

# Race and Essentialism in Feminist Legal Theory

Angela P. Harris\*

*bein alive & bein a woman & bein colored is a metaphysical dilemma*<sup>1</sup>  
— ntozake shange

## I. INTRODUCTION

### A. *Prologue: The Voices in Which We Speak*

#### 1. *Funes the Memorious.*

In *Funes the Memorious*,<sup>2</sup> Borges tells of Ireneo Funes, who was a rather ordinary young man (notable only for his precise sense of time) until the age of nineteen, when he was thrown by a half-tamed horse and left paralyzed but possessed of perfect perception and a perfect memory.

After his transformation, Funes

knew by heart the forms of the southern clouds at dawn on the 30th of April, 1882, and could compare them in his memory with the mottled streaks on a book in Spanish binding he had only seen once and with the outlines of the foam raised by an oar in the Río Negro the night before the Quebracho uprising. These memories were not simple ones; each visual image was linked to muscular sensations, thermal sensations, etc. He could reconstruct all his dreams, all his half-dreams. Two or three times he had reconstructed a whole day; he never hesitated, but each reconstruction had required a whole day.<sup>3</sup>

---

\* Acting Professor, University of California at Berkeley (Boalt Hall). B.A., University of Michigan, Ann Arbor, 1981; M.A., University of Chicago, 1983; J.D., University of Chicago, 1986. An earlier version of this essay was presented at the first annual Conference on Critical Race Theory, sponsored by the University of Wisconsin Institute for Legal Studies, July 7-12, 1989; my indescribable gratitude to all the participants in that conference, but especially to Derrick Bell, Teri Miller, and Ginger Patterson. Thanks also to the many other people who provided insightful comments and criticism, including Herma Hill Kay, Kristin Luker, Robert Post, and Deborah Rhode.

1. NTOZAKE SHANGE, *no more love poems #4*, in *FOR COLORED GIRLS WHO HAVE CONSIDERED SUICIDE/WHEN THE RAINBOW IS ENUF* 45 (1977) (The poem in part reads, "bein alive & bein a woman & bein colored is a metaphysical dilemma/ i havent conquered yet/ do you see the point/ my spirit is too ancient to understand the separation of soul & gender/ my love is too delicate to have thrown back on my face").

2. JORGE LUIS BORGES, *Labyrinths: Selected Stories and Other Writings* 59 (D. Yates & J. Irby eds. 1964).

3. *Id.* at 63-64.

Funes tells the narrator that after his transformation he invented his own numbering system. "In place of seven thousand thirteen, he would say (for example) *Máximo Pérez*; in place of seven thousand fourteen, *The Railroad*; other numbers were Luis Melián Lafinur, Olimar, sulphur, the reins, the whale, the gas, the caldron, Napoleon, Agustín de Vedia."<sup>4</sup> The narrator tries to explain to Funes "that this rhapsody of incoherent terms was precisely the opposite of a system of numbers. I told him that saying 365 meant saying three hundreds, six tens, five ones, an analysis which is not found in the 'numbers' *The Negro Timoteo* or *meat blanket*. Funes did not understand me or refused to understand me."<sup>5</sup>

In his conversation with Funes, the narrator realizes that Funes' life of infinite unique experiences leaves Funes no ability to categorize: "With no effort, he had learned English, French, Portuguese and Latin. I suspect, however, that he was not very capable of thought. To think is to forget differences, generalize, make abstractions. In the teeming world of Funes, there were only details, almost immediate in their presence."<sup>6</sup> For Funes, language is only a unique and private system of classification, elegant and solipsistic. The notion that language, made abstract, can serve to create and reinforce a community is incomprehensible to him.

## 2. "We the People."

Describing the voice that speaks the first sentence of the Declaration of Independence, James Boyd White remarks:

It is not a person's voice, not even that of a committee, but the "unanimous" voice of "thirteen united States" and of their "people." It addresses a universal audience—nothing less than "mankind" itself, located neither in space nor in time—and the voice is universal too, for it purports to know about the "Course of human events" (all human events?) and to be able to discern what "becomes necessary" as a result of changing circumstances.<sup>7</sup>

The Preamble of the United States Constitution, White argues, can also be heard to speak in this unified and universal voice. This voice claims to speak

for an entire and united nation and to do so directly and personally, not in the third person or by merely delegated authority. . . . The instrument thus appears to issue from a single imaginary author, consisting of all the people of the United States, including the reader, merged into a single identity in this act of self-constitution. "The People" are at once the author and the audience of this instrument.<sup>8</sup>

4. *Id.* at 64.

5. *Id.* at 65.

6. *Id.* at 66.

7. JAMES BOYD WHITE, WHEN WORDS LOSE THEIR MEANING 232 (1984).

8. *Id.* at 240.

Despite its claims, however, this voice does not speak for everyone, but for a political faction trying to constitute itself as a unit of many disparate voices; its power lasts only as long as the contradictory voices remain silenced.

In a sense, the "I" of Funes, who knows only particulars, and the "we" of "We the People," who know only generalities, are the same. Both voices are monologues; both depend on the silence of others. The difference is only that the first voice knows of no others, while the second has silenced them.

### 3. *Law and literature.*

The first voice, the voice of Funes, is the voice toward which literature sometimes seems driven. In an essay, Cynthia Ozick describes a comment she once overheard at a party: "For me, the Holocaust and a corn cob are the same."<sup>9</sup> Ozick understands this comment to mean that for a writer, all experience is equal. Literature has no moral content, for it exists purely in the domain of the imagination, a place where only aesthetics matter. Thus, a poet may freely replace the Holocaust with a corn cob, just as Funes replaces "7013" with *Máximo Pérez*. Poetic language is only a game of words; the poet need not and in fact should not worry about social responsibility. Literary language is purely self-referential.

Law, however, has not been much tempted by the sound of the first voice. Lawyers are all too aware that legal language is not a purely self-referential game, for "legal interpretive acts signal and occasion the imposition of violence upon others."<sup>10</sup> In their concern to avoid the social and moral irresponsibility of the first voice, legal thinkers have veered in the opposite direction, toward the safety of the second voice, which speaks from the position of "objectivity" rather than "subjectivity," "neutrality" rather than "bias." This voice, like the voice of "We the People," is ultimately authoritarian and coercive in its attempt to speak for everyone.<sup>11</sup>

In both law and literature there are theorists who struggle against their discipline's grain. Literary theorists such as Henry Louis Gates, Jr., Gayatri Spivak, and Abdul JanMohamed are attempting to "read specific verbal and visual texts against complex cultural codes of power, assertion, and domination which these texts both reflect and, indeed,

9. CYNTHIA OZICK, *Innovation and Redemption: What Literature Means*, in *ART AND ARDOR* 238, 244 (1983).

10. Robert M. Cover, *Violence and the Word*, 95 *YALE L.J.* 1601, 1601 (1986); see also Robert Weisberg, *The Law-Literature Enterprise*, 1 *YALE J.L. & HUMANITIES* 1, 45 (1988) (describing how students of legal interpretation are initially drawn to literary interpretation because of its greater freedom, and then almost immediately search for a way to reintroduce constraints).

11. See Peter Goodrich, *Historical Aspects of Legal Interpretation*, 61 *IND. L.J.* 331, 333 (1986) (arguing that legal interpretation is theological in derivation and "unjustifiably authoritarian in its practice").

reinforce.”<sup>12</sup> Legal theorists such as Mari Matsuda, Pat Williams, and Derrick Bell juxtapose the voice that “allows theorists to discuss liberty, property, and rights in the aspirational mode of liberalism with no connection to what those concepts mean in real people’s lives”<sup>13</sup> with the voices of people whose voices are rarely heard in law. In neither law nor literature, however, is the goal merely to replace one voice with its opposite. Rather, the aim is to understand both legal and literary discourse as the complex struggle and unending dialogue between these voices.

The metaphor of “voice” implies a speaker. I want to suggest, however, that both the voices I have described come from the same source, a source I term “multiple consciousness.” It is a premise of this article that we are not born with a “self,” but rather are composed of a welter of partial, sometimes contradictory, or even antithetical “selves.” A unified identity, if such can ever exist, is a product of will, not a common destiny or natural birthright. Thus, consciousness is “never fixed, never attained once and for all”;<sup>14</sup> it is not a final outcome or a biological given, but a process, a constant contradictory state of becoming, in which both social institutions and individual wills are deeply implicated. A multiple consciousness is home both to the first and the second voices, and all the voices in between.

As I use the phrase, “multiple consciousness” as reflected in legal or literary discourse is not a golden mean or static equilibrium between two extremes, but rather a process in which propositions are constantly put forth, challenged, and subverted. Cynthia Ozick argues that “a redemptive literature, a literature that interprets and decodes the world, beaten out for the sake of humanity, must wrestle with its own body, with its own flesh and blood, with its own life.”<sup>15</sup> Similarly, Mari Matsuda, while arguing that in the legal realm “[h]olding on to a multiple consciousness will allow us to operate both within the abstractions of standard jurisprudential discourse, *and* within the details of our own special knowledge,”<sup>16</sup> acknowledges that “this constant shifting of consciousness produces sometimes madness, sometimes genius, sometimes both.”<sup>17</sup>

---

12. Henry Louis Gates, Jr., *Editor's Introduction: Writing "Race" and the Difference It Makes*, in *"RACE," WRITING AND DIFFERENCE* 1, 16 (H.L. Gates, Jr. ed. 1986).

13. Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *WOMEN'S RTS. L. REP.* 7, 9 (1989).

14. Teresa de Lauretis, *Feminist Studies/Critical Studies: Issues, Terms, and Contexts*, in *FEMINIST STUDIES/CRITICAL STUDIES* 1, 8 (T. de Lauretis ed. 1986).

15. C. OZICK, *supra* note 9, at 247.

16. Matsuda, *supra* note 13, at 9.

17. *Id.* at 8.

B. *Race and Essentialism in Feminist Legal Theory*

1. *Methodology.*

In this article, I discuss some of the writings of feminist legal theorists Catharine MacKinnon and Robin West. I argue that their work, though powerful and brilliant in many ways, relies on what I call gender essentialism—the notion that a unitary, “essential” women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience. The result of this tendency toward gender essentialism, I argue, is not only that some voices are silenced in order to privilege others (for this is an inevitable result of categorization, which is necessary both for human communication and political movement), but that the voices that are silenced turn out to be the same voices silenced by the mainstream legal voice of “We the People”—among them, the voices of black women.

This result troubles me for two reasons. First, the obvious one: As a black woman, in my opinion the experience of black women is too often ignored both in feminist theory and in legal theory, and gender essentialism in feminist legal theory does nothing to address this problem. A second and less obvious reason for my criticism of gender essentialism is that, in my view, contemporary legal theory needs less abstraction and not simply a different sort of abstraction. To be fully subversive, the methodology of feminist legal theory should challenge not only law’s content but its tendency to privilege the abstract and unitary voice, and this gender essentialism also fails to do.

In accordance with my belief that legal theory, including feminist legal theory, is in need of less abstraction, in this article I destabilize and subvert the unity of MacKinnon’s and West’s “woman” by introducing the voices of black women, especially as represented in literature. Before I begin, however, I want to make three cautionary points to the reader. First, my argument should not be read to accuse either MacKinnon or West of “racism” in the sense of personal antipathy to black people. Both writers are steadfastly anti-racist, which in a sense is my point. Just as law itself, in trying to speak for all persons, ends up silencing those without power, feminist legal theory is in danger of silencing those who have traditionally been kept from speaking, or who have been ignored when they spoke, including black women. The first step toward avoiding this danger is to give up the dream of gender essentialism.

Second, in using a racial critique to attack gender essentialism in feminist legal theory, my aim is not to establish a new essentialism in its place based on the essential experience of black women. Nor should my focus on black women be taken to mean that other women are not silenced either by the mainstream culture or by feminist legal theory. Accordingly, I invite the critique and subversion of my own generalizations.

Third and finally, I do not mean in this article to suggest that either feminism or legal theory should adopt the voice of Funes the Memorious, for whom every experience is unique and no categories or generalizations exist at all. Even a jurisprudence based on multiple consciousness must categorize; without categorization each individual is as isolated as Funes, and there can be no moral responsibility or social change. My suggestion is only that we make our categories explicitly tentative, relational, and unstable, and that to do so is all the more important in a discipline like law, where abstraction and "frozen" categories are the norm. Avoiding gender essentialism need not mean that the Holocaust and a corn cob are the same.

