

Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color

Kimberle Crenshaw*

INTRODUCTION

Over the last two decades, women have organized against the almost routine violence that shapes their lives.¹ Drawing from the strength of shared experience, women have recognized that the political demands of millions speak more powerfully than the pleas of a few isolated voices. This politicization in turn has transformed the way we understand violence against women. For example, battering and rape, once seen as private (family matters) and aberrational (errant sexual aggression), are now largely recognized as part of a broad-scale system of domination that affects women as a class.² This process of recognizing as social and systemic what was for-

* © 1993 by Kimberle Crenshaw. Professor of Law, University of California, Los Angeles. B.A. Cornell University, 1981; J.D. Harvard Law School, 1984; LL.M. University of Wisconsin, 1985.

I am indebted to a great many people who have pushed this project along. For their kind assistance in facilitating my field research for this article, I wish to thank Maria Blanco, Margaret Cambrick, Joan Creer, Estelle Cheung, Nilda Rimonte and Fred Smith. I benefitted from the comments of Taunya Banks, Mark Barenberg, Darcy Calkins, Adrienne Davis, Gina Dent, Brent Edwards, Paul Gewirtz, Lani Guinier, Neil Gotanda, Joel Handler, Duncan Kennedy, Henry Monaghan, Elizabeth Schneider and Kendall Thomas. A very special thanks goes to Gary Peller and Richard Yarrow. Jayne Lee, Paula Puryear, Yancy Garrido, Eugenia Gifford and Leti Volpp provided valuable research assistance. I gratefully acknowledge the support of the Academic Senate of UCLA, Center for Afro-American Studies at UCLA, the Reed Foundation and Columbia Law School. Earlier versions of this article were presented to the Critical Race Theory Workshop and the Yale Legal Theory Workshop.

This article is dedicated to the memory of Denise Carty-Bennia and Mary Joe Frug.

1. Feminist academics and activists have played a central role in forwarding an ideological and institutional challenge to the practices that condone and perpetuate violence against women. See generally SUSAN BROWN MILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* (1975); LORENNE M.G. CLARK & DEBRA J. LEWIS, *RAPE: THE PRICE OF COERCIVE SEXUALITY* (1977); R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* (1979); NANCY GAGER & CATHLEEN SCHURR, *SEXUAL ASSAULT: CONFRONTING RAPE IN AMERICA* (1976); DIANA E.H. RUSSELL, *THE POLITICS OF RAPE: THE VICTIM'S PERSPECTIVE* (1974); ELIZABETH ANNE STANKO, *INTIMATE INTRUSIONS: WOMEN'S EXPERIENCE OF MALE VIOLENCE* (1985); LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989); LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* (1984); LENORE E. WALKER, *THE BATTERED WOMAN* (1979).

2. See, e.g., SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* (1982) (arguing that battering is a means of maintaining women's subordinate position); S. BROWN MILLER, *supra* note 1 (arguing that rape is a

Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color

Kimberle Crenshaw*

INTRODUCTION

Over the last two decades, women have organized against the almost routine violence that shapes their lives.¹ Drawing from the strength of shared experience, women have recognized that the political demands of millions speak more powerfully than the pleas of a few isolated voices. This politicization in turn has transformed the way we understand violence against women. For example, battering and rape, once seen as private (family matters) and aberrational (errant sexual aggression), are now largely recognized as part of a broad-scale system of domination that affects women as a class.² This process of recognizing as social and systemic what was for-

* © 1993 by Kimberle Crenshaw. Professor of Law, University of California, Los Angeles. B.A. Cornell University, 1981; J.D. Harvard Law School, 1984; LL.M. University of Wisconsin, 1985.

I am indebted to a great many people who have pushed this project along. For their kind assistance in facilitating my field research for this article, I wish to thank Maria Blanco, Margaret Cambrick, Joan Creer, Estelle Cheung, Nilda Rimonte and Fred Smith. I benefitted from the comments of Taunya Banks, Mark Barenberg, Darcy Calkins, Adrienne Davis, Gina Dent, Brent Edwards, Paul Gewirtz, Lani Guinier, Neil Gotanda, Joel Handler, Duncan Kennedy, Henry Monaghan, Elizabeth Schneider and Kendall Thomas. A very special thanks goes to Gary Peller and Richard Yarrow. Jayne Lee, Paula Puryear, Yancy Garrido, Eugenia Gifford and Leti Volpp provided valuable research assistance. I gratefully acknowledge the support of the Academic Senate of UCLA, Center for Afro-American Studies at UCLA, the Reed Foundation and Columbia Law School. Earlier versions of this article were presented to the Critical Race Theory Workshop and the Yale Legal Theory Workshop.

This article is dedicated to the memory of Denise Carty-Bennia and Mary Joe Frug.

1. Feminist academics and activists have played a central role in forwarding an ideological and institutional challenge to the practices that condone and perpetuate violence against women. See generally SUSAN BROWN MILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* (1975); LORENNE M.G. CLARK & DEBRA J. LEWIS, *RAPE: THE PRICE OF COERCIVE SEXUALITY* (1977); R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* (1979); NANCY GAGER & CATHLEEN SCHURR, *SEXUAL ASSAULT: CONFRONTING RAPE IN AMERICA* (1976); DIANA E.H. RUSSELL, *THE POLITICS OF RAPE: THE VICTIM'S PERSPECTIVE* (1974); ELIZABETH ANNE STANKO, *INTIMATE INTRUSIONS: WOMEN'S EXPERIENCE OF MALE VIOLENCE* (1985); LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989); LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* (1984); LENORE E. WALKER, *THE BATTERED WOMAN* (1979).

2. See, e.g., SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* (1982) (arguing that battering is a means of maintaining women's subordinate position); S. BROWN MILLER, *supra* note 1 (arguing that rape is a

merly perceived as isolated and individual has also characterized the identity politics of African Americans, other people of color, and gays and lesbians, among others. For all these groups, identity-based politics has been a source of strength, community, and intellectual development.

The embrace of identity politics, however, has been in tension with dominant conceptions of social justice. Race, gender, and other identity categories are most often treated in mainstream liberal discourse as vestiges of bias or domination—that is, as intrinsically negative frameworks in which social power works to exclude or marginalize those who are different. According to this understanding, our liberatory objective should be to empty such categories of any social significance. Yet implicit in certain strands of feminist and racial liberation movements, for example is the view that the social power in delineating difference need not be the power of domination; it can instead be the source of social empowerment and reconstruction.

The problem with identity politics is not that it fails to transcend difference, as some critics charge, but rather the opposite—that it frequently conflates or ignores intragroup differences. In the context of violence against women, this elision of difference in identity politics is problematic, fundamentally because the violence that many women experience is often shaped by other dimensions of their identities, such as race and class. Moreover, ignoring difference *within* groups contributes to tension *among* groups, another problem of identity politics that bears on efforts to politicize violence against women. Feminist efforts to politicize experiences of women and antiracist efforts to politicize experiences of people of color have frequently proceeded as though the issues and experiences they each detail occur on mutually exclusive terrains. Although racism and sexism readily intersect in the lives of real people, they seldom do in feminist and antiracist practices. And so, when the practices expound identity as woman or person of color as an either/or proposition, they relegate the identity of women of color to a location that resists telling.

My objective in this article is to advance the telling of that location by exploring the race and gender dimensions of violence against women of color.³ Contemporary feminist and antiracist discourses have failed to con-

patriarchal practice that subordinates women to men); Elizabeth Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 974 (1991) (discussing how "concepts of privacy permit, encourage and reinforce violence against women"); Susan Estrich, *Rape*, 95 YALE L.J. 1087 (1986) (analyzing rape law as one illustration of sexism in criminal law); see also CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 143-213 (1979) (arguing that sexual harassment should be redefined as sexual discrimination actionable under Title VII, rather than viewed as misplaced sexuality in the workplace).

3. This article arises out of and is inspired by two emerging scholarly discourses. The first is critical race theory. For a cross-section of what is now a substantial body of literature, see PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); Robin D. Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*, 103 HARV. L. REV. 1864 (1990); John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129 (1992); Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King*, 103 HARV. L. REV. 985 (1990); Kimberle Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Richard

sider intersectional identities such as women of color.⁴ Focusing on two dimensions of male violence against women—battering and rape—I consider how the experiences of women of color are frequently the product of intersecting patterns of racism and sexism,⁵ and how these experiences tend not

Delgado, *When a Story is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1990); Neil Gotanda, *A Critique of "Our Constitution is Colorblind,"* 44 STAN. L. REV. 1 (1991); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice—Some Observations and Questions of an Emerging Phenomenon*, 75 MINN. L. REV. 993 (1991). For a useful overview of critical race theory, see Calmore, *supra*, at 2160-2168.

A second, less formally linked body of legal scholarship investigates the connections between race and gender. See, e.g., Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539; Crenshaw, *supra*; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Marlee Kline, *Race, Racism and Feminist Legal Theory*, 12 HARV. WOMEN'S L.J. 115 (1989); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991); Cathy Scarborough, *Conceptualizing Black Women's Employment Experiences*, 98 YALE L.J. 1457 (1989) (student author); Peggie R. Smith, *Separate Identities: Black Women, Work and Title VII*, 14 HARV. WOMEN'S L.J. 21 (1991); Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989); Judith A. Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 CAL. L. REV. 775 (1991). This work in turn has been informed by a broader literature examining the interactions of race and gender in other contexts. See, e.g., PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (1990); ANGELA DAVIS, *WOMEN, RACE AND CLASS* (1981); BELL HOOKS, *AIN'T I A WOMAN? BLACK WOMEN AND FEMINISM* (1981); ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); Frances Beale, *Double Jeopardy: To Be Black and Female*, in *THE BLACK WOMAN* 90 (Toni Cade ed. 1970); Kink-Kok Cheung, *The Woman Warrior versus The Chinaman Pacific: Must a Chinese American Critic Choose between Feminism and Heroism?*, in *CONFLICTS IN FEMINISM* 234 (Marianne Hirsch & Evelyn Fox Keller eds. 1990); Deborah H. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, 14 SIGNS 42 (1988); Diane K. Lewis, *A Response to Inequality: Black Women, Racism and Sexism*, 3 SIGNS 339 (1977); Deborah E. McDowell, *New Directions for Black Feminist Criticism*, in *THE NEW FEMINIST CRITICISM: ESSAYS ON WOMEN, LITERATURE AND THEORY* 186 (Elaine Showalter ed. 1985); Valerie Smith, *Black Feminist Theory and the Representation of the "Other"*, in *CHANGING OUR OWN WORDS: ESSAYS ON CRITICISM, THEORY AND WRITING BY BLACK WOMEN* 38 (Cheryl A. Wall ed. 1989).

4. Although the objective of this article is to describe the intersectional location of women of color and their marginalization within dominant resistance discourses, I do not mean to imply that the disempowerment of women of color is singularly or even primarily caused by feminist and antiracist theorists or activists. Indeed, I hope to dispell any such simplistic interpretations by capturing, at least in part, the way that prevailing structures of domination shape various discourses of resistance. As I have noted elsewhere, "People can only demand change in ways that reflect the logic of the institutions they are challenging. Demands for change that do not reflect . . . dominant ideology . . . will probably be ineffective." Crenshaw, *supra* note 3, at 1367. Although there are significant political and conceptual obstacles to moving against structures of domination with an intersectional sensibility, my point is that the effort to do so should be a central theoretical and political objective of both antiracism and feminism.

5. Although this article deals with violent assault perpetrated by men against women, women are also subject to violent assault by women. Violence among lesbians is a hidden but significant problem. One expert reported that in a study of 90 lesbian couples, roughly 46% of lesbians have been physically abused by their partners. Jane Garcia, *The Cost of Escaping Domestic Violence: Fear of Treatment in a Largely Homophobic Society May Keep Lesbian Abuse Victims from Calling for Help*, L.A. Times, May 6, 1991, at 2; see also NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING (Kerry Lobel ed. 1986); Ruthann Robson, *Lavender Bruises: Intralesbian Violence, Law and Lesbian Legal Theory*, 20 GOLDEN GATE U.L. REV. 567 (1990). There are clear parallels between violence against women in the lesbian community and violence against women in

to be represented within the discourses of either feminism or antiracism. Because of their intersectional identity as both women *and* of color within discourses that are shaped to respond to one *or* the other, women of color are marginalized within both.

In an earlier article, I used the concept of intersectionality to denote the various ways in which race and gender interact to shape the multiple dimensions of Black⁶ women's employment experiences.⁷ My objective there was to illustrate that many of the experiences Black women face are not subsumed within the traditional boundaries of race or gender discrimination as these boundaries are currently understood, and that the intersection of racism and sexism factors into Black women's lives in ways that cannot be captured wholly by looking at the race or gender dimensions of those experiences separately. I build on those observations here by exploring the various ways in which race and gender intersect in shaping structural, political, and representational aspects of violence against women of color.⁸

I should say at the outset that intersectionality is not being offered here as some new, totalizing theory of identity. Nor do I mean to suggest that violence against women of color can be explained only through the specific frameworks of race and gender considered here.⁹ Indeed, factors I address

communities of color. Lesbian violence is often shrouded in secrecy for similar reasons that have suppressed the exposure of heterosexual violence in communities of color—fear of embarrassing other members of the community, which is already stereotyped as deviant, and fear of being ostracized from the community. Despite these similarities, there are nonetheless distinctions between male abuse of women and female abuse of women that in the context of patriarchy, racism and homophobia, warrants more focused analysis than is possible here.

6. I use "Black" and "African American" interchangeably throughout this article. I capitalize "Black" because "Blacks, like Asians, Latinos, and other 'minorities,' constitute a specific cultural group and, as such, require denotation as a proper noun." Crenshaw, *supra* note 3, at 1332 n.2 (citing Catharine MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515, 516 (1982)). By the same token, I do not capitalize "white," which is not a proper noun, since whites do not constitute a specific cultural group. For the same reason I do not capitalize "women of color."

7. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139.

8. I explicitly adopt a Black feminist stance in this survey of violence against women of color. I do this cognizant of several tensions that such a position entails. The most significant one stems from the criticism that while feminism purports to speak *for* women of color through its invocation of the term "woman," the feminist perspective excludes women of color because it is based upon the experiences and interests of a certain subset of women. On the other hand, when white feminists attempt to include other women, they often add our experiences into an otherwise unaltered framework. It is important to name the perspective from which one constructs her analysis; and for me, that is as a Black feminist. Moreover, it is important to acknowledge that the materials that I incorporate in my analysis are drawn heavily from research on Black women. On the other hand, I see my own work as part of a broader collective effort among feminists of color to expand feminism to include analyses of race and other factors such as class, sexuality, and age. I have attempted therefore to offer my sense of the tentative connections between my analysis of the intersectional experiences of Black women and the intersectional experiences of other women of color. I stress that this analysis is not intended to include falsely nor to exclude unnecessarily other women of color.

9. I consider intersectionality a provisional concept linking contemporary politics with postmodern theory. In mapping the intersections of race and gender, the concept does engage dominant assumptions that race and gender are essentially separate categories. By tracing the categories to their intersections, I hope to suggest a methodology that will ultimately disrupt the tendencies to see race and gender as exclusive or separable. While the primary intersections that I explore here are

only in part or not at all, such as class or sexuality, are often as critical in shaping the experiences of women of color. My focus on the intersections of race and gender only highlights the need to account for multiple grounds of identity when considering how the social world is constructed.¹⁰

I have divided the issues presented in this article into three categories. In Part I, I discuss structural intersectionality, the ways in which the location of women of color at the intersection of race and gender makes our actual experience of domestic violence, rape, and remedial reform qualitatively different than that of white women. I shift the focus in Part II to political intersectionality, where I analyze how both feminist and antiracist politics have, paradoxically, often helped to marginalize the issue of violence against women of color. Then in Part III, I discuss representational intersectionality, by which I mean the cultural construction of women of color. I consider how controversies over the representation of women of color in popular culture can also elide the particular location of women of color, and thus become yet another source of intersectional disempowerment. Finally, I address the implications of the intersectional approach within the broader scope of contemporary identity politics.

I. STRUCTURAL INTERSECTIONALITY

A. *Structural Intersectionality and Battering*

I observed the dynamics of structural intersectionality during a brief field study of battered women's shelters located in minority communities in Los Angeles.¹¹ In most cases, the physical assault that leads women to these shelters is merely the most immediate manifestation of the subordination they experience. Many women who seek protection are unemployed or underemployed, and a good number of them are poor. Shelters serving these women cannot afford to address only the violence inflicted by the batterer; they must also confront the other multilayered and routinized forms of domination that often converge in these women's lives, hindering their ability to create alternatives to the abusive relationships that brought them to shelters in the first place. Many women of color, for example, are burdened by poverty, child care responsibilities, and the lack of job skills.¹² These burdens,

between race and gender, the concept can and should be expanded by factoring in issues such as class, sexual orientation, age, and color.

10. Professor Mari Matsuda calls this inquiry "asking the other question." Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183 (1991). For example, we should look at an issue or condition traditionally regarded as a gender issue and ask, "Where's the racism in this?"

11. During my research in Los Angeles, California, I visited Jenesse Battered Women's Shelter, the only shelter in the Western states primarily serving Black women, and Everywoman's Shelter, which primarily serves Asian women. I also visited Estelle Chueng at the Asian Pacific Law Foundation, and I spoke with a representative of La Casa, a shelter in the predominantly Latino community of East L.A.

12. One researcher has noted, in reference to a survey taken of battered women's shelters, that "many Caucasian women were probably excluded from the sample, since they are more likely to have available resources that enable them to avoid going to a shelter. Many shelters admit only women with few or no resources or alternatives." MILDRED DALEY PAGELOW, WOMAN-BAT-

largely the consequence of gender and class oppression, are then compounded by the racially discriminatory employment and housing practices women of color often face,¹³ as well as by the disproportionately high unemployment among people of color that makes battered women of color less able to depend on the support of friends and relatives for temporary shelter.¹⁴

Where systems of race, gender, and class domination converge, as they do in the experiences of battered women of color, intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles.¹⁵ Such was the case in 1990 when Congress amended the marriage fraud provisions of the Immigration and Nationality Act to protect immigrant women who were battered or exposed to extreme cruelty by the United States citizens or permanent residents these women

TERING: VICTIMS AND THEIR EXPERIENCES 97 (1981). On the other hand, many middle- and upper-class women are financially dependent upon their husbands and thus experience a diminution in their standard of living when they leave their husbands.

13. Together they make securing even the most basic necessities beyond the reach of many. Indeed one shelter provider reported that nearly 85 percent of her clients returned to the battering relationships, largely because of difficulties in finding employment and housing. African Americans are more segregated than any other racial group, and this segregation exists across class lines. Recent studies in Washington, D.C., and its suburbs show that 64% of Blacks trying to rent apartments in white neighborhoods encountered discrimination. Tracy Thompson, *Study Finds 'Persistent' Racial Bias in Area's Rental Housing*, Wash. Post, Jan. 31, 1991, at D1. Had these studies factored gender and family status into the equation, the statistics might have been worse.

14. More specifically, African Americans suffer from high unemployment rates, low incomes, and high poverty rates. According to Dr. David Swinton, Dean of the School of Business at Jackson State University in Mississippi, African Americans "receive three-fifths as much income per person as whites and are three times as likely to have annual incomes below the Federally defined poverty level of \$12,675 for a family of four." *Urban League Urges Action*, N.Y. Times, Jan. 9, 1991, at A14. In fact, recent statistics indicate that racial economic inequality is "higher as we begin the 1990s than at any other time in the last 20 years." David Swinton, *The Economic Status of African Americans: "Permanent" Poverty and Inequality*, in THE STATE OF BLACK AMERICA 1991, at 25 (1991).

The economic situation of minority women is, expectedly, worse than that of their male counterparts. Black women, who earn a median of \$7,875 a year, make considerably less than Black men, who earn a median income of \$12,609 a year, and white women, who earn a median income of \$9,812 a year. *Id.* at 32 (Table 3). Additionally, the percentage of Black female-headed families living in poverty (46.5%) is almost twice that of white female-headed families (25.4%). *Id.* at 43 (Table 8). Latino households also earn considerably less than white households. In 1988, the median income of Latino households was \$20,359 and for white households, \$28,340—a difference of almost \$8,000. HISPANIC AMERICANS: A STATISTICAL SOURCEBOOK 149 (1991). Analyzing by origin, in 1988, Puerto Rican households were the worst off, with 34.1% earning below \$10,000 a year and a median income for all Puerto Rican households of \$15,447 per year. *Id.* at 155. 1989 statistics for Latino men and women show that women earned an average of \$7,000 less than men. *Id.* at 169.

15. See text accompanying notes 61-66 (discussing shelter's refusal to house a Spanish-speaking woman in crisis even though her son could interpret for her because it would contribute to her disempowerment). Racial differences marked an interesting contrast between Jenese's policies and those of other shelters situated outside the Black community. Unlike some other shelters in Los Angeles, Jenese welcomed the assistance of men. According to the Director, the shelter's policy was premised on a belief that given African American's need to maintain healthy relations to pursue a common struggle against racism, anti-violence programs within the African American community cannot afford to be antagonistic to men. For a discussion of the different needs of Black women who are battered, see Beth Richie, *Battered Black Women: A Challenge for the Black Community*, BLACK SCHOLAR, Mar./Apr. 1985, at 40.

immigrated to the United States to marry. Under the marriage fraud provisions of the Act, a person who immigrated to the United States to marry a United States citizen or permanent resident had to remain "properly" married for two years before even applying for permanent resident status,¹⁶ at which time applications for the immigrant's permanent status were required of both spouses.¹⁷ Predictably, under these circumstances, many immigrant women were reluctant to leave even the most abusive of partners for fear of being deported.¹⁸ When faced with the choice between protection from their batterers and protection against deportation, many immigrant women chose the latter.¹⁹ Reports of the tragic consequences of this double subordination put pressure on Congress to include in the Immigration Act of 1990 a provision amending the marriage fraud rules to allow for an explicit waiver for hardship caused by domestic violence.²⁰ Yet many immigrant women, par-

16. 8 U.S.C. § 1186a (1988). The Marriage Fraud Amendments provide that an alien spouse "shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section." § 1186a(a)(1). An alien spouse with permanent resident status under this conditional basis may have her status terminated if the Attorney General finds that the marriage was "improper," § 1186a(b)(1), or if she fails to file a petition or fails to appear at the personal interview. § 1186a(c)(2)(A).

