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Crossing the River of Blood Between Us: Lynching, Violence, Beauty, and the Paradox of Feminist History

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3 J. Gender Race & Just. 545-580 (2000)

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Crossing the River of Blood Between Us: Lynching, Violence, Beauty, and the Paradox of Feminist History

*Emma Coleman Jordan**

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I. AN INTRODUCTION TO LYNCHING: FIRST THE STORIES, THEN THE PICTURES

A. Family Ties to Violent Racial Etiquette

I interviewed my father, who was then eighty-three years old, and originally from New Orleans. He reminded me of a harrowing family story about a cousin who had narrowly escaped lynching for flirting with a white girl. I saw the pride in his lips and eyes as he told me that Grandpa Bolden, my

* Professor of Law, Georgetown University Law Center. This Essay is based upon Chapter Six of Emma Coleman Jordan's book *LYNCHING, THE DARK METAPHOR OF THE AMERICAN IDENTITY* (forthcoming 2000) and upon the keynote address given at the third annual Symposium of *The Journal of Gender, Race & Justice, Critical Race Feminism: Preparing Legal Thought for the 21st Century*, held November 6-7, 1998 at the University of Iowa College of Law.

paternal great grandfather, had pointed his Winchester rifle at “those peckerwoods who came to lynch his son and had threatened to shoot the first thing that moved.”

My daddy laughed. Old Man Bolden was known throughout the bayou as “mean.” The white men left and, later, Grandpa learned that they had gang-raped the woman his son had flirted with—to teach her a lesson. That story made me understand, in a very vivid and personal way, the connection between the control of white women through threats of violence and barbaric ritualistic violence to black men. The latter was justified by myths about the threat to white women’s social purity posed by black male sexuality. I told my family story to Anita Hill while we were reviewing the last edits of our book.¹ She was on leave at that time and we were just talking. We did more talking than writing, but we did eventually get down to some writing. While we were talking, I told her that I was putting the story that my father had told me in a footnote.

She responded with a story of her own. She said, “Oh yes, everybody has some lynching story in their family. My uncle was run out of Oklahoma and later lynched in the 1921 Black Wall Street Riots that occurred in Tulsa.”² She said, “it’s a very well-known story in this state. There were race riots that followed this lynching.”³ And we agreed that Clarence Thomas’ use of the metaphor during his confirmation hearings had been effective because it served as a clarion call to blacks to come unquestioningly to his defense.

After I completed the basic research on the history of lynching, I kept going, fueled by an almost compulsive curiosity about two distinct questions: How many black Americans had incorporated the violence of lynching into a coded family cautionary tale about survival in a universe controlled by hostile whites? How did the ubiquitous violence of lynching shape black American beliefs about the legal system and the rule of law? From this process of asking questions and seeking to integrate the responses into a coherent hypothesis about how lynching shaped attitudes about law enforcement, judges, and jury accounts of the world, I began giving virtually every black person with whom I had contact the “Jordan test”: I asked, “Do you have any lynching stories in your family? Does anyone know anything about lynching? What was the experience of lynching in your family?” And I began to learn that more and more people were responding with an affirmative.

1. ANITA FAYE HILL & EMMA COLEMAN JORDAN, *RACE, GENDER AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS* (1995).

2. Interview with Professor Anita Faye Hill, University of Oklahoma College of Law, in Los Angeles, Cal. (Apr. 1995). For the story surrounding the Black Wall Street Riots, see SCOTT ELLSWORTH, *DEATH IN A PROMISED LAND: THE TULSA RACE RIOT OF 1921* (1992).

3. Interview with Professor Anita Faye Hill, University of Oklahoma College of Law, in Los Angeles, Cal. (Apr. 1995).

The responses fell into three groups. In the first group, someone in the family had been lynched. That number was very small. The second group consisted of graphic accounts of near-lynching experiences of a family member. I belong to this category. The third and largest group consisted of those whose family members had been intimidated by lynchings in their communities. For this largest group, newspaper accounts or photographs of lynching victims often played a major role in amplifying and spreading fear and intimidation. These responses led me to continue to ask questions.

During a conversation with a former Wall Street Journal reporter,⁴ I asked these questions and I mentioned my research hypothesis that lynching was a contemporary civic metaphor for the black experience within the American legal system. I asked her whether her family had been affected by lynching. "Oh no," she said, "we're from Philadelphia. We never had any contact with Southern violence. My grandfather is originally from Danville, Virginia."⁵ But then she added: "Oh, wait a minute, that's how my family got to Philadelphia. My uncle threatened a white man who made sexual overtures to my grandmother. He fled Danville when he understood that he had been targeted for lynching. My grandfather once told me how scared he had been, when as a young boy in Surrey, Virginia, he was sent to live and work in the house of a man, who, everyone in town knew, had committed lynchings."⁶ Soon, I was committed to this "Jordan test" and anyone that I had contact with was certainly fair game.

B. Finding Barbaric Photographs in the National Family Album

I asked Kenneth Nunn, a faculty member of the law school of the University of Florida, "What about you and your family?" He said that he was from Nebraska and that his grandmother had told him about being present at the periphery of the scene of a famous picture of a lynching showing whites toasting and celebrating in the midst of a grizzly mob murder of a black man.⁷ He promised to fax me a picture. He did not, but he did not need to, because it was indeed a famous picture that I found in the Library of Congress photo archives on lynching.⁸ Looking through those pictures was the most emotional

4. Telephone Interview with Michelle McQueen, *ABC/Nightline* correspondent and former *Wall Street Journal* reporter (Nov. 1996).

5. *Id.*

6. *Id.*

7. Telephone Interview with Professor Kenneth Nunn, University of Florida College of Law (Sept. 1996).

8. See *infra* Appendix A, *The Burning of William Brown, Sept. 28, 1919*, National Association of Colored People Visual Achieves, Library of Congress.

research experience of my life. The sheer evil captured in the pictures propelled me even deeper into the project.

I spent more than a month going through the Library of Congress' Lynching Photo Archives and the Tuskegee Newspaper Clipping File on Lynching,⁹ as well as other photographs that were collected in the national "photo album" in the Library of Congress. And I must tell you it was a horrifying, truly grizzly experience. After viewing this graphic portrait of racial violence, abstract theories about race and gender take on new meaning and become searing reminders of the dehumanizing consequences of racial ideology. The pain of my father, grandfather, brothers and cousins became my own pain when I saw black men charred like so much leftover charcoal after a barbecue. The pain soon became the motivating force for my research and my commitment to delve deeply into this dark, complex secret of American identity in order to determine the impact of this barbarism on contemporary racial attitudes.

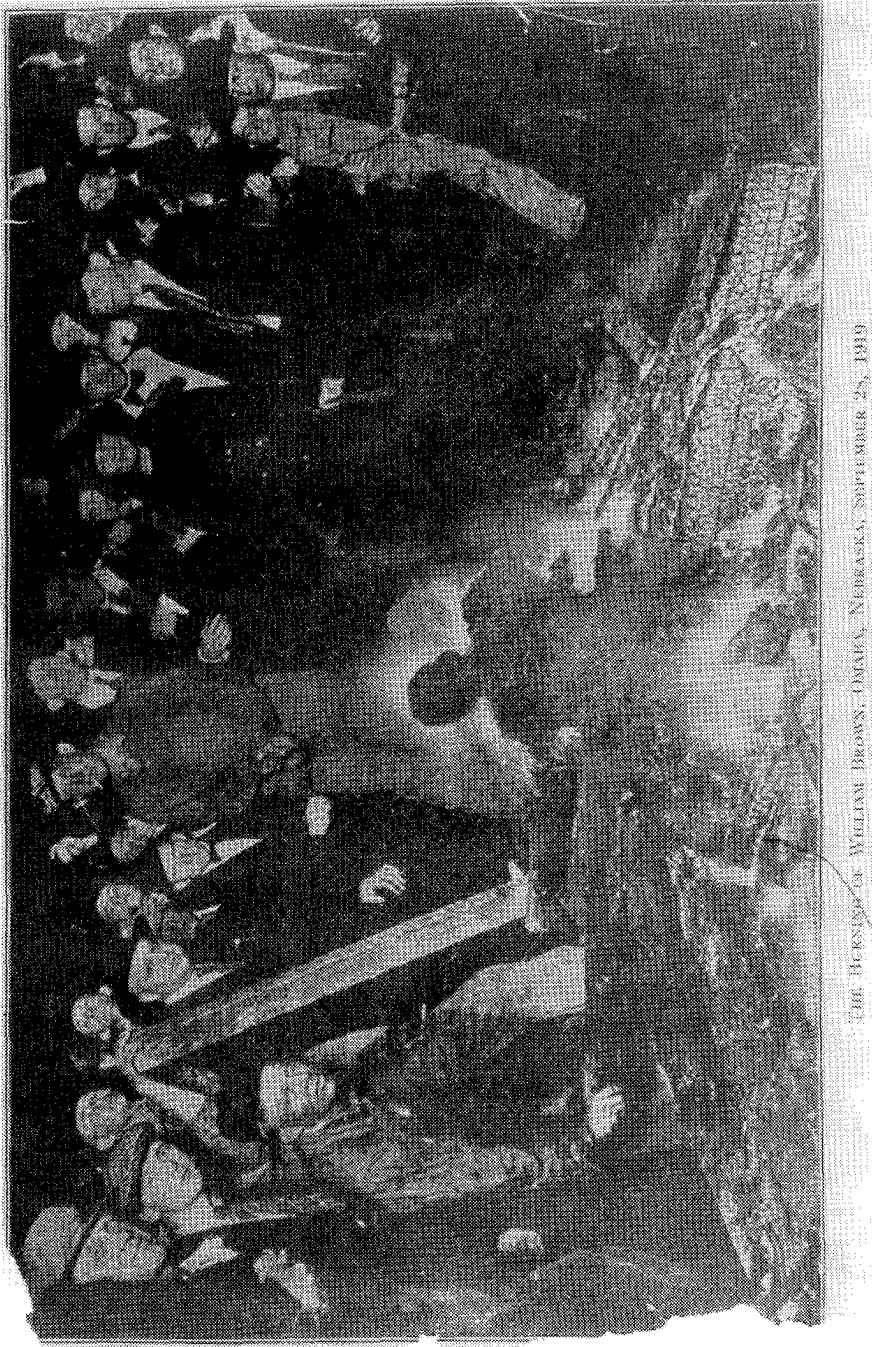
I reproduced one picture for use in my book on lynching. It is a picture of a scaffold that reads, in hand-lettered white paint, "Justice."¹⁰ There is a massive mob of people standing below the scaffold. When I first saw this picture, I assumed that it was a picture of a legal hanging. Then, I looked more carefully, and there was no post that went up high enough for a hanging. Instead, the victim had his hands tied behind his back to what was to be a burning stake. The platform was just high enough off the ground to provide clearance for a bundle of logs to fuel the fire beneath. The crowds had been assembled to participate in a spectacle lynching. The picture marked the beginning of ritual lynching-burning as racial sport.¹¹

Looking at these photographs sent me into a state of profound despondency. I cried. I stopped talking to my white neighbors. I withdrew, I became irritable. It deeply affected me to see the barbaric photographs, and to see the legacy in this concrete way. My reaction to the pictures I saw in 1997 are consistent with the public reaction to a recent exhibit of an especially

9. See generally National Association of Colored People Visual Archives (containing hundreds of photographic documents); Tuskegee Institute News Clippings File, 1899-1966; General Office File: Tuskegee Conference on Lynching Record 1940 at frames 0115-126, *microformed on* Papers of the National Association of Colored People, pt.7, ser.A, guide c.1 (University Publications of America) (detailing the findings and recommendations of the committee charged with reporting lynching numbers, defining, analyzing and researching the putative causes of the lynchings reported, hypothesizing about ways to prevent lynchings and determining effective reporting strategies when prevention fails).

10. JORDAN, *supra* note *.

11. See *The Lynching and Burning at the Stake of Henry Smith, Paris Texas, 1893*, National Association of Colored People Visual Archives, Library of Congress. This photo was made into a postcard and sold for 50 cents. *Id.* The caption reads: "The avengers of Little Myrtle Vance, and the villain brought to justice." *Id.* Grace Elizabeth Hale describes this lynching as the "founding event in the history of spectacle lynchings . . ." GRACE ELIZABETH HALE, *MAKING WHITENESS: THE CULTURE OF SEGREGATION IN THE SOUTH, 1890-1940*, at 207 (1998).



