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FROM LAVENDER TO PURPLE: PRIVACY, BLACK WOMEN, AND FEMINIST LEGAL THEORY*

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Feminist legal theory, practice, and politics have been constructed around making “the personal political,” subjecting and exposing space traditionally seen as private to public purview, in order to safeguard the female subject’s bodily integrity. Conventional feminist legal theory asserts that privacy functions as an ideology that enables male violence against women with little, or no, legal, social, or cultural recourse. It is this characterization of the private that has led feminists to assert that men and women are unequally situated subjects in relation to the private. Catharine MacKinnon argues, “the law of privacy treats the private sphere as a sphere of personal freedom. For men, it is. For women, the private is the distinctive sphere of intimate violation and abuse, neither free nor particularly personal.”¹ That is, feminist theory has developed the notion of the private as a space that cultivates male autonomy and reifies female subordination and has sought to destabilize the private/public binary to foreground the ways in which “[c]oncepts of privacy permit, encourage, and reinforce violence against women.”²

* “Lavender to purple” is drawn from Alice Walker’s definition of “womanism.” She notes “womanist is to feminist as purple to lavender.” ALICE WALKER, *IN SEARCH OF OUR MOTHERS’ GARDENS* xii (1983).

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¹ CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 168 (1989). Most feminist scholarship focusing on domestic violence has centered on male violence against women, a theoretical assumption founded in empirical evidence. However, in framing domestic violence as necessarily between a male batterer and a female victim, feminist theory has reified the heterosexist assumptions that it purports to problematize. Therefore, feminists need to re-commit to grappling with the particularity and pervasiveness of male violence against women while developing a theoretical and political model that is inclusive of intimate partner violence more generally. This model needs to include same-sex violence not as an after-thought, but as a central component of the framework.

² ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 87 (2000). See also Catharine A. MacKinnon, *Disputing Male Sovereignty*, 114 *Harvard L. Rev.* 135, 174-175 (2000).

The closer to home women’s injuries are addressed, the less power and fewer rights they seem to have; the further away from home the forum, the more power and rights women have gained—and with them freedom of action, resources, and access to a larger world.

Thus, feminist scholarship has committed itself to “explod[ing] the private” in order to secure the female subject’s safety and to ensure that male violence is taken seriously by the state.³ Under this regime, the private is a space of injury, a primary locus of female subjugation, and a stronghold of patriarchal control.

The feminist critique of the private has been particularly visible in feminist discourse surrounding domestic violence where feminists have skillfully and successfully demonstrated that “the veil of privacy” or “the veil of relationship” has to be pierced in order to both protect the abused female subject and to hold batterers accountable for their criminal conduct.⁴ Feminists have revealed the “veil of privacy” operates to render battering socially and culturally invisible and to render women’s injuries legally insignificant because they occur both in the private sphere and “in the name of love.”⁵ Feminist law reform efforts, animated by a belief in the importance of the exposure of the private, have championed mandatory arrest/no drop policies as an important way of ensuring that the state engages attention to “private” injuries as seriously as it engages attention to “public” injuries.⁶ Elizabeth Schneider notes that mandatory arrest laws:

[S]end a message that domestic violence shall not be treated as a less serious crime than violence between strangers, and thus they transform the private nature of domestic violence into a public matter. Otherwise, by refusing to intervene under a rationale that domestic violence is a private family matter, the state not only condones beating but in fact promotes it.⁷

Thus, mandatory state intervention functions as a signal that the private is no longer a site of male control and dominance, or a space where men can abuse women with immunity, but rather a site where the state must intervene in order to fulfill the promise of equal protection, bodily integrity, and sex equality.

While mandatory arrest/no-drop policies have not been uncontested within the feminist legal theoretical and political tradition, there is a paucity of feminist scholarship that has meaningfully grappled with the experiences of domestic

In experiential terms, women are least equal at home, in private; they have had the most equality in public, far from home. It is in the private, man’s sovereign castle, where most women remain for a lifetime, where women are most likely to be battered and sexually assaulted, and where they have no recourse because the private, by definition is inviolable and recourse means intervention.

MacKinnon, *Disputing Male Sovereignty*, *supra* at 174-175.

³ CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 100 (1987). See also Sally F. Goldfarb, *Public Rights for “Private” Wrongs: Sexual Harassment and the Violence Against Women Act*, in DIRECTIONS IN SEXUAL HARASSMENT LAW (Catharine MacKinnon & Reva Siegel, eds., 2004).

⁴ Reva Siegel, ‘The Rule of Love’: Wife Beating as Prerogative and Privacy, 105 YALE L.J. 2117, 2196-2206 (1996).

⁵ ANN JONES, NEXT TIME SHE’LL BE DEAD 106-128 (Beacon Press 2000).

⁶ It is important to note that some theorists have advocated mandatory victim participation in the prosecution of the batterer in addition to mandatory arrest/no-drop policies. I will be dealing exclusively with mandatory arrest/no-drop policies rather than explaining the literature on mandated victim participation. For more on mandatory participation, see Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARVARD L. REV. 1849 (1996).

⁷ SCHNEIDER, *supra* note 2, at 186.

violence and the repercussions of mandated “engagement with the state” for racially marginalized subjects.⁸ That is, while the problematization of the private has been tremendously successful at engendering cultural space for articulating gendered injuries including domestic violence, sexual assault, and sexual harassment, the starting point for this intervention is a particular vision of the female subject: White, heterosexual, and middle-class.⁹ Underpinning the feminist “personal is political” strategy is a notion of a female subject whose body is not subject to hyper-surveillance by law enforcement, whose choices are not culturally scrutinized because of race or ethnicity, and whose home is not a refuge from the simultaneity of racism and sexism. Because black female subjects are not granted social, cultural, or legal privacy, the ostensibly radical feminist strategy of “exploding” the private is considerably less radical when applied to subjects who are not given cultural or legal freedom from surveillance.¹⁰

By offering an analysis of the private as a site of potential liberation, empowerment, and physical, social, and psychic safety, I will provide a counter-narrative that challenges the dominant feminist conception of the private as necessarily a site of female subordination. Rather than arguing that the feminist strategy of problematizing the private should be abandoned, I will argue that a more nuanced and complex approach to critiquing the culturally entrenched private/public binary is necessary. Underpinning my approach will be a

⁸ By “racially marginalized subjects” and “communities of color,” I am hoping to point to the fact that while “racially marginalized subjects” might not see themselves, their experiences, or their beliefs as marginal, they have been pushed to the cultural and political periphery both by white-dominated heteronormative patriarchy and by feminist hegemony. I will use “black” (and not African-American) to gesture at the continued cultural significance of color. Patricia J. Williams notes that, “[I] use . . . the term ‘black’ in order to accentuate the unshaded monolithism of color itself as a social force.” PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*, 257 (1991). “Engaging with the state” is Elizabeth Schneider’s term. See Schneider, *supra* note 2, at 181.

⁹ I deploy this not to assume a monolithic “white heterosexual middle-class female subject” experience but to highlight the ways in which a particularized (and prototyped) female subject underpins feminist scholarship. Some have critiqued the analysis of the “white heterosexual middle-class female subject” as the feminist subject’s arguing that this term has not been sufficiently problematized, interrogated, and scrutinized. I am utilizing it to foreground the ways in which feminist theory itself rests upon the architecture of a generalization. See Catharine MacKinnon, *From Practice to Theory, Or What Is A White Woman Anyway?*, 4 *YALE J.L. & FEMINISM* 13, 20 (1991). MacKinnon notes that:

Beneath the trivialization of the white woman’s subordination implicit in the dismissive sneer ‘straight white economically-privileged women’ (a phrase which has become one word, the accuracy of some of its terms being rarely documented even in law journals) lies the notion that there is no such thing as the oppression of women as such.

Id.