## 2. *Feminist legal theory.*

As a Black lesbian feminist comfortable with the many different ingredients of my identity, and a woman committed to racial and sexual freedom from oppression, I find I am constantly being encouraged to pluck out some one aspect of myself and present this as the meaningful whole, eclipsing or denying the other parts of self.<sup>18</sup>

— Audre Lorde

The need for multiple consciousness in feminist movement—a social movement encompassing law, literature, and everything in between—has long been apparent. Since the beginning of the feminist movement in the United States, black women have been arguing that their experience calls into question the notion of a unitary "women's experience."<sup>19</sup> In the first wave of the feminist movement, black women's<sup>20</sup> realization that the white leaders of the suffrage movement intended to take neither issues of racial oppression nor black women themselves seriously was instrumental in destroying or preventing

18. AUDRE LORDE, *Age, Race, Class, and Sex: Women Redefining Difference*, in *SISTER OUTSIDER* 114, 120 (1984).

19. For example, in 1851, Sojourner Truth told the audience at the woman's rights convention in Akron, Ohio:

That man over there says women need to be helped into carriages, and lifted over ditches, and to have the best place everywhere. Nobody ever helps me into carriages, or over mud-puddles, or gives me any best place! And ain't I a woman? Look at me! Look at my arm! I have ploughed, and planted, and gathered into barns, and no man could head me! And ain't I a woman? I could work as much and eat as much as a man—when I could get it—and bear the lash as well! And ain't I a woman? I have borne thirteen children, and seen them most all sold off to slavery, and when I cried out with my mother's grief, none but Jesus heard me! And ain't I a woman?

Address by Sojourner Truth (1851), reprinted in *BLACK WOMEN IN NINETEENTH-CENTURY AMERICAN LIFE: THEIR WORDS, THEIR THOUGHTS, THEIR FEELINGS* 234, 235 (B.J. Loewenberg & R. Bogin eds. 1976).

20. I use "black" rather than "African-American" because some people of color who do not have African heritage and/or are not Americans nevertheless identify themselves as black, and in this essay I am more interested in stressing issues of culture than of nationality or genetics. I use "black" rather than "Black" because it is my contention in this essay that race and gender issues are inextricably intertwined, and to capitalize "Black" and not "Woman" would imply a privileging of race with which I do not agree.

political alliances between black and white women within the movement.<sup>21</sup> In the second wave, black women are again speaking loudly and persistently,<sup>22</sup> and at many levels our voices have begun to be heard. Feminists have adopted the notion of multiple consciousness as appropriate to describe a world in which people are not oppressed only or primarily on the basis of gender, but on the bases of race, class, sexual orientation, and other categories in inextricable webs.<sup>23</sup> Moreover, multiple consciousness is implicit in the precepts of feminism itself. In Christine Littleton's words, "[f]eminist method starts with the very radical act of taking women seriously, believing that what we say about ourselves and our experience is important and valid, even when (or perhaps especially when) it has little or no relationship to what has been or is being said *about us*."<sup>24</sup> If a unitary "women's experience" or "feminism" must be distilled, feminists must ignore many women's voices.<sup>25</sup>

In feminist legal theory, however, the move away from univocal toward multivocal theories of women's experience and feminism has been

21. For a discussion of white racism in the suffrage movement, see ANGELA Y. DAVIS, *WOMEN, RACE AND CLASS* 110-26 (1981); PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 159-70 (1984). See also P. GIDDINGS, *supra*, at 46-55 (white racism in the abolitionist movement).

22. See, e.g., A. DAVIS, *supra* note 21; BELL HOOKS, *AIN'T I A WOMAN? BLACK WOMEN AND FEMINISM* (1981) [hereinafter B. HOOKS, *AIN'T I A WOMAN?*]; BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* (1984) [hereinafter B. HOOKS, *FEMINIST THEORY*]; BELL HOOKS, *TALKING BACK: THINKING FEMINIST, THINKING BLACK* (1989) [hereinafter B. HOOKS, *TALKING BACK*]; GLORIA I. JOSEPH & JILL LEWIS, *COMMON DIFFERENCES: CONFLICTS IN BLACK AND WHITE FEMINIST PERSPECTIVES* (1981); *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* (C. Moraga & G. Anzaldúa 2d ed. 1983) [hereinafter *THIS BRIDGE CALLED MY BACK*]; Hazel V. Carby, *White Woman Listen! Black Feminism and the Boundaries of Sisterhood*, in *THE EMPIRE STRIKES BACK: RACE AND RACISM IN 70s BRITAIN* 212 (Centre for Contemporary Cultural Studies ed. 1982); Martí C. Lugones & Elizabeth V. Spelman, *Have We Got a Theory for You? Feminist Theory, Cultural Imperialism and the Demand for "The Woman's Voice,"* 6 *WOMEN'S STUD. INT'L F.* 573 (1983).

23. See, e.g., de Lauretis, *supra* note 14, at 9 (characterizing the feminist identity as "multiple, shifting, and often self-contradictory").

24. Christine A. Littleton, *Feminist Jurisprudence: The Difference Method Makes* (Book Review), 41 *STAN. L. REV.* 751, 764 (1989). MacKinnon's definition of feminist method is the practice of "believing women's accounts of sexual use and abuse by men." CATHARINE A. MACKINNON, *Introduction: The Art of the Impossible*, in *FEMINISM UNMODIFIED* 1, 5 (1987). Littleton argues that MacKinnon's major contribution to feminist jurisprudence has been "more methodological than programmatic." Littleton, *supra*, at 753-54. In Littleton's view, "the essence of MacKinnon's view on 'feminisms' comes down to a single choice: feminist method or not." *Id.* at 752-53.

25. See Jane Flax, *Postmodernism and Gender Relations in Feminist Theory*, 12 *SIGNS* 621, 633 (1987):

[W]ithin feminist theory a search for a defining theme of the whole or a feminist viewpoint may require the suppression of the important and discomforting voices of persons with experiences unlike our own. The suppression of these voices seems to be a necessary condition for the (apparent) authority, coherence, and universality of our own.

Elizabeth Spelman sees this as "the paradox at the heart of feminism: Any attempt to talk about all women in terms of something we have in common undermines attempts to talk about the differences among us, and vice versa." ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 3 (1988).

slower than in other areas. In feminist legal theory, the pull of the second voice, the voice of abstract categorization, is still powerfully strong: "We the People" seems in danger of being replaced by "We the Women." And in feminist legal theory, as in the dominant culture, it is mostly white, straight, and socioeconomically privileged people who claim to speak for all of us.<sup>26</sup> Not surprisingly, the story they tell about "women," despite its claim to universality, seems to black women to be peculiar to women who are white, straight, and socioeconomically privileged—a phenomenon Adrienne Rich terms "white solipsism."<sup>27</sup>

Elizabeth Spelman notes:

[T]he real problem has been how feminist theory has confused the condition of one group of women with the condition of all.

. . . A measure of the depth of white middle-class privilege is that the apparently straightforward and logical points and axioms at the heart of much of feminist theory guarantee the direction of its attention to the concerns of white middle-class women.<sup>28</sup>

The notion that there is a monolithic "women's experience" that can be described independent of other facets of experience like race, class, and sexual orientation is one I refer to in this essay as "gender essentialism."<sup>29</sup> A corollary to gender essentialism is "racial essentialism"—the belief that there is a monolithic "Black Experience," or "Chicano Experience." The source of gender and racial essentialism (and all other essentialisms, for the list of categories could be infinitely multiplied) is the second voice, the voice that claims to speak for all. The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: "racism + sexism = straight black women's experience," or "racism + sexism + homophobia = black lesbian experience."<sup>30</sup> Thus, in an essentialist

26. See, e.g., CATHARINE A. MACKINNON, *On Collaboration*, in *FEMINISM UNMODIFIED*, *supra* note 24, at 198, 204 ("I am here to speak for those, particularly women and children, upon whose silence the law, including the law of the First Amendment, has been built.").

27. Rich defines white solipsism as the tendency to "think, imagine, and speak as if whiteness described the world." ADRIENNE RICH, *Disloyal to Civilization: Feminism, Racism, Gynophobia*, in *ON LIES, SECRETS, AND SILENCE* 275, 299 (1979).

28. E. SPELMAN, *supra* note 25, at 4.

29. Elizabeth Spelman lists five propositions which I consider to be associated with gender essentialism:

1. Women can be talked about "as women."
2. Women are oppressed "as women."
3. Gender can be isolated from other elements of identity that bear on one's social, economic, and political position such as race, class, ethnicity; hence sexism can be isolated from racism, classism, etc.
4. Women's situation can be contrasted to men's.
5. Relations between men and women can be compared to relations between other oppressor/oppressed groups (whites and Blacks, Christians and Jews, rich and poor, etc.), and hence it is possible to compare the situation of women to the situation of Blacks, Jews, the poor, etc.

*Id.* at 165.

30. See Deborah K. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, 14 *SIGNS* 42, 51 (1988) ("To reduce this complex of negotiations to an addi-



world, black women's experience will always be forcibly fragmented before being subjected to analysis, as those who are "only interested in race" and those who are "only interested in gender" take their separate slices of our lives.

Moreover, feminist essentialism paves the way for unconscious racism. Spelman puts it this way:

[T]hose who produce the "story of woman" want to make sure they appear in it. The best way to ensure that is to be the storyteller and hence to be in a position to decide which of all the many facts about women's lives ought to go into the story, which ought to be left out. Essentialism works well in behalf of these aims, aims that subvert the very process by which women might come to see where and how they wish to make common cause. For essentialism invites me to take what I understand to be true of me "as a woman" for some golden nugget of womanness all women have as women; and it makes the participation of other women inessential to the production of the story. How lovely: the many turn out to be one, and the one that they are is me.<sup>31</sup>

In a racist society like this one, the storytellers are usually white, and so "woman" turns out to be "white woman."

Why, in the face of challenges from "different" women and from feminist method itself, is feminist essentialism so persistent and pervasive? I think the reasons are several. Essentialism is intellectually convenient, and to a certain extent cognitively ingrained. Essentialism also carries with it important emotional and political payoffs. Finally, essentialism often appears (especially to white women) as the only alternative to chaos, mindless pluralism (the Funes trap), and the end of the feminist movement. In my view, however, as long as feminists, like theorists in the dominant culture, continue to search for gender and racial essences, black women will never be anything more than a crossroads between two kinds of domination, or at the bottom of a hierarchy of oppressions; we will always be required to choose pieces of ourselves to present as wholeness.<sup>32</sup>

Part II of this article examines some of Catharine MacKinnon's writings, the ways in which the voices of black women in those works are

---

tion problem (racism + sexism = black women's experience) is to define the issues, and indeed black womanhood itself, within the structural terms developed by Europeans and especially white males to privilege their race and their sex unilaterally."); see also E. SPELMAN, *supra* note 25, at 114-32 (chapter entitled "Gender & Race: The Ampersand Problem in Feminist Thought"); Barbara Smith, *Notes for Yet Another Paper on Black Feminism, or Will the Real Enemy Please Stand Up?*, 5 CONDITIONS 123, 123 (1979) (the effect of multiple oppression is "not merely arithmetic").

31. E. SPELMAN, *supra* note 25, at 159.

32. Audre Lorde writes:

As a Black lesbian feminist comfortable with the many different ingredients of my identity, and a woman committed to racial and sexual freedom from oppression, I find I am constantly being encouraged to pluck out some one aspect of myself and present this as the meaningful whole, eclipsing or denying the other parts of self.

A. LORDE, *supra* note 18, at 120.

suppressed in the name of commonality, and the damage this process does to MacKinnon's analysis of male domination.<sup>33</sup> Part III examines the underpinnings of Robin West's more explicit essentialism and argues that here, as well, the experience of white women is used to define the experience of all women. Part IV discusses some of the reasons why feminist essentialism, despite its violation of feminist method, is so attractive. Part V offers no answers, but suggests that the experience of black women can be important in moving beyond essentialism and toward a jurisprudence of multiple consciousness, and that storytelling is the right way to begin the process.