17. The Marriage Fraud Amendments provided that for the conditional resident status to be removed, "the alien spouse and the petitioning spouse (if not deceased) *jointly* must submit to the Attorney General . . . a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information." § 1186a(b)(1)(A) (emphasis added). The Amendments provided for a waiver, at the Attorney General's discretion, if the alien spouse was able to demonstrate that deportation would result in extreme hardship, or that the qualifying marriage was terminated for good cause. § 1186a(c)(4). However, the terms of this hardship waiver have not adequately protected battered spouses. For example, the requirement that the marriage be terminated for good cause may be difficult to satisfy in states with no-fault divorces. Eileen P. Lynsky, *Immigration Marriage Fraud Amendments of 1986: Till Congress Do Us Part*, 41 U. MIAMI L. REV. 1087, 1095 n.47 (1987) (student author) (citing Jerome B. Ingber & R. Leo Prischet, *The Marriage Fraud Amendments*, in *THE NEW SIMPSON-RODINO IMMIGRATION LAW OF 1986*, at 564-65 (Stanley Mailman ed. 1986)).

18. Immigration activists have pointed out that "[t]he 1986 Immigration Reform Act and the Immigration Marriage Fraud Amendment have combined to give the spouse applying for permanent residence a powerful tool to control his partner." Jorge Banales, *Abuse Among Immigrants; As Their Numbers Grow So Does the Need for Services*, Wash. Post, Oct. 16, 1990, at E5. Dean Ito Taylor, executive director of Nihonmachi Legal Outreach in San Francisco, explained that the Marriage Fraud Amendments "bound these immigrant women to their abusers." Deanna Hodgkin, *'Mail-Order' Brides Marry Pain to Get Green Cards*, Wash. Times, Apr. 16, 1991, at E1. In one egregious instance described by Beckie Masaki, executive director of the Asian Women's Shelter in San Francisco, the closer the Chinese bride came to getting her permanent residency in the United States, the more harshly her Asian-American husband beat her. Her husband, kicking her in the neck and face, warned her that she needed him, and if she did not do as he told her, he would call immigration officials. *Id.*

19. As Alice Fernandez, head of the Victim Services Agency at the Bronx Criminal Court, explained, "'Women are being held hostage by their landlords, their boyfriends, their bosses, their husbands. . . . The message is: If you tell anybody what I'm doing to you, they are going to ship your ass back home. And for these women, there is nothing more terrible than that Sometimes their response is: I would rather be dead in this country than go back home.'" Vivienne Walt, *Immigrant Abuse: Nowhere to Hide; Women Fear Deportation, Experts Say*, Newsday, Dec. 2, 1990, at 8.

20. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. The Act, introduced by Representative Louise Slaughter (D-N.Y.), provides that a battered spouse who has conditional permanent resident status can be granted a waiver for failure to meet the requirements if she can show that "the marriage was entered into in good faith and that after the marriage the alien spouse was

ticularly immigrant women of color, have remained vulnerable to battering because they are unable to meet the conditions established for a waiver. The evidence required to support a waiver "can include, but is not limited to, reports and affidavits from police, medical personnel, psychologists, school officials, and social service agencies."²¹ For many immigrant women, limited access to these resources can make it difficult for them to obtain the evidence needed for a waiver. And cultural barriers often further discourage immigrant women from reporting or escaping battering situations. Tina Shum, a family counselor at a social service agency, points out that "[t]his law sounds so easy to apply, but there are cultural complications in the Asian community that make even these requirements difficult. . . . Just to find the opportunity and courage to call us is an accomplishment for many."²² The typical immigrant spouse, she suggests, may live "[i]n an extended family where several generations live together, there may be no privacy on the telephone, no opportunity to leave the house and no understanding of public phones."²³ As a consequence, many immigrant women are wholly dependent on their husbands as their link to the world outside their homes.²⁴

Immigrant women are also vulnerable to spousal violence because so many of them depend on their husbands for information regarding their legal status.²⁵ Many women who are now permanent residents continue to suffer abuse under threats of deportation by their husbands. Even if the threats are unfounded, women who have no independent access to information will still be intimidated by such threats.²⁶ And even though the domes-

battered by or was subjected to extreme mental cruelty by the U.S. citizen or permanent resident spouse." H.R. REP. NO. 723(I), 101st Cong., 2d Sess. 78 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 6758; *see also* 8 C.F.R. § 216.5(3) (1992) (regulations for application for waiver based on claim of having been battered or subjected to extreme mental cruelty).

21. H.R. REP. NO. 723(I), *supra* note 20, at 79, *reprinted in* 1990 U.S.C.C.A.N. 6710, 6759.

22. Hodgin, *supra* note 18.

23. *Id.*

24. One survey conducted of battered women "hypothesized that if a person is a member of a discriminated minority group, the fewer the opportunities for socioeconomic status above the poverty level and the weaker the English language skills, the greater the disadvantage." M. PAGELOW, *supra* note 12, at 96. The 70 minority women in the study "had a double disadvantage in this society that serves to tie them more strongly to their spouses." *Id.*

25. A citizen or permanent resident spouse can exercise power over an alien spouse by threatening not to file a petition for permanent residency. If he fails to file a petition for permanent residency, the alien spouse continues to be undocumented and is considered to be in the country illegally. These constraints often restrict an alien spouse from leaving. Dean Ito Taylor tells the story of "one client who has been hospitalized—she's had him arrested for beating her—but she keeps coming back to him because he promises he will file for her. . . . He holds that green card over her head." Hodgin, *supra* note 18. Other stories of domestic abuse abound. Maria, a 50-year-old Dominican woman, explains that "'One time I had eight stitches in my head and a gash on the other side of my head, and he broke my ribs. . . . He would bash my head against the wall while we had sex. He kept threatening to kill me if I told the doctor what happened.'" Maria had a "powerful reason for staying with Juan through years of abuse: a ticket to permanent residence in the United States." Walt, *supra* note 19.

26. One reporter explained that "Third-world women must deal with additional fears, however. In many cases, they are afraid of authority, government institutions and their abusers' threat of being turned over to immigration officials to be deported." Banales, *supra* note 18.

tic violence waiver focuses on immigrant women whose husbands are United States citizens or permanent residents, there are countless women married to undocumented workers (or who are themselves undocumented) who suffer in silence for fear that the security of their entire families will be jeopardized should they seek help or otherwise call attention to themselves.²⁷

Language barriers present another structural problem that often limits opportunities of non-English-speaking women to take advantage of existing support services.²⁸ Such barriers not only limit access to information about shelters, but also limit access to the security shelters provide. Some shelters turn non-English-speaking women away for lack of bilingual personnel and resources.²⁹

These examples illustrate how patterns of subordination intersect in women's experience of domestic violence. Intersectional subordination need not be intentionally produced; in fact, it is frequently the consequence of the imposition of one burden that interacts with preexisting vulnerabilities to create yet another dimension of disempowerment. In the case of the marriage fraud provisions of the Immigration and Nationality Act, the imposition of a policy specifically designed to burden one class—immigrant spouses seeking permanent resident status—exacerbated the disempowerment of those already subordinated by other structures of domination. By failing to take into account the vulnerability of immigrant spouses to domestic vio-

27. Incidents of sexual abuse of undocumented women abound. Marta Rivera, director of the Hostos College Center for Women's and Immigrant's Rights, tells of how a 19-year-old Dominican woman had "arrived shaken . . . after her boss raped her in the women's restroom at work." The woman told Rivera that "70 to 80 percent of the workers [in a Brooklyn garment factory] were undocumented, and they all accepted sex as part of the job She said a 13-year-old girl had been raped there a short while before her, and the family sent her back to the Dominican Republic." Walt, *supra* note 19. In another example, a "Latin American woman, whose husband's latest attack left her with two broken fingers, a swollen face and bruises on her neck and chest, refused to report the beating to police." She returned to her home after a short stay in a shelter. She did not leave the abusive situation because she was "an undocumented, illiterate laborer whose children, passport and money are tightly controlled by her husband." Although she was informed of her rights, she was not able to hurdle the structural obstacles in her path. Banales, *supra* note 18.

28. For example, in a region with a large number of Third-World immigrants, "the first hurdle these [battered women's shelters] must overcome is the language barrier." Banales, *supra* note 18.

29.

There can be little question that women unable to communicate in English are severely handicapped in seeking independence. Some women thus excluded were even further disadvantaged because they were not U.S. citizens and some were in this country illegally. For a few of these, the only assistance shelter staff could render was to help reunite them with their families of origin.

M. PAGELOW, *supra* note 12, at 96-97. Non-English speaking women are often excluded even from studies of battered women because of their language and other difficulties. A researcher qualified the statistics of one survey by pointing out that "an unknown number of minority group women were excluded from this survey sample because of language difficulties." *Id.* at 96. To combat this lack of appropriate services for women of color at many shelters, special programs have been created specifically for women from particular communities. A few examples of such programs include the Victim Intervention Project in East Harlem for Latina women, Jenesee Shelter for African American women in Los Angeles, Apna Gar in Chicago for South Asian women, and, for Asian women generally, the Asian Women's Shelter in San Francisco, the New York Asian Women's Center, and the Center for the Pacific Asian Family in Los Angeles. Programs with hotlines include Sakhi for South Asian Women in New York, and Manavi in Jersey City, also for South Asian women, as well as programs for Korean women in Philadelphia and Chicago.

lence, Congress positioned these women to absorb the simultaneous impact of its anti-immigration policy and their spouses' abuse.

The enactment of the domestic violence waiver of the marriage fraud provisions similarly illustrates how modest attempts to respond to certain problems can be ineffective when the intersectional location of women of color is not considered in fashioning the remedy. Cultural identity and class affect the likelihood that a battered spouse could take advantage of the waiver. Although the waiver is formally available to all women, the terms of the waiver make it inaccessible to some. Immigrant women who are socially, culturally, or economically privileged are more likely to be able to marshal the resources needed to satisfy the waiver requirements. Those immigrant women least able to take advantage of the waiver—women who are socially or economically the most marginal—are the ones most likely to be women of color.

B. *Structural Intersectionality and Rape*

Women of color are differently situated in the economic, social, and political worlds. When reform efforts undertaken on behalf of women neglect this fact, women of color are less likely to have their needs met than women who are racially privileged. For example, counselors who provide rape crisis services to women of color report that a significant proportion of the resources allocated to them must be spent handling problems other than rape itself. Meeting these needs often places these counselors at odds with their funding agencies, which allocate funds according to standards of need that are largely white and middle-class.³⁰ These uniform standards of need ignore the fact that different needs often demand different priorities in terms of resource allocation, and consequently, these standards hinder the ability of counselors to address the needs of nonwhite and poor women.³¹ A case in point: women of color occupy positions both physically and culturally marginalized within dominant society, and so information must be targeted directly to them in order to reach them.³² Accordingly, rape crisis centers

30. For example, the Rosa Parks Shelter and the Compton Rape Crisis Hotline, two shelters that serve the African-American community, are in constant conflict with funding sources over the ratio of dollars and hours to women served. Interview with Joan Greer, Executive Director of Rosa Parks Shelter, in Los Angeles, California (April 1990).

31. One worker explained:

For example, a woman may come in or call in for various reasons. She has no place to go, she has no job, she has no support, she has no money, she has no food, she's been beaten, and after you finish meeting all those needs, or try to meet all those needs, then she may say, by the way, during all this, I was being raped. So that makes our community different than other communities. A person wants their basic needs first. It's a lot easier to discuss things when you are full.

Nancy Anne Matthews, *Stopping Rape or Managing its Consequences? State Intervention and Feminist Resistance in the Los Angeles Anti-Rape Movement, 1972-1987*, at 287 (1989) (Ph.D. dissertation, University of California, Los Angeles) (chronicling the history of the rape crisis movement, and highlighting the different histories and dilemmas of rape crisis hotlines run by white feminists and those situated in the minority communities).

32.

Typically, more time must be spent with a survivor who has fewer personal resources.

must earmark more resources for basic information dissemination in communities of color than in white ones.

Increased costs are but one consequence of serving people who cannot be reached by mainstream channels of information. As noted earlier, counselors in minority communities report spending hours locating resources and contacts to meet the housing and other immediate needs of women who have been assaulted. Yet this work is only considered "information and referral" by funding agencies and as such, is typically underfunded, notwithstanding the magnitude of need for these services in minority communities.³³ The problem is compounded by expectations that rape crisis centers will use a significant portion of resources allocated to them on counselors to accompany victims to court,³⁴ even though women of color are less likely to have their cases pursued in the criminal justice system.³⁵ The resources expected to be set aside for court services are misdirected in these communities.

The fact that minority women suffer from the effects of multiple subordination, coupled with institutional expectations based on inappropriate nonintersectional contexts, shapes and ultimately limits the opportunities for meaningful intervention on their behalf. Recognizing the failure to consider intersectional dynamics may go far toward explaining the high levels of failure, frustration, and burn-out experienced by counselors who attempt to meet the needs of minority women victims.

II. POLITICAL INTERSECTIONALITY

The concept of political intersectionality highlights the fact that women

These survivors tend to be ethnic minority women. Often, a non-assimilated ethnic minority survivor requires translating and interpreting, transportation, overnight shelter for herself and possibly children, and counseling to significant others in addition to the usual counseling and advocacy services. So, if a rape crisis center serves a predominantly ethnic minority population, the "average" number of hours of service provided to each survivor is much higher than for a center that serves a predominantly white population.

Id. at 275 (quoting position paper of the Southern California Rape Hotline Alliance).

33. *Id.* at 287-88.

34. The Director of Rosa Parks reported that she often runs into trouble with her funding sources over the Center's lower than average number of counselors accompanying victims to court. Interview with Joan Greer, *supra* note 30.

35.

Even though current statistics indicate that Black women are more likely to be victimized than white women, Black women are less likely to report their rapes, less likely to have their cases come to trial, less likely to have their trials result in convictions, and, most disturbing, less likely to seek counseling and other support services.

PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* 178-79 (1990); accord HUBERT S. FEILD & LEIGH B. BIENEN, *JURORS AND RAPE: A STUDY IN PSYCHOLOGY AND LAW* 141 (1980) (data obtained from 1,056 citizens serving as jurors in simulated legal rape cases generally showed that "the assailant of the black woman was given a more lenient sentence than the white woman's assailant"). According to Fern Ferguson, an Illinois sex abuse worker, speaking at a Women of Color Institute conference in Knoxville, Tennessee, 10% of rapes involving white victims end in conviction, compared with 4.2% for rapes involving non-white victims (and 2.3% for the less-inclusive group of Black rape victims). UPI, July 30, 1985. Ferguson argues that myths about women of color being promiscuous and wanting to be raped encourage the criminal justice system and medical professionals as well to treat women of color differently than they treat white women after a rape has occurred. *Id.*

of color are situated within at least two subordinated groups that frequently pursue conflicting political agendas. The need to split one's political energies between two sometimes opposing groups is a dimension of intersectional disempowerment that men of color and white women seldom confront. Indeed, their specific raced *and* gendered experiences, although intersectional, often define as well as confine the interests of the entire group. For example, racism as experienced by people of color who are of a particular gender—male—tends to determine the parameters of antiracist strategies, just as sexism as experienced by women who are of a particular race—white—tends to ground the women's movement. The problem is not simply that both discourses fail women of color by not acknowledging the "additional" issue of race or of patriarchy but that the discourses are often inadequate even to the discrete tasks of articulating the full dimensions of racism and sexism. Because women of color experience racism in ways not always the same as those experienced by men of color and sexism in ways not always parallel to experiences of white women, antiracism and feminism are limited, even on their own terms.

Among the most troubling political consequences of the failure of antiracist and feminist discourses to address the intersections of race and gender is the fact that, to the extent they can forward the interest of "people of color" and "women," respectively, one analysis often implicitly denies the validity of the other. The failure of feminism to interrogate race means that the resistance strategies of feminism will often replicate and reinforce the subordination of people of color, and the failure of antiracism to interrogate patriarchy means that antiracism will frequently reproduce the subordination of women. These mutual elisions present a particularly difficult political dilemma for women of color. Adopting either analysis constitutes a denial of a fundamental dimension of our subordination and precludes the development of a political discourse that more fully empowers women of color.

A. *The Politicization of Domestic Violence*

That the political interests of women of color are obscured and sometimes jeopardized by political strategies that ignore or suppress intersectional issues is illustrated by my experiences in gathering information for this article. I attempted to review Los Angeles Police Department statistics reflecting the rate of domestic violence interventions by precinct because such statistics can provide a rough picture of arrests by racial group, given the degree of racial segregation in Los Angeles.³⁶ L.A.P.D., however, would not release the statistics. A representative explained that one reason the statistics were not released was that domestic violence activists both within and

36. Most crime statistics are classified by sex or race but none are classified by sex *and* race. Because we know that most rape victims are women, the racial breakdown reveals, at best, rape rates for Black women. Yet, even given this head start, rates for other non-white women are difficult to collect. While there are some statistics for Latinas, statistics for Asian and Native American women are virtually non-existent. Cf. G. Chezia Carraway, *Violence Against Women of Color*, 43 STAN. L. REV. 1301 (1993).

outside the Department feared that statistics reflecting the extent of domestic violence in minority communities might be selectively interpreted and publicized so as to undermine long-term efforts to force the Department to address domestic violence as a serious problem. I was told that activists were worried that the statistics might permit opponents to dismiss domestic violence as a minority problem and, therefore, not deserving of aggressive action.

The informant also claimed that representatives from various minority communities opposed the release of these statistics. They were concerned, apparently, that the data would unfairly represent Black and Brown communities as unusually violent, potentially reinforcing stereotypes that might be used in attempts to justify oppressive police tactics and other discriminatory practices. These misgivings are based on the familiar and not unfounded premise that certain minority groups—especially Black men—have already been stereotyped as uncontrollably violent. Some worry that attempts to make domestic violence an object of political action may only serve to confirm such stereotypes and undermine efforts to combat negative beliefs about the Black community.

This account sharply illustrates how women of color can be erased by the strategic silences of antiracism and feminism. The political priorities of both were defined in ways that suppressed information that could have facilitated attempts to confront the problem of domestic violence in communities of color.

1. *Domestic violence and antiracist politics.*

Within communities of color, efforts to stem the politicization of domestic violence are often grounded in attempts to maintain the integrity of the community. The articulation of this perspective takes different forms. Some critics allege that feminism has no place within communities of color, that the issues are internally divisive, and that they represent the migration of white women's concerns into a context in which they are not only irrelevant but also harmful. At its most extreme, this rhetoric denies that gender violence is a problem in the community and characterizes any effort to politicize gender subordination as itself a community problem. This is the position taken by Shahrazad Ali in her controversial book, *The Blackman's Guide to Understanding the Blackwoman*.³⁷ In this stridently antifeminist tract, Ali draws a positive correlation between domestic violence and the

37. SHAHRAZAD ALI, *THE BLACKMAN'S GUIDE TO UNDERSTANDING THE BLACKWOMAN* (1989). Ali's book sold quite well for an independently published title, an accomplishment no doubt due in part to her appearances on the Phil Donahue, Oprah Winfrey, and Sally Jesse Raphael television talk shows. For public and press reaction, see Dorothy Gilliam, *Sick, Distorted Thinking*, Wash. Post, Oct. 11, 1990, at D3; Lena Williams, *Black Woman's Book Starts a Predictable Storm*, N.Y. Times, Oct. 2, 1990, at C11; see also PEARL CLEAGUE, *MAD AT MILES: A BLACK WOMAN'S GUIDE TO TRUTH* (1990). The title clearly styled after Ali's, *Mad at Miles* responds not only to issues raised by Ali's book, but also to Miles Davis's admission in his autobiography, *Miles: The Autobiography* (1989), that he had physically abused, among other women, his former wife, actress Cicely Tyson.

liberation of African Americans. Ali blames the deteriorating conditions within the Black community on the insubordination of Black women and on the failure of Black men to control them.³⁸ Ali goes so far as to advise Black men to physically chastise Black women when they are "disrespectful."³⁹ While she cautions that Black men must use moderation in disciplining "their" women, she argues that Black men must sometimes resort to physical force to reestablish the authority over Black women that racism has disrupted.⁴⁰

Ali's premise is that patriarchy is beneficial for the Black community,⁴¹ and that it must be strengthened through coercive means if necessary.⁴² Yet

38. Shahrazad Ali suggests that the "[Blackwoman] certainly does not believe that her disrespect for the Blackman is destructive, *nor* that her opposition to him has deteriorated the Black nation." S. ALI, *supra* note 37, at viii. Blaming the problems of the community on the failure of the Black woman to accept her "real definition," Ali explains that "[n]o nation can rise when the natural order of the behavior of the male and the female have been altered against their wishes by force. No species can survive if the female of the genus disturbs the balance of her nature by acting other than herself." *Id.* at 76.

39. Ali advises the Blackman to hit the Blackwoman in the mouth, "[b]ecause it is from that hole, in the lower part of her face, that all her rebellion culminates into words. Her unbridled tongue is a main reason she cannot get along with the Blackman. She often needs a reminder." *Id.* at 169. Ali warns that "if [the Blackwoman] ignores the authority and superiority of the Blackman, there is a penalty. When she crosses this line and becomes viciously insulting it is time for the Blackman to soundly slap her in the mouth." *Id.*

40. Ali explains that, "[r]egretfully some Blackwomen want to be physically controlled by the Blackman." *Id.* at 174. "The Blackwoman, deep inside her heart," Ali reveals, "wants to surrender but she wants to be coerced." *Id.* at 72. "[The Blackwoman] wants [the Blackman] to stand up and defend himself even if it means he has to knock her out of the way to do so. This is necessary whenever the Blackwoman steps out of the protection of womanly behavior and enters the dangerous domain of masculine challenge." *Id.* at 174.

41. Ali points out that "[t]he Blackman being number 1 and the Blackwoman being number 2 is another absolute law of nature. The Blackman was created first, he has seniority. And the Blackwoman was created 2nd. He is first. She is second. The Blackman is the beginning and all others come from him. Everyone on earth knows this except the Blackwoman." *Id.* at 67.

42. In this regard, Ali's arguments bear much in common with those of neoconservatives who attribute many of the social ills plaguing Black America to the breakdown of patriarchal family values. See, e.g., William Raspberry, *If We Are to Rescue American Families, We Have to Save the Boys*, Chicago Trib., July 19, 1989, at C15; George F. Will, *Voting Rights Won't Fix It*, Wash. Post, Jan. 23, 1986, at A23; George F. Will, "White Racism" Doesn't Make Blacks Mere Victims of Fate, Milwaukee J., Feb. 21, 1986, at 9. Ali's argument shares remarkable similarities to the controversial "Moynihan Report" on the Black family, so called because its principal author was now-Senator Daniel P. Moynihan (D-N.Y.). In the infamous chapter entitled "The Tangle of Pathology," Moynihan argued that

the Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well.