¹⁰ Hazel Carby offers a useful and insightful critique of feminist notions of “the family,” “patriarchy,” and “reproduction,” arguing that “[w]hen used they are placed in a context of the herstory of white (frequently middle-class) women and become contradictory when applied to the lives and experiences of black women.” Hazel Carby, *White Woman Listen! Black Feminism and the Boundaries of Sisterhood*, in *BLACK BRITISH CULTURAL STUDIES* 63 (Houston A. Baker et al. eds., 1996). It is also important to note that there is an array of subjects denied cultural or legal privacy. These subjects are marked by difference in some way: Ethnic minorities, religious minorities (particularly in our post-September 11th cultural moment), sexual minorities, lower-income communities, queer subjects, etc. My focus will be on racial minorities and the particular counter-narrative that black women and privacy can provide to feminist law reform efforts. However, I am cognizant throughout of the fact that privacy remains a radical political project for an array of minority subjects.

commitment to the significant theoretical interventions of both "intersectionality"¹¹ and "complex personhood,"¹² and a recognition that while the private can function as a space of violence, abuse, subordination, and exploitation, it can also operate as a locus of empowerment, safety, community-building, and solidarity, and it can perform contradictory meanings simultaneously. In particular, I hope to complicate the conventional feminist strategy of disrupting and dislodging the private by arguing that the private can function as a radical site for culturally marginalized subjects who may envision the private sphere as a critical site of safety.¹³ In offering this picture, I will suggest that as feminists continue to problematize the history and legacy of separate-spheres ideology and its connection to the cultural omnipresence of intimate partner violence, our critique must be attentive to multiplicity and complexity to ensure that our theory and politics do not replicate the problems of feminist hegemony and exclusivity that have plagued feminist scholarship since its inception.

The first part of this paper will map the theoretical terrain from which I will draw a framework committed to anti-essentialist theorizing and de-centering the privileged theoretical and political position of the white female subject. The second part of this paper will look at the state of mandatory arrest/no-drop laws, their relationship to the feminist problematization of the private, and the arguments that have been advanced on both sides of the feminist debate around this policy intervention. The absence of an analysis of the experience of domestic violence for women of color and an examination of the problematic role of the state in the lived experiences (and cultural and historical memories) of some black subjects will serve as the cornerstone of the third part. In that section, I will grapple with the ways in which a theory of the simultaneity of gender and race oppressions

¹¹ "Intersectionality" is Kimberlé Crenshaw's term used to describe the fact that race, gender, sexual orientation, class, and an array of other social categories intersect to form one's position in the social hierarchy and to craft, constitute, and shape one's lived experience. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 357-384 (Kimberlé Crenshaw et al. eds., 1995).

¹² AVERY GORDON, *GHOSTLY MATTERS: HAUNTING AND THE SOCIOLOGICAL IMAGINATION* 5 (1997) (defining "complex personhood" as "about conferring the respect on others that comes from presuming that life and people's lives are simultaneously straightforward and full of enormously subtle meaning.").

¹³ As a black female subject writing about black female subjects' lived experiences, I am negotiating the dilemma of "we" and "they." For more on this linguistic dilemma, see Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). Crenshaw asserts:

One of the conventions of dominant scholarship is the use of 'they' or 'them' to denote Blacks as a subject group. Implicit in such references is a silent 'we' which carries the appearance of objectivity but actually presumes a dominant group perspective. This creates a dilemma for some Black scholars who must either risk self-exclusion by referring to our own cultural group as 'they' or adopt a seemingly unscholarly approach to the subject by assuming a 'we' identity. I have sometimes succumbed to convention; however, I acknowledge the dilemma in hopes that doing so may somehow bridge the distance created by my occasional use of 'them' or 'they.'

illuminates the shortcomings of the feminist critique of privacy as manifested in mandatory arrest/no-drop policies. Finally, the last portion of the paper will argue in favor of a more radical and nuanced conception of the private, a vision that recognizes the multiplicity of meanings inherent in the private as it can function as a site for self-cultivation, community-building, and political solidarity in addition to being a site of women's subordination.

I. BEYOND AFTER-THOUGHT POLITICS:

“WHAT EXACTLY DO YOU MEAN WHEN YOU SAY ‘WE?’”¹⁴

The critique of feminist theory as shaped, molded, and crafted around the white, middle-class, heterosexual female subject is so familiar that it is both universally recognized and quickly dismissed in an array of academic literature.¹⁵ That is, it has become commonplace for feminist work to begin with the caveat that race, class, and sexual orientation matter, and that intersections of identities inform material realities and subject experiences. Yet there is still a paucity of feminist scholarship utilizing “intersectionality” as the methodology underpinning and animating the analysis.¹⁶ This critique of feminist theory has early roots: Second-wave women-of-color feminist/womanist interventions critiqued the exclusion of women of color from feminist discourse and/or the tokenistic inclusion of a singular woman-of-color's voice to stand in for the experiences of all women of color.¹⁷ Expressing concern about the erasure of race (and other marginalized cultural identities) from dominant feminist theorizing, many women of color feminists articulated their theoretical and political frustration with having to

¹⁴ Carby, *supra* note 10, at 84.

¹⁵ For a discussion of feminist silences on race and an analysis of black feminisms, see BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* (1984); *ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN'S STUDIES* (Gloria Hull et al. eds., 1982); MICHELE WALLACE, *BLACK MACHO AND THE MYTH OF THE SUPERWOMAN* (1979); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* (1st ed. 1990). For a poetic articulation of the experience of black female subjectivity, see NTOZAKE SHANGE, *FOR COLORED GIRLS WHO HAVE CONSIDERED SUICIDE / WHEN THE RAINBOW IS ENUF* 45 (1975) (noting, “bein alive & bein a woman & bein colored is a metaphysical dilemma”). Some scholars have grappled with how to meaningfully include an array of women's experiences under the organizing tenant of feminist theory without either simplifying and generalizing complex lived experience or engaging in:

Commatization . . . a punctuational device whereby individual groups are enumerated as a proxy for a larger classification, as, for example, when diverse categories of people are listed, such as “social class (comma) women (comma) blacks (comma) gays (comma) youth (comma) and so forth.” The concern is that the array of commatized groups in this example not only suggests that all characteristics are of equal significance, but also submerges the intersections among different forms of oppression.

Marlee Kline, *Race, Racism, and Feminist Theory*, 12 HARV. WOMEN'S L.J. 115, 145-146 (1989).

¹⁶ For a text that meaningfully grapples with complexity, see *WHORES AND OTHER FEMINISTS* (Jill Nagle ed., 1997). Nagle deploys “intersectionality” as methodology and remains committed to questions of the simultaneity of gender, race, sexual orientation, and class, including complexity not as an after-thought but as central to its analysis.

¹⁷ See *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* (Cherrie Moraga & Gloria Anzaldúa eds., 1st ed. 1981).

function as "the bridge," the connection between ostensibly separate radical projects: Dismantling patriarchy and dismantling racism.¹⁸

We currently inhabit a "post-feminist" or "third wave feminist" cultural moment. A moment that is ostensibly marked by multiculturalism, diversity, and racial and ethnic plurality. Nevertheless, the second-wave feminist critique remains a potent one as there continues to be a dearth of meaningful feminist scholarship that integrates and draws on the voices, narratives, and experiences of women of color.¹⁹ Patricia Hill Collins argues that "theories advanced as being universally applicable to women as a group upon closer examination appear greatly limited by the White, middle-class, and Western origin of their proponents."²⁰ In addition to theories that are explicitly or implicitly constructed around the white female subject's experience, Collins notes that "lip-service" theorizing occurs where white feminists conclude that they are unable to grapple with multiplicity. Collins asserts that this is either because of the white feminists' subject position or where the inclusion of a singular black voice serves to fill the feminist multiplicity quota and to bolster the feminist claim that a particular problem is about gender while disregarding an analysis of the simultaneity of race and gender.²¹ Thus, the black

¹⁸ See Donna Kate Rushin, *The Bridge Poem*, in *THIS BRIDGE*, *supra* note 17, at xxi.

I've had enough / . . . Sick of being the damn bridge for everybody / . . . I explain my mother to my father my father to my little sister / My little sister to my brother my brother to the white feminists / The white feminists to the Black church folks the Black church folks / To the ex-hippies the ex-hippies to the Black separatists the / Black separatists to the artists to my friends' parents / . . . I do more translating / Than the Gawdamn U.N. / Forget it / I'm sick of it . . .

Id.

¹⁹ "Post feminism" and "third wave" are two historical terms that are deserving of intellectual suspicion. "Post feminism" suggests that we inhabit an era in which the feminist project is complete, a proposition that I wholeheartedly contest given the omnipresence of violence against women, the continued under-representation of women in an array of governmental, political, and cultural institutions, etc. "Third wave feminism" seems to suggest that the projects and commitments of "second wave" have been resolved (another proposition I contest) or that feminism has re-invented and re-framed itself. Presumably, "third wave" has a renewed commitment to multiplicity and diversity. Despite this presumed commitment to multiculturalism, I have yet to see a full and meaningful representation of women of color as women of color, women whose identities are intersectional, in the "third wave" movement. For more on the critique of third wave feminism, see Rebecca Hurdis, *Divorced from History: Women of Color and the Third Wave*, Address at the American Sociological Association Conference (Aug. 17, 2003).