## II. MODIFIED WOMEN AND UNMODIFIED FEMINISM: BLACK WOMEN IN DOMINANCE THEORY<sup>34</sup>

Catharine MacKinnon describes her "dominance theory," like the Marxism with which she likes to compare it, as "total": "[T]hey are both theories of the totality, of the whole thing, theories of a fundamental and critical underpinning of the whole they envision."<sup>35</sup> Both her dominance theory (which she identifies as simply "feminism") and Marxism "focus on that which is most one's own, that which most makes one the being the theory addresses, as that which is most taken away by what the theory criticizes. In each theory you are made who you are by that which is taken away from you by the social relations the theory criticizes."<sup>36</sup> In Marxism, the "that" is work; in feminism, it is sexuality.

MacKinnon defines sexuality as "that social process which creates, organizes, expresses, and directs desire, creating the social beings we know as women and men, as their relations create society."<sup>37</sup> Moreover, "the organized expropriation of the sexuality of some for the use of others defines the sex, woman. Heterosexuality is its structure, gender and family its congealed forms, sex roles its qualities generalized to social persona, reproduction a consequence, and control its issue."<sup>38</sup> Dominance theory, the analysis of this organized expropriation, is a theory of power and its unequal distribution.

In MacKinnon's view, "[t]he idea of gender difference helps keep

33. In my discussion I focus on Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS* 515 (1982) [hereinafter MacKinnon, *Signs I*], and Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635 (1983) [hereinafter MacKinnon, *Signs II*], but I make reference to the essays in C. MACKINNON, *FEMINISM UNMODIFIED*, *supra* note 24, as well.

34. After this article was nearly finished, I came across Marlee Kline's article, *Race, Racism, and Feminist Legal Theory*, 12 *HARV. WOMEN'S L.J.* 115 (1989), which contains a similar (and thus, to my mind, remarkably insightful) critique of MacKinnon's work. I recommend Kline's article to all interested in the challenge women of color pose to MacKinnon's theory.

35. C. MACKINNON, *Desire and Power*, in *FEMINISM UNMODIFIED*, *supra* note 24, at 46, 49.

36. *Id.* at 48.

37. MacKinnon, *Signs I*, *supra* note 33, at 516 (footnote omitted).

38. *Id.*

the reality of male dominance in place.”<sup>39</sup> That is, the concept of gender difference is an ideology which masks the fact that genders are socially constructed, not natural, and coercively enforced, not freely consented-to. Moreover, “the social relation between the sexes is organized so that men may dominate and women must submit and this relation is sexual—in fact, is sex.”<sup>40</sup>

For MacKinnon, male dominance is not only “perhaps the most pervasive and tenacious system of power in history, but . . . it is metaphysically nearly perfect.”<sup>41</sup> The masculine point of view is point-of-viewlessness; the force of male dominance “is exercised as consent, its authority as participation, its supremacy as the paradigm of order, its control as the definition of legitimacy.”<sup>42</sup> In such a world, the very existence of feminism is something of a paradox. “Feminism claims the voice of women’s silence, the sexuality of our eroticized desexualization, the fullness of ‘lack,’ the centrality of our marginality and exclusion, the public nature of privacy, the presence of our absence.”<sup>43</sup> The wonder is how feminism can exist in the face of its theoretical impossibility.

In MacKinnon’s view, men have their foot on women’s necks,<sup>44</sup> regardless of race or class, or of mode of production: “Feminists do not argue that it means the same to women to be on the bottom in a feudal regime, a capitalist regime, and a socialist regime; the commonality argued is that, despite real changes, bottom is bottom.”<sup>45</sup> As a political matter, moreover, MacKinnon is quick to insist that there is only one “true,” “unmodified” feminism: that which analyzes women *as women*, not as subsets of some other group and not as gender-neutral beings.<sup>46</sup>

Despite its power, MacKinnon’s dominance theory is flawed by its essentialism. MacKinnon assumes, as does the dominant culture, that there is an essential “woman” beneath the realities of differences between women<sup>47</sup>—that in describing the experiences of “women” issues

39. C. MACKINNON, *supra* note 24, at 3.

40. *Id.* Thus, MacKinnon disagrees both with feminists who argue that women and men are really the same and should therefore be treated the same under the law, and with feminists who argue that the law should take into account women’s differences. Feminists who argue that men and women are “the same” fail to take into account the unequal power relations that underlie the very construction of the two genders. Feminists who want the law to recognize the “differences” between the genders buy into the account of women’s “natural difference,” and therefore (inadvertently) perpetuate dominance under the name of inherent difference. See *id.* at 32-40, 71-77.

41. MacKinnon, *Signs II*, *supra* note 33, at 638.

42. *Id.* at 639.

43. *Id.*

44. See C. MACKINNON, *Difference and Dominance: On Sex Discrimination*, in FEMINISM UNMODIFIED, *supra* note 24, at 32, 45.

45. MacKinnon, *Signs I*, *supra* note 33, at 523.

46. See C. MACKINNON, *supra* note 24, at 16.

47. Although MacKinnon’s explicit position is that until women are free from male domination, we simply don’t know what we might be like, as Katharine Bartlett notes, in *Feminism Unmodified* MacKinnon

speaks of “women’s point of view,” “woman’s voice,” woman’s “distinctive contribu-

of race, class, and sexual orientation can therefore be safely ignored, or relegated to footnotes.<sup>48</sup> In her search for what is essential womanhood, however, MacKinnon rediscovers white womanhood and introduces it as universal truth. In dominance theory, black women are white women, only more so.

Essentialism in feminist theory has two characteristics that ensure that black women's voices will be ignored. First, in the pursuit of the essential feminine, Woman leached of all color and irrelevant social circumstance, issues of race are bracketed as belonging to a separate and distinct discourse—a process which leaves black women's selves fragmented beyond recognition. Second, feminist essentialists find that in removing issues of "race" they have actually only managed to remove black women—meaning that white women now stand as the epitome of Woman. Both processes can be seen at work in dominance theory.

MacKinnon begins *Signs I* promisingly enough: She says she will render "Black" in upper-case, because she does not regard

Black as merely a color of skin pigmentation, but as a heritage, an experience, a cultural and personal identity, the meaning of which becomes specifically stigmatic and/or glorious and/or ordinary under specific social conditions. It is as much socially created as, and at least in the American context no less specifically meaningful or definitive than, any linguistic, tribal, or religious ethnicity, all of which are conventionally recognized by capitalization.<sup>49</sup>

By the time she has finished elaborating her theory, however, black women have completely vanished; remaining are only white women with an additional burden.

#### A. *Dominance Theory and the Bracketing of Race*

MacKinnon repeatedly seems to recognize the inadequacy of theories that deal with gender while ignoring race, but having recognized the problem, she repeatedly shies away from its implications. Thus, she at times justifies her essentialism by pointing to the essentialism of the dominant discourse: "My suggestion is that what we have in common is not that our conditions have no particularity in ways that matter. But we are all measured by a male standard for women, a standard that is not ours."<sup>50</sup> At other times she deals with the challenge of black wo-

---

tion," of standards that are "not ours," of empowering women "on our own terms," and of what we "really want." These references all suggest a reality beyond social construct that women will discover once freed from the bonds of oppression.

Katharine T. Bartlett, *MacKinnon's Feminism: Power on Whose Terms?* (Book Review), 75 CALIF. L. REV. 1559, 1566 (1987) (citations omitted).

48. See, e.g., MacKinnon, *Signs II*, *supra* note 33, at 639 n.8 ("This feminism seeks to define and pursue women's interest as the fate of all women bound together. It seeks to extract the truth of women's commonalities out of the lie that all women are the same.").

49. MacKinnon, *Signs I*, *supra* note 33, at 516 n.\*.

50. C. MACKINNON, *On Exceptionality: Women as Women in Law*, in FEMINISM UNMODIFIED, *supra* note 24, at 70, 76.

men by placing it in footnotes. For example, she places in a footnote without further comment the suggestive, if cryptic, observation that a definition of feminism "of coalesced interest and resistance" has tended both to exclude and to make invisible "the diverse ways that many women—notably Blacks and working-class women—have *moved* against their determinants."<sup>51</sup> In another footnote generally addressed to the problem of relating Marxism to issues of gender and race, she notes that "[a]ny relationship *between* sex and race tends to be left entirely out of account, since they are considered parallel 'strata,' "<sup>52</sup> but this thought simply trails off into a string cite to black feminist and social feminist writings.

Finally, MacKinnon postpones the demand of black women until the arrival of a "general theory of social inequality";<sup>53</sup> recognizing that "gender in this country appears partly to comprise the meaning of, as well as bisect, race and class, even as race and class specificities make up, as well as cross-cut, gender,"<sup>54</sup> she nevertheless is prepared to maintain her "colorblind" approach to women's experience until that general theory arrives (presumably that is someone else's work).

The results of MacKinnon's refusal to move beyond essentialism are apparent in the most tentative essay in *Whose Culture? A Case Note on Martinez v. Santa Clara Pueblo*.<sup>55</sup> Julia Martinez sued her Native American tribe, the Santa Clara Pueblo, in federal court, arguing that a tribal ordinance was invalid under a provision of the Indian Civil Rights Act guaranteeing equal protection of the laws. The ordinance provided that if women married outside the Pueblo, the children of that union were not full tribal members, but if men married outside the tribe, their children were full tribal members. Martinez married a Navajo man, and her children were not allowed to vote or inherit her rights in communal land. The United States Supreme Court held that this question was a matter of Indian sovereignty to be resolved by the tribe.<sup>56</sup>

MacKinnon starts her discussion with an admission: "I find *Martinez* a difficult case on a lot of levels, and I don't usually find cases difficult."<sup>57</sup> She concludes that the Pueblo ordinance was wrong, because it "did nothing to address or counteract the reasons why Native women were vulnerable to white male land imperialism through marriage—it gave in to them, by punishing the *woman*, the Native person."<sup>58</sup> Yet she reaches her conclusion, as she admits, without knowledge other than

---

51. MacKinnon, *Signs I*, *supra* note 33, at 518 & n.3.

52. *Id.* at 537 n.54.

53. C. MACKINNON, *supra* note 24, at 3.

54. *Id.* at 2.

55. C. MACKINNON, *Whose Culture? A Case Note on Martinez v. Santa Clara Pueblo*, in *FEMINISM UNMODIFIED*, *supra* note 24, at 63.

56. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 71-72 (1978).

57. C. MACKINNON, *supra* note 55, at 66.

58. *Id.* at 68.

"word of mouth" of the history of the ordinance and its place in Santa Clara Pueblo culture.

MacKinnon has Julia Martinez ask her tribe, "Why do you make me choose between my equality as woman and my cultural identity?"<sup>59</sup> But she, no less than the tribe, eventually requires Martinez to choose; and the correct choice is, of course, that Martinez's female identity is more important than her tribal identity. MacKinnon states,

[T]he aspiration of women to be no less than men—not to be punished where a man is glorified, not to be considered damaged or disloyal where a man is rewarded or left in peace, not to lead a derivative life, but to do everything and be anybody at all—is an aspiration indigenous to women across place and across time.<sup>60</sup>

What MacKinnon does not recognize, however, is that though the aspiration may be everywhere the same, its expression must depend on the social historical circumstances. In this case, should Julia Martinez be content with struggling for change from within,<sup>61</sup> or should the white government have stepped in "on her behalf"? What was the meaning of the ordinance within Pueblo discourse, as opposed to a transhistorical and transcultural feminist discourse? How did it come about and under what circumstances? What was the status of women within the tribe, both historically and at the time of the ordinance and at the present time, and was Martinez's claim heard and understood by the tribal authorities or simply ignored or derided? What were the Pueblo traditions about children of mixed parentage,<sup>62</sup> and how were those traditions changing? In a jurisprudence based on multiple consciousness, rather than the unitary consciousness of MacKinnon's dominance theory, these questions would have to be answered before the ordinance could be considered on its merits and even before the Court's decision to stay out could be evaluated.<sup>63</sup> MacKinnon does not answer these questions, but leaves the essay hanging with the idea that the male supremacist ideology of some Native American tribes may be adopted from white culture and therefore invalid.<sup>64</sup> MacKinnon's tentativeness may be due to not wanting to appear a white cultural imperialist, speaking for a Native American tribe, but to take up Julia Martinez's claim at all is to take that risk. Without a theory that can shift focus from gender to race and other facets of identity and back again, MacKinnon's essay is ultimately crippled. Martinez is made to choose her gender over her race, and her experience is distorted in the

---

59. *Id.* at 67.