THE BURIAL OF WILLIAM BROWN, OMAHA, NEBRASKA, SEPTEMBER 28, 1919

Appendix A

gruesome collection of photo postcards of lynchings.¹² For example, one viewer of the collection had these comments after the viewing the collection on the Internet:

My heart literally hurt, and the tears welled up in my throat as I watched this. The impact is immeasurable. No wonder we have such unresolved pain, such conflict, and such guilt, still being played out in our social, economic and political lives. I am an African-American woman, and as I view this I feel pain and sadness, more than anger, sadness for the lost humanity of those people who so callously took human life¹³

For me the most horrifying element of the photographs was the sea of white faces in the crowd. In some of the pictures, some members of the mob posed brazenly, without hiding their faces, or showing any sign that they were engaged in murder. The photographs bore testimony to the undeniable legal immunity conferred by whiteness. The pictures and the stories provided a concrete perspective from which to begin formulating answers to my questions about the modern legacy of lynching. The cumulative emotional and intellectual burden of these accounts, the photographs, the stories, began to build. My growing experience in probing for links to this horrid past assured me that pursuing this project was a worthwhile effort and that I should in fact go forward with it.

As I began compiling specific histories of lynching and began focusing on the subject in greater detail, I identified a number of other prominent African-Americans who were members of families where racial lynching played a role. They include John Hope Franklin¹⁴ and Christopher Darden, the O.J. Simpson

12. *Journal E* (visited May 11, 2000) <<http://www.journale.com/withoutsanctuary/main.html>> (featuring photography from WITHOUT SANCTUARY: LYNCHING PHOTOGRAPHY IN AMERICA (James Allen ed., 2000)).

13. *Id.* (quoting from the comments posted by Tanya Y. Price on March 16, 2000).

14. In the same riots in which Anita Hill's uncle was killed, the Black Wall Street Riots in Tulsa, Oklahoma in 1921, in which more than 200 blacks were killed, historian John Hope Franklin's father, a lawyer from Rentisville, Oklahoma escaped death. Sharon Egiebor, *New Focus on Old Racial Wounds; Florida Plan to Pay for Black Town's Destruction in 1923 Draws Wide Interest*, DALLAS MORNING NEWS, Apr. 19, 1994, at 1A. When asked to comment on the feasibility of reparations for violence like that experienced in Tulsa and Rosewood, he said,

[t]he administration of justice in this country—the way in which the death penalty is rendered, something about the prison terms, the exploitation of the black community, the devastating havoc that drugs [are] playing in the black community. That's what we need to do. I'm not very sanguine about reparations.

Id. For a brief description of the race riot in Tulsa, see Lois Romano, *The Fire That Seared Into Tulsa's Memory; In the Ruins of a Riot, a City Learned Tolerance*, WASH. POST, May 30, 1996, at A1. The riot apparently began after the local newspaper published an inflammatory story that 19-year-old Dick Rowland had entered an elevator and attacked a white woman elevator operator and tore her clothing. *Id.* After Rowland was arrested, thousands of angry white men congregated outside the jail where

prosecutor, who told an audience after the trial that his grandfather, a sharecropper, was shot by a white landowner in 1930. Others include Ike Turner, the rock 'n roll singer, Malcolm X, and Elijah Muhammad who was traumatized as a child by a white man who approached him with a smile, and then displayed the severed ear of a lynch victim.¹⁵ The widespread nature of the lynching experience among African-Americans—either directly, or indirectly—became an incentive for me to pursue this story further, because I saw the clear implication of this vitally important, yet “forgotten” and erased, history for today.

While I was on research leave for this project, the O.J. Simpson trial dominated the newspaper headlines and television. It occurred to me that the O.J. Simpson¹⁶ and Rodney King¹⁷ verdicts exposed critical fissures in the

Rowland was being held and called for a lynching. *Id.* Rumors of the lynching incited blacks to arm themselves and head for the jail to meet the mob, and violence then ensued. *Id.* The National Guard was sent to Tulsa and in the end more than 200 blacks were reportedly killed. *Id.* The elevator operator refused to press charges, and Rowland was released. *Id.* It is commonly believed that Rowland actually tripped and bumped into the elevator operator, and grabbed her arm to keep her from falling, and that she screamed as a result. Romano, *supra*, at A1.

15. See Pam Belluck, *O.J. Prosecutor Takes the Stage*, N.Y. TIMES, Nov. 20, 1995, at B3. For an eyewitness account of historically prevalent violence, see IKE TURNER & NIGEL CAWTHORNE, TAKIN' BACK MY NAME: THE CONFESSIONS OF IKE TURNER 45 (1999) (relating the experience of watching white men castrate a black criminal suspect in Mississippi). See also KARL EVANZZ, THE MESSENGER: THE RISE AND FALL OF ELIJAH MUHAMMAD 23-24, 38-40 (1999) (describing the lynching of Muhammad's childhood friend, Albert Hamilton, in 1912 in their hometown of Cordele, Georgia and the comments of a photographer who took pictures and sold postcards of the lynching in nearby towns, bragging that, “I knew that nigger all my life”).

16. For many blacks, the “not guilty” verdict symbolized a victory fueled by a well-founded lack of confidence in the neutrality and fairness of the justice system. This distrust is the legacy of lynching and the complicity of law enforcement officials in lynching. The historic conditions are only reinforced by modern scandals involving police corruption targeting members of minority communities. For example, the Los Angeles Police Department Ramparts scandal has resurrected old wounds between that police force and minority residents of Los Angeles. For an overview of the impact and origins of the corruption scandal, see Jane Fritsch, *Squads That Tripped Up Walking the Bad Walk*, N.Y. TIMES, Mar. 5, 2000, at D6 (relating the admission by the New York City Police Department Street Crimes Unit that the Unit targets minority communities to the Los Angeles Police Department Ramparts officers' actions). See also Michael Wilbon, *A Celebrity Goes Free*, WASH. POST, Oct. 4, 1995, at C4.

A lot of black people could care less about Simpson and see him truly for what he is. They simply see this as payback, even if the score is still about 1 million to one. They feel the chickens might have come home to roost yesterday for all of our relatives and ancestors who've been beaten and raped and lynched and murdered by whites without any consequence whatsoever.

Id.; see also *The O.J. Simpson Verdict; Cheers, Boos Ring Out as the Verdict is Read; Reaction in Los Angeles Community Remains Just as Divided Now as Ever*, HOUSTON CHRON., Oct. 4, 1995, at A12.

That's how it should be because white folks have been doing stuff to black folks for all these years. . . . I don't care if he did it or not. There's been a lot of injustices done to the black community. So what if he did it and got away with it?

Id. (quoting Andrew Brown). But see Paul Brinkley-Rogers, *Barbers Polar: Verdict Splits Black and White*, PHOENIX REPUBLIC, Oct. 4, 1995, at A12 (quoting a white barber in Arizona: “It was a travesty

tectonic plates of the American justice system. Like the geologic structures deep beneath the earth's surface, the disparate attitudes of whites and blacks toward American law and justice are mostly hidden from view until those violent conflicts seize public attention. Then, these celebrated cases provide other predictable, but less visible, eruptions that expose incomprehensible differences of racial perspective. The moment when each of these verdicts was read challenged our fixed comfortable ways of seeing things. For whites, the policemen and the sheriff provided reassurance of safety and order. To many blacks, these officers evoked the prospect of trouble, of irrational racial violence and the failure to protect black life and limb.¹⁸

If we are alert, the jolt of momentary disbelief at the verdicts can jump-start the difficult and deep reconstruction of widely held racial attitudes that erode the common fabric required for jurors to become peers and for jury verdicts to enjoy wide acceptance. For those who are willing to risk the loss of reassuring stereotypes, the path to break-through lines of racial awareness leads to a potent Pandora's box of racial secrets and denial. Lynching and the role of women, white women, is one of these not-so-secret secrets.

of justice! I was totally disgusted"); *see also* James Tobin, *Reactions of Metro-Detroiters Typify Racial Division Over Case*, DETROIT NEWS, Oct. 4, 1995, at A1 (quoting an unidentified woman: "That jury is racist The jury had too many blacks. And you can print that").

17. For responses to the verdict in which four Los Angeles police officers were acquitted after beating Rodney King, see Mark Platte, *Fire Bombs Hit S.D. Store, Office; Police Dismayed by King Verdict*, L.A. TIMES, Apr. 30, 1992, at B1 (quoting police officer Shirley Black: "We as black law enforcement persons from all respective areas of law enforcement recognize today as being a day of regression, going back to the days when you could do anything if you were white and had a badge"); *see also* Karen Grigsby Bates, *Perspective on the Rodney King Verdict*, L.A. TIMES, Apr. 30, 1992, at B7 ("My mind's eye flashed back to tales of trials in the segregated Deep South, trials where—when they occurred at all—smirking white defendants who had assaulted or killed black people walked away, acquitted by a jury of what was indeed their peers."). *But see Memory Will Haunt Him*, USA TODAY, May 1, 1992, at I4A (reporting responses of readers who agreed with the verdict). One person stated:

The Rodney King incident wasn't a case of racism. It was a case of whether excessive force was used by the police. . . .

King did not adhere to the police officers' request, so what happened was just as much his fault as it was the officers' fault. There is no police brutality in this country. If you don't do what a police officer says, he has the right to protect the city that he represents and the citizens of that city and state.

Id. (quoting Marilyn Calkins). Others who defended the verdict generally blamed the press for only showing part of the videotaped beating and argued that the jury was better informed because it was able to see everything from beginning to end. *See, e.g.*, Reed Irvine & Joe Goulden, *Cached Tape Segment*, WASH. TIMES, May 14, 1992, at G4 ("Had the censored portion been shown, the nation perhaps could have understood the jury's verdict, sparing us the horrible trauma of the Los Angeles race riots.").

18. *See* JESSE JACKSON, LEGAL LYNCHING, RACISM, INJUSTICE AND THE DEATH PENALTY 16-17 (1996); *see also* RANDALL KENNEDY, RACE, CRIME AND THE LAW 20 (1997) (arguing that legal discourse helps to construct race in relation to crime).

II. CROSSING THE RACIAL DIVIDE IN FEMINIST HISTORY

We must cross a field of pain and death to achieve legal equality between black women and white women. The hidden legacy of ritual lynching feeds a deep and treacherous undertow of competition between white and black women for economic and cultural power today. This competition is more intense because it takes place within the constricted boundaries of gender defined by white men.

A. *The Racial Strategies of Early Feminists*

Understandably, early feminist legal theory¹⁹ and history focused almost exclusively on establishing white women's autonomy against white male dominance. The vehicles of nineteenth century women's liberation included elements of public equality such as ownership of property, the right to vote, access to male dominated occupations, equal education and employment opportunity.²⁰

Twentieth century feminists extended the equality project by penetrating the "private" sphere and attacking the very notion of a separate zone of family relations which was immune from government intervention to protect women from male abuse.²¹ Cultural feminists like Carol Gilligan took another approach, arguing that women's experiences as sexual subordinates gave rise to a distinctive moral sensibility.²² The portrait of white men as victimizers thus became central to advancing the psychosocial and legal agendas for white women's autonomy in this century.²³

19. See, e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 598 (1990) (critiquing the racial blindness of feminist legal scholars which still provides groundbreaking analysis).

20. See generally Jennifer K. Brown, *The Nineteenth Amendment and Women's Equality*, 102 YALE L.J. 2175 (1993) (arguing that the Nineteenth Amendment, recognizing women's right to vote, should be seen as affirming women's constitutional equality).

21. *Id.* at 2182-204.

22. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 6 (1982) (stating that women's "social subordination" contributes to their "moral concern").

23. See generally SUSAN ESTRICH, *REAL RAPE* (1987) (examining the legal treatment of rape cases in the United States); SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* (1975) (analyzing the sociology of rape and the unequal treatment of men and women under the law); SUSAN BROWNMILLER, *FEMININITY* (1984) (discussing the demands women, read white women, must meet in order for society to consider them "feminine" and thus acceptable).

