



1991

Unmaddening: A Response to Angela Harris

e. christi cunningham

Follow this and additional works at: <https://digitalcommons.law.yale.edu/yjlf>



Part of the [Law Commons](#)

Recommended Citation

e. c. cunningham, *Unmaddening: A Response to Angela Harris*, 4 YALE J.L. & FEMINISM (1991).
Available at: <https://digitalcommons.law.yale.edu/yjlf/vol4/iss1/15>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Yale Journal of Law & Feminism by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.

Unmaddening: A Response to Angela Harris

e. christi cunningham†

Angela Harris, in her article *Race and Essentialism in Feminist Legal Theory*,¹ asserts a theory of “multiple consciousness” in which Black women are composed of partial, contradictory, or antithetical selves. She defines “essentialism” as the idea that there is an essential women’s experience that can be isolated from other aspects of experience.² In this vein, she criticizes the supposed “essentialism” of Catharine MacKinnon’s work. Her argument is that MacKinnon writes from a white perspective, including Black women only in the brackets and footnotes of her analysis.³ She also accuses MacKinnon of having a “nuance theory” in which Black women’s experience is simply a variation of white women’s experience. In MacKinnon’s work, according to Harris, Black women become white women plus.

In her article, Harris discusses the multiple consciousness of individuals. “It is a premise of this article,” she writes, “that we are not born with a ‘self,’ but rather are composed of a welter of partial, sometimes contradictory, or even antithetical ‘selves.’”⁴ Harris would say that women of color are multiplicitous, speaking in many voices, because in addition to being female, we are also Black,⁵ or Native American, or poor, or Latina, or lesbian. Mari Matsuda describes multivoicedness as “this constant shifting of consciousness produc[ing] sometimes madness, sometimes genius, sometimes both.”⁶ It is the potential madness that Harris fails to recognize in both her elaboration of the theory of multiple consciousness and her critique of MacKinnon.

In Toni Morrison’s *The Bluest Eye*,⁷ after being raped by her father and

† Third year student at Yale Law School, member of the Collective on Women of Color and the Law, and the *Yale Journal of Law and Feminism*. For their support, I would like to give special thanks to my friends in Brooklyn—Carolyn Ford, Kris Drumm, and Ronnie Bero. I also appreciate the suggestions and insight of Professor Jules Coleman, Professor Harlon Dalton, Professor Adrienne Davis, Professor Catharine A. MacKinnon, Sandra J. Mullings, and the members of the Collective on Women of Color and the Law.

1. Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

2. *Id.* at 585.

3. *Id.* at 603.

4. Harris, *supra* note 1, at 584.

5. Harris does not capitalize “black” because she believes that capitalizing “‘Black’ and not ‘Woman’ would imply a privileging of race.” *Id.* at 586, n. 20. I, on the other hand, choose to capitalize “Black” because Black, in reference to a people, signifies more than color. It represents history, culture, and common oppression. Unlike Harris, I do not believe that capitalizing “Black” privileges race over sex because I do not believe that the two are in opposition. Because I assert the potential for Black women to define ourselves, I believe that we have the capacity to define “Black” and “woman” so that one does not have the effect of diminishing the other.

6. Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7, 8 (1989) (cited in Harris, *supra* note 1, at 584).

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

emotionally abused by a neighbor, Pecola Breedlove is overcome by madness. She literally speaks in multiple voices as she converses with an imaginary friend about what she believes to be the blueness of her eyes. For Pecola, the many voices of being Black, in a society in which beauty is synonymous with whiteness and exemplified by blue eyes;⁸ female, in a society in which being female means being the object of male sexual violence; and poor, lead to madness. The literal madness of Pecola Breedlove may in some ways symbolize the multiple consciousness experienced especially by women of color. Harris may be correct in identifying the multiple consciousness of women of color. She fails, however, to recognize that while her version of this multiple consciousness should be claimed by women of color as descriptive, it should not necessarily be championed by us as a source of power.

This article challenges Harris's theory of multiple consciousness and, specifically, her analysis of MacKinnon. Section I argues that multiple consciousness, as Harris describes it, should not be more than an intermediary step to the goal of whole, self-defined identity. Through textual analysis, Section II exposes the inaccuracy of Harris's first major assertion—that MacKinnon relegates Black women to footnotes and brackets in her writing. Section III examines the ways in which Harris's second major assertion—that MacKinnon creates a "nuance theory" about women of color—contradicts the first. The epilogue considers the place of this type of public discourse among writers in the women of color community.