60. *Id.* at 68.

61. As she did. See *Martinez v. Santa Clara Pueblo*, 402 F. Supp. 5, 11 (D.N.M. 1975), *rev'd*, 540 F.2d 1039 (10th Cir. 1976), *rev'd*, 436 U.S. 49 (1978).

62. The district court hints that such questions were decided on a case-by-case basis. *Id.* at 16. Why was an ordinance thought necessary?

63. In her article *Dependent Sovereigns: Indian Tribes, States, and the Federal Courts*, 56 U. CHI. L. REV. 671 (1989), Judith Resnik begins to address some of these issues.

64. C. MACKINNON, *supra* note 55, at 69.

process.<sup>65</sup>

### B. Dominance Theory and White Women as All Women

The second consequence of feminist essentialism is that the racism that was acknowledged only in brackets quietly emerges in the feminist theory itself—both a cause and an effect of creating “Woman” from white woman. In MacKinnon’s work, the result is that black women become white women only more so.

In a passage in *Signs I*, MacKinnon borrows a quote from Toni Cade Bambara describing a black woman with too many children and no means with which to care for them as “grown ugly and dangerous from being nobody for so long,” and then explains:

By using her phrase in altered context, I do not want to distort her meaning but to extend it. Throughout this essay, I have tried to see if women’s condition is shared, even when contexts or magnitudes differ. (Thus, it is very different to be “nobody” as a Black woman than as a white lady, but neither is “somebody” by male standards.) This is the approach to race and ethnicity attempted throughout. I aspire to include all women in the term “women” in some way, without violating the particularity of any woman’s experience. Whenever this fails, the statement is simply wrong and will have to be qualified or the aspiration (or the theory) abandoned.<sup>66</sup>

I call this the “nuance theory” approach to the problem of essentialism<sup>67</sup>: by being sensitive to the notion that different women have different experiences, generalizations can be offered about “all women” while qualifying statements, often in footnotes, supplement the general account with the subtle nuances of experience that “different” women add to the mix. Nuance theory thus assumes the commonality of all women—differences are a matter of “context” or “magnitude”; that is, nuance.

The problem with nuance theory is that by defining black women as “different,” white women quietly become the norm, or pure, essential woman.<sup>68</sup> Just as MacKinnon would argue that being female is more than a “context” or a “magnitude” of human experience,<sup>69</sup> being black

65. Elsewhere, MacKinnon explicitly asserts that gender oppression is more significant than racial oppression. See C. MACKINNON, *Francis Biddle’s Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 24, at 163, 166-68.

66. MacKinnon, *Signs I*, *supra* note 33, at 520 n.7.

67. The reference is to an article in *Newsweek* called *Feminism: “The Black Nuance,”* NEWSWEEK, Dec. 17, 1973, at 89-90; cf. E. SPELMAN, *supra* note 25, at 114-15 (describing article in the *New York Times* in which the women are white and the blacks are men).

68. MacKinnon recognizes a similar process in Marxism, whereby gender oppression becomes merely a variant form of class oppression. See MacKinnon, *Signs I*, *supra* note 33, at 524-27. What MacKinnon misses is that her own theory reduces racial oppression to a mere intensifier of gender oppression.

69. See, e.g., C. MACKINNON, *supra* note 65, at 169 (“Defining feminism in a way that connects epistemology with power as the politics of women’s point of view, [the discovery of

is more than a context or magnitude of all (white) women's experience. But not in dominance theory.

For instance, MacKinnon describes how a system of male supremacy has constructed "woman":

Contemporary industrial society's version of her is docile, soft, passive, nurturant, vulnerable, weak, narcissistic, childlike, incompetent, masochistic, and domestic, made for child care, home care, and husband care. . . . Women who resist or fail, including those who never did fit—for example, black and lower-class women who cannot survive if they are soft and weak and incompetent, assertively self-respecting women, women with ambitions of male dimensions—are considered less female, lesser women.<sup>70</sup>

In a peculiar symmetry with this ideology, in which black women are something less than women, in MacKinnon's work black women become something more than women. In MacKinnon's writing, the word "black," applied to women, is an intensifier: If things are bad for everybody (meaning white women), then they're even worse for black women. Silent and suffering, we are trotted onto the page (mostly in footnotes) as the ultimate example of how bad things are.<sup>71</sup>

Thus, in speaking of the beauty standards set for (white) women, MacKinnon remarks, "Black women are further from being able concretely to achieve the standard that no woman can ever achieve, or it would lose its point."<sup>72</sup> The frustration of black women at being unable to look like an "All-American" woman is in this way just a more dramatic example of all (white) women's frustration and oppression. When a black woman speaks on this subject, however, it becomes clear that a black woman's pain at not being considered fully feminine is different qualitatively, not merely quantitatively, from the pain MacKinnon describes. It is qualitatively different because the ideology of beauty concerns not only gender but race. Consider Toni Morrison's

---

feminism] can be summed up by saying that women live in another world: specifically, a world of *not* equality, a world of inequality.").

70. MacKinnon, *Signs I*, *supra* note 33, at 530. Yet, having acknowledged that black women have never been "women," MacKinnon continues in the article to discuss "women," making it plain that the "women" she is discussing are white.

71. Applied to men, however, the word "black" ameliorates: MacKinnon concedes that black men are not quite as bad as white men, although they are still bad, being men. For instance, in a footnote she qualifies her statement that "[P]ower to create the world from one's point of view is power in its male form," *id.* at 537, with the recognition that black men have "less" power: "But to the extent that they cannot create the world from their point of view, they find themselves unmanned, castrated, literally or figuratively." *Id.* at 537 n.54. The last clause of this statement appears, puzzlingly, to be a reference to lynching; but it was not for *failing* to create the world but for the more radical sin of *making the attempt* that black men were "literally castrated."

72. *Id.* at 540 n.59. Similarly, in *Feminism Unmodified*, MacKinnon reminds us that the risk of death and mutilation in the course of a botched abortion is disproportionately borne by women of color, C. MACKINNON, *Not by Law Alone: From a Debate with Phyllis Schlafly*, in FEMINISM UNMODIFIED, *supra* note 24, at 21, 25, but only in the context of asserting that "[n]one of us can afford this risk," *id.*



analysis of the influence of standards of white beauty on black people in *The Bluest Eye*.<sup>73</sup> Claudia MacTeer, a young black girl, muses, "Adults, older girls, shops, magazines, newspapers, window signs—all the world had agreed that a blue-eyed, yellow-haired, pink-skinned doll was what every girl child treasured."<sup>74</sup> Similarly, in the black community, "high yellow" folks represent the closest black people can come to beauty, and darker people are always "lesser. Nicer, brighter, but still lesser."<sup>75</sup> Beauty is whiteness itself; and middle-class black girls

go to land-grant colleges, normal schools, and learn how to do the white man's work with refinement: home economics to prepare his food; teacher education to instruct black children in obedience; music to soothe the weary master and entertain his blunted soul. Here they learn the rest of the lesson begun in those soft houses with porch swings and pots of bleeding heart: how to behave. The careful development of thrift, patience, high morals, and good manners. In short, how to get rid of the funkiness. The dreadful funkiness of passion, the funkiness of nature, the funkiness of the wide range of human emotions.

Wherever it erupts, this Funk, they wipe it away; where it crusts, they dissolve it; wherever it drips, flowers, or clings, they find it and fight it until it dies. They fight this battle all the way to the grave. The laugh that is a little too loud; the enunciation a little too round; the gesture a little too generous. They hold their behind in for fear of a sway too free; when they wear lipstick, they never cover the entire mouth for fear of lips too thick, and they worry, worry, worry about the edges of their hair.<sup>76</sup>

Thus, Pecola Breedlove, born black and ugly, spends her lonely and abused childhood praying for blue eyes.<sup>77</sup> Her story ends in despair and the fragmentation of her mind into two isolated speaking voices, not because she's even further away from ideal beauty than white women are, but because Beauty *itself* is white, and she is not and can never be, despite the pair of blue eyes she eventually believes she has. There is a difference between the hope that the next makeup kit or haircut or diet will bring you salvation and the knowledge that nothing can. The relation of black women to the ideal of white beauty is not a more intense form of white women's frustration: It is something other, a com-

---

73. TONI MORRISON, *THE BLUEST EYE* (1970).

74. *Id.* at 14.

75. *Id.* at 57.

76. *Id.* at 64.

77.

It had occurred to Pecola some time ago that if her eyes, those eyes that held the pictures, and knew the sights—if those eyes of hers were different, that is to say, beautiful, she herself would be different. Her teeth were good, and at least her nose was not big and flat like some of those who were thought so cute. If she looked different, beautiful, maybe [her father] would be different, and Mrs. Breedlove too. Maybe they'd say, "Why, look at pretty-eyed Pecola. We mustn't do bad things in front of those pretty eyes."

*Id.* at 34.

plex mingling of racial and gender hatred from without, self-hatred from within.

MacKinnon's essentialist, "color-blind" approach also distorts the analysis of rape that constitutes the heart of *Signs II*. By ignoring the voices of black female theoreticians of rape, she produces an ahistorical account that fails to capture the experience of black women.

MacKinnon sees sexuality as "a social sphere of male power of which forced sex is paradigmatic."<sup>78</sup> As with beauty standards, black women are victimized by rape just like white women, only more so: "Racism in the United States, by singling out Black men for allegations of rape of white women, has helped obscure the fact that it is men who rape women, disproportionately women of color."<sup>79</sup> In this peculiar fashion MacKinnon simultaneously recognizes and shelves racism, finally reaffirming that the divide between men and women is more fundamental and that women of color are simply "women plus." MacKinnon goes on to develop a powerful analysis of rape as the subordination of women to men, with only one more mention of color: "[R]ape comes to mean a strange (read Black) man knowing a woman does not want sex and going ahead anyway."<sup>80</sup>

This analysis, though rhetorically powerful, is an analysis of what rape means to white women masquerading as a general account; it has nothing to do with the experience of black women.<sup>81</sup> For black women, rape is a far more complex experience, and an experience as deeply rooted in color as in gender.

For example, the paradigm experience of rape for black women has historically involved the white employer in the kitchen or bedroom as much as the strange black man in the bushes. During slavery, the sexual abuse of black women by white men was commonplace.<sup>82</sup> Even af-

78. MacKinnon, *Signs II*, *supra* note 33, at 646.

79. *Id.* at 646 n.22; see also C. MacKinnon, *A Rally Against Rape*, in FEMINISM UNMODIFIED, *supra* note 24, at 81, 82 (black women are raped four times as often as white women); DIANA RUSSELL, SEXUAL EXPLOITATION 185 (1984) (black women, who comprise 10% of all women, accounted for 60% of rapes reported in 1967).

Describing SUSAN BROWN MILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* (1976), MacKinnon writes, "Brownmiller examines rape in riots, wars, pogroms, and revolutions; rape by police, parents, prison guards; and rape motivated by racism—seldom rape in normal circumstances, in everyday life, in ordinary relationships, by men as men." MacKinnon, *Signs II*, *supra* note 33, at 646.

80. MacKinnon, *Signs II*, *supra* note 33, at 653; cf. SUSAN ESTRICH, *REAL RAPE* 3 (1987) (remarking, while telling the story of her own rape, "His being black, I fear, probably makes my account more believable to some people, as it certainly did with the police."). Indeed, Estrich hastens to assure us, though, that "the most important thing is that he was a stranger." *Id.*

81. See ALICE WALKER, *Advancing Luna—and Ida B. Wells*, in *YOU CAN'T KEEP A GOOD WOMAN DOWN* 93 (1981) ("Who knows what the black woman thinks of rape? Who has asked her? Who cares?").

