I sometimes push the envelope even further by suggesting that her controversial essay *From Practice to Theory, or What Is a White Woman Anyway?* is among my favorite MacKinnon essays to teach.[2]

Teaching MacKinnon, particularly *What is a White Woman Anyway?* is not

1. *See generally* Michele Barrett & Mary McIntosh, *Ethnocentrism and Socialist-Feminist Theory*, 20 FEMINIST REV. 23, 24 (1985) ("Black feminist critiques of the work of white women have made two particular points . . . [o]n the one hand it is argued that black groups are typecast, stereotyped and ghettoized; that the dominant racist ideologies ... are reproduced rather than challenged in white feminist work. On the other hand ...it is argued that they are invisible and unheard in white feminist work"); Kum-Kum Bhavnani & Margaret Coulson, *Transforming Socialist-Feminism: The Challenge of Racism*, 80 FEMINIST REV. 87, 88 (2005) ("[W]hite women cannot avoid the legacy of racism within feminism"); Margaret A. Simons, *Racism and Feminism: A Schism in the Sisterhood*, 5 FEMINIST STUD. 384 (1979) (critiquing important, classic feminist works by exploring ethnocentrism, racism, and minority women's invisibility). For discussion of the contested relationship between antiracism and feminism within the law, *see, e.g.*, Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Barbara Johnson, *The Postmodern in Feminism*, 105 HARV. L. REV. 1076 (1992); Martha R. Mahoney, *Whiteness and Women, In Practice and Theory: A Reply to Catharine MacKinnon*, 5 YALE J.L. & FEMINISM 217 (1993); Alisa D. Nave, *Book Received* (reviewing FEMINIST LEGAL THEORY: AN ANTI-ESSENTIALIST READER (Nancy E. Dowd & Michelle S. Jacobs, eds., 2003)), 19 BERKELEY WOMEN'S L.J. 313 (2004); Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L.J. 296 (1991); Jane Wong, *The Anti-Essentialism v. Essentialism Debate in Feminists Legal Theory: The Debate and Beyond*, 5 WM. & MARY J. WOMEN & L. 273 (1999).

2. Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991).

without its challenges. For some of my students, many of them progressive young women and men who gravitate toward courses such as Intersectionalities and Advanced Constitutional Law, our discussion of MacKinnon's argument profoundly disrupts their expectations. This dissonance is not incomprehensible given that many students step into the discussion fully armed with the well-rehearsed critique that feminism has been built on the erasure of women of color. Moreover, MacKinnon's rhetorical stance and bold confrontation of the racial politics embedded in this debate pose a striking contrast to some white feminists who engage the critique through superficial gestures of inclusion, or who ignore the argument altogether. MacKinnon's unswerving defense of her project makes her stand out as the purveyor of a universalizing, one-size-fits-all feminism that runs roughshod over women of color. Staged as such, for a significant number of these students, my work and MacKinnon's are poised as oppositional rather than synergistic.[3] Intersectionality is one of many registers through which women of color boldly speak back against their theoretical marginality.

Debates about race and representation in MacKinnon's work have raged for years; some of these arguments are complex, linked to broader tensions between various schools of thought on questions pertaining to theory, epistemology, discipline, and politics.[4] Drawing from debates and reactions of students over the past several years, there is a sizable cohort who style their critiques as anti-essentialist, yet whose basic moves are themselves built on essentialisms, including the trope of the white woman.[5] Within, or perhaps under cover of these larger debates are assertions and interpretive alliances that suggest that, at least for some, what is at stake is less about fidelity to antiessentialism[6] per se, but more about identity-based politics that reflect very different

3. Of the works that draw a link between the writings of this Author and MacKinnon, many posit intersectionality as a "remedy" of sorts for the essentialist faults of dominance theory. See, e.g., Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 Mich. L. Rev. 2479 (1994); Rosemary Hunter, *Deconstructing the Subjects of Feminism: The Essentialism Debate in Feminist Theory and Practice*, 6 Austl. Feminist L.J. 135 (1996); Wong, *supra* note 1. This interpretation is not, of course, groundless. I have been and remain a critic of theories and practices that fail to sufficiently account for and effectively engage the interface between gender and other systems of subordination. My own projects have tended to take up relatively specific articulations of feminist and antiracist interventions with the goal of interrogating how narrow conceptualizations of race and gender power produce limited and sometimes counterproductive political rhetorics and policy interventions. While these sites of feminist and antiracist convergence are the points of departure for my own work, intersectionality is certainly not limited to these concerns. Equally significant is the possible reading of intersectionality as either a call for a Black feminist particularity, or as simple illustrative of the incoherence of feminism per se. I find neither interpretation compelling, nor have I tended to frame my principle critiques in the language of "anti-essentialism." See, e.g. Mapping the Margins, pp. (arguing, for example, in the case of the competing race/gender narratives on the Anita Hill debacle, that the centrality of Black male and white female experiences, respectively, could not be met solely by invoking a sense of the "multiplicity of identities" nor through a challenge seeking to "out" the essentialism in race and gender claims more generally. Instead, I called there — as I do here — for a more robust analysis of how difference make a difference in marginalizing and sometimes erasing the consequences of a race-gender system for women of color.

4. *See* sources cited *supra* note 1.

5. *See* discussion *infra* at p. 142.

6. Because the deployment of essentialism as a critique serves multiple and sometime contradictory purposes, it is not always clear from its deployment what its sins really are. *Compare* DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 83-84 (1989) (leveling the essentialist critique at MacKinnon, arguing that MacKinnon's dominance theory relies on a biologically essentialist framework while "ignor[ing] the ways that common biological constraints are experienced differently by different groups of women") *and* DRUCILLA CORNELL, BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION AND

orientations toward feminism and antiracism.

This presumption of oppositionality between white feminists and feminists of color is markedly different from the presumptions that prevail when feminists of color are situated in relation to race-based discourses. Feminists of color are not usually presumed to be in active contestation with leading antiracist theorists[7] even though many antiracist

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THE LAW 120 (1991) (leveling a different essentialist critique at MacKinnon, arguing that MacKinnon's essentialized "woman" relies entirely too much on a "social reality" constructed through the male gaze and male power.) To hazard a working framework for this discussion, essentialism captures the view that members of a particular group all possess some set of defining characteristics, universal among group members, and not dependent upon context. Under the essentialist framework, although individual group members may possess characteristics that are not in the bundle of characteristics required for group membership there is nevertheless some bottom line "essence" of experience that is shared amongst all group members. Thus, an argument that there is an identifiable "woman's" or "Black person's" experience that maintains a stable and clear meaning across different historical, social, and personal contexts would be subject to critique as essentialist. *See, e.g.* Harris, *supra* note 1, at 585 (1990) (describing how MacKinnon's work relies on "gender essentialism" insofar as it holds that a "unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience"). The antiessentialist critique would be premised on the impossibility of reducing the experiences of particular groups down to an essential narrative shared by all members. *See, e.g.* Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16, 19 (1995) (arguing against the possibility of a universal "women's experience" on the basis that "race and class can never be just "subtracted" because they are in ways inextricable from gender"). Antiessentialist arguments vary in terms of what kinds of claims are grouped together as essentialist; for some, any asserted commonality across group members, or the very attempt to name a group is essentialist while for others, an acknowledgment that group members will be shaped by particular contexts and the interplay of myriad identities in individual group members would likely escape the essentialist critique. When and to whom the label "essentialist" is attached is another variable in the discourse and is the point of departure of this Article. The background premise of this discussion is that the critique is somewhat selectively deployed, first as against so-called "identity" formations such as "women" and "Blacks," as opposed to class-formations such as "the working class" or "the poor." Further, within and between the discourses of antiracism and feminism, the critique is more likely to surface within the latter than the former.

7. In contrast to the presumption that feminists of color are in active contestation with mainstream feminists, see sources cited *supra,* note 1, many feminists of color, including this Author, Mari Matsuda, Angela P. Harris, and Patricia Williams, are widely cited as aligned with Critical Race Theory ("CRT"), not as contesting CRT claims. *Compare* Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57, 78 (1994) (noting the "split that exists between white feminists and feminists of color"), *with* UMKC Law Review, *New Complexity Theories: from Theoretical Innovation to Doctrinal Reform*, 71 UMKCLR 431, 432 (2002) (referring to Angela Harris, Mari Matsuda, and this Author as "critical race feminists"). It bears noting, however, that this observation about the tendency to see feminists of color in oppositionalist terms regarding feminism, and cooperative terms regarding antiracism, reflects differences in degree and is also field specific. Within the political and cultural discourses around the political allegiances of Black feminists, for example, there are significant allegations that such sensibilities are at odds with Black community interests. In the political arena, such allegations shaped the controversy over Anita Hill, whose testimony against Clarence Thomas was roundly criticized within the Black community as a treasonous saddling up to white feminists even though Hill did not frame her testimony at that time in feminist terms. *See, e.g.* Jane Mansbridge & Katherine Tate, *Race Trumps Gender: The Thomas Nomination in the Black Community*, 25 PS: POL. SCI. & POL. 488, 488-89 (1992) (arguing that Blacks were "concern[ed] at this historical moment with the public image of a Black woman attacking a Black man."); Kimberlé Crenshaw, *Whose Story Is It, Anyway? Feminist and Antiracist Appropriations of Anita Hill*, *in* RACE-ING JUSTICE, EN-GENDERING POWER 402, 416-20 (Toni Morrison, ed., 1992) (arguing that the "vilification of Anita Hill" emphasized how she treacherously violated the 'code of silence' . . . experienced by African-American [intra-racial rape victims] as a self-imposed gesture of racial solidarity") (citing Nathan Hare & Julia Hare, *The Many Faces of Anita Faye Hill*, FINAL CALL (Nov. 18, 1991) at 29). In the cultural arena, author Alice Walter was widely attacked on similar grounds of similar critiques of treason and betrayal for her novel THE COLOR PURPLE, which was widely critiqued as a tirade against Black men. *See, e.g.* Henry Louis Gates, *The Black Person in Art: How Should S/He Be Portrayed? (Part II)*, 21 BLACK AM. LITERATURE F. 317, 318 (1987) (noting that critics view "Walker as a prostitute . . . [for] exploit[ing] the . . . schism between black men and black women . . . .'" in her book) (quoting Eugenia Collier); Jacqueline Bobo, *The Color Purple: Black Women as Cultural Readers*, *in* THE BLACK STUDIES READER (Jacqueline Bobo et al. eds 2004) (noting that some Black commentators have "called The Color Purple 'the most racist depiction of Black men since The Birth of a Nation'. . . [and] a Nazi conspiracy'") (internal citations omitted); Jacqueline Bobo, *Sifting through the*

theorists and activists often frame their theoretical projects in the same universal terms[8] that have engendered essentialist critiques of feminists.[9] Deeper still is the fact that despite the centrality of male histories, sensibilities, and urgencies in both historical and contemporary antiracism, this construction of antiracism around male subjectivities carries little of the rhetorical sanction that has bedeviled feminism. This is particularly relevant in current policy discourses operating under the rubric of "Black male endangerment," where a male-centered analysis circulates as a common, if not dominant, frame for addressing the disparities that continue to plague the African American community.[10] Although these frames and the interventions they engender share many of the features of essentialism against which critics have railed in feminism, this male-centered vision of antiracism has largely escaped the critical scrutiny that is directed against MacKinnon's feminism.[11]

Controversy: Reading The Color Purple 39 CALLALOO 332,338 (1989) (illustrating how Black men attacked Walker by claiming that she "'had problems with black men ' . . . [and violated] a tradition that is nearly as old as Black American literature itself . . . [of] 'expos[ing] aspects of [Black] inner-community life that might reinforce damaging racial stereotypes' . . .). More recently, the heated debates about misogyny in hip-hop have generated similar allegations against feminist critics, who are accused of carrying white women's sensibilities into Black cultural spaces. *See, e.g.* Leslie Weisstuch, *Sexism in Rap Sparks Black Magazine to Say, 'Enough!'*, CHRISTIAN SCI. MONITOR (Jan. 12, 2005), http://www.csmonitor.com/2005/0112/p11s01-almp.html (writing that some critics, such as Professor Todd Body, see Black feminist campaigns against misogyny in hip hop as "another attempt to lash out at hip-hop's free, and at times, subversive, expression."); Jeffery O. F. Ogbar, *Slouching Toward Bork: The Culture Wars and Self-Criticism in Hip-Hop Music*, 30 J. BLACK STUD. 164, 164-183 (arguing that feminist critics of hip hop have ignored the fact that many in the hip-hop community have risen to critique misogyny and violence in hip hop lyrics and culture). Thus, while it is certainly true that efforts to discipline Black feminism have been expressed in terms of rhetorical expulsion from the Black community, this impulse is less prominent in the academic debates, and in legal discourses more particularly. Equally important is the fact that these politics themselves are manifestations of the principle argument, that the critique of whiteness in feminism carries considerably more rhetorical weight than the critique of maleness in antiracism.

8. *See, e.g.*, Frank R. Cooper, Race and Essentialism in Gloria Steinem, 11 BERKELEY J. AFR.-AM. L. & POL'Y 36 (2009); Francisco Valdez, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L.J. 1 (1996); Williams, *supra* note 1.

9. *See* sources cited *supra* notes 1, 3.

10. *See* discussion *infra* at pp. 123–24.

11. My claim here is not that there are no anti-essentialist critiques of antiracist discourse, but that there is significantly more space given to such critiques against feminism than antiracism. This may or may not be empirically provable, and may be limited to the discursive communities within which these tendencies are observed. Given these caveats, a few observations may suffice to establish the plausibility of the claim. In 1995, Louis Farrakhan staged a Million Man March in Washington, D.C. to which women were discouraged from attending. *See* Norma Quarles, *Behind Million Men, Black Women: 'No Girls Allowed' Request Leaves Community Divided*, CNN.COM (Oct. 16, 1995, 10am EDT), http://www.cnn.com/US/9510/megamarch/10-16/women/index.html; *Million Man March Is Stirring Passions*, N.Y. TIMES, Oct. 8, 1995, *available at* http://www.nytimes.com/1995/10/08/us/million-man-march-is-stirring-passions.html?src=pm. Although Farrakhan's Nation of Islam is not a sizeable political formation in the Black community, notable African Americans supported and attended the March including Jesse Jackson, Cornel West, Michael Eric Dyson, and numerous others. *See* Charisse Jones, *Thousands Are Expected At Rally Set by Farrakhan*, N.Y. TIMES, Oct. 16, 1996, *available at* http://www.nytimes.com/1996/10/16/nyregion/thousands-are-expected-at-rally-set-by-farrakhan.html?src=pm. Some African Americans (Angela Davis, Paula Giddings, Julianne Malvaux, Barbara Ransby, Luke Charles Harris, Cathy Cohen, Marcia Gillespie, and this Author, among others) protested the exclusion of women on both substantive and political grounds, yet the critics were in a distinct and embattled minority. *See* Michel Marriott, *Black Women Are Split Over All-Male March on Washington*, N.Y. TIMES, Oct. 14, 1995, *available at* http://www.nytimes.com/1995/10
/14/us/black-women-are-split-over-all-male-march-on-washington.html. Farrakhan framed the exclusion of women as an essential means to the March' principle ends: for Black men to hold themselves accountable for their failures to their families and their communities. However it is doubtful that a similar march organized by white women which explicitly excluded nonwhite women in order to hold themselves accountable for their

This suggests that how and when a certain set of critiques become commonplace and routinely reproduced is not solely a matter of the substantive availability of the critique. The relative availability of certain critiques of feminism — in this instance, essentialism, universalism, and the like — alongside the relative absence of similar claims that could well be launched against antiracism, suggests that a variety of factors are likely at play that have more to do with politics than an organic commitment to theoretical rigor. These politics elevate certain oppositions within feminism while they suppress potential conflicts over the role of gender, sexuality and other differences within antiracism.