I. SELF-DEFINITION: TOWARD A WHOLE VOICE

Clever, but schoolteacher beat him anyway to show him that definitions belong to the definers.⁹

Multiple consciousness or multiple voices within the individual (as opposed to within a movement) describes women of color because we have not been "the definers." Multi-voicedness within the individual means that a person speaks partially with her Black voice, partially with her female voice, and partially with her lesbian voice. She does so because none of these voices defines her completely. None of her voices defines her completely because she is not the one who defined them, or their separation from one another. If she had defined Blackness, she would not have defined it in a way that did not describe herself. If she had defined femaleness (which has been largely defined by men and to some extent by white women¹⁰), she would not have defined

8. See Harris, *supra* note 1, at 597.

9. TONI MORRISON, *BELOVED* 190 (1987).

10. For example, MacKinnon writes:

Accepting a middle-class definition of the women's movement has distorted perception of its actual composition and made invisible the diverse ways in which many women—notably Black women and working-class women—have long moved against gendered determinants. But

it in a way that did not describe herself. Multi-voicedness describes powerlessness: a condition in which definitions have been created by others and women of color have been left to combine applicable bits and pieces to create a whole.

A whole voice, if developed by women of color, would not be Asian-American *and* female *and* lesbian. A whole voice does not borrow or attempt to adapt voices. While the whole voice has the capacity and perhaps even the need to harmonize with other voices, it is first self-defining. Speaking in a whole voice, being Asian-American *means* being female and lesbian; being lesbian *means* being Native American and economically disadvantaged. What it means to be a woman is what it means to be Black. What it means to be a woman is what it means to be lesbian. Members of the dominant group do not speak with multiple voices because their voice is whole. There is no opposition or dissonance in its identity. The dominant group does not have to choose to speak with the white *or* the male *or* the "straight" part of its personality because the white heterosexual male is the standard. Individuals of the dominant group do not have multiple consciousness because such madness is for the defined, not the definers.

Men, and especially white men, have been definers in virtually all areas. As MacKinnon's theory suggests, they have defined sexuality and femaleness for all women.¹¹ Harris interprets this deconstruction as an application of a general (white) feminism to women of color. Harris assumes that a white messenger brings a white message.¹² Male dominance, however, is not just a white thing. All men—Latino men, African-American men, Asian-American men, Native American men, as well as white men—perpetuate and are advantaged by male dominance. And all women experience male dominance through some form of subordination. MacKinnon's feminism is *not* unmodified because all women experience subordination in the same ways. In her work, Black women, for example, do not experience domination from white men *like* (in the same manner that) white women do, and Black women do not experience domination from Black men *like* white women do. MacKinnon's feminism is unmodified because, given the various forms that subordination takes, women are subordinated *as* (because we are) women.¹³

II. NONESSENTIALISM AND BLACK WOMEN IN DOMINANCE THEORY

advocates of women's interest have not always been class conscious; some have exploited class-based arguments for advantage, even when the interests of women, working-class women, were thereby obscured.

CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 6 (1989).

11. See generally CATHARINE A. MACKINNON, FEMINISM UNMODIFIED (1987); MACKINNON, *supra* note 10.

12. See Harris, *supra* note 1, at 588.

13. MacKinnon distinguishes between Black women experiencing domination *like* white women and Black women experiencing domination *as* women. CATHARINE A. MACKINNON, *On Exceptionality*, in FEMINISM UNMODIFIED, *supra* note 11, at 76-77.

Harris makes two major criticisms of MacKinnon's theory. Her first criticism is that MacKinnon does not adequately address Black women in her theory. According to Harris, MacKinnon's theory is essentially white, and includes women of color only in the brackets and footnotes.¹⁴ Harris thus labels MacKinnon an essentialist. Harris defines "essentialism" as "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."¹⁵ Although Harris cites Elizabeth Spelman's *Inessential Woman*¹⁶ as the source of her use of "essentialism," Spelman does not define essentialism in the passage that Harris quotes. Harris writes:

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.¹⁷

Spelman, however, lists these as assumptions of *feminism*, not *essentialism*.¹⁸ Harris begs the question of whether MacKinnon is essentialist, in her terms, by defining feminism as "essentialism." In contrast to Harris's use of "essentialism," Spelman recognizes the value of identifying the characteristic "woman" and applying it. She defines essentialism as the idea that there is "an essential 'womanness' . . . some 'woman' substance that is the same in each of us and interchangeable between us."¹⁹

That essentialism exists and that some theories of feminism can accurately be labelled essentialist, I do not doubt. To the extent that Harris seeks to attack

14. Harris, *supra* note 1, at 592-94.

15. *Id.* at 585.

