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Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics

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One of the very few Black women's studies books is entitled *All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave.*[1] I have chosen this title as a point of departure in my efforts to develop a Black feminist criticism because it sets forth a problematic consequence of the tendency to treat race and gender as mutually exclusive categories of experience and analysis.[2] ... I want to examine how this tendency is perpetuated by a single-axis framework that is dominant in antidiscrimination law and that is also reflected in feminist theory and antiracist politics.

I will center Black women in this analysis in order to contrast the multidimensionality of Black women's experience with the single-axis analysis that distorts these experiences. Not only will this juxtaposition reveal how Black women are theoretically erased, it will also illustrate how this framework imports its own theoretical limitations that undermine efforts to broaden feminist and antiracist analyses. With Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical axis. I want to suggest further that this single-axis framework erases Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group. In other words, in race indiscrimination cases, discrimination tends to be viewed in terms of sex- or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women.

This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. I suggest further that this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.

After examining the doctrinal manifestations of this single-axis framework, I will discuss how it contributes to the marginalization of Black women in feminist theory and in antiracist politics. I argue that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Thus, for feminist theory and antiracist policy discourse to embrace the experiences and concerns of Black women, the entire framework that has been used as a basis for translating "women's experience" or "the Black experience" into concrete policy demands must be rethought and recast.

As examples of theoretical and political developments that miss the mark with respect to Black women because of their failure to consider intersectionality, I will briefly discuss the feminist critique of rape and separate spheres ideology. ...

The Antidiscrimination Framework

A. The Experience of Intersectionality and the Doctrinal Response

One way to approach the problem of intersectionality is to examine how courts frame and interpret the stories of Black women plaintiffs. While I cannot claim to know the circumstances underlying the cases that I will discuss, I nevertheless believe that the way courts interpret claims made by Black women is itself part of Black

women's experience and, consequently, a cursory review of cases involving Black female plaintiffs is quite revealing. To illustrate the difficulties inherent in judicial treatment of intersectionality, I will consider three Title VII[3] cases: *DeGraffenreid v General Motors,*[4] *Moore v Hughes Helicopters*[5] and *Payne v Travenol.*[6]

1. DeGraffenreid v General Motors. In *DeGraffenreid,* five Black women brought suit against General Motors, alleging that the employer's seniority system perpetuated the effects of past discrimination against Black women. Evidence adduced at trial revealed that General Motors simply did not hire Black women prior to 1964 and that all of the Black women hired after 1970 lost their jobs in a seniority-based layoff during a subsequent recession. The district court granted summary judgment for the defendant, rejecting the plaintiff's attempt to bring a suit not on behalf of Blacks or women, but specifically on behalf of Black women. The court stated:

> [P]laintiffs have failed to cite any decisions which have stated that Black women are a special class to be protected from discrimination. The Court's own research has failed to disclose such a decision. The plaintiffs are clearly entitled to a remedy if they have been discriminated against. However, they should not be allowed to combine statutory remedies to create a new 'super-remedy' which would give them relief beyond what the drafters of the relevant statutes intended. Thus, this lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both.[7]

Although General Motors did not hire Black women prior to 1964, the court noted that "General Motors has hired ... female employees for a number of years prior to the enactment of the Civil Rights Act of 1964."[8] Because General Motors did hire women—albeit *white women*—during the period that no Black women were hired, there was, in the court's view, no sex discrimination that the seniority system could conceivably have perpetuated.

After refusing to consider the plaintiffs' sex discrimination claim, the court dismissed the race discrimination complaint and recommended its consolidation with another case alleging race discrimination against the same employer.[9] The plaintiffs responded that such consolidation would defeat the purpose of their suit since theirs was not purely a race claim, but an action brought specifically on behalf of Black women alleging race *and* sex discrimination. ...

...