OFFICE OF POLICY PLANNING AND RESEARCH, U.S. DEPARTMENT OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* 29 (1965), reprinted in LEE RAINWATER & WILLIAM L. YANCEY, *THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY* 75 (1967). A storm of controversy developed over the book, although few commentators challenged the patriarchy embedded in the analysis. Bill Moyers, then a young minister and speechwriter for President Johnson, firmly believed that the criticism directed at Moynihan was unfair. Some 20 years later, Moyers resurrected the Moynihan thesis in a special television program, *The Vanishing Family: Crisis in Black America* (CBS television broadcast, Jan. 25, 1986). The show first aired in January 1986 and featured several African-American men and women who had become parents but were unwilling to marry. Arthur Unger, *Hardhitting Special About Black Families*, Christian Sci. Mon., Jan. 23, 1986,

the violence that accompanies this will to control is devastating, not only for the Black women who are victimized, but also for the entire Black community.⁴³ The recourse to violence to resolve conflicts establishes a dangerous pattern for children raised in such environments and contributes to many other pressing problems.⁴⁴ It has been estimated that nearly forty percent of all homeless women and children have fled violence in the home,⁴⁵ and an estimated sixty-three percent of young men between the ages of eleven and twenty who are imprisoned for homicide have killed their mothers' batterers.⁴⁶ And yet, while gang violence, homicide, and other forms of Black-on-Black crime have increasingly been discussed within African-American politics, patriarchal ideas about gender and power preclude the recognition of domestic violence as yet another compelling incidence of Black-on-Black crime.

Efforts such as Ali's to justify violence against women in the name of Black liberation are indeed extreme.⁴⁷ The more common problem is that

at 23. Many saw the Moyers show as a vindication of Moynihan. President Reagan took the opportunity to introduce an initiative to revamp the welfare system a week after the program aired. Michael Barone, *Poor Children and Politics*, Wash. Post, Feb. 10, 1986, at A1. Said one official, "Bill Moyers has made it safe for people to talk about this issue, the disintegrating black family structure." Robert Pear, *President Reported Ready to Propose Overhaul of Social Welfare System*, N.Y. Times, Feb. 1, 1986, at A12. Critics of the Moynihan/Moyers thesis have argued that it scapegoats the Black family generally and Black women in particular. For a series of responses, see *Scapegoating the Black Family*, NATION, July 24, 1989 (special issue, edited by Jewell Handy Gresham and Margaret B. Wilkerson, with contributions from Margaret Burnham, Constance Clayton, Dorothy Height, Faye Wattleton, and Marian Wright Edelman). For an analysis of the media's endorsement of the Moynihan/Moyers thesis, see CARL GINSBURG, RACE AND MEDIA: THE ENDURING LIFE OF THE MOYNIHAN REPORT (1989).

43. Domestic violence relates directly to issues that even those who subscribe to Ali's position must also be concerned about. The socioeconomic condition of Black males has been one such central concern. Recent statistics estimate that 25% of Black males in their twenties are involved in the criminal justice systems. See David G. Savage, *Young Black Males in Jail or in Court Control Study Says*, L.A. Times, Feb. 27, 1990, at A1; Newsday, Feb. 27, 1990, at 15; *Study Shows Racial Imbalance in Penal System*, N.Y. Times, Feb. 27, 1990, at A18. One would think that the linkages between violence in the home and the violence on the streets would alone persuade those like Ali to conclude that the African-American community cannot afford domestic violence and the patriarchal values that support it.

44. A pressing problem is the way domestic violence reproduces itself in subsequent generations. It is estimated that boys who witness violence against women are ten times more likely to batter female partners as adults. *Women and Violence: Hearings Before the Senate Comm. on the Judiciary on Legislation to Reduce the Growing Problem of Violent Crime Against Women*, 101st Cong., 2d Sess., pt. 2, at 89 (1991) [hereinafter *Hearings on Violent Crime Against Women*] (testimony of Charlotte Fedders). Other associated problems for boys who witness violence against women include higher rates of suicide, violent assault, sexual assault, and alcohol and drug use. *Id.*, pt. 2, at 131 (statement of Sarah M. Buel, Assistant District Attorney, Massachusetts, and Supervisor, Harvard Law School Battered Women's Advocacy Project).

45. *Id.* at 142 (statement of Susan Kelly-Dreiss) (discussing several studies in Pennsylvania linking homelessness to domestic violence).

46. *Id.* at 143 (statement of Susan Kelly-Dreiss).

47. Another historical example includes Eldridge Cleaver, who argued that he raped white women as an assault upon the white community. Cleaver "practiced" on Black women first. ELDRIDGE CLEAVER, *SOUL ON ICE* 14-15 (1968). Despite the appearance of misogyny in both works, each professes to worship Black women as "queens" of the Black community. This "queenly subervience" parallels closely the image of the "woman on a pedestal" against which white feminists have railed. Because Black women have been denied pedestal status within dominant society, the image of the African queen has some appeal to many African-American women. Although it is not a

the political or cultural interests of the community are interpreted in a way that precludes full public recognition of the problem of domestic violence. While it would be misleading to suggest that white Americans have come to terms with the degree of violence in their own homes, it is nonetheless the case that race adds yet another dimension to why the problem of domestic violence is suppressed within nonwhite communities. People of color often must weigh their interests in avoiding issues that might reinforce distorted public perceptions against the need to acknowledge and address intracommunity problems. Yet the cost of suppression is seldom recognized in part because the failure to discuss the issue shapes perceptions of how serious the problem is in the first place.

The controversy over Alice Walker's novel *The Color Purple* can be understood as an intracommunity debate about the political costs of exposing gender violence within the Black community.⁴⁸ Some critics chastised Walker for portraying Black men as violent brutes.⁴⁹ One critic lambasted Walker's portrayal of Celie, the emotionally and physically abused protagonist who finally triumphs in the end. Walker, the critic contended, had created in Celie a Black woman whom she couldn't imagine existing in any Black community she knew or could conceive of.⁵⁰

The claim that Celie was somehow an unauthentic character might be read as a consequence of silencing discussion of intracommunity violence. Celie may be unlike any Black woman we know because the real terror experienced daily by minority women is routinely concealed in a misguided (though perhaps understandable) attempt to forestall racial stereotyping. Of course, it is true that representations of Black violence—whether statistical or fictional—are often written into a larger script that consistently portrays Black and other minority communities as pathologically violent. The problem, however, is not so much the portrayal of violence itself as it is the absence of other narratives and images portraying a fuller range of Black experience. Suppression of some of these issues in the name of antiracism imposes real costs. Where information about violence in minority communi-

feminist position, there are significant ways in which the promulgation of the image directly counters the intersectional effects of racism and sexism that have denied African-American women a perch in the "gilded cage."

48. ALICE WALKER, *THE COLOR PURPLE* (1982). The most severe criticism of Walker developed after the book was filmed as a movie. Donald Bogle, a film historian, argued that part of the criticism of the movie stemmed from the one-dimensional portrayal of Mister, the abusive man. See Jacqueline Trescott, *Passions Over Purple; Anger and Unease Over Film's Depiction of Black Men*, Wash. Post, Feb. 5, 1986, at C1. Bogle argues that in the novel, Walker linked Mister's abusive conduct to his oppression in the white world—since Mister "can't be himself, he has to assert himself with the black woman." The movie failed to make any connection between Mister's abusive treatment of Black women and racism, and thereby presented Mister only as an "insensitive, callous man." *Id.*

49. See, e.g., Gerald Early, *Her Picture in the Papers: Remembering Some Black Women*, AN-TAEUS, Spring 1988, at 9; Daryl Pinckney, *Black Victims, Black Villains*, N.Y. REVIEW OF BOOKS, Jan. 29, 1987, at 17; Trescott, *supra* note 48.

50. Trudier Harris, *On the Color Purple, Stereotypes, and Silence*, 18 BLACK AM. LIT. F. 155, 155 (1984).

ties is not available, domestic violence is unlikely to be addressed as a serious issue.

The political imperatives of a narrowly focused antiracist strategy support other practices that isolate women of color. For example, activists who have attempted to provide support services to Asian- and African-American women report intense resistance from those communities.⁵¹ At other times, cultural and social factors contribute to suppression. Nilda Rimonte, director of Everywoman's Shelter in Los Angeles, points out that in the Asian community, saving the honor of the family from shame is a priority.⁵² Unfortunately, this priority tends to be interpreted as obliging women not to scream rather than obliging men not to hit.

Race and culture contribute to the suppression of domestic violence in other ways as well. Women of color are often reluctant to call the police, a hesitancy likely due to a general unwillingness among people of color to subject their private lives to the scrutiny and control of a police force that is frequently hostile. There is also a more generalized community ethic against public intervention, the product of a desire to create a private world free from the diverse assaults on the public lives of racially subordinated people. The home is not simply a man's castle in the patriarchal sense, but may also function as a safe haven from the indignities of life in a racist society. However, but for this "safe haven" in many cases, women of color victimized by violence might otherwise seek help.

There is also a general tendency within antiracist discourse to regard the problem of violence against women of color as just another manifestation of racism. In this sense, the relevance of gender domination within the community is reconfigured as a consequence of discrimination against men. Of

51. The source of the resistance reveals an interesting difference between the Asian-American and African-American communities. In the African-American community, the resistance is usually grounded in efforts to avoid confirming negative stereotypes of African-Americans as violent; the concern of members in some Asian-American communities is to avoid tarnishing the model minority myth. Interview with Nilda Rimonte, Director of the Everywoman Shelter, in Los Angeles, California (April 19, 1991).

52. Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311 (1991); see also Nilda Rimonte, *Domestic Violence Against Pacific Asians*, in MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN 327, 328 (Asian Women United of California ed. 1989) ("Traditionally Pacific Asians conceal and deny problems that threaten group pride and may bring on shame. Because of the strong emphasis on obligations to the family, a Pacific Asian woman will often remain silent rather than admit to a problem that might disgrace her family."). Additionally, the possibility of ending the marriage may inhibit an immigrant woman from seeking help. Tina Shum, a family counselor, explains that a "'divorce is a shame on the whole family. . . . The Asian woman who divorces feels tremendous guilt.'" Of course, in an attempt to be sensitive to cultural difference, stereotype a culture or defer to it in ways that abandon women to abuse. When—or, more importantly, how—to take culture into account when addressing the needs of women of color is a complicated issue. Testimony as to the particularities of Asian "culture" has increasingly been used in trials to determine the culpability of both Asian immigrant women and men who are charged with crimes of interpersonal violence. A position on the use of the "cultural defense" in these instances depends on how "culture" is being defined as well as on whether and to what extent the "cultural defense" has been used differently for Asian men and Asian women. See Leti Volpp, (Mis)Identifying Culture: Asian Women and the "Cultural Defense," (unpublished manuscript) (on file with the *Stanford Law Review*).

course, it is probably true that racism contributes to the cycle of violence, given the stress that men of color experience in dominant society. It is therefore more than reasonable to explore the links between racism and domestic violence. But the chain of violence is more complex and extends beyond this single link. Racism is linked to patriarchy to the extent that racism denies men of color the power and privilege that dominant men enjoy. When violence is understood as an acting-out of being denied male power in other spheres, it seems counterproductive to embrace constructs that implicitly link the solution to domestic violence to the acquisition of greater male power. The more promising political imperative is to challenge the legitimacy of such power expectations by exposing their dysfunctional and debilitating effect on families and communities of color. Moreover, while understanding links between racism and domestic violence is an important component of any effective intervention strategy, it is also clear that women of color need not await the ultimate triumph over racism before they can expect to live violence-free lives.

2. *Race and the domestic violence lobby.*

Not only do race-based priorities function to obscure the problem of violence suffered by women of color; feminist concerns often suppress minority experiences as well. Strategies for increasing awareness of domestic violence within the white community tend to begin by citing the commonly shared assumption that battering is a minority problem. The strategy then focuses on demolishing this strawman, stressing that spousal abuse also occurs in the white community. Countless first-person stories begin with a statement like, "I was not supposed to be a battered wife." That battering occurs in families of all races and all classes seems to be an ever-present theme of anti-abuse campaigns.⁵³ First-person anecdotes and studies, for example, consistently assert that battering cuts across racial, ethnic, economic, educational, and religious lines.⁵⁴ Such disclaimers seem relevant only in the presence of an

53. See, e.g., *Hearings on Violent Crime Against Women*, *supra* note 44, pt. 1, at 101 (testimony of Roni Young, Director of Domestic Violence Unit, Office of the State's Attorney for Baltimore City, Baltimore, Maryland) ("The victims do not fit a mold by any means."); *Id.* pt. 2, at 89 (testimony of Charlotte Fedders) ("Domestic violence occurs in all economic, cultural, racial, and religious groups. There is not a typical woman to be abused."); *Id.* pt. 2 at 139 (statement of Susan Kelly-Dreiss, Executive Director, Pennsylvania Coalition Against Domestic Violence) ("Victims come from a wide spectrum of life experiences and backgrounds. Women can be beaten in any neighborhood and in any town.").

54. See, e.g., LENORE F. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* 101-02 (1989) ("Battered women come from all types of economic, cultural, religious, and racial backgrounds. . . . They are women like you. Like me. Like those whom you know and love."); MURRAY A. STRAUS, RICHARD J. GELLES, SUZANNE K. STEINMETZ, *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* 31 (1980) ("Wife-beating is found in every class, at every income level."); Natalie Loder Clark, *Crime Begins At Home: Let's Stop Punishing Victims and Perpetuating Violence*, 28 WM. & MARY L. REV. 263, 282 n.74 (1987) ("The problem of domestic violence cuts across all social lines and affects 'families regardless of their economic class, race, national origin, or educational background.' Commentators have indicated that domestic violence is prevalent among upper middle-class families.") (citations omitted); Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 276 (1985) ("It is important to emphasize that wife abuse is prevalent

initial, widely held belief that domestic violence occurs primarily in minority or poor families. Indeed some authorities explicitly renounce the "stereotypical myths" about battered women.⁵⁵ A few commentators have even transformed the message that battering is not *exclusively* a problem of the poor or minority communities into a claim that it *equally* affects all races and classes.⁵⁶ Yet these comments seem less concerned with exploring domestic abuse within "stereotyped" communities than with removing the stereotype as an obstacle to exposing battering within white middle- and upper-class communities.⁵⁷

Efforts to politicize the issue of violence against women challenge beliefs that violence occurs only in homes of "others." While it is unlikely that advocates and others who adopt this rhetorical strategy intend to exclude or ignore the needs of poor and colored women, the underlying premise of this seemingly universalistic appeal is to keep the sensibilities of dominant social

throughout our society. Recently collected data merely confirm what people working with victims have long known: battering occurs in all social and economic groups.") (citations omitted); Liza G. Lerman, *Mediation of Wife Abuse Cases: The adverse Impact of Informal Dispute Resolution on Women*, 7 HARV. WOMEN'S L.J. 57, 63 (1984) ("Battering occurs in all racial, economic, and religious groups, in rural, urban, and suburban settings.") (citation omitted); Steven M. Cook, *Domestic Abuse Legislation in Illinois and Other States: A Survey and Suggestions for Reform*, 1983 U. ILL. L. REV. 261, 262 (1983) (student author) ("Although domestic violence is difficult to measure, several studies suggest that spouse abuse is an extensive problem, one which strikes families regardless of their economic class, race, national origin, or educational background.") (citations omitted).

55. For example, Susan Kelly-Dreiss states:

The public holds many myths about battered women—they are poor, they are women of color, they are uneducated, they are on welfare, they deserve to be beaten and they even like it. However, contrary to common misperceptions, domestic violence is not confined to any one socioeconomic, ethnic, religious, racial or age group.

Hearings on Violent Crime Against Women, *supra* note 44, pt. 2, at 139 (testimony of Susan Kelly-Dreiss, Executive Director, Pa. Coalition Against Domestic Violence). Kathleen Waits offers a possible explanation for this misperception:

It is true that battered women who are also poor are more likely to come to the attention of governmental officials than are their middle- and upper-class counterparts. However, this phenomenon is caused more by the lack of alternative resources and the intrusiveness of the welfare state than by any significantly higher incidence of violence among lower-class families.

Waits, *supra* note 54, at 276-77 (citations omitted).

56. However, no reliable statistics support such a claim. In fact, some statistics suggest that there is a greater frequency of violence among the working classes and the poor. See M. STRAUS, R. GELLES, & S. STEINMETZ, *supra* note 54, at 31. Yet these statistics are also unreliable because, to follow Waits's observation, violence in middle- and upper-class homes remains hidden from the view of statisticians and governmental officials alike. See note 55 *supra*. I would suggest that assertions that the problem is the same across race and class are driven less by actual knowledge about the prevalence of domestic violence in different communities than by advocates' recognition that the image of domestic violence as an issue involving primarily the poor and minorities complicates efforts to mobilize against it.

57. On January 14, 1991, Senator Joseph Biden (D-Del.) introduced Senate Bill 15, the Violence Against Women Act of 1991, comprehensive legislation addressing violent crime confronting women. S. 15, 102d Cong., 1st Sess. (1991). The bill consists of several measures designed to create safe streets, safe homes, and safe campuses for women. More specifically, Title III of the bill creates a civil rights remedy for crimes of violence motivated by the victim's gender. *Id.* § 301. Among the findings supporting the bill were "(1) crimes motivated by the victim's gender constitute bias crimes in violation of the victim's right to be free from discrimination on the basis of gender" and "(2) current law [does not provide a civil rights remedy] for gender crimes committed on the street or in the home." S. REP. NO. 197, 102d Cong., 1st Sess. 27 (1991).

groups focused on the experiences of those groups. Indeed, as subtly suggested by the opening comments of Senator David Boren (D-Okla.) in support of the Violence Against Women Act of 1991, the displacement of the "other" as the presumed victim of domestic violence works primarily as a political appeal to rally white elites. Boren said,

Violent crimes against women are not limited to the streets of the inner cities, but also occur in homes in the urban and rural areas across the country.

Violence against women affects not only those who are actually beaten and brutalized, but indirectly affects all women. Today, our wives, mothers, daughters, sisters, and colleagues are held captive by fear generated from these violent crimes—held captive not for what they do or who they are, but solely because of gender.⁵⁸

Rather than focusing on and illuminating how violence is disregarded when the home is "othered," the strategy implicit in Senator Boren's remarks functions instead to politicize the problem only in the dominant community. This strategy permits white women victims to come into focus, but does little to disrupt the patterns of neglect that permitted the problem to continue as long as it was imagined to be a minority problem. The experience of violence by minority women is ignored, except to the extent it gains white support for domestic violence programs in the white community.

Senator Boren and his colleagues no doubt believe that they have provided legislation and resources that will address the problems of all women victimized by domestic violence. Yet despite their universalizing rhetoric of "all" women, they were able to empathize with female victims of domestic violence only by looking past the plight of "other" women and by recognizing the familiar faces of their own. The strength of the appeal to "protect our women" must be its race and class specificity. After all, it has always been someone's wife, mother, sister, or daughter that has been abused, even when the violence was stereotypically Black or Brown, and poor. The point here is not that the Violence Against Women Act is particularistic on its own terms, but that unless the Senators and other policymakers ask why violence remained insignificant as long as it was understood as a minority problem, it is unlikely that women of color will share equally in the distribution of resources and concern. It is even more unlikely, however, that those in power will be forced to confront this issue. As long as attempts to politicize domestic violence focus on convincing whites that this is not a "minority" problem but *their* problem, any authentic and sensitive attention to the

58. 137 Cong. Rec. S611 (daily ed. Jan. 14, 1991) (statement of Sen. Boren). Senator William Cohen (D-Me.) followed with a similar statement, noting that rapes and domestic assaults are not limited to the streets of our inner cities or to those few highly publicized cases that we read about in the newspapers or see on the evening news. Women throughout the country, in our Nation's urban areas and rural communities, are being beaten and brutalized in the streets and in their homes. It is our mothers, wives, daughters, sisters, friends, neighbors, and coworkers who are being victimized; and in many cases, they are being victimized by family members, friends, and acquaintances.
Id. (statement of Sen. Cohen).

experiences of Black and other minority women probably will continue to be regarded as jeopardizing the movement.

While Senator Boren's statement reflects a self-consciously political presentation of domestic violence, an episode of the CBS news program *48 Hours*⁵⁹ shows how similar patterns of othering nonwhite women are apparent in journalistic accounts of domestic violence as well. The program presented seven women who were victims of abuse. Six were interviewed at some length along with their family members, friends, supporters, and even detractors. The viewer got to know something about each of these women. These victims were humanized. Yet the seventh woman, the only nonwhite one, never came into focus. She was literally unrecognizable throughout the segment, first introduced by photographs showing her face badly beaten and later shown with her face electronically altered in the videotape of a hearing at which she was forced to testify. Other images associated with this woman included shots of a bloodstained room and blood-soaked pillows. Her boyfriend was pictured handcuffed while the camera zoomed in for a close-up of his bloodied sneakers. Of all the presentations in the episode, hers was the most graphic and impersonal. The overall point of the segment "featuring" this woman was that battering might not escalate into homicide if battered women would only cooperate with prosecutors. In focusing on its own agenda and failing to explore why this woman refused to cooperate, the program diminished this woman, communicating, however subtly, that she was responsible for her own victimization.

Unlike the other women, all of whom, again, were white, this Black woman had no name, no family, no context. The viewer sees her only as victimized and uncooperative. She cries when shown pictures. She pleads not to be forced to view the bloodstained room and her disfigured face. The program does not help the viewer to understand her predicament. The possible reasons she did not want to testify—fear, love, or possibly both—are never suggested.⁶⁰ Most unfortunately, she, unlike the other six, is given no epilogue. While the fates of the other women are revealed at the end of the episode, we discover nothing about the Black woman. She, like the "others" she represents, is simply left to herself and soon forgotten.

I offer this description to suggest that "other" women are silenced as much by being relegated to the margin of experience as by total exclusion. Tokenistic, objectifying, voyeuristic inclusion is at least as disempowering as complete exclusion. The effort to politicize violence against women will do little to address Black and other minority women if their images are retained simply to magnify the problem rather than to humanize their experiences. Similarly, the antiracist agenda will not be advanced significantly by forcibly suppressing the reality of battering in minority communities. As the *48 Hours* episode makes clear, the images and stereotypes we fear are readily

59. *48 Hours: Till Death Do Us Part* (CBS television broadcast, Feb. 6, 1991).

60. See Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23.

available and are frequently deployed in ways that do not generate sensitive understanding of the nature of domestic violence in minority communities.

3. *Race and domestic violence support services.*

Women working in the field of domestic violence have sometimes reproduced the subordination and marginalization of women of color by adopting policies, priorities, or strategies of empowerment that either elide or wholly disregard the particular intersectional needs of women of color. While gender, race, and class intersect to create the particular context in which women of color experience violence, certain choices made by "allies" can reproduce intersectional subordination within the very resistance strategies designed to respond to the problem.