The time may be ripe to interrogate and potentially disrupt these circuits of meaning, to reconnect links that have been broken, and to redirect critical scrutiny to the various tropes around which expressions of solidarity and rupture have been organized. My Intersectionalities classroom is, in a sense, a laboratory in which these objectives are foregrounded. In teaching these materials, I challenge students to think more deeply about the politics of representation and the narratives that they take for granted and reproduce in the antisubordination discourses to which they subscribe. Our conversations attend to the moments in which structural assertions are tolerated and when they are not, and to the ways that group members permit certain narratives to stand-in for their more complex realities and the moments in which they don't. Drawing on my dialogue with students who have inherited a particular set of assumptions about feminism and antiracism, I want to highlight and interrogate some of the particular understandings about the relationship between feminism and intersectionality. These reflections should not be read as an attempt to build a comprehensive analysis of the ongoing struggles about the utility of grand theory, or the contours of essentialism in theory and in practice. Although the narrative I tell here touches on these matters, my primary objective at this juncture is to share another vantage point on MacKinnon's feminism, one that brings forward some of the parallels and intersections between her project and projects that are folded under the banner of Critical Race Theory. In particular, I want to take up several dimensions of what may be missed in the oppositionalist framing of intersectionality and dominance theory, not only as an effort to uncover important connections between these approaches, but also to think more concretely about a certain way that intersectionality has sometimes been mistaken as a call for Black feminist particularism. Reflected in the opposing images of 'MacKinnon — laying out grand theory' and 'Crenshaw — setting forth a Black women's particularity' is an underreading of how intersectionality incorporates one of the central frameworks introduced by MacKinnon: the

failures to women of color would have been seamlessly integrated within feminist politics. It is also doubtful that leading white feminists would have graced the stage at such an explicitly exclusionary event. It might be said that the cases are different, and moreover, that white feminists engage in other exclusionary political projects, including, for instance, pro-abortion marches in which women of color and their sometimes distinct frames on reproductive freedom are marginalized. Yet there are significant differences between the formal exclusion of women of color in one, and the functional marginalization of them in the other, that would seem to reverse the focal point of the essentialist critique even if both would be targeted. It is this asymmetry that draws my attention here. *See* Luke Charles Harris, *My Two Mothers, America, and the Million Man March*, *in* BLACK MEN ON RACE, GENDER, AND SEXUALITY: A CRITICAL READER 54, 59 (Devon W. Carbado ed., 1999) (discussing the ways in which issues concerning Black women were pushed to the "periphery of the Black agenda" in the 1995 Million Man March, to keep the focus on heterosexual Black male concerns).

"sameness/difference" paradox in antidiscrimination law.

The sameness/difference paradox is one of the central thematics in much of MacKinnon's thinking.[12] Her trenchant critique of how equality discourse reinscribes the logics of domination within its very terms is now a widely understood critique of the limits of contemporary antidiscrimination law.[13] As I discuss below, my *Demarginalizing the Intersection of Race and Sex* developed this theme in the context of a series of cases reflecting Black women's employment claims.[14] As argued in *Demarginalizing*, Black women were harmed by court decisions that conditioned their recovery on their sameness to Black men or to white women, as well as by decisions that saw them as too different to represent those who were routinely permitted to represent them — namely, Black men and white women. Often, this dimension of *Demarginalizing* is itself underread and, along with it, the convergence between MacKinnon's insights and those that are central elements of intersectionality and Critical Race Theory more broadly. Indeed, rarely within the literature do the common threads of dominance theory and intersectionality find articulation, as if the relationship between the two projects can be summed up in terms of the corner they each occupy in a racially charged boxing match. Rethinking this contest offers the opportunity to articulate an alternative frame, one in which the interface between dominance theory and intersectionality is understood not as intractably oppositional but as setting forth similar critiques at different levels of abstraction.

Reconnecting the links that have been severed by the race critique of MacKinnon also provides the opportunity to explore dimensions of her work that have been obscured — specifically her analytic posture toward power more broadly, and law in particular.[15]

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12. For works of Catharine A. MacKinnon that discuss sameness and difference see CATHARINE A. MACKINNON, WOMEN'S LIVES, MEN'S LAWS 46–50 (2007); CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 32–45 (1987) [hereinafter FEMINISM UNMODIFIED]; CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 220–26 (1991) [hereinafter TOWARD A FEMINIST THEORY]; Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281 (1991) [hereinafter *Reflections on Sex Equality*]. Of course MacKinnon is one of the most prolific scholars of her generation and thus, the analysis here does not engage the wide expanse of MacKinnon's archive. It attends more narrowly to the interface between MacKinnon's methodological and rhetorical stance toward gender hierarchy and the Critical Race Theory approach toward racial hierarchy. In drawing out the parallels and intersections between these projects in the classroom and in this Article, I engage primarily MacKinnon's "What is a White Woman Anyway?", a text that has circulated both as an illustration of MacKinnon's essentialism among critics as well MacKinnon's repudiation of that critique.

13. *See, e.g.*, Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CALIF. L. REV. 1 (2006); Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988) [hereinafter *Race, Reform, and Retrenchment*].

14. Kimberlé [W.] Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989) [hereinafter *Demarginalizing*].

15. This Article might be grouped together with other recovery projects that seek to reintegrate feminist and antiracism theories, doctrines and histories. *See e.g.*, SERENA MAYERI, REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION (2011) (arguing that the role of antiracism in general, and in particular, the theorizing of Black feminists has been a central but unappreciated feature in the development of legal strategies and conceptualizations of sex discrimination); DANIELLE L. MCGUIRE, AT THE DARK END OF THE STREET: BLACK WOMEN, RAPE, AND RESISTANCE — A NEW HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM ROSA PARKS TO THE RISE OF BLACK POWER (tracing the antirape origins of the Civil Rights Movement and noting that "Rosa Parks was a militant race woman, a sharp detective, and an antirape activist long before she became the patron saint of the bus boycott.").

MacKinnon's rhetorical posture toward gender power is parallel in many ways to the orientation of Critical Race Theory toward race.[16] In an earlier period, MacKinnon's radical feminism and Critical Race Theory's radical antiracism might both have been framed as representing a militant critique of the gender and racial status quo respectively. Yet, the similarity in their rhetorical postures is, nevertheless, often eclipsed by a frame that places them in unyielding ideological and political contestation. Radical gender politics are associated with a white-woman-identified fundamentalism, whereas Radical racial politics are all too frequently imagined in terms of a male-centered nationalism. Framed as such, radical feminism and critical antiracism are cast as irreconcilably oppositional wherein theoretic or political alliance with one project presumes repudiation of the other. Lost in this frame is the very possibility of a critical antiracism that is also, and a radical feminism that is also antiracist. This Article aims to recover just such a possibility.

FIRST ENCOUNTER

I first encountered Catharine MacKinnon as a third-year student at Harvard Law School when she was invited to give the Francis Biddle Lecture in the Ames Courtroom.[17] Properly appointed to underscore Harvard's sense of its importance in legal education, the stately surroundings were accented by the crowd's hushed tones as we entered the hall. Many of us were drawn to the event having heard more about Catharine MacKinnon than having read her, and were anxious spectators in the dramatic

16. MacKinnon acknowledges as much, noting that "[t]he African American struggle for social equality . . . has provided the deep structure, social resonance, and primary referent for legal equality." Catharine A. MacKinnon, *Reflections on Sex Equality under Law*, 100 YALE L.J. 1281, 1289 (1991). Indeed, the structure of MacKinnon's critique of sex discrimination law tracks many elements of Black Nationalist critiques of liberal integrationism, especially its focus on bias and discrimination rather than on the institutionalization of social power. Although critics have largely lumped Nationalist racial critiques together under the liberal frame of racial chauvinism and the critical frame of essentialist fundamentalism, as Gary Peller argues, there are various strands of Black nationalist thought that eschew essentialism but insist on that a non-essentialist theorization of racial power is possible. Peller contrasts what he calls:

> [R]acialist approaches 'essentialize' the group's characteristics into a form of fundamentalism about the group's identity, characteristics that are supposed to exist outside of the contingencies of history and geography . . . [and the] more critical nationalist discourses [that] do not try to universalize the characteristics of racial and other communities, but rather take the common culture that ties a community together as the contingent result of historical contestation, as something open to future political transformation.

Gary Peller, *History, Identity, Alienation*, 43 CONN. L. REV. 1479, 1488. It is possible to map the debate around MacKinnon's work through a similar grid, contrasting critics who read MacKinnon's bottom-up theorizing as sex fundamentalism versus those who read her as setting forth an analysis of gender that, like race, is socially constructed — i.e. that there is no necessary logic underwriting patriarchy, but its imposition through force nevertheless creates a common cultural ethos among women as a group, that ultimately ties women together despite varying intersectional identities among group members. *See, e.g.* Elizabeth Rapaport, *Generalizing Gender: Reason and Essence in the Legal Thought of Catherine Mackinnon*, *in* A MIND OF ONE'S OWN: FEMINIST ESSAYS ON REASON AND OBJECTIVITY 137 (Louise M. Antony & Charlotte Witt eds., 1993) (defending MacKinnon's treatment of rape against essentialist critiques, writing that "MacKinnon claims only that along with the particularity of distinctness there is a common experience of rape, common experience of various forms of coerced sex that the male paradigm of stranger rape obscures"). The division between these two positions largely comes down to how much weight is to be given to MacKinnon's rejection of cultural, biological and pre-historical visions of male dominance.

17. CATHARINE A. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, *in* FEMINISM UNMODIFIED, supra note 12, at 163.

encounter that was about to unfold. I was, at the time, a student activist, having participated in the occupation of the Dean's office and in a range of other activities protesting the Law School's exclusionary hiring policies.[18] The law school, to put it mildly, was an ideological war zone at that point, with liberals and the Old Guard staking out the position that there were very few people of color throughout the nation who were qualified to teach at Harvard, while the Crits[19] and other progressive faculty members supported student efforts to challenge such complacencies. As far as women were concerned, apparently the handful of white women who were qualified to teach at Harvard were already there, a point that was reinforced by the faculty's decision to hire ten white males in the midst of a high-profile controversy regarding its hiring policies.[20] By that point, it was clear not only how the power to exclude was rationalized and constructed through a particular vision of merit, but that, within the high-profile searches for women and people of color that the school had performed, women of color had utterly fallen through the cracks.[21]

I had not thought much about gender in the law as such, but as a female organizer in a race-based group, the presumptions, performances, and expectations of male-centered leadership had been made abundantly clear to me. Indeed, the power dynamics within BLSA and the Third World Coalition were not at all surprising. I had come out of an undergraduate experience where both the academic and activist dimensions of student organizing were highly gendered, where gender conflict was often muted in the name of racial solidarity, and where gender analysis rarely took center stage in either our politics or our studies. Although I was, at that point, relatively more conversant with a radical race critique, I was not at all hostile to the possibility of developing a more systemic critique of gender in light of what I had witnessed and personally experienced.

MacKinnon's argument that day drew from her work with Andrea Dworkin on pornography.[22] I had not thought much at all about pornography, and I cannot recall my immediate reaction to the substance of the idea. What I do recall most vividly was being riveted by the tone and the stance of this new voice. To say that MacKinnon was uncompromising in the presentation of her ideas does not fully capture the dissonance between what I had expected and what I saw that day. This dissonance was a reflection

18. *See* Kimberlé Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253 [hereinafter *Twenty Years*]; *See also* DERRICK BELL, CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER 42–44 (1994); *see generally* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xvi– xxvii (Kimberlé W. Crenshaw, Neil Gotanda, Gary Peller, & Kendall Thomas eds., 1995) [hereinafter CRT READER].

19. "Crits" is the vernacular term for faculty associated with the Conference on Critical Legal Studies, a loose affiliation of progressive law professors who in general sought to rethink some of the fundamental presumptions about law and to transform legal education. *See* CRT READER, *supra* note 18, at xxv; *see also* Abby D. Phillip, *Race Sparked HLS Tension*, HARV. CRIMSON, June 1, 2008, *available at* http://www.thecrimson.com/article.aspx?ref=523668.

20. *See* Dave Horn, *Third World Coalition Renews Support for Course Boycott*, HARV. L. REC., Sept. 17, 1982, at 1.

21. *See Twenty Years, supra note 18*; Kimberlé Crenshaw, *A Foot in the Closing Door*, *in* CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 9 (Francisco Valdes, Jerome M. Culp & Angela P. Harris eds., 2002) [hereinafter *Foot in the Closing Door*]; *see also* Gary Peller, *History, Identity, Alienation*, 43 CONN. L. REV. (forthcoming 2011).

22. ANDREA DWORKIN & CATHARINE A. MACKINNON, PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY (1988).

of an a priori set of expectations about how women speaking about women tended to perform in rarified atmospheres such as these: Animated but not harsh, sharp but charming, grounded but not too invested. MacKinnon turned these expectations upside down. She was concrete and polemical, analytical and evocative, rigorously legal, and unremittingly social. Her performance transcended the traditional antinomies that stratified legal thought and social action into separate and unequal spheres. As for being fearlessly concrete, I think few of us in attendance will ever forget the moment that "f-u-c-k" echoed around the walls of Ames Hall.

I found MacKinnon's stance to be a compelling parallel to that of Derrick Bell's in the context of his writings on race and the law. Indeed, her performative sensibilities in that courtroom symbolized to me exactly what Bell had sought to represent by including a lithograph of Tommie Smith and John Carlos giving the Black Power salute in the opening pages of his book *Race, Racism, and American Law*.[23] Their salute at the 1968 Olympics was one of the more controversial moments of the Black Power movement, one that not only mesmerized me, but also galvanized youth activists and scandalized the Nation.[24] When I encountered the image again as a law student, I viewed Bell's decision to use the salute in this context as symbolic gesture that not only reflected a trenchant critique of the "games" of legal discourse but also reflected a commitment to master and transcend its traditional boundaries. Bell's stance signaled what he was offering: An alternative framing of the study of civil rights.

In *Race, Racism, and American Law*, Bell pitched the objective of civil rights beyond the constant search for ways to fit meaningful equality interventions within the limited parameters of liberal legalism. Bell went beyond these conventional projects to challenge not simply the regulation of race but, even more broadly, law's construction of racial power. Having been immersed in Bell's work in the context of the Alternative Course,[25] I read MacKinnon's stance with regard to gender power in a similar vein. Both were offering radical interventions in complementary ways. Both set out to substantively lay waste to conventional framings. Both dared to break away from analytic traditions that had cabined demands for equality to require only moderate reform rather than to transform race and gender power more fundamentally.

I suspect that many readers may find this comparison curious to say the least. There are those for whom a Black Power paradigm represented by Bell seems utterly incompatible with radical feminism, especially a feminism articulated by militant white women like MacKinnon. No doubt some readers might equate radical race paradigms with simplistic forms of patriarchal nationalism and thus presume that radical feminists

23. DERRICK A. BELL, RACE, RACISM, AND AMERICAN LAW (5th ed., 2004).

24. *See* Richard Lewis, *Caught in Time: Black Power Salute, Mexico, 1968*, THE TIMES (LONDON), Oct. 8, 2006, available at http://www.timesonline.co.uk/tol/sport/article664806.ece; Owen Slot, *America Finally Honours Rebels as Clenched Fist Becomes Salute*, THE TIMES (LONDON), Oct. 19, 2005, *available at* http://www.timesonline.co.uk/tol/sport/article580095.ece.

25. The "Alternative Course" was a student-organized seminar that featured guest speakers from across the nation who visited Harvard each week to cover one chapter from Bell's textbook, RACE, RACISM AND AMERICAN LAW. *See* BELL, *supra* note 18. *See also* CRT READER, *supra* note 18, at xxi–xxii; *Twenty Years*, *supra* note 18; Kimberlé W. Crenshaw, *The First Decade: Critical Reflections, or "A Foot in the Closing Door,"* in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 9 (Francisco Valdes, Jerome M. Culp, & Angela P. Harris eds., 2002) [hereinafter *First Decade*].

would necessarily steer clear of any intellectual stance so grounded. This sense that race and gender projects occupy mutually exclusive social universes may explain a certain tension that is sometimes apparent between the adherents of these two perspectives. Yet radical sensibilities — the unrelenting focus on power dynamics structured along race or gender lines — need not be framed as oppositional to one another. Indeed, an affinity for structural accounts of power along one domain may actually make such critics more rather than less receptive to similar analytical projects in other domains. For example, my own take on MacKinnon's work initially was as much informed by my immersion in the historicized analysis of racial power as it was by my personal exposure to the politics of gender.[26] Indeed, having learned to think in institutional and structural terms about the everyday features of American racial stratification, MacKinnon's efforts to do the same with respect to gender seemed perfectly reasonable to me.