2. Moore v Hughes Helicopters, Inc. *Moore v Hughes Helicopters, Inc.*[10] presents a different way in which courts fail to understand or recognize Black women's claims. *Moore* is typical of a number of cases in which courts refused to certify Black females as class representatives in race *and* sex discrimination actions.[11] In *Moore,* the plaintiff alleged that the employer, Hughes Helicopter, practiced race and sex discrimination in promotions to upper-level craft positions and to supervisory jobs. Moore introduced statistical evidence establishing a significant disparity between men and women, and somewhat less of a disparity between Black and white men in supervisory jobs.[12]

Affirming the district court's refusal to certify Moore as the class representative in the sex discrimination complaint on behalf of all women at Hughes, the Ninth Circuit noted approvingly:

> ... Moore had never claimed before the EEOC that she was discriminated against as a female, *but only* as a Black female. ... [T]his raised serious doubts as to Moore's ability to adequately represent white female employees.[13]

The curious logic in *Moore* reveals not only the narrow scope of antidiscrimination doctrine and its failure to embrace intersectionality, but also the centrality of white female experiences in the conceptualization of gender discrimination. One inference that could be drawn from the court's statement that Moore's complaint did not entail a claim of discrimination "against females" is that discrimination against Black females is something less than discrimination against females. More than likely, however, the court meant to imply that Moore did not claim that *all* females were discriminated against *but only* Black females. But even thus recast, the court's rationale is problematic for Black women. The court rejected Moore's bid to represent all females apparently because her attempt to specify her race was seen as being at odds with the standard allegation that the employer simply discriminated "against females."

The court failed to see that the absence of a racial referent does not necessarily mean that the claim being made is a more inclusive one. A white woman claiming discrimination against females may be in no better position to represent all women than a Black woman who claims discrimination as a Black female and wants to represent all females. The court's preferred articulation of "against females" is not necessarily more inclusive—it just appears to be so because the racial contours of the claim are not specified.

The court's preference for "against females" rather than "against Black females" reveals the implicit grounding of white female experiences in the doctrinal conceptualization of sex discrimination. For white women, claiming sex discrimination is simply a statement that but for gender, they would not have been disadvantaged. For them there is no need to specify discrimination as *white* females because their race does not contribute to the disadvantage for which they seek redress. The view of discrimination that is derived from this grounding takes race privilege as a given.

Discrimination against a white female is thus the standard sex discrimination claim; claims that diverge from this standard appear to present some sort of hybrid claim. More significantly, because Black females' claims are seen as hybrid, they sometimes cannot represent those who may have "pure" claims of sex discrimination. The effect of this approach is that even though a challenged policy or practice may clearly discriminate against all females, the fact that it has particularly harsh consequences for Black females places Black female plaintiffs at odds with white females.

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3. Payne v Travenol. Black female plaintiffs have also encountered difficulty in their efforts to win certification as class representatives in some race discrimination actions. This problem typically arises in cases where statistics suggest significant disparities between Black and white workers and further disparities between Black men and Black women. Courts in some cases[14] have denied certification based on logic that mirrors the rationale in *Moore:* The sex disparities between Black men and Black women created such conflicting interests that Black women could not possibly represent Black men adequately. In one such case, *Payne v Travenol,*[15] two Black female plaintiffs alleging race discrimination brought a class action suit on behalf of all Black employees at a pharmaceutical plant.[16] The court refused, however, to allow the plaintiffs to represent Black males and granted the defendant's request to narrow the class to Black women only. Ultimately, the district court found that there had been extensive racial discrimination at the plant and awarded back pay and constructive seniority to the class of Black female employees. But, despite its finding of general race discrimination, the court refused to extend the remedy to Black men for fear that their conflicting interests would not be adequately addressed.[17]

...

In sum, several courts have proved unable to deal with intersectionality, although for contrasting reasons. In *DeGraffenreid,* the court refused to recognize the possibility of compound discrimination against Black women and analyzed their claim using the employment of white women as the historical base. As a consequence, the employment experiences of white women obscured the distinct discrimination that Black women experienced.