This problem is starkly illustrated by the inaccessibility of domestic violence support services to many non-English-speaking women. In a letter written to the deputy commissioner of the New York State Department of Social Services, Diana Campos, Director of Human Services for Programas de Ocupaciones y Desarrollo Económico Real, Inc. (PODER), detailed the case of a Latina in crisis who was repeatedly denied accomodation at a shelter because she could not prove that she was English-proficient. The woman had fled her home with her teenaged son, believing her husband's threats to kill them both. She called the domestic violence hotline administered by PODER seeking shelter for herself and her son. Because most shelters would not accommodate the woman with her son, they were forced to live on the streets for two days. The hotline counselor was finally able to find an agency that would take both the mother and the son, but when the counselor told the intake coordinator at the shelter that the woman spoke limited English, the coordinator told her that they could not take anyone who was not English-proficient. When the woman in crisis called back and was told of the shelter's "rule," she replied that she could understand English if spoken to her slowly. As Campos explains, Mildred, the hotline counselor, told Wendy, the intake coordinator

that the woman said that she could communicate a little in English. Wendy told Mildred that they could not provide services to this woman because they have house rules that the woman must agree to follow. Mildred asked her, "What if the woman agrees to follow your rules? Will you still not take her?" Wendy responded that all of the women at the shelter are required to attend [a] support group and they would not be able to have her in the group if she could not communicate. Mildred mentioned the severity of this woman's case. She told Wendy that the woman had been wandering the streets at night while her husband is home, and she had been mugged twice. She also reiterated the fact that this woman was in danger of being killed by either her husband or a mugger. Mildred expressed that the woman's safety was a priority at this point, and that once in a safe place, receiving counseling in a support group could be dealt with.⁶¹

61. Letter of Diana M. Campos, Director of Human Services, PODER, to Joseph Semidei,

The intake coordinator restated the shelter's policy of taking only English-speaking women, and stated further that the woman would have to call the shelter herself for screening. If the woman could communicate with them in English, she might be accepted. When the woman called the PODER hotline later that day, she was in such a state of fear that the hotline counselor who had been working with her had difficulty understanding her in Spanish.⁶² Campos directly intervened at this point, calling the executive director of the shelter. A counselor called back from the shelter. As Campos reports,

Marie [the counselor] told me that they did not want to take the woman in the shelter because they felt that the woman would feel isolated. I explained that the son agreed to translate for his mother during the intake process. Furthermore, that we would assist them in locating a Spanish-speaking battered women's advocate to assist in counseling her. Marie stated that utilizing the son was not an acceptable means of communication for them, *since it further victimized the victim*. In addition, she stated that they had similar experiences with women who were non-English-speaking, and that the women eventually just left because they were not able to communicate with anyone. I expressed my extreme concern for her safety and reiterated that we would assist them in providing her with the necessary services until we could get her placed someplace where they had bilingual staff.⁶³

After several more calls, the shelter finally agreed to take the woman. The woman called once more during the negotiation; however, after a plan was in place, the woman never called back. Said Campos, "After so many calls, we are now left to wonder if she is alive and well, and if she will ever have enough faith in our ability to help her to call us again the next time she is in crisis."⁶⁴

Despite this woman's desperate need, she was unable to receive the protection afforded English-speaking women, due to the shelter's rigid commitment to exclusionary policies. Perhaps even more troubling than the shelter's lack of bilingual resources was its refusal to allow a friend or relative to translate for the woman. This story illustrates the absurdity of a feminist approach that would make the ability to attend a support group without a translator a more significant consideration in the distribution of resources than the risk of physical harm on the street. The point is not that the shelter's image of empowerment is empty, but rather that it was imposed without regard to the disempowering consequences for women who didn't match the kind of client the shelter's administrators imagined. And thus they failed to accomplish the basic priority of the shelter movement—to get the woman out of danger.

Deputy Commissioner, New York State Department of Social Services (Mar. 26, 1992) [hereinafter *PODER Letter*].

62. The woman had been slipping back into her home during the day when her husband was at work. She remained in a heightened state of anxiety because he was returning shortly and she would be forced to go back out into the streets for yet another night.

63. *PODER Letter*, *supra* note 61 (emphasis added).

64. *Id.*

Here the woman in crisis was made to bear the burden of the shelter's refusal to anticipate and provide for the needs of non-English-speaking women. Said Campos, "It is unfair to impose more stress on victims by placing them in the position of having to demonstrate their proficiency in English in order to receive services that are readily available to other battered women."⁶⁵ The problem is not easily dismissed as one of well-intentioned ignorance. The specific issue of monolingualism and the monistic view of women's experience that set the stage for this tragedy were not new issues in New York. Indeed, several women of color reported that they had repeatedly struggled with the New York State Coalition Against Domestic Violence over language exclusion and other practices that marginalized the interests of women of color.⁶⁶ Yet despite repeated lobbying, the Coalition did not act to incorporate the specific needs of nonwhite women into its central organizing vision.

Some critics have linked the Coalition's failure to address these issues to the narrow vision of coalition that animated its interaction with women of color in the first place. The very location of the Coalition's headquarters in Woodstock, New York—an area where few people of color live—seemed to guarantee that women of color would play a limited role in formulating policy. Moreover, efforts to include women of color came, it seems, as something of an afterthought. Many were invited to participate only after the Coalition was awarded a grant by the state to recruit women of color. However, as one "recruit" said, "they were not really prepared to deal with us or our issues. They thought that they could simply incorporate us into their organization without rethinking any of their beliefs or priorities and that we would be happy."⁶⁷ Even the most formal gestures of inclusion were not to be taken for granted. On one occasion when several women of color attended a meeting to discuss a special task force on women of color, the group debated all day over including the issue on the agenda.⁶⁸

The relationship between the white women and the women of color on the Board was a rocky one from beginning to end. Other conflicts developed over differing definitions of feminism. For example, the Board decided to hire a Latina staffperson to manage outreach programs to the Latino community, but the white members of the hiring committee rejected candidates favored by Latina committee members who did not have recognized feminist

65. *Id.*

66. Roundtable Discussion on Racism and the Domestic Violence Movement (April 2, 1992) (transcript on file with the *Stanford Law Review*). The participants in the discussion—Diana Campos, Director, Bilingual Outreach Project of the New York State Coalition Against Domestic Violence; Elsa A. Rios, Project Director, Victim Intervention Project (a community-based project in East Harlem, New York, serving battered women); and Haydee Rosario, a social worker with the East Harlem Council for Human Services and a Victim Intervention Project volunteer—recounted conflicts relating to race and culture during their association with the New York State Coalition Against Domestic Violence, a state oversight group that distributed resources to battered women's shelters throughout the state and generally set policy priorities for the shelters that were part of the Coalition.

67. *Id.*

68. *Id.*

credentials. As Campos pointed out, by measuring Latinas against their own biographies, the white members of the Board failed to recognize the different circumstances under which feminist consciousness develops and manifests itself within minority communities. Many of the women who interviewed for the position were established activists and leaders within their own community, a fact in itself suggesting that these women were probably familiar with the specific gender dynamics in their communities and were accordingly better qualified to handle outreach than other candidates with more conventional feminist credentials.⁶⁹

The Coalition ended a few months later when the women of color walked out.⁷⁰ Many of these women returned to community-based organizations, preferring to struggle over women's issues within their communities rather than struggle over race and class issues with white middle-class women. Yet as illustrated by the case of the Latina who could find no shelter, the dominance of a particular perspective and set of priorities within the shelter community continues to marginalize the needs of women of color.

The struggle over which differences matter and which do not is neither an abstract nor an insignificant debate among women. Indeed, these conflicts are about more than difference as such; they raise critical issues of power. The problem is not simply that women who dominate the anti-violence movement are different from women of color but that they frequently have power to determine, either through material or rhetorical resources, whether the intersectional differences of women of color will be incorporated at all into the basic formulation of policy. Thus, the struggle over incorporating these differences is not a petty or superficial conflict about who gets to sit at the head of the table. In the context of violence, it is sometimes a deadly serious matter of who will survive—and who will not.⁷¹

B. *Political Intersectionalities in Rape*

In the previous sections, I have used intersectionality to describe or frame various relationships between race and gender. I have used intersectionality as a way to articulate the interaction of racism and patriarchy generally. I have also used intersectionality to describe the location of women of color both within overlapping systems of subordination and at the margins of feminism and antiracism. When race and gender factors are examined in the context of rape, intersectionality can be used to map the ways in which racism and patriarchy have shaped conceptualizations of rape, to describe the unique vulnerability of women of color to these converging sys-

69. *Id.*

70. Ironically, the specific dispute that led to the walk-out concerned the housing of the Spanish-language domestic violence hotline. The hotline was initially housed at the Coalition's headquarters, but languished after a succession of coordinators left the organization. Latinas on the Coalition board argued that the hotline should be housed at one of the community service agencies, while the board insisted on maintaining control of it. The hotline is now housed at PODER. *Id.*

71. Said Campos, "It would be a shame that in New York state a battered woman's life or death were dependent upon her English language skills." *PODER Letter*, *supra* note 61.

tems of domination, and to track the marginalization of women of color within antiracist and antirape discourses.⁷²

1. *Racism and sexism in dominant conceptualizations of rape.*

Generations of critics and activists have criticized dominant conceptualizations of rape as racist and sexist. These efforts have been important in revealing the way in which representations of rape both reflect and reproduce race and gender hierarchies in American society.⁷³ Black women, as both women and people of color, are situated within both groups, each of which has benefitted from challenges to sexism and racism, respectively, and yet the particular dynamics of gender and race relating to the rape of Black women have received scant attention. Although antiracist and antisexist assaults on rape have been politically useful to Black women, at some level, the monofocal antiracist and feminist critiques have also produced a political discourse that disservices Black women.

Historically, the dominant conceptualization of rape as quintessentially Black offender/white victim has left Black men subject to legal and extralegal violence. The use of rape to legitimize efforts to control and discipline the Black community is well established, and the casting of all Black men as potential threats to the sanctity of white womanhood was a familiar construct that antiracists confronted and attempted to dispel over a century ago.

Feminists have attacked other dominant, essentially patriarchal, conceptions of rape, particularly as represented through law. The early emphasis of rape law on the property-like aspect of women's chastity resulted in less solicitude for rape victims whose chastity had been in some way devalued. Some of the most insidious assumptions were written into the law, including the early common-law notion that a woman alleging rape must be able to show that she resisted to the utmost in order to prove that she was raped, rather than seduced. Women themselves were put on trial, as judge and jury scrutinized their lives to determine whether they were innocent victims or women who essentially got what they were asking for. Legal rules thus functioned to legitimize a good woman/bad woman dichotomy in which women who lead sexually autonomous lives were usually least likely to be vindicated if they were raped.

72. The discussion in following section focuses rather narrowly on the dynamics of a Black/white sexual hierarchy. I specify African Americans in part because given the centrality of sexuality as a site of racial domination of African Americans, any generalizations that might be drawn from this history seem least applicable to other racial groups. To be sure, the specific dynamics of racial oppression experienced by other racial groups are likely to have a sexual component as well. Indeed, the repertoire of racist imagery that is commonly associated with different racial groups each contain a sexual stereotype as well. These images probably influence the way that rapes involving other minority groups are perceived both internally and in society-at-large, but they are likely to function in different ways.

73. For example, the use of rape to legitimize efforts to control and discipline the Black community is well established in historical literature on rape and race. See JOYCE E. WILLIAMS & KAREN A. HOLMES, *THE SECOND ASSAULT: RAPE AND PUBLIC ATTITUDES* 26 (1981) ("Rape, or the threat of rape, is an important tool of social control in a complex system of racial-sexual stratification.").

Today, long after the most egregious discriminatory laws have been eradicated, constructions of rape in popular discourse and in criminal law continue to manifest vestiges of these racist and sexist themes. As Valerie Smith notes, "a variety of cultural narratives that historically have linked sexual violence with racial oppression continue to determine the nature of public response to [interracial rapes]." ⁷⁴ Smith reviews the well-publicized case of a jogger who was raped in New York's Central Park ⁷⁵ to expose how the public discourse on the assault "made the story of sexual victimization inseparable from the rhetoric of racism." ⁷⁶ Smith contends that in dehumanizing the rapists as "savages," "wolves," and "beasts," the press "shaped the discourse around the event in ways that inflamed pervasive fears about black men." ⁷⁷ Given the chilling parallels between the media representations of the Central Park rape and the sensationalized coverage of similar allegations that in the past frequently culminated in lynchings, one could hardly be surprised when Donald Trump took out a full page ad in four New York newspapers demanding that New York "Bring Back the Death Penalty, Bring Back Our Police." ⁷⁸

Other media spectacles suggest that traditional gender-based stereotypes that are oppressive to women continue to figure in the popular construction of rape. In Florida, for example, a controversy was sparked by a jury's acquittal of a man accused of a brutal rape because, in the jurors' view, the woman's attire suggested that she was asking for sex. ⁷⁹ Even the press cov-

74. Valerie Smith, *Split Affinities: The Case of Interracial Rape*, in CONFLICTS IN FEMINISM 271, 274 (Marianne Hirsch & Evelyn Fox Keller eds. 1990).

75. On April 18, 1989, a young white woman, jogging through New York's Central Park, was raped, severely beaten, and left unconscious in an attack by as many as 12 Black youths. Craig Wolff, *Youths Rape and Beat Central Park Jogger*, N.Y. Times, Apr. 21, 1989, at B1.

76. Smith, *supra* note 74, at 276-78.

77. Smith cites the use of animal images to characterize the accused Black rapists, including descriptions such as: "a wolfpack of more than a dozen young teenagers" and "[t]here was a full moon Wednesday night. A suitable backdrop for the howling of wolves. A vicious pack ran rampant through Central Park. . . . This was bestial brutality." An editorial in the *New York Times* was entitled "The Jogger and the Wolf Pack." *Id.* at 277 (citations omitted).

Evidence of the ongoing link between rape and racism in American culture is by no means unique to media coverage of the Central Park jogger case. In December 1990, the George Washington University student newspaper, *The Hatchet*, printed a story in which a white student alleged that she had been raped at knifepoint by two Black men on or near the campus. The story caused considerable racial tension. Shortly after the report appeared, the woman's attorney informed the campus police that his client had fabricated the attack. After the hoax was uncovered, the woman said that she hoped the story "would highlight the problems of safety for women." Felicity Banger, *False Rape Report Upsetting Campus*, N.Y. Times, Dec. 12, 1990, at A2; see also Les Payne, *A Rape Hoax Stirs Up Hate*, Newsday, Dec. 16, 1990, at 6.

78. William C. Troft, *Deadly Donald*, UPI, Apr. 30 1989. Donald Trump explained that he spent \$85,000 to take out these ads because "I want to hate these muggers and murderers. They should be forced to suffer and, when they kill, they should be executed for their crimes." *Trump Calls for Death to Muggers*, L.A. Times, May 1, 1989, at A2. But cf. *Leaders Fear 'Lynch' Hysteria in Response to Trump Ads*, UPI, May 6, 1989 (community leaders feared that Trump's ads would fan "the flames of racial polarization and hatred"); Cynthia Fuchs Epstein, *Cost of Full-Page Ad Could Help Fight Causes of Urban Violence*, N.Y. Times, May 15, 1989, at A18 ("Mr. Trump's proposal could well lead to further violence.").

79. Ian Ball, *Rape Victim to Blame, Says Jury*, Daily Telegraph, Oct. 6, 1989, at 3. Two months after the acquittal, the same man pled guilty to raping a Georgia woman to whom he said,

erage of William Kennedy Smith's rape trial involved a considerable degree of speculation regarding the sexual history of his accuser.⁸⁰

The racism and sexism written into the social construction of rape are merely contemporary manifestations of rape narratives emanating from a historical period when race and sex hierarchies were more explicitly policed. Yet another is the devaluation of Black women and the marginalization of their sexual victimizations. This was dramatically shown in the special attention given to the rape of the Central Park jogger during a week in which twenty-eight other cases of first-degree rape or attempted rape were reported in New York.⁸¹ Many of these rapes were as horrific as the rape in Central Park, yet all were virtually ignored by the media. Some were gang rapes,⁸² and in a case that prosecutors described as was "one of the most brutal in recent years," a woman was raped, sodomized and thrown fifty feet off the top of a four-story building in Brooklyn. Witnesses testified that the victim "screamed as she plunged down the air shaft. . . . She suffered fractures of both ankles and legs, her pelvis was shattered and she suffered extensive internal injuries."⁸³ This rape survivor, like most of the other forgotten victims that week, was a woman of color.

In short, during the period when the Central Park jogger dominated the headlines, many equally horrifying rapes occurred. None, however, elicited the public expressions of horror and outrage that attended the Central Park rape.⁸⁴ To account for these different responses, Professor Smith suggests a

"It's your fault. You're wearing a skirt." Roger Simon, *Rape: Clothing is Not the Criminal*, L.A. Times, Feb. 18, 1990, at E2.

80. See Barbara Kantrowitz, *Naming Names*, NEWSWEEK, Apr. 29, 1991, at 26 (discussing the tone of several newspaper investigations into the character of the woman who alleged that she was raped by William Kennedy Smith). There were other dubious assumptions animating the coverage. One article described Smith as an "unlikely candidate for the rapist's role." *Boy's Night Out in Palm Beach*, TIME, Apr. 22, 1991, at 82. But see Hillary Rustin, *Letters: The Kennedy Problem*, TIME, May 20, 1991, at 7 (criticizing authors for perpetuating stereotypical images of the who is or is not a "likely" rapist). Smith was eventually acquitted.

81. The New York Times pointed out that "[n]early all the rapes reported during that April week were of black or Hispanic women. Most went unnoticed by the public." Don Terry, *In Week of an Infamous Rape, 28 Other Victims Suffer*, N.Y. Times, May 29, 1989, at B25. Nearly all of the rapes occurred between attackers and victims of the same race: "Among the victims were 17 blacks, 7 Hispanic women, 3 whites, and 2 Asians." *Id.*

82. In Glen Ridge, an affluent New Jersey suburb, five white middle-class teenagers allegedly gang-raped a retarded white woman with a broom handle and a miniature baseball bat. See Robert Hanley, *Sexual Assault Splits a New Jersey Town*, N.Y. Times, May 26, 1989, at B1; Derrick Z. Jackson, *The Seeds of Violence*, Boston Globe, June 2, 1989, at 23; Bill Turque, *Gang Rape in the Suburbs*, NEWSWEEK, June 5, 1989, at 26.

83. Robert D. McFadden, *2 Men Get 6 to 18 Years for Rape in Brooklyn*, N.Y. Times, Oct. 2, 1990, at B2. The woman "lay, half naked, moaning and crying for help until a neighbor heard her" in the air shaft. *Community Rallies to Support Victim of Brutal Brooklyn Rape*, N.Y. Daily News, June 26, 1989, at 6. The victim "suffered such extensive injuries that she had to learn to walk again. . . . She faces years of psychological counseling" McFadden, *supra*.

84. This differential response was epitomized by public reaction to the rape-murder of a young Black woman in Boston on October 31, 1990. Kimberly Rae Harbour, raped and stabbed more than 100 times by eight members of a local gang, was an unwed mother, an occasional prostitute, and a drug-user. The Central Park victim was a white, upper-class professional. The Black woman was raped and murdered intraracially. The white woman was raped and left for dead interracially. The Central Park rape became a national rallying cause against random (read Black male) violence; the

sexual hierarchy in operation that holds certain female bodies in higher regard than others.⁸⁵ Statistics from prosecution of rape cases suggest that this hierarchy is at least one significant, albeit often overlooked factor in evaluating attitudes toward rape.⁸⁶ A study of rape dispositions in Dallas, for example, showed that the average prison term for a man convicted of raping a Black woman was two years,⁸⁷ as compared to five years for the rape of a Latina and ten years for the rape of an Anglo woman.⁸⁸ A related issue is the fact that African-American victims of rape are the least likely to be believed.⁸⁹ The Dallas study and others like it also point to a more subtle problem: neither the antirape nor the antiracist political agenda has focused on the Black rape victim. This inattention stems from the way the problem of rape is conceptualized within antiracist and antirape reform discourses. Although the rhetoric of both agendas formally includes Black women, racism is generally not problematized in feminism, and sexism, not problematized in antiracist discourses. Consequently, the plight of Black women is relegated to a secondary importance: The primary beneficiaries of policies supported by feminists and others concerned about rape tend to be white women; the primary beneficiaries of the Black community's concern over racism and rape, Black men. Ultimately, the reformist and rhetorical strategies that have grown out of antiracist and feminist rape reform movements have been ineffective in politicizing the treatment of Black women.

2. *Race and the antirape lobby.*

Feminist critiques of rape have focused on the way rape law has reflected

rape of Kimberly Rae Harbour was written into a local script highlighted by the Boston Police Department's siege upon Black men in pursuit of the "fictional" Carol Stuart murderer. See John Ellement, *8 Teen-agers Charged in Rape, Killing of Dorchester Woman*, Boston Globe, Nov. 20, 1990, at 1; James S. Kunen, *Homicide No. 119*, PEOPLE, Jan. 14, 1991, at 42. For a comparison of the Stuart and Harbour murders, see Christopher B. Daly, *Scant Attention Paid Victim as Homicides Reach Record in Boston*, Wash. Post, Dec. 5, 1990, at A3.

85. Smith points out that "[t]he relative invisibility of black women victims of rape also reflects the differential value of women's bodies in capitalist societies. To the extent that rape is constructed as a crime against the property of privileged white men, crimes against less valuable women—women of color, working-class women, and lesbians, for example—mean less or mean differently than those against white women from the middle and upper classes." Smith, *supra* note 74, at 275-76.

86. "Cases involving black offenders and black victims were treated the least seriously." GARY D. LAFREE, *RAPE AND CRIMINAL JUSTICE: THE SOCIAL CONSTRUCTION OF SEXUAL ASSAULT* (1989). LaFree also notes, however, that "the race composition of the victim-offender dyad" was not the only predictor of case dispositions. *Id.* at 219-20.

87. *Race Tilts the Scales of Justice. Study: Dallas Punishes Attacks on Whites More Harshly*, Dallas Times Herald, Aug. 19, 1990, at A1. A study of 1988 cases in Dallas County's criminal justice system concluded that rapists whose victims were white were punished more severely than those whose victims were Black or Hispanic. The Dallas Times Herald, which had commissioned the study, reported that "[t]he punishment almost doubled when the attacker and victim were of different races. Except for such interracial crime, sentencing disparities were much less pronounced" *Id.*

88. *Id.* Two criminal law experts, Iowa law professor David Baldus and Carnegie-Mellon University professor Alfred Blumstein "said that the racial inequities might be even worse than the figures suggest." *Id.*

89. See G. LAFREE, *supra* note 86, at 219-20 (quoting jurors who doubted the credibility of Black rape survivors); see also H. FEILD & L. BIENEN, *supra* note 35, at 117-18.

dominant rules and expectations that tightly regulate the sexuality of women. In the context of the rape trial, the formal definition of rape as well as the evidentiary rules applicable in a rape trial discriminate against women by measuring the rape victim against a narrow norm of acceptable sexual conduct for women. Deviation from that norm tends to turn women into illegitimate rape victims, leading to rejection of their claims.