The supposed tension between critical projects organized around race and gender represents less of an inherent conflict between antiracism and feminism than a particular (and contested) understanding of what each of these projects is thought to entail. I was thus not at all troubled by MacKinnon's theorizing in a manner that some criticized as unduly generalized or abstract because I had come from an intellectual tradition that theorized racial subordination in much the same fashion. This intellectual tradition supported the view that one could gain valuable insights about racial subordination without requiring or expecting an exhaustive articulation of how difference and privilege among and between disadvantaged groups factored into a particular configuration of power. Indeed, many of the most illuminating projects that contest and transcend the traditional parameters of 'race relations' scholarship do so from a vantage point that articulates racial power using a group-based analysis.

A full list of scholarship falling in this category is beyond the scope of this comment, but one can add, in addition to Bell's groundbreaking work discussed above, Cheryl Harris's *Whiteness as Property*,[27] George Lipsitz's *The Possessive Investment in Whiteness*,[28] Charles Mills' *The Racial Contract*,[29] Robin Kelly's *Race Rebels: Culture,*

26. I was a graduate of the Africana Studies & Research Center at Cornell University, then directed by Dr. James Turner, a leading figure in Black studies. The Center was one of the flagship centers of the burgeoning Black studies movement and the source of my familiarity with structural analysis of racial power. See AFRICANA STUDIES AND RESEARCH CENTER, http://arsc.cornell.edu (last visited May 30, 2011); *see also* Jonathan B. Fenderson & Candace Katungi, *"Committed to Institution Building": James Turner and the History of the Africana Studies at Cornell University, an Interview*, J. AFR. AM. STUD., Apr. 29, 2011, at 1. For an account of the Center's formation, with a brief discussion of the Black student take over of Willard Straight Hall that in part led to the creation of the Center, see *The Plight of Black Studies: Field is Still Not Securely Entrenched on White College Campuses Despite Nearly Five Years of Student Protest*, EBONY, Dec. 1973, at 128. Born in controversy, the Center continues to be a focal point of competing conceptions of what its role should be in higher education. For example, in late 2010 Provost Kent Fuchs announced that the Center, which had since its founding been autonomous from Cornell's colleges and reported directly to the provost, would be moved under the College of Arts and Science, and act that many faculty, alumni current students regard as an effort to reign in the more radical elements of the program. Press Release, Kent Fuchs, Provost, Cornell University, Statements Regarding the Africana Studies and Research Center's Move to the College of Arts and Sciences (Dec. 2, 2010), *reprinted in* CORNELL DAILY SUN, *available at* http://www.cornellsun.com/node/45163.

27. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

28. GEORGE LIPSITZ, THE POSSESSIVE INVESTMENT IN WHITENESS (1998).

29. CHARLES W. MILLS, THE RACIAL CONTRACT (1997).

Politics, and the Black Working Class,[30] and Luke Harris and Uma Narayan's *Affirmative Action as Equalizing Opportunity*.[31] These works set forth compelling analyses of racial power in a variety of contexts. This work teaches volumes about how racial power is constituted, maintained, and contested across institutional contexts even though, as a general matter, these projects neither anticipate nor articulate their particular racial theories through gender, class, sexual orientation, or other cofactors. In fact, these projects have circulated widely, and they have been read by academics as well as laypersons alike as setting forth analytically rigorous and politically provocative theorizations of race.

Although all these projects can be said to have their own set of critics, it is fair to say that none of them have engendered anything like the chorus of critiques leveled against MacKinnon's radical feminism. Of course, it is possible to argue that Bell, Harris, Lipsitz, and others are in fact doing something quite different than MacKinnon. She is often said to have packaged her claims as universal,[32] whereas the race works cited here are decidedly local and historical. Moreover, MacKinnon is read as advancing a theory that centers on white women, whereas the race projects referred to above explicitly center no particular gender or subjectivity.[33] These distinctions, however, are more argumentative than evidentiary. MacKinnon does acknowledge the contextual specificity of her arguments and she critiques abstract or top down theorizing more than some critics acknowledge.[34] Comparatively, many of the canonical texts on race do not

30. ROBIN D. G. KELLEY, RACE REBELS: CULTURE, POLITICS, AND THE BLACK WORKING CLASS (1996).

31. Luke C. Harris & Uma Narayan, *Affirmative Action as Equalizing Opportunity: Challenging the Myth of "Preferential Treatment," in* ETHICS IN PRACTICE: AN ANTHOLOGY 448 (Hugh Lafollette ed., 3d ed. 2006), *available at* http://aapf.org/libraries/aarl/equalizingopportunity.

32. *See, e.g.*, DONNA J. HARAWAY, A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century, in SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE 159 (1991) ("MacKinnon's radical theory of experience is totalizing in the extreme; it does not so much marginalize as obliterate the authority of any other women's political speech and action."); Harris, *supra* note 12 (taking issue with the idea that there is one common experience shared by all women); Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 HARV. WOMEN'S L.J. 115, 137 (1989) (noting that, in drawing a theory of commonality based on gender, MacKinnon does not pay enough attention to other facets of identity that have an impact on the experiences of women); DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 83–84 (1991) ("On a descriptive level, dominance-oriented paradigms that divide the world solely along gender lines ignore the ways that common biological constraints are experienced differently by different groups of women.").

33. There are, however, race projects that explicitly center males. *See, e.g.*, Frantz Fanon, *The Fact of Blackness, in* THE MASCULINITIES STUDIES READER (Rachel Adams & David Savran, eds., 2002); PHILLIP BRIAN HARPER, ARE WE NOT MEN?: MASCULINE ANXIETY AND THE PROBLEM OF AFRICAN-AMERICAN IDENTITY (1998); RONALD L. JACKSON, SCRIPTING THE BLACK MASCULINE BODY: IDENTITY, DISCOURSE, AND RACIAL POLITICS IN POPULAR MEDIA (2006). Yet the argument advanced herein is that even this explicit grounding of male subjectivity draws relatively fewer critiques of essentialism. *See* discussion *infra* note 60.

34. For example, MacKinnon has disclaimed top–down theorizing. *See* Catharine A. MacKinnon, *Points Against Postmodernism*, 75 CHI.-KENT L. REV. 687, 696 (2000) ("Feminism thus does not "assume," it rather builds, its "women." From women who socially exist. When feminism makes its "women" from the ground up, out of particularities, from practice, rather than from the top down, out of abstractions and prior theory, the so-called essentialism problem cannot occur."). Some critics do take MacKinnon's methodological claims seriously but disagree about whether her methods are not still essentialist. *Compare* Elizabeth Rapaport, *Generalising Gender; Reason and Essence in the Legal Thought of Catherine MacKinnon, in* A MIND OF ONE'S OWN: FEMINIST ESSAYS ON REASON & OBJECTIVITY 127, 135–40 (Louise Antony & Charlotte Witt eds., 1993) (discussing "strong" and "weak" essentialism, and concluding that MacKinnon's "weak essentialism" is not methodologically vulnerable to fundamental critiques lodged at her by most anti-essentialist feminist critics), *with* Allan C. Hutchinson, *Inessentially Speaking (Is There Politics After*

even explicitly engage this question — partly because the temporal and contextual focal point of their analysis is plainly evident. The claim that MacKinnon's subject is white is also argument — not an illegitimate one, given the fact that even a lack of signification often defaults to the dominant subjectivity. But for the claim to be more fully vetted, critics must grapple with MacKinnon's own descriptions of her method in which commonality isn't presumed or imposed but informed by what women say their experiences are. Of course, the debate over what is or isn't essentialist, and more importantly, what is really a stake in making the claim of essentialism could easily occupy feminist theory for another decade. The more important question for comparative purposes is why it is that many race discourses that might easily engender parallel critiques, namely that the subject is essentially male — are seldom targeted even though the centering of men's experiences as a focal point of racism is fairly common.

I suspect that these divergent patterns of critique are less about essential differences between race and gender projects themselves and more about a different sensibility — perhaps even permissiveness — among consumers of race work. Consumers of race work tend to see the project of theorizing race as a collective enterprise, one in which the relevant question is not whether the work attends to variability within any one racial group, but whether the given analysis of racial power rings true on a group level.

For the most part, consumers of race work apparently accept that racial patterns of power can be analyzed as such regardless of race's potentially differential effects as it winds through a web of other structures and attendant power relations. For example, the historical practice of segregation, or the contemporary practices of racial profiling, is framed as acceptable markers of group-based harms notwithstanding the fact that there remain profound differences among group members regarding how these practices affect them. The fact that some sectors of a population might have suffered more under a particular racial regime due to cofactors such as class or age or disability has generally not been seen as evidence that the initial frame of group-based harm is itself problematic.

This is not to say that exclusion or marginality are unknown or unproblematic within antiracism. To the contrary, as discussed below, there have been and continue to be articulations of antiracism that are grounded narrowly and thus generate interventions that are exclusionary, trading on one kind of subordination to advance interventions against another. However, the point is that exclusion and marginality require operational analysis — specific inquiries into whether and to what extent a theory authorizes interventions that do or do not work across difference. This focus on functional realism is in contrast to inquiries that focus on a certain antiracist idealism, namely, whether theory operates to essentialize, universalize, or particularize.

What an extended comparison might reveal is the need to recalibrate the relevant discourses within feminism and antiracism, all with a focus on the question of what

Postmodernism?) 89 MICH. L. REV. 1549,1558 (1991) (arguing that MacKinnon's essentialist tendencies "reinforce essentialist epistemology of the traditional thinking that it condemns and seeks to dislodge"), *and* Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 590–601 (arguing that MacKinnon's gender essentialism is problematic because it makes gender a linear explanation for oppression to the exclusion of other identities like race).

difference difference makes in the theories and practices each authorize. For feminism in general and MacKinnon in particular, debates about essentialism might be more productively shifted to efficacy. It may be the case that MacKinnon's theories privilege interventions that simply do not move the needle much for women of color. However, advancing this argument would require a kind of reasoning that moves from the general critique to the specific illustrations, i.e. what are the particular ways that the theory misdirects the practice. In the arena of antiracism, by contrast, more work might be directed toward interrogating the continued (and potentially growing) centrality of male subjectivities in the very articulation of antiracism. Thus, the relevant inquiry in both instances is not so much about essentialism per se, but is instead about the whether the theorization of race at issue takes gender structures as given and a theorization of gender that takes racial structures as a given, reinforcing both structures by failing to contest them.

SECOND ENCOUNTER

My next significant encounter with MacKinnon was four years later. By then I had moved into legal teaching, having been hired by UCLA. I was delighted but almost sick with anxiety to be giving a talk alongside MacKinnon at a conference organized by the University of Chicago's Legal Forum.[35] At the time I was presenting a talk that explored the interface between race and gender in antidiscrimination law and social justice politics. My piece in some sense was a natural progression from my law school interests in Critical Legal Theory in particular and in race and gender discourses more generally. I was by that time an active participant in Critical Legal Studies (CLS), having forged connections with a variety of allies during the student protests over affirmative action. CLS had been a site of active engagement over the politics of law, and the 1980s, had witnessed the rise of feminism within that space soon to be followed by the formal emergence of Critical Race Theory.[36] My work was patterned in many ways on what I had witnessed during the early days as a student activist and budding academic: CLS intellectual traditions were both critical of prevailing structures of legal consciousness and, at the same time, interventionist on a variety of discursive levels.[37] Doctrinal innovation and mass scale social transformation were equally at home within the movement, and often within the articles themselves. The intellectual tools were drawn from a variety of theoretical traditions and our politics ranged from Democratic Party liberal to a variety of left wing affiliations. My own work in this milieu was centrally organized around doctrinal retrenchment in anti-discrimination law and its implications

35. *See Demarginalizing*, *supra* note 14.

36. *See* CRT READER, *supra* note 18, at xiii–xxxii.

37. *Id.* at xix–xxvii. *See also* Kimberlé Crenshaw, *"Post-Script," in* FRAMING INTERSECTIONALITY: DEBATES ON A MULTI-FACETED CONCEPT IN GENDER STUDIES 221-225 (Helma Lutz, Maria Teresa Herrera Vivar, Linda Supik eds., 2011 (describing "intersectionality" as arising out of and an attempt to speak across and within the intellectual and political arena of CLS, a "richly diverse but highly contested space occupied by left-leaning law professors, debates among and between adherents of various intellectual traditions in all their classical, post and neo-articulations were standard fare. CLS was a site where liberal feminists struggled and aligned with post-modernists and dominance feminists, where neo-marxists and post-structuralists struggled between them and against liberal anti-racists, where liberal anti-racists took issue with radical black nationalists, who in turn struggled with queer and feminist anti-racists").

for thinking about racial power. The rhetorical and doctrinal gaps between gender and race based interventions were embedded in this. The talk I was scheduled to give with MacKinnon would be one of the first occasions that I would present "intersectionality" to the broader academic community.

I began this work with the aim of exploring how American courts analyze claims that involve the simultaneous operation of race and gender discrimination. In short order, I came across several cases that presented what initially appeared to be a paradox.[38] In one case, it appeared that Black female plaintiffs were getting the silent treatment — that is, their claims were being processed through an analytic prism that seemed to require them to slip quietly in the door under the cover of others. As long as Black women could map their stories onto narratives of Black male or, alternatively, white female discrimination, they would be treated 'the same' as their group representatives.[39] Yet where their experiences were different — where prevailing understandings of race or gender discrimination were not capacious enough to include the combined effects of both forms of discrimination — their claims were seen as too different to merit consideration. In one case, the plaintiffs' solution to this imposition was to argue for the right to combine two causes of action — namely, to set forth a claim of compound discrimination — yet the court framed this as a request for preferential treatment. Invoking the metaphor of Pandora 's Box, the court rationalized curbing such claims for fear that too much difference would create havoc in the operation of antidiscrimination law.[40]

Much of how *Demarginalizing* has subsequently traveled reflects the perception that the solution that the Article was arguing for in response to *DeGraffenreid* was to create a separate room for Black women, specifically, their own cause of action. Yet this part of the *Demarginalizing* analysis, standing alone, has sometimes grounded an interpretation that is at odds with a parallel point that was being made, namely, that Black women were harmed not only when they were forced into sameness, but also when their difference was interpreted as reflecting an experience so different from Black men and white women that they were rendered categorically distinct from them. It is in the exploration of this paradox that the analysis lines up with MacKinnon.

The two other cases that are explored in *Demarginalizing* addressed Black female plaintiffs' petitions to represent 'all women' or 'all African Americans' in class actions against their employers.[41] Both claims were rebuffed by courts that saw Black women's arguments as presenting something outside the scope of standard race and gender discrimination claims. Indeed, one court put it quite bluntly when it concluded that the Black female plaintiff was an inappropriate representative of all female employees

38. See Payne v. Travenol Labs., Inc., 673 F.2d 798 (5th Cir. 1982), which is discussed at length in *Race, Reform, and Retrenchment*, *supra* note 13, at 141. *See also* Moore v. Hughes Helicopters, Inc., 708 F.2d 475 (9th Cir. 1983); DeGraffenreid v. General Motors Assembly Div., 413 F. Supp. 142 (E.D. Mo. 1976), *rev'd in part*, 558 F.2d 480 (8th Cir. 1977).

39. *See Demarginalizing*, *supra* note 14, at 148.

40. The *DeGraffenreid* court stated its discomfort as follows: "[T]he prospect of the creation of new classes of protected minorities, governed only by the mathematical principles of permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box." *DeGraffenreid*, 413 F. Supp. at 145.

41. *Payne*, 673 F.2d 798; *Moore*, 708 F.2d 475.

because she had not made a claim to discrimination as a female, "but only as a Black female."[42] This slip of the pen rationale revealed the Court's inability to regard the intersectional experience of Black women as part and parcel of discrimination as a woman.[43]

The critique of this rationale in *Demarginalizing* is precisely the opposite what some infer the piece to be calling for, namely, the separate juridical recognition of Black women. The point there was that the specific articulation of the Black woman's experience was no more or less representative of "discrimination as a woman" than the presumed representative who was white.

What is missing, of course, is an appreciation of the fact that Black women were harmed both by being treated as though they were the same and by being treated as though they were different. There was no simple, once and for all, solution because the nature of the discrimination faced by these Black female plaintiffs was not a simple, once and for all, event. Indeed, as the cases revealed, there were numerous ways that Black female plaintiffs experienced discrimination; the point of the intersectional metaphor was to draw attention to the multiple ways that patterns of power can converge. Its corollary was to argue both against the elision of difference where it makes a difference, and against fetishizing difference where it does not. That is, these interactions are dynamic, historically and contextually specific, and—although they might be prefigured by certain patterns — they cannot be fully mapped in advance.