Conversely, in *Moore,* the court held that a Black woman could not use statistics reflecting the overall sex disparity in supervisory and upper-level labor jobs because she had not claimed discrimination as a women, but "only" as a Black woman. The court would not entertain the notion that discrimination experienced by Black women is indeed sex discrimination—provable through disparate impact statistics on women.

Finally, courts, such as the one in *Travenol,* have held that Black women cannot represent an entire class of Blacks due to presumed class conflicts in cases where sex additionally disadvantaged Black women. As a result, in the few cases where Black women are allowed to use overall statistics indicating racially disparate treatment Black men may not be able to share in the remedy.

Perhaps it appears to some that I have offered inconsistent criticisms of how Black women are treated in antidiscrimination law: I seem to be saying that in one case, Black women's claims were rejected and their experiences obscured because the court refused to acknowledge that the employment experience of Black women can be distinct from that of white women, while in other cases, the interests of Black women are harmed because Black women's claims were viewed as so distinct from the claims of either white women or Black men that the court denied to Black females representation of the larger class. It seems that I have to say that Black women are the same and harmed by being treated differently, or that they are different and harmed by being treated the same. But I cannot say both.

This apparent contradiction is but another manifestation of the conceptual limitations of the single-issue analyses that intersectionality challenges. The point is that Black women can experience discrimination in any number of ways and that the contradiction arises from our assumptions that their claims of exclusion must be unidirectional. Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black women is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.

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To bring this back to a non-metaphorical level, I am suggesting that Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women's experiences; sometimes they share very similar experiences with Black men. Yet often they experience double-discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women.

...

B. The Significance of Doctrinal Treatment of Intersectionality

DeGraffenreid, Moore and *Travenol* are doctrinal manifestations of a common political and theoretical approach to discrimination which operates to marginalize Black women. Unable to grasp the importance of Black women's intersectional experiences, not only courts, but feminist and civil rights thinkers as well have treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger classes of women and Blacks. Black women are regarded either as too much like women or Blacks and the compounded nature of their experience is absorbed into the collective experiences of either group or as too different, in which case Black women's Blackness or femaleness sometimes has placed their needs and perspectives at the margin of the feminist and Black liberationist agendas.

While it could be argued that this failure represents an absence of political will to include Black women, I believe that it reflects an uncritical and disturbing acceptance of dominant ways of thinking about discrimination. Consider first the definition of discrimination that seems to be operative in antidiscrimination law: Discrimination which is wrongful proceeds from the identification of a specific class or category; either a discriminator intentionally identifies this category, or a process is adopted which somehow disadvantages all members of this category.[18] According to the dominant view, a discriminator treats all people within a race or sex category similarly. Any significant experiential or statistical variation within this group suggests either that the group is not being discriminated against or that conflicting interests exist which defeat any attempts to bring a common claim. Consequently, one

generally cannot combine these categories. Race and sex, moreover, become significant only when they operate to explicitly *disadvantage* the victims; because the *privileging* of whiteness or maleness is implicit, it is generally not perceived at all.

Underlying this conception of discrimination is a view that the wrong which antidiscrimination law addresses is the use of race or gender factors to interfere with decisions that would otherwise be fair or neutral. This process-based definition is not grounded in a bottom-up commitment to improve the substantive conditions for those who are victimized by the interplay of numerous factors. Instead, the dominant message of antidiscrimination law is that it will regulate only the limited extent to which race or sex interferes with the process of determining outcomes. This narrow objective is facilitated by the top-down strategy of using a singular "but for" analysis to ascertain the effects of race or sex. Because the scope of antidiscrimination law is so limited, sex and race discrimination have come to be defined in terms of the experiences of those who are privileged *but for* their racial or sexual characteristics. Put differently, the paradigm of sex discrimination tends to be based on the experiences of white women; the model of race discrimination tends to be based on the experiences of the most privileged Blacks. Notions of what constitutes race and sex discrimination are, as a result, narrowly tailored to embrace only a small set of circumstances, none of which include discrimination against Black women.