82. As Barbara Omolade notes:

To [the white slave holder the black woman slave] was a fragmented commodity whose feelings and choices were rarely considered: her head and her heart were separated from her back and her hands and divided from her womb and vagina. Her

ter emancipation, the majority of working black women were domestic servants for white families, a job which made them uniquely vulnerable to sexual harassment and rape.<sup>83</sup>

Moreover, as a legal matter, the experience of rape did not even exist for black women. During slavery, the rape of a black woman by any man, white or black, was simply not a crime.<sup>84</sup> Even after the Civil War, rape laws were seldom used to protect black women against either white or black men, since black women were considered promiscuous by nature.<sup>85</sup> In contrast to the partial or at least formal protection white women had against sexual brutalization, black women frequently had no legal protection whatsoever. "Rape," in this sense, was something that only happened to white women; what happened to black women was simply life.

Finally, for black people, male and female, "rape" signified the terrorism of black men by white men, aided and abetted, passively (by silence) or actively (by "crying rape"), by white women. Black women have recognized this aspect of rape since the nineteenth century. For example, social activist Ida B. Wells analyzed rape as an example of the

---

back and muscle were pressed into field labor where she was forced to work with men and work like men. Her hands were demanded to nurse and nurture the white man and his family as domestic servant whether she was technically enslaved or legally free. Her vagina, used for his sexual pleasure, was the gateway to the womb, which was his place of capital investment—the capital investment being the sex act and the resulting child the accumulated surplus, worth money on the slave market.

Barbara Omolade, *Hearts of Darkness*, in *POWERS OF DESIRE: THE POLITICS OF SEXUALITY* 354 (A. Snitow, C. Stansell & S. Thompson eds. 1983).

83. See JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW* 150 (1985). In *Beloved*, Toni Morrison tells the story of Ella, whose "puberty was spent in a house where she was shared by father and son, whom she called 'the lowest yet.' It was 'the lowest yet' who gave her a disgust for sex and against whom she measured all atrocities." TONI MORRISON, *BEL-LOVED* 256 (1987). Ella knew "[t]hat anybody white could take your whole self for anything that came to mind. Not just work, kill, or maim you, but dirty you. Dirty you so bad you couldn't like yourself anymore. Dirty you so bad you forgot who you were and couldn't think it up." *Id.* at 251. Sethe, one of the protagonists in *Beloved*, kills her own baby daughter rather than relinquish her to such a life. Cf. Omolade, *supra* note 82, at 355 ("Testimony seems to be quite widespread to the fact that many if not most southern boys begin their sexual experiences with Negro girls." (quoting JOHN DOLLARD, *CASTE AND CLASS IN A SOUTHERN TOWN* 139 (rev. ed. 1949))).

84. See Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 118 (1983).

85. Susan Estrich gives an example: When a black man raped a white woman, the death penalty was held to be justified by the Virginia Supreme Court; but when a black man raped a black woman, his conviction was reversed, on the grounds that the defendant's behavior, "though extremely reprehensible, and deserving of punishment, does not involve him in the crime which this statute was designed to punish." *Christian v. Commonwealth*, 64 Va. (23 Gratt.) 954, 959 (1873), quoted in S. ESTRICH, *supra* note 80, at 35-36. On the intertwining of gender and race oppression in the law of rape and its connection to lynching, see Jacquelyn Dowd Hall, "The Mind that Burns in Each Body": *Women, Rape, and Racial Violence*, in *POWERS OF DESIRE: THE POLITICS OF SEXUALITY*, *supra* note 82, at 328; Wriggins, *supra* note 84, at 103. On the intertwining of gender and race oppression in the miscegenation laws, see Karen A. Getman, *Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System*, 7 HARV. WOMEN'S L.J. 115 (1984). See generally Paul A. Lombardo, *Miscegenation, Eugenics, and Racism: Historical Footnotes to Loving v. Virginia*, 21 U.C. DAVIS L. REV. 421 (1988).

inseparability of race and gender oppression in *Southern Horrors: Lynch Law in All Its Phases*, published in 1892. Wells saw that both the law of rape and Southern miscegenation laws were part of a patriarchal system through which white men maintained their control over the bodies of all black people: "[W]hite men used their ownership of the body of the white female as a terrain on which to lynch the black male."<sup>86</sup> Moreover, Wells argued, though many white women encouraged interracial sexual relationships, white women, protected by the patriarchal idealization of white womanhood, were able to remain silent, unhappily or not, as black men were murdered by mobs.<sup>87</sup> Similarly, Anna Julia Cooper, another nineteenth-century theorist, "saw that the manipulative power of the South was embodied in the southern patriarch, but she describes its concern with 'blood,' inheritance, and heritage in entirely female terms and as a preoccupation that was transmitted from the South to the North and perpetuated by white women."<sup>88</sup>

Nor has this aspect of rape become purely a historical curiosity. Susan Estrich reports that between 1930 and 1967, 89 percent of the men executed for rape in the United States were black;<sup>89</sup> a 1968 study of rape sentencing in Maryland showed that in all 55 cases where the death penalty was imposed the victim had been white, and that between 1960 and 1967, 47 percent of all black men convicted of criminal assaults on black women were immediately released on probation.<sup>90</sup> The case of Joann Little is testimony to the continuing sensitivity of black women to this aspect of rape. As Angela Davis tells the story:

Brought to trial on murder charges, the young Black woman was accused of killing a white guard in a North Carolina jail where she was the

86. Hazel V. Carby, "On the Threshold of Woman's Era": *Lynching, Empire, and Sexuality in Black Feminist Theory*, in "RACE," WRITING, AND DIFFERENCE, *supra* note 12, at 301, 309.

87. Carby notes, "Those that remained silent while disapproving of lynching were condemned by Wells for being as guilty as the actual perpetrators of lynching." *Id.* at 308.

Of course, courageous white women have spoken out against lynching and even about the white women's complicity in its occurrence by choosing to remain silent. See A. DAVIS, *supra* note 21, at 194-96; Hall, *supra* note 85, at 337-40 (discussing the work of Jessie Daniel Ames and the Association of Southern Women for the Prevention of Lynching in the 1930s). However, as Davis also points out, such forms of intervention were sadly belated. A. DAVIS, *supra* note 21, at 195.

88. Carby, *supra* note 86, at 306 (discussing Anna Julia Cooper, *A Voice from the South* (1892)). Carby continues:

By linking imperialism to internal colonization, Cooper thus provided black women intellectuals with the basis for an analysis of how patriarchal power establishes and sustains gendered and racialized social formations. White women were implicated in the maintenance of this wider system of oppression because they challenged only the parameters of their domestic confinement; by failing to reconstitute their class and caste interests, they reinforced the provincialism of their movement.

*Id.* at 306-07.

89. S. ESTRICH, *supra* note 80, at 107 n.2.

90. Wriggins, *supra* note 84, at 121 n.113. According to the study, "the average sentence received by Black men, exclusive of cases involving life imprisonment or death, was 4.2 years if the victim was Black, 16.4 years if the victim was white." *Id.* I do not know whether a white man has ever been sentenced to death for the rape of a black woman, although I could make an educated guess as to the answer.

only woman inmate. When Joann Little took the stand, she told how the guard had raped her in her cell and how she had killed him in self-defense with the ice pick he had used to threaten her. Throughout the country, her cause was passionately supported by individuals and organizations in the Black community and within the young women's movement, and her acquittal was hailed as an important victory made possible by this mass campaign. In the immediate aftermath of her acquittal, Ms. Little issued several moving appeals on behalf of a Black man named Delbert Tibbs, who awaited execution in Florida because he had been falsely convicted of raping a white woman.

Many Black women answered Joann Little's appeal to support the cause of Delbert Tibbs. But few white women—and certainly few organized groups within the anti-rape movement—followed her suggestion that they agitate for the freedom of this Black man who had been blatantly victimized by Southern racism.<sup>91</sup>

The rift between white and black women over the issue of rape is highlighted by the contemporary feminist analyses of rape that have explicitly relied on racist ideology to minimize white women's complicity in racial terrorism.<sup>92</sup>

Thus, the experience of rape for black women includes not only a vulnerability to rape and a lack of legal protection radically different from that experienced by white women, but also a unique ambivalence. Black women have simultaneously acknowledged their own victimization and the victimization of black men by a system that has consistently ignored violence against women while perpetrating it against men.<sup>93</sup> The complexity and depth of this experience is not captured, or even acknowledged, by MacKinnon's account.

MacKinnon's essentialist approach recreates the paradigmatic woman in the image of the white woman, in the name of "unmodified feminism." As in the dominant discourse, black women are relegated to the margins, ignored or extolled as "just like us, only more so." But "Black women are not white women with color."<sup>94</sup> Moreover, feminist essentialism represents not just an insult to black women, but a broken promise—the promise to listen to women's stories, the promise of feminist method.

---

91. A. DAVIS, *supra* note 21, at 174.

92. For example, Susan Brownmiller describes the black defendants in publicized Southern rape trials as "pathetic, semiliterate fellows," S. BROWN MILLER, *supra* note 79, at 237, and the white female accusers as innocent pawns of white men, *see, e.g., id.* at 233 ("confused and fearful, they fell into line"). *See also* A. DAVIS, *supra* note 21, at 196-99.

93. *See* Carby, *supra* note 86, at 307 (citing Ida B. Wells, *Southern Horrors*, (1892), reprinted in IDA B. WELLS, ON LYNCHINGS 5-6 (1969)) (miscegenation laws, directed at preventing sexual relations between white women and black men, "pretended to offer 'protection' to white women but left black women the victims of rape by white men and simultaneously granted to these same men the power to terrorize black men as a potential threat to the virtue of white womanhood").

94. Barbara Omolade, *Black Women and Feminism*, in THE FUTURE OF DIFFERENCE 247, 248 (H. Eisenstein & A. Jardine eds. 1980).

### III. ROBIN WEST'S "ESSENTIAL WOMAN"

While MacKinnon's essentialism is pervasive but covert, Robin West expressly declares her essentialism. In the last section of *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*,<sup>95</sup> West argues:

Both the liberal and the radical legalist have accepted the Kantian assumption that *to be human* is to be in some sense autonomous—meaning, minimally, to be differentiated, or individuated, from the rest of social life.

Underlying and underscoring the poor fit between the proxies for subjective well-being endorsed by liberals and radicals—choice and power—and women's subjective, hedonic lives is the simple fact that women's lives—*because of our biological, reproductive role*—are drastically at odds with this fundamental vision of human life. Women's lives are *not* autonomous, they are profoundly relational.<sup>96</sup>

In West's view, women are ontologically distinct from men, because "Women, and *only* women, and *most* women, transcend *physically* the differentiation or individuation of biological self from the rest of human life trumpeted as the norm by the entire Kantian tradition."<sup>97</sup> That is, because only women can bear children, and because women have the social responsibility for raising children, our selves are profoundly different from male selves. "To the considerable degree that our potentiality for motherhood defines ourselves, women's lives are relational, not autonomous. As mothers we nurture the weak and we depend upon the strong. More than do men, we live in an interdependent and hierarchical natural web with others of varying degrees of strength."<sup>98</sup>

This claim about women's essential connectedness to the world becomes the centerpiece of *Jurisprudence and Gender*.<sup>99</sup> West begins the article with the question, "What is a human being?" She then asserts that "perhaps the central insight of feminist theory of the last decade has been that wom[e]n are 'essentially connected,' not 'essentially separate,' from the rest of human life, both materially, through pregnancy, intercourse, and breast-feeding, and existentially, through the moral and practical life."<sup>100</sup> For West, this means that "all of our modern legal theory—by which I mean 'liberal legalism' and 'critical legal theory' collectively—is essentially and irretrievably masculine."<sup>101</sup> This is

95. 3 WIS. WOMEN'S L.J. 81 (1987).

96. *Id.* at 140.

97. *Id.*

98. *Id.* at 141.

99. 55 U. CHI. L. REV. 1 (1988).

100. *Id.* at 3. West further posits a "fundamental contradiction" in women's experience equivalent to the "fundamental contradiction" posited by some critical legal scholars between autonomy and connection; whereas men experience a fundamental contradiction between autonomy and connection, women experience a fundamental contradiction between invasion and intimacy. See *id.* at 53-58.

101. *Id.* at 2.

so because modern legal theory relies on the "separation thesis," the claim that human beings are distinct individuals first and form relationships later.<sup>102</sup>

Black women are entirely absent from West's work, in contrast to MacKinnon's; issues of race do not appear even in guilty footnotes. However, just as in MacKinnon's work, the bracketing of issues of race leads to the installation of white women on the throne of essential womanhood.