²⁰ PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 5-6 (1990).

²¹ See Collins, *supra* note 20, at 6. See generally Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -isms)*, 1991 *DUKE L.J.* 397 (1991). See HAZEL CARBY, *RACE MEN* 5 (1998). Carby argues that:

[I]t is true that, superficially, the situation appears to have improved. The words 'women and gender' are frequently added after the word 'race' and the appropriate commas, and increasingly the word 'sexuality' completes the litany. On occasion a particular black woman's name will be mentioned, like that of Toni Morrison. But the *intellectual work* of black women and gay men is not thought to be of enough significance to be engaged with, argued with, agreed or disagreed with. Thus terms like women, gender, and sexuality have a decorative function only. They color the background of the canvas to create the appropriate illusion of inclusion and diversity, but they do not affect the shape or texture of the subject.

CARBY, *RACE MEN*, *supra* at 5.

female subject's experience is erased or essentialized to bolster conventional "feminist ends," ends which are fundamentally connected to situating gender as the sole or primary locus of oppression.

The deployment of the black female subject to advance the ends of conventional white feminist theorizing has been poignantly critiqued by Angela Harris, who examines MacKinnon's deployment of the black woman as the representation of the most oppressed woman, the subject whose subordination reveals the depths of gender oppression. Harris notes, "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."²² Harris's critical deconstruction of essentialist feminist theory problematizes both the failure of feminist theory to adequately grapple with multiplicity and the strategic deployment of the black female subject to reify claims about gender and to render claims about race (or the simultaneity of race and gender) invisible.

Harris's critique reveals the ways in which under white feminist hegemony, the white female subject remains the "measure of all things."²³ MacKinnon poignantly interrupted the conventional feminist sameness/difference debate by offering a unique insight: That the measure of sameness or difference always centers on the male subject as the norm. Similarly, feminist theorizing and praxis have routinely discussed the female subject's experience with the white woman as the norm, as the quintessential feminist subject.²⁴ The result has been both the exiting out of feminism for many black female subjects who have asserted both that the subject of feminism and the actual practice of feminism is too far removed, too theoretical, or too incompatible with the material realities of their lives. This sentiment is articulated by Linda LaRue who argues that "'[c]ommon oppression' is fine for rhetoric, but it does not reflect the actual distance between the oppression of the black man and woman who are unemployed, and the 'oppression' of the American white woman who is 'sick and tired' of *Playboy* foldouts, or of Christian Dior lowering hemlines or adding ruffles"²⁵ Because of feminist hegemony or a sense that feminist commitments do not elucidate, inform, or describe black female subjects' lived experiences, some black feminists have asserted that black female subjects and white female subjects have radically different visions of what the political content of feminism should be.²⁶

²² Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 596 (1990).

²³ MACKINNON, *supra* note 3, at 34.

²⁴ The white female subject as the measure of all things has been a force that has caused many woman of color feminists/womanists to strongly critique feminism or to craft and cultivate new definitions of feminism. See Walker, *supra* note *, at xi (defining "womanism").

²⁵ Linda LaRue, *The Black Movement and Women's Liberation*, in WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 164 (Beverly Guy-Sheftall ed., 1995).

²⁶ See, e.g., *The Combahee River Collective, A Black Feminist Statement*, in THIS BRIDGE CALLED MY BACK 218 (Cherrie Moraga and Gloria Anzaldúa eds., 1981). The Collective notes that:

Kimberlé Crenshaw's theoretical notion of "intersectionality" has provided a significant vocabulary for feminists to grapple with the simultaneity of oppression(s), and for feminists to imagine creating a cohesive theory and practice that seeks to represent the complexity and diversity of women's experiences. Crenshaw writes:

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.²⁷

"Intersectionality" has provided a useful rhetorical and theoretical device for conceptualizing and examining the ways in which identities are complex and multifaceted. However, "intersectionality" has not yet developed a methodology for feminists to think about meaningfully inclusive praxis and political organizing. That is, while "intersectionality" requires feminist theory to disengage the pervasive practice of pitting race and gender (and other social categories) against each other and to examine the simultaneity of hierarchy and social disadvantage, the theory has not yet developed a way of "doing" feminist work, a particular methodology. The current feminist application of "intersectionality" reads more like a recipe (i.e. GENDER + RACE + CLASS + SEXUAL ORIENTATION = INCLUSIVE FEMINIST THEORIZING) than a political or theoretical commitment to the complexities of "intersectional" identities.²⁸

The fact that Crenshaw's tremendously valuable notion of "intersectionality" has not yielded a feminist methodology is not a reason to critique the usefulness and insightfulness of her contribution. Rather, Crenshaw's intervention poses a critical challenge to feminists to begin developing analyses that reflect a commitment to complex subject positions and experiences. In seeking to utilize

One issue that is of major concern to us and that we have begun to publicly address is racism in the white women's movement. As Black feminists we are made constantly and painfully aware of how little effort white women have made to understand and combat their racism, which requires among other things that they have a more than superficial comprehension of race, color, and black history and culture . . . in the practice of our politics we do not believe that the end always justifies the means. As feminists we do not want to mess over people in the name of politics . . . We are committed to a continual examination of our politics as they develop through criticism and self-criticism as an essential aspect of our practice.

Id.

²⁷ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, in *THE BLACK FEMINIST READER* 209 (Joy James & T. Denean Sharpley-Whiting eds., 2000).

²⁸ I use "intersectional identities" so as not to suggest that any subjects are without "intersectional identities." For example, white female subjects have "intersectional identities" where white privilege intersects with gender oppression and with an array of other social categories (i.e. class, sexual orientation) to locate a particular subject in our social hierarchy. See Kline, *supra* note 15. I use the term "intersectional identities" to describe the intersection of multiple disadvantaged social categories. Thus, I use "intersectional identities" to analyze the intersection that constitutes black female subjectivity under conditions of white-supremacist patriarchy.

Crenshaw's formulation, I will use a methodology of the multiple; it is my belief that a methodology of the multiple, one which engages with discursive silences, theoretical absences, and political shortcomings, and which seeks to build both its theory and its politics around the diversity, multiplicity, and variety of women's experiences, will come closest to Crenshaw's theoretical promise of "intersectionality." While nuanced theorizing necessarily requires a scholarly uncertainty, a recognition of the failure of theory to ever have full explanatory power over the multiplicity of every subject's lived experience, I believe that a methodology of the multiple can function as a starting point for grappling with how to move beyond multiplicity as a mantra to a multiplicity steeped in a meaningful theoretical and political content.

II. THE CRITIQUE OF PRIVACY AS PRACTICE: MANDATORY ARREST/NO-DROP ON THE GROUND

The critique of privacy, which has functioned as one of the cornerstones of both feminist theory and praxis, is particularly evident in feminist domestic violence law reform efforts. The starting point of feminist law reform in the domestic violence arena has been a problematization of the doctrine of "affective privacy."²⁹ In a historical moment where "the rule of love has superseded the rule of force," feminists have argued that the cultural (omni)presence of domestic violence has been enabled by a legal and cultural perception that injuries that occur within the private space of the home are private injuries that are less deserving of legal attention.³⁰ MacKinnon articulates this as a "dynamic" where:

[M]en often respect other men's terrain as sovereign in exchange for those other men's respect for their own sovereignty on their own terrain. As a result of such balances that men with power strike among themselves . . . men have the most freedom at home, and women gain correspondingly greater equality, hence freedom, the further away from home they go.³¹

Many feminists have contextualized MacKinnon's analysis, examining the historical trajectory from legally-sanctioned male violence to legally-tolerated male violence to the beginnings of legal intolerance of male violence. Underpinning this analysis is a concern with the ways in which "men have enjoyed the shield of 'private family matters' to protect themselves against legal intervention."³² While the size and contour of that "shield" has varied across historical moments and is related to subject position and social hierarchy, meaningful feminist interventions in the arena of domestic violence continue to be haunted by the specter of the private, by a pervasive cultural perception that the abuse that women suffer at home is simply not culturally or legally relevant.