To the extent that this general description is accurate, the following analogy can be useful in describing how Black women are marginalized in the interface between antidiscrimination law and race and gender hierarchies: Imagine a basement which contains all people who are disadvantaged on the basis of race, sex, class, sexual preference, age and/or physical ability. These people are stacked—feet standing on shoulders—with those on the bottom being disadvantaged by the full array of factors, up to the very top, where the heads of all those disadvantaged by a singular factor brush up against the ceiling. Their ceiling is actually the floor above which only those who are *not* disadvantaged in any way reside. In efforts to correct some aspects of domination, those above the ceiling admit from the basement only those who can say that "but for" the ceiling, they too would be in the upper room. A hatch is developed through which those placed immediately below can crawl. Yet this hatch is generally available only to those who—due to the singularity of their burden and their otherwise privileged position relative to those below—are in the position to crawl through. Those who are multiply-burdened are generally left below unless they can somehow pull themselves into the groups that are permitted to squeeze through the hatch.

As this analogy translates for Black women, the problem is that they can receive protection only to the extent that their experiences are recognizably similar to those whose experiences tend to be reflected in antidiscrimination doctrine. If Black women cannot conclusively say that "but for" their race or "but for" their gender they would be treated differently, they are not invited to climb through the hatch but told to wait in the unprotected margin until they can be absorbed into the broader, protected categories of race and sex.

...

Feminism and Black Women: "Ain't We Women?"

...

In 1851, Sojourner Truth declared "Ain't I a Woman?" and challenged the sexist imagery used by male critics to justify the disenfranchisement of women. The scene was a Women's Rights Conference in Akron, Ohio; white male hecklers, invoking stereotypical images of "womanhood," argued that women were too frail and delicate to take on the responsibilities of political activity. When Sojourner Truth rose to speak, many white women urged that she be silenced, fearing that she would divert attention from women's suffrage to emancipation. Truth, once permitted to speak, recounted the horrors of slavery, and its particular impact on Black women:

> Look at my arms! I have ploughed and planted and gathered into barns, and no man could head me—and ain't I a woman? I would 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 born thirteen children, and seen most of 'em sold into slavery, and when I cried out with my mother's grief, none but Jesus heard me—and ain't I a woman?[19]

By using her own life to reveal the contradiction between the ideological myths of womanhood and the reality of Black women's experience, Truth's oratory provided a powerful rebuttal to the claim that women were categorically weaker than men. Yet Truth's personal challenge to the coherence of the cult of true womanhood was useful only to the extent that white women were willing to reject the racist attempts to rationalize the contradiction—that because Black women were something less than real women, their experiences had no bearing on true womanhood. Thus, this 19th-century Black feminist challenged not only patriarchy, but she also challenged white feminists wishing to embrace Black women's history to relinquish their vestedness in whiteness.

...

The value of feminist theory to Black women is diminished because it evolves from a white racial context that is seldom acknowledged. Not only are women of color in fact overlooked, but their exclusion is reinforced when *white* women speak for and as *women*. The authoritative universal voice—usually white male subjectivity masquerading as non-racial, non-gendered objectivity—is merely transferred to those who, but for gender, share many of the same cultural, economic and social characteristics. When feminist theory attempts to describe women's experiences through analyzing patriarchy, sexuality, or separate spheres ideology, it often overlooks the role of race. Feminists thus ignore how their own race functions to mitigate some aspects of sexism and, moreover, how it often privileges them over and contributes to the domination of other women.[20] Consequently, feminist theory remains *white*, and its potential to broaden and deepen its analysis by addressing nonprivileged women remains unrealized.

...