16. ELIZABETH SPELMAN, *INESSENTIAL WOMAN* 165 (1988).

17. Harris, *supra* note 1, at 588 n.29 (citing SPELMAN, *supra* note 16, at 165).

18. SPELMAN, *supra* note 16, at 165. Spelman writes, "Feminism has been preoccupied with gender, and in order to talk about what gender is and how being a woman affects women, it has seemed necessary and extremely useful to make the following assumptions" *Id.*

19. *Id.* at 158.

essentialist theories as defined by Spelman, her criticism is appropriately directed. Such theories, asserting that all women's experiences are the same and ignoring variations in the forms that subordination takes, should be criticized. To the extent that Harris redefines essentialism as feminism, however, her criticism is misplaced. She argues that "MacKinnon assumes, as does the dominant culture, that there is an essential 'woman' beneath the realities of differences between women—that in describing the experiences of 'women' issues of race, class, and sexual orientation can therefore be safely ignored, or relegated to footnotes."²⁰ MacKinnon, however, does exactly the opposite.²¹ By identifying dominant culture (meaning white male culture²²) as the defining culture, MacKinnon seeks to empower all women to be our own definers.²³ Harris assumes that since MacKinnon is a white woman, her theory must concern only white women. Referencing MacKinnon, Harris writes:

"[I]n 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. 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"²⁴

The moral of a story told by a white woman, however, is not always white. When MacKinnon writes about white male domination, she is not telling a white story. She is writing about the foot on all of our necks.²⁵ She does not

20. Harris, *supra* note 1, at 591-92.

21. For example, throughout MacKinnon's *TOWARD A FEMINIST THEORY OF THE STATE*, she analyzes class issues. See MACKINNON, *supra* note 10.

22. To the extent that women of color have been subordinated by white women and men of color, it is because those groups have been able to access power from part of the defined norm. White women draw power from the white aspect of the standard, and men of color draw power from the male aspect of the standard. See Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *YALE L.J.* 1281, 1291 (1991).

23. Andrea Dworkin and Catharine MacKinnon describe the way in which civil rights movements have historically sought the power to define:

Civil rights is a "Look, we live here, too" movement. It is not dedicated primarily to making the society more comfortable for outlaws or to lessening the stigma of marginality or to making powerlessness feel better. It is dedicated to changing basic norms so that what was outlaw and marginal and powerless no longer is. It aims to alter the mainstream. For civil-rights movements, then, the fact that law is an instrument of the powerful has never been an inert fact to be met with complacency or despair, far less a reason to leave its power in the hands of the powerful The law's pretense at providing equal justice did not provide an occasion for cynicism, but a hypocrisy to be exposed and a promise to be delivered, not a radical reason to do nothing. The law of sex discrimination, aimed at altering the inequality of women to men as a norm, has been a part of this tradition, at least to some of us.

ANDREA DWORKIN & CATHARINE A. MACKINNON, *PORNOGRAPHY & CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY* 29 (1988) (emphasis in original).

24. Harris, *supra* note 1, at 588 (citing CATHARINE A. MACKINNON, *On Collaboration*, in *FEMINISM UNMODIFIED*, *supra* note 11, at 204).

25. See CATHARINE A. MACKINNON, *Difference and Dominance: On Sex Discrimination*, in *FEMINISM*

imply that we all feel the same part of the boot. Some of us are under the heel. Some of us are under the instep. Some of us experience more or less pressure per square centimeter. Moreover, MacKinnon discusses in some detail how the way the boot feels to us may depend on whether we are Black or Native American or white or Asian or Latina.

In their book *Pornography & Civil Rights: A New Day for Women's Equality*, which begins with a brief history of the civil rights movement and presents a theory of pornography as a civil rights violation, MacKinnon and Andrea Dworkin describe what the foot has felt like to Black women: "[i]t is especially important to understand that *Blacks* includes Black women and that *women* includes Black women. When Black people as a whole or women as a whole are discriminated against or hurt, Black women are denied rights."²⁶ MacKinnon does not relegate Black women to footnotes and brackets. Her theory is explicitly about us. Writing about subordination in the form of pornography, Dworkin and MacKinnon describe how "Black women are presented as animalistic bitches, bruised and bleeding, struggling against their bonds."²⁷ They describe what subordination, as both racism and sexism, feels like to Asian women who are "presented so passive they cannot be said to be alive, bound so they are not recognizably human, hanging from trees and light fixtures and clothes hooks in closets."²⁸ In pornography, "Jewish women orgasm in re-enactments of death-camp tortures."²⁹ Pornography's subordination of lesbians is both sexist and heterosexist; in "so-called lesbian pornography, women do what men imagine women do when men are not around, so men can watch."³⁰

MacKinnon's analysis of pornography is a specific example of MacKinnon's general theory of dominance in which the boot does not feel the same to all of us, but we all feel it.