²⁹ Siegel, *supra* note 4, at 2120.

³⁰ *Id.* at 2143.

³¹ MacKinnon, *supra* note 2, at 175.

³² Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 285 (1997).

Mandatory arrest/no-drop policies were originally envisioned as an appropriate and useful response to domestic violence because state (in)action in response to domestic violence revealed a legal indifference to women's injuries.³³ Mandatory arrest policies require law enforcement to arrest the batterer whenever there is probable cause to believe that an assault has occurred. A mandatory arrest regime is designed to remove discretion from law enforcement and to require a uniform state response to domestic violence.³⁴ This uniform response is significant for two reasons: First, it removes discretion from law enforcement who traditionally are not taking domestic violence seriously, absent the threat of liability; second, it removes the decision to arrest the batterer from the victim who may feel coerced by her batterer not to "engage with the state" as she would like in order to preserve her safety.³⁵ Adopted in forty-nine states, mandatory arrest policies are advanced as a way to insure that law enforcement responds uniformly, fairly, and seriously to all domestic violence cases.³⁶

Similarly, no-drop policies or no-drop prosecutions require the prosecution to pursue a case against the perpetrator regardless of the participation or consent of the victim. Linda Mills notes, "[p]rosecutors try these cases in the same manner in which they conduct murder trials—without the primary witness, namely, the victim."³⁷ Many have argued that this prosecutorial strategy is particularly significant because the state has learned to take domestic violence cases as seriously as any other case the state would pursue regardless of the consent of the victim, the willingness of the victim to testify against the perpetrator, or the presence of the victim at court hearings.³⁸

Mills traces the advent of mandatory arrest/no-drop laws to a study by Lawrence Sherman and Richard Berk, which found that arrests significantly decreased recidivism in domestic violence cases.³⁹ Despite the fact that other studies have complicated and problematized the Sherman and Berk findings, suggesting that mandatory arrest might not have a uniform or monolithic effect on stopping batterers' abusive and criminal behavior, law enforcement continues to embrace mandatory arrest policies.⁴⁰ Proponents of mandatory arrest laws argue

³³ For an egregious example of state inaction in a domestic violence case, see *Thurman v. City of Torrington*, 595 F.Supp. 1521 (D.Conn. 1984).

³⁴ Schneider, *supra* note 2, at 184. It is important to note that even under a mandatory arrest scheme, some law enforcement discretion remains as officers still have to find probable cause to arrest the batterer.

³⁵ See *id.* at 184-186.

³⁶ LINDA MILLS, FROM INSULT TO INJURY: RETHINKING OUR RESPONSES TO INTIMATE ABUSE 37 (2003). Mills notes that only Washington D.C. and Arkansas do not have mandatory arrest domestic violence policies. This uniform serious response is critical because of the potential lethality of domestic violence.

³⁷ *Id.* at 40.

³⁸ Angela Corsilles, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 FORDHAM L. REV. 853, 874 (1994).

³⁹ MILLS, *supra* note 36, at 36. See Lawrence Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261 (1984).

⁴⁰ MILLS, *supra* note 36, at 37-39.

they represent the end of cultural and legal toleration of violence against women and compel the state to engage with domestic violence cases as likely lethal crimes.⁴¹

Mandatory arrest/no-drop policies are underpinned by the conventional feminist critique of the “private” and are championed precisely because they are seen as challenging the cultural and legal presumption of uncontested male power in the home, “man’s sovereign castle.”⁴² In listing the arguments that are often used by advocates of mandatory arrest, Schneider asserts:

[mandatory arrest laws] best effectuate the state and prosecutors’ roles regarding domestic violence . . . and send a strong message regarding the ‘public’ wrong of domestic violenceA prosecutor’s ‘client’ is the state, not the victim. Moreover, it is the role of the prosecutor to represent the people of the state; the decision whether to prosecute a crime should not rest with victims but with the state. Because domestic violence affects society as a whole, and not just the victims of abuse, it concerns public safety and the protection of children. Thus, the state cannot ignore human tragedies caused by domestic violence, just as it cannot ignore tragedies caused by other crimes.⁴³

Schneider’s analysis reveals that mandatory arrest/no-drop policies are embraced precisely because they interrupt the notion that the “private,” the site of many women’s injuries, is separate from and invisible to public purview. Instead, mandatory arrest/no-drop policies shift the injury of domestic violence from the victim alone to the victim *and* the citizenry. Because prosecutors are required to treat domestic violence like any other criminal case where the consent or

⁴¹ SCHNEIDER, *supra* note 2, at 186. Schneider argues that:

[T]hey send a message that domestic violence shall not be treated as a less serious crime than violence between strangers, and thus transform the private nature of domestic violence into a public matter. Otherwise, by refusing to intervene under a rationale that domestic violence is a private family matter, the state not only condones battering, but in fact promotes it.

Id. See also Corsilles, *supra* note 38 at 879 (arguing “that no-drop policies communicate the message that domestic violence is a crime against the public order, not just the victim. The use of such policies acknowledges the exigencies and constraints faced by a battered woman, and removes the onus on her to proceed.”); JONES, *supra* note 5, at 221-222. Jones notes that:

They [police and judges] can regard violation of a restraining order as a very serious offense, punishable by imprisonment. They can regard a man who commits an assault in violation of a restraining order as dangerous; and a judge can set bail accordingly or refuse it. Knowing that between one-half and three-fourths of all murder-suicides are committed by battering men, courts can take at his word any man who threatens to harm or kill his present or former partner and/or himself; and prosecutors and judges can recognize that many attacks currently charged as ‘assault’ are in fact failed murder attempts. (Charging with assault or battery a man who has slashed, stabbed, shot, clubbed, run over with a car, or doused with gasoline and set fire to a woman—as happens again and again in our courts—is an invitation to him to try again.) The court can also recognize that such a man presents a danger to himself and to the public at large.

JONES, *supra* note 5, at 221-222.

⁴² MacKinnon, *supra* note 2, at 175.

⁴³ SCHNEIDER, *supra* note 2, at 185.

participation of the victim is irrelevant, domestic violence is elevated from a "private" crime to a crime worthy of public attention. That is, mandatory arrest signifies that batterers will be held accountable for their actions and reminds them that "continued violent conduct will be met with severe, adverse consequences."⁴⁴ These policies stand for the idea that although gender-motivated abuse occurs in the home as opposed to at work (sexual harassment) or on the street (assault), female subjects deserve the same kind of legal protection they would receive if the crime occurred elsewhere.

In addition to furthering the interests of the state, mandatory arrest laws are also asserted to advance particular interests of battered women. Some feminists have argued that mandatory arrest regimes empower victims of violence by providing a criminal justice system that is responsive to safeguarding their needs and ensuring their safety, a critical component of the process of healing.⁴⁵ Furthermore, some feminists have argued that because the battered woman might lack the economical or emotional capacity to exit an abusive relationship, mandatory arrest is an intervention on behalf of battered women that assists them when they are unable to accurately assess an abusive and violent situation.⁴⁶ Hanna notes, "[a]lthough removing a woman's right to choose whether to prosecute may undermine her autonomy, such an infringement on her liberty is necessary to protect women overall."⁴⁷ Thus, many feminists believe that mandatory arrest not only furthers the need of the polity by requiring that batterers be held accountable for their actions, but it also aids battered women. Many have argued that despite the fact that in the immediate short-term, mandatory arrest might function as an infringement on women's autonomy and choices, the long-term benefits, including women's safety and freedom from violence, outweigh the more limited interest in autonomy.⁴⁸

Animating both arguments is a profound belief in the necessity of disrupting the "private," a space in which women have traditionally been oppressed and abused, a space defined as "man's sovereign castle." That is, mandatory arrest/no-drop policies are championed by an array of feminists precisely because of the fact that they compel the state to push back the "veil of relationship," punish the batterer, and protect the battered woman regardless of her articulated wishes. Mandatory arrest is hailed because it publicizes the private, makes the home a place subject to public purview, and ensures that privacy is no longer a justification or

⁴⁴ Barbara J. Hart, *Arrest: What's the Big Deal*, 3 WM. & MARY J. WOMEN & L. 207, 208 (1997).

⁴⁵ SCHNEIDER, *supra* note 2, at 185 (arguing "[b]ecause victims may be unable to trust that criminal intervention can assist in the shared goal of ending the violence, this approach [mandatory arrest] shows victims that criminal intervention works.").