West's claims are clearly questionable on their face insofar as the experience of some women—"mothers"—is asserted to stand for the experience of all women. As with MacKinnon's theory, West's theory necessitates the stilling of some voices—namely, the voices of women who have rejected their "biological, reproductive role"—in order to privilege others. One might also question the degree to which motherhood, or our potential for it, defines us.<sup>103</sup> For purposes of this article, however, I am more interested in the conception of self that underlies West's account of "women's experience."

West argues that the biological and social implications of motherhood shape the selfhood of all, or at least most, women. This claim involves at least two assumptions.<sup>104</sup> First, West assumes (as does the liberal social theory she criticizes) that everyone has a deep, unitary "self" that is relatively stable and unchanging. Second, West assumes that this "self" differs significantly between men and women but is the same for all women and for all men despite differences of class, race, and sexual orientation: that is, that this self is deeply and primarily gendered. In a later part of the article, I will argue that black women can bring the experience of a multiple rather than a unitary self to feminist theory.<sup>105</sup> Here I want to argue that the notion that the gender difference is primary to an individual's selfhood is one that privileges white women's experience over the experience of black women.

102. *Id.*

103. The danger of such a theory is that, like some French feminist scholarship, it threatens to reembrace the old belief, used against women for so long, that anatomy is destiny: A good deal of French feminist scholarship has been concerned with specifying the nature of the feminine . . . . This principle of femininity is sought in the female body, sometimes understood as the pre-oedipal mother and other times understood naturalistically as a pantheistic principle that requires its own kind of language for expression. In these cases, gender is not constituted, but is considered an essential aspect of bodily life, and we come very near the equation of biology and destiny, that conflation of fact and value, which Beauvoir spent her life trying to refute.

Judith Butler, *Variations on Sex and Gender: Beauvoir, Wittig and Foucault*, in *FEMINISM AS CRITIQUE: ESSAYS ON THE POLITICS OF GENDER* 128, 140 (S. Benhabib & D. Cornell eds. 1987).

Curiously, MacKinnon's dominance theory, which claims to be "total," says very little about motherhood at all. See Littleton, *supra* note 24, at 762 n.54.

104. I have taken this analysis from Nancy Fraser and Linda Nicholson's analysis of Nancy Chodorow's work. Nancy Fraser & Linda Nicholson, *Social Criticism Without Philosophy: An Encounter Between Feminism and Postmodernism*, in *UNIVERSAL ABANDON? THE POLITICS OF POSTMODERNISM* 83, 96 (A. Ross ed. 1988). See generally NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* (1978).

105. See text accompanying notes 125-135 *infra*.

The essays and poems in *This Bridge Called My Back*<sup>106</sup> describe experiences of women of color that differ radically from one another. Some contributors are Lesbians; some are straight; some are class-privileged, and others are not. What links all the writings, however, is the sense that the self of a woman of color is not primarily a female self or a colored self, but a both-and self. In her essay "Brownness,"<sup>107</sup> Andrea Canaan describes both-and experience:

The fact is I am brown and female, and my growth and development are tied to the entire community. I must nurture and develop brown self, woman, man, and child. I must address the issues of my own oppression and survival. When I separate them, isolate them, and ignore them, I separate, isolate, and ignore myself. I am a unit. A part of brownness.<sup>108</sup>

A personal story may also help to illustrate the point. At a 1988 meeting of the West Coast "fem-crits," Pat Cain and Trina Grillo asked all the women present to pick out two or three words to describe who they were. None of the white women mentioned their race; all of the women of color did.

In this society, it is only white people who have the luxury of "having no color"; only white people have been able to imagine that sexism and racism are separate experiences.<sup>109</sup> Far more for black women than for white women, the experience of self is precisely that of being unable to disentangle the web of race and gender—of being enmeshed always in multiple, often contradictory, discourses of sexuality and color. The challenge to black women has been the need to weave the fragments, our many selves, into an integral, though always changing and shifting, whole: a self that is neither "female" nor "black," but both-and.<sup>110</sup> West's insistence that every self is deeply and primarily gendered, then, with its corollary that gender is more important to personal identity than race, is finally another example of white solipsism. By suggesting that gender is more deeply embedded in self than race, her theory privileges the experience of white people over all others,<sup>111</sup>

106. *THIS BRIDGE CALLED MY BACK*, *supra* note 22.

107. *Id.* at 232.

108. *Id.* at 234.

109. *Cf.* E. SPELMAN, *supra* note 25, at 167 (describing the phrase "as a woman" as "the Trojan horse of feminist ethnocentrism, for its use typically makes it look as if one can neatly isolate one's gender from one's race or class").

110. *See, e.g.*, ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD* (1937) (protagonist, Janie, slowly creates herself out of the oppressions of gender and race); TONI MORRISON, *SONG OF SOLOMON* (1977) (one of the strongest characters is a woman with no navel—a woman who has literally created herself); N. SHANGE, *supra* note 1, at 31, 34 (the "lady in red" daily creates herself as a bold, wild, sexy woman, then, in the morning, sends the man she's attracted home and becomes an "ordinary/ brown braided woman/ with big legs & full lips/ reglar"); ALICE WALKER, *THE COLOR PURPLE* (1982) (two sisters, Celie and Nettie, construct healthy selves out of the potentially killing circumstance of being abused young black girls from a "broken home").

111. Feminist essentialism also strengthens the wall between the genders. The binary character of essentialism tends to make men into enemies, rather than beings who are also



and thus serves to reproduce relations of domination in the larger culture.<sup>112</sup> Like MacKinnon's essential woman, West's essential woman turns out to be white.

#### IV. THE ATTRACTIONS OF GENDER ESSENTIALISM

*Strategies become institutions.*<sup>113</sup>

— Cynthia Ozick

If gender essentialism is such a terrible thing, why do two smart and politically committed feminists like Catharine MacKinnon and Robin West rely on it? In this section I want to briefly sketch some of the attractions of essentialism.

First, as a matter of intellectual convenience, essentialism is easy. Particularly for white feminists—and most of the people doing academic feminist theory in this country at this time are white—essentialism means not having to do as much work, not having to try and learn about the lives of black women, with all the risks and discomfort that that effort entails.<sup>114</sup> Essentialism is also intellectually easy because the dominant culture is essentialist—because it is difficult to find materials on the lives of black women, because there is as yet no academic infrastructure of work by and/or about black women or black feminist theory.<sup>115</sup>

Second, and more important, essentialism represents emotional safety. Especially for women who have relinquished privilege or had it taken away from them in their struggle against gender oppression, the feminist movement comes to be an emotional and spiritual home, a place to feel safe, a place that must be kept harmonious and free of difference. In an essay, Minnie Bruce Pratt describes her early involvement in the women's movement after having lost her children in a cus-

---

crippled by the dominant discourse, though in different ways. Compare this to Joan C. Williams's view in *Deconstructing Gender*, 87 MICH. L. REV. 797, 841 (1989) ("To break free of traditional gender ideology, we need at the simplest level to see how men nurture people and relationships and how women are competitive and powerful.").

112. In this sense, my point about feminist essentialism is analogous to the point Joan Williams has made about the ideology of domesticity, a Victorian notion that some feminists have used to argue that women are "more nurturing than men ('focused on relationships'), less tied to the questionable virtues of capitalism, and ultimately more moral than men." *Id.* at 807 (Note the resemblance to West's picture of the essential woman). Williams argues powerfully that this critique, though attractive because it seems less "strident" than traditional radical arguments, in the end leaves women open to the same old patterns of discrimination, only now justified by "choice." *Id.* at 801, 820-21.

113. CYNTHIA OZICK, *Literature and the Politics of Sex: A Dissent*, in ART & ARDOR 287 (1983).

114. At an international conference on women's history in 1986, a white feminist, in response to questions about why Western women's history is still white women's history, answered, "We have enough of a burden trying to get a feminist viewpoint across, why do we have to take on this extra burden?" E. SPELMAN, *supra* note 25, at 8.

115. Moreover, essentialism is built into the structure of academia. There are "black studies" and "women's studies" departments, but no departments of Gender and Ethnicity or "race and gender studies."

tody fight for being a lesbian, and her reluctance to look for or recognize struggle and difference within the movement itself:

We were doing "outreach," that disastrous method of organizing; *we* had gone forward to a new place, women together, and now were throwing back safety lines to other women, to pull them in as if they were drowning, to save them. I understood then how important it was for me to have this new place; it was going to be my home, to replace the one I had lost. I needed desperately to have a place that was mine with other women, where I felt hopeful. But because of my need, I did not push myself to look at what might separate me from other women. I relied on the hopefulness of all women together: what I felt, deep down, was hope that they would join me in my place, which would be the way I wanted it. I didn't want to have to *limit* myself.

I didn't understand what a limited, narrow space, and how short lasting, it would be, if only *my* imagination and knowledge and abilities were to go into the making and extending of it. I didn't understand how much I was still inside the restrictions of my culture, in my vision of how the world could be. I, and the other women I worked with, limited the effectiveness of our struggle for that place by our own racism and anti-Semitism.<sup>116</sup>

Many women, perhaps especially white women who have rejected or been rejected by their homes of origin, hope and expect that the women's movement will be a new home—and home is a place of comfort, not conflict.

Third, feminist essentialism offers women not only intellectual and emotional comfort, but the opportunity to play all-too-familiar power games both among themselves and with men. Feminist essentialism provides multiple arenas for power struggle which cross-cut one another in complex ways. The gameswomanship is palpable at any reasonably diverse gathering of feminists with a political agenda. The participants are busy constructing hierarchies of oppression, using their own suffering (and consequent innocence) to win the right to define "women's experience" or to demand particular political concessions for their interest group. White women stress women's commonality, which enables them to control the group's agenda; black women make reference to 200 years of slavery and argue that their needs should come first. Eventually, as the group seems ready to splinter into mutually suspicious and self-righteous factions, someone reminds the group that after all, women are women and we are all oppressed by men, and solidarity reappears through the threat of a common enemy.<sup>117</sup> These

116. Minnie Bruce Pratt, *Identity: Skin Blood Heart*, in ELLY BULKIN, MINNIE BRUCE PRATT & BARBARA SMITH, *YOURS IN STRUGGLE: THREE FEMINIST PERSPECTIVES ON ANTI-SEMITISM AND RACISM*, at 9, 30 (1984).

117. But this peace is only temporary, for the divisions between women remain real even when suppressed.

The idea of 'common oppression' was a false and corrupt platform disguising and mystifying the true nature of women's varied and complex social reality. Women are divided by sexist attitudes, racism, class privilege, and a host of other prejudices.

are the strategies of zero-sum games; and feminist essentialism, by purveying the notion that there is only one "women's experience," perpetuates these games.

Finally, as Martha Minow has pointed out, "Cognitively, we need simplifying categories, and the unifying category of 'woman' helps to organize experience, even at the cost of denying some of it."<sup>118</sup> Abandoning mental categories completely would leave us as autistic as Funes the Memorious, terrorized by the sheer weight and particularity of experience.<sup>119</sup> No categories at all, moreover, would leave nothing of a women's movement, save perhaps a tepid kind of "I've got my oppression, you've got yours" approach.<sup>120</sup> As Elizabeth Spelman has put the problem:

At the heart of anything that can coherently be called a "women's movement" is the shared experience of being oppressed as women. The movement is, as it has to be, grounded in and justified by the fact of this shared experience: without it there would be neither the impulse nor the rationale for the political movement (whatever else is true of the movement). That is, unless in some important sense women speak in a single voice, the voice each has as a woman, there are no solid grounds for a "women's movement."<sup>121</sup>

The problem of avoiding essentialism while preserving "women" as a meaningful political and practical concept has thus often been posed as a dilemma.<sup>122</sup> The argument sometimes seems to be that we must choose: use the traditional categories or none at all.<sup>123</sup>

---

Sustained woman bonding can occur only when these divisions are confronted and the necessary steps are taken to eliminate them. Divisions will not be eliminated by wishful thinking or romantic reverie about common oppression despite the value of highlighting experiences all women share.