[T]he abuses of pornography's production are a mere prelude to the abuse mass-produced through pornography's mass distribution and mass consumption: the rapes, the battery, the sexual harassment, the sexual abuse of children, the forced sex, the forced prostitution, the unwanted

UNMODIFIED, *supra* note 11, at 45.

26. DWORKIN & MACKINNON, *supra* note 23, at 11 (emphasis in original). MacKinnon continues this analysis in a recent *Yale Law Journal* article:

One hundred years and a war among men over equality among men later, the Fourteenth Amendment guaranteed "equal protection of the laws." Racial inequality was its crucible, its paradigm, its target, and its subtext. Sex-based denials of equal rights were not covered. It is thus a misnomer to say that the Reconstruction Amendments gave Blacks even *formal* constitutional equality. To the extent gender inequality limited it—no woman could vote, for example—equality was reserved for Black men.

MacKinnon, *supra* note 22, at 1283 (emphasis added).

27. DWORKIN & MACKINNON, *supra* note 23, at 46.

28. *Id.*

29. *Id.*

30. *Id.*

sexualization, the second-class status. And the increasing inability to tell the difference between all of that and sex—all of that and just what a woman is.³¹

This is not just a story about white women. This is a story about women, unmodified, which includes Black women and Latinas and Native American women and white women and Asian women.

Women, moreover, are not defined and subordinated only by white men. Domination also comes from those who some of us call brother. Its origins are sometimes Latino as well as white, or Black as well as white, or Native American as well as white. Not only does MacKinnon tell Linda Marchiano's story,³² she also tells Mechelle Vinson's story.³³ Vinson's claim in *Meritor Savings Bank v. Vinson*³⁴ that sexual harassment is sex-based discrimination is one of the central cases that MacKinnon uses in developing her theory,³⁵ which has become the law on sexual harassment.

MacKinnon also tells Julia Martinez's story. Martinez brought suit, first in tribal court and then in federal court, arguing that a tribal law that denied full tribal membership to children of Santa Clara women who married outside of the tribe but did not deny full tribal membership to children of Santa Clara men who married outside of the tribe was a violation of equal protection of the laws.³⁶ MacKinnon writes in support of Martinez's claim, concluding that "the tribal rule in the *Martinez* case is male supremacist, not just sex differentiated."³⁷

Harris accuses MacKinnon of requiring Martinez to choose between equality as woman and her cultural identity, with the correct choice being that her female identity is more important than her tribal identity.³⁸ Harris argues that in order to be valid, MacKinnon's theory must be able to "shift focus from gender to race and other facets of identity and back again."³⁹ In this way, Harris faults MacKinnon for not writing a prescription for madness. Harris wants Martinez to "shift focus from gender to race and other facets of identity and back again." Because Harris imposes on Martinez "gender" as defined by someone other than Martinez and "race" as defined by someone other than

31. *Id.* at 25-26.

32. Marchiano is a white woman who was "coerced by abduction, systematic beatings, surveillance, and torture into the persona of 'Linda Lovelace,' the centerpiece of the pornographic film *Deep Throat*." CATHARINE A. MACKINNON, *Introduction*, in FEMINISM UNMODIFIED, *supra* note 11, at 10.

33. Vinson is a Black woman who, among other things, was raped and forced to perform sexual acts by her employer, who was a Black man.

34. 477 U.S. 57 (1986).

35. See CATHARINE A. MACKINNON, *Sexual Harassment: Its First Decade in Court* (1986), in FEMINISM UNMODIFIED, *supra* note 11, at 103-16.

36. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

37. CATHARINE A. MACKINNON, *Whose Culture? A Case Note on Martinez v. Santa Clara Pueblo* (1983), in FEMINISM UNMODIFIED, *supra* note 11, at 68-69.

38. Harris, *supra* note 1, at 594.

39. *Id.*

Martinez, Martinez is unable to have equality on her own terms, having, therefore, no real equality. MacKinnon, on the other hand, proposes the exact opposite. Rather than asking Martinez to choose between *some* identity as a woman and *some* identity as a Native American, MacKinnon argues that Native American women should be permitted to define what it means to be a Native American woman. She writes:

I raise this case because it poses difficult tensions, even conflicts, between equality of the sexes, on the one hand, and the need to approach those questions within their particular cultural meanings, in an awareness of history and out of respect for cultural diversity and the need for cultural survival, on the other. If questions of sex and sexism are not to be separated from questions of race and racism under the specific cultural and historical conditions in which both arise, as I think they cannot be, we need to ask: who will define what equality means?⁴⁰

If Martinez, as a Native American woman, were empowered to define what it means to be a Santa Clara woman, then she would define equality in her own terms, as she attempted to do by bringing suit before both the tribal court and the white (federal) court. Martinez asserts the right, as a Santa Clara woman, to say what her culture is; and her culture is one in which she is equal. Equality means that her identity as a Santa Clara woman capable of bearing Santa Clara children is no more invalidated by men⁴¹ than a Santa Clara man's identity is invalidated by women.