⁴⁶ Fedders, *supra* note 32, at 290. Note that many feminists have debated the prototype of "the battered woman" and the casting of "the battered woman" as purely a victim and not an agentic subject.

⁴⁷ Hanna, *supra* note 6, at 1870.

⁴⁸ SCHNEIDER *supra* note 2, at 185 (arguing that "[e]ven though forcing a victim to participate in a trial violates her autonomy, those who support mandatory prosecution and no-drop argue that this loss of autonomy cannot be equated with the loss of autonomy and harm that results from battering and violence.").

excuse for male violence. Because privacy is what hurts women, mandatory arrest “explodes” the private, eviscerating the distinction between public and private, and moving women’s injuries from “man’s sovereign castle” to the public domain.

However, mandatory arrest/no-drop policies have not generated feminist consensus and have been problematized and critiqued on a number of grounds. The most common and potent critique levied against the policies asserts that mandatory arrest strips the female subject of her agency, autonomy, and choice at a time when she needs empowerment most. Mills has offered the most compelling articulation of this critique: “[I]ronically, the very state interventions designed to eradicate the intimate abuse in battered women’s lives all too often reproduce the emotional abuse of the battering relationship. Mandatory state interventions rob the battered woman of an important opportunity to acknowledge and reject patterns of abuse and to partner with state actors . . . in imagining the possibility of a life without violence.”⁴⁹ This critique of mandatory arrest/no-drop policies suggests that feminism paradoxically commits itself to being guided by “the truth” of women’s experiences and women’s narratives and then entrenches the systematic (and patriarchal) desire to silence women’s voices when they articulate either that they do not want their partners arrested or that they are ambivalent about “engagement with the state.”⁵⁰ The agency critique suggests that feminist theory is deeply contradictory about the role of the female subject’s voice whose wishes can be ignored by the state when deemed necessary for her protection.

The agency critique also suggests that mandatory, non-discretionary arrest and prosecution is problematic because it might ultimately signal to women who are reluctant to have their batterer arrested that calling the police to stop a particular episode of violence is no longer an appropriate venue for assistance. Jessica Dayton writes, “mandatory arrest policies do not take into account the reasons why a woman may not want her partner arrested. For instance, an Orthodox-Jewish woman is viewed as violating Jewish law if she files for divorce, even if it is because her husband is violent towards her.”⁵¹ Dayton highlights the experiences of immigrant women who might find mandatory arrest/no-drop policies particularly problematic as they would likely result in her batterer’s deportation.⁵² Dayton argues, “[s]trict prosecution without weighing the possible repercussions might

⁴⁹ Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 554-555 (1999).

⁵⁰ Many have argued that feminist theory is unique in that it is constructed around women’s experiences. Catharine MacKinnon notes, “Feminism is the first theory to emerge from those whose interest it affirms. Its method recapitulates as theory the reality it seeks to capture.” MacKinnon, *supra* note 1, at 83. Critiques of feminist theory have centered on this early rhetorical and political move as necessarily exclusive as, at its inception, feminist theory excluded an array of women’s voices.

⁵¹ Jessica Dayton, *The Silencing of a Woman’s Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases*, 9 CARDOZO WOMEN’S L. J. 281, 286 (2003).

⁵² The deportation of the batterer can have particularly severe consequences if the batterer is the sole or primary wage earner for the family. Furthermore, the deportation of the batterer can have severe consequences for the battered woman who, depending on the insularity of her community, might be ostracized by community members who might envision the arrest of the batterer and his deportation as a problematic alliance between the battered woman and the state.

lead to grave results for an immigrant woman including deportation, loss of child custody, and isolation to a country with few protections against domestic violence."⁵³ This critique of mandatory arrest has encouraged some theorists to advocate a version of "engagement with the state" that allows for individualization, thus enabling the battered woman to opt for particular state services while refraining from utilizing others.⁵⁴ Underpinning this critique is an interest in particularity and individuality. Each woman's experience of a battery is unique and includes an array of distinct barriers that might prevent her from "engaging with the state." The individualization advocates believe that by allowing women to opt for particular state services, women will more successfully associate with the state to ensure their safety.

Finally, critics of mandatory arrest have begun to develop a theory of the particularities of both domestic violence and reliance on the state for women of color.⁵⁵ This theory has been articulated by Mills, who argues that:

[W]omen from minority religious and racial communities face unique considerations when deciding whether to leave a violent partner These women face additional pressures to paint a favorable picture of their families and to protect against reinforcing cultural stereotypes that depict minority communities as more violent than the mainstream group. This need to hide the violence is integral to the decisions minority women make with regard to the violence A comprehensive understanding of domestic violence must recognize these contingencies that so often influence women's lives and understandably affect their decision making.⁵⁶

Mills highlights the unique and complex ways in which women of color experience violence, which have not been adequately included within the feminist architecture of domestic violence law reform efforts.⁵⁷ This critique has been advanced by

⁵³ Dayton, *supra* note 51, at 291.

⁵⁴ Mills, *Killing Her Softly*, *supra* note 49, at 612-613 ("Instead, we need to develop systems that respond to each battered woman on an individual basis and that help her determine what intervention strategy is best for her.").

⁵⁵ It is important to note that some feminists who are not critical of mandatory arrest regimes have also begun to develop an analysis of the raced and gendered components of domestic violence. See Sarah M. Buel, *The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 309, 318-320 (2003).

⁵⁶ MILLS, *supra* note 36, at 61-62.

⁵⁷ Mills, *Killing Her Softly*, *supra* note 49, at 598-599. Mills argues that:

In accepting the battered woman's attachment to the relationship, it is also important to explore how religion, culture, and race affect her decision whether to support the arrest or prosecution of her partner For example, she may be willing to compromise her physical safety in order to avoid being stigmatized by her church or synagogue. Or she may fear that calling the police will inevitably unleash police brutality on the father of her child.

Id. See also MILLS, FROM INSULT TO INJURY, *supra* note 36 at 61-62, where Mills argues that:

Women from minority religious and racial communities face unique considerations when deciding whether to leave a violent partner. Lett Volpp observes that to isolate women's

other scholars who assert that feminist reliance on law enforcement has not contained a correlative feminist problematization of law enforcement and discriminatory state policing tactics.⁵⁸ Miriam Rutenburg poignantly notes, “[w]hen battered women’s advocates turn to the police for aid and support tougher laws and punitive measures, they deny the complexity of a problem which involves issues of race as well as gender.”⁵⁹ Thus, some feminists, mostly those critical of mandatory arrest regimes, have begun to think about creating feminist strategies that protect women, further sex equality, hold batterers accountable, and attend to “intersectional” identities and experiences in meaningful ways.

While some feminists wrestle with the numerous experiences of domestic violence and experiences of “engagement with the state,” there has been a paucity of scholarship committed exclusively to racialized versions of these experiences. Some feminists have grappled with the repercussions of this critique by asserting that women of color simply cannot “opt out” of the criminal justice system because of a fear of racial bias in law enforcement practices. Hanna writes:

[I]n our efforts to be racially, culturally, and economically sensitive, we cannot allow violence to go unchecked under the rationale that state intervention is always racist, ethnocentric, or classist. Allowing women to step out of the criminal process can further solidify their perception that the criminal justice system marginalizes their concerns. The underenforcement of domestic violence laws and the refusal to mandate participation for certain groups ultimately denies women legitimate state protection and

experiences as women above religious or racial influences divorces them from the complicated identities that make up their lives. Women cannot live only as women, Volpp argues, because they are part of numerous communities that include racial and religious affinities. Several scholars have described the unique frame of reference within which women of color understand intimate violence, a frame that spans the clinical, political, and legal spectrums. These women face additional pressures to paint a favorable picture of their families and to protect against reinforcing cultural stereotypes that depict minority communities as more violent than the mainstream group. This need to hide the violence is integral to the decisions minority women make with regard to the violence. Some women of color fear that calling the police will subject their partner to brutality; an immigrant woman understands that to prosecute her husband is potentially to jeopardize their family’s status in the United States. Most women of color understand the challenges men of color face in relation to such issues as cultural subordination, job insecurity, and the rage and feelings of inadequacy that these experiences foster. Others understand how experiencing abuse as a child can turn a man into a monster. Some women of color feel safe enough to share their experiences of violence with friends, but unsafe when their views are amplified beyond their close-knit communities.