B. The Paradox of Subordination

This largely bi-polar account of gender relations was a necessary, yet woefully defective, model for true autonomy. If the feminist dialogue is to mature, the complex story of the violence that underlies white women's power as distinct from the power of white men must move from the parenthesis to the central thesis of a new debate about the uses and abuses of power among women. A healthy next stage of feminist discourse will include engagement and accountability for the dual role of victim and victimizer. This will require exploration of the paradox that a subordinated group could at once be the target of violence and disadvantage, while at the same time be the perpetrators of pervasive racial and sexual violence. This Essay seeks to explore the meaning of the complex history of lynching for understanding the relationships between black women and white women today.

III. A CONTESTED HISTORY: AGREEING TO DISAGREE

A. The Racial Contradictions of Jesse Daniel Ames, Anti-Lynching Crusader

Jacquelyn Dowd Hall, a noted historian, chronicles Jesse Daniel Ames' leadership of the Association of Southern Women for the Prevention of Lynching in her influential book *Revolt Against Chivalry*.²⁴ Hall's primary argument is that white women's participation in the anti-lynching campaigns of the 1930s reflects a battle against racism.²⁵ Hall's emphasis on the anti-racist character of the Southern women's anti-lynching campaign is seriously misleading. Although Hall reports the racism of white women leaders of various anti-lynching initiatives toward black women collaborators,²⁶ she does not provide a sustained examination of the contradictory, often mutually antagonistic impulses these leaders displayed. However, in fairness, Hall does report that within the white women's movement "spontaneity gave way to a reassertion of traditional hierarchies and assumptions . . ." ²⁷ Ironically, during this formative period of women's consciousness, the plight of black men provided a central opportunity for white women to participate in the *verboten* arena of public talk about race and sex. These same white women leaders

24. JACQUELYN DOWD HALL, *REVOLT AGAINST CHIVALRY: JESSIE DANIEL AMES AND THE WOMEN'S CAMPAIGN AGAINST LYNCHING* (2d ed. 1993). Hall argues that white women's participation in organized efforts to end lynching were an example of "feminist antiracism." *Id.* at xx. In this study of Jessie Daniel Ames and the Association of Southern Women for the Prevention of Lynching, Hall observes "that the racism that caused white men to lynch black men cannot be understood apart from the sexism that informed their policing of white women and their exploitation of black women." *Id.*

25. *Id.* at xxi.

26. *Id.* at 99-102, 105-06.

27. *Id.* at 95.

summarily rejected black women's call for suffrage and equal treatment with white women.²⁸ The enormous potential of anti-lynching protests for establishing a bridge of equality between black and white women was thereby dissipated. These early proto-feminists used the very stereotypes that fueled mob hatred to degrade and exclude black women leaders who sought to join this ironically segregated effort to end racial violence against black men.²⁹ Hall reports that "without consulting [black women]" white anti-lynching leaders decried "any act on the part of Negro men which excites the mob spirit."³⁰ This was an implicit endorsement of the stereotype which cast black men as rapists. In an introduction to the second edition, prompted by the Hill-Thomas Hearings, Hall offers only a slightly more focused acknowledgment of the meaning of white women's racism during the anti-lynching movement:

I do not mean to downplay white women's complicity: they sometimes betrayed their lovers with false charges of rape; they helped to stir up rape scares; their faces can be found in the chilling photographs of crowds gathered to watch African-American men suffer and die. I do, however, argue that racism intensified sexual hierarchy and rape scares functioned as a means of both sexual and racial control.³¹

Moreover, if you look at the structures of feminist leadership, one of the early stories, told so well by Jacquelyn Dowd Hall, is the story of the Association of Southern Women for the Prevention of Lynching, led by Jessie Daniel Ames.³² Returning again to Hall's recounting, when Ames did not enjoy the political power that she thought she should enjoy in the suffrage movement,

28. See HALL, *supra* note 24, at 96.

29. *Id.* at 101 (citing Mrs. T.W. Bickett, Chairperson of the Interracial Women's Committee). Mrs. Bickett, a white woman, introduced Charlotte Hawkins Brown, a black woman and a fellow activist at an Interracial Women's Committee meeting:

The memory of slavery is very dear to me because in the women of that day the colored women, there was the same loyalty of purpose, integrity . . . that I find among the women who are leading their race today. [It was] my old Negro mammy [who] endeared [me] to the people of her race, however little I might find in them individually to appeal to me today. . . . I cannot say anymore, Mrs. Brown, for your race today than . . . that you are as fine as my Negro mammy.

Id.

30. *Id.* at 96 (quoting from a statement read by Carrie Parks Johnson, Director of Woman's Work for the Commission on Interracial Cooperation at an Interracial Woman's Committee Conference).

31. *Id.* at xxi.

32. See generally HALL, *supra* note 24 (discussing Jessie Daniel Ames' life and career as an activist in the anti-lynching movement).

she left that movement in 1930 and identified a new crusade in which she could be an uncontested leader—the anti-lynching movement.³³

While Ames is described as an important figure in the anti-lynching effort, Ames' record is much more mixed than is evident at first glance. In fact, Jessie Daniel Ames was a person who disparaged the work of her African-American contemporaries.³⁴ Mary McLeod Bethune³⁵ had a distant relationship with her.³⁶ So, her status as a legendary race-conscious feminist belies the fact the more difficult and complex reality of her willingness to use the tools of racial subordination to achieve her position of power in the anti-lynching movement. For me, this disqualifies her from feminist beatification.

Ames' stance on critical legislative initiatives to correct the problem of lynching was racist by any contemporary measure. She opposed the anti-lynching bills that African-Americans had introduced in Congress to obtain federal sanctions for lynching.³⁷ Jessie Daniel Ames, at first, appeared neutral, refused to support, and then ultimately, behind the scenes, became aggressively opposed to anti-lynching legislation.³⁸ It was her way or the highway. Her way was lobbying, fundraising, and going to the scene to investigate after lynchings.³⁹ She did not believe that lynching legislation was needed.⁴⁰ The arrogance of this position reveals racial subordination at work.

If black civic and political leaders had concluded lynching legislation was needed,⁴¹ their views were entitled to complete deference. For it was blacks whose necks were in the noose and whose bodies could be burned at the stake.

33. *Id.* at 56-66.

34. Ames seldom saw African-Americans as equals in the struggle against their own oppression. *See id.* at 250. Hall admits that Ames "frankly" could not see any "contribution the Negro race itself could make in the eradication of lynching." *Id.* at 181-82.

35. *Id.* at 81 (introducing Mary McLeod Bethune and providing a biographical sketch of the activist). Bethune was one of 17 children born to parents in slavery. *Id.* She established Bethune-Cookman School in Daytona, Florida, and was the president and founder of the National Council of Negro Women. HALL, *supra* note 24, at 81. She went on to become the only woman cabinet member of Franklin Delano Roosevelt's "Black Cabinet." *Id.*

36. *Id.* at 124-26 (discussing Mary McLeod Bethune's work with Ames on the Commission on Interracial Cooperation).

37. *Id.* at 237-38.

38. *Id.* at 239-51.

39. *Id.* at 113.

40. HALL, *supra* note 24, at 239-51.

41. *See* CLAUDINE L. FERRELL, NIGHTMARE AND DREAM: ANTI-LYNCHING IN CONGRESS, 1917-1922, at 192-93 (1986); HALL, *supra* note 24, at 245 (noting that the Dyer anti-lynching bill was pushed through the House of Representatives despite fervent lobbying against it). A poll conducted in January 1937 showed that 70% of the nation and 65% of Southerners believed Congress should pass federal legislation making lynching a crime. *Id.*

Thus, Jessie Daniel Ames is a complex figure. There are many laudable achievements of the Southern women's anti-lynching crusade. However, these achievements present a more complex, more nuanced story than is made evident. Jacquelyn Dowd Hall's work is seminal because she recaptures a white woman's story from the forgotten past; but at the same time Hall contributes to the myth of the white woman who saved black America from the practice of lynching, when in fact, the story is much more complex than that.⁴² It retells, in its silences, more than Hall may know.

B. Can a Victim Be a Victimizer?

The story of lynching, in Hall's telling is still a story of three victims: white women, black men, and black women. There is room for only one victimizer in her account. Hall does not pursue the problem of feminist racism within the anti-lynching movement as a central concern. Instead Hall acknowledges white women's role as victimizer as an apologetic afterthought rather than an equal focus of the story.⁴³ A fuller, more complex account would acknowledge and explore the paradox of white women's sexual autonomy being indirectly controlled by lynching, while also benefitting from the same racial stereotypes which reinforced the subordination of black women.⁴⁴ Perhaps a more balanced explanation of the role of white women in the anti-lynching campaign would confirm the contradiction of their willingness to accept all of the benefits of white supremacy, even as they battled lynching. The paradox of feminist history is that lynching was used as a mechanism to control the social behavior and status of white women, and African-Americans—men and women, even as white women benefitted from their elevated position in the racial hierarchy built on lynching.⁴⁵ Therefore, the first step across the river of blood between us requires identification of, and acceptance of the complex role white women played during the era of lynching.⁴⁶ Without a forthright acknowledgement of

42. See, e.g., HALL, *supra* note 24, at xxi-xxii (acknowledging white women's complicity in lynching and the racism within white anti-lynching campaigns, while celebrating Ames' ability to rhetorically reconceptualize the African-American man and woman for whites and thereby change Southern attitudes and break through racial barriers).

43. *Id.*

44. See *id.* at xxiv-xxvi, 101.

45. See MARTHA HODES, *WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE NINETEENTH CENTURY SOUTH* 6 (1997) (describing the increased penalization of interracial sexual relations after the Civil War as a defensive exercise in white patriarchal power).

46. See HALE, *supra* note 11, at 231-36 (describing the role white women played in lynchings, both in actual lynchings and literary lynching narratives); SANDRA GUNNING, *RACE, RAPE AND LYNCHING: THE RED RECORD OF AMERICAN LITERATURE, 1890-1912*, at 108-12 (1996) (explaining that white women were divided on the issue of lynching in the late 1800s and into the early twentieth century and particularly noting the position of Rebecca Latimer Felton, a suffragist and temperance advocate, in a speech to the State Agricultural Society of Georgia in 1897 in which she called for white men to "lynch a thousand times a week" if necessary to protect white women from black rapists); see

this untidy fact of feminist history coalitions between black and white women today will not succeed.⁴⁷

IV. THE ERASURE OF HISTORY

Contemporary histories of the South have focused on the primary targets of lynching:⁴⁸ black men.⁴⁹ These studies show that lynching became a central feature of the American imagination after the Civil War.⁵⁰ As Mark Twain observed, lynching became a habit.⁵¹ Systematic review of the conditions surrounding the most intense periods of lynching reveal that the practice thrived because there was a broad social consensus supporting it.⁵²

also HODES, *supra* note 45, at 202 (describing the use of lynching to preserve racial hierarchy between poor whites and blacks). Hodes concludes, “[f]or to characterize all white women as pure had an important effect: it made sex between a black man and a white woman by definition rape, because a ‘pure’ white woman, no matter how poor, could not possibly (in white minds) desire sex with a black man.” *Id.*

47. See PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 307 (noting the suspicions black women have of white women’s agendas within the feminist movement).

48. See HALL, *supra* note 24, at xxi.

49. See generally ORLANDO PATTERSON, *RITUALS OF BLOOD: CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES* (1998) (considering, like Hall, the link between lynching as a vehicle to assert control over both black men and white women’s sexuality, in order to assert the primacy of white male sexuality). However, Patterson’s original contribution to the analysis of lynching focuses on the most barbaric subset of lynchings, those involving mass mobs “which had the full support of the community for their extralegal and illegal activities.” *Id.* at 179. Such mass mob lynchings were quite prevalent, making up over 34% of all lynchings in Georgia and 40% of lynchings in Virginia. *Id.* (citing W. FITZHUGH BRUNDAGE, *LYNCHING IN THE NEW SOUTH: GEORGIA AND VIRGINIA, 1880-1930*, at 36 (1993)). Patterson argues that this type of lynching was a highly ritualized tribal sacrifice that served to “symbolically recreate a disrupted or threatened social world It is a brutal rite of passage enacted not primarily for the individual but for the community.” *Id.* at 175 (footnote omitted).