Because ideological and descriptive definitions of patriarchy are usually premised upon white female experiences, feminists and others informed by feminist literature

may make the mistake of assuming that since the role of Black women in the family and in other Black institutions does not always resemble the familiar manifestations of patriarchy in the white community, Black women are somehow exempt from patriarchal norms. For example, Black women have traditionally worked outside the home in numbers far exceeding the labor participation rate of white women.[21] An analysis of patriarchy that highlights the history of white women's exclusion from the workplace might permit the inference that Black women have not been burdened by this particular gender-based expectation. Yet the very fact that Black women must work conflicts with norms that women should not, often creating personal, emotional and relationship problems in Black women's lives. Thus, Black women are burdened not only because they often have to take on responsibilities that are not traditionally female but, moreover, their assumption of these roles is sometimes interpreted within the Black community as either Black women's failure to live up to such norms or as another manifestation of racism's scourge upon the Black community.[22] This is one of the many aspects of intersectionality that cannot be understood through an analysis of patriarchy rooted in white experience.

Another example of how theory emanating from a white context obscures the multidimensionality of Black women's lives is found in feminist discourse on rape. A central political issue on the feminist agenda has been the pervasive problem of rape. Part of the intellectual and political effort to mobilize around this issue has involved the development of a historical critique of the role that law has played in establishing the bounds of normative sexuality and in regulating female sexual behavior.[23] Early carnal knowledge statutes and rape laws are understood within this discourse to illustrate that the objective of rape statutes traditionally has not been to protect women from coercive intimacy but to protect and maintain a property-like interest in female chastity.[24] Although feminists quite rightly criticize these objectives, to characterize rape law as reflecting male control over female sexuality is for Black women an oversimplified account and an ultimately inadequate account.

Rape statutes generally do not reflect *male* control over *female* sexuality, but *white* male regulation of *white* female sexuality.[25] Historically, there has been absolutely no institutional effort to regulate Black female chastity.[26] Courts in some states had gone so far as to instruct juries that, unlike white women, Black women were not presumed to be chaste.[27] Also, while it was true that the attempt to regulate the sexuality of white women placed unchaste women outside the law's protection, racism restored a fallen white woman's chastity where the alleged assailant was a Black man.[28] No such restoration was available to Black women.

The singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror.[29] When Black women were raped by white males, they were being raped not as women generally, but as Black women specifically: Their femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied them any protection. This white male power was reinforced by a judicial system in which the successful conviction of a white man for raping a Black woman was virtually unthinkable.

In sum, sexist expectations of chastity and racist assumptions of sexual promiscuity combined to create a distinct set of issues confronting Black women.[30] These issues have seldom been explored in feminist literature nor are they prominent in antiracist politics. The lynching of Black males, the institutional practice that was legitimized by the regulation of white women's sexuality, has hitorically and contemporaneously occupied the Black agenda on sexuality and violence. Consequently, Black women are caught between a Black community that, perhaps understandably, views with suspicion attempts to litigate questions of sexual violence, and a feminist community that reinforces those suspicions by focusing on white female sexuality.[31] The suspicion is compounded by the historical fact that the protection of white female sexuality was often the pretext for terrorizing the Black community. Even today some fear that antirape agendas may undermine antiracist objectives. This is the paradigmatic political and theoretical dilemma created by the intersection of race and gender: Black women are caught between ideological and political currents that combine first to create and then to bury Black women's experiences.

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Expanding Feminist Theory and Antiracist Politics by Embracing the Intersection

If any real efforts are to be made to free Black people of the constraints and conditions that characterize racial subordination, then theories and strategies purporting to reflect the Black community's needs must include an analysis of sexism and patriarchy. Similarly, feminism must include an analysis of race if it hopes to express the aspirations of non-white women. Neither Black liberationist politics nor feminist theory can ignore the intersectional experiences of those whom the movements claim as their respective constituents. In order to include Black women, both movements must distance themselves from earlier approaches in which experiences are relevant only when they are related to certain clearly identifiable causes (for example, the oppression of Blacks is significant when based on race, of women when based on gender). The praxis of both should be centered on the life chances and life situations of people who should be cared about without regard to the source of their difficulties.

I have stated earlier that the failure to embrace the complexities of compoundedness is not simply a matter of political will, but is also due to the influence of a way of thinking about discrimination which structures politics so that struggles are categorized as singular issues. Moreover, this structure imports a descriptive and normative view of society that reinforces the status quo.