⁵⁸ MILLS, FROM INSULT TO INJURY, *supra* note 36 at 31. Mills argues that:

[P]erhaps most strikingly, by criminalizing domestic violence, the racism that is endemic to the criminal justice system is underscored. Men of color are likely to be arrested and prosecuted for intimate abuse crimes at disturbingly disproportionate rates when compared with their white counterparts. The view that violence against women trumps other violence, including abuse by law enforcement officials in communities of color, has been a distinguishing feature of the mainstream feminist movement against domestic abuse since its inception in the 1960s.

⁵⁹ Miriam Rutenburg, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U.J. GENDER SOC. POL’Y & L. 171, 173 (1994).

enforcement of the right to be free from violence in their homes and in their communities. An equal and effective response to domestic violence requires that all citizens be subject to the same prosecution policies.⁶⁰

While Hanna is correct that “the right to be free from violence” is critical to both equal protection and equal citizenship, her analysis does not fully account for the fact that “sensitivity” is not what “intersectional” feminists or critics of mandatory arrest are seeking. Nor are feminists who analyze the particular meanings of mandatory arrest regimes for communities of color advocating legal “underenforcement.” Instead, feminists struggle with repercussions resulting from the problematization of the private that animates mandatory arrest/no-drop policies. Feminists suggest that law enforcement has contradictory meanings for distinct communities and that privacy has multiple meanings for distinct communities.⁶¹ Feminist efforts designed to promote “engagement with the state” need to attend to both the disparate treatment the state metes out and the particular experiences of domestic violence for women of color.

Despite numerous critiques of essentialism within feminist theory, there has been little discussion of approaching domestic violence through an “intersectional” lens. That is, little feminist scholarship has grappled with the following questions: What happens when we theorize domestic violence as a simultaneously gendered and racialized crime? What happens when we analyze domestic violence as a crime that women experience differently based on subject position? How should these questions inform or shape feminist engagement with the criminal justice system?⁶² How does this understanding alter and problematize feminist engagement both with the notion of the private as inherently regressive and with “engagement with the state” as inherently beneficial? How can we be attentive to the fact that the “private” is a site of multiple and complex meanings, a space that can contain contradictions that might be shaped by gender and race?

While some have argued that this “intersectional” approach is misleading because women are abused, violated, and subordinated *as women*, feminist theory has always concerned itself with the primacy of women’s narratives and experiences.⁶³ If feminist theory is going to continue to maintain its stated commitment to the importance of women’s voices and the significance of women’s narratives for revealing “the truth(s)” of women’s experiences, it must begin to concern itself with the fact that women’s experiences of domestic violence are shaped by myriad forces, including the nexus and intersections of race and gender (and a panoply of other social categories). That is, while violence against women is gender-motivated, the experience of gendered violence can be simultaneously racialized and gendered. When we draw upon an “intersectional” analysis of

⁶⁰ Hanna, *supra* note 6, at 1881-1882.

⁶¹ MILLS, FROM INSULT TO INJURY, *supra* note 36 at 31.

⁶² For the most comprehensive analysis of the ways in which violence against women is simultaneously racialized and gendered, see Crenshaw, *supra* note 11.

⁶³ MacKinnon, *supra* note 9, at 20.

intimate partner violence, the location of privacy as solely regressive has to be problematized and complicated.

III. BEING ASKED TO GIVE UP SOMETHING YOU NEVER HAD: BLACK WOMEN AND PRIVACY

The lack of an “intersectional” analysis of the problematization of privacy has led some feminists to ask that women relinquish something not all women have: An entitlement to privacy. Feminist strategies that champion mandatory arrest/no-drop policies started from the proposition that privacy has enabled violence against women without questioning who has been entitled to privacy (some white subjects) and who has been rendered suspect and thus unworthy of privacy (anyone with a racial or ethnic difference). Because the black body is culturally, socially, and legally hyper-surveyed and because the black female body is inscribed and engraved with particular gendered and racialized cultural meanings, the black female subject has never been granted the same kind of privacy as the white female, the privacy that some feminists have argued needs to be “exploded.” In this section, I will explore the cultural and legal hyper-surveillance of the black body, and the particular kind of gendered and racialized scrutiny that the black female body receives. I will also look at the feminist promise of engagement with the uniformity of the state as something that might be more anxiety-producing than safety-promising for black subjects who have heard the promise of uniformity and witnessed the reality of disparate enforcement and state-sanctioned brutality of black bodies.

A. Monitoring Black Female Sexuality:

The Cultural and Social Surveillance of the Black Body

The black body is subject to an array of cultural, social, discursive, and legal forces which operate to hyper-survey and regulate it. Numerous theorists have examined the simultaneous hyper-visibility and invisibility of the black body in our cultural moment, rendering black subjects invisible from a panoply of cultural institutions and hyper-visible in the cultural association of blackness with criminality, poverty, and deviance.⁶⁴ The hyper-visibility of the black body is most apparent in the fact that the black body is a critical subject of cultural and political

⁶⁴ For examples of the invisibility/hypervisibility negotiation, see ANN DUCILLE, *SKIN TRADE* 97 (1996) (noting “black women scholars on white college campuses . . . experience both hypervisibility and superisolation . . .”). See also Patricia J. Williams, *supra* note 8, at 55. Williams remarks:

My abiding recollection of being a student at Harvard Law School is the sense of being invisible. I spent three years wandering in a murk of unreality. I observed large, mostly male bodies assert themselves against one another like football players caught in the gauzy mist of intellectual slow motion . . . When I became a law professor, I found myself on yet another planet: a planet with a sun as strong as a spotlight and an atmosphere so thin that my slightest murmur would travel for miles, skimming from ear to ear to ear, merrily distorting and refracting as it went.

Patricia J. Williams, *supra* note 8, at 55.

discourse. That is, the black body is always public, a site of debate, concern, and scrutiny, because of its perceived link to "social ills" including crime, teenage pregnancy, and drugs, and because of the presumed "dysfunctionality" of the black subject.⁶⁵ Robin Kelley argues:

Perhaps 'jungle bunny,' 'darky,' 'coon,' 'sapphire,' 'jezebel,' and 'mammy' have gone by the wayside, but certain images of the lazy, irresponsible Negro endure in the form of 'the underclass,' 'matriarchy,' 'welfare queens,' 'criminals,' and 'dysfunctional'. . . . We have been consistently marked as dysfunctional: ironically, dysfunctionality is both the source of the slander directed toward us, as well as a source of attraction.⁶⁶

Kelley analyzes the ways in which the black body is culturally located as a site of "dysfunctionality," as a space that needs to be regulated and controlled, and thus as a locus of public debate.⁶⁷ That is, as "social ills" are discussed, debated, and analyzed in ways that are racially coded, the black body becomes a subject whose regulation is voted on by citizens, debated by politicians, and legislated by elected officials.

The cultural markers of black "dysfunctionality" are distributed in gendered ways. Black female bodies are subject to particular forms of cultural and legal hyper-surveillance; the black female body has been culturally located as the primary site of the reproduction of poverty and the primary space of deviant uncontrolled sexuality in a sociocultural moment where race and class are conflated and collapsed.⁶⁸ Deborah Tolman argues that politicians debating the "twin crises of 'teenage promiscuity and pregnancy'" conjure up the image of "the Urban Girl" who has both a class designation (low-income) and a race designation (black) to signal the moral decay and subsequent fiscal crisis of contemporary society. Tolman paints the picture of "the Urban Girl" as it is frequently represented: "She is the daughter of a single mother. She is incapable of delaying gratification, fails in school, does not secure employment, and most of all she is sexually promiscuous, lacking in morality of family values, and out of control. She is at risk and at fault."⁶⁹ Thus, many politicians have argued that "the Urban Girl's" body is a site that, if regulated, controlled, and disciplined, can alleviate the "moral decay" of contemporary society. Thus, the black female body functions as "a reservoir for

⁶⁵ ROBIN D.G. KELLEY, *YO' MAMA'S DISFUNKTIONAL!: FIGHTING THE URBAN WARS IN URBAN AMERICA* 3 (1997).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Lucy A. Williams, *Race, Rat Bites, and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 *FORDHAM URB. L. J.* 1159 (1995).