50. See, e.g., STEWART E. TOLNAY & E.M. BECK, *A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882-1930* (1995). Tolnay and Beck describe lynching as

an integral part of the southern economy and class structure that emerged during the 1870s and 1880s to replace slavery. . . . At all times, racial violence and the terroristic control of the black population were an integral part of the southern society and economy, which was heavily dependent upon the availability of sedentary, docile and subordinate tenant farmers

Id. at 244; see also BRUNDAGE, *supra* note 49, at 6-7 (describing white southerners’ use of violence against blacks “to restore their supremacy” after the Civil War).

51. Mark Twain, *The United States of Lyncherdom*, reprinted in MARK TWAIN: *COLLECTED TALES, SKETCHES, SPEECHES & ESSAYS* 479, 480 (Louis J. Budd ed., 1992) (referring to lynching as “the usual crime” throughout the country). This essay was written in 1901 and published posthumously in 1923. *Id.*

52. See BRUNDAGE, *supra* note 49, at 26-48. Brundage notes that “[t]he great variations in form that mob violence could assume underscore the complex and contradictory character of lynching. No single model of lynching can describe adequately the great differences in size, organization, and

This social agreement was an indispensable common denominator of the widely varied circumstances surrounding 4,743 extralegal, violent, and public murders that took place between 1882 and 1968.⁵³ An examination of lynching offers an opportunity to break the silence of denial about white women's complicity in the lynching of black men. Racial subordination is at the heart of social, economic, political and cultural relationships between blacks and whites. White women's participation in this subordination succeeded in establishing, then preserving, a complex code of gender and racial hierarchy focused primarily upon the sexuality of white women and black men.⁵⁴

Examining the state of lynching history provides a window into a more general problem of the racial aphasia of American culture—the willingness to see no evil, hear no evil, speak no evil about unpleasant truths of the American past. The erasure of history is itself a corollary form of subordination. When traumatic events are removed from the collective memory, the resulting distortion of contemporary relationships becomes a new avenue to separate the survivors and their heirs from the truthful legacy of the trauma. This multi-layered process of subordination severs the stabilizing continuity between now and then, between truth and falsehood. Like invisible ink, the process of lynching and its structure of ideological subordination was omitted from most formal histories of the United States.⁵⁵

The quintessential lynching offense was social contact with a white woman by a black man, whether or not the contact had been mutually arranged.⁵⁶ Lynchings could be triggered by offenses as trivial as failure to observe the racial courtesy of moving aside to let a white woman pass, or as serious as rape or murder.⁵⁷ The sanction for this bizarre spectrum of offenses was the same:

motivation that distinguished mobs . . .” *Id.* at 18.

53. See PATTERSON, *supra* note 49, at 179.

54. See HODES, *supra* note 45, at 1 (exploring the evolution of “white anxiety about sex between white women and black men”). She concludes that the “toleration” of interracial sex “was mediated by limits of both patriarchy and class.” *Id.* at 4.

55. For a discussion of how the history of lynching has been neglected by major American historians, see Joel Williamson, *Wounds Note Scars: Lynching, the National Conscience and the American Historian*, 83 J. AM. HIST. 1221, 1242-53 (1997).

56. See HODES, *supra* note 45, at 176.

57. See JOEL WILLIAMSON, *THE CRUCIBLE OF RACE: BLACK-WHITE RELATIONS IN THE AMERICAN SOUTH SINCE EMANCIPATION* 117 (1984) (“[B]lack men . . . avoid[ed] occasions that could possibly be twisted into a semblance of rape . . . [B]lack men came generally to avoid being alone with white women, were careful not to meet feminine eyes with a level gaze, and guarded the tone of their voices in the presence of black females.”). Williamson also notes that “Whites seem to have recurrent manias about blacks’ ‘bumping’ whites, especially white women, off the sidewalks.” *Id.* at 187; Ida B. Wells-Barnett, *A Red Record*, in *ON LYNCHING* 7, 16-20 (William Loren Katz ed., 1969) (detailing the crimes of which black men were accused of committing and for which they were lynched, including murder, rape and “insulting whites”).

spectacle lynching.⁵⁸ These events were orchestrated to teach black people their proper place in society.⁵⁹ To have the necessary terroristic effect of compelling compliance with the post-slavery code of racial subordination, lynchings were usually held in public spaces⁶⁰ and advertised in advance,⁶¹ often times drawing festive crowds as large as 10,000.⁶²

One of the myths about lynchings is that they occurred in the backwoods, organized by a few hooded Klansmen in the bayou, attended only by men, late at night or in the wee hours of the early morning, hidden by the cover of darkness. However, the facts reveal the participation of women and children in lynch mobs in what one scholar has described as “orgy-like atmospheres.”⁶³ Professor James Comer, a noted black psychiatrist on the Yale faculty who specializes in issues related to children and public schooling⁶⁴ notes the psychological importance of the communal dimension of lynching:

58. See FERRELL, *supra* note 41, at 77 (indicating that “everything from common law crimes against person and property [committed by blacks] to the blacks’ refusal to settle into his ‘place’ without argument or protest” catalyzed the lynching of blacks by whites after 1880); see also WILLIAMSON, *supra* note 57, at 116-17; DAN LACY, *THE WHITE USE OF BLACKS IN AMERICA* 132-33 (1972) (“In the face of a charge of rape, it would require great courage and quick action by local authorities . . . to prevent a lynching.”).

59. See BRUNDAGE, *supra* note 49, at 18 (“Lynchings of blacks had a twofold nature: not only were they intended to enforce social conformity and to punish an individual, but they also were a means of racial repression.”); HALE, *supra* note 11, at 203; LACY, *supra* note 58, at 133-34; see also HODES, *supra* note 45, at 203 (“[A]n unwanted glance, or accidental touch might be transformed by whites into sexual violence.”).

60. These public sites included the town square and main streets. Even courthouses were the sites of lynchings. See *Lynched Negro’s Body Is Hanged*, BIRMINGHAM POST, Oct. 27, 1934, at A1-2, reprinted in part in RALPH GINZBURG, 100 YEARS OF LYNCHINGS 222-23 (1988) (describing the torture of Claude Neal, a black man accused of murder who was forced to perform self mutilation, shot at least 18 times, and then dragged through the streets behind an automobile to the town square where thousands waited for the body, which, upon arrival, was hung from a tree in the front of the courthouse). Lynchings were often carefully planned to teach a lesson to the black community, and whenever possible an easily accessible and highly visible location was chosen. See generally BRUNDAGE, *supra* note 49 (describing the ritualistic function of lynchings for the white community).

61. See HODES, *supra* note 45, at 176-77 (indicating that notices announcing lynchings were printed in local papers in the South and describing a typical lynching of a black man accused of raping a white woman as including perpetrators who were unmasked, spectators of all classes, and describing the general festive nature of the lynching, including the presence of families who had traveled for miles and who brought picnic supplies for the event); see also TOLNAY & BECK, *supra* note 50, at 10 (“The blatant race-baiting of the *Independent Monitor* [newspaper] . . . and the explicit endorsement of violence by the newspaper legitimated the use of terrorism to ensure . . . white supremacy.”).

62. See PATTERSON, *supra* note 49, at 193-94.

63. JAMES P. COMER, *BEYOND BLACK AND WHITE* 134 (1972).

64. Doctor James P. Comer is the Maurice Folk Professor of Child Psychiatry at the Yale University School of Medicine’s Child Study Center. Professor Comer’s books include *BEYOND BLACK AND WHITE* (1972); *MAGGIE’S AMERICAN DREAM: THE LIFE AND TIMES OF A BLACK FAMILY* (1988); *RALLYING THE WHOLE VILLAGE* (1996); and *CHILD BY CHILD: THE COMER PROCESS FOR CHANGE IN EDUCATION* (James P. Comer et al. eds., 1999).

The conduct of whites who participated in murdering and lynching blacks suggest that these grizzly events served as a catharsis by purging the evil whites feared in themselves and “projected” on to the blacks. Black victims were castrated, tortured, burned and mutilated by white men, women and children in drunken orgy-like atmospheres.⁶⁵

Thus the lynching experience became the defining experience of both whiteness and blackness. Through this gruesome social spectacle, repeated over and over in cities as widely dispersed as Elaine, Arkansas; Omaha, Nebraska; Wilmington, Delaware, the code of behavior for “free” blacks was established.⁶⁶ Lynchings became the preferred method of racial subordination because this ritualized form of violence served deeply shared norms of racial superiority.⁶⁷ Lynchings were explicitly approved by large majorities in the South and were tacitly approved by large majorities in the North; thus, they reflected not only the consensus of the communities in which these events occurred, but the passive agreement of an entire nation.⁶⁸ No one who participated in a lynching needed to fear criminal sanction.⁶⁹ The rule of law became mob rule.⁷⁰

The phenomenon of mob rule reveals a further distortion of the history of lynching that became an accepted representation of fact over time. Lynching was not merely a hanging without a trial, a premature acceleration of an otherwise well-ordered judicial process.⁷¹ Despite the appearance of disorder,

65. See COMER, *supra* note 63, at 134.

66. See generally Emma Coleman Jordan, *Lynching Research Timeline* (1996) (unpublished research memorandum, on file with *The Journal of Gender, Race & Justice*) (outlining the dates and locations of selected lynchings and historical events).

67. See HALE, *supra* note 11, at 228 (stating that lynching was “the unified assertion of white supremacy”); PATTERSON, *supra* note 49, at 191-93 (discussing white southerners’ preoccupation with total racial subordination in the post-Civil War South).

68. See generally Twain, *supra* note 51 (discussing the lynching phenomenon in Missouri and the increase in lynching during the early twentieth century throughout the country as a reflection of America’s degradation as a society).

69. See GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 562 (1944) (stating that while local authorities tried to prevent lynchings, they did not actively seek to punish lynchings).

70. See JAMES HARMON CHADBOURN, *LYNCHING AND THE LAW* 13-28 (1933) (providing an historical analysis of legal responses to lynching).

71. According to *Webster’s*, the term “lynch law” derives from the tribunals of William Lynch, of Pittsylvania, Virginia circa 1776. See RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 1148 (2d ed. 1998). A *Washington Tribune* article contains the following report:

On Route 29, two miles north of Alta Vista, Virginia, stands an historical marker of the Virginia Highway Commission which tells the following story:

“One hundred yards west of here stands a walnut tree under which Colonel

the repetitive structure of the lynching ritual reveals a practice that was as ritualized and detailed as the official ritual of the death sentence imposed after due process of law and carried out in state sanctioned hanging.⁷² Lynch victims were frequently sexually mutilated, and spectators fought over souvenirs of the event.⁷³ The souvenirs often included severed human body parts—ears, fingers, gonads, and toes of lynching victims placed in jars filled with alcohol and displayed in white homes and businesses as evidence of their participation in the ritual of lynch law.⁷⁴

W.E.B. Du Bois, responding to reports of a threatened lynching in Newman, Georgia, went to the town only to discover that Sam Holt, the victim, had already been lynched and that his fingers were on display.⁷⁵ Du Bois turned back, realizing that his mission was futile.⁷⁶

The actual events of leading up to and immediately following a lynching were only the central core of concentric circles of terror radiating outward from the physical violence to its direct victim. The larger circle around a lynching created a complex process of incredible barbarity and inhumanity that

Charles Lynch held an informal court in 1870 for the trial of Tories and criminals who were later whipped. This form of summary justice was first used by his brother, John Lynch, founder of Lynchburg. From this crude form of justice evolved the term 'Lynch Law.' It is claimed that John Lynch used such methods to rid the neighborhood of escaped slaves."

See Origin of the Word "Lynch," WASH. TRIB., Sept. 1, 1934, at 15, reprinted in GINZBURG, *supra* note 60, at 220.

72. *See generally* TRUDIER HARRIS, EXORCISING BLACKNESS: HISTORICAL AND LITERARY LYNCHING AND BURNING RITUALS (1984) (describing and identifying the figurative and literal uses of racialized ritual violence in American society to constitute symbolic communities and the cultural function of lynching as an example of such violence).