Historically, legal rules dictated, for example, that rape victims had to have resisted their assailants in order for their claims to be accepted. Any abatement of struggle was interpreted as the woman's consent to the intercourse under the logic that a real rape victim would protect her honor virtually to the death. While utmost resistance is not formally required anymore, rape law continues to weigh the credibility of women against narrow normative standards of female behavior. A woman's sexual history, for example, is frequently explored by defense attorneys as a way of suggesting that a woman who consented to sex on other occasions was likely to have consented in the case at issue. Past sexual conduct as well as the specific circumstances leading up to the rape are often used to distinguish the moral character of the legitimate rape victim from women who are regarded as morally debased or in some other way responsible for their own victimization.

This type of feminist critique of rape law has informed many of the fundamental reform measures enacted in antirape legislation, including increased penalties for convicted rapists⁹⁰ and changes in evidentiary rules to preclude attacks on the woman's moral character.⁹¹ These reforms limit the tactics attorneys might use to tarnish the image of the rape victim, but they operate within preexisting social constructs that distinguish victims from nonvictims on the basis of their sexual character. And so these reforms, while beneficial, do not challenge the background cultural narratives that undermine the credibility of Black women.

Because Black women face subordination based on both race and gender, reforms of rape law and judicial procedures that are premised on narrow conceptions of gender subordination may not address the devaluation of Black women. Much of the problem results from the way certain gender expectations for women intersect with certain sexualized notions of race, no-

90. For example, Title I of the Violence Against Women Act creates federal penalties for sex crimes. See 137 CONG. REC. S597, S599-600 (daily ed. Jan. 14, 1991). Specifically, section 111 of the Act authorizes the Sentencing Commission to promulgate guidelines to provide that any person who commits a violation after a prior conviction can be punished by a term of imprisonment or fines up to twice of what is otherwise provided in the guidelines. S. 15, *supra* note 57, at 8. Additionally section 112 of the Act authorizes the Sentencing Commission to amend its sentencing guidelines to provide that a defendant convicted of rape or aggravated rape, "shall be assigned a base offense . . . that is at least 4 levels greater than the base offense level applicable to such offenses." *Id.* at 5.

91. Title I of the Act also creates new evidentiary rules for the introduction of sexual history in criminal and civil cases. *Id.* Sections 151 and 152 amend Fed. R. Evid. 412 by prohibiting "reputation or opinion evidence of the past sexual behavior of an alleged victim" from being admitted, and limiting other evidence of past sexual behavior. *Id.* at 39-44. Similarly, section 153 amends the rape shield law. *Id.* at 44-45. States have also either enacted or attempted to enact rape shield law reforms of their own. See Harriet R. Galvin, *Shielding Rape Victims in the State and Federal Courts: A Proposal for the Second Decade*, 70 MINN. L. REV. 763 (1986); Barbara Fromm, *Sexual Battery: Mixed-Signal Legislation Reveals Need for Further Reform*, 18 FLA. ST. U. L. REV. 579 (1991).

tions that are deeply entrenched in American culture. Sexualized images of African Americans go all the way back to Europeans' first engagement with Africans. Blacks have long been portrayed as more sexual, more earthy, more gratification-oriented. These sexualized images of race intersect with norms of women's sexuality, norms that are used to distinguish good women from bad, the madonnas from the whores. Thus Black women are essentially prepackaged as bad women within cultural narratives about good women who can be raped and bad women who cannot. The discrediting of Black women's claims is the consequence of a complex intersection of a gendered sexual system, one that constructs rules appropriate for good and bad women, and a race code that provides images defining the allegedly essential nature of Black women. If these sexual images form even part of the cultural imagery of Black women, then the very representation of a Black female body at least suggests certain narratives that may make Black women's rape either less believable or less important. These narratives may explain why rapes of Black women are less likely to result in convictions and long prison terms than rapes of white women.⁹²

Rape law reform measures that do not in some way engage and challenge the narratives that are read onto Black women's bodies are unlikely to affect the way cultural beliefs oppress Black women in rape trials. While the degree to which legal reform can directly challenge cultural beliefs that shape rape trials is limited,⁹³ the very effort to mobilize political resources toward addressing the sexual oppression of Black women can be an important first step in drawing greater attention to the problem. One obstacle to such an effort has been the failure of most antirape activists to analyze specifically the consequences of racism in the context of rape. In the absence of a direct attempt to address the racial dimensions of rape, Black women are simply presumed to be represented in and benefitted by prevailing feminist critiques.

3. *Antiracism and rape.*

Antiracist critiques of rape law focus on how the law operates primarily to condemn rapes of white women by Black men.⁹⁴ While the heightened

92. See note 35 *supra*.

93. One can imagine certain trial-based interventions that might assist prosecutors in struggling with these beliefs. For example, one might consider expanding the scope of voir dire to examine jurors' attitudes toward Black rape victims. Moreover, as more is learned about Black women's response to rape, this information may be deemed relevant in evaluating Black women's testimony and thus warrant introduction through expert testimony. In this regard, it is worth noting that the battered women's syndrome and the rape trauma syndrome are both forms of expert testimony that frequently function in the context of a trial to counter stereotypes and other dominant narratives that might otherwise produce a negative outcome for the woman "on trial." These interventions, probably unimaginable a short while ago, grew out of efforts to study and somehow quantify women's experience. Similar interventions that address the particular dimensions of the experiences of women of color may well be possible. This knowledge may grow out of efforts to map how women of color have fared under standard interventions. For an example of an intersectional critique of the battered women's syndrome, see Sharon A. Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 U.C.L.A. WOMEN'S L.J. 191 (1991) (student author).

94. See Smith, *supra* note 74 (discussing media sensationalization of the Central Park jogger case as consistent with historical patterns of focusing almost exclusively on Black male/white female

concern with protecting white women against Black men has been primarily criticized as a form of discrimination against Black men,⁹⁵ it just as surely reflects devaluation of Black women.⁹⁶ This disregard for Black women results from an exclusive focus on the consequences of the problem for Black men.⁹⁷ Of course, rape accusations historically have provided a justification for white terrorism against the Black community, generating a legitimating power of such strength that it created a veil virtually impenetrable to appeals based on either humanity or fact.⁹⁸ Ironically, while the fear of the Black rapist was exploited to legitimate the practice of lynching, rape was not even alleged in most cases.⁹⁹ The well-developed fear of Black sexuality served primarily to increase white tolerance for racial terrorism as a prophylactic measure to keep Blacks under control.¹⁰⁰ Within the African-American community, cases involving race-based accusations against Black men have stood as hallmarks of racial injustice. The prosecution of the Scottsboro boys¹⁰¹ and the Emmett Till¹⁰² tragedy, for example, triggered African-

dyads.); see also Terry, *supra* note 81 (discussing the 28 other rapes that occurred during the same week, but that were not given the same media coverage). Although rape is largely an intraracial crime, this explanation for the disparate coverage given to nonwhite victims is doubtful, however, given the findings of at least one study that 48% of those surveyed believed that most rapes involved a Black offender and a white victim. See H. FEILD & L. BIENEN, *supra* note 35, at 80. Ironically, Feild and Bienen include in their book-length study of rape two photographs distributed to the subjects in their study depicting the alleged victim as white and the alleged assailant as Black. Given the authors' acknowledgment that rape was overwhelmingly intraracial, the appearance of these photos was particularly striking, especially because they were the only photos included in the entire book.

95. See, e.g., G. LAFREE, *supra* note 86, at 237-39.

96. For a similar argument that race-of-victim discrimination in the administration of the death penalty actually represents the devalued status of Black victims rather than discrimination against Black offenders, see Randall L. Kennedy, *McCleskey v. Kemp: Race, Capital Punishment, and the Supreme Court*, 101 HARV. L. REV. 1388 (1988).

97. The statistic that 89% of all men executed for rape in this country were Black is a familiar one. *Furman v. Georgia*, 408 U.S. 238, 364 (1972) (Marshall, J., concurring). Unfortunately, the dominant analysis of racial discrimination in rape prosecutions generally does not discuss whether any of the rape victims in these cases were Black. See Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 113 (1983) (student author).

98. Race was frequently sufficient to fill in facts that were unknown or unknowable. As late as 1953, the Alabama Supreme Court ruled that a jury could take race into account in determining whether a Black man was guilty of "an attempt to commit an assault with an attempt to rape." See *McQuirter v. State*, 63 So. 2d 388, 390 (Ala. 1953). According to the "victim's" testimony, the man stared at her and mumbled something unintelligible as they passed. *Id.* at 389.

99. Ida Wells, an early Black feminist, investigated every lynching she could for about a decade. After researching 728 lynchings, she concluded that "[o]nly a third of the murdered Blacks were even accused of rape, much less guilty of it." PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 28 (1984) (quoting Wells).

100. See Jacquelyn Dowd Hall, "The Mind That Burns in Each Body": *Women, Rape, and Racial Violence*, in POWERS OF DESIRE: THE POLITICS OF SEXUALITY 328, 334 (Ann Snitow, Christine Stansell, & Sharon Thompson eds. 1983).

101. Nine Black youths were charged with the rape of two white women in a railroad freight car near Scottsboro, Alabama. Their trials occurred in a heated atmosphere. Each trial was completed in a single day, and the defendants were all convicted and sentenced to death. See DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* (1976). The Supreme Court reversed the defendants' convictions and death sentences, holding that they were unconstitutionally denied the right to counsel. *Powell v. Alabama*, 287 U.S. 45, 65 (1932). However, the defendants were retried by an all-white jury after the Supreme Court reversed their convictions.

102. Emmett Till was a 14-year-old Black boy from Chicago visiting his relatives near Money,

American resistance to the rigid social codes of white supremacy.¹⁰³ To the extent rape of Black women is thought to dramatize racism, it is usually cast as an assault on Black manhood, demonstrating his inability to protect Black women. The direct assault on Black womanhood is less frequently seen as an assault on the Black community.¹⁰⁴

The sexual politics that this limited reading of racism and rape engenders continues to play out today, as illustrated by the Mike Tyson rape trial. The use of antiracist rhetoric to mobilize support for Tyson represented an ongoing practice of viewing with considerable suspicion rape accusations against Black men and interpreting sexual racism through a male-centered frame. The historical experience of Black men has so completely occupied the dominant conceptions of racism and rape that there is little room to squeeze in the experiences of Black women. Consequently, racial solidarity was continually raised as a rallying point on behalf of Tyson, but never on behalf of Desiree Washington, Tyson's Black accuser. Leaders ranging from Benjamin Hooks to Louis Farrakhan expressed their support for Tyson,¹⁰⁵ yet no established Black leader voiced any concern for Washington. The fact that Black men have often been falsely accused of raping white women underlies the antiracist defense of Black men accused of rape even when the accuser herself is a Black woman.

As a result of this continual emphasis on Black male sexuality as the core issue in antiracist critiques of rape, Black women who raise claims of rape against Black men are not only disregarded but also sometimes vilified within the African-American community. One can only imagine the alienation experienced by a Black rape survivor such as Desiree Washington when the accused rapist is embraced and defended as a victim of racism while she is, at best, disregarded, and at worst, ostracized and ridiculed. In contrast, Tyson was the beneficiary of the longstanding practice of using antiracist rhetoric to deflect the injury suffered by Black women victimized by Black men. Some defended the support given to Tyson on the ground that all Afri-

Mississippi. On a dare by local boys, he entered a store and spoke to a white woman. Several days later, Emmett Till's body was found in the Tallahatchie River. "The barbed wire holding the cotton-gin fan around his neck had become snagged on a tangled river root." After the corpse was discovered, the white woman's husband and his brother-in-law were charged with Emmett Till's murder. JUAN WILLIAMS, *EYES ON THE PRIZE* 39-43 (1987). For a historical account of the Emmett Till tragedy, see STEPHEN J. WHITFIELD, *A DEATH IN THE DELTA* (1988).

103. Crenshaw, *supra* note 7, at 159 (discussing how the generation of Black activists who created the Black Liberation Movement were contemporaries of Emmett Till).

104.

Until quite recently, for example, when historians talked of rape in the slavery experience they often bemoaned the damage this act did to the Black male's sense of esteem and respect. He was powerless to protect his woman from white rapists. Few scholars probed the effect that rape, the threat of rape, and domestic violence had on the psychic development of the female victims.

Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle West: Preliminary Thoughts on the Culture of Dissemblance*, in *UNEQUAL SISTERS: A MULTI-CULTURAL READER IN U.S. WOMEN'S HISTORY* (Ellen Carol Dubois & Vicki L. Ruiz eds. 1990).

105. Michael Madden, *No Offensive from Defense*, Boston Globe, Feb. 1, 1992, at 33 (Hooks); *Farrakhan Backs Calls for Freeing Tyson*, UPI, July 10, 1992.

can Americans can readily imagine their sons, fathers, brothers, or uncles being wrongly accused of rape. Yet daughters, mothers, sisters, and aunts also deserve at least a similar concern, since statistics show that Black women are more likely to be raped than Black men are to be falsely accused of it. Given the magnitude of Black women's vulnerability to sexual violence, it is not unreasonable to expect as much concern for Black women who are raped as is expressed for the men who are accused of raping them.

Black leaders are not alone in their failure to empathize with or rally around Black rape victims. Indeed, some Black women were among Tyson's staunchest supporters and Washington's harshest critics.¹⁰⁶ The media widely noted the lack of sympathy Black women had for Washington; Barbara Walters used the observation as a way of challenging Washington's credibility, going so far as to press Washington for a reaction.¹⁰⁷ The most troubling revelation was that many of the women who did not support Washington also doubted Tyson's story. These women did not sympathize with Washington because they believed that Washington had no business in Tyson's hotel room at 2:00 a.m. A typical response was offered by one young Black woman who stated, "She asked for it, she got it, it's not fair to cry rape."¹⁰⁸

Indeed, some of the women who expressed their disdain for Washington acknowledged that they encountered the threat of sexual assault almost daily.¹⁰⁹ Yet it may be precisely this threat—along with the relative absence of rhetorical strategies challenging the sexual subordination of Black women—that animated their harsh criticism. In this regard, Black women who condemned Washington were quite like all other women who seek to distance themselves from rape victims as a way of denying their own vulnerability. Prosecutors who handle sexual assault cases acknowledge that they often exclude women as potential jurors because women tend to empathize the least with the victim.¹¹⁰ To identify too closely with victimization may reveal their own vulnerability.¹¹¹ Consequently, women often look for evi-

106. See Megan Rosenfeld, *After the Verdict, The Doubts: Black Women Show Little Sympathy for Tyson's Accuser*, Wash. Post, Feb. 13, 1992, at D1; Allan Johnson, *Tyson Rape Case Strikes a Nerve Among Blacks*, Chicago Trib., Mar. 29, 1992, at C1; Suzanne P. Kelly, *Black Women Wrestle with Abuse Issue: Many Say Choosing Racial Over Gender Loyalty Is Too Great a Sacrifice*, Star Trib., Feb. 18, 1992, at A1.

107. 20/20 (ABC television broadcast, Feb. 21, 1992).

108. *Id.*

109. According to a study by the Bureau of Justice, Black women are significantly more likely to be raped than white women, and women in the 16-24 age group are 2 to 3 times more likely to be victims of rape or attempted rape than women in any other age group. See Ronald J. Ostrow, *Typical Rape Victim Called Poor, Young*, L.A. Times, Mar. 25, 1985, at 8.

110. See Peg Tyre, *What Experts Say About Rape Jurors*, Newsday, May 19, 1991, at 10 (reporting that "researchers had determined that jurors in criminal trials side with the complainant or defendant whose ethnic, economic and religious background most closely resembles their own. The exception to the rule . . . is the way women jurors judge victims of rape and sexual assault."). Linda Fairstein, a Manhattan prosecutor, states, "(T)oo often women tend to be very critical of the conduct of other women, and they often are not good jurors in acquaintance-rape cases." Margaret Carlson, *The Trials of Convicting Rapists*, TIME, Oct. 14, 1991, at 11.

111. As sex crimes prosecutor Barbara Eganhauser notes, even young women with contemporary lifestyles often reject a woman's rape accusation out of fear. "To call another woman the victim

dence that the victim brought the rape on herself, usually by breaking social rules that are generally held applicable only to women. And when the rules classify women as dumb, loose, or weak on the one hand, and smart, discriminating, and strong on the other, it is not surprising that women who cannot step outside the rules to critique them attempt to validate themselves within them. The position of most Black women on this issue is particularly problematic, first, because of the extent to which they are consistently reminded that they are the group most vulnerable to sexual victimization, and second, because most Black women share the African-American community's general resistance to explicitly feminist analysis when it appears to run up against long-standing narratives that construct Black men as the primary victims of sexual racism.

C. *Rape and Intersectionality in Social Science*

The marginalization of Black women's experiences within the antiracist and feminist critiques of rape law are facilitated by social science studies that fail to examine the ways in which racism and sexism converge. Gary LaFree's *Rape and Criminal Justice: The Social Construction of Sexual Assault*¹¹² is a classic example. Through a study of rape prosecutions in Minneapolis, LaFree attempts to determine the validity of two prevailing claims regarding rape prosecutions. The first claim is that Black defendants face significant racial discrimination.¹¹³ The second is that rape laws serve to regulate the sexual conduct of women by withholding from rape victims the ability to invoke sexual assault law when they have engaged in nontraditional behavior.¹¹⁴ LaFree's compelling study concludes that law constructs rape in ways that continue to manifest both racial and gender domination.¹¹⁵ Although Black women are positioned as victims of both the racism and the sexism that LaFree so persuasively details, his analysis is less illuminating than might be expected because Black women fall through the cracks of his dichotomized theoretical framework.

1. *Racial domination and rape.*

LaFree confirms the findings of earlier studies that show that race is a significant determinant in the ultimate disposition of rape cases. He finds that Black men accused of raping white women were treated most harshly, while Black offenders accused of raping Black women were treated most leniently.¹¹⁶ These effects held true even after controlling for other factors

of rape is to acknowledge the vulnerability in yourself. They go out at night, they date, they go to bars, and walk alone. To deny it is to say at the trial that women are not victims." Tyre, *supra* note 110.

112. G. LAFREE, *supra* note 86.

113. *Id.* at 49-50.

114. *Id.* at 50-51.

115. *Id.* at 237-40.

116. LaFree concludes that recent studies finding no discriminatory effect were inconclusive because they analyzed the effects of the defendant's race independently of the race of victim. The differential race effects in sentencing are often concealed by combining the harsher sentences given to

such as injury to the victim and acquaintance between victim and assailant.

Compared to other defendants, blacks who were suspected of assaulting white women received more serious charges, were more likely to have their cases filed as felonies, were more likely to receive prison sentences if convicted, were more likely to be incarcerated in the state penitentiary (as opposed to a jail or minimum-security facility), and received longer sentences on the average.¹¹⁷

LaFree's conclusions that Black men are differentially punished depending on the race of the victim do not, however, contribute much to understanding the plight of Black rape victims. Part of the problem lies in the author's use of "sexual stratification" theory, which posits both that women are differently valued according to their race and that there are certain "rules of sexual access" governing who may have sexual contact with whom in this sexually stratified market.¹¹⁸ According to the theory, Black men are discriminated against in that their forced "access" to white women is more harshly penalized than their forced "access" to Black women.¹¹⁹ LaFree's analysis focuses on the harsh regulation of access by Black men to white women, but is silent about the relative subordination of Black women to

Black men accused of raping white women with the more lenient treatment of Black men accused of raping Black women. *Id.* at 117, 140. Similar results were found in another study. See Anthony Walsh, *The Sexual Stratification Hypothesis and Sexual Assault in Light of the Changing Conceptions of Race*, 25 *CRIMINOLOGY* 153, 170 (1987) ("sentence severity mean for blacks who assaulted whites, which was significantly in excess of mean for whites who assaulted whites, was masked by the lenient sentence severity mean for blacks who assaulted blacks").

117. G. LAFREE, *supra* note 86, at 139-40.

118. Sexual stratification, according to LaFree, refers to the differential valuation of women according to their race and to the creation of "rules of sexual access" governing who may have contact with whom. Sexual stratification also dictates what the penalty will be for breaking these rules: The rape of a white woman by a Black man is seen as a trespass on the valuable property rights of white men and is punished most severely. *Id.* at 48-49.

The fundamental propositions of the sexual stratification thesis have been summarized as follows:

- (1) Women are viewed as the valued and scarce property of the men of their own race.
- (2) White women, by virtue of membership in the dominant race, are more valuable than black women.
- (3) The sexual assault of a white by a black threatens both the white man's "property rights" and his dominant social position. This dual threat accounts for the strength of the taboo attached to interracial sexual assault.
- (4) A sexual assault by a male of any race upon members of the less valued black race is perceived as nonthreatening to the status quo and therefore less serious.
- (5) White men predominate as agents of social control. Therefore, they have the power to sanction differentially according to the perceived threat to their favored social position.

Walsh, *supra* note 116, at 155.

119. I use the term "access" guardedly because it is an inapt euphemism for rape. On the other hand, rape is conceptualized differently depending on whether certain race-specific rules of sexual access are violated. Although violence is not explicitly written into the sexual stratification theory, it does work itself into the rules, in that sexual intercourse that violates the racial access rules is presumed to be coercive rather than voluntary. See, e.g., *Sims v. Balkam*, 136 S.E. 2d 766, 769 (Ga. 1964) (describing the rape of a white woman by a Black man as "a crime more horrible than death"); *Story v. State*, 59 So. 480 (Ala. 1912) ("The consensus of public opinion, unrestricted to either race, is that a white woman prostitute is yet, though lost of virtue, above the even greater sacrifice of the voluntary submission of her person to the embraces of the other race."); *Wriggins*, *supra* note 97, at 125, 127.

white women. The emphasis on differential access to women is consistent with analytical perspectives that view racism primarily in terms of the inequality between men. From this prevailing viewpoint, the problem of discrimination is that white men can rape Black women with relative impunity while Black men cannot do the same with white women.¹²⁰ Black women are considered victims of discrimination only to the extent that white men can rape them without fear of significant punishment. Rather than being viewed as victims of discrimination in their own right, they become merely the means by which discrimination against Black men can be recognized. The inevitable result of this orientation is that efforts to fight discrimination tend to ignore the particularly vulnerable position of Black women, who must both confront racial bias *and* challenge their status as instruments, rather than beneficiaries, of the civil rights struggle.