⁶⁹ Deborah L. Tolman, *Adolescent Girls' Sexuality: Debunking the Myth of the Urban Girl*, in *URBAN GIRLS: RESISTING STEREOTYPES, CREATING IDENTITIES* 255 (Bonnie J. Ross Leadbeater & Niobe Way eds., 1996).

the fears of Western culture” and its potential regulation and control operates as a cultural relief.⁷⁰

Images of black sexual and reproductive deviance operate to bolster the notion of black “dysfunctionality” and the need for social and legal control of the black body with black female sexuality as the object of particular cultural anxiety.⁷¹ Dorothy Roberts analyzes the array of images that serve to undermine complex black female subjectivity and to entrench culturally prevalent notions of the black female subject’s deviant sexuality. She references “the licentious Jezebel, the careless, incompetent mother, the domineering matriarch, and the lazy welfare mother,” all images that relate to cultural conceptions of black female reproduction, black deviant sexuality, and black “dysfunctionality.”⁷² Some scholars have been particularly interested in analyzing the ways in which these images are not without historical precedent. Collins draws parallels between the legacy of the historical image of the black mammy and the contemporary image of the “welfare mother,” noting that both are underpinned by a “breeder woman image” where black female subjects are seen as hyper-reproductive.⁷³ It is this notion of black women as “breeders” that has garnered particular public attention and scrutiny.

In public debates about low-income mothers and their rights to reproduce, the public nature of all black female bodies becomes apparent.⁷⁴ In this context, the image of the “lazy welfare mother” and “the licentious Jezebel” coincide to form an image of a hyper-sexual, hyper-fecund, hyper-reproductive black woman whose sexuality must be regulated in order to maintain the fiscal health of the state. The black “welfare mother” or “welfare queen” is routinely evoked during these discussions to represent someone “relying on the public dole” and “content to take the hard-earned money of tax-paying Americans.”⁷⁵ Thus, the black female subject is cast as a subject actively contributing to “the deterioration of the state.”⁷⁶ To protect the state, black female sexuality “must be curbed at all costs” and policy-makers must imagine ways to curb both black reproduction and black sexuality

⁷⁰ Collins, *supra* note 20, at 73.

⁷¹ Patricia Hill Collins provides an important account of images of black female sexuality documenting the intersections of images of the mammy, the matriarch, the welfare mother, and the jezebel. Collins links cultural anxieties about black reproduction to representations of black female sexual deviance. Collins notes:

Images of sexuality associated with jezebel and the hoochie not only mark the boundaries of deviant sexualities, they weave throughout prevailing conceptualizations of the mammy, matriarch, and the Janus-faced welfare queen/Black lady Each image transmits distinctive messages about the proper links among female sexuality, desired levels of fertility for working-class and middle-class Black women, and U.S. Black women’s placement in social class and citizenship hierarchies.

Collins, *supra* note 20, at 84.

⁷² Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARVARD L. REV. 1419, 1437 (1991).

⁷³ Collins, *supra* note 20, at 78.

⁷⁴ See Barbara Omolade, *Hearts of Darkness, in WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT* (Beverly Guy-Sheftall, ed., 1995).

⁷⁵ Collins, *supra* note 20, at 80.

⁷⁶ *Id.*

more generally.⁷⁷ In this way, debates about welfare “reform” can be understood as debates over the discipline and regularization of the black female body and the rights of black women to reproduce.

Under this regime, the black female body is never free from cultural scrutiny; her body is a public site, a space on which public debates are played out and onto which axes of race, gender, and class are routinely inscribed. Some might argue that “the welfare queen” trope offers a class-specific example of the black female body functioning as a public site rather than its image operating as a public space. More generally, the constant conflation of class and race in public dialogues about welfare reform signals that all black female bodies cultivate their sexuality while being haunted by the specter of “the welfare queen.” Collins notes that “the welfare queen” trope is countered by the pervasive “black lady” trope, the image of a professional black woman who is “highly educated” and thus unmarriageable by black men⁷⁸ (another sign of “dysfunctionality”) and who has benefited from affirmative action by “tak[ing] jobs that should go to more worthy whites, especially U.S. white men.”⁷⁹ However, the fact that black female subjects are always responding to the image of the “welfare queen” reveals both the currency of the “welfare queen” image and the idea that black female sexuality is cultivated while haunted by the specter of these simultaneously racist and sexist tropes.⁸⁰ That is, it is precisely because the “black lady” is a counter to the “welfare queen” that the “welfare queen” image is further entrenched.

The public black female body cannot be divorced from the history of the fascination with the black body, the simultaneous disgust and attraction that it has provided white viewers. Collins analyzes the historical legacy of Sarah Bartmann, the Hottentot Venus, who functioned as an “object of display” in early nineteenth century Europe.⁸¹ Bartmann’s body was of particular interest to white onlookers who could gaze at the exhibit of her body at parties because of a perceived notion of black difference and deviance.⁸² Collins notes, “[a]t the time European audiences thought that Africans had deviant sexual practices and searched for physiological differences, such as enlarged penises and malformed female genitalia, as indications of this deviant sexuality.”⁸³ In situating the black female body as a subject of public debate in dialogue with its history as an object of display (and as an exciting and objectified locus of difference), it becomes evident

⁷⁷ Anna Marie Smith, *The Politicization of Marriage in Contemporary American Public Policy: The Defense of Marriage Act and the Personal Responsibility Act*, 5 CITIZENSHIP STUDIES 303, 305 (2001).

⁷⁸ Note that continued cultural taboos surrounding interracialism (with the exception of pornography where there is a hyper-representation of the desire for the Other) mean that black female respectability is often tied to marriage to a black man.

⁷⁹ COLLINS, *supra* note 20, at 81.

⁸⁰ *Id.*

⁸¹ Patricia Hill Collins, *Pornography and Black Women's Bodies*, in MAKING VIOLENCE SEXY 99 (Diana Russell, ed., 1993).

⁸² *See id.*

⁸³ *Id.*

that the black female body has historically functioned as a public space, a site that the public (whether discursively, materially, or physically) can access, consume, and scrutinize.⁸⁴

B. The False Promise of Uniformity: Legal (Hyper) Surveillance

The cultural and social surveillance of the black body has been compounded by the legal hyper-surveillance of the black body. While mandatory arrest/no-drop advocates have argued that non-discretion oriented law enforcement mandates operate to ensure that law enforcement engage with all domestic violence calls the same way, many communities of color simultaneously hear the promise of uniformity and recall the terror of disparate policing, racial profiling, and police brutality as a reality that trumps the promise of uniformity. In her reading of the Rodney King beating, Judith Butler analyzes the ways that a tape depicting King “being brutally beaten, repeatedly, and without visible resistance” could be deployed to argue that King’s body was posing a threat to the white officers who brutalized him.⁸⁵ Butler argues that the presence of the film in “a racially saturated field of visibility” literally colored objectivity and enabled both jurors and members of the court of public opinion to read the video as being in some way about black deviance and criminality rather than white brutality.⁸⁶ Butler argues that it is this “racist organization and disposition of the visible” which taints the potential for objectivity, neutrality, or uniformity.⁸⁷ While Butler’s analysis is grounded in the ways in which jurors and citizens “read” the tape of a brutalized black body and the hyper-exertion of (white male) state force on that body, her insights can be utilized as a way of analyzing and critiquing the language (and promise) of uniformity. That is, if the visual field is “racially saturated” such that evidence of brutality against King can be spun into evidence of his dangerousness, an objective viewer cannot help but wonder if uniform or neutral law enforcement is possible in a regime where “by virtue of [one’s] blackness,” one’s body is already coded as imminently dangerous.⁸⁸

Mills argues that this “racially saturated field of visibility” affects law enforcement’s implementation of ostensibly uniform and neutral policies in the domestic violence context. She notes that while mandatory arrest is often contextualized as a sex equality project, it is also a project that perpetuates racial discrimination because “[m]en of color are likely to be arrested and prosecuted for intimate abuse crimes at disturbingly disproportionate rates when compared with their white counterparts.”⁸⁹ Mills asserts that these actual gross disparities in

⁸⁴ For more on the black body as consumable, see bell hooks, *Eating the Other*, in *BLACK LOOKS: RACE AND REPRESENTATION* (1992). See also bell hooks, *Selling Hot Pussy*, in *BLACK LOOKS*, *supra*.