73. *See id.* at 6 ("White men, women, and children would hang or burn (frequently both), shoot, and castrate the offender, then divide the body into trophies."); *A Negro Burned at the Stake in the Presence of Thousands*, SPRINGFIELD WKLY. REPUBLICAN, Apr. 28, 1899, at 4.

Before the torch was applied to the pyre, the negro was deprived of his ears, fingers and other parts of his body. . . . Before the body was cool, it was cut to pieces, the bones were crushed into small bits and even the tree . . . was torn up and disposed of as "souvenirs." . . . Those unable to obtain the ghastly relics direct paid their more fortunate possessors extravagant sums for them.

Id.

74. *See* HARRIS, *supra* note 72, at 8 (citing Richard Maxwell Brown, *Legal and Behavioral Perspectives on American Vigilantism*, in PERSPECTIVES IN AMERICAN HISTORY 110-11 (1971) (describing the aftermath of the lynching of a man named "George" in the 1890s in which his "skin was tanned and made into a medical instrument bag, razor strops, a pair of lady's shoes, and a tobacco pouch. The shoes were displayed in the Rawlins National Bank for years").

75. *See* HODES, *supra* note 45, at 207-08; *see also* W.E.B. DU BOIS, DUSK OF DAWN: AN ESSAY TOWARD AN AUTOBIOGRAPHY OF A RACE CONCEPT 602-03 (1940) (retelling the story of a lynching and subsequent display of the victim's body parts in a meat market).

76. *See* HODES, *supra* note 45, at 208.

established the dominance of the white majority and the subordination of blacks.⁷⁷ The last circle is perhaps the cruelest of all. It consists of the creation of myths that falsely shrink the size of the mob,⁷⁸ redraw the geography of culpability to include only the rural South,⁷⁹ extract women and children from the mob,⁸⁰ paint the victims as guilty without evidence,⁸¹ and focus on sexual predation,⁸² thereby eliminating the large number of lynchings that occurred for minor violations of the code of racial subordination.⁸³ The myths became history in the absence of critical thinking by white scholars of Southern history who were the intellectual arbiters of this vastly contested piece of American history.⁸⁴ Thus, the oral and written histories of black families were forced underground. Even the efforts of black historians to set the record straight were marginalized in the arena of intellectual authority to control the history of racial violence.⁸⁵ The prevailing myths surrounding lynching are the source of the divided perception about law and our understanding of the responsibility for this barbaric practice.

A. Repressed Memory as a Vivid Code of Racial Survival

The white community has suppressed this memory.⁸⁶ For them, it is too horrible to contemplate. Black Americans, by contrast, have in fact retained either the direct memory of lynching or lessons for surviving under the specter

77. *Id.* at 176 (stating the lynching of black men was intended to “sustain an atmosphere of terrorism that was in turn intended to maintain the racial hierarchy that emancipation and Reconstruction had begun to destroy”).

78. *See* PATTERSON, *supra* note 49, at 193-94 (citing to reports of crowds of up to 10,000 onlookers at a lynching).

79. *Id.* at 176-77; TOLNAY & BECK, *supra* note 50, at 239-57.

80. *See The Lynching of Rubin Stacy, July 19, 1935, Fort Lauderdale, Florida, in WITHOUT SANCTUARY: LYNCHING PHOTOGRAPHY IN AMERICA, supra* note 12, at 57 (featuring photographic evidence of the presence of women and children in lynch mobs); HODES, *supra* note 45, at 176-77.

81. *See* Wells-Barnett, *supra* note 57, at 8.

82. *Id.* at 16-20; BRUNDAGE, *supra* note 49, at 58 (“Ignoring statistics that showed that sexual offenses did not spark most lynchings, white southerners maintained that rape was the key to lynching.”).

83. *See* Wells-Barnett, *supra* note 57, at 10-11, 16-20; PATTERSON, *supra* note 49, at 179 (indicating that as many lynchings occurred by reason of a combination of “offense to whites” and “other crimes” as for homicide, the most offered justification for lynching).

84. *See* Williamson, *supra* note 55, at 1247-52.

85. *Id.* at 1250.

86. *Id.* at 1240.

of unpredictable racial violence passed on through family lore.⁸⁷ This memory has been processed in the form of healthy racial survival training given to virtually every black male child.⁸⁸ The social code imposed by lynching extended well into the twentieth century. After the lynching of fourteen-year-old Emmett Till in Mississippi in 1955, a black man did not dare whistle at a white woman, nor did he dare indicate through his actions even the slightest interest in sex with white women.⁸⁹ No white woman could be trusted, even those who actively courted black men.⁹⁰ They had the power to cry rape without accountability.⁹¹ They could launch a rein of terror upon an entire community of blacks with impunity.⁹²

During the O.J. Simpson trial, such “folk” knowledge became visible. For example, the belief that a jury would not render an impartial verdict if it was not a majority black jury was widely shared in the black community.⁹³ Today we see it on display in the extremely disparate reaction of many blacks to the O.J. Simpson verdict,⁹⁴ the Rodney King beating,⁹⁵ and the shooting of

87. For Julia Bond’s recounts of the lynching of Jerome Wilson, see HORACE MANN BOND & JULIA W. BOND, *THE STAR CREEK PAPERS 77-84* (1997) (publishing the manuscripts of Horace and Julia Bond as edited by Adam Fairclough).

88. See *Ole Sis Goose*, in *THE BOOK OF NEGRO FOLKLORE* 13, 13 (Langston Hughes & Arna Bontemps eds., 1959) (telling the story of Ole Sis Goose, analogizing a show trial and lynching, ending with a warning: “Now, my chilluns, listen to me, when all de folks in de cotehouse is foxes, and you is des’er common goose, der ain’t gwine to be much jestic for you pore cullud folks”).

89. See COMER, *supra* note 63, at 143 (stating that Till was lynched for whistling at a white woman).

90. See HODES, *supra* note 45, at 186-87, 197.

91. *Id.* at 198.

92. Transcript of interview with Joyce Ladner, Sociologist, Fellow of the Brookings Institute, in Washington, D.C. 48 (July 24, 1995) (on file with author).

93. See Devon W. Carbado, *The Construction of O.J. Simpson as a Racial Victim*, 32 HARV. C.R.-C.L.L.REV. 49, 72-74 (1997); see also Richard Morin, *Poll Reflects Division over Simpson Case; Trial Damaged Image of Courts, Races Agree*, WASH. POST, Oct. 8, 1995, at A31 (“Two out of three blacks and half of all whites interviewed said Simpson would have been found guilty of murder ‘if the jury had been all-white’ instead of predominantly black.”).

94. See, e.g., Dan Whitcomb, *Simpson Trial Long over, But Effects Remain Retrospective: Some Say It Exposed Racial Rifts as No Other Recent Event Has, Fueling Controversy over the Courts and Media*, ORANGE COUNTY REG., June 12, 1999, at A6 (stating that “[t]he criminal court verdict stunned white America but was cheered by blacks, exposing a deep rift between the races”).

95. See, e.g., Lori Rodriguez, *Racial Division Tearing at Fabric of U.S. Society; Crack Opened by Rodney King Beating Turning Into Chasm*, HOUSTON CHRON., Nov. 5, 1995, at 1 (“Like a pulled thread, that singular episode [the Rodney King beating] served up for mass television consumption in March 1991 began relentlessly unraveling the multi-ethnic fabric of the nation, and Americans since have careened wildly from one racial flashpoint to another.”).

Amadou Diallo by New York City policemen.⁹⁶ The trial in each of these cases became a racial Rorschach test of lynching and associated attitudes about black male criminality. For example, a black man accused of murdering a white woman, his former wife, provided ample reinforcement of old stereotypes about black male criminality, and for blacks fertile ground for reflection upon the history of interracial sex.⁹⁷ A black man's vicious beating by four white policemen, caught on video tape,⁹⁸ served to reinforce either the brutality and lawlessness of policemen or the dangerous, criminal defiance of lawful authority by black men, depending upon which history of lynching and lawlessness one had been exposed. Needless to say, O.J. Simpson would have been lynched in Mississippi in 1955. Coming to terms with the current code of racial conduct reveals upon reflection that the attitudes of the past often prevail today.⁹⁹ The question in the minds of black people was, is this trial in 1995 a fair trial? One can trace the responses of many to this trial to the lynching experience—to a memory of people being taken out of their homes without due process of law, mutilated and tortured for doing less than O.J. Simpson was

96. See, e.g., Ed Vulliamy, *Cold Rage Engulfs the Bronx: Nineteen Bullets, One Dead Black Man and Now the Four Cops Who Fired the Shots Go Free*, *GUARDIAN* (London), May 17, 2000, available in 2000 WL 20905278 (stating that the acquittal of the four police officers of murder and manslaughter charges "has detonated extreme emotions of anger, vindication, grief . . . And as word of the jury's decision spread through New York's ghettos like wildfire, the Bronx, Harlem, sections of Queens and Brooklyn entered the night of greatest tension since Mayor Rudy Giuliani took office").

97. See Carbado, *supra* note 93, at 69-74, 85-89; see generally CALVIN HERNTON, *SEX AND RACISM IN AMERICA* (1966) (providing a sociological inquiry into the effects of taboos on interracial sex, and the commingling of racial equality with sexual liberty in the minds of both blacks and whites).

98. See Michael Janofsky, *Resentencing Ordered for Two L.A. Officers*, *HOUSTON CHRON.*, Aug. 20, 1994, at 2.

99. During closing arguments, defense attorney Johnnie Cochran used the behavior of Mark Fuhrman to invoke notions of vigilantism on the police force. See *Reporter's Transcript of Proceedings: Transcripts from People v. Simpson Criminal Trial*, Sept. 28, 1995, available in LEXIS, Nexis Library, California State Courts File. Reading from a letter sent to him by Laura McKinney, he stated, "Officer Fuhrman says that when he sees a nigger as he called it, driving with a white woman, he would pull them over. I asked what if he didn't have a reason and he said that he would find one." *Id.* Later Cochran stated to the jury,

[t]his man will lie to set you up. . . . He would do anything to set you up because of the hatred he has in his heart. . . .

. . . .

People could have views but keep them to themselves, but when they have power over you, that is when racism becomes insidious. . . . A police officer in the street, a patrol officer, is the single most powerful figure in the criminal justice system. He can take your life.

Unlike the Supreme Court, you don't have to go through all these appeals. He can do it right there and justify it.

Id.

accused of doing. Black people know that O.J. could not expect, despite his celebrity, to be treated any differently than any other black man.

Today, the impact of this racially divided memory of lynching has emerged as the single most perplexing collection of problems in the American legal and social system. In November of 1995, a *Washington Post* poll found that seven percent of those surveyed cited race and civil rights as the nation's most pressing problems.¹⁰⁰ Seven percent does not sound like a large number, but it was second only to the fourteen percent who felt that crime was the nation's number one problem.¹⁰¹ There were a lot of fractured responses in small categories. Yet, the second largest response addressed the racial interaction.

Lynching with ritual mutilation became a dark system of law as firmly enforced as statutes and cases of formal laws. Ritualistic uses of lynching and the failure of law enforcement structures to punish participants in mob violence against blacks revealed a complex interaction between culture and the definition of law itself.¹⁰² Lynch mobs were formed to displace conventional legal processes.¹⁰³ However, at the same time, this pattern of lawlessness redefined the meaning of law itself.¹⁰⁴

B. When Lynching Was the Law

Systems of law depend upon the consensus of those governed.¹⁰⁵ Therefore, social consensus permitted lynching to thrive with virtual impunity

100. Dan Balz, *Racial Issues Weigh Heavily on the Minds of Nation's Voters*, WASH. POST, Nov. 6, 1995, at A10.

101. *Id.*

102. See BRUNDAGE, *supra* note 49, at 18 (“[A] degree of community approval and complicity, whether expressed in popular acclaim for the mob’s actions or in the failure of law officers either to prevent lynchings or to prosecute lynchers, was present in most lynchings.”); see also HILL & JORDAN, *supra* note 1, at 37-42, 44-46.

103. See TOLNAY & BECK, *supra* note 50, at 60-65; WILLIAMSON, *supra* note 57, at 189; see also BRUNDAGE, *supra* note 49, at 34 (“[W]hites perceived posses as legitimate extensions of the law”).