It is somewhat ironic that those concerned with alleviating the ills of racism and sexism should adopt such a top-down approach to discrimination. If their efforts instead began with addressing the needs and problems of those who are most disadvantaged and with restructuring and remaking the world where necessary, then others who are singularly disadvantaged would also benefit. In addition, it seems that placing those who currently are marginalized in the center is the most effective

way to resist efforts to compartmentalize experiences and undermine potential collective action.

It is not necessary to believe that a political consensus to focus on the lives of the most disadvantaged will happen tomorrow in order to recenter the discrimination discourse at the intersection. It is enough, for now, that such an effort would encourage us to look beneath the prevailing conceptions of discrimination and to challenge the complacency that accompanies belief in the effectiveness of this framework. By so doing, we may develop language which is critical of the dominant view and which provides some basis for unifying activity. The goal of this activity should be to facilitate the inclusion of marginalized groups for whom it can be said: "When they enter, we all enter."

Notes

1. Gloria T. Hull, et al, eds (The Feminist Press, 1982).

2. The most common linguistic manifestation of this analytical dilemma is represented in the conventional usage of the term "Blacks and women." Although it may be true that some people mean to include Black women in either "Blacks" or "women," the context in which the term is used actually suggests that often Black women are not considered. See, for example, Elizabeth Spelman, *The Inessential Woman* 114–15 (Beacon Press, 1988) (discussing an article on Blacks and women in the military where "the racial identity of those identified as 'women' does not become explicit until reference is made to Black women, at which point it also becomes clear that the category of women excludes Black women"). It seems that if Black women were explicitly included, the preferred term would be either "Blacks and white women" or "Black men and all women."

3. Civil Rights Act of 1964, 42 USC & 2000e, et seq as amended (1982).

4. 413 F Supp 142 (E D Mo 1976).

5. 708 F2d 475 (9th Cir 1983).

6. 673 F2d 798 (5th Cir 1982).

7. *De Graffenreid,* 413 F Supp at 143.

8. Id at 144.

9. Id at 145. In *Mosley v General Motors,* 497 F Supp 583 (E D Mo 1980), plaintiffs, alleging broad-based racial discrimination at General Motors' St. Louis facility, prevailed in a portion of their Title VII claim. The seniority system challenged in *DeGraffenreid,* however, was not considered in *Mosley.*

10. 708 F2d 475.

11. See also *Moore v National Association of Securities Dealers,* 27 EPD (CCH) ¶ 32,238 (D DC 1981); but see *Edmondson v Simon,* 86 FRD 375 (N D Ill 1980) (where the court was unwilling to hold as a matter of law that no Black female could represent without conflict the interests of both Blacks and females).

12. 708 F2d at 479. Between January 1976 and June 1979, the three years in which Moore claimed that she was passed over the promotion, the percentage of white males occupying first-level supervisory positions ranged from 70.3 to 76.8%; Black males from 8.9 to 10.9%; white women from 1.8 to 3.3%; and Black females from 0 to 2.2%. The overall male/female ratio in the top five labor grades ranged from 100/0% in 1976 to 98/1.8% in 1979. The white/Black ratio was 85/3.3% in 1976 and 79.6/8% in 1979. The overall ratio of men to women in supervisory positions was 98.2 to 1.8% in 1976 to 93.4 to 6.6% in 1979; the Black to white ratio during the same time period was 78.6 to 8.9% and 73.6 to 13.1%.

For promotions to the top five labor grades, the percentages were worse. Between 1976 and 1979, the percentage of white males in these positions ranged from 85.3 to 77.9%; Black males 3.3 to 8%; white females from 0 to 1.4%, and Black females from 0 to 0%. Overall, in 1979, 98.2% of the highest level employees were male; 1.8% were female.

13. 708 F2d at 480 (emphasis added).