Where racial discrimination is framed by LaFree primarily in terms of a contest between Black and white men over women, the racism experienced by Black women will only be seen in terms of white male access to them. When rape of Black women by white men is eliminated as a factor in the analysis, whether for statistical or other reasons, racial discrimination against Black women no longer matters, since LaFree's analysis involves comparing the "access" of white and Black men to white women.¹²¹ Yet Black women are not discriminated against simply because white men can rape them with little sanction and be punished less than Black men who rape white women, or because white men who rape them are not punished the same as white men who rape white women. Black women are also discriminated against because intraracial rape of white women is treated more seriously than intraracial rape of Black women. But the differential protection that Black and white women receive against intraracial rape is not seen as racist because intraracial rape does not involve a contest between Black and white men. In other words, the way the criminal justice system treats rapes of Black women by Black men and rapes of white women by white men is not seen as raising issues of racism because Black and white men are not involved with each other's women.

In sum, Black women who are raped are racially discriminated against because their rapists, whether Black or white, are less likely to be charged with rape, and when charged and convicted, are less likely to receive significant jail time than the rapists of white women. And while sexual stratification theory does posit that women are stratified sexually by race, most applications of the theory focus on the inequality of male agents of rape rather than on the inequality of rape victims, thus marginalizing the racist

120. This traditional approach places Black women in a position of denying their own victimization, requiring Black women to argue that it is racist to punish Black men more harshly for raping white women than for raping Black women. However, in the wake of the Mike Tyson trial, it seems that many Black women are prepared to do just that. See notes 106-109 *supra* and accompanying text.

121. In fact, critics and commentators often use the term "interracial rape" when they are actually talking only about Black male/white female rape.

treatment of Black women by consistently portraying racism in terms of the relative power of Black and white men.

In order to understand and treat the victimization of Black women as a consequence of racism and sexism, it is necessary to shift the analysis away from the differential access of men and more toward the differential protection of women. Throughout his analysis, LaFree fails to do so. His sexual stratification thesis—in particular, its focus on the comparative power of male agents of rape—illustrates how the marginalization of Black women in antiracist politics is replicated in social science research. Indeed, the thesis leaves unproblematic the racist subordination of less valuable objects (Black women) to more valuable objects (white women), and it perpetuates the sexist treatment of women as property extensions of “their” men.

2. *Rape and gender subordination.*

Although LaFree does attempt to address gender-related concerns of women in his discussion of rape and the social control of women, his theory of sexual stratification fails to focus sufficiently on the effects of stratification on women.¹²² LaFree quite explicitly uses a framework that treats race and gender as separate categories, giving no indication that he understands that Black women may fall in between or within both. The problem with LaFree's analysis lies not in its individual observations, which can be insightful and accurate, but in his failure to connect them and develop a broader, deeper perspective. His two-track framework makes for a narrow interpretation of the data because it leaves untouched the possibility that these two tracks may intersect. And it is those who reside at the intersection of gender and race discrimination—Black women—that suffer from this fundamental oversight.

LaFree attempts to test the feminist hypothesis that “the application of law to nonconformist women in rape cases may serve to control the behavior of all women.”¹²³ This inquiry is important, he explains, because “if women who violate traditional sex roles and are raped are unable to obtain justice through the legal system, then the law may be interpreted as an institutional arrangement for reinforcing women's gender-role conformity.”¹²⁴ He finds that “acquittals were more common and final sentences were shorter when nontraditional victim behavior was alleged.”¹²⁵ Thus LaFree concludes that the victim's moral character was more important than victim injury, and was second only to the defendant's character. Overall, 82.3 percent of the traditional victim cases resulted in convictions and average sentences of

122. G. LAFREE, *supra* note 86, at 148. LaFree's transition between race and gender suggests that the shift might not loosen the frame enough to permit discussion of the combined effects of race and gender subordination on Black women. LaFree repeatedly separates race from gender, treating them as wholly distinguishable issues. See, e.g., *id.* at 147.

123. *Id.*

124. *Id.* at 151. LaFree interprets nontraditional behavior to include drinking, drug use, extra-marital sex, illegitimate children, and “having a reputation as a ‘partier,’ a ‘pleasure seeker’ or someone who stays out late at night.” *Id.* at 201.

125. *Id.* at 204.

43.38 months.¹²⁶ Only 50 percent of nontraditional victim cases led to convictions, with an average term of 27.83 months.¹²⁷ The effects of traditional and nontraditional behavior by Black women are difficult to determine from the information given and must be inferred from LaFree's passing comments. For example, LaFree notes that Black victims were evenly divided between traditional and nontraditional gender roles. This observation, together with the lower rate of conviction for men accused of raping Blacks, suggests that gender role behavior was not as significant in determining case disposition as it was in cases involving white victims. Indeed, LaFree explicitly notes that "the victim's race was . . . an important predictor of jurors' case evaluations."¹²⁸

Jurors were less likely to believe in a defendant's guilt when the victim was black. Our interviews with jurors suggested that part of the explanation for this effect was that jurors . . . were influenced by stereotypes of black women as more likely to consent to sex or as more sexually experienced and hence less harmed by the assault. In a case involving the rape of a young black girl, one juror argued for acquittal on the grounds that a girl her age from 'that kind of neighborhood' probably wasn't a virgin anyway.¹²⁹

126. *Id.*

127. *Id.*

128. *Id.* at 219 (emphasis added). While there is little direct evidence that prosecutors are influenced by the race of the victim, it is not unreasonable to assume that since race is an important predictor of conviction, prosecutors determined to maintain a high conviction rate might be less likely to pursue a case involving a Black victim than a white one. This calculus is probably reinforced when juries fail to convict in strong cases involving Black victims. For example, the acquittal of three white St. John's University athletes for the gang rape of a Jamaican schoolmate was interpreted by many as racially influenced. Witnesses testified that the woman was incapacitated during much of the ordeal, having ingested a mixture of alcohol given to her by a classmate who subsequently initiated the assault. The jurors insisted that race played no role in their decision to acquit. "There was no race, we all agreed to it," said one juror; "They were trying to make it racial but it wasn't," said another. *Jurors: 'It Wasn't Racial,'* *Newsday*, July 25, 1991, at 4. Yet it is possible that race did influence on some level their belief that the woman consented to what by all accounts, amounted to dehumanizing conduct. See, e.g., Carole Agus, *Whatever Happened to 'The Rules,'* *Newsday*, July 28, 1991, at 11 (citing testimony that at least two of the assailants hit the victim in the head with their penises). The jury nonetheless thought, in the words of its foreman, that the defendants' behavior was "obnoxious" but not criminal. See Sydney H. Schanberg, *Those 'Obnoxious' St. John's Athletes,* *Newsday*, July 30, 1991, at 79. One can imagine a different outcome had the races of the parties only been reversed.

Representative Charles Rangel (D-N.Y.) called the verdict "a rerun of what used to happen in the South." James Michael Brodie, *The St. John's Rape Acquittal: Old Wounds That Just Won't Go Away,* *BLACK ISSUES IN HIGHER EDUC.*, Aug. 15, 1991, at 18. Denise Snyder, executive director of the D.C. Rape Crisis Center, commented:

It's a historical precedent that white men can assault black women and get away with it. Woe be to the black man who assaults white women. All the prejudices that existed a hundred years ago are dormant and not so dormant, and they rear their ugly heads in situations like this. Contrast this with the Central Park jogger who was an upper-class white woman.

Judy Mann, *New Age, Old Myths,* *Wash. Post*, July 26, 1991, at C3 (quoting Snyder); see Kristin Bumiller, *Rape as a Legal Symbol: An Essay on Sexual Violence and Racism*, 42 U. MIAMI L. REV. 75, 88 ("The cultural meaning of rape is rooted in a symbiosis of racism and sexism that has tolerated the acting out of male aggression against women and, in particular, black women.").

129. *Id.* at 219-20 (citations omitted). Anecdotal evidence suggests that this attitude exists among some who are responsible for processing rape cases. Fran Weinman, a student in my seminar on race, gender, and the law, conducted a field study at the Rosa Parks Rape Crisis Center. During

LaFree also notes that "[o]ther jurors were simply less willing to believe the testimony of black complainants."¹³⁰ One white juror is quoted as saying, "Negroes have a way of not telling the truth. They've a knack for coloring the story. So you know you can't believe everything they say."¹³¹

Despite explicit evidence that the race of the victim is significant in determining the disposition of rape cases, LaFree concludes that rape law functions to penalize nontraditional behavior in women.¹³² LaFree fails to note that racial identification may itself serve as a proxy for nontraditional behavior. Rape law, that is, serves not only to penalize actual examples of nontraditional behavior but also to diminish and devalue women who belong to groups in which nontraditional behavior is perceived as common. For the Black rape victim, the disposition of her case may often turn less on her behavior than on her identity. LaFree misses the point that although white and Black women have shared interests in resisting the madonna/whore dichotomy altogether, they nevertheless experience its oppressive power differently. Black women continue to be judged by who they are, not by what they do.

3. *Compounding the marginalizations of rape.*

LaFree offers clear evidence that the race/sex hierarchy subordinates Black women to white women, as well as to men—both Black and white. However, the different effects of rape law on Black women are scarcely mentioned in LaFree's conclusions. In a final section, LaFree treats the devaluation of Black women as an aside—one without apparent ramifications for rape law. He concludes: "The more severe treatment of black offenders who rape white women (*or, for that matter, the milder treatment of black offenders who rape black women*) is probably best explained in terms of racial discrimination within a broader context of continuing social and physical segregation between blacks and whites."¹³³ Implicit throughout LaFree's

her study, she counseled and accompanied a 12-year-old Black rape survivor who became pregnant as a result of the rape. The girl was afraid to tell her parents, who discovered the rape after she became depressed and began to slip in school. Police were initially reluctant to interview the girl. Only after the girl's father threatened to take matters into his own hands did the police department send an investigator to the girl's house. The City prosecutor indicated that the case wasn't a serious one, and was reluctant to prosecute the defendant for statutory rape even though the girl was underage. The prosecutor reasoned, "After all, she looks 16." After many frustrations, the girl's family ultimately decided not to pressure the prosecutor any further and the case was dropped. See Fran Weinman, *Racism and the Enforcement of Rape Law*, 13-30 (1990) (unpublished manuscript) (on file with the *Stanford Law Review*).

130. G. LAFREE, *supra* note 86, at 220.

131. *Id.*

132. *Id.* at 226.

133. *Id.* at 239 (emphasis added). The lower conviction rates for those who rape Black women may be analogous to the low conviction rates for acquaintance rape. The central issue in many rape cases is proving that the victim did not consent. The basic presumption in the absence of explicit evidence of lack of consent is that consent exists. Certain evidence is sufficient to disprove that presumption, and the quantum of evidence necessary to prove nonconsent increases as the presumptions warranting an inference of consent increases. Some women—based on their character, identity, or dress—are viewed as more likely to consent than other women. Perhaps it is the combination of the sexual stereotypes about Black people along with the greater degree of familiarity presumed to

study is the assumption that Blacks who are subjected to social control are Black *men*. Moreover, the social control to which he refers is limited to securing the boundaries between Black males and white females. His conclusion that race differentials are best understood within the context of social segregation as well as his emphasis on the interracial implications of boundary enforcement overlook the intraracial dynamics of race and gender subordination. When Black men are leniently punished for raping Black women, the problem is *not* "best explained" in terms of social segregation but in terms of both the race- and gender-based devaluation of Black women. By failing to examine the sexist roots of such lenient punishment, LaFree and other writers sensitive to racism ironically repeat the mistakes of those who ignore race as a factor in such cases. Both groups fail to consider directly the situation of Black women.

Studies like LaFree's do little to illuminate how the interaction of race, class and nontraditional behavior affects the disposition of rape cases involving Black women. Such an oversight is especially troubling given evidence that many cases involving Black women are dismissed outright.¹³⁴ Over 20 percent of rape complaints were recently dismissed as "unfounded" by the Oakland Police Department, which did not even interview many, if not most, of the women involved.¹³⁵ Not coincidentally, the vast majority of the complainants were Black and poor; many of them were substance abusers or prostitutes.¹³⁶ Explaining their failure to pursue these complaints, the police remarked that "those cases were hopelessly tainted by women who are transient, uncooperative, untruthful or not credible as witnesses in court."¹³⁷

exist between Black men and Black women that leads to the conceptualization of such rapes as existing somewhere between acquaintance rape and stranger rape.

134. See, e.g., Candy J. Cooper, *Nowhere to Turn for Rape Victims: High Proportion of Cases Tossed Aside by Oakland Police*, S.F. Examiner, Sept. 16, 1990, at A1 [hereinafter Cooper, *Nowhere to Turn*]. The most persuasive evidence that the images and beliefs that Oakland police officers hold toward rape victims influence the disposition of their cases is represented in two follow-up stories. See Candy J. Cooper, *A Rape Victim Vindicated*, S.F. Examiner, Sept. 17, 1990, at A1; Candy J. Cooper, *Victim of Rape, Victim of the System*, S.F. Examiner, Sept. 17, 1990, at A10. These stories contrasted the experiences of two Black women, both of whom had been raped by an acquaintance after smoking crack. In the first case, although there was little physical evidence and the woman was initially reluctant to testify, her rapist was prosecuted and ultimately convicted. In the second case, the woman was severely beaten by her assailant. Despite ample physical evidence and corroboration, and a cooperative victim, her case was not pursued. The former case was handled by the Berkeley, California, police department while the latter was handled by the Oakland police department. Perhaps the different approaches producing these disparate results can best be captured by the philosophies of the investigators. Officers in Berkeley "take every woman's case so seriously that not one [in 1989] was found to be false." See Candy J. Cooper, *Berkeley Unit Takes All Cases as Legitimate*, S.F. Examiner, Sept. 16, 1990, at A16. The same year, 24.4% of Oakland's rape cases were classified as "unfounded." Cooper, *Nowhere to Turn*, *supra*.

135. Cooper, *Nowhere to Turn*, *supra* note 134, at A10.

136. *Id.* ("Police, prosecutors, victims and rape crisis workers agree that most of the dropped cases were reported by women of color who smoked crack or were involved in other criminal, high-risk behavior, such as prostitution.").

137. *Id.* Advocates point out that because investigators work from a profile of the kind of case likely to get a conviction, people left out of that profile are people of color, prostitutes, drug users and people raped by acquaintances. This exclusion results in "a whole class of women . . . systematically being denied justice. Poor women suffer the most." *Id.*

The effort to politicize violence against women will do little to address the experiences of Black and other nonwhite women until the ramifications of racial stratification among women are acknowledged. At the same time, the antiracist agenda will not be furthered by suppressing the reality of intraracial violence against women of color. The effect of both these marginalizations is that women of color have no ready means to link their experiences with those of other women. This sense of isolation compounds efforts to politicize sexual violence within communities of color and permits the deadly silence surrounding these issues.

D. *Implications*

With respect to the rape of Black women, race and gender converge in ways that are only vaguely understood. Unfortunately, the analytical frameworks that have traditionally informed both antirape and antiracist agendas tend to focus only on single issues. They are thus incapable of developing solutions to the compound marginalization of Black women victims, who, yet again, fall into the void between concerns about women's issues and concerns about racism. This dilemma is complicated by the role that cultural images play in the treatment of Black women victims. That is, the most critical aspects of these problems may revolve less around the political agendas of separate race- and gender-sensitive groups, and more around the social and cultural devaluation of women of color. The stories our culture tells about the experience of women of color present another challenge—and a further opportunity—to apply and evaluate the usefulness of the intersectional critique.

III. REPRESENTATIONAL INTERSECTIONALITY

With respect to the rape of Black women, race and gender converge so that the concerns of minority women fall into the void between concerns about women's issues and concerns about racism. But when one discourse fails to acknowledge the significance of the other, the power relations that each attempts to challenge are strengthened. For example, when feminists fail to acknowledge the role that race played in the public response to the rape of the Central Park jogger, feminism contributes to the forces that produce disproportionate punishment for Black men who rape white women, and when antiracists represent the case solely in terms of racial domination, they belittle the fact that women particularly, and all people generally, should be outraged by the gender violence the case represented.

Perhaps the devaluation of women of color implicit here is linked to how women of color are represented in cultural imagery. Scholars in a wide range of fields are increasingly coming to acknowledge the centrality of issues of representation in the reproduction of racial and gender hierarchy in the United States. Yet current debates over representation continually elide the intersection of race and gender in the popular culture's construction of images of women of color. Accordingly, an analysis of what may be termed

"representational intersectionality" would include both the ways in which these images are produced through a confluence of prevalent narratives of race and gender, as well as a recognition of how contemporary critiques of racist and sexist representation marginalize women of color.

In this section I explore the problem of representational intersectionality—in particular, how the production of images of women of color and the contestations over those images tend to ignore the intersectional interests of women of color—in the context of the controversy over 2 Live Crew, the Black rap group that was the subject of an obscenity prosecution in Florida in 1990. I oppose the obscenity prosecution of 2 Live Crew, but not for the same reasons as those generally offered in support of 2 Live Crew, and not without a sense of sharp internal division, of dissatisfaction with the idea that the "real issue" is race or gender, inertly juxtaposed. An intersectional analysis offers both an intellectual and political response to this dilemma. Aiming to bring together the different aspects of an otherwise divided sensibility, an intersectional analysis argues that racial and sexual subordination are mutually reinforcing, that Black women are commonly marginalized by a politics of race alone or gender alone, and that a political response to each form of subordination must at the same time be a political response to both.

A. *The 2 Live Crew Controversy*

In June 1990, the members of 2 Live Crew were arrested and charged under a Florida obscenity statute for their performance in an adults-only club in Hollywood, Florida. The arrests came just two days after a federal court judge ruled that the sexually explicit lyrics in 2 Live Crew's album, *As Nasty As They Wanna Be*,¹³⁸ were obscene.¹³⁹ Although the members of 2 Live Crew were eventually acquitted of charges stemming from the live performance, the federal court determination that *Nasty* is obscene still stands. This obscenity judgment, along with the arrests and subsequent trial, prompted an intense public controversy about rap music, a controversy that merged with a broader debate about the representation of sex and violence in popular music, about cultural diversity, and about the meaning of freedom of expression.

Two positions dominated the debate over 2 Live Crew. Writing in *Newsweek*, political columnist George Will staked out a case for the prosecu-

138. 2 LIVE CREW, *AS NASTY AS THEY WANNA BE* (Luke Records 1989).

139. In June 1990, a federal judge ruled that 2 Live Crew's lyrics referring to sodomy and sexual intercourse were obscene. *Skywalker Records, Inc. v. Navarro*, 739 F. Supp. 578, 596 (S.D. Fla. 1990). The court held that the recording appealed to the prurient interest, was patently offensive as defined by state law, and taken as a whole, lacked serious literary, artistic or political value. *Id.* at 591-96. However, the court also held that the sheriff's office had subjected the recording to unconstitutional prior restraint and consequently granted 2 Live Crew permanent injunctive relief. *Id.* at 596-604. Two days after the judge declared the recording obscene, 2 Live Crew members were charged with giving an obscene performance at a club in Hollywood, Florida. *Experts Defend Live Crew Lyrics*, UPI, Oct. 19, 1990. Deputy sheriffs also arrested Charles Freeman, a merchant who was selling copies of the *Nasty* recording. See Gene Santoro, *How 2 B Nasty*, *NATION*, July 2, 1990, at 4. The 11th Circuit reversed the conviction, *Luke Records, Inc. v. Navarro*, 960 F.2d 134 (11th Cir. 1992).

tion.¹⁴⁰ Will argued that *Nasty* was misogynistic filth and characterized 2 Live Crew's performance as a profoundly repugnant "combination of extreme infantilism and menace" that objectified Black women and represented them as suitable targets of sexual violence.¹⁴¹ The most prominent defense of 2 Live Crew was advanced by Henry Louis Gates, Jr., Harvard professor and expert on African-American literature. In a *New York Times* op-ed piece and in testimony at the criminal trial, Gates contended that 2 Live Crew's members were important artists operating within and inventively elaborating upon distinctively African-American forms of cultural expression.¹⁴² According to Gates, the characteristic exaggeration featured in 2 Live Crew's lyrics served a political end: to explode popular racist stereotypes in a comically extreme form.¹⁴³ Where Will saw a misogynistic assault on Black women by social degenerates, Gates found a form of "sexual carnivalesque" with the promise to free us from the pathologies of racism.¹⁴⁴

Unlike Gates, there are many who do not simply "bust out laughing" upon first hearing 2 Live Crew.¹⁴⁵ One does a disservice to the issue to describe the images of women in *Nasty* as simply "sexually explicit."¹⁴⁶ Listening to *Nasty*, we hear about "cunts" being "fucked" until backbones are cracked, "asses" being "busted," "dicks" rammed down throats, and semen

140. See George F. Will, *America's Slide into the Sewer*, NEWSWEEK, July 30, 1990, at 64.

141. *Id.*

142. Henry Louis Gates, *2 Live Crew, Decoded*, N.Y. Times, June 19, 1990, at A23. Professor Gates, who testified on behalf of 2 Live Crew in the criminal proceeding stemming from their live performance, pointed out that the members of 2 Live Crew were expressing themselves in coded messages, and were engaging in parody. "For centuries, African-Americans have been forced to develop coded ways of communicating to protect them from danger. Allegories and double meanings, words redefined to mean their opposites . . . have enabled blacks to share messages only the initiated understood." *Id.* Similarly, parody is a component of "the street tradition called 'signifying' or 'playing the dozens,' which has generally been risqué, and where the best signifier or 'rapper' is the one who invents the most extravagant images, the biggest 'lies,' as the culture says." *Id.*

143. Testifying during 2 Live Crew's prosecution for obscenity, Gates argued that, "[o]ne of the brilliant things about these four songs is they embrace that stereotype [of blacks having overly large sexual organs and being hypersexed individuals]. They name it and they explode it. You can have no reaction but to bust out laughing. The fact that they're being sung by four virile young black men is inescapable to the audience." Laura Parker, *Rap Lyrics Likened to Literature; Witness in 2 Live Crew Trial Cites Art, Parody, Precedents*, Wash. Post, Oct. 20, 1990, at D1.

144. Compare Gates, *supra* note 142 (labeling 2 Live Crew's braggadocio as "sexual carnivalesque") with Will, *supra* note 140 (characterizing 2 Live Crew as "lower animals").

145. See note 143 *supra*.

146. Although I have elected to print some of the actual language from *Nasty*, much of the debate about this case has proceeded without any specific discussion of the lyrics. There are reasons one might avoid repeating such sexually explicit material. Among the more compelling ones is the concern that presenting lyrics outside of their fuller musical context hampers a complex understanding and appreciation of the art form of rap itself. Doing so also essentializes one dimension of the art work—its lyrics—to stand for the whole. Finally, focusing on the production of a single group may contribute to the impression that that group—here, 2 Live Crew—fairly represents all rappers.