Harris asserts that for MacKinnon to argue Martinez's claim is to take the risk of "appear[ing] a white cultural imperialist."⁴² What Harris ignores, however, is that it was Martinez, not MacKinnon, who brought suit for *sex* discrimination. As a Santa Clara woman, Martinez identified as oppression a male-defined rule that had been passed off as her culture.

When Harris intimates that MacKinnon is a white cultural imperialist for taking up Martinez's claim, she fails in a most typical manner: she fails to believe in the woman. Rather than believing in the woman, Harris suggests that Martinez should have been "content with struggling for change from within" rather than asking the white government to intercede on her behalf.⁴³ How often have people of color been told to seek change more quietly, more slowly, and from within the system that oppresses us? And if women should be content to struggle "from within" rather going to the white government,

40. CATHARINE A. MACKINNON, *Whose Culture? a Case Note on Martinez v. Santa Clara Pueblo* (1983), in *FEMINISM UNMODIFIED*, *supra* note 11, at 65-66.

41. "Men," for Martinez, includes white men who infected Native American tribes with male supremacy (*id.*, at 69), Santa Clara men who create tribal law, or the man that she marries.

42. Harris, *supra* note 1, at 594.

43. *Id.*

should Black women be content to struggle within the rape culture that has become a part of Black male-defined culture and refrain from going to the white government when we are raped? Should Mechelle Vinson be content to struggle with the Black male supervisor who raped her rather than suing for sexual harassment? In rape cases, in sexual harassment cases, in child molestation cases—women and girls are often not believed. By defending Martinez's claim, far from being essentialist or imperialist, MacKinnon is merely saying to Martinez, "I believe you and recognize your right to define yourself as a whole person."

To a certain extent, Harris's first criticism of MacKinnon is a matter of what level of generality is acceptable. She questions MacKinnon's ability to say "we."⁴⁴ Paradoxically, she attacks the validity of MacKinnon's discussion of "we women" by saying, "we black women."⁴⁵ However, MacKinnon's theory is modelled on the experiences of Black women. Her theory derives from practice in which she advocates that model of sexual harassment on behalf of Black women.⁴⁶ In practice, she works to implement a civil rights ordinance that would create a cause of action for women, which includes Black women, subordinated by pornography.⁴⁷ Criticisms of her ability to speak for "us" women, then, seem theoretical.

III. RESOLVING A CONTRADICTION: BLACK WOMEN ARE WOMEN

While Harris's first contention is that MacKinnon relegates Black women to the brackets and footnotes of her theory, Harris's second major criticism is that Black women's experiences in MacKinnon's work are simply a contextual or quantitative variation of white women's experiences. "[I]n MacKinnon's work," she writes, "black women become something more than women."⁴⁸ Black women are white women plus, "the ultimate example of how bad things are."⁴⁹ She argues that MacKinnon's theory is a "nuance theory" in which Black women's differences are discussed as nuances of white women's theory of commonality.⁵⁰ "[B]y defining black women as 'different,'" she writes, "white women quietly become the norm, or pure essential woman."⁵¹ Harris's second criticism contradicts the first. Harris does not explain how MacKinnon has a theory in which Black women are *marginalized* on one hand and which is *typified* by Black women on the other.

44. See Harris, *supra* note 1, at 588.

45. For example, Harris puts "women" and "women's experience" in quotations as if they were tentative categories. See Harris, *supra* note 1, at 586-89, 591. On the other hand, she repeatedly asserts the experience of Black women without pause or quotation mark. See, e.g., Harris, *supra* note 1, 596-601, 606, 608, 612-13.

46. See CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* (1979).

47. See INDIANAPOLIS, IND., CODE ch. 16 (1984).

48. Harris, *supra* note 1, at 596.

49. *Id.*

50. *Id.* at 595.

51. *Id.*

The contradiction is resolved through the realization that MacKinnon has developed a theory in which Black women are central.