B. HOOKS, *FEMINIST THEORY*, *supra* note 22, at 44.

118. Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47, 51 (1988); see also Martha Minow, *The Supreme Court 1986 Term—Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 64-66 (1987) [hereinafter Minow, *Justice Engendered*]. Minow also suggests that gender essentialism is part of our early childhood experience and thus is built into our psyches. Her reference on this point, however, is to Chodorow's work, which, as Minow concedes, "underplays . . . the significance of early formation of racial, religious, and national identities, which are layered into the psychodynamic process of individuation with perhaps as much power as gender identities." Minow, *Feminist Reason: Getting It and Losing It*, *supra*, at 52 n.23.

119. See E. SPELMAN, *supra* note 25, at 2 (footnote omitted) (using the metaphor of the multiplicity of pebbles on a beach).

120. See, e.g., Littleton, *supra* note 24, at 753 n.11 (rejecting "uncritical pluralism"); see also Elly Bulkin, *Hard Ground: Jewish Identity, Racism, and Anti-Semitism*, in E. BULKIN, M.B. PRATT & B. SMITH, *supra* note 116, at 89, 99 (noting the danger of "'hunkering down in one's oppression,' refusing to look beyond one's identity as an oppressed person").

121. E. SPELMAN, *supra* note 25, at 15.

122. See *id.*; Seyla Benhabib & Drucilla Cornell, *Introduction: Beyond the Politics of Gender*, in *FEMINISM AS CRITIQUE*, *supra* note 103, at 1, 13; Fraser & Nicholson, *supra* note 104, at 97; Mary E. Hawkesworth, *Knowers, Knowing, Known: Feminist Theory and Claims of Truth*, 14 SIGNS 533, 537 (1989).

123. See J.M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743, 753 (1987) ("The history of ideas, then, is not the history of individual conceptions, but of favored conceptions held in opposition to disfavored conceptions."); see also GEORGE LAKOFF & MARK

## V. BEYOND ESSENTIALISM: BLACK WOMEN AND FEMINIST THEORY

*[O]ur future survival is predicated upon our ability to relate within equality. As women, we must root out internalized patterns of oppression within ourselves if we are to move beyond the most superficial aspects of social change. Now we must recognize differences among women who are our equals, neither inferior nor superior, and devise ways to use each others' difference to enrich our visions and our joint struggles.*<sup>124</sup>

— Audre Lorde

In this part of the article, I want to talk about what black women can bring to feminist theory to help us move beyond essentialism and toward multiple consciousness as feminist and jurisprudential method. In my view, there are at least three major contributions that black women have to offer post-essentialist feminist theory: the recognition of a self that is multiplicitous, not unitary; the recognition that differences are always relational rather than inherent; and the recognition that wholeness and commonality are acts of will and creativity, rather than passive discovery.

A. *The Abandonment of Innocence*

Black women experience not a single inner self (much less one that is essentially gendered), but many selves. This sense of a multiplicitous self is not unique to black women, but black women have expressed this sense in ways that are striking, poignant, and potentially useful to feminist theory. bell hooks describes her experience in a creative writing program at a predominantly white college, where she was encouraged to find "her voice," as frustrating to her sense of multiplicity.

It seemed that many black students found our situations problematic precisely because our sense of self, and by definition our voice, was not unilateral, monologist, or static but rather multi-dimensional. We were as at home in dialect as we were in standard English. Individuals who speak languages other than English, who speak patois as well as standard English, find it a necessary aspect of self-affirmation not to feel compelled to choose one voice over another, not to claim one as more authentic, but rather to construct social realities that celebrate, acknowledge, and affirm differences, variety.<sup>125</sup>

This experience of multiplicity is also a sense of self-contradiction, of containing the oppressor within oneself. In her article *On Being the Object of Property*,<sup>126</sup> Patricia Williams writes about herself writing about her great-great-grandmother, "picking through the ruins for my

---

JOHNSON, METAPHORS WE LIVE BY 14-19 (1980) (discussing the concepts underlying binary spatial metaphors such as GOOD IS UP and BAD IS DOWN); A. LORDE, *supra* note 18, at 114 ("Much of Western European history conditions us to see human differences in simplistic opposition to each other: dominant/subordinate, good/bad, up/down, superior/inferior.").

124. A. LORDE, *supra* note 18, at 122.

125. B. HOOKS, TALKING BACK, *supra* note 22, at 11-12.

126. 14 SIGNS 5 (1988).

roots.”<sup>127</sup> What she finds is a paradox: She must claim for herself “a heritage the weft of whose genesis is [her] own disinheritance.”<sup>128</sup> Williams’s great-great-grandmother, Sophie, was a slave, and at the age of about eleven was impregnated by her owner, a white lawyer named Austin Miller. Their daughter Mary, Williams’s great-grandmother, was taken away from Sophie and raised as a house servant.

When Williams went to law school, her mother told her, “The Millers were lawyers, so you have it in your blood.”<sup>129</sup> Williams analyzes this statement as asking her to acknowledge contradictory selves:

[S]he meant that no one should make me feel inferior because someone else’s father was a judge. She wanted me to reclaim that part of my heritage from which I had been disinherited, and she wanted me to use it as a source of strength and self-confidence. At the same time, she was asking me to claim a part of myself that was the dispossessor of another part of myself; she was asking me to deny that disenfranchised little black girl of myself that felt powerless, vulnerable and, moreover, rightly felt so.<sup>130</sup>

The theory of black slavery, Williams notes, was based on the notion that black people are beings without will or personality, defined by “irrationality, lack of control, and ugliness.”<sup>131</sup> In contrast, “wisdom, control, and aesthetic beauty signify the whole white personality in slave law.”<sup>132</sup> In accepting her white self, her lawyer self, Williams must accept a legacy of not only a disinheritance but a negation of her black self: To the Millers, her forebears, the Williamses, her forebears, did not even have selves as such.

Williams’s choice ultimately is not to deny either self, but to recognize them both, and in so doing to acknowledge guilt as well as innocence. She ends the piece by invoking “the presence of polar bears”<sup>133</sup>: bears that mauled a child to death at the Brooklyn Zoo and were subsequently killed themselves, bears judged in public debate as simultaneously “innocent, naturally territorial, unfairly imprisoned, and guilty.”<sup>134</sup>

This complex resolution rejects the easy innocence of supposing oneself to be an essential black self with a legacy of oppression by the guilty white Other. With such multilayered analyses, black women can bring to feminist theory stories of how it is to have multiple and contradictory selves, selves that contain the oppressor as well as the oppressed.<sup>135</sup>

---

127. *Id.* at 5.

128. *Id.* at 6-7.

129. *Id.* at 6.

130. *Id.*

131. *Id.* at 11.

132. *Id.* at 10.

133. *Id.* at 24.

134. *Id.* at 22.

135. Donna Haraway, in her essay *A Manifesto for Cyborgs: Science, Technology, and Socialist*

B. *Strategic Identities and "Difference"*

A post-essentialist feminism can benefit not only from the abandonment of the quest for a unitary self, but also from Martha Minow's realization that difference—and therefore identity—is always relational, not inherent.<sup>136</sup> Zora Neale Hurston's work is a good illustration of this notion.

In an essay written for a white audience, *How It Feels to Be Colored Me*,<sup>137</sup> Hurston argues that her color is not an inherent part of her being, but a response to her surroundings. She recalls the day she "became colored"—the day she left her home in an all-black community to go to school: "I left Eatonville, the town of the oleanders, as Zora. When I disembarked from the river-boat at Jacksonville, she was no more. It seemed that I had suffered a sea change. I was not Zora of Orange County any more, I was now a little colored girl."<sup>138</sup> But even as an adult, Hurston insists, her colored self is always situational: "I do not always feel colored. Even now I often achieve the unconscious Zora of Eatonville before the Hegira. I feel most colored when I am thrown against a sharp white background."<sup>139</sup>

As an example, Hurston describes the experience of listening to music in a jazz club with a white male friend:

My pulse is throbbing like a war drum. I want to slaughter something—give pain, give death to what, I do not know. But the piece ends. The men of the orchestra wipe their lips and rest their fingers. I creep back slowly to the veneer we call civilization with the last tone and find the white friend sitting motionless in his seat, smoking calmly.

"Good music they have here," he remarks, drumming the table with his fingertips.

Music. The great blobs of purple and red emotion have not touched him. He has only heard what I felt. He is far away and I see him but dimly across the ocean and the continent that have fallen between us. He is so pale with his whiteness then and I am *so* colored.<sup>140</sup>

In reaction to the presence of whites—both her white companion

---

*Feminism in the 1980s*, 15 SOCIALIST REV. 65 (1985), argues that postmodernist theorists (who reject the idea of a "self" altogether, preferring to speak instead of multiple "subject positions") offer feminists the chance to abandon the dream of a common language and the power games of guilt and innocence in favor of "a powerful infidel heteroglossia." *Id.* at 101. Haraway's symbol for this alternate path is the cyborg, a being that transgresses the familiar boundaries of nature vs. culture, animate vs. inanimate, and born vs. made. She suggests that "'women of color' might be understood as a cyborg identity, a potent subjectivity synthesized from fusions of outsider identities," *id.* at 93, and that the writings of women of color are a tool for subverting Western culture without falling under its spell, *id.* at 94.

136. Minow, *Justice Engendered*, *supra* note 118, at 34-38.

137. ZORA NEALE HURSTON, *How It Feels to Be Colored Me*, in *I LOVE MYSELF WHEN I AM LAUGHING . . . AND THEN AGAIN WHEN I AM LOOKING MEAN AND IMPRESSIVE* 152 (A. Walker ed. 1979).

138. *Id.* at 153.

139. *Id.* at 154.

140. *Id.*

and the white readers of her essay—Hurston invokes and uses the traditional stereotype of black people as tied to the jungle, “living in the jungle way.”<sup>141</sup> Yet in a later essay for a black audience, *What White Publishers Won't Print*,<sup>142</sup> she criticizes the white “folklore of ‘reversion to type’”:

This curious doctrine has such wide acceptance that it is tragic. One has only to examine the huge literature on it to be convinced. No matter how high we may *seem* to climb, put us under strain and we revert to type, that is, to the bush. Under a superficial layer of western culture, the jungle drums throb in our veins.<sup>143</sup>

The difference between the first essay, in which Hurston revels in the trope of black person as primitive, and the second essay, in which she deplores it, lies in the distinction between an identity that is contingent, temporary, and relational, and an identity that is fixed, inherent, and essential. Zora as jungle woman is fine as an argument, a reaction to her white friend's experience; what is abhorrent is the notion that Zora can always and only be a jungle woman.<sup>144</sup> One image is in flux, “inspired” by a relationship with another;<sup>145</sup> the other is static, unchanging, and ultimately reductive and sterile rather than creative.

Thus, “how it feels to be colored Zora” depends on the answer to these questions: “‘Compared to what? As of when? Who is asking? In what context? For what purpose? With what interests and presuppositions?’ What Hurston rigorously shows is that questions of difference and identity are always functions of a specific interlocutory situation—and the answers, matters of strategy rather than truth.”<sup>146</sup> Any “essential self” is always an invention; the evil is in denying its artificiality.<sup>147</sup>

141. *Id.*

142. Z. HURSTON, *What White Publishers Won't Print*, in *I LOVE MYSELF WHEN I AM LAUGHING . . . AND THEN AGAIN WHEN I AM LOOKING MEAN AND IMPRESSIVE*, *supra* note 137, at 169.

143. *Id.* at 172.

144. As Barbara Johnson perceptively notes,

In the first [essay], Hurston can proclaim “I am this”; but when the image is repeated as “you are that,” it changes completely. The content of the image may be the same, but its interpersonal use is different. The study of Afro-American literature as a whole poses a similar problem of address: any attempt to lift out of a text an image or essence of blackness is bound to violate the interlocutory strategy of its formulation.

Barbara Johnson, *Thresholds of Difference: Structures of Address in Zora Neale Hurston*, in “RACE,” WRITING, AND DIFFERENCE, *supra* note 12, at 322-23.

145. See Barbara Smith & Beverly Smith, *Across the Kitchen Table: A Sister-to-Sister Dialogue*, in *THIS BRIDGE CALLED MY BACK*, *supra* note 22, at 113, 119 (two sisters discuss the black selves they miss when they are with white women: “Because the way you act with Black people is because they inspire the behavior. And I *do* mean inspire.”).