Recognizing these risks, I believe that it is nonetheless important to incorporate excerpts from the Crew's lyrics into this analysis. Not only are the lyrics legally relevant in any substantive discussion of the obscenity prosecution, but also their inclusion here serves to reveal the depth of misogyny many African-American women must grapple with in order to defend 2 Live Crew. This is particularly true for African-American women who have been sexually abused by men in their lives. Of course, it is also the case that many African-American women who are troubled by the sexual degradation of Black women in some rap music can and do enjoy rap music generally.

splattered across faces. Black women are "cunts," "bitches," and all-purpose "hos."¹⁴⁷

This is no mere braggadocio. Those who are concerned about high rates of gender violence in our communities must be troubled by the possible connections between these images and the tolerance for violence against women. Children and teenagers are listening to this music, and one cannot but be concerned that the range of acceptable behavior is being broadened by the constant propagation of misogynistic imagery. One must worry as well about young Black women who, like young men, are learning that their value lies between their legs. But the sexual value of women, unlike that of men, is a depletable commodity; boys become men by expending theirs, while girls become whores.

Nasty is misogynist, and an intersectional analysis of the case against 2 Live Crew should not depart from a full acknowledgement of that misogyny. But such an analysis must also consider whether an exclusive focus on issues of gender risks overlooking aspects of the prosecution of 2 Live Crew that raise serious questions of racism.

B. *The Obscenity Prosecution of 2 Live Crew*

An initial problem with the obscenity prosecution of 2 Live Crew was its apparent selectivity.¹⁴⁸ Even the most superficial comparison between 2 Live Crew and other mass-marketed sexual representations suggests the likelihood that race played some role in distinguishing 2 Live Crew as the first group ever to be prosecuted for obscenity in connection with a musical recording, and one of a handful of recording artists to be prosecuted for a live performance. Recent controversies about sexism, racism, and violence in popular culture point to a vast range of expression that might have provided targets for censorship, but was left untouched. Madonna has acted out masturbation, portrayed the seduction of a priest, and insinuated group sex on stage,¹⁴⁹ but she has never been prosecuted for obscenity. While 2 Live Crew was performing in Hollywood, Florida, Andrew Dice Clay's recordings were being sold in stores and he was performing nationwide on HBO.

147. See generally 2 LIVE CREW, *supra* note 138; N.W.A., *STRAIGHT OUTTA COMPTON* (Priority Records, Inc. 1988); N.W.A., *N.W.A. & THE POSSE* (Priority Records, Inc. 1989).

148. There is considerable support for the assertion that prosecution of 2 Live Crew and other rap groups is a manifestation of selective repression of Black expression which is no more racist or sexist than expression by non-Black groups. The most flagrant example is Geffen Records' decision not to distribute an album by the rap act, the Geto Boys. Geffen explained that "the extent to which the Geto Boys album glamorizes and possibly endorses violence, racism, and misogyny compels us to encourage Def American (the group's label) to select a distributor with a greater affinity for this musical expression." Greg Ket, *No Sale, Citing Explicit Lyrics, Distributor Backs Away From Geto Boys Album*, Chicago Trib., Sept. 13, 1990, § 5, at 9. Geffen apparently has a greater affinity for the likes of Andrew Dice Clay and Guns 'N Roses, non-Black acts which have come under fire for racist and sexist comments. Despite criticism of Guns 'N Roses for lyrics which include "niggers" and Clay's "joke" about Native Americans (see note 150 *infra*), Geffen continued to distribute their recordings. *Id.*

149. See Derrick Z. Jackson, *Why Must Only Rappers Take the Rap?*, Boston Globe, June 17, 1990, at A17.

Well-known for his racist "humor," Clay is also comparable to 2 Live Crew in sexual explicitness and misogyny. In his show, for example, Clay offers, "Eenie, meenie, minee, mo / Suck my [expletive] and swallow slow," and "Lose the bra, bitch."¹⁵⁰ Moreover, graphic sexual images—many of them violent—were widely available in Broward County where the performance and trial took place. According to the testimony of a Broward County vice detective, "nude dance shows and adult bookstores are scattered throughout the county where 2 Live Crew performed."¹⁵¹ Given the availability of other forms of sexually explicit "entertainment" in Broward County, Florida, one might wonder how 2 Live Crew could have been seen as uniquely obscene by the lights of the "community standards" of the county.¹⁵² After all, patrons of certain Broward County clubs "can see women dancing with at least their breasts exposed," and bookstore patrons can "view and purchase films and magazines that depict vaginal, oral and anal sex, homosexual sex and group sex."¹⁵³ In arriving at its finding of obscenity, the court placed little weight on the available range of films, magazines, and live shows as evidence of the community's sensibilities. Instead, the court apparently accepted the sheriff's testimony that the decision to single out *Nasty* was based on the number of complaints against 2 Live Crew "communicated by telephone calls, anonymous messages, or letters to the police."¹⁵⁴

Evidence of this popular outcry was never substantiated. But even if it

150. *Id.* at A20. Not only does Clay exhibit sexism comparable to, if not greater than, that of 2 Live Crew, he also intensifies the level of hatred by flaunting racism: "'Indians, bright people, huh? They're still livin' in [expletive] tepees. They deserved it. They're dumb as [expletive].'" *Id.* (quoting Clay).

One commentator asked, "What separates Andrew Dice Clay and 2 Live Crew? Answer: Foul-mouthed Andrew Dice Clay is being chased by the producers of 'Saturday Night Live.' Foul-mouthed 2 Live Crew are being chased by the police." *Id.* at A17. When Clay did appear on Saturday Night Live, a controversy was sparked because cast member Nora Dunn and musical guest Sinead O'Connor refused to appear. Jean Seligmann, *Dicey Problem*, NEWSWEEK, May 21, 1990, at 95.

151. Jane Sutton, *Untitled*, 2 Live Crew, UPI, Oct. 18, 1990.

152. Prosecuting 2 Live Crew but not Clay might be justified by the argument that there is a distinction between "obscenity," defined as expressions of prurient interests, and "pornography" or "racist speech," defined as expressions of misogyny and race hatred, respectively. 2 Live Crew's prurient expressions could be prosecuted as constitutionally unprotected obscenity while Clay's protected racist and misogynistic expressions could not. Such a distinction has been subjected to critical analysis. See Catharine A. MacKinnon, *Not A Moral Issue*, 2 YALE L. & POL'Y REV. 321 (1984). The distinction does not explain why other expressions which appeal more directly to "prurient interests" are not prosecuted. Further, 2 Live Crew's prurient appeal is produced, at least in part, through the degradation of women. Accordingly, there can be no compelling distinction between the appeal Clay makes and that of 2 Live Crew.

153. Sutton, *supra* note 151.

154. *Skywalker Records, Inc. v. Navarro*, 739 F. Supp. 578, 589 (S.D. Fla. 1990). The court rejected the defendants' argument that "admission of other sexually explicit works" is entitled to great weight in determining community standards and held that "this type of evidence does not even have to be considered even if the comparable works have been found to be nonobscene." *Id.* (citing *Hamling v. United States*, 418 U.S. 82, 126-27 (1974)). Although the court gave "some weight" to sexually explicit writings in books and magazines, Eddie Murphy's audio tape of *Raw*, and Andrew Dice Clay's tape recording, it did not explain why these verbal messages "analogous to the format in the *Nasty* recording" were not obscene as well. *Id.*

were, the case for selectivity would remain.¹⁵⁵ The history of social repression of Black male sexuality is long, often violent, and all too familiar.¹⁵⁶ Negative reactions to the sexual conduct of Black men have traditionally had racist overtones, especially where that conduct threatens to "cross over" into the mainstream community.¹⁵⁷ So even if the decision to prosecute did reflect a widespread community perception of the purely prurient character of 2 Live Crew's music, that perception itself might reflect an established pattern of vigilante attitudes directed toward the sexual expression of Black men.¹⁵⁸ In short, the appeal to community standards does not undercut a

155. One report suggested that the complaint came from a lawyer, Jack Thompson. Thompson has continued his campaign, expanding his net to include rap artists the Geto Boys and Too Short. Sara Rimer, *Obscenity or Art? Trial on Rap Lyrics Opens*, N.Y. Times, Oct. 17, 1990, at A1. Despite the appearance of selective enforcement, it is doubtful that any court would be persuaded that the requisite racial motivation was proved. Even evidence of racial disparity in the heaviest of criminal penalties—the death sentence—is insufficient to warrant relief absent specific evidence of discrimination in the defendant's case. See *McClesky v. Kemp*, 481 U. S. 279 (1987).

156. See notes 101-104 *supra* and accompanying text.

157. Some critics speculate that the prosecution of 2 Live Crew has less to do with obscenity than with the traditional policing of Black males, especially as it relates to sexuality. Questioning whether 2 Live Crew is more obscene than Andrew Dice Clay, Gates states, "Clearly, this rap group is seen as more threatening than others that are just as sexually explicit. Can this be completely unrelated to the specter of the young black male as a figure of sexual and social disruption, the very stereotypes that 2 Live Crew seems determined to undermine?" Gates, *supra* note 142. Clarence Page makes a similar point, speculating that "2 Live Crew has become the scapegoat for widespread frustration shared by many blacks and whites over a broad range of social problems that seem to have gotten out of control." Clarence Page, *Culture, Taste and Standard-Setting*, Chicago Trib., Oct. 7, 1990, § 4, at 3. Page implies, however, that this explanation is something more than or different from racism. "Could it be (drumroll, please) racism? Or could it be fear?" *Id.* (emphasis added). Page's definition of racism apparently does not include the possibility that it is racist to attach one's societal fears and discomforts to a subordinated and highly stigmatized "other." In other words, scapegoating, at least in this country, has traditionally been, and still is, considered racist, whatever the source of the fear.

158. Even in the current era, this vigilantism is sometimes tragically expressed. Yusef Hawkins became a victim of it in New York on August 23, 1989, when he was killed by a mob of white men who believed themselves to be protecting "their" women from being taken by Black men. UPI, May 18, 1990. Jesse Jackson called Hawkins's slaying a "racially and sexually motivated lynching" and compared it to the 1955 murder of black Mississippi youth Emmett Till, who was killed by men who thought he whistled at a white woman. *Id.* Even those who denied the racial overtones of Hawkins's murder produced alternative explanations that were part of the same historical narrative. Articles about the Hawkins incident focused on Gina Feliciano as the cause of the incident, attacking her credibility. See, e.g., Lorrin Anderson, *Cracks in the Mosaic*, NAT'L REV., June 25, 1990, at 36. "Gina instigated the trouble . . . Gina used drugs and apparently still does. She dropped out of a rehabilitation program before testifying for the prosecution at trial" and was later picked up by the police and "charged with possession of cocaine—15 vials of crack fell out of her purse, police said, and she had a crack pipe in her bra." *Id.* at 37. At trial, defense attorney Stephen Murphy claimed that Feliciano "lied, . . . perjured herself . . . She divides, polarizes eight million people . . . It's despicable what she did, making this a racial incident." *Id.* (quoting Murphy). But feminists attacked the "scapegoating" of Feliciano, one stating, "Not only are women the victims of male violence, they're blamed for it." Alexis Jetter, *Protesters Blast Scapegoat Tactics*, Newsday, Apr. 3, 1990, at 29 (quoting Francoise Jacobsohn, president of the New York chapter of the National Organization for Women). According to Merle Hoffman, founder of the New York Pro-Choice Coalition, "Gina's personal life has nothing to do with the crime, . . . [b]ut rest assured, they'll go into her sexual history. . . . It's all part of the 'she made me do it' idea." *Id.* (quoting Hoffman). And New York columnist Ilene Barth observed that

Gender . . . has a role in New York's race war. Fingers were pointed in Bensonhurst last week at a teenage girl . . . [who] never harmed anyone Word of her invitation offended local studs, sprouting macho-freaks determined to own local turf and the young

concern about racism; rather, it underscores that concern.

A second troubling dimension of the case brought against 2 Live Crew was the court's apparent disregard for the culturally rooted aspects of 2 Live Crew's music. Such disregard was essential to a finding of obscenity given the third prong of the *Miller* test requiring that material judged obscene must, taken as a whole, lack literary, artistic, or political value.¹⁵⁹ 2 Live Crew argued that this criterion of the *Miller* test was not met in the case of *Nasty* since the recording exemplified such African-American cultural modes as "playing the dozens," "call and response," and "signifying."¹⁶⁰ The court denied each of the group's claims of cultural specificity, recharacterizing in more generic terms what 2 Live Crew contended was distinctly African American. According to the court, "playing the dozens" is "commonly seen in adolescents, especially boys, of all ages"; "boasting" appears to be "part of the universal human condition"; and the cultural origins of "call and response"—featured in a song on *Nasty* about fellatio in which competing groups chanted "less filling" and "tastes great"—were to be found in a Miller beer commercial, not in African-American cultural tradition.¹⁶¹ The possibility that the Miller beer commercial may have itself evolved from an African-American cultural tradition was apparently lost on the court.

In disregarding the arguments made on behalf of 2 Live Crew, the court denied that the form and style of *Nasty* and, by implication, rap music in general had any artistic merit. This disturbing dismissal of the cultural attributes of rap and the effort to universalize African-American modes of expression are a form of colorblindness that presumes to level all significant racial and ethnic differences in order to pass judgment on intergroup conflicts. The court's analysis here also manifests a frequently encountered strategy of cultural appropriation. African-American contributions that have been accepted by the mainstream culture are eventually absorbed as

females in their ethnic group. . . . [W]omen have not made the headlines as part of marauding bands intent on racial assault. But they number among their victims."

Ilene Barth, *Let the Women of Bensonhurst Lead Us in a Prayer Vigil*, *Newsday*, Sept. 3, 1989, at 10.

159. The Supreme Court articulated its standard for obscenity in *Miller v. California*, 413 U.S. 15 (1973), *reh'g denied*, 414 U.S. 881 (1973). The Court held that the basic guidelines for the trier of fact were (a) "whether the 'average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest"; (b) "whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law"; and (c) "whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." *Id.* at 24 (citations omitted).

160. See Gates, *supra* note 142.

161. *Skywalker Records, Inc., v. Navarro*, 739 F. Supp. 578, 595 (S.D. Fla. 1990). The commercial appropriation of rap is readily apparent in pop culture. Soft drink and fast food commercials now feature rap even though the style is sometimes presented without its racial/cultural face. Dancing McDonald's french fries and the Pillsbury Doughboy have gotten into the rap act. The crossover of rap is not the problem; instead, it is the tendency, represented in *Skywalker*, to reject the cultural origins of language and practices which are disturbing. This is part of an overall pattern of cultural appropriation that predates the rap controversy. Most starkly illustrated in music and dance, cultural trailblazers like Little Richard and James Brown have been squeezed out of their place in popular consciousness to make room for Elvis Presley, Mick Jagger, and others. The meteoric rise of white rapper Vanilla Ice is a contemporary example.

simply "American" or found to be "universal." Other modes associated with African-American culture that resist absorption remain distinctive and are either neglected or dismissed as "deviant."

The court apparently rejected as well the possibility that even the most misogynistic rap may have political value as a discourse of resistance. The element of resistance found in some rap is in making people uncomfortable, thereby challenging received habits of thought and action. Such challenges are potentially political, as are more subversive attempts to contest traditional rules by becoming what is most feared.¹⁶² Against a historical backdrop in which the Black male as social outlaw is a prominent theme, "gangsta" rap" might be taken as a rejection of a conciliatory stance aimed at undermining fear through reassurance, in favor of a more subversive form of opposition that attempts to challenge the rules precisely by becoming the very social outlaw that society fears and attempts to proscribe. Rap representations celebrating an aggressive Black male sexuality can be easily construed as discomfiting and oppositional. Not only does reading rap in this way preclude a finding that *Nasty* lacks political value, it also defeats the court's assumption that the group's intent was to appeal solely to prurient interests. To be sure, these considerations carry greater force in the case of other rap artists, such as N.W.A., Too Short, Ice Cube, and The Geto Boys, all of whose standard fare includes depictions of violent assault, rape, rape-murder, and mutilation.¹⁶³ In fact, had these other groups been targeted rather than the comparatively less offensive 2 Live Crew, they might have successfully defeated prosecution. The graphic violence in their representations militate against a finding of obscenity by suggesting an intent not to appeal to prurient interests but instead to more expressly political ones. So long as violence is seen as distinct from sexuality, the prurient interest requirement may provide a shield for the more violent rap artists. However, even this somewhat formalistic dichotomy may provide little solace to such rap artists given the historical linkages that have been made between Black

162. Gates argues that 2 Live Crew is undermining the "specter of the young black male as a figure of sexual and social disruption." Gates, *supra* note 142. Faced with "racist stereotypes about black sexuality," he explains, "you can do one of two things: you can disavow them or explode them with exaggeration." *Id.* 2 Live Crew, Gates suggests, has chosen to burst the myth by parodying exaggerations of the "oversexed black female and male." *Id.*

163. Other rap acts that have been singled out for their violent lyrics include Ice Cube, the Geto Boys, and Too Short. See, e.g., ICE CUBE, *KILL AT WILL* (Gangsta Boogie Music (ASCAP)/UJAMA Music, Inc. 1990); GETO BOYS, *THE GETO BOYS* (N-The-Water Music, Inc. (ASCAP) 1989); TOO SHORT, *SHORT DOG'S IN THE HOUSE* (RCA Records 1990). Not all rap lyrics are misogynist. Moreover, even misogynist acts also express a political world view. The differences among rap groups and the artistic value of the medium is sometimes overlooked by mainstream critics. See, e.g., Jerry Adler, *The Rap Attitude*, NEWSWEEK, Mar. 19, 1990, at 56, 57 (labeling rap as a "bombastic, self-aggrandizing" by-product of the growing "Culture of Attitude"). Adler's treatment of rap set off a storm of responses. See, e.g., Patrick Goldstein, *Pop Eye: Rappers Don't Have Time For Newsweek's Attitude*, L.A. Times, Mar. 25, 1990, at 90 (Magazine). Said Russell Simmons, chairman of Def-Jam Records, rap's most successful label, "Surely the moral outrage in [Adler's] piece would be better applied to contemporary American crises in health care, education, homelessness Blaming the victims—in this case America's black working class and underclass—is never a very useful approach to problem-solving." *Id.* (quoting Simmons).

male sexuality and violence. Indeed, it has been the specter of violence that surrounds images of Black male sexuality that presented 2 Live Crew as an acceptable target of an obscenity prosecution in a field that included Andrew Dice Clay and countless others.

The point here is not that the distinction between sex and violence should be rigorously maintained in determining what is obscene or, more specifically, that rap artists whose standard fare is more violent ought to be protected. To the contrary, these more violent groups should be much more troubling than 2 Live Crew. My point instead is to suggest that obscenity prosecutions of rap artists do nothing to protect the interests of those most directly implicated in rap—Black women. On the one hand, prevailing notions of obscenity separate out sexuality from violence, which has the effect of shielding the more violently misogynistic groups from prosecution; on the other, historical linkages between images of Black male sexuality and violence permit the singling out of “lightweight” rappers for prosecution among all other purveyors of explicit sexual imagery.

C. *Addressing the Intersectionality*

Although Black women’s interests were quite obviously irrelevant in the 2 Live Crew obscenity judgment, their images figured prominently in the public case supporting the prosecution. George Will’s *Newsweek* essay provides a striking example of how Black women’s bodies were appropriated and deployed in the broader attack against 2 Live Crew. Commenting on “America’s Slide into the Sewers,” Will laments that

America today is capable of terrific intolerance about smoking, or toxic waste that threatens trout. But only a deeply confused society is more concerned about protecting lungs than minds, trout than black women. We legislate against smoking in restaurants; singing “Me So Horny” is a constitutional right. Secondary smoke is carcinogenic; celebration of torn vaginas is “mere words.”¹⁶⁴

Lest one be misled into thinking that Will has become an ally of Black women, Will’s real concern is suggested by his repeated references to the Central Park jogger assault. Will writes, “Her face was so disfigured a friend took 15 minutes to identify her. ‘I recognized her ring.’ Do you recognize the relevance of 2 Live Crew?”¹⁶⁵ While the connection between the threat of 2 Live Crew and the image of the Black male rapist was suggested subtly in the public debate, it is blatant throughout Will’s discussion. Indeed, it bids to be the central theme of the essay. “Fact: Some members of a particular age and societal cohort—the one making 2 Live Crew rich—stomped and raped the jogger to the razor edge of death, for the fun of it.”¹⁶⁶ Will directly indicts 2 Live Crew in the Central Park jogger rape through a fictional dialogue between himself and the defendants. Responding to one de-

164. See Will, *supra* note 140.

165. *Id.*

166. *Id.*

fendant's alleged confession that the rape was fun, Will asks, "Where can you get the idea that sexual violence against women is fun? From a music store, through Walkman earphones, from boom boxes blaring forth the rap lyrics of 2 Live Crew."¹⁶⁷ Since the rapists were young Black males and *Nasty* presents Black men celebrating sexual violence, 2 Live Crew was in Central Park that night, providing the underlying accompaniment to a vicious assault. Ironically, Will rejected precisely this kind of argument in the context of racist speech on the ground that efforts to link racist speech to racist violence presume that those who hear racist speech will mindlessly act on what they hear.¹⁶⁸ Apparently, the certain "social cohort" that produces and consumes racist speech is fundamentally different from the one that produces and consumes rap music.

Will invokes Black women—twice—as victims of this music. But if he were really concerned with the threat of 2 Live Crew to Black women, why does the Central Park jogger figure so prominently in his argument? Why not the Black woman in Brooklyn who was gang-raped and then thrown down an airshaft? In fact, Will fails even to mention Black victims of sexual violence, which suggests that Black women simply function for Will as stand-ins for white women. Will's use of the Black female body to press the case against 2 Live Crew recalls the strategy of the prosecutor in Richard Wright's novel *Native Son*. Bigger Thomas, Wright's Black male protagonist, is on trial for killing Mary Dalton, a white woman. Because Bigger burned her body, it cannot be established whether Bigger had sexually assaulted her, so the prosecutor brings in the body of Bessie, a Black woman raped by Bigger and left to die, in order to establish that Bigger had raped Mary Dalton.¹⁶⁹

These considerations about selectivity, about the denial of cultural specificity, and about the manipulation of Black women's bodies convince me that race played a significant, if not determining, role in the shaping of the case against 2 Live Crew. While using antisexist rhetoric to suggest a concern for women, the attack on 2 Live Crew simultaneously endorses traditional readings of Black male sexuality. The fact that the objects of these violent sexual images are Black women becomes irrelevant in the representation of the threat in terms of the Black rapist/white victim dyad. The Black male becomes the agent of sexual violence and the white community becomes his potential victim. The subtext of the 2 Live Crew prosecution thus becomes a re-reading of the sexualized racial politics of the past.