104. See TOLNAY & BECK, *supra* note 50, at 86-118; see generally EDWARD L. AYERS, *VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH CENTURY AMERICAN SOUTH* (1984) (recounting the violent and complex history of Southern racism); MARY FRANCES BERRY, *BLACK RESISTANCE, WHITE LAW: A HISTORY OF THE CONSTITUTIONAL RACISM IN AMERICA* (1984) (discussing the constitutional origins of race-based subordination in the United States).

105. See generally MORTIMER R. KADISH & SANFORD H. KADISH, *DISCRETION TO DISOBEY: A STUDY OF LAWFUL DEPARTURES FROM LEGAL RULES* (1973) (arguing that representative democracy requires a legal system that serves a social discipline and conflict resolution function, while at the same time providing avenues to challenge that authority); see also JOHN LOCKE, *THE SECOND TREATISE ON CIVIL GOVERNMENT* 78-80 (Prometheus Books 1986) (1690) (theorizing that representative democracy and the rule of law depends upon the operation of consensual authority, designated by a social contract).

in the period from 1868 to 1955.¹⁰⁶ The 1998 beheading and automobile lynching of a black man in Texas, although the product of two white criminals, revived the painful memories just under the surface of American life.¹⁰⁷ “Lynch law” is thus not an oxymoron. It was a fact of legal life that has implications for today, for the vestiges of this long forgotten period of crude racial subordination remain. A legacy of the era of the act of lynching can be traced through folklore,¹⁰⁸ and modern popular culture,¹⁰⁹ to jury attitudes and presumptions about police decision-making when interacting with black men.¹¹⁰ Whites have forgotten the legacy; blacks have not.

Andrew Delbanco in his book *The Death of Satan*¹¹¹ describes lynching as follows:

The most convenient sacrificial beast was the Negro. Lynchings increased in the South, as vigilantes struck back at [blacks]

This kind of compensatory hatred went beyond race retribution. The idea of evil had become generally synonymous with one sort of alien or another. . . .

106. See LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 13 (1993); CHADBOURN, *supra* note 70, at 3-28 (discussing the pro-lynching sentiment evident in the judiciary of the South during the period from 1889 to 1932); PATTERSON, *supra* note 49, at 176-81 (providing a statistical breakdown of the occurrence and distribution of lynchings from 1882 to 1968 and an analysis of the reasons offered by lynch mobs for their actions during this period); BRUNDAGE, *supra* note 49, at 19-48 (highlighting the complicity of law enforcement officials in lynch mob action from the 1890s to the 1940s and the role of white supremacist ideology in legitimizing the lynch mob).

107. James Byrd, Jr., 49, was brutally beaten, chained to the back of a pickup truck and dragged for more than two miles. See Clarence Waldron, *Three White Men Accused of Dragging Black Man to Death in Jasper, TX*, JET, June 29, 1998, at 10. His body was horribly mangled, with his head, neck and right arm found more than a mile from his torso. *Id.* (describing the crime and the responses of the victims family); see also Sue Anne Pressley, *Disabled Man Dragged to Death; 3 Whites Charged with Murder; FBI Probes for Racial Motive*, WASH. POST, June 10, 1998, at A3 (detailing the investigation into the murder and providing a portrait of the victim).

108. See, e.g., ZORA NEALE HURSTON, *MULES AND MEN* 110-14 (1969) (relating the story of a slave named John who was going to be lynched by his master but who was saved when John prayed for a burst of lightning that signaled the destruction of the master and his family and the lightning, in the form of a match lit by John’s friend, appeared).

109. Billie Holiday sang a popular song about lynching entitled *Strange Fruit*. See HALL, *supra* note 24, at 150 (reproducing the text of *Strange Fruit*). Contemporary rap group Arrested Development invoked the history of lynching with the lyrics “climbed the trees my forefathers hung from” in a song called *Tennessee*. ARRESTED DEVELOPMENT, *Tennessee, on 3 YEARS, 5 MONTHS AND 2 DAYS IN THE LIFE OF . . .* (EMI Records 1992). See also HARRIS, *supra* note 72, at 69-195 (discussing modern literary responses to and depictions of lynching, emphasizing the prominence of lynching as a metaphor in the work of Richard Wright and Langston Hughes).

110. See Carbado, *supra* note 93, at 72-80 (discussing a variety of presumptions and perspectives operative upon the jury and the public during the Simpson trial).

111. ANDREW DELBANCO, *THE DEATH OF SATAN: HOW AMERICANS LOST THE SENSE OF EVIL* (1995).

....

... Then as now, Americans seemed to have no genuine moral language for describing what was happening to them. And then as now, they resorted to the formula of blame.¹¹²

The stories transmitted from one generation of African-Americans to another about lynching constituted a hidden legacy of distrust of the law, law enforcement, and legal process. These stories have been passed on and they provide an indispensable link between ancient mob brutality and modern racial attitudes.

One could say the series of propositions passed in California bring to mind the power of a majority.¹¹³ It can do what it wants. Where does the 800-lb. gorilla sit? Wherever it wants to sit. So, the history of lynching and mob violence can become a contemporary fear, because during the era of lynching every African-American man, woman, and child felt at risk as a target for execution upon the word of any white person. The lynching ritual served to terrorize, control, and subordinate all African-Americans: men, women and children.

White women too were subordinated by concentric circles of fear created through the practice of lynching.¹¹⁴ They were prohibited from following what would ordinarily be spontaneous passions not controlled by race.¹¹⁵ Or, in some cases, white women were forced to choose between being a victim of gender subordination by white men, or exercising their racial superiority by falsely crying rape after consensual sexual liaisons with black men.¹¹⁶ Thus, rape claims became a way of protecting family reputations when a consensual sexual relationship was made public.¹¹⁷ This function of lynching has played a critical role in the friction that exists today between black women and white women. White women were literally “to die” for.

112. *See id.* at 164-65, 169.

113. *See* Prohibition Against Affirmative Action by Public Entities, CAL. CONST. art. I § 31 (1999) (amendment passed by California voters in 1996 as Proposition 209 or the California Civil Rights Initiative); *see also* Exclusion of Illegal Aliens from Public Elementary and Secondary Schools, CAL. EDUC. CODE § 48215 (West 1999) (passed by California voters in 1994 as Proposition 187).

114. *See* HODES, *supra* note 45, at 200, 207.

115. *Id.* at 207.

116. *Id.* at 204, 207.

117. *Id.* at 178.

V. INSTALLING WHITE BEAUTY

A. *Lethal Virtue*

It had begun with Christmas and the gift of dolls. The big, the special, the loving gift was always a big, blue-eyed Baby Doll. From the clucking sounds of adults, I knew that the doll represented what they thought was my fondest wish. . . . I was physically revolted by and secretly frightened of those round moronic eyes, the pancake face, and orangeworms hair.¹¹⁸

White women's lives were often duplicitous or disingenuous in comparison to the social construct they strove to uphold.¹¹⁹ The ideal of pure white womanhood was elevated to a central cultural status by literature, advertising and popular cultural myths about white beauty and sexual purity.¹²⁰ In fact, I attribute some of the friction between black women and white women to what I have identified as an "intimacy thesis"—the experience of African-American women as members of the household of white women who observed the contradictions in their sexual practices.¹²¹ Sexual infidelity among married white men and women, and interracial sexual experimentation by white women would have been secrets of the household that black women, working as domestic help, were expected to keep.¹²² Although black women kept the secrets from white men,¹²³ they did not keep the secrets among themselves.¹²⁴

118. TONI MORRISON, *THE BLUEST EYE* 19-20 (1970).

119. *See, e.g.*, MICHAEL D'ORSO, *LIKE JUDGMENT DAY: THE RUIN AND REDEMPTION OF A TOWN CALLED ROSEWOOD* 30-31 (1996) (describing the fabricated story told by a married white woman, that she had been attacked and beaten by a black man, when in fact her white paramour had inflicted the beating).

120. *See* HARRIS, *supra* note 72, at 83 (explaining that the myth of the purity of white womanhood was "[a] primary concern motivating the rituals in postslavery settings").

121. *See* D'ORSO, *supra* note 119, at 30-31 (explaining that the white woman's affair, beating, and subsequent falsification were all observed by her black housekeeper); *see also* ELIZABETH CLARK-LEWIS, *LIVING IN, LIVING OUT: AFRICAN AMERICAN DOMESTICS IN WASHINGTON, D.C. 1910-1940*, at 108-10 (1994) (describing attempts by a white woman—the wife of a senator—to seduce a black male servant as observed by the white women's maid, a black woman). As live-in servants black women "were required to learn and respond to all of the mistress' idiosyncracies and demands." *Id.* at 108. Thus they were privy to intimate information about nearly every aspect of their employer's life, including the elements that directly contradicted the notion of white female purity. *Id.* at 110.

122. *See, e.g.*, HODES, *supra* note 45, at 80 ("Ending a marriage . . . had serious consequences for white women Most married white women who entered into liaisons with black men must have attempted secrecy"); D'ORSO, *supra* note 119, at 30 (noting that a black servant knew better than to comment on seeing a white man coming and going from her mistress' house).

123. *See* D'ORSO, *supra* note 119, at 30.

124. *Id.* at 31 (recounting the story of a white woman's affair and subsequent accusations that a black man was responsible for its initiation).

The disrespect for the myth of white womanhood often came from the contempt bred by the familiarity of service.

The Rosewood burning-out and lynching was provoked by a white woman's false claim that she had been attacked and beaten by a black man.¹²⁵ Her black laundress later told others in the African-American community that the scars and bruises on the woman whose cries of "rape" precipitated a "race riot" and lynching, were in fact placed upon her by her white lover.¹²⁶ There is a fictionalized representation of this conversation in the movie *Rosewood*.¹²⁷ Friction between African-American women and white women comes from the intimacy of sharing a household within which black women could observe the discrepancy between the ideal of white womanhood and its actual practice. Consensual liaisons across the color line is a part of that discrepancy.

Ida B. Wells-Barnett spoke about the false accusations of rape:

In numerous instances where colored men have been lynched on the charge of rape, it was positively known at the time of the lynching, and indisputably proven after the victim's death, that the relationship sustained between the man and woman was voluntary and clandestine, and that in no court of law could even the charge of assault been successfully maintained.¹²⁸

She said, "[n]obody in this section of the country believes the old threadbare lie that Negro men rape white women."¹²⁹ Ida Wells-Barnett was almost lynched for daring to challenge the myth of white woman's sexual chastity. When Wells-Barnett was editor of the *Memphis Free Speech* the comments above appeared in an editorial in her newspaper.¹³⁰ The competing white newspapers in town counter-editorialized against her comment, clearly, if

125. *Id.*

126. *Id.* at 30-31.

127. See *ROSEWOOD* (Warner Bros. 1997) (directed by John Singleton and Johnny E. Jensen).

128. Wells-Barnett, *supra* note 57, at 11.

129. *Id.* at 12.

130. Ida B. Wells-Barnett was the editor of the *Memphis Free Speech*, a journal published in Memphis, Tennessee. See GUNNING, *supra* note 46, at 81.

indirectly, calling for the author to be lynched.¹³¹ A mob looted and burned the office of her newspaper as a result.¹³²

To avoid being lynched herself, Ida Wells-Barnett stayed in New York.¹³³ She then moved to Chicago, where she married a prominent black publisher and continued developing the international anti-lynching crusade for which she is best known.¹³⁴ Ida Wells-Barnett's speeches and writings argued that hundreds of such cases prove the assertion that "there are white women in the South who love [black men's sexual companionship] even as there are white men notorious for their preference for [black] women."¹³⁵ Those bold assertions were fighting words, lynching words in that day. Yet Wells-Barnett was fearless enough to say the unspeakable in print.

Bell hooks talks about the social construct of the "virtuous, pure, innocent, not sexual and worldly" image of the white woman.¹³⁶ The discrepancy between the virtuous ideal and the intimate observation of the real lives of white women and the disingenuity of some of the sexual practices observed by black women who were household help in the homes of white women created mistrust.¹³⁷ Today we have an opportunity to confront the false and misrepresented elements of our national history of lynching. If we succeed in even partially renegotiating the history of lynching, we have an opportunity to take a second step to cross the river of blood between us. The history of rape

131. One Memphis newspaper editorial stated bluntly:

The fact that a black scoundrel is allowed to live and utter such loathsome and repulsive calumnies is a volume of evidence as to the wonderful patience of Southern whites. But we have had enough of it.