The partial erasure of this argument as detailed in *Demarginalizing*, also occludes the connections between intersectionality and dominance feminism. Putting these analyses into conversation with each other, it becomes evident that the analysis in *Demarginalizing* is a specific instance of a broader dynamic that MacKinnon had exposed in her critique of the Aristotelian limits of antidiscrimination law.[44] Addressing the vexed debate between feminists who embraced an equality paradigm premised on assertions of the sameness of women to men, to feminists who acknowledged and argued

42. *Moore*, 708 F.2d at 480 ("Moore had never claimed before the EEOC that she was discriminated against as a female, but only as a Black female .... This raised serious doubts as to Moore's ability to adequately represent white female employees.").

43. Similarly, in *Payne*, Black women were told by the court that they were not claiming discrimination as women or as Black employees, but only as Black women. *Payne*, 673 F.2d at 811 ("We are aware of no case holding that a black female plaintiff is an adequate representative of black males in a sex and race discrimination suit when the interests of the two groups conflict .... Black males are entitled to a class representative who is free from a desire to prove a claim that will impair their interests.").

44. The Aristotelian conception of equality states that people who are alike should be treated similarly, whereas those who are unalike should be treated differently. MacKinnon has criticized this view as being inadequate for remedying the problem of sex discrimination, as women cannot be seen as similarly situated to men under a system of male dominance. *See, e.g.*, FEMINISM UNMODIFIED, *supra* note 12, at 37 ("What is missing in the difference approach is what Aristotle missed in his empiricist notion that equality means treating likes alike and unlikes unlike, and nobody has questioned it since. Why should you have to be the same as a man to get what a man gets simply because he is one?"); *see also Reflections on Sex Equality*, *supra* note 12, at 1289–91 ("Although the political analysis developed by the civil rights movement was substantive not abstract ... and opposed hierarchical disadvantage rather than differentiation as such, courts in racial equality cases have largely confined themselves to the Aristotelian framework: qualification for admission into liberal humanity implicitly meant being like the white man .... Whatever the defects of the Aristotelian model when applied to race and nation—and they are substantial—it is stunningly inappropriate to sex. Society defines women as such according to differences from men: hence the sex difference, as gender is customarily termed. Then equality law tells women that they are entitled to equal treatment mainly to the degree they are the same as men.").

for equality in the name of difference, MacKinnon argued persuasively that sameness and difference were merely different sides of the same coin.[45] In both, men are the measure of whether and to what extent women can gain access to equality. Drawing attention to the particularity that underwrote equality law, MacKinnon provocatively inquired: Why must a woman be like a man to get what he has by dint of his birth?[46] And further: Why should women's difference make a difference in what she is able to wrangle out of antidiscrimination law?[47] MacKinnon's arguments on behalf of all women are fully applicable in the query posed by Black female plaintiffs, namely: Why must Black women be like white women or Black men to win the protection that Black men or white women received under antidiscrimination law? Moreover: Why was it presumptively legitimate to prohibit a Black female plaintiff from representing all women simply because her gendered experience also implicated racial disadvantage? Why would it, nevertheless, be perfectively sensible for a white woman — who potentially faced no racial disadvantage — to represent nonwhite women, who presumably did face racial obstacles as well as gender based ones? Why is it that a Black male plaintiff could represent Black men as well as women, but not the other way around? In sum: Why does the lack of full congruence defeat the presumption that Black women can "represent" Black men or white women, yet this same lack of congruence permits Blacks who are men, or women who are white, to represent Black women?

MacKinnon's arguments in response to the claim that protection against pregnancy discrimination constituted "special treatment" for women also set forth the contours of a meaningful response to a similar argument made by the Court in *DeGraffenreid.* Courts had rejected arguments that the exclusion of pregnancy-related disabilities from a company disability plan or the denial of insurance benefits for pregnancy-related work losses constituted discrimination, positing instead that such rules were, in fact, gender neutral.[48] As MacKinnon pointedly states:

> Gender neutrality suggests, indeed, that it may be sex discrimination to give women what they need because only women need it. It would certainly be considered special protection. But it is not, in this approach, sex discrimination not to give only women what they need,

45. TOWARD A FEMINIST THEORY, *supra* note 12, at 220–21 ("[T]reating issues of sex equality as issues of sameness and difference is to take a particular approach. This approach is here termed the sameness/difference approach because it is obsessed with sex difference. Its main theme is: 'we're the same, we're the same, we're the same'. Its counterpoint theme . . . goes: 'but we're different, but we're different, but we're different' . . . . Concealed is the substantive way in which man has become the measure of all things. Under the sameness rubric, women are measured according to correspondence with man, their equality judged by proximity to his measure. Under the difference rubric, women are measured according to their lack of correspondence from man, their womanhood judged by their distance from his measure . . . . Masculinity or maleness is the referent for both").

46. FEMINISM UNMODIFIED, *supra* note 12, at 37 ("Why does maleness provide an original entitlement, not questioned on the basis of its gender, so that it is women—women who want to make a case of unequal treatment in a world men have made in their image . . . who have to show in effect that they are men in every relevant respect, unfortunately mistaken for women on the basis of an accident of birth?").

47. *Id.*

48. *See, e.g.*, General Electric Co. v. Gilbert, 429 U.S. 125 (1976); Geduldig v. Aiello, 417 U.S. 484 (1974).

because then only women will not get what they need.[49]

MacKinnon's observation might be similarly applicable to court decisions that saw preferential treatment in Black women's demands that doctrine be shaped to recognize compound discrimination. For example, as I argued in *Demarginalizing*, the *DeGraffenreid* Court denied plaintiffs' demand to combine a race and gender cause of action on the grounds that such permissive pleading would grant Black women preferential treatment.[50] If neither Black men nor white women could combine race and gender claims, then permitting Black women to do so would elevate their claims over everyone elses', thus turning Black women into a superclass of plaintiffs who could jump ahead of all others with a standing leap.[51] Of course, under prevailing antidiscrimination law, neither Black men nor white women must combine causes of action to make their specific complaints legible. Building upon MacKinnon's interrogation of anti-discrimination discourse here, one might ask: Why is it preferential to give Black women what they need simply because, unlike white women and Black men, they are the ones who need it?[52] The problem begins on day one, when antidiscrimination law is shaped narrowly around the experiences of women who are not racial minorities and around racial minorities who are not women. This might be framed as a built-in preference in antidiscrimination law — a playing out within the category woman or Black of the same conundrums of sameness and difference that are evident within equality discourse writ large.

It is not only relative to white women and Black men that the rules of antidiscrimination law recreate the sameness/different paradox highlighted by MacKinnon's radical feminist critique. MacKinnon also provides analytic clarity in framing another telling difference — specifically, the way that Black women's double discrimination claims are fundamentally distinct from another type of compound claim: white men claiming reverse discrimination. In many affirmative action cases alleging reverse discrimination,[53] white men are routinely permitted to make the same kind of

49. TOWARD A FEMINIST THEORY, *supra* note 12, at 222.

50. *Demarginalizing*, *supra* note 14, at 142 (citing the court's reasoning that the authors of Title VII could not have meant to create a new class for Black women, who would have more grounds for their claims than, say, Black men).

51. *Id.*

52. A more moderate but similarly problematic approach reflecting the imperative to keep Black women from securing some superwoman status in the antidiscrimination game was to permit Black women to choose one group with which they would cast their lot, but prohibit them from claiming both race and gender discrimination. *See* Ann Scales, *Disappearing Medusa: The Fate of Feminist Legal Theory*, 20 HARV. WOMEN'S L.J. 34, 39 (1997) (describing a 1979 case concerning aerospace employees in Los Angeles, where the judge prohibited Black women from joining both a subclass challenging race discrimination and a subclass challenging sex discrimination).

53. *See, e.g.*, United Steelworkers of America v. Weber, 443 U.S. 193 (1979) (holding that employer's affirmative action plan that reserved fifty percent of openings in training program for Black employees until the percentage of Black craftworkers in plant more closely matched percentage of Blacks in local labor force did not violate Title VII); Iadimarco v. Runyon, 190 F.3d 151 (3d Cir. 1999) (holding that as a prima facie case, White male plaintiff alleging reverse discrimination where Black female hired for position he sought need not present evidence of "background circumstances" that establish that defendant is "unusual employer" who discriminates against the majority); Ricci v. DeStefano, 129 S.Ct. 2658 (2009) (holding that because the City of New Haven failed to demonstrate a strong basis in evidence that it believed it would be subject to disparate-impact liability if it failed to take race-conscious, discriminatory action, it's decision to discard the tests for

compound discrimination claims that so troubled the courts when Black women made them.[54] As plaintiffs, white men are similarly situated to Black women relative to the compound argument they must make. In typical reverse discrimination suits, the discrimination that white male plaintiffs allege does not operate against all men — since non-white men are presumably benefited by the policies that the plaintiffs are contesting — and the discrimination does not operate against all whites — since white women are presumably included as well. Thus, like the *DeGraffenreid* women, white men cannot tell a story of race discrimination given the inclusion of white women, nor can they tell a story of gender discrimination due to the inclusion of Black men. Nevertheless, courts have refused to acknowledge the fact that white men are making compound discrimination claims in challenging race and gender-based affirmative action programs. Interestingly, courts decline to lecture these plaintiffs about the risks of opening Pandora's Box; nor do they worry about white males becoming a superclass of plaintiffs that will inevitably leap over all others simply by combining race and gender claims. Indeed, to date it is difficult to find a single case where a court has discounted a white male claim by declaring that a white male is not claiming to be discriminated against as a male, but *only* as a white male. In contrast to the court's perceptions of Black female complaints, the notion that discrimination against a white male is something lesser than, and completely distinct from, discrimination against whites as a whole, or males as a whole is almost unthinkable.

So what might explain this apparent anomaly? MacKinnon is helpful here as well, acknowledging that the law does reflect a subjective vantage point. As I argued in *Demarginalizing*, one can catch a glimpse of this subjective grounding in the way the apparently analytically identical claims of white men and Black women were analyzed differently.[55] Black women caused a doctrinal crisis, yet white men's claims barely registered as a structural challenge to antidiscrimination law. Black women are indeed seen as making a two-step compound claim — an unusual demand for preferential treatment — in contrast to white men who are not seen as making a claim for preferential treatment either in their pleading, or in the substantive claims they are making. The irony that they are contesting what they call "preferential treatment" through pleadings that courts have perceived as themselves "preferential" is wholly obscured. This apparent

promotion of a class of seventeen White and two Hispanic firefighters because no Black firefighters passed the exam, violated Title VII). United States v. Brennan, No. 08-5171, 2011 WL 1679850 (2d Cir. May 5, 2011) (holding that district court's certification of class of white male employees in Title VII disparate-treatment action was proper); Bishop v. Gainer, 272 F.3d 1009 (7th Cir. 2001) (denying monetary and injunctive relief to certified class of white males, but not questioning prudence of certification of white male class); Culver v. City of Milwaukee, 202 F.3d 272 (holding, inter alia, that district court's initial certification of class of "all male applicants for hire as sworn officers with the Milwaukee Police Department" was a valid class certification in reverse discrimination suit).

54. For example, in *Weber*, even though the Supreme Court ultimately upheld the affirmative action policy favoring women and minorities that the United Steelworkers had implemented, it never considered the question of whether the claim brought by the white male plaintiff might be inadequately representative of a race discrimination claim because the alleged injury did not extend to white women, or of a gender discrimination claim because the injury did not extend to men of color. *Weber*, 443 U.S. 193 (1979).

55. *See Demarginalizing*, *supra* note 14, at 150–52 ("Race and sex . . . become significant only when they operate to explicitly disadvantage the victims; because the privileging of whiteness or maleness is implicit, it is generally not perceived at all.").

paradox provides a glimpse into the law's subjectivity, specifically, how antidiscrimination law anchors both race and gender discrimination in the white male imagination. Beginning from that subject position, race discrimination is what it means to be a man who is not white; gender discrimination is what it is to be a white who is not male. From this point of view, the discrimination experienced by Black female plaintiffs is not one distinct form of discrimination but two: Because they could not be imagined to be merely men of a darker hue nor whites with a higher voice, Black women were in effect two steps removed from white men. By contrast, white male plaintiffs need not first make themselves white or male to be understood as making a gender or race claim. Their claims are not seen as compounded because they are not two steps removed from the imagined legal subject; they *are* the starting position. This subjectivity, framed by MacKinnon as male relative to gender claims, is also white relative to race claims. It is this grounding that renders the conceptual similarity between Black women's claims and white male claims invisible. Dominance theory reveals law's gender; intersectionality reinforces this exposure, and brings to the fore its whiteness as well.

What then is the relationship between these two projects, the dominance approach and the intersectional project? Are they just incidentally congruent on some points? Or might they be thought of as setting forth related critiques of the liberal legalist conceptions of discrimination at various levels of generalization? If they are simply incidentally convergent, then dominance theory and intersectionality may — despite their superficial connections — reflect contradictory orientations toward gender, race, and women of color. Under the congruent view, both analytics are similarly oriented as a critique of dominant understandings of equality, a critique built not from theory in the abstract but fashioned out of the law's response to particular demands made by women who sought to challenge the specific dimensions of their subordination. If a case for this congruence can be made, then it may suggest that dominance theory — despite many claims to the contrary — is not all about an imposition of sameness, and intersectionality — despite its mobilization as a demand for Black female exceptionalism — is not all about racial difference. If so, these projects are not, in the end, presumptively or inevitably at odds with each other, but are important articulations of a common critique.

THIRD ENCOUNTER: THE VIRTUAL MACKINNON

The third encounter is with the virtual MacKinnon, a two-dimensional hologram constructed out of discourses engendered by the figure of MacKinnon as much if not more than by her writing. For many, the conceptual images of the white feminist character cross the imaginary terrain before any particular words do, establishing an array of assumptions and predispositions that substitute reputational consumption of the figure for active engagement with her work. In the classroom, my efforts to prompt a refinement of the virtual MacKinnon have often stretched my skills as a teacher committed to challenging, provoking, and inspiring new thinking among curious and socially conscious graduate students. In this context, what emerges is a sense of the differential capital associated with projects that contest gender power as opposed to those that contest race.

In each seminar, we explore a variety of theories and writers on various topics

pertaining to feminism, antiracism, queer theory, and the convergences and tensions between them. I have taught these classes long enough to be able to note generational trends, say, between students of the mid 1990's, and students who have come of age within the current post-feminist era. Many of the students who would gravitate to Intersectionalities are part of the Critical Race Studies program at UCLA, while my students at Columbia represent a socially progressive cohort from law, women's studies, social work, and other disciplines. Students in both institutions lean toward careers in social justice advocacy. Antiracism and feminism are both clearly indicated as among the key topics that the seminar will engage.

Given both the seminar descriptions and the population from which the students come, I have occasionally been surprised by the quick and dismissive way that feminism is cabined and framed by a significant cohort of my students, particularly in comparison to the relatively robust investments in antiracism that is manifested in the classroom discussion. Of course the shrinking social capital associated with feminism is nothing particularly new; the debate about whether feminist consciousness manifests itself in recognizable forms across generations is probably as old as feminism itself.[56] Whether the conversation is marked by the notion of waves (as in second wave, third, etc.) or by temporal references that modify the brand of feminism at issue (post-feminist, neo-feminists) or something else), there are numerous indicators that suggest a certain distancing from what is perceived to be a crude and unappealing feminism. This distancing has been the subject of analysis and debate for some time, but the particular version of it that emerges most forcefully in my Intersectionalities course wraps its logics either implicitly or explicitly around the primacy of race. This relatively traditional strain of argument frames feminism as a white woman's thing while certain male-centric ideologies about racism continue to win the allegiance of many of my progressive students. This stance rarely involves an explicit rejection of feminism per se, but instead a race-centered critique that repudiates white feminism as an embodiment of racism and hierarchy. Inevitably, MacKinnon's iconic status in legal discourse places her at the epicenter of this frame.