MacKinnon's inclusive definition of woman is evident in a passage in which she discusses how women are often treated with more significance as ideas than as women:

The more aggravated an injury becomes, the more it ceases to exist Our most powerful moment is on paper, in complaints we frame, and our worst is in the flesh in court. Although it isn't much, we have the most credibility when we are only an idea of us and our violation in their minds. In our allegations we construct reality to some extent; face to face, their angle of vision frames us irrevocably. In court we have breasts, we are Black, we are (in a word) women.⁵²

Black women cannot be a nuance of women because Black women *are* women. When MacKinnon writes about pornography, she is not only writing about white women, she is writing about women. When MacKinnon writes about sexual harassment, she is writing about women. Women of color are not nuances; we are often the model. MacKinnon does not marginalize Black women, nor does she make us into something more than women, because MacKinnon considers Black women to be women.

Harris often repeats MacKinnon's ideas when she describes Black women's experiences of dominance. For example, Harris argues that MacKinnon does not recognize how Black women's experience of beauty is qualitatively as well as quantitatively different. Her argument fails, however, when her description of Black women's experience of beauty echoes MacKinnon's description.⁵³ MacKinnon argues that men, and especially white men, have defined what womanhood is and what beauty is: "docile, soft, passive . . . weak."⁵⁴ Similarly, Harris's depiction of Black women's experience describes some Black women as aspiring to "refinement" (in white terms), learning lessons begun in "soft houses," developing "patience, high morals, and good manners," getting "rid of the funkiness."⁵⁵ In other words, Black women are

52. CATHARINE A. MACKINNON, *Sexual Harrassment: Its First Decade in Court (1986)*, in FEMINISM UNMODIFIED, *supra* note 11, at 111.

53. MacKinnon explains how a system of white male supremacy had 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.

Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515, 530 (1982), *quoted in* Harris, *supra* note 1, at 595.

54. Harris, *supra* note 1, at 596 (*quoting* Catharine A. MacKinnon, *supra* note 53, at 530).

55. Harris describes her version of Black women's experience, quoting a passage by Toni Morrison: [I]n 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." Beauty is

expected to mold ourselves to meet the definition of beauty established by “the white man.” Harris fails to distinguish her description of how women have been defined by men from MacKinnon’s description because in deconstructing the white, male power to define, MacKinnon does not limit the disempowering effect (quantitatively or qualitatively) to white women. In fact, MacKinnon specifically writes about how the experiences of Black women and economically disadvantaged white women who “never did fit”⁵⁶ are qualitatively different from women who failed or resisted the definition. In identifying the origin of definitions of womanhood and beauty, MacKinnon says what Harris repeats—that “Beauty *itself* is white,”⁵⁷ white as defined by men and subordinating of all women.

In her discussion of rape, Harris fails to demonstrate the deficiency in MacKinnon’s analysis. Harris argues that MacKinnon “produces an ahistorical account [of rape] that fails to capture the experience of black women.”⁵⁸ She notes that “MacKinnon sees sexuality as ‘a social sphere of male power of which forced sex is paradigmatic.’”⁵⁹ The contradiction in her argument unfolds in her discussion of rape; she accuses MacKinnon of being both “color-blind” and of using race as an intensifier.⁶⁰ She refers to MacKinnon’s statement that “[r]acism 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”⁶¹ and argues that MacKinnon models a theory in which “black women are victimized by rape just like white women, only more so.”⁶² In attempting to manufacture a “women plus” element in MacKinnon’s theory, Harris misses the point.

MacKinnon writes that Black women are *not* victimized by rape just like white women. MacKinnon explains that racism has erased rape as experienced

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.

Harris, *supra* note 1, at 597 (quoting TONI MORRISON, *THE BLUEST EYE* 64 (1970)).

56. See MacKinnon, *supra* note 53 and accompanying text.

57. MacKinnon, *supra* note 53, quoted in Harris, *supra* note 1, at 597 (emphasis in original).

58. Harris, *supra* note 1, at 598.

59. *Id.* (quoting Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635, 646 (1983)).

60. *Id.*

61. Harris, *supra* note 1, at 598 (quoting MacKinnon, *supra* note 59, at 646).

62. *Id.* at 598.

by women of color by making rape into something that is only done to white women by Black men. Harris quotes a passage in which MacKinnon describes the way white male culture has mystified the reality of rape: "[R]ape comes to mean a strange (read Black) man knowing a woman does not want sex and going ahead anyway."⁶³ Harris interprets this passage as "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."⁶⁴ MacKinnon's description is not an analysis of what rape means to white women but of how rape has been defined by white men⁶⁵ in order to obscure the rape of Black women.⁶⁶ MacKinnon explains that "[t]he invisibility of women of color is such that if you do not say that a woman is of color, it is assumed that her race is nonexistent—therefore, oddly, white."⁶⁷ Most white women are raped by white men—their fathers, their brothers, their boyfriends, husbands, or dates.⁶⁸ MacKinnon describes the only type of rape that has been recognized by white male culture. MacKinnon's point is that the white male definition has nothing to do with the experience of Black women or white women or most women (unmodified, which since Black women *are* women, includes Black women). She writes this in a passage similar to the one that Harris quotes:

The legal claim for sexual harassment marks the first time in history, to my knowledge, that women have defined women's injuries in a law. Consider what has happened with rape. We have never defined the injury of rape; men define it. The men who define it, define what they take to be this violation of women according to, among other things, what they think they don't do. In this way rape becomes an act of a stranger (they mean Black) committed upon a woman (white) whom he has never seen before. Most rapes are intraracial and are committed by men the women know.⁶⁹

Not only does the white male paradigm of rape *not* reflect the experiences of white women, but it also does not reflect the experiences of Black women, who are raped mostly by Black men.⁷⁰

63. *Id.* (quoting MacKinnon, *supra* note 59, at 653).

64. *Id.*

65. MacKinnon writes this in discussing a series of rapes that occurred at Stanford University, exposing rape by a stranger and rape by a Black man as "the white male archetype of rape." CATHARINE A. MACKINNON, *A Rally against Rape (1981)*, in *FEMINISM UNMODIFIED*, *supra* note 11, at 81.

66. In the essay that Harris cites (MACKINNON, *supra* note 65, at 81, cited in Harris, *supra* note 1, at 598 n.79) MacKinnon explicitly discusses the rape of two women of color.

67. MACKINNON, *supra* note 65, at 81-82, cited in Harris, *supra* note 1, at 598 n.79.

68. DIANE E. H. RUSSELL, *RAPE IN MARRIAGE* 64-66, 130 (1982).

69. CATHARINE A. MACKINNON, *Sexual Harassment: Its First Decade in Court (1986)*, in *FEMINISM UNMODIFIED*, *supra* note 11, at XX, 105 (citation omitted).

70. Wallace D. Loh, *The Impact of Common Law and Reform Rape Statutes on Prosecution: An Empirical Study*, 55 Wash. L. Rev. 543, 589 n.250 (1980) (citations omitted); Toni M. Massaro, *Experts, Psychology, Credibility, and Rape: The Rape Trauma Syndrome Issue and Its Implications for Expert Psychological Testimony*, 69 MINN. L. REV. 395, 403 (1985) (citations omitted). See also DIANE E. H.

That Harris has missed the point is evident when she repeats MacKinnon's analysis.⁷¹ She writes:

[A]s 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. 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. 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.⁷²

Harris agrees with MacKinnon that the construction of rape as something done to white women by Black men provided white women with formal but not real protection. Harris reiterates MacKinnon's analysis that the white male paradigm of rape leaves Black women vulnerable to rape by both white men and Black men (in other words, "disproportionately"). MacKinnon's theory is not an analysis of Black women as women plus; rather it is an analysis of how Black women have experienced rape.

That Harris, in writing about the experiences of Black women, often echoes MacKinnon's analysis is not surprising given the fact that both are writing about us women. Their analyses are alike not because all women are the same, but because women have been denied jurisdiction over our own identity, the power to say who we are. Harris stops short of MacKinnon's vision, focusing on the multiplicity that results from disempowerment as a rallying point. Harris is correct in pointing out that Black women must recognize our multiple consciousness and appreciate our genius and endurance in surviving, having

RUSSELL, *SEXUAL EXPLOITATION* 90-93 (1984).

71. Part of Harris's analysis that she does not borrow from MacKinnon is "the paradigm experience of rape for black women." Harris, *supra* note 1, at 598. She writes that "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." *Id.* In presenting the paradigmatic rape of Black women, not only does Harris fail to explain how such a categorization is not essentialist in her own terms, but the paradigm that she presents ignores the fact that most Black women who are raped are raped by Black men. See sources cited *supra* note 70. Of course some Black women are raped by white men, but Harris's presentation of this type of rape as the paradigmatic rape obscures the rape of Black women by Black men that is most common.

In contrast, consider bell hooks's deconstruction of the sexism of "black liberation struggle" which often has been symbolized by the struggle for "black manhood:"

Sexism has always been a political stance mediating racial domination, enabling white men and black men to share a common sensibility about sex roles and the importance of male domination. Clearly both groups have equated freedom with manhood, and manhood with the right of men to have indiscriminate access to the bodies of women. Both groups have been socialized to condone patriarchal affirmation of rape as an acceptable way to maintain male domination. It is this merging of sexuality with male domination within patriarchy that informs the construction of masculinity for men of all races and classes.

BELL HOOKS, *Reflections on Race and Sex*, in *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* 57, 59-60 (1990).