There are some things that the Southern white man will not tolerate, and the obscene intimations of the foregoing have brought the writer to the very outermost limit of public patience.

Ida B. Wells-Barnett, *Southern Horror: Lynch Law in All Its Phases, in ON LYNCHING*, *supra* note 57, at 4, 4-5 (quoting DAILY COM., May 25, 1892). The *Evening Scimitar*, also of Memphis, responded:

Patience under such circumstances is not a virtue. If the [N]egroes themselves do not apply the remedy without delay it will be the duty of those whom he has attacked to tie the wretch who utters these calumnies to a stake at the intersection of the Main and Madison Sts., brand him in the forehead with a hot iron and perform upon him a surgical operation with a pair of tailor's shears.

Id. at 5 (quoting the EVENING SCIMITAR, May 25, 1892).

132. See GIDDINGS, *supra* note 47, at 29.

133. *Id.*

134. See BLACK WOMEN IN AMERICA: AN HISTORICAL ENCYCLOPEDIA 1244 (Darlene Clark Hine ed., 1993).

135. Wells-Barnett, *supra* note 57, at 11; see, e.g., *id.* (citing several stories of white women choosing to be with black men, including a woman who lived openly with a black man).

136. BELL HOOKS, AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM 31 (1981).

137. See *supra* notes 119-22 and accompanying text.

would not be complete without an exploration of the abuse of rape accusations by white women who used their power as whites to terrorize black men, women and children. White women aided and abetted lynching actively by direct participation in the utilization of lynch mobs.¹³⁸ They precipitated lynching passive-aggressively by falsely crying rape, staying home and letting their husbands and sons go out to defend their honor with racial barbarity.¹³⁹ No modern feminist should be surprised by the legacy of white women's complicity in some lynchings, yet unearthing this unpleasant fact creates a counter-narrative to the essentialist narrative of feminism's white woman victim.

It is a legacy which most feminists, in forming coalitions, try to avoid talking about because it is so unpleasant. We would like to think that men are the source of our shared oppression, and thus "can't we all be friends here?" The fact of the matter is that this history is buried in our consciousness and our suspicions and our folklore. I am a member of the board of the NOW [National Organization for Women] Legal Defense and Education Fund and I find that when we have conversations that require a somewhat more complex mastery of racial history, the conversation turns somehow, it slows down, the penetrating insights disappear. For some, but by no means all, it has meant that there is some difficulty in understanding that coalition does not mean appropriation, it means looking, standing as equals and hearing another's experience and being willing to fight for another's cause along with your own. And that is quite different than saying rape is like lynching where the historical metaphor imbedded in the experience of lynching has been appropriated to create additional historical evidence for the subordination of women. All subordination has its victims. And the reality is that to the extent white women have insisted upon playing "who's-the-better-victim" game, they have destroyed the trust and the possibility of real political and theoretical coalitions between black and white women.

Another source of friction between black women and white women has been the presumption of virtue.¹⁴⁰ Black women are still presumed to be promiscuous,¹⁴¹ thus reinforcing the age-old stereotype that black women

138. See BRUNDAGE, *supra* note 49, at 37-38 (describing the role that women played in lynch mobs: "inciting the crowd with cheers, providing fuel for the execution pyre and, scavenging for souvenirs after the lynchings").

139. See HODES, *supra* note 45, at 178 (noting that a white woman who may have had an illicit consensual relationship with a black man might "tak[e] cover under the cloak of victimization when discovered" and allow others to assume the sex was nonconsensual).

140. See IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 173 (1998) (observing the associations between "whiteness" and "goodness" and "blackness" and "badness" in modern society).

141. See Adele Logan Alexander, "*She's No Lady, She's a Nigger*": Abuse, Stereotypes, and Realities from the Middle Passage to Capitol (and Anita) Hill, in *RACE, GENDER, AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS*, *supra* note 1, at 3, 7 (stating that white people

cannot be raped.¹⁴² At the same time, white woman can be raped and their rape is defined as the ultimate violent subordination.

Angela Harris provides a seminal exploration of the problem in feminist legal thought in her article criticizing Catherine MacKinnon's race thesis.¹⁴³ Harris argues that MacKinnon's reliance on essentialist claims for all women, without pausing to engage the separate experience of black women in fact subordinates and silences the rape experience of African-American women.¹⁴⁴ The presumption of white women's virtue and the appropriation of exclusive female virtue are sources of friction between white and black women that are not completely in the past.

B. Domestic Intimacy: The Black Women in White Women's Lives

Yet another source of friction is the refusal of white women to acknowledge their participation and benefits from white supremacy. Historically, black women domestics were a status symbol.¹⁴⁵ Recently, the "nanny tax" controversy revealed the persistence of white women's dependence on the subordinate economic position of women of color to absorb the unpleasant household chores which no economically successful white man or woman wants to do.¹⁴⁶ Domestic workers are still a status symbol.¹⁴⁷ If one has a nanny, the likelihood is that the nanny was not imported from England despite the popular stories because the people who do this work are people of color.¹⁴⁸ If you expect peace and harmony and great love from me when I am your status symbol, you have not come to terms with the effects of our unequal power. That is a problem. Feminists do a disservice to the cause of women's equality

have historically presumed that black women have no sexual morality).

142. See A. Leon Higginbotham, Jr., *The Hill-Thomas Hearings—What Took Place and What Happened: White Male Domination, Black Male Domination, and the Denigration of Black Women*, in *RACE, GENDER, AND POWER: THE LEGACY OF THE HILL-THOMAS HEARINGS*, *supra* note 1, at 26, 31-32 (citing the prevalent belief in the 1800s that black female slaves lacked "moral virtue" and thus "it was not within their nature to be raped").

143. See Harris, *supra* note 19, at 598.

144. *Id.* at 598-99.

145. See CLARK-LEWIS, *supra* note 121, at 187-88 (describing, in the words of one domestic worker, how the white family she worked for took her along while traveling merely to "show people that they had enough money to bring a black person with them").

146. See Martha Shirk, *Cashing in on Domestic Help*, ST. LOUIS POST-DISPATCH, Feb. 15, 1993, at 1C.

147. *Id.*

148. See Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER RACE & JUST. 1, 26-27 (stating that women of color perform the highest percentage of domestic work in the United States) (quoting Twila Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 GEO. L.J. 2481, 2509 (1994)).

when they fail to acknowledge their appropriation of labor and the “straw man” game they play. It is truly a straw man strategy to ignore the complex status of white women in the racial and economic hierarchy, to claim that the patriarchal society is the source of all the significant problems women face today. Some of the matriarchs aided and abetted the patriarchs, or passively benefitted from the social order designed by white men, and they are therefore no less accountable for that collaboration.

We have friction over the unacknowledged power of white women to control the quality of many poor black women’s lives. White women hire and fire and, in some cases, abuse of domestic workers,¹⁴⁹ tolerating the sexual exploitation of domestic workers by sons and libidinous husbands.¹⁵⁰ Finally, white women’s power over black men by crying rape, is a legendary source of friction. Moreover, these are cultural practices that have no accepted representation in popular culture. The truly complex history of lynching has been erased, shrunk to fit a more palatable version of American identity. The official history leaves those who seek to make claims that are not found in the official account standing outside the consensus.¹⁵¹ This account of history says to black people: “It didn’t happen. You made it up. You imagined it. You’re psychotic. You people are paranoid. This didn’t really happen.” The confirmation in official histories of experiences that a community knows to be true is important. And to the extent that we dance along and pretend that, “I love my nanny. She’s wonderful. I’d leave my kids with her in a moment,”—to believe that such a conversation is not a direct descendent of the wet nurse practice of slave women being forced to give their milk to the master and mistress’ children to spare the mistress from the gravitational disfiguration of nursing¹⁵²—is unreal and provides another source of friction. Ownership of this link between slavery and the post-slavery relationships between black women and white women today must be acknowledged by white women close to home in order to cross the river.

149. See CLARK-LEWIS, *supra* note 121, at 107-10 (discussing the mistress’ control over every facet of a live-in servant’s life, including an account of one mistress’ abusive treatment of her servant).

150. *Id.* at 48-49 (describing the risk of rape domestic workers faced from white males in the employer household).

151. See, e.g., Williamson, *supra* note 55, at 1242-44 (explaining that lynching was a subject that was left unexplored and met with silence, or only indirect acknowledgment as a part of American life, in the literary community, as well as by historians).

152. See EUGENE GENOVESE, ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE 507 (1974) (describing the wide-spread practice of using a slave woman to breast-feed slave owner’s children).

VI. BLACK WOMEN AND OWNERSHIP OF SEXUAL JEALOUSY

A. *Whoopi Goldberg's Blue Eyes*

The starched gauze or lace on the cotton dress irritated any embrace. I had only one desire: to dismember it. To see of what it was made, to discover the dearness, to find the beauty, the desirability that had escaped me, but apparently only me. . . . "Here," they said, "this is beautiful, and if you are on this day 'worthy' you may have it." . . . I could not love it. But I could examine it to see what it was that all the world said was lovable. Break off the tiny fingers, bend the flat feet, loosen the hair, twist the head around Remove the cold and stupid eyeball

. . . .

. . . I did not know why I destroyed those dolls. . . .

. . . .

I destroyed white baby dolls.

But the dismembering of dolls was not the true horror. The truly horrifying thing was the transference of the same impulses to little white girls.¹⁵³

Rosemary Villanucci . . . sits in a 1939 Buick eating bread and butter. She rolls down the window to tell my sister . . . and me that we can't come in. We stare at her, wanting her bread, but more than that wanting to poke the arrogance out of her eyes and smash the pride of ownership that curls her chewing mouth. When she comes out of the car we will beat her up, make red marks on her white skin¹⁵⁴

These painful passages reveal a deep and difficult legacy. The corollary to the myth of white women's superior beauty is that black women came to loathe that ideal of beauty, even as we tried to emulate it. Thus the love-hate complexity of our involvement with white ideals of beauty sustains a treacherous mixture of sexual jealousy and competition between white and black women.¹⁵⁵

153. MORRISON, *supra* note 118, at 20-22.

154. *Id.* at 12.

155. *Id.* at 20-22.

One recent commentator noted that one of the areas of racial misunderstanding between white women and black women is the “toss”—the annoying habit of white women who toss their hair around without looking to see who is behind them.¹⁵⁶ Needless to say, this is inconsiderate and rude no matter who is standing behind the tosser. Yet when a black woman encounters this habit, it takes on added meaning, because the rhetoric of white women’s purity and beauty used to control and kill black men, stigmatizes black women’s different beauty.¹⁵⁷

B. The Power to Declare Bastardy: Erasing the “Other” Children of Powerful White Men

Recently, scientific confirmation of the long-rumored, but never confirmed, genetic link between the heirs of Thomas Jefferson and Sally Hemings¹⁵⁸ provided an example of another hidden relationship binding black women and white women together: sexual competition and its correlate, racial dominance. This competition for genetic exclusivity and control of the wealth of white men dictated that to extent white women and black women were having sex with the same powerful white man, the myth of white women’s superior femininity had been challenged. The laws of bastardy distinguished the legitimate heirs from

156. See *Talk of the Nation: Analysis: Racial Issues in the United States, How Whites and Blacks View One Another and How the Racial Divide Might Be Overcome* (NPR radio broadcast, May 15, 2000); cf. JIM MYERS, *AFRAID OF THE DARK: WHAT WHITES AND BLACKS NEED TO KNOW ABOUT EACH OTHER* 331 (2000) (postulating that white women’s hair “flipping” perceived by black women as a gesture of superiority is an example of a trivial obstacle to better relations between black and white women).

157. BELL HOOKS, *BLACK LOOKS: RACE & REPRESENTATION* 165-78 (1992) (discussing the meaning of whiteness for black people and revealing the fear and self-loathing within the black experience in America created by white supremacist ideology and cultural domination).