Students have of course heard of MacKinnon and may have encountered her work in Constitutional Law and in other courses. By the time they arrive in Intersectionalities, she is no stranger to most of them. On occasion, I have been fortunate enough to have MacKinnon present in class. But often the MacKinnon who emerges in the student discussion and reaction papers is not the MacKinnon who lives and breathes.[57] At times,

56. For examples of works that address the diminishing appeal of feminism among young women, *see generally* JESSICA VALENTI, FULL FRONTAL FEMINISM: A YOUNG WOMAN'S GUIDE TO WHY FEMINISM MATTERS (2007); *see also* ASTRID HENRY, NOT MY MOTHER'S SISTER: GENERATIONAL CONFLICT AND THIRD-WAVE FEMINISM (2004) (discussing conflicts between the second-wave and third-wave feminists); Angela McRobbie, *Post-Feminism and Popular Culture*, 4 Feminist Media Stud. 255, 255 (2004) (noting that for the new generation of women, feminism seems old and redundant); Jen Nedeau, *Is Feminism Dead? An Overview of Post-Feminism*, CHANGE.ORG (Oct. 4, 2008), http://womensrights.change.org/blog/view/is_feminism_dead_an_overview_of_post-feminism (arguing that postfeminism represents a "backlash" against the feminist movement).

57. For example, some responses to MacKinnon's work by students enrolled in a class called Intersectionality criticize what they view as MacKinnon's separation of gender and race in conceptualizing pornography and sexual violence against women, while some others note that from a personal standpoint,

she appears as the same stock character that she herself invokes to critique the essentialisms that are sometimes at play in critique of MacKinnon.[58] Indeed, some take MacKinnon's riff on the mythical white woman literally — her effort to critique the stereotype by invoking it becomes conflated with the character doing the writing.

Given the close readings and balanced debate that characterize our discussions of other texts, I am sometimes mystified by the intensity of the critique that surfaces in our discussions. Although the critical weapon of choice is *antiessentialism*, students rarely define what they mean by the term, often use essentialist categories to support their own arguments, and usually fail to explore other potential essentialisms that, if true of MacKinnon, are certainly true of almost every other theorist we discuss. Indeed, by the time we have arrived at MacKinnon, we have often read numerous articles that both historicize and demonstrate patriarchal sensibilities that have informed antiracism. We have talked about the patriarchal center of the "benign neglect" debacle represented by the Moynihan report[59] and the tepid, male-centered responses to it.[60] We have discussed antiracist claims made by Black, Latino, Asian, and Native American communities that center the subordination of men in defining the essential character of race discrimination. We explore the investments and practices that function to elevate male leadership in defining the terms of resistance against racial subordination.[61] In the international arena,

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sexism has caused less harm in their lives than racism, and suggest that white feminists address the concerns of women of color less ably than men of color do. At least one reader has suggested that these patterns are likely to be context specific, i.e. that the students drawn to "Intersectionalities" may be far more conversant with and defensive of a race based project than a gender-based one, and that the asymmetries I note herein might be reversed in courses that center gender more explicitly. Others, however, have noted a similar pattern in which essentialist concerns are readily engaged in the context of feminism, while rarely raised with respect to antiracism. They also note, however, that race does not as a general matter, enjoy the same airtime as gender.

58. *See* MacKinnon, *supra* note 2, at 18–19 ("This creature is not poor, not battered, not raped (not really), not molested as a child, not pregnant as a teenager, not prostituted, not coerced into pornography, not a welfare mother, and not economically exploited. She doesn't work. She is either the white man's image of her — effete, pampered, privileged, protected, flighty, and self-indulgent — or the Black man's image of her — all that, plus the 'pretty white girl' (meaning ugly as sin but regarded as the ultimate in beauty because she is white.").

59. Daniel P. Moynihan, Office of Pol'y Planning and Research, U.S. Dep't of Labor, The Negro Family: The Case for National Action (1965) [hereinafter Moynihan Report], *available at* http://www.dol.gov/oasam/programs/history/webid-meynihan.htm (arguing that single-parent Black families, illegitimacy, and matriarchal dynamics are contributing factors to the high incidence of poverty among Blacks). In recent years there has been a resurgent interest in the Moynihan Report. Though the Moynihan Report's central argument that the staggering poverty of Black families was in part correlated with the absence of two-parent headed nuclear families was greatly criticized by civil rights activists in the 1960s and 1970s as, *inter alia*, victim blaming (William Ryan, Blaming the Victim (1971)) and simply racist (*id.*), William Wilson and others have reclaimed the Moynihan Report. William Julius Wilson, *The Moynihan Report and Research on the Black Community*, 621 ANNALS AM. ACAD. POL. SCI. & SOC. SCI. 34, 44 (2009) (arguing that Moynihan's attempts to "synthesize structural and cultural analyses to understand the dynamics of poor black families and the plight of low-skilled black males" provided an invaluable framework to "capture the complexity and multidimentionality of culture" that contribute to the reproduction of poverty over time.). *See also* WILLIAM WILSON, MORE THAN JUST RACE: BEING BLACK AND POOR IN THE INNER CITY (2010).

60. *See generally* LEE RAINWATER & WILLIAM L. YANCEY, THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY (1967).

61. For a discussion of how antiracist discourse has often centered around the experiences of men of color by default, *see* Harris, *supra* note 12, at 59 and accompanying text; *See also* Lovelace v. Canada, Communication No. 24/1977, U.N. Hum. Rts. Comm., 13th Sess., in Selected Decisions Under the Optional Protocol, at 83, U.N. DOC. CCPR/C/OP/1 (1985) (holding that Canada was in violation of Article 27 of the International Covenant on Civil and Political Rights protecting the right of minorities to practice their culture and be in community with fellow minority group members, but declining to rule on the sex discrimination

we explore efforts both by nationalists and Western feminists to elevate certain gender practices as essentially cultural either to defend "traditional culture" against the ravages of colonialism or to present poster-ready images of the cultural oppression of Third World women.[62] We have considered the gender solipsisms integrated within the brilliant analysis of some of the most prescient critics of anti-Black racism such as Martin Luther King, Jr. and Malcolm X,[63] and we also have gone deep into the explicitly misogynist rhetorics of Eldridge Cleaver.[64] Of course, the famous quip from Stokely Carmichael that the position of women in the civil rights movement is "prone" finds its way into the analysis,[65] as do other rhetorical politics that seek to build collective action

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inherent in governmental legislation that stripped women who married non-Native men of their Native Canadian status but not Native Canadian men who married non-Native women); Alma M. Garcia, *The Development of Chicana Feminist Discourse, 1970–1980*, 3 GENDER & SOC'Y 217, 219–21 (1989) (detailing the struggle of Chicana feminists to achieve equality not just in American society but also within the "male-dominated nationalist movement," and comparing this to the analogous obstacles that Black and Asian American feminists confronted).

62. *See, e.g.*, Uma Narayan, *Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism*, 13 HYPATIA 86 (1998) (drawing parallels between gender essentialism and cultural essentialism).

63. For a discussion of patriarchy inherent in the ideas of Malcolm X, see Patricia Hill Collins, *Learning to Think for Ourselves: Malcolm X's Black Nationalism Reconsidered, in* MALCOLM X: IN OUR OWN IMAGE 59, 74–81 (Joe Wood ed., 1992). For an exploration of Martin Luther King, Jr.'s conceptions of women's roles in the civil rights movement, see MICHAEL ERIC DYSON, I MAY NOT GET THERE WITH YOU: THE TRUE MARTIN LUTHER KING, JR. 298 (2000).

64. For a notable example of Cleaver's misogyny see ELDRIDGE CLEAVER, SOUL ON ICE 14–15 (1968) (arguing that he raped white women as part of an assault on the white community; also arguing that he "practiced" on Black women first). For examples of criticism of Cleaver's misogyny see, e.g., PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA 310 (1984); BELL HOOKS, YEARNING: RACE, GENDER, AND CULTURAL POLITICS 58–59 (1990); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1255 n. 47 (1990).

65. For discussion of the Carmichael quote and general attitudes within the civil rights movement toward women in the Student Nonviolent Coordinating Committee, see WINIFRED BREINES, THE TROUBLE BETWEEN US: AN UNEASY HISTORY OF WHITE AND BLACK WOMEN IN THE FEMINIST MOVEMENT 27 (2006).

66. To clarify, I am not arguing that the slate of essentialist critiques of antiracist theories and practice is clear. There are in fact, several strains of argumentation about the contours of antiracist discourse that might be deemed anti-essentialist. Black feminists, for example, have repeatedly signaled discontent with the gendered dimensions of Black theory and practice. *See*, e.g. Devon W. Carbado, *Men in Black*, 3 J. GENDER RACE & JUST. 427, 428 (2000) (discussing the emergence of sustained Black feminist critiques of antiracist discourse in the 1970s). Representing another angle, essentialist critiques greeted the emergence of Critical Race Theory (see "INTRODUCTION," CRT READER, *supra* note 18) and continue to circulate as counter-arguments against what is perceived to be the expansion of "race discrimination" beyond its original boundaries to address matters of culture and choice. *See generally* RICHARD T. FORD, RACIAL CULTURE: A CRITIQUE (2004), RICHARD T. FORD, THE RACE CARD: HOW BLUFFING ABOUT BIAS MAKES RACE RELATIONS WORSE (2009). Indeed, there is a robust debate about whether the entire antiracist project is gerrybuilt on an essentialist notion of Blackness, a critique emerging from some strains of post-colonial criticism; *see generally* Paul Gilroy, *Race Ends Here*, 21 RACIAL & ETHNIC STUD. 838, 842 (1998) (offering an antiessentialist critique of antiracist and anti-fascist activism) and Stuart Hall, *Old and New Identities, Old and New Ethnicities, in* THEORIES OF RACE AND RACISM: A READER 152 (Les Back & John Solomos eds., 2000). Elsewhere, there are those who critique the dominance of the Black/white paradigm in antidiscrimination law and antiracist practices more broadly. *See generally* Juan Perea, *Black/White Binary Paradigm of Race: The Normal Science of American Racial Thought*, 85 CALIF. L. REV. 1213 (1997) (arguing that the Black/white paradigm's tendency to "truncate history for the sake of telling a linear story of progress" distorts the history of racism in America as well as contributes to the marginalization of non-Black persons of color). So while anti-essentialism frames some discourses within and about anti-racism, the particular investment that drives the analysis set forth herein is built around two objectives: one is to understand the critique of feminist essentialism by those who defend — rightfully so, in many cases — the 'strategic essentialism' of antiracism. The second is to posit for further debate the possibility that even among those committed to a practice of non-essentialism, there are differences in the tone and intensity of the critique that

around a male subject. Yet, despite the implicit and often explicit marginalization of women in virtually all of these anti-racist projects, the epistemological and political practices that they represent never generate the sweeping critiques that MacKinnon's theorizing engenders.

Recently, I have attempted to more closely examine how explicitly male-centric claims escape essentialist critique when manifested in political arguments, group formations, and policy interventions around race while dominance feminism engenders scathing critique as irretrievably essentialist.[66] I've wanted to understand how those who are strikingly critical of reductive accounts of gender oppression make room for projects that are explicitly wrapped around essentialist conceptions of racial oppression. More specifically, I've sought to understand: What exactly is the bill of particulars against MacKinnon's feminism that generates so much traction in my classroom? Three basic arguments come to the fore, each of which entails either a complex maneuver around MacKinnon's actual texts or, alternatively, an effort to rationalize what appears to be a selective deployment of the essentialist critique.

Perhaps the most common set of arguments presents MacKinnon as a white feminist who ignores the realities of women of color by insisting that their experiences are essentially the same as those of white women. Accordingly, MacKinnon does not pay attention to the actual conditions of women of color, but instead simply maps these conditions onto white women's experiences in a superficial effort to appear to be inclusive. For example, a common reaction to *What Is a White Woman Anyway?* reads MacKinnon's effort to disrupt the essentialist figure of "the white woman" as evidence that her principle concern is to shore up white women as the central subject of feminism. MacKinnon's argument that her analysis is built up from the multiple ways in which women—including women of color—say that they experience discrimination invites little engagement among critical students.[67] To the contrary, some draw a hard line here, arguing that MacKinnon's theory is modeled on white women and simply imposed on

reflect something other than mere theoretical investment. This is not, as yet, an empirically driven claim but one more appropriately viewed as an observation about the political contours of race and gender argumentation. It also bears noting that the aforementioned critiques of "race essentialism" are themselves somewhat differently mobilized. The critiques made by theorists such as Gilroy for example might be equally deployed against those who hope to disrupt the Black/white paradigm by creating alternative schools that simply substitute one "essentialist subject" for another. In a sense, the internal debate between theorists who ground their projects in the group experiences of Blacks, Latinos, Asians, etc. belies a common orientation that is more closely lined up to the argument pursued here. Their concerns are frequently not so much about the sins of essentialist thinking per se, but about the politicized contours of social justice claims and their rhetorical frames. In other words, what seems to be at stake is less a debate about essentialism and more of a debate about how the center and periphery of anti-discrimination discourse are constructed. *See* Devon W. Carbado, *Race to the Bottom*, 49 UCLA L REV. 1283 (2001); Peller, *supra* note 21.

67. For example, MacKinnon characterizes her method as bottom-up rather than top-down, calling for feminists to "build a theory out of women's practice, comprised of the diversity of all women's experiences," rather than creating theory "out of abstractions" and "the images forced on us by male dominance." MacKinnon, *supra* note 2, at 22. While it is certainly possible to dispute whether the intention to build from bottom up ensures the theory works for all women — theory after all is a human exercise subject to interpretation — one has to at least recognize that a challenge is being made with examples, and counter this challenge with examples of interventions that suggest the opposite, namely, the theory gets it wrong more than incidentally. This is one of the challenges moving the conversation away from reliance on stereotype or tenor of the argument to its details.

women of color without their consent or voice.

A second response is that even when MacKinnon addresses the subordination of women of color, her singular focus on gender denigrates other dynamics that simultaneously play out against these women. By these lights, MacKinnon's primary focus on gender effectively elevates it to the most important if not exclusive factor contributing to their situation. Critics argue here that MacKinnon's theory operates on the assumption that the differences that matter are only differences of degree, and that the qualitative differences between women escape theorization and thus effective intervention.

A third theme that frequently emerges is explicitly comparative, partly in response to my queries about the apparently less objectionable essentialisms that circulate within antiracist formations. In response to these challenges, students produce some variant of the idea that racism within feminism is a far more significant concern than sexism within antiracist formations. For some, the position is based on an argument that there is far more intimacy, shared interest and trust between men and women within racial groups that between women as a whole. This greater intimacy is presumed to create more empathy within racially marginalized groups. This empathy moderates, if not eliminates, concerns about how subgroups such as women, sexual minorities, and other group members will fair in the construction of a politic built around male-centric visions of racism.

The aforementioned are some of the more common themes that arise in the classroom encounter with MacKinnon but perhaps the most significant and abiding foundation upon which others are based is that there is a profound racial difference between women and, correspondingly, an essential intra-racial sameness between men and women of color. In sum, this analytic frame gravitates perilously close to a reification of race that appears as formulaic as the view of an essential sameness among women that the students are arguing against. Expressed both in terms of the presumed whiteness of MacKinnon's feminist subject and presumed commonality among nonwhite women, race serves as the foundation of their critique of MacKinnon's gender fundamentalism.[68]

Aside from these categorical claims about the inherent differences between white women and women of color, there is little analysis of how and to what degree these differences make a difference in the interventions that MacKinnon's theory brings to bear. As I will elaborate below, assertions of difference between women tell us very little about how these differences misshape or distort feminist praxis. Yet "difference" is all-too-often the central claim behind skepticism or outright opposition to MacKinnon's

68. Of course, the origins of these critiques are not mysterious as they variously reflect the range of criticisms that have emerged in the cottage industry of academic work that has sprung up around MacKinnon's theory. What may be significant about how these debates circulate among students is the degree to which the readily articulable critiques of MacKinnon's feminism, alongside the relatively tepid discourses around essentialism in antiracism, leaves students with the task of intuiting the rationale for such asymmetries. This pattern leaves to the students the task of reconciling the different rhetorical postures, and they in turn draw inferences that are sometimes more stark and even essentialist than more nuanced critiques in the literature. These inferences may not fully encompass the perceptions of MacKinnon's academic critics. At minimum, the classroom may profound a sound-check for some critics who otherwise invest in the feminist project to be more attentive to the various ways that the asymmetries might be read and re-enacted

insistence that domination "as women" is legible as an expression of social power. Critics' deployment of women of color as evidence of an apparently insurmountable difference between women, as well as the whiteness of MacKinnon's subject, is particularly striking in response to *What is a White Woman Anyway*? There, MacKinnon challenged critics to reconcile the presumed whiteness of her theory with the arguments of Mechelle Vinson and Lillian Garland, two African American women who brought suit against their employer alleging discrimination as women.[69] Mechelle Vinson was the plaintiff in the landmark case that established sexual harassment as a cognizable injury under sex discrimination law,[70] while Garland's complaint led to the Supreme Court permissive interpretation of Title VII's Pregnancy Discrimination Act affirming that the PDA was no bar to state legislation requiring pregnancy leave regardless of whether the employer provided other disability-based leaves.[71] Both of these doctrinal advances, MacKinnon argues, grew from these plaintiffs' understanding that they were experiencing discrimination as women.[72]

In foregrounding these two women, MacKinnon, perhaps not ironically, echoes the age-old question raised by and about Black women: Aren't these women experiencing discrimination as women?[73] More pointedly, does the notion that Vinson and Garland are challenging their discrimination "as women" denigrate from myriad other factors that

69. See *id.* at 15.

70. Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986) (holding that sexual harassment occurring in the workplace, where it creates a hostile work environment, is a form of sex discrimination that is actionable under Title VII).