146. Johnson, *supra* note 144, at 323-24.

147. bell hooks makes a related point about the self's relationality:

Discarding the notion that the self exists in opposition to an other that must be destroyed, annihilated (for when I left the segregated world of home and moved in and among white people, and their ways of knowing, I learned this way of understanding the social construction of self). I evoked the way of knowing I had learned from unschooled southern black folks. We learned that the self existed in relation, was

To be compatible with this conception of the self, feminist theorizing about "women" must similarly be strategic and contingent, focusing on relationships, not essences. One result will be that men will cease to be a faceless Other and reappear as potential allies in political struggle.<sup>148</sup> Another will be that women will be able to acknowledge their differences without threatening feminism itself. In the process, as feminists begin to attack racism and classism and homophobia, feminism will change from being only about "women as women" (modified women need not apply), to being about all kinds of oppression based on seemingly inherent and unalterable characteristics.<sup>149</sup> We need not wait for a unified theory of oppression;<sup>150</sup> that theory can be feminism.

### C. *Integrity as Will and Idea*

*Because each had discovered years before that they were neither white nor male, and that all freedom and triumph was forbidden to them, they had set about creating something else to be.*<sup>151</sup>

— Toni Morrison

Finally, black women can help feminist movement move beyond its fascination with essentialism through the recognition that wholeness of the self and commonality with others are asserted (if never completely achieved) through creative action, not realized in shared victimization. Feminist theory at present, especially feminist legal theory, tends to focus on women as passive victims. For example, for MacKinnon, women have been so objectified by men that the miracle is how they are able to exist at all. Women are the victims, the acted-upon, the helpless, until by radical enlightenment they are somehow empowered to act for themselves.<sup>152</sup> Similarly, for West, the "fundamental fact" of women's lives is pain—"the violence, the danger, the boredom, the ennui, the

---

dependent for its very being on the lives and experiences of everyone, the self not as signifier of one "I" but the coming together of many "I"s, the self as embodying collective reality past and present, family and community.

B. HOOKS, *TALKING BACK*, *supra* note 22, at 30-31.

148. Thus Joan Williams argues that feminism must move away from "the destructive battle between 'sameness' and 'difference' toward a deeper understanding of gender as a system of power relations." Williams, *supra* note 111, at 836. In her view, gender must be "deconstructed." See *id.* at 841, *quoted in* note 111 *supra*. The deconstruction approach would make clear the payoff of feminism for men as well as women. This change will also encourage women of color to identify themselves as feminists. See B. HOOKS, *FEMINIST THEORY*, *supra* note 22, at 70 ("Many black women refused participation in feminist movement because they felt an anti-male stance was not a sound basis for action.").

149. See B. HOOKS, *FEMINIST THEORY*, *supra* note 22, at 31 ("Focus on social equality with men as a definition of feminism led to an emphasis on discrimination, male attitudes, and legalistic reforms. Feminism as a movement to end sexist oppression directs our attention to systems of domination and the inter-relatedness of sex, race, and class oppression.").

Elizabeth Spelman suggests that feminism be expanded by conceiving of not just two genders, but many—a function of race and class as well as sex. E. SPELMAN, *supra* note 25, at 174-77.

150. See note 53 *supra* and accompanying text.

151. TONI MORRISON, *SULA* 52 (1974).

152. As Andrew Ross has noted, even the female "collaborators" MacKinnon attacks



non-productivity, the poverty, the fear, the numbness, the frigidity, the isolation, the low self-esteem, and the pathetic attempts to assimilate."<sup>153</sup>

This story of woman as victim is meant to encourage solidarity by emphasizing women's shared oppression, thus denying or minimizing difference, and to further the notion of an essential woman—she who is victimized. But as bell hooks has succinctly noted, the notion that women's commonality lies in their shared victimization by men "directly reflects male supremacist thinking. Sexist ideology teaches women that to be female is to be a victim."<sup>154</sup> Moreover, the story of woman as passive victim denies the ability of women to shape their own lives, whether for better or worse. It also may thwart their abilities. Like Minnie Bruce Pratt, reluctant to look farther than commonality for fear of jeopardizing the comfort of shared experience, women who rely on their victimization to define themselves may be reluctant to let it go and create their own self-definitions.

At the individual level, black women have had to learn to construct themselves in a society that denied them full selves. Again, Zora Neale Hurston's writings are suggestive. Though Hurston plays with being her "colored self" and again with being "the eternal feminine with its string of beads,"<sup>155</sup> she ends *How It Feels to Be Colored Me* with an image of herself as neither essentially black nor essentially female, but simply

a brown bag of miscellany propped against a wall. Against a wall in company with other bags, white, red and yellow. Pour out the contents, and there is discovered a jumble of small things priceless and worthless. A first-water diamond, an empty spool, bits of broken glass, lengths of string, a key to a door long since crumbled away, a rusty knife-blade, old shoes saved for a road that never was and never will be, a nail bent under the weight of things too heavy for any nail, a dried flower or two still fragrant. In your hand is the brown bag. On the ground before you is the jumble it held—so much like the jumble in the bags, could they be emptied, that all might be dumped in a single heap and the bags refilled without altering the content of any greatly. A bit of colored glass more or less would not matter. Perhaps that is how the Great Stuffer of Bags filled them in the first place—who knows?<sup>156</sup>

Hurston thus insists on a conception of identity as a construction, not an essence—something made of fragments of experience, not discovered in one's body or unveiled after male domination is eliminated.

This insistence on the importance of will and creativity seems to threaten feminism at one level, because it gives strength back to the concept of autonomy, making possible the recognition of the element

---

with fury are seen as stupid, not as wrong or evil. Andrew Ross, *Politics Without Pleasure* (Book Review), 1 YALE J.L. & HUMANITIES 193, 200 (1989).

153. West, *supra* note 95, at 143.

154. B. HOOKS, *FEMINIST THEORY*, *supra* note 22, at 45.

155. Z. HURSTON, *supra* note 137, at 155.

156. *Id.*

of consent in relations of domination,<sup>157</sup> and attributes to women the power that makes culpable the many ways in which white women have actively used their race privilege against their sisters of color.<sup>158</sup> Although feminists are correct to recognize the powerful force of sheer physical coercion in ensuring compliance with patriarchal hegemony,<sup>159</sup> we must also "come to terms with the ways in which women's culture has served to enlist women's support in perpetuating existing power relations."<sup>160</sup>

However, at another level, the recognition of the role of creativity and will in shaping our lives is liberating, for it allows us to acknowledge and celebrate the creativity and joy with which many women have survived and turned existing relations of domination to their own ends. Works of black literature like *Beloved*, *The Color Purple*, and *Song of Solomon*, among others, do not linger on black women's victimization and

157. As Gramsci points out, hegemony consists of two strands: "1. the 'spontaneous' consent given by the great masses of the population [and] 2. the apparatus of state coercive power which 'legally' enforces discipline on those groups who do not 'consent' either actively or passively." ANTONIO GRAMSCI, *SELECTIONS FROM THE PRISON NOTEBOOKS* 12 (Q. Hoare & G. Smith trans. 1971). Consent, however, is not liberal consent, freely given, but a "'contradictory consciousness' mixing approbation and apathy, resistance and resignation." T.J. Jackson Lears, *The Concept of Cultural Hegemony: Problems and Possibilities*, 90 AM. HIST. REV. 567, 570 (1985).

158. For example, during slavery, [w]hite women performed acts of violence against Black slave women with whom their husbands had sexual relations. Often these racist acts were shaped by feelings of sexual jealousy rooted in and sustained by sexism: for such jealousy is a function of the sexism that makes the "proper" attention of her husband a condition of a woman's sense of self-worth.

E. SPELMAN, *supra* note 25, at 106 (footnotes omitted); see also B. HOOKS, *FEMINIST THEORY*, *supra* note 22, at 49 ("Historically, many black women experienced white women as the white supremacist group who most directly exercised power over them, often in a manner far more brutal and dehumanizing than that of racist white men.").

159. MacKinnon, for example, points out that her dominance approach is based on a reality that includes

not only the extent and intractability of sex segregation into poverty, which has been known before, but the range of issues termed violence against women, which has not been. It combines women's material desperation, through being relegated to categories of jobs that pay nil, with the massive amount of rape and attempted rape—44 percent of all women—about which virtually nothing is done; the sexual assault of children—38 percent of girls and 10 percent of boys—which is apparently endemic to the patriarchal family; the battery of women that is systematic in one quarter to one third of our homes; prostitution, women's fundamental economic condition, what we do when all else fails, and for many women in this country, all else fails often; and pornography, an industry that traffics in female flesh, making sex inequality into sex to the tune of eight billion dollars a year in profits largely to organized crime.

C. MACKINNON, *supra* note 44, at 41 (footnotes omitted).

160. Williams, *supra* note 111, at 829. Williams, for instance, analyzes how women use women's culture against themselves, "as they do every time a woman 'chooses' to subordinate her career 'for the good of the family' and congratulates herself on that choice as a mature assessment of her own 'priorities.'" *Id.* at 830.

Black women have often actively embraced patriarchal stereotypes in the name of racial solidarity. See P. GIDDINGS, *supra* note 21, at 322-23 (discussing women's concessions to male chauvinism in the civil rights movement of the 1960s); A. LORDE, *supra* note 18, at 119-21 (discussing refusal to confront sexism and homophobia within the black community).

misery; though they recognize our pain, they ultimately celebrate our transcendence.<sup>161</sup>

Finally, on a collective level this emphasis on will and creativity reminds us that bridges between women are built, not found. The discovery of shared suffering is a connection more illusory than real; what will truly bring and keep us together is the use of effort and imagination to root out and examine our differences, for only the recognition of women's differences can ultimately bring feminist movement to strength. This is hard work, and painful work;<sup>162</sup> but it is also radical work, real work. As Barbara Smith has said, "What *I* really feel is radical is trying to make coalitions with people who are different from you. I feel it is radical to be dealing with race and sex and class and sexual identity all at one time. I think *that* is really radical because it has never been done before."<sup>163</sup>

#### D. *Epilogue: Multiple Consciousness*

I have argued in this article that gender essentialism is dangerous to feminist legal theory because in the attempt to extract an essential female self and voice from the diversity of women's experience, the experiences of women perceived as "different" are ignored or treated as variations on the (white) norm. Now I want to return to an earlier point: that legal theory, including feminist legal theory, has been entranced for too long and to too great an extent by the voice of "We the People." In order to energize legal theory, we need to subvert it with narratives and stories, accounts of the particular, the different, and the hitherto silenced.

Whether by chance or not, many of the legal theorists telling stories these days are women of color. Mari Matsuda calls for "multiple consciousness as jurisprudential method";<sup>164</sup> Patricia Williams shows the way with her multilayered stories and meditations.<sup>165</sup> These writings

161. See T. MORRISON, *supra* note 83, at 273 ("[M]e and you, we got more yesterday than anybody. We need some kind of tomorrow.").

162. As Bernice Johnson Reagon has written:

Coalition work is not work done in your home. Coalition work has to be done in the streets. And it is some of the most dangerous work you can do. And you shouldn't look for comfort. Some people will come to a coalition and they rate the success of the coalition on whether or not they feel good when they get there. They're not looking for a coalition; they're looking for a home! They're looking for a bottle with some milk in it and a nipple, which does not happen in a coalition. You don't get a lot of food in a coalition. You don't get fed in a coalition. In a coalition you have to give, and it is different from your home. You can't stay there all the time. You go to the coalition for a few hours and then you go back and take your bottle wherever it is, and then you go back and coalesce some more.

Bernice Johnson Reagon, *Coalition Politics: Turning the Century*, in HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 359 (B. Smith ed. 1983).

163. Smith & Smith, *supra* note 145 at 126.

164. Matsuda, *supra* note 13, at 9.

165. See, e.g., Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Williams, *supra* note 126.

are healthy for feminist legal theory as well as legal theory more generally. In acknowledging "the complexity of messages implied in our being,"<sup>166</sup> they begin the task of energizing legal theory with the creative struggle between Funes and We the People: the creative struggle that reflects a multiple consciousness.

---

166. Williams, *supra* note 126, at 24.