14. See *Strong v Arkansas Blue Cross & Blue Shield, Inc.*, 87 FRD 496 (E D Ark 1980); *Hammons v Folger Coffee Co.*, 87 FRD 600 (W D Mo 1980); *Edmondson v Simon*, 86 FRD 375 (N D Ill 1980); *Vuyanich v Republic National Bank of Dallas*, 82 FRD (N D Tex 1979); *Colston v Maryland Cup Corp.*, 26 Fed Rules Serv 940 (D Md 1978).

15. 416 F Supp 248 (N D Miss 1976).

16. The suit commenced on March 2, 1972, with the filing of a complaint by three employees seeking to represent a class of persons allegedly subjected to racial discrimination at the hands of the defendants. Subsequently, the plaintiffs amended the complaint to add an allegation of sex discrimination. Of the original named plaintiffs, one was a Black male and two were Black females. In the course of the three-year period between the filing of the complaint and the trial, the only named male plaintiff received permission of the court to withdraw for religious reasons. Id at 250.

17. As the dissent in *Travenol* pointed out, there was no reason to exclude Black males from the scope of the remedy *after* counsel had presented sufficient evidence to support a finding of discrimination against Black men. If the rationale for excluding Black males was the potential conflict between Black males and Black females, then "[i]n this case, to paraphrase an old adage, the proof of plaintiffs' ability to represent the interests of Black males was in the representation thereof." 673 F2d at 837–38.

18. In much of antidiscrimination doctrine, the presence of intent to discriminate distinguishes unlawful from lawful discrimination. See *Washington v Davis*, 426 US 229, 239–45 (1976) (proof of discriminatory purposes required to substantiate Equal Protection violation). Under Title VII, however, the Court has held that statistical data showing a disproportionate impact can suffice to support a finding of discrimination. See *Griggs*, 401 US at 432. Whether the distinction between the two analyses will survive is an open question. See *Wards Cove Packing Co., Inc. v Atonio*, 109 S Ct 2115, 2122–23 (1989) (plaintiffs must show more than mere disparity to support a prima facie case of disparate impact). For a discussion of the competing normative visions that underlie the intent and effects analyses, see Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 Minn L Rev 1049 (1978).

19. Eleanor Flexner, *Century of Struggle: The Women's Rights Movement in the United States* 91 (Belknap Press of Harvard University Press, 1975). See also Bell Hooks, *Ain't I a Woman* 159–60 (South End Press, 1981).

20. For example, many white females were able to gain entry into previously all white male enclaves not through bringing about a fundamental reordering of male versus female work, but in large part by shifting their "female" responsibilities to poor and minority women.

21. See generally Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (Basic Books, 1985); Angela Davis, *Women, Race and Class* (Random House, 1981).

22. As Elizabeth Higginbotham noted, "women, who often fail to conform to 'appropriate' sex roles, have been pictured as, and made to feel, inadequate—even though as women, they possess traits recognized as positive when held by men in the wider society. Such women are stigmatized because their lack of adherence to expected gender roles is seen as a threat to the value system." Elizabeth Higginbotham, *Two Representative Issues in Contemporary Sociological Work on Black Women*, in Hull, et al, eds, *But Some of Us Are Brave* at 95 (cited in note 1).

23. See generally Susan Brownmiller, *Against Our Will* (Simon and Schuster, 1975); Susan Estrich, *Real Rape* (Harvard University Press, 1987).

24. See Brownmiller, *Against Our Will* at 17; see generally Estrich, *Real Rape*.

25. One of the central theoretical dilemmas of feminism that is largely obscured by universalizing the white female experience is that experiences that are described as a manifestation of male control over females can be instead a manifestation of dominant group control over all subordinates. The significance is that other nondominant men may not share in, participate in or connect with the behavior, beliefs or actions at issue, and may be victimized themselves by "male" power. In other contexts, however, "male authority" might include nonwhite men, particularly in private sphere contexts. Efforts to think more clearly about when Black women are dominated as *women* and when they are dominated as *Black women* are directly related to the question of when power is *male* and when it is *white male*.