71. Cal. Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272 (1987) (holding that Title VII, as amended by the Pregnancy Discrimination Act of 1978 (PDA), does not prohibit employment practices favoring pregnant women, and further holding that CAL. GOV'T CODE § 12945(b)(2), which required that employers reinstate women after a reasonable disability leave, was not pre-empted by the PDA). The case caused a major rift between feminist legal scholars and organizations. Some feminists worried that protection against discrimination on the basis of pregnancy threatened to re-inscribe a separate spheres mentality that would reinforce the current gender system. Others argued that pregnancy leave was consistent with gender neutrality in that it equalized procreative choices in an employment regime built on the assumption that workers are men. *Compare* Wendy Williams, *Notes From a First Generation*, 1989 U. CHI. LEGAL F. 99, 101 (1989) (arguing against the holding in Cal Fed from a position of formal equality on the basis that CAL. GOV'T CODE § 12945(b)(2) and the PDA taken together should be interpreted to provide workers disabled by causes other than pregnancy the same protection as pregnant workers) *with* Christine Littleton, *Reconstructing Sexual Equality*, 75 CALIF. L. REV. 1279, 1298 (1987) (defending the holding in Cal Fed on the grounds that the California statute can be read to recognize equality of the choice to procreate insofar as if not for provision adequate leave time for pregnant women, women will not be able to make a meaningful procreative choice).

72. MacKinnon, *supra* note 2, at 15 ("The arguments that won these cases were based on the plaintiffs' lives as women, on insisting that actual social practices that subordinated them as women be theoretically recognized as impermissible sex-based discrimination under law. In the process, sexual assault and reproduction became sex equality issues, with implications for the laws of rape and abortion, among others.").

73. "Ain't I a Woman," is a refrain that refers to the story of Sojourner Truth and has been widely cited for the proposition that Black women stand as a ready refutation of the separate spheres ideology that held women as a group to be considerably weaker and thus less prepared to enter political life than men. *See* Crenshaw, *Demarginalizing*, *supra* note 14, at 153. *See also* Cheryl Harris, *Finding Sojourner's Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309, 313; Dorothy Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 16 (1993). Historian Nell Painter casts doubt on whether Truth really uttered these words and has suggested that the frequently cited episode where Truth was said to have delivered this rhetorical call was embellished by white women to advance the suffrage cause. NELL IRVIN PAINTER, SOJOURNER TRUTH: A LIFE, A SYMBOL 206 (1996). Interestingly, this possibility does little to alter the basic argument, that namely, the racial dimensions of Black women's status as "woman" has both been contested and has also proved politically useful to challenge certain assumptions about the inherent nature of "women."

also shape their lives? If theory is, as MacKinnon argues, built from practice, then arguably the practice of these women in challenging the circumstances of employment "as women" gives rise to a theory of sex discrimination that exists in the face of racial particulars. Indeed, the case for encompassing these racial particulars may be even stronger than MacKinnon suggests, especially in the case of Vinson. Given the antiracist sensibilities that enabled so many of the early sexual harassment plaintiffs to conceptualize sexual aggression as a form of discrimination rather than mere workplace flattery,[74] racial difference may not be merely coextensive with feminist theory but may be an agent of it.

The role of Vinson and Garland in both feminist theory and in MacKinnon's article is particularly significant in confronting the central premises around difference within feminism, quite simply what difference difference makes. This question takes on added significance in light of the contradictory way in which racial difference has figured within critiques of an antidiscrimination law (for denying women of color protection because they were deemed to be "different") and then again as a critique of feminist essentialism (for collapsing all differences into a unified narrative of women's oppression.)

From at least one vantage point, the ability of Vinson and Garland to represent women in both the theory and doctrine can be read as an affirmation that their claims can be authorized as "what happens to women" in a way that includes their racial particularities. Indeed, the incorporation of their claims may mark a progressive broadening of doctrine and theory, particularly in light of the contrast between what the Courts' conclusions might have been in the not-too-distant past when the sexuality and reproductive capacities of Black women were regulated under racially distinct and stratified rules.[75] An allegation of discrimination involving Black women and sex might

74. The Civil Rights Movement, and its subsequent Black Consciousness dimensions encouraged African Americans to resist not only the structural dimensions of white supremacy but also the interpersonal dimensions of racial power. For men, these interpersonal dimensions of racism often included emasculating violations of their personal dignity, and for women, it frequently included sexual assault and other forms of violation both in their place of employment and in the public arena as well. If "don't call me boy" could be widely understood among African Americans as a demand for racial equality, certainly "don't sexually assault me" could also be understood as part and parcel of a racialized pattern of sexual abuse that was actively contested under the rubric of anti-racism and equal citizenship. *See*, Kimberlé Crenshaw, Address at the Yale Law School Symposium on Sexual Harassment Law: Celebrating the 20th Anniversary of Catherine A. MacKinnon's SEXUAL HARASSMENT OF THE WORKING WOMEN, "The Intersections of Black Power and Feminism: How Antiracism Gave Rise to Sexual Harassment Law," (Feb. 27, 1999). In fact, Mayeri argues that Black women were far more central in the development of modern feminism, and in particular, gender antidiscrimination law, than has previously been acknowledged. *See* MAYERI, *supra* note 15 (detailing how contrary to conventional misunderstandings of how gender equality 'borrowed' from antiracism, antiracism was constitutive of gender-based advocacy). Key Black feminists such as lawyer Pauli Murray saw the interconnections between racism and sexism from the beginning and formulated strategies to build on their interface. Murray's genius was not simply conceptual but strategic. As Mayeri writes: "At a time when most civil rights leaders, not to mention government officials saw feminism and Black progress as mutually exclusive, to model arguments for women's rights on the case for racial justice was both subversive and savvy. Reasoning from race allowed black feminists to invoke paradigms already accepted by the civil rights and legal establishments and to highlight the benefits of allying themselves with a numerous and potentially powerful constituency — white women." *Id.* at 50.

75. *See* Kimberlé Crenshaw, *Race, Gender, and Sexual Harassment*, 65 S. CALIF. L. REV. 1467, 1470 (1991) (discussing practices that associate the race of Black women with a lack of veracity or chastity). Darlene Clark Hine details how the rape of African American women seldom led to prosecutions when their assailants were white, a fact that Jeanette Dunn attributes to the organization of women's caucus that in turn constituted

have easily been dismissed out of hand because Black women have long been regarded as simply different from white women, lacking in chastity, veracity and respectability.[76] Even in more "enlightened" times, the capacity of Black women to stand as class representatives for all women has been questioned by judges who seemed to regard Black women as something less, yet, at the same time, also something more, than just a woman. One need only recall the Moore Court's pointed claim that the Black female plaintiff who sought class representative status for all women had not argued that she was discriminated against as a woman, "but only as a Black female."[77] Her racial identity constituted a difference that was not one of degree but one of kind.

Judges are far from the only observers who make troubling assertions of racial difference between women. In the broader political arena, the very case that brought sexual harassment to public consciousness prompted a jaw-dropping claim by a leading Black scholar that Black women were so different from white women that behavior that might have constituted harassment against white women was merely harmless banter when engaged in amongst Black men and women. This claim, made by Orlando Patterson in an op-ed in the New York Times,[78] positioned Anita Hill as a Black woman who was essentially acting white by claiming to have experienced Clarence Thomas's pornographically laden "repartee" as discriminatory. That the argument was advanced at all was troubling enough, but that it was packaged as one of the few insights about the debacle worthy of inclusion in the august New York Times suggests more: that age-old stereotypes of Black female sexuality could readily escape proscription as racist and sexist, especially when argued intraracially. The fact that the very stereotypes that had historically justified the exclusion of Black women from the rather limited protections against sexual abuse that white women enjoyed could be so readily reproduced suggests how robust the racialized discourse of difference has been. More importantly, it reveals how easily assertions of difference among women can be deployed toward antifeminist ends.

The simple point here is that the political work that difference does among women is contradictory and warrants careful reflection. Absent contextual analysis that delivers more than a simple assertion of racial difference, conventional critiques of feminism that ground themselves in differences between women come dangerously close to reifying

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the infrastructure of the Montgomery Bus Boycott. DARLENE CLARK HINE, 1 BLACK WOMEN IN AMERICA 22 (2005); JEANETTE R. DUNN, SOUTHERN WOMEN AT THE MILLENNIUM 75 (2003). Rosa Parks, who in the civil rights lore, was tired seamstress who refused to give up her seat, was in fact activist who had agitated on behalf of several Black women who were sexually assaulted and never saw their cases prosecuted. *See* DANIELLE L. MCGUIRE, AT THE DARK END OF THE STREET: BLACK WOMEN, RAPE, AND RESISTANCE — A NEW HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM ROSA PARKS TO THE RISE OF BLACK POWER (discussing how the struggle against these differential and stratified rules governing the sexual autonomy of Black women constitutes a key but underappreciated point of departure of the Civil Rights movement).

76. GIDDINGS, *supra* note 64, at 31; E. FRANCES WHITE, DARK CONTINENT OF OUR BODIES: BLACK FEMINISM AND THE POLITICS OF RESPECTABILITY 78 (2001) (describing how feminists such as Davis, Barbara Ramsby, and Kimberlé Crenshaw created the African American Agenda 2000 in opposition to the March).

77. Moore v. Hughes Helicopters, Inc., 708 F.2d 475 (9th Cir. 1983)

78. Orlando Patterson, Op-Ed., *Race, Gender and Liberal Fallacies*, N.Y. TIMES, Oct. 20, 1991, at E15, *available at* http://www.nytimes.com/1991/10/20/opinion/op-ed-race-gender-and-liberal-fallacies.html (dismissing Clarence Thomas's advances to Hill as merely a "down-home style of courting," and calling Hill "unfair and disingenuous" for having brought the allegations of harassment against Thomas).

women into the very polar categories that have traditionally situated women of color as something other than women.

As argued above, both dominance theory and the intersectional frame take up the ways in which operating exclusively within either a sameness or difference frame can lead to contradictory and counterproductive debates within equality doctrine. The meaning that intra-categorical difference makes in such efforts — and, more specifically, the degree to which such differences must be explicitly incorporated to sustain the kind of advocacy and intervention that matters on the ground — calls for deft navigation of both the descriptive and political dimensions of the context. This is a not a defense of theoretical abstraction but in fact a critique of the very abstractions that operate to deflect more context specific analysis.

Of course, this challenge is not unique to feminism. In the political terrain where mass mobilization is animated by notions of common experience and shared agendas, similar contradictions around sameness and difference play out. Discourses built around sameness and difference are utterly indeterminate in what they enable and what they preclude in terms of theory, rhetorical politics and interventionist praxis. As the briefest reflection of the politics of mass mobilization and reform-seeking discourses reveal, neither the assertion of difference as a critique of these efforts, nor the attempt to shore up the critique through reassertion of sameness, provides stable or consistently progressive critiques.

Sometimes discourses of difference are mobilized to defeat a certain set of progressive sensibilities. Consider, for example, the history of class politics in the United States. Traditionally U.S. class hierarchies have been managed and stabilized by the use of racial difference to divide poor and working people. Similarly some feminist rhetorics have been constructed to amplify racial difference among women — such as some nineteenth-century claims around suffrage. Indeed, one school of suffrage argumentation was premised on portraying white women as worthy and reliable as allies in the efforts to sustain white supremacy and imperialism.[79]

Just as difference has historically been foregrounded in efforts to rationalize and sustain certain power relations, assertions of sameness have also been used to suppress the recognition of and advocacy around certain patterns of exclusion and marginalization. Consider in this regard the current school of thought among a left-leaning cohort committed to colorblind policies. Their arguments for repudiating affirmative action and other race-targeted interventions are premised on the controversial narrative that class solidarity between whites and people of color has been undermined by the race-conscious advocacy of civil rights and Black Power activists.[80] Class

79. Kimberlé Crenshaw, *The Curious Resurrection of First Wave Feminism in the U.S. Elections: An Intersectional Critique of the Rhetoric of Solidarity and Betrayal*, in SEXUALITY, GENDER AND POWER; INTERSECTION AND TRANSNATIONAL PERSPECTIVES 231–233 (Anna G. Jónasdóttir, Valerie Bryson & Kathleen B. Jones eds., 2010).

80. For an example of such tensions playing out between race- and class-based concerns in the labor movement, consider the Todd Gitlin–Robin Kelley debate that occurred during the "Culture, Identity, and Class Politics" panel at the October 1996 Columbia Teach-In with the Labor Movement. According to third-person accounts of the debate, Gitlin dismissed race-based concerns as unnecessarily divisive, while Kelley was strongly resistant to the idea that class should be the focus of the inquiry to the exclusion of race. *See* Eric Lott, *The New Liberalism in America: Identity Politics in the "Vital Center,"* in THE MAKING AND UNMAKING OF

solidarity, under this view, depends upon the repression of racial difference and the advancement of a politics built on intra-class sameness.

At the same time that exclusion and subordination can be rationalized by both difference and sameness rhetorics, inclusionary objectives can be similarly enhanced by assertions of sameness as well as difference. Efforts to create sameness sensibility can sometimes be productive, especially in resistance to cultural and political histories that have foregrounded difference to justify or normalize dominance. For instance, one of the compelling features of modern feminism was to advance a vision of a common vulnerability as women that was typically obscured by ideological and institutional conventions — such as the public–private distinction in law — and by prevailing notions of race and class. In efforts to politicize the everyday practices of domestic violence and rape, feminists asserted a certain "sameness" in terms of a common vulnerability that operated against ideological and social distinctions. These distinctions that had earlier divided women along race and class gave way to new frames that sought to unite them. By reframing experiences that had been regarded as fragmented and individualized into patterns of subordination that were reconceived as systemic and group-based, the concept of "violence against women" came to fore as a social problem. The notion of "violence against women" reflects the politicized construction of a common vulnerability "as women" in order to reconceptualize what had been traditionally viewed as a 'private' problem into a public one.[81] .

Of course, this effort to gather every day experiences into the politicized frame of "the subordination of women" did not come without risk; the assertions of sameness that made the frame viable could at the same time constitute ideological blinders that militated against the acknowledgement of difference in the development of effective interventions. Elsewhere I have written about how the ideological and practical dimensions of domestic violence discourse tragically underserve the needs of some survivors relative to others.[82] This and other examples remind us how rigid assertions of

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WHITENESS 214, 227–28 (Birgit Brander Rasmussen et al. eds., 2001). For a an illustration of a similar argument in the context of affirmative action in higher education, *see* RICHARD D. KAHLENBERG, THE REMEDY: CLASS, RACE, AND AFFIRMATIVE ACTION (1997) (critiquing what he sees as racial "entitlements" and arguing for class-based affirmative action instead).

81. *See* Crenshaw, *supra* note 64, at 1241 ("Drawing from the strength of shared experience, women have recognized that the political demands of millions speak more powerfully than the pleas of a few isolated voices. This politicization in turn has transformed the way we understand violence against women.").

82. For discussion on the multiple levels of subordination suffered by immigrant women facing domestic abuse, see Crenshaw, *supra* note 64, at 1249 (noting, for example, the multiple subordination that immigrant women often face in the domestic violence context: "language barriers present [a] structural problem that often limits opportunities of non-English-speaking women to take advantage of existing support services. Such barriers not only limit access to information about shelters, but also limit access to the security shelters provide."); Nancy K. D. Lemon, *Access to Justice; Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?*, 21 BERKELEY J. GENDER L. & JUST. 38 (2006). As many have noted, domestic violence advocates have overwhelmingly focused on domestic violence that occurs in heterosexual relationships. *See* Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 50, n.79 (1992) ("The heterosexist assumption implicit in the term 'battered woman' becomes clear when one considers that the term applies equally to a woman who is beaten within a heterosexual relationship as well as a woman who is in a lesbian relationship"). This has the ultimate effect of obfuscating the violence endured by lesbians. *See e.g.*, PHYLLIS GOLDFARB, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582, 589 (1996) ("Those who developed [domestic violence] discourse sought to portray accurately the gothic horrors of battering in heterosexual relationships. They did so

sameness at the level of intervention can function to marginalize and further subordinate individuals who are not 'the same' as the imagined survivor of domestic violence. Theories of women's subordination as well as the interventions that such theories anticipate will obviously exclude subjects whose contexts are not anticipated, accommodated, or recognized.