72. Harris, *supra* note 1, at 599 (citations omitted).

drawn our identity from various sources. Nevertheless, her theory fails in that she leaves us in Pecola Breedlove's madness. Recognition of multiple consciousness, that we are not the definers, is a step toward becoming definers, not the end of the journey. Recognizing our many voices must only be the means by which we write new definitions and claim the power to say who we are.

IV. EPILOGUE: ON UNSPOKEN RULES, AND SPACE

An acknowledged subtext of this essay is that in the process of defining Black women in the legal context, I have engaged Professor Harris in a public debate over the theories of a white woman. This public discourse is justified because many of Professor Harris's characterizations are inaccurate and because the potential effect of Professor Harris's approach would be to curtail Black women's power of self-definition.

While part of my thesis has been that Black women must claim and actualize a status as self-definers, I have not in this essay attempted to give content to the definitions that Black women might discover. By labelling MacKinnon an "essentialist," Harris necessarily adopts a content of what it means to be Black and female and determines that this content is something outside of the parameters of MacKinnon's theory, thus closing off space for self-definition.

Consider the following example. My statement, "I am a Black woman," will necessarily be different in content from Harris's statement, "I am a Black woman," although both will be valid if both definitions are created out of our own personal experience, rather than adopted from current definitions. The content of *my* "I am" will be a whole and definitive answer to the question, "What is a Black woman?" *My* "I am," though specific to me, contributes to a general definition of Black women. And it is not essentialist because it is not exclusive. As long as other Black women generate their *own* definitions of Black woman, then my "I am" is not diminished, distorted, or silenced by theirs, nor is theirs diminished, distorted, or silenced by mine. As long as the content is self-defined, other definitions remain valid.

All definitions, if self-generated, may be equally valid in contributing to the collective, "we."⁷³ Professor Harris limits Black women's potential as definers because she gives content that comes from pre-defined categories of Black and woman;⁷⁴ and these definitions have the capacity to diminish both

73. This statement assumes that individual definitions are generally weighted equally, which is usually the case among women of color.

74. In contrast, consider the meaning that bell hooks contributes to the definition of Black woman. She deconstructs the sexism in the view of woman as "natural" homemaker and suggests a reconstructed approach to this aspect of women's struggle against oppression, drawing from her experiences of the "homeplace":

I had read it in the slave narratives of African-American women who, like Sojourner Truth, could say, "When I cried out with a mother's grief none but Jesus heard." I knew this story. I had

who I am and who the self-defined, collective "we" are.

MacKinnon cannot define Black woman, but in deconstructing male definitions that have been imposed on women, she creates space for new definitions. For example, by deconstructing the male definition of what it means to be a woman in the workplace, she formulated the law of sexual harassment, based in part on the experiences of Mechelle Vinson. In addition, the space that she created through this deconstruction made it possible for Anita Hill to present a claim of injury. In the male-defined, pre-*Vinson* world, what happened to Hill would have been the "normal" interaction between men and women. In the deconstructed space of the post-*Vinson* world, what happened to Hill is what *Hill* defined as sexual harassment. When Professor Harris asserts that MacKinnon's theories do not apply to Black women, the effect is to close off space that has been opened through deconstruction.

Professor Harris's criticism attempts to give a universal (rather than individual) content to the definition of Black women. She would define the group as a unit, rather than allowing the group to be defined as a collective of self-defined individuals. In other words, Professor Harris's criticisms have the effect of saying "We are not a part of the space produced by MacKinnon's deconstruction." This implies that none of us have been sexually harassed or subordinated by pornography, for example, and diminishes the capacity of those of us who have been harassed and/or subordinated to define ourselves in that space. Sometimes rules should be broken.⁷⁵ In this instance, engaging in public discourse is as much an act of preserving space for self-definitions as a debate about theory.

grown to womanhood hearing about black women who nurtured and cared for white families when they longed to have time and energy to give to their own. . . . For those who dominate and oppress us benefit most when we have nothing to give our own, when they have so taken from us our dignity, our humanness that we have nothing left, no "homeplace" where we can recover ourselves.

She continues:

Drawing on past legacies, contemporary black women can begin to *reconceptualize* ideas of homeplace, once again considering the primacy of domesticity as a site for subversion and resistance. When we renew our concern with homeplace, we can address political issues that most affect our daily lives.

BELL HOOKS, *Homeplace: a site of resistance*, in *YEARNING: RACE, GENDER, AND CULTURAL POLITICS*, *supra* note 71, at 41, 43, 48 (emphasis added).

75. See BELL HOOKS, *Liberation scenes: speak this yearning*, in *YEARNING: RACE, GENDER, AND CULTURAL POLITICS*, *supra* note 71, at 1.