26. See Note, *Rape, Racism and the Law*, 6 Harv Women's L J 103, 117–23 (1983) (discussing the historical and contemporary evidence suggesting that Black women are generally not thought to be chaste). See also Hooks, *Ain't I a Woman* at 54 (cited in note 19) (stating that stereotypical images of Black womanhood during slavery were based on the myth that "all black women were immoral and sexually loose"); Beverly Smith, *Black Women's Health: Notes for a Course*, in Hull et al, eds, *But Some of Us Are Brave* at 110 (cited in note 1) (noting that "... white men for centuries have justified their sexual abuse of Black women by claiming that we are licentious, always 'ready' for any sexual encounter").

27. The following statement is probably unusual only in its candor: "What has been said by some of our courts about an unchaste female being a comparatively rare exception is no doubt true where the population is composed largely of the Caucasian race, but we would blind ourselves to actual conditions if we adopted this rule where another race that is largely immoral constitutes an appreciable part of the population." *Dallas v State*, 76 Fla 358, 79 So 690 (1918), quoted in Note, 6 Harv Women's L J at 121 (cited in note 26).

Espousing precisely this view, one commentator stated in 1902: "I sometimes hear of a virtuous Negro woman but the idea is so absolutely inconceivable to me ... I cannot imagine such a creature as a virtuous Negro woman." Id at 82. Such images persist in popular culture. See Paul Grein, *Taking Stock of the Latest Pop Record Surprises*, LA Times § 6 at 1 (July 7, 1988) (recalling the controversy in the late 70s over a Rolling Stones recording which included the line "Black girls just wanna get fucked all night")...

28. Because the way the legal system viewed chastity, Black women could not be victims of forcible rape. One commentator has noted that "[a]ccording to governing [stereotypes], chastity could not be possessed by Black women. Thus, Black women's rape charges were automatically discounted, and the issue of chastity was contested only in cases where the rape complainant was a white woman." Note, 6 Harv Women's L J at 126 (cited in note 26). Black women's claims of rape were not taken seriously regardless of the offender's race. A judge in 1912 said: "This court will never take the word of a nigger against the word of a white man [concerning rape]." Id at 120. On the other hand, lynching was considered an effective remedy for a Black man's rape of a white woman. Since rape of a white woman by a Black man was "a crime more horrible than death," the only way to assuage society's rage and to make the woman whole again was to brutally murder the Black man. Id at 125.

29. See *The Rape of Black Women as a Weapon of Terror*, in Gerda Lerner, ed, *Black Women in White America* 172–93 (Pantheon Books, 1972). See also Brownmiller, *Against Our Will* (cited in note 23). Even where Brownmiller acknowledges the use of rape as racial terrorism, she resists making a "special case" for Black women by offering evidence that white women were raped by the Klan as well. Id at 139. Whether or not one considers the racist rape of Black women a "special case," such experiences are probably different. In any case, Brownmiller's treatment of the issue raises serious questions about the ability to sustain an analysis of patriarchy without understanding its multiple intersections with racism.

30. Paula Giddings notes the combined effect of sexual and racial stereotypes: "Black women were seen having all of the inferior qualities of white women without any of their virtues." Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* 82 (William Morrow and Co, Inc, 1st ed 1984).

31. Susan Brownmiller's treatment of the Emmett Till case illustrates why antirape politicization makes some African Americans uncomfortable. Despite Brownmiller's quite laudable efforts to discuss elsewhere the rape of Black women and the racism involved in much of the hysteria over the Black male threat, her analysis of the Till case places the sexuality of white women, rather than racial terrorism, at center stage. Brownmiller states: "Rarely has one single case exposed so clearly as Till's the underlying group-male antagonisms over access to women, for what began in Bryant's store should not be misconstrued as an innocent flirtation. ... In concrete terms, the accessibility of all white women was on review." Brownmiller, *Against Our Will* at 272 (cited in note 23). ...