This point closes the analytic loop to return to the point of departure, namely, that sameness has often been the register through which exclusion has been perpetrated. Of the many familiar examples is Betty Friedan's classic text, *The Feminine Mystique*, that theorized women's oppression in terms of domestic imprisonment of the home; it is obvious that her conclusions were not informed by the diversity and breadth of women's experiences in the US, much less around the world.[83] This is a use of sameness that elides difference by using 'women' to substitute a subset for a whole. Its limitations are classic illustrations of a deductive theory built from inside out, rather than outside in. But here is where it might be profitable to bear down on the various missteps contained within Friedan's argument in order to determine how best to think about essentialist assertions within contemporary feminist practice. There are of course broad questions about whether there is or is not a proper whole that Friedan elides with her rendition of "woman's experience," whether it is a universal whole, a whole that exists throughout time, a whole that is fixed and unchanging or a whole that is temporal and contextual.

effectively, calling public attention to a pervasive and pervasively overlooked system of brutality and contributing to an understanding of the woman caught in these nightmarish situations. Despite their popular success in exposing and naming the problem of heterosexual battering, these activist suggest that the entire problem of battering consisted of male violence against female intimates . . . . [Ultimately, by] failing to circumscribe the boundaries of the particular problem upon which they focused, these activist silently inscribed heterosexuality into the meaning of battering."). Heteronormative conceptions of domestic violence have also proved to obfuscate domestic violence in heterosexual relationships where the female partner is the aggressor. *See e.g.*, Amanda J. Schmesser, Note, *Real Men May Not Cry, But They Are Victims of Domestic Violence: Bias in the Application of Domestic Violence: Bias in the Application of Domestic Violence Laws*, 58 SYRACUSE L. REV. 171 (2007); Linda Kelly, *Disabusing the Definition of Domestic Abuse: Women Batter Men and the Role of the Feminist State*, 30 FLA. ST. U. L. REV. 791, 801 (2003) (generally discussing the mainstream denial of domestic abuse of heterosexual men at the hands of their female partners; specifically discussing the trials and tribulations of Suzanne Steinmetz, an early advocate for redressing "husband abuse," who received threats of physical violence from total strangers and faced extensive lash-back from "every female faculty member at the University of Delaware" when she sought tenure); Murray A. Straus, *The Controversy Over Domestic Violence by Women: A Methodological, Theoretical, and Sociology of Science Analysis*, *in* VIOLENCE IN INTIMATE RELATIONSHIPS 17, 17–18 (Ximena B. Arriaga & Stuart Oskamp eds., 1999). This pattern extends to domestic violence in gay relationships. *See e.g.*, Patrick Letellier, *Gay and Bisexual Male Domestic Violence Victimization: Challenges to Feminist Theory and Responses to Violence*, 9 VIOLENCE & VICTIMS 2, 95 (1994) (arguing that mainstream feminist domestic violence discourse is inherently heterosexist and fails to explain the phenomenon of domestic violence in gay male relationships. Ultimately, the illustrations above reflect yet another essentialist trap. *See* Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM & MARY J. WOMEN & L. 703 (generally discussing how the domestic violence movement has led to the further entrechment of "hegemonic masculinity" which, in turn, perpetuates "gender stereotypes positioning all men as prone to violence and all women as vulnerable to victimization and displacing the men and women that function outside these binary constructs." (*Id.* at 703). *But cf.* Cheryl Hanna, *No Right to Choose*, 109 HARV. L. REV. 1849, 1856 n. 24 (1996) (arguing that the author's own focus on male violence against women is legitimately tied to the "historical and institutional marginalization of intimate violence against women"). For an explicitly anti-essentialist approach to addressing domestic violence, see e.g. Leigh Goodmark, *Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal*, 31WASH. U. J.L. & POL'Y 39 (2009).

83. BETTY FRIEDAN, THE FEMININE MYSTIQUE 240 (1963) ("Each scientific advance that might have freed women from the drudgery of cooking, cleaning, and washing, thereby giving her more time for other purposes, instead imposed new drudgery, until housework not only expanded to fill the time available, but could hardly be done in the available time").

These all implicate certain sins of essentialism in one way or another, but on some level, sanctioning the "essentialism" in The 'Feminine Mystique seems somewhat beside the point in grasping what seemed "off" about Friedan's argument. It isn't so much Friedan's assertion of an "essence" that exists across history, nation or class that was so striking to her critics. It was instead that Friedan wasn't able to provide a convincing account that included her very contemporaries, women who were distinct in terms of race and class, and who were certainly within her immediate field of vision. This is arguably a narrower problem of class and racial solipsism, a set of erasures that are significant because of their political consequences as well as their philosophical implications.

Given the wide-ranging scope of what the edict against essentialism presumably prohibits, it seems unlikely that any formulation of "discrimination as a woman" will entirely resolve the debate. Yet one wonders on a certain level whether "essentialism" is really the concern that animates so much of the heated debate around feminism. Perhaps practical efforts to specify and normalize a theoretical practice that avoids the obvious solipsisms engendered by such narrow fields of vision might be a better investment of critical energies in the here and now.

In sum, despite the rhetorical deployment of difference to serve as the foundation for anti-essentialist critique, not all differences are equally significant in the pursuit of certain objectives. The relevance of difference depends on the political use for which claims of group commonality are made, and the flexibility and openness to difference in shaping the demands and interventions that are realized. These are obviously more political and contextual questions than philosophical ones. Thus assertions of difference do not always produce a more illuminating theory or a more productive intervention, although they sometimes can. But central to the critique of sameness/difference in both dominance feminism and intersectionality is the fact that the critique of difference does not reflexively engender the embrace of sameness. In the same way that the sameness/difference paradigm failed to decenter the male subject against which equality was measured,[84] and in the same way that it rendered Black female plaintiffs too anomalous as subjects of antidiscrimination law,[85] the sameness/difference debate can do no more to resolve the essentialist challenge. Sameness/difference discourses that underlie at least some reservations about dominance feminism elide the recognition that both positions inevitably reinscribe existing configurations of power. In the case of resistance discourses, the dimensions of critical discourse must arguably transcend the sameness/difference straightjacket to embrace more a productive attentiveness to the ever changing challenges of contesting social power.

The third response to MacKinnon squarely presents an opportunity to exploit the comparative dimensions of feminist and antiracist mobilizations. The critique lodged against MacKinnon is that her theorizing lifts gender out of a matrix of subordination in a manner that elides qualitative differences in women's experience. These experiences

84. *See* discussion *supra* p. 106 and note 12 (offering discussion of MacKinnon's sameness/difference framework).

85. *See* discussion *supra* p. 116 (discussing sameness and difference in the context of courts' handling of Black female plaintiffs).

cannot be accommodated within a paradigm that foregrounds what women have in common without distorting or marginalizing the significance of what constitutes the difference between them. Thus, efforts to discover, interrogate and contest discrimination "as women" necessarily suppress the ways that women are embedded in and thereby invested in contesting other structures. Feminism's implicit expectation of solidarity is thus framed as inherently partial and to the degree that it minimizes the comparative urgency of contesting these other structures, appears to be counterproductive. More significantly, students in this context express an abiding distrust of intra-gender collaboration across race, and a relatively less critical embrace of intra-racial coalition across gender. Therein lies at least some part of their skepticism about the trustworthiness and empathy of white feminists.

While these arguments are certainly debatable on their own terms, what is significant here is how the analysis loses traction in its interface with antiracism. In practice, MacKinnon's theorizing about women closely parallels similar analytic moves that have historically mobilized African Americans as a group to contest the terms of racial subordination. The parallel tends to be underappreciated in the discourses surrounding the commensurability of feminist and antiracist mobilizations. Moreover, the premises upon which intra-racial solidarity and empathy are grounded are not fully explained by actual antiracist practice.

In the context of antiracism, the conventional politics of solidarity mark decidedly different orientations toward sameness and difference. Despite the fact that the interface of race with a host of other factors creates differences among members of racially vulnerable groups, this reality has not for the most part engendered a skepticism as to whether experiences are too diverse to support either a project called "racism" nor has it significantly undermined the notion of common vulnerability as objects of racist policy and practice. Political action built around narratives of a common vulnerability to something called 'racism' remain fully legible and sustainable notwithstanding the obvious reality that the struggle against racial subordination often targets practices that never effected everyone the same way. Equally compelling, antiracist strategies have not garnered the allegiance of all who were subject to it, yet the idea of anti-racist struggle has been widely viewed as a defensible exercise of group agency.

The very notion of social movement inherently implies the foregrounding of common interests in contesting barriers that impact the group as a whole. The classic civil rights movement against racial segregation in public accommodations in the American South was no exception. Take, for example, the sit-in campaigns that sprang up as students resorted to direct action to challenge what was called the 'second class citizenship' of American 'Negroes.' It was widely understood that segregation was a racial barrier that applied to Blacks as a socially-marked group. At the same time, segregation did not function in the same way against all African Americans. For example, formal segregation policies were not the only barriers that prohibited poor Blacks from being served. Even when these formal barriers were lifted, many group members would lack the economic resources to gain service in the restaurants and lunch-counters that had been liberated by the sit-in activists. Morever, for those Blacks that could "pass" for white, segregation was potentially less of an intrusive barrier in

circumscribing their day-to-day lives; their skin color ameliorated certain aspects of racism, creating experiences that can be said to differ from other identifiable Blacks both quantitatively and qualitatively. Thus, not only did segregation effect individuals or sub-groups of African Americans differently, the political imperatives motivating some Blacks to contest segregation made little difference to those group members who, even with the formal disability of race lifted, would not want to eat at white lunch counters under any circumstances.

Yet, the fact that there are differences within a group — different barriers, different vulnerabilities, and different preferences—does not render the notion of group-based advocacy less coherent intellectually or less effective politically as meaningful action. Nor is it the case that the failure to attend to all dimensions of subordination in a particular campaign normalizes, reinforces or legitimizes the other structures that shaped the life chances of Blacks as a whole. That there were additional structures and individual preferences that made Blacks differently situated with respect to the campaign did not render the project of naming and strategizing around it unintelligible as a political struggle against a group based harm.

The actions of Blacks that did engage in sit-ins were packed with social meaning that was well-understood by both supporters and detractors. Segregation, it was understood, was a practice that affected Blacks as a group notwithstanding the fact that it might not in practice affect every group member in the same way. Nor did the fact that some Blacks opposed the campaign alter the common sense understanding of it as "about race" in general and about "Blacks" in particular. Many Blacks who opposed the sit-ins believing that the costs of pursuing such confrontational disruptions outweighed the possible benefits of challenging these entrenched system.[86] However, even the sentiments of Blacks that opposed the sit-ins should not be interpreted as a challenge to the coherence of the group. Indeed, it was precisely because of the group's social legibility that many Blacks sensed a risk of collective or personal loss through the protest even though they opposed such efforts themselves.

As the sit-ins demonstrate, political action built on common understandings of group interest has been and continues to be coherent and intelligible to a wide variety of audiences, including those directly implicated by the contested practices as well as those who fall outside its reach. One need not think "as a Black" or assume that there is an essence that defines "Blackness" to understand the protest as group-based action. Yet these discourses about racism differ substantially from those about gender; it is a difference that makes for a rhetorical difference in how the two projects are framed and understood.

This comparison is not offered to simply defend group-based sensibilities against all criticism. Indeed, such practices can veer drastically off course. A vivid example is

86. *See, e.g.*, IRA KATZNELSON & MARGARET WEIR, SCHOOLING FOR ALL: CLASS, RACE, AND THE DECLINE OF THE DEMOCRATIC IDEAL 183 (1988) (describing the tension between activists in the postwar San Francisco Black community and moderate Blacks who disapproved of using protest as a means for effecting social change, wishing instead to achieve change through the legislature and the courts); Glen Feldman, BEFORE BROWN: CIVIL RIGHTS AND WHITE BACKLASH IN THE MODERN SOUTH 12 (Glen Feldman ed., 2004) (noting that there were a number of moderate African Americans who did not support the agenda of the Civil Rights Congress because it was seen as too radical).

antiracist discourse that centers entirely on men as the primary subject of racial oppression.

Both historically and in contemporary terms, the objects of structural oppressions — the worker, the colonized, the immigrant, the slave, the Native, and the Negro — have been imagined as male. Consequently, theories of resistance and the voice of opposition have also posited a male subject. Although sometimes merely a figure of speech, the subject of racism is almost always marked as "he" regardless of whether the claim or demand that follows is in fact gender-specific or is more broadly inclusive.

Neither the figurative use of men as the stand-in for all racialized subjects, nor the specific articulations of male-centric visions of racial harm have been widely politicized and critiqued for excluding or marginalizing women. Yet, some of the most common metaphors through which racism is conceptualized and represented have been male-centric. Lynching, for example, became the symbolic embodiment of the terrorism that held American Blacks in the perpetual grasp of white supremacy. Although its rationales were often framed as extrajudicial measures to contain the sexual pathologies of Black men, in reality the practice extended well beyond punishing Black men accused of sexual crimes against white women.[87] Economic and political dependence, fidelity to the unwritten rules of white dominance, group deference, and social inferiority were all enforced against African American men and women by the threat of extralegal violence. Because these dynamics obviously impacted the community as a whole, the male-centric discourses growing out of these experiences, as well as the campaigns designed to politicize and resist this dimension of subordination, were accepted as expressing the interests of the Black community as a whole.

The centering of lynching as the symbolic representation of racist domination is not problematic because of its emphasis on the gendered particularity of Black men's experience per se. What is problematic instead is how these gendered expressions of racism implicated in lynching narratives have the effect of confirming that men — the only subjects of racism apparent in these narratives — are the principle targets of anti-Black racism. The conceptualization of the subject of anti-Black racism as necessarily male feeds the belief that the gendered forms of racism that do not map on to Black men's narratives — essentially those that affect Black women as Black women — are, as a necessary matter, less significant. Furthermore, a conceptualization of anti-Black racism as essentially that which constitutes anti-Black-male racism implies that the gendered forms of racism experienced by Black women constitute a set of particularities that are not representative of the group but merely collateral effects of the primary dynamics of racism against men.

The consequences of such interpretations become apparent in contexts where the habitual inferences around Black male subordination suppress and marginalize the experiences of Black women. For example, the blinding effect of the lynching trope was abundantly clear in the Anita Hill-Clarence Thomas controversy, where Thomas, having

87. Ida B. Wells, an African American journalist who led a vigorous campaign against lynching in the late nineteenth and early twentieth centuries, analyzed lynching statistics published in newspapers of the time and found that only about one-third of the victims had been accused of rape. *See* PAULA J. GIDDINGS, IDA: A SWORD AMONG LIONS: IDA B. WELLS AND THE CAMPAIGN AGAINST LYNCHING 226–27 (2008).

made his career distancing himself from antiracist discourses and claims, wrapped his troubled nomination around the imagery of the lynched Black man.[88] Thomas's eleventh-hour shift to the language of Black resistance effectively mobilized the Black community on his behalf, drowning out any intraracial empathy for Hill. As the inquiry unfolded, Hill was subjected to the age-old stereotypes about Black female sexuality, veracity, and sanity. Even though she, rather than he, had a more credible claim to having been victimized by racially stereotyped imagery, the sensibilities built around lynching were so entrenched that the mere invocation of it erased Anita Hill as a recognizable member of the African American community.[89]

This transition from gendered particularity of racism to what might be called an essentialist rhetoric around race and racism is represented in what has been called the Black male endangerment thesis.[90] Most notably represented in the Million Man March,[91] the endangerment thesis typically represents Black male victimization as the

88. During his Supreme Court confirmation hearings, Clarence Thomas referred to Anita Hill's accusations of sexual harassment as the "high-tech lynching for uppity blacks who in any way deign to think for themselves, to do for themselves, to have different ideas . . . you will be lynched, destroyed, caricatured by a committee of the U.S. Senate rather than hung from a tree." *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States Before the Subcomm. on the Judiciary*, Part 4, 102d Cong. 157–58 (1991).