158. See Eric S. Lander & Joseph J. Ellis, *Founding Father*, *NATURE*, Nov. 5, 1998, at 13-14 (discussing the history of the controversy and the definitiveness of the DNA evidence supporting the claim that Thomas Jefferson fathered at least one child with Sally Hemings); *U.S. President Thomas Jefferson Fathered Child with Slave, DNA Study Shows*, *JET*, Nov. 16, 1998, at 4 (explaining the DNA evidence proving Jefferson’s paternity); Dinitia Smith & Nicholas Wade, *DNA Test Finds Evidence of Jefferson Child by Slave*, *N.Y. TIMES*, Nov. 1, 1998, at A1 (“The [DNA] finding undercuts the position of historians that Jefferson did not have a liaison with [Hemings] . . . [a]nd it confirms . . . the oral tradition that has been handed down among Sally Heming’s descendants.”). Julian Bond, Chairman of the NAACP, moderated a conference of leading historians to discuss the impact of this confirmation of paternity on the national discourse about “the legitimizing national myths’ of the United States.” Jan Ellen Lewis & Peter S. Onuf, *Introduction to SALLY HEMINGS & THOMAS JEFFERSON: HISTORY, MEMORY, AND CIVIC CULTURE* 1, 7 (Jan Ellen Lewis & Peter S. Onuf eds., 1999) (quoting in part Werner Sollors, *Presidents, Race, and Sex*, in *SALLY HEMINGS & THOMAS JEFFERSON: HISTORY, MEMORY, AND CIVIC CULTURE*, *supra*, at 199, 207). Another participant, Gordon S. Wood, reminded his fellow scholars that the symbolic value of the mythic Jefferson poses a unique challenge to critical historians, who must come to terms with the fact that “distortions of heritages are precisely what many people want and perhaps need in order to keep the past alive and meaningful.” Gordon S. Wood, *The Ghosts of Monticello*, in *SALLY HEMINGS & THOMAS JEFFERSON: HISTORY, MEMORY, AND CIVIC CULTURE*, *supra*, at 19, 31.

the illegitimate offspring.¹⁵⁹ Thus family laws regarding paternity provided an avenue for white women to legally control the economic status of the heirs of powerful white men.¹⁶⁰ Heritage thus became both a social good, an economic good and a legal asset that white women had used.¹⁶¹ The erasure of the history of the consensual, as well as the exploitative, sexual liaisons of black women and white men served to maintain this control.

C. *The Gene Pool*

This genetic competition and the use of laws of bastardy to control the economic fruits of white male power is another source of friction. It belies the reality that we are all brothers and sisters under the skin. In fact, this revelation about Thomas Jefferson helps us say this with a straight face and recognize that we are all brothers and sisters under the skin in ways that we have not really appreciated before.

Thus, to the extent that we have white women serving in the role of the appropriators of the genetic link, the genetic heritage, the enforcers of that link, black women could not be raped. Black women could not legally give birth to children that were in the line of descendancy from white men.¹⁶² These are mythological rules that white women have to take responsibility for. They need to own the consequences of appropriating the societal benefits gained from these myths. Such realizations help black and white women together face the consequences of continuing such myths.

Sally Hemings was not eligible to be Thomas Jefferson's wife, even while Thomas Jefferson was a single man.¹⁶³ The blood between us includes the efforts, measured by genetic "purity," to control the economic fruits of

159. HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 149 (2d ed. 1988) (discussing the common law rule that a bastard or illegitimate child—defined as a child of parents who are not married to one another—has no rights of inheritance from either parent).

160. See HODES, *supra* note 45, at 96 (stipulating that a child's legal status followed the mother, thus making children of black women slaves and white men the property of white men, rather than heirs, leaving only white children as heirs).

161. See *id.* at 114-15 (describing cases during slavery wherein married white women's children were assumed to be legal heirs, whereas children born to slave women were presumed to be slaves). For an interesting account of some of the legal and social consequences of bearing bi-racial children, see WILLIAMSON, *supra* note 57, at 38-43; see also HANEY LÓPEZ, *supra* note 140, at 111-55 (analyzing the legal construction of race).

162. See Higginbotham, Jr., *supra* note 142, at 29; HODES, *supra* note 45, at 96.

163. See, e.g., HODES, *supra* note 45, at 19 ("Because marriage between blacks and whites was prohibited or severely discouraged by law . . . sexual liaisons between white women and black men took the legal form of fornication or adultery.") (footnote omitted); cf. Philip D. Morgan, *Interracial Sex in the Chesapeake and the British Atlantic World, c. 1700-1820*, in SALLY HEMINGS & THOMAS JEFFERSON: HISTORY, MEMORY, AND CIVIC CULTURE, *supra* note 158, at 52, 67 (noting the social and legal condemnation of interracial marriages in the late eighteenth century).

procreation by labeling some children legitimate and others illegitimate, and thus inherit the economic benefits of white male hierarchy. These problems are problems that will persist.

The exclusion of black women from legal motherhood—from the benefits of legitimating their children and participating in the white social order to which the fathers of their children belonged—also empowered the structural and political exclusion of African-American women from the leading feminist movement of the day—the suffrage movement.¹⁶⁴ Sojourner Truth's words—"ain't I a woman?"¹⁶⁵ were reportedly spoken at a conference where white participants, women and men, protested allowing her to speak.¹⁶⁶ This exemplified the division along the color line present in the suffrage movement.¹⁶⁷ One white man even said, "I don't believe you really are a woman."¹⁶⁸ To prove her gender, she bared her breasts.¹⁶⁹ This exclusion largely from the participation and leadership in the suffrage movement of African-American women is a source of historic friction. The river of blood between us consists of blood in the form of genetic competition for purity—an apocalyptic quest to determine whose blood is purer, based upon myths about one another and ourselves, long since forged in an era of fear.

VII. THE CONTESTED RACIAL MEMORY OF LYNCHING: WOMEN'S BURDEN, WOMEN'S BENEFIT

An unusual roundtable on lynching featured a provocative essay by Joel Williamson, a distinguished Southern historian who has delved deeply into the psychology of racism.¹⁷⁰ Williamson argues that the white South and indeed all of white America have erased the memory of lynching, and that this erasure began just as lynching as a sanctioned practice was ending.¹⁷¹ Williamson, like Hall, was stimulated by the Clarence Thomas "high-tech lynching" speech to

164. See GIDDINGS, *supra* note 47, at 119-31 (discussing the contributions of black women's organizations to the suffrage movement, and the racist response of white women's groups to these efforts). White suffragists initially feared that if they invited black women, such as Sojourner Truth, to speak at their events that "their cause would be associated with 'abolitionists and niggers' . . ." *Id.* at 54.

165. See HOOKS, *supra* note 136, at 160.

166. See HALL, *supra* note 24, at 91-92 (relating the "dramatic tale" of Sojourner Truth's presence at the conference, thereby suggesting its embellishment through the years).

167. See HALE, *supra* note 11, at 91-92.

168. See HOOKS, *supra* note 136, at 159.

169. *Id.*

170. See Williamson, *supra* note 55, at 1221-53.

171. *Id.* at 1244-52.

consider the contemporary impact of lynching on our national conscience. Williamson concludes: "Thomas was saying that white racism was still rampant in the land. If a black man of talent and ambition dared to rise and assert himself, he might expect to be labeled 'uppity' and [be] destroyed by some loose allegation."¹⁷²

Williamson focuses on the role of the intellectual leadership of the dominant Southern historians in creating this void. C. Vann Woodward's 1951 seminal study *Origins of the New South*¹⁷³ received special criticism for including only one paragraph on lynching.¹⁷⁴ In a later book, *The Strange Career of Jim Crow*,¹⁷⁵ Woodward expanded the coverage to three paragraphs by tracing a brief history of race riots and lynchings.¹⁷⁶ For Williamson, this erasure of history by premiere Southern historians was a contributing factor to the continued subterranean friction that exists between whites and blacks about the extent of racial violence in shaping contemporary race relations.¹⁷⁷

The experience of black women is so incongruous with the myth about lynching and the myth of potential cooperation between black women and white women that it creates an intolerable gap between lived experience and the rhetoric of cooperation and collaboration.¹⁷⁸ The missing history has an effect. It has a consequence.

This has consequences for the law of both race and gender equality. For example, how can we develop durable constitutional analogies for extending the Equal Protection doctrine's suspect classification and heightened scrutiny reasoning to women without reckoning with the role of white women in benefitting from, or engendering, racial violence? The river of blood between white women and black women ensures that we cannot treat Equal Protection theory as a merely convenient, all-encompassing syllogism. The central role of

172. *Id.* at 1225. Williamson observed that

[a]s Thomas talked, the myriad ghosts of white oppression and black rebellion seemed to float into the room and stand. Was it to be the old story again . . . Not this time. It was as if the single word "lynching" were the catalysts that generated an emotional and mental meltdown. First it halted and confused, then it chastened and sobered white America. Not so fast, they said. We are not lynchers.

Id. at 1226. This reflects my own view of Thomas' use of lynching.

173. C. VANN WOODWARD, 9 ORIGINS OF THE NEW SOUTH, 1877-1913 (1951).

174. See Williamson, *supra* note 55, at 1233-35.

175. C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (rev. ed. 1957).

176. *Id.* at 69-71.

177. See Williamson, *supra* note 55, at 1242-53.

178. See GIDDINGS, *supra* note 47, at 75-94 (rendering a history of conflicting interests and perceptual gaps between white and black women activists in the early twentieth century); HALL, *supra* note 24, at xxix-xxxv.

violent atrocities haunts every effort to create a harmonious future. This missing history has shaped the rules that the Supreme Court has been historically, and currently, willing to announce.¹⁷⁹ Of course it is an optimistic assumption that if there had been a better history, the Court would have written better law. One of the cases I talk about in this regard is *R.A.V. v. City of St. Paul*,¹⁸⁰ a case in which Clarence Thomas provided an important vote.¹⁸¹ This vote was the first he cast after coining the high-tech lynching metaphor. He voted in favor of a novel interpretation of the First Amendment, which gutted the fighting words doctrine and concluded that a St. Paul, Minnesota ordinance prohibiting displays such as a cross burning was a constitutional violation.¹⁸²

Thus, in this analysis we can see the symbiotic relationship between history and law. History cannot be erased. If we stop and reflect upon the past without denying its complexity, the horrible landscape of lynching can provide the basis for a critical yet missing piece of a more complete portrait of America. If we reach a consensus about the past, necessary to reshape the “false heritage” and legitimizing national myths of the United States,¹⁸³ we will form a more accurate representation of the past that then could be the basis for collaboration. Not until these secrets and distortions are unearthed will we truly be able to collaborate.

In the missing history of lynching, there is a river of blood in those ritualistic tortures between us. Until we can unearth this history, and bring it into the public discourse on issues of race and gender, we have precious little hope of having a conversation that could in fact be productive. The Truth and Reconciliation Commission in South Africa serves as a model of how a society can, albeit with great difficulty, face cruelty and atrocity in the past, without deteriorating into perpetual bloodletting in a cycle of intergenerational revenge and retribution.¹⁸⁴ One cannot have reconciliation without truth. The paradox

179. See HANEY LÓPEZ, *supra* note 140, at 49-78, 79-55 (describing, primarily in the context of immigration, the varying definitions of race employed by the Supreme Court which became determinative of legal rights).

180. 505 U.S. 377 (1992) (holding the Bias Motivated Crime Ordinance of St. Paul, Minnesota, facially invalid under the First Amendment on facts involving a teenager who had burned a cross in the front yard of a black family).

181. *Id.* As the fifth vote supporting the reasoning of Justice Antonin Scalia’s majority opinion, Justice Thomas provided the vote needed to make the case binding precedent. Had he merely concurred in the opinion with other reasoning, the decision would have been binding only on the parties to the case and not in future cases.

182. *Id.*

183. See text accompanying *supra* note 158.

184. See generally 1-5 TRUTH AND RECONCILIATION COMMISSION, TRUTH AND RECONCILIATION COMMISSION REPORT (1998) (collecting the findings and recommendations of the committee in its work to document the effects of apartheid on all individuals and groups in South Africa, and exploring the legal consequences and innovations which have emerged from the process of dismantling apartheid).

of feminist history is that women, both black and white, will never cross the river of blood between us until white women see the bloody legacy upon which even their own power exists. Only then can the paradox of feminist history lose its grip on the future possibilities for collaboration, and even equality, between black women and white women.