167. *Id.*

168. See George F. Will, *On Campuses, Liberals Would Gag Free Speech*, *Newsday*, Nov. 6, 1989, at 62.

169. RICHARD WRIGHT, *NATIVE SON* 305-08 (Perennial Library ed. 1989) (1940). Wright wrote,

Though he had killed a black girl and a white girl, he knew that it would be for the death of the white girl that he would be punished. The black girl was merely "evidence." And under it all he knew that white people did not really care about Bessie's being killed. White people never searched for Negroes who killed other Negroes.

Id. at 306-07.

While concerns about racism fuel my opposition to the obscenity prosecution of 2 Live Crew, the uncritical support for, and indeed celebration of, 2 Live Crew by other opponents of the prosecution is extremely troubling as well. If the rhetoric of antisexism provided an occasion for racism, so, too, the rhetoric of antiracism provided an occasion for defending the misogyny of 2 Live Crew. That defense took two forms, one political, the other cultural, both advanced prominently by Henry Louis Gates. Gates's political defense argues that 2 Live Crew advances the antiracist agenda by exaggerating stereotypes of Black male sexuality "to show how ridiculous [they] are."¹⁷⁰ The defense contends that by highlighting to the extreme the sexism, misogyny, and violence stereotypically associated with Black male sexuality, 2 Live Crew represents a postmodern effort to "liberate" us from the racism that perpetuates these stereotypes.¹⁷¹

Gates is right to contend that the reactions of Will and others confirm that the racial stereotypes still exist, but even if 2 Live Crew intended to explode these stereotypes, their strategy was misguided. Certainly, the group wholly miscalculated the reaction of their white audience, as Will's polemic amply illustrates. Rather than exploding stereotypes, as Gates suggests, 2 Live Crew, it seems most reasonable to argue, was simply (and unsuccessfully) trying to be funny. After all, trading in sexual stereotypes has long been a means to a cheap laugh, and Gates's cultural defense of 2 Live Crew recognizes as much in arguing the identification of the group with a distinctly African-American cultural tradition of the "dozens" and other forms of verbal boasting, raunchy jokes, and insinuations of sexual prowess, all of which were meant to be laughed at and to gain for the speaker respect for his word wizardry, and not to disrupt conventional myths of Black sexuality.¹⁷² Gates's cultural defense of 2 Live Crew, however, recalls similar efforts on behalf of racist humor, which has sometimes been defended as antiracist—an effort to poke fun at or to show the ridiculousness of racism.

170. Gates, *supra* note 142. Gates's defense of 2 Live Crew portrayed the group as engaging in postmodern guerrilla warfare against racist stereotypes of Black sexuality. Says Gates, "2 Live Crew's music exaggerates stereotypes of black men and women to show how ridiculous those portrayals are. One of the brilliant things about these songs is that they embrace the stereotypes . . . It's ridiculous. That's why we laugh about them. That is one of the things I noticed in the audience's reaction. There is no undertone of violence. There's laughter, there's joy." *Id.* Gates repeats the celebratory theme elsewhere, linking 2 Live Crew to Eddie Murphy and other Black male performers because

they're saying all the things that we couldn't say even in the 1960's about our own excesses, things we could only whisper in dark rooms. They're saying we're going to explode all these sacred cows. It's fascinating, and it's upsetting everybody—not just white people but black people. But it's a liberating moment.

John Pareles, *An Album is Judged Obscene; Rap: Slick, Violent, Nasty and, Maybe Hopeful*, N. Y. Times, June 17, 1990, at 1 (quoting Gates). For a cogent intersectional analysis of Eddie Murphy's popular appeal, see Herman Beavers, *The Cool Pose: Intersectionality, Masculinity and Quiescence in the Comedy and Films of Richard Pryor and Eddie Murphy* (unpublished manuscript) (on file with the *Stanford Law Review*).

171. Gates and others who defend 2 Live Crew as postmodern comic heroes tend to dismiss or downplay the misogyny represented in their rap. Said Gates, "Their sexism is so flagrant, however, that it almost cancels itself out in a hyperbolic war between the sexes." Gates, *supra* note 142.

172. See note 142 *supra*.

More simply, racist humor has often been excused as "just joking"—even racially motivated assaults have been defended as simple pranks. Thus the racism of an Andrew Dice Clay could be defended in either mode as an attempt to explode racist stereotypes or as simple humor not meant to be taken seriously. Implicit in these defenses is the assumption that racist representations are injurious only if they are intended to injure, or to be taken literally, or are devoid of some other nonracist objective. It is highly unlikely that this rationale would be accepted by Blacks as a persuasive defense of Andrew Dice Clay. Indeed, the Black community's historical and ongoing criticism of such humor suggests widespread rejection of these arguments.

The claim that a representation is meant simply as a joke may be true, but the joke functions as humor within a specific social context in which it frequently reinforces patterns of social power. Though racial humor may sometimes be intended to ridicule racism, the close relationship between the stereotypes and the prevailing images of marginalized people complicates this strategy. And certainly, the humorist's positioning vis-à-vis a targeted group colors how the group interprets a potentially derisive stereotype or gesture. Although one could argue that Black comedians have broader license to market stereotypically racist images, that argument has no force here. 2 Live Crew cannot claim an in-group privilege to perpetuate misogynist humor against Black women: the members of 2 Live Crew are not Black women, and more importantly, they enjoy a power relationship over them.

Humor in which women are objectified as packages of bodily parts to serve whatever male-bonding/male-competition needs men please subordinates women in much the same way that racist humor subordinates African Americans. Claims that incidences of such humor are just jokes and are not meant to injure or to be taken literally do little to blunt their demeaning quality—nor, for that matter, does the fact that the jokes are told within an intragroup cultural tradition.

The notion that sexism can serve antiracist ends has proponents ranging from Eldridge Cleaver¹⁷³ to Shahrazad Ali,¹⁷⁴ all of whom seem to expect Black women to serve as vehicles for the achievement of a "liberation" that functions to perpetuate their own subordination.¹⁷⁵ Claims of cultural specificity similarly fail to justify toleration of misogyny.¹⁷⁶ While the cultural

173. See note 47 *supra*.

174. See notes 37-42 *supra* and accompanying text.

175. Gates occasionally claims that both Black male and Black female images are exploded by 2 Live Crew. Even if Gates's view holds true for Black male images, the strategy does not work—and was not meant to work—for Black women. Black women are not the actors in 2 Live Crew's strategy; they are acted upon. To challenge the images of Black women, Black women themselves would have to embrace them, not simply permit Black men to "act out" on them. The only Black female rap groups that might conceivably claim such a strategy are Bytches With Problems and Hoes With Attitudes. Yet, having listened to the music of these Black female rap groups, I am not sure that exploding racist images is either their intent or effect. This is not to say, of course, that all Black female rap is without its strategies of resistance. See note 179 *infra*.

176. It is interesting that whether those judging the 2 Live Crew case came out for or against,

defense of 2 Live Crew has the virtue of recognizing merit in a form of music common to the Black community, something George Will and the court that convicted 2 Live Crew were all too glib in dismissing, it does not eliminate the need to question both the sexism within the tradition it defends and the objectives to which the tradition has been pressed. The fact that playing the dozens, say, is rooted in the Black cultural tradition, or that themes represented by mythic folk heroes such as "Stackolee" are African American does not settle the question of whether such practices oppress Black women.¹⁷⁷ Whether these practices are a distinctive part of the African-American cultural tradition is decidedly beside the point. The real question is how subordinating aspects of these practices play out in the lives of people in the community, people who share the benefits as well as the burdens of a common culture. With regard to 2 Live Crew, while it may be true that the Black community has accepted the cultural forms that have evolved into rap, that acceptance should not preclude discussion of whether the misogyny within rap is itself acceptable.

With respect to Gates's political and cultural defenses of 2 Live Crew, then, little turns on whether the "word play" performed by the Crew is a postmodern challenge to racist sexual mythology or simply an internal group practice that crossed over into mainstream America. Both defenses are problematic because they require Black women to accept misogyny and its attendant disrespect and exploitation in the service of some broader group objective, whether it be pursuing an antiracist political agenda or maintaining the cultural integrity of the Black community. Neither objective obligates Black women to tolerate such misogyny.

Likewise, the superficial efforts of the anti-2 Live Crew movement to link

all seemed to reject the notion that race has anything to do with their analysis. See *Skywalker Records, Inc. v. Navarro*, 739 F. Supp. 578, 594-96 (S.D. Fla. 1990) (rejecting defense contention that 2 Live Crew's *Nasty* had artistic value as Black cultural expression); see also Sara Rimer, *Rap Band Members Found Not Guilty in Obscenity Trial*, N.Y. Times, Oct. 21, 1990, at A30 ("Jurors said they did not agree with the defense's assertion that the 2 Live Crew's music had to be understood in the context of black culture. They said they thought race had nothing to do with it."). Clarence Page also rejects the argument that 2 Live Crew's *NASTY* must be valued as Black cultural expression: "I don't think 2 Live Crew can be said to represent black culture any more than, say, Andrew Dice Clay can be said to represent white culture. Rather, I think both represent a lack of culture." See Page, *supra* note 157.

177. Gay men are also targets of homophobic humor that might be defended as culturally specific. Consider the homophobic humor of such comedians as Eddie Murphy, Arsenio Hall, and Damon Wayans and David Alan Grier, the two actors who currently portray Black gay men on the television show *In Living Color*. Critics have linked these homophobic representations of Black gay men to patterns of subordination within the Black community. Black gay filmmaker Marlon Riggs has argued that such caricatures discredit Black gay men's claim to Black manhood, presenting them as "game for play, to be used, joked about, put down, beaten, slapped, and bashed, not just by illiterate homophobic thugs in the night, but by black American culture's best and brightest." Marlon Riggs, *Black Macho Revisited: Reflections of a SNAP! Queen*, in *BROTHER TO BROTHER: NEW WRITINGS BY BLACK GAY MEN* 253, 254 (Essex Hemphill ed. 1991); see also Blair Fell, *Gayface/Blackface: Parallels of Oppression*, NYQ, Apr. 5, 1992, at 32 (drawing parallels between gayface and blackface and arguing that "gayfaced contemporary comedy . . . serves as a tool to soothe the guilty consciences and perpetuate the injustices of gay-bashing America. After all, laughing at something barely human is easier than dealing with flying bullets, split skulls, dying bodies and demands for civil rights.").

the prosecution of the Crew to the victimization of Black women had little to do with Black women's lives. Those who deployed Black women in the service of condemning 2 Live Crew's misogynist representations did not do so in the interest of empowering Black women; rather, they had other interests in mind, the pursuit of which was racially subordinating. The implication here is not that Black feminists should stand in solidarity with the supporters of 2 Live Crew. The spirited defense of 2 Live Crew was no more about defending the entire Black community than the prosecution was about defending Black women. After all, Black women whose very assault is the subject of the representation can hardly regard the right to be represented as bitches and whores as essential to their interest. Instead, the defense primarily functions to protect 2 Live Crew's prerogative to be as misogynistic as they want to be.¹⁷⁸

Within the African-American political community, Black women will have to make it clear that patriarchy is a critical issue that negatively affects the lives not only of Black women, but of Black men as well. Doing so would help reshape traditional practices so that evidence of racism would not constitute sufficient justification for uncritical rallying around misogynistic politics and patriarchal values. Although collective opposition to racist practice has been and continues to be crucially important in protecting Black interests, an empowered Black feminist sensibility would require that the terms of unity no longer reflect priorities premised upon the continued marginalization of Black women.

178. Although much of the sexism that is voiced in rap pervades the industry, Black female rappers have gained a foothold and have undertaken various strategies of resistance. For some, their very presence in rap challenges prevailing assumptions that rap is a Black male tradition. See Tricia Rose, *One Queen, One Tribe, One Destiny*, VILLAGE VOICE ROCK & ROLL QUARTERLY, Spring 1990, at 10 (profiling Queen Latifah, widely regarded as one of the best female rappers). Although Latifah has eschewed the head-on approach, her rap and videos are often women-centered, as exemplified by her single, "Ladies First." QUEEN LATIFAH, ALL HAIL THE QUEEN (Tommy Boy 1989). The "Ladies First" video featured other female rappers, "showing a depth of women's solidarity never seen before." Rose, *supra*, at 16. Rappers like Yo-Yo, "hip-hop's first self-proclaimed feminist activist," take a more confrontational line; for example, Yo-Yo duels directly with rapper Ice Cube in "It's a Man's World." Joan Morgan, *Throw the 'F'*, Village Voice, June 11, 1991, at 75.

Some female rappers, such as Bytches With Problems, have attempted to subvert the categories of bitches and whores by taking on the appellations and infusing them with power. As Joan Morgan observes,

It's common practice for oppressed peoples to neutralize terms of disparagement by adopting and redefining them. Lyndah McCaskill and Tanisha Michelle Morgan's decision to define *bitch* "as a strong woman who doesn't take crap from anyone, male or female" and to encourage women to "wear the title as a badge of honor and keep getting yours" does not differ significantly from blacks opting to use the word *nigger* or gays embracing *queer*.

Id. However in the case of the Bytches, Joan Morgan ultimately found the attempt unsuccessful, in part because the subversion operated merely as an exception for the few ("Lynda and Tanisha Michelle are the only B-Y-T-C-H's here; all the other women they speak about, including the menstrual accident, the woman whose boyfriend Lyndah screws, and anyone else who doesn't like their style, are B-I-T-C-H's in the very male sense of the word") and because ultimately, their world view serves to reinscribe male power. Said Morgan, "It's a tired female rendition of age-old sexist, patriarchal thinking: the power is in the pistol or the penis." *Id.*

CONCLUSION

This article has presented intersectionality as a way of framing the various interactions of race and gender in the context of violence against women of color. Yet intersectionality might be more broadly useful as a way of mediating the tension between assertions of multiple identity and the ongoing necessity of group politics. It is helpful in this regard to distinguish intersectionality from the closely related perspective of antiessentialism, from which women of color have critically engaged white feminism for the absence of women of color on the one hand, and for speaking for women of color on the other. One rendition of this antiessentialist critique—that feminism essentializes the category woman—owes a great deal to the postmodernist idea that categories we consider natural or merely representational are actually socially constructed in a linguistic economy of difference.¹⁷⁹ While the descriptive project of postmodernism of questioning the ways in which meaning is socially constructed is generally sound, this critique sometimes misreads the meaning of social construction and distorts its political relevance.

One version of antiessentialism, embodying what might be called the vulgarized social construction thesis, is that since all categories are socially constructed, there is no such thing as, say, Blacks or women, and thus it makes no sense to continue reproducing those categories by organizing around them.¹⁸⁰ Even the Supreme Court has gotten into this act. In *Metro Broadcasting, Inc. v. FCC*,¹⁸¹ the Court conservatives, in rhetoric that oozes vulgar constructionist smugness, proclaimed that any set-aside designed to increase the voices of minorities on the air waves was itself based on a racist assumption that skin color is in some way connected to the likely content of one's broadcast.¹⁸²

But to say that a category such as race or gender is socially constructed is not to say that that category has no significance in our world. On the contrary, a large and continuing project for subordinated people—and indeed, one of the projects for which postmodern theories have been very helpful—is

179. I follow the practice of others in linking antiessentialism to postmodernism. See generally LINDA NICHOLSON, *FEMINISM/POSTMODERNISM* (1990).

180. I do not mean to imply that all theorists who have made antiessentialist critiques have lapsed into vulgar constructionism. Indeed, antiessentialists avoid making these troubling moves and would no doubt be receptive to much of the critique set forth herein. I use the term vulgar constructionism to distinguish between those antiessentialist critiques that leave room for identity politics and those that do not.

181. 110 S. Ct. 2997 (1990).

182.

The FCC's choice to employ a racial criterion embodies the related notions that a particular and distinct viewpoint inheres in certain racial groups and that a particular applicant, by virtue of race or ethnicity alone, is more valued than other applicants because the applicant is "likely to provide [that] distinct perspective." The policies directly equate race with belief and behavior, for they establish race as a necessary and sufficient condition of securing the preference. . . . The policies impermissibly value individuals because they presume that persons think in a manner associated with their race.

Id. at 3037 (O'Connor, J., joined by Rehnquist, C.J., and Scalia and Kennedy, J.J., dissenting) (internal citations omitted).

thinking about the way power has clustered around certain categories and is exercised against others. This project attempts to unveil the processes of subordination and the various ways those processes are experienced by people who are subordinated and people who are privileged by them. It is, then, a project that presumes that categories have meaning and consequences. And this project's most pressing problem, in many if not most cases, is not the existence of the categories, but rather the particular values attached to them and the way those values foster and create social hierarchies.

This is not to deny that the process of categorization is itself an exercise of power, but the story is much more complicated and nuanced than that. First, the process of categorizing—or, in identity terms, naming—is not unilateral. Subordinated people can and do participate, sometimes even subverting the naming process in empowering ways. One need only think about the historical subversion of the category “Black” or the current transformation of “queer” to understand that categorization is not a one-way street. Clearly, there is unequal power, but there is nonetheless some degree of agency that people can and do exert in the politics of naming. And it is important to note that identity continues to be a site of resistance for members of different subordinated groups. We all can recognize the distinction between the claims “I am Black” and the claim “I am a person who happens to be Black.” “I am Black” takes the socially imposed identity and empowers it as an anchor of subjectivity. “I am Black” becomes not simply a statement of resistance but also a positive discourse of self-identification, intimately linked to celebratory statements like the Black nationalist “Black is beautiful.” “I am a person who happens to be Black,” on the other hand, achieves self-identification by straining for a certain universality (in effect, “I am first a person”) and for a concomitant dismissal of the imposed category (“Black”) as contingent, circumstantial, nondeterminant. There is truth in both characterizations, of course, but they function quite differently depending on the political context. At this point in history, a strong case can be made that the most critical resistance strategy for disempowered groups is to occupy and defend a politics of social location rather than to vacate and destroy it.

Vulgar constructionism thus distorts the possibilities for meaningful identity politics by conflating at least two separate but closely linked manifestations of power. One is the power exercised simply through the process of categorization; the other, the power to cause that categorization to have social and material consequences. While the former power facilitates the latter, the political implications of challenging one over the other matter greatly. We can look at debates over racial subordination throughout history and see that in each instance, there was a possibility of challenging either the construction of identity or the system of subordination based on that identity. Consider, for example, the segregation system in *Plessy v. Ferguson*.¹⁸³ At issue were multiple dimensions of domination, including cate-

183. 163 U.S. 537 (1896).

gorization, the sign of race, and the subordination of those so labeled. There were at least two targets for Plessy to challenge: the construction of identity ("What is a Black?"), and the system of subordination based on that identity ("Can Blacks and whites sit together on a train?"). Plessy actually made both arguments, one against the coherence of race as a category, the other against the subordination of those deemed to be Black. In his attack on the former, Plessy argued that the segregation statute's application to him, given his mixed race status, was inappropriate. The Court refused to see this as an attack on the coherence of the race system and instead responded in a way that simply reproduced the Black/white dichotomy that Plessy was challenging. As we know, Plessy's challenge to the segregation system was not successful either. In evaluating various resistance strategies today, it is useful to ask which of Plessy's challenges would have been best for him to have won—the challenge against the coherence of the racial categorization system or the challenge to the practice of segregation?

The same question can be posed for *Brown v. Board of Education*.¹⁸⁴ Which of two possible arguments was politically more empowering—that segregation was unconstitutional because the racial categorization system on which it was based was incoherent, or that segregation was unconstitutional because it was injurious to Black children and oppressive to their communities? While it might strike some as a difficult question, for the most part, the dimension of racial domination that has been most vexing to African Americans has not been the social categorization as such, but the myriad ways in which those of us so defined have been systematically subordinated. With particular regard to problems confronting women of color, when identity politics fail us, as they frequently do, it is not primarily because those politics take as natural certain categories that are socially constructed but rather because the descriptive content of those categories and the narratives on which they are based have privileged some experiences and excluded others.

Along these lines, consider the Clarence Thomas/Anita Hill controversy. During the Senate hearings for the confirmation of Clarence Thomas to the Supreme Court, Anita Hill, in bringing allegations of sexual harassment against Thomas, was rhetorically disempowered in part because she fell between the dominant interpretations of feminism and antiracism. Caught between the competing narrative tropes of rape (advanced by feminists) on the one hand and lynching (advanced by Thomas and his antiracist supporters) on the other, the race and gender dimensions of her position could not be told. This dilemma could be described as the consequence of antiracism's essentializing Blackness and feminism's essentializing womanhood. But recognizing as much does not take us far enough, for the problem is not simply linguistic or philosophical in nature. It is specifically political: the narratives of gender are based on the experience of white, middle-class women, and the narratives of race are based on the experience of Black men. The solution does not merely entail arguing for the multiplicity of identities or

184. 397 U.S. 483 (1954).

challenging essentialism generally. Instead, in Hill's case, for example, it would have been necessary to assert those crucial aspects of her location that were erased, even by many of her advocates—that is, to state what difference her difference made.

If, as this analysis asserts, history and context determine the utility of identity politics, how then do we understand identity politics today, especially in light of our recognition of multiple dimensions of identity? More specifically, what does it mean to argue that gender identities have been obscured in antiracist discourses, just as race identities have been obscured in feminist discourses? Does that mean we cannot talk about identity? Or instead, that any discourse about identity has to acknowledge how our identities are constructed through the intersection of multiple dimensions? A beginning response to these questions requires that we first recognize that the organized identity groups in which we find ourselves in are in fact coalitions, or at least potential coalitions waiting to be formed.

In the context of antiracism, recognizing the ways in which the intersectional experiences of women of color are marginalized in prevailing conceptions of identity politics does not require that we give up attempts to organize as communities of color. Rather, intersectionality provides a basis for reconceptualizing race as a coalition between men and women of color. For example, in the area of rape, intersectionality provides a way of explaining why women of color have to abandon the general argument that the interests of the community require the suppression of any confrontation around intraracial rape. Intersectionality may provide the means for dealing with other marginalizations as well. For example, race can also be a coalition of straight and gay people of color, and thus serve as a basis for critique of churches and other cultural institutions that reproduce heterosexism.

With identity thus reconceptualized, it may be easier to understand the need for and to summon the courage to challenge groups that are after all, in one sense, "home" to us, in the name of the parts of us that are not made at home. This takes a great deal of energy and arouses intense anxiety. The most one could expect is that we will dare to speak against internal exclusions and marginalizations, that we might call attention to how the identity of "the group" has been centered on the intersectional identities of a few. Recognizing that identity politics takes place at the site where categories intersect thus seems more fruitful than challenging the possibility of talking about categories at all. Through an awareness of intersectionality, we can better acknowledge and ground the differences among us and negotiate the means by which these differences will find expression in constructing group politics.