89. *See e.g.*, Jackie Calmes & Jill Abramson, *Anita Hill Defends Herself as Attacks By Thomas Supporters Grow Sharper*, WALL ST. J., Oct. 15, 1991, at A-4 ("After Prof. Hill passed a lie-detector test Sunday, Republicans pressed speculation that she is emotionally unstable and believes her allegations even though they are untrue. Previously, GOP lawmakers portrayed her variously as a snubbed woman, a perjurer, a publicity seeker or a tool of liberal interest groups out to get Judge Thomas."); Lynne Duke & Kevin Sullivan, *Cry of 'Lynching' Opens Wounds; Thomas's Words Evoke a Range of Emotions Among Blacks in the Area*, WASH. POST, Oct. 13, 1991, at A-1 ("If it is a lynching, Thomas isn't the only victim, said Adrienne Massey, 25 . . . 'This Clarence Thomas 'trial,' which is what it comes down to, is a lynching for black America,' Massey said. 'This should be a sign to black America that the American Dream is really a nightmare for black Americans,' Massey said. 'No matter what economic or social success you may attain in America, you are still a nigger'."); Charles Krauthmmer, Editorial, *Clarence Thomas and The Decline of Congress*, WASH. POST, Oct. 11, 1991, at A-27 ("[Hill deploys] the all-purpose defense of those who do not want to be questioned closely that her message is being ignored while the messenger is being attacked. On the contrary. Her message has been received, loud and clear. But since the message is contradicted by Clarence Thomas, by some of his female associates and by many of Prof. Hill's own actions, the only question is whether this message is true. And since there were no witnesses, the question of truth hinges on the credibility of the messenger."); Clarence Page, *Clarence Thomas Feeds Blacks' Conspiracy Fears*, CHI. TRIB., Oct. 16, 1991, at C-19 ("To me, [Thomas'] prime-time speech indicated a keen awareness of the Rally-Round-the-Brother Syndrome. His calling the hearings a 'high-tech lynching for uppity blacks who . . . deign to think for themselves' touched all the right buttons, particularly with black males, who suddenly saw 'Uncle Thomas' replaced by a proud brother under fire from white folks").

90. *See generally* HAKI R. MADHUBUTI, BLACK MEN: OBSOLETE, SINGLE, DANGEROUS? THE AFRIKAN AMERICAN FAMILIES IN TRANSITION: ESSAYS IN DISCOVERY, SOLUTION AND HOPE (1990); YOUNG, BLACK, AND MALE IN AMERICA: AN ENDANGERED SPECIES (Jewelle T. Gibbs ed., 1988); Salim Muwakkil, *Are Black Males an Endangered Species?*, UTNE READER, Nov.–Dec. 1998, at 46; Robert Staples, *Black Male Genocide: A Final Solution to the Race Problem in America*, *in* BLACK MALE ADOLESCENTS: PARENTING AND EDUCATION IN COMMUNITY CONTEXT (Benjamin P. Bowser ed., 1991).

91. The Million Man March on October 16, 1995, brought hundreds of thousands of African American men to Washington, D.C., for a rally promoting self-empowerment, self-sufficiency, reconciliation, and responsibility on the part of Black males, and highlighted social, economic, and political issues facing the Black community. *See* Maulana Karenga, *The Million Man March/Day of Absence Mission Statement*, 25 BLACK SCHOLAR 2 (1995); Michael O. West, *Like a River: The Million Man March and the Black Nationalist Tradition in the United States*, 12 J. HIST. SOC. 81 (1999); *Farrakhan Revels in the Spotlight of Million Man March*, CNN (October 16, 1995), http://www.cnn.com/US/9510/megamarch/10-16/update/index.html. The March generated opposition from Black feminists, however, for its marginalization of Black women's issues and its conception of Black women's roles in the March itself. *See* Don Terry, *Black March Stirs Passion and Protests: Farrakhan's Call to Men Upsets Some Black Groups and Women*, N.Y. TIMES, Oct. 8, 1995, (noting

principal site of racial subordination, and thus directs policy, advocacy, and intervention to addressing the constituent elements of this crisis. Currently, foundations, agencies, and organizations have sponsored a wide variety of programs, policies, and initiatives targeted to alleviate racial disparities that effect Black men.[92] Attention to Black women is considerably muted within these discourses; women sometimes appear as the Blacks most preferred and whose "success" is further evidence of Black male endangerment.[93] At other times Black women function as causal agents to the plight of Black men,[94] blamed for the pending extinction of Black men by dint of their failures to parent, partner, or role-model in effective ways.[95] Black women are collateral subjects whose situation is seen in relation to Black men.[96] Consequently, the particular ways in which the racial subordination that shapes the life chances of women is manifested largely

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that Black women had been told not to participate in the March); *Frontline: The Two Nations of Black America, Interview with Angela Davis* (PBS television broadcast Feb. 10, 1998) (transcript *available at* http://www.pbs.org/wgbh/pages/frontline/shows/race/interviews/davis.html) (stating that the March had suffered from the "failure to integrate gender into the vision of what the Black community needed" and "the exclusion of women from the march . . . although finally . . . someone said it's OK for black women to come, they don't have to stay at home with the babies as they were urged to before."); *see* WHITE, *supra* note 76 and accompanying text.; Andrea L. Mays, *Women's Reactions Run from Elation to Disdain*, USA TODAY (Feb. 16, 1996), *available at* http://www.usatoday.com/news/index/nman013.htm (citing Kimberlé Crenshaw as saying, "No one seems to notice that the gender exclusion is just as much of a problem as what everybody in the march wanted to talk about, which is racism . . . . A unity that is purchased through the exclusion of the interests of specific obstacles facing 50% of the community is ill begotten unity." (citations omitted)); Harris, *supra* note 112, at 108 (citing bell hooks: "Both O.J.'s case and the Million Man March confirm that, while white men are trying to be sensitive and pretending they're the new man, black men are saying that patriarchy must be upheld at all costs, even if women must die." (citations omitted)). For further analysis of the patriarchal impulses that served as the impetus behind the March, *see* Nikol G. Alexander-Floyd, *"We Shall Have Our Manhood": Black Macho, Black Nationalism, and the Million Man March*, 3 MERIDIANS 171, 194–96 (2003) (describing as problematic the March's gender politics and its underlying assumptions that Black women were not as affected by racism as Black men, and criticizing the view that Black women have contributed to the oppression of Black males by usurping their places at the head of the household, thus forcing Black males into a position where they need to "reclaim" their masculinity).

92. For examples of initiatives, reports, and hearings that have focused on the problems that Black males in particular face, see JACQUELINE COPELAND-CARSON & THE FORD FOUNDATION, THE MY BROTHER'S KEEPER FUND: A COLLABORATIVE STRATEGY TO ADDRESS AMERICA'S BLACK MALE CRISIS (2008); IVORY A. TOLDSON, BREAKING BARRIERS: PLOTTING THE PATH TO ACADEMIC SUCCESS FOR SCHOOL-AGE AFRICAN AMERICAN MALES (2008); NATIONAL URBAN LEAGUE, THE STATE OF BLACK AMERICA 2007: PORTRAIT OF THE BLACK MALE (Stephanie J. Jones ed., 2007); *The Plight of African American Men in Urban America: Hearings Before the Senate Comm. on Banking, Hous., and Urban Affairs*, 102d Cong. (1991).

92. ROBERT SINGH, THE FARRAKHAN PHENOMENON: RACE, REACTION, AND THE PARANOID STYLE IN AMERICAN POLITICS 116 (1997) (quoting Farrakhan as stating that: "[A]s Black men we've been castrated. We feel so threatened by the high degree of intelligence, aggressiveness, and forthrightness of our women. It only shows that we have not been afforded the opportunity under this social, economic, and political system to grow to our full potential as men. Our women have had a little more freedom to grow.").

94. Jawanzaa Kunjufu, in explaining what he perceived as a "conspiracy" against Black males, pinpointed Black women as one of the forces within a larger society that undermined black men. JAWANZAA KUNJUFU, 2 COUNTERING THE CONSPIRACY TO DESTROY BLACK BOYS (1985).

95. Ron Harris, *NAACP Seeks Solutions to Crisis of Black Males*, L.A. TIMES, July 10, 1990, *available at* http://articles.latimes.com/1990-07-10/news/mn-80_1_black-male.

96. For example, in a 1994 speech on domestic violence to a largely female audience, Nation of Islam Minister Louis Farrakhan, the organizer and director of the Million Man March, stated: "Look at all these young women going to college. When you [referring to black women] come out with your degree, [the black man] is already behind. The only thing he has is his physical strength and his sex. . . . To have power, the white male broke the black male. Once your male is broken, [black women] are fair game for being the victim." *Farrakhan Describes Cycle of Domestic Violence*, WASH. POST, June 27, 1994, at A22. While Farrakhan does not deny that black women have been subordinated, he explicitly ties their oppression to that of black men, and suggests that black men have suffered to a greater degree.

exists outside the current frames. The differences in their experiences are seen not only as differences in degree (lesser than), but so qualitatively different from men and boys that the consequences of their marginality in the "crisis" discourses rarely warrants comment or criticism.

The difference I am attempting to draw here is between the historic mobilizations against segregation and white supremacy on one hand, and the contemporary frames built around the notion of Black male endangerment on the other. The former might be subject to essentialist critique given the group-based logic of the movement's basic premises, but the fact that there was variability among and between Blacks did not undermine the coherence or commensurability of the discourse. By contrast, a prevailing frame around the contemporary crisis facing the African American community is explicitly centered on African American men as the subject of racial trauma. The exclusionary consequence of this frame is not merely rhetorical; it is material and political.[97] While such a male-centered discourse might be subject to essentialist critique, a plausible expectation given the readily articulable critique of feminist accounts that implicitly ground the project in white women's interest, so far, essentialist criticism of Black male endangerment has yet to emerge.

In the Intersectionalities seminar, we grapple with what might be seen as the puzzling picture of a yawning asymmetry between the targets of anti-essentialism. We use this comparison to grapple with precisely what is at stake in the claims, particularly in relation to "identity" group politics. My own sense in this debate is that projects such as the Civil Rights Movement on one hand and the Black male endangerment frame on the other, represent two opposing poles in the essentialist debate. Both seem to survive essentialist critique — and most students seem to agree that they should. The challenge then is how then to rethink MacKinnon's project on the one hand, and the contemporary frame of Black male endangerment on the other. For some students the endangerment frame survives their critiques of MacKinnon, an argument that seems to illustrate the curious asymmetry the undergirds the inquiry. Occasionally there are others who share an essentialist critique of the male-centric antiracism, but extend that critique to MacKinnon. My own sense that MacKinnon's project is more in line with the Civil Rights example and that the contemporary crisis frame is not only essentialist but patriarchal is seldom the winning argument.

Returning to this Article's key inquiry — the asymmetries in anti-essentialist criticism of feminism and anti-racism — these different orientations toward today's "crisis" metaphor, might provide additional insight toward understanding why MacKinnon's *What is a White Woman Anyway?* struck such disturbingly discordant notes with many of my students, particularly the Black ones. Black men are, of course, not alone in the lynching narrative; white women, as MacKinnon noted, play a decisive

97. See for example, Mayor Bloomberg's initiative to address the problem. Press Release, Office of the Mayor, New York City, Mayor Bloomberg Launches Nation's Most Comprehensive Effort to Tackle Disparities Between Young Black and Latino Males and Their Peers (Aug. 4, 2011), available at http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2011b%2Fpr282-11.html&cc=unused1978&rc=1194&ndi=1.

role as the finger-pointing provocateur in an act of violence, a role that is all the more despicable where the claims of sexual assault were either non-existent or in truth, voluntary encounters. It is certainly true that the patriarchal dimensions of white supremacy encouraged and coerced white women into denying interracial desire and correspondingly, flattened them into the cause de raison for lynching. This flattening in turn reified white women into an enduring figure of racial threat rather than a reliable ally in a politics built around gender solidarity. This flattening is partly what is being challenged by MacKinnon's parade of white female representations. Certainly there are essentialisms at work here that could well stand interrogation. However, there will be relatively little "movement" on how white women are configured as characters in this narrative until there is critical reflection on the gender-work that the lynching narratives do within antiracist politics, both historically and in contemporary terms. Indeed, so long as Black women remain locked in the status of mere collateral damage, the likelihood that any other gender disruption would gain traction is slim. MacKinnon's efforts in *What is a White Woman Anyway?* — in particular her extended riff on the various tropes of white women that underscore the perceived incommensurability of the social category "women" — were unlikely to penetrate the deep associations between antiracism and lynching in order to deliver the critical reflection on how white women were themselves being essentialized.[98] Although quite far from her primary aim, in interrogating the trope of the venile, politically useless, finger pointing white woman, MacKinnon's prose was read as an attack on the essential representation of anti-Black racism, one that even the most stalwart Black feminists step to gingerly, and even then with caveats to signal an unwavering commitment toward the imperative of antiracism.

To the degree that the lynching narrative remains foundational to Black conceptions of common vulnerability, the collateral effort to disrupt the essentialist entrapment of one of its central characters is likely to be interpreted as hostile to the

98. MacKinnon here writes:

> In this connection, it has recently come to my attention that the white woman is the issue here, so I decided I better find out what one is. This creature is not poor, not battered, not raped (not really), not molested as a child, not pregnant as a teenager, not prostituted, not coerced into pornography, not a welfare mother, and not economically exploited. She doesn't work. She is either the white man's image of her—effete, pampered, privileged, protected, flighty, and self-indulgent—or the Black man's image of her—all that, plus the "pretty white girl" (meaning ugly as sin but regarded as the ultimate in beauty because she is white). She is Miss Anne of the kitchen, she puts Frederick Douglass to the lash, she cries rape when Emmet Till looks at her sideways, she manipulates white men's very real power with the lifting of her very well-manicured little finger. She makes an appearance in Baraka's "rape the white girl," as Cleaver's real thing after target practice on Black women, as Helmut Newton's glossy upscale hard-edged, distanced vamp, and as the Central Park Jogger, the classy white madonna who got herself raped and beaten nearly to death. She flings her hair, feels beautiful all the time, complains about the colored help, tips badly, can't do anything, doesn't do anything, doesn't know anything, and alternates fantasizing about fucking Black men with accusing them of raping her. As Ntozake Shange points out, all Western civilization depends on her. On top of all this, out of impudence, imitativeness, pique, and a simple lack of anything meaningful to do, she thinks she needs to be liberated. Her feminist incarnation is all of the above, and guilty about every single bit of it, having by dint of repetition refined saying "I'm sorry" to a high form of art. She can't even make up her own songs.

MacKinnon, *supra* note 2, at 18–19 (citations omitted).

antiracism project. The fact that it is theoretically possible to critique a frame as essentialist doesn't deliver with it any particular traction or discursive pay off. The considerable heat generated by this debate seems to be at least as much about conventional practices of representation, about who and what can be disrupted and what essentialisms are taken for granted, than it is about a general, replicable and widely practiced commitment to anti-essentialism. Rather than understanding MacKinnon's provocative passage and the heat it generated as a primary scene in the war of essentialisms, one might consider this rhetoric as having come up against a discursive roadblock, one constituted by the convergence of an antiracism whose patriarchal subtexts have yet to be disrupted, and a feminist discourse that has yet to fully emerge from the historical associations of its presumed subjects. This, in the end, adds greater credence to the notion that at least this particular debate about essentialism is essentially about permissible disruptions and acceptable elisions, about who can "represent" and who cannot. One might frame these as largely political questions in that they reflect the power to ground and define the interests of the group, and not, principally speaking, about essentialist theory — whether it be feminist, antiracist, post-modern, or otherwise.

CONCLUSION

MacKinnon's work generally and *What is a White Woman, Anyway?* specifically help to focus attention on the essentialist paradigms that underwrite a significant portion of contemporary discourses on feminism as well as antiracism, especially those grounded in the particularized narrative of Black male endangerment. The comparison of the critiques of feminist essentialism on one hand, and the relatively muted critiques of male-centric views of antiracism on the other, call for a more robust analysis of the rhetorical practices of feminism and antiracism alike. Both projects should be subject to the same expectations, whether framed as non-essentialist or grounded in the lived conditions of those whose lives are circumscribed by both race and gender.

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