⁸⁵ Judith Butler, *Endangered/endangering: Schematic Racism and White Paranoia*, in *READING RODNEY KING/READING URBAN UPRISING 15* (Robert Gooding-Williams ed., 1993).

⁸⁶ *Id.*

⁸⁷ *Id.* at 17.

⁸⁸ *Id.* at 19.

⁸⁹ Mills, *supra* note 36, at 31.

enforcement and policing have implications for communities' perceptions of whether mandatory arrest is a beneficial police intervention. She notes, "[a]s law professor Kimberlé Crenshaw has argued, it is critical to remember that many women of color are reluctant to seek intervention from the police, fearing that their contact with law enforcement will exacerbate the system's assaults on their public and private lives."⁹⁰ The fact that at least some black female subjects envision, and imagine, the state as a threatening, and potentially brutal, agent rather than as a safe and potentially life-affirming institution reveals that the adoption of mandatory arrest might have significantly different results, effectiveness, and consequences for communities of color.

Evidenced by the fact that "driving while black" has become a common phrase to describe the fact that black drivers are routinely racially-profiled by law enforcement, it is apparent that the perception of race-motivated policing is fairly widespread, at least in some communities of color.⁹¹ While some scholars have grappled with determining whether racial profiling is "just a problem of perception, the product of years of mistrust between police and minorities" or an actual material representation of gross policing disparities, the mere fact that many black subjects sense that law enforcement's decisions are motivated by racialized, if not racist, attitudes is significant for grappling with the role of "engagement with the state" for black subjects.⁹² David Harris argues that "driving while black" has significant implications for all citizens' perceptions of the fairness of the system. He writes, "[d]riving while black destroys the ideal that holds us together as a nation: Equal justice under law. And when that goes, we are all in trouble."⁹³ Because the promises of fairness, neutrality, uniformity, and objectivity have already been eroded, feminists must grapple with the ways in which the fact that women of color who experience domestic violence in both gendered and racialized dimensions must navigate a perception that "equal justice under law" does not apply to them.

⁹⁰ *Id.* at 39.

⁹¹ Numerous cultural critics, scholars, and journalists have grappled with the cultural significance of "driving while black" and racial profiling more generally. In the wake of the brutal torture of Amadou Diallo, a *New York Times* editorial detailed the fears of black parents in even providing their children with cell phones. Brent Staples articulated his anxiety that a cell phone in the pocket of his black son could easily be interpreted as a gun. He writes:

When my fiancée's teenage son pleaded for a cell phone, his mother and I came back with an emphatic 'no.' [We] reminded him that he is a black teenager in New York City, where people of his description—6 feet 2, 200 pounds, with braids and the currently fashionable baggy pants—attract disproportionate attention from wary citizens and the police. We do not want him mistaken for a drug dealer . . . nor do we want him reaching into his pocket at some inopportune moment for an implement that in the bad lighting of a subway entrance might be mistaken for a weapon. Call it paranoid if you like . . . In the meantime, those of us with black teenagers to raise will continue with our paranoid precautions—understanding that we are not really paranoid at all.

Brent Staples, *How a Black Man's Wallet Becomes a "Gun,"* N.Y. TIMES, Mar. 12, 2000, § 4, at 14.

⁹² David A. Harris, *The Stories, the Statistics, and the Law: Why 'Driving While Black' Matters*, 84 MINN. L. REV. 265, 266 (1999).

⁹³ *Id.* at 326.

Furthermore, situating the criminal justice system in a white-supremacist matrix is critical to an understanding of the ways in which the promise of uniformity from law enforcement in the name of “exploding” the private can sound more like “an injury” than “a gift.” In light of the growth of the “punishment industry” and the ways in which “the high proportion of black people in the criminal justice system is . . . normalized and neither the state nor the general public is required to talk about and act on the meaning of that racial imbalance,” it is apparent that the criminal justice system must be situated in a matrix where a racialized logic informs the actions of at least some members of the law enforcement community.⁹⁴ Angela Davis details the ways in which ostensibly race-neutral laws like mandatory minimum sentences and three-strikes-you’re-out laws are in fact deeply racialized as they are conceived of in a culture where “racist logic is deeply entrenched.”⁹⁵ Situating policy in the context of a culture in which “racist logic” informs the very fabric of American thinking, reveals the ways in which increasing reliance on the criminal justice system and its “punishment industry” which relies on the incarceration of black bodies for economic viability, is deeply problematic for some black female subjects.

Because the black body is already seen as a public site, a space which is subject to cultural and legal hyper-regulation and hyper-surveillance, some theorists have asserted that the private is a site of particular importance for black subjects. That is, the home becomes a site where black subjects can seek refuge from the simultaneity of racism and sexism. The home also functions as a locus of safety and community-building, a space where black subjects can safely gather without the threat of racism. The importance of this radical conception of the private must be grappled with if feminists are to fully understand the consequences and repercussions of the blanket problematization of the private. In situating the private as a potentially radical site, it becomes apparent that feminists need to cultivate new, nuanced conceptions of the private, which simultaneously problematize the legacy of separate spheres ideology and its harm to female subjects as well as critique the generalized and simplified framing of the private as a site of singular and monolithic meaning.

IV. MAKING HOMES, MAKING PLACES OF RESISTANCE

Because black female subjects’ bodies are coded and marked as public sites, spaces onto which the terms of policy debates can be inscribed and engraved, the private can function as a critical space of empowerment and safety for some women of color, a space that enables the project of the cultivation of whole personhood, even in the midst of a deeply oppositional culture. In situating the private as a critical oppositional site for some black female subjects, it becomes

⁹⁴ Angela Davis, *Race and Criminalization: Black Americans and the Punishment Industry*, in *THE HOUSE THAT RACE BUILT* 265 (Wahneema Lubiano ed., 1998).

⁹⁵ *Id.* at 268.

clear that the feminist critique of the private relies on a particular subject experience that does not fully account for the array of experiences of some women of color. Dorothy Roberts notes: "The government's pervasive involvement in Black women's lives illustrates the inadequacy of the privacy critique presented by some white feminist scholars Women of color . . . often experience the family as the site of solace and resistance against racial oppression."⁹⁶ As Roberts indicates, for some black female subjects, the private can function as a critical site for the healthy cultivation of subjectivity, for community-building, for solidarity, and for safety. It is in situating the private as an oppositional site, a space in which black subjects can cultivate their subjectivity and personhood without the threat of cultural and social hyper-surveillance or legal terror, that the feminist critique of the private as a site that engenders the subordination of women looks most problematic and least inclusive.

[B]ell hooks's vision of "homeplace" as a locus of resistance reveals the cultural, social, and personal significance of the private for some black female subjects. In describing her conception of "homeplace," she writes, "despite the brutal reality of racial apartheid, of domination, one's homeplace was the one site where one could freely confront the issue of humanization, where one could resist."⁹⁷ [H]ooks' formulation of "homeplace" is linked to a notion of both personal and group safety as she imagines the private as a site where black subjects could "affirm one another and . . . heal many of the wounds inflicted by racist domination" and as a site where subjectivity could be cultivated and affirmed without being haunted by the specter of racism.⁹⁸ However, hooks' vision of "homeplace" is not solely a site of personal cultivation but also a deeply politicized space, a place "where all black people could strive to be subjects, not objects" in a culture in which the black body is constantly objectified, commodified, and publicized.⁹⁹ That is, the private can function as a critical site where black subjects can be both safe from white supremacy and sexism (and their simultaneity) and can freely utilize their political imaginations to envision a world in which equal protection and equal personhood are realities. Under this conception of "homeplace," the private enables a political solidarity-building and an affirmation of a whole, complete, and complex black subjectivity.

"Homeplace" is a particularly important notion because it functions as an oppositional site in a white-dominated patriarchy, a space where black subjects can access the proverbial "room of one's own" without being haunted by the dual specters of racism and sexism.¹⁰⁰ That is, "homeplace" is a critical site precisely

⁹⁶ Roberts, *supra* note 72, at 1470-71.

⁹⁷ BELL HOOKS, *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* 42 (1990).

⁹⁸ *Id.* at 42.

⁹⁹ *Id.*

¹⁰⁰ The creation and cultivation of "oppositional sites," spaces where black female subjects can safely cultivate their own complex subjectivity, has traditionally functioned as a literary and artistic trope. See ALICE WALKER, *IN SEARCH OF OUR MOTHERS GARDENS*, *supra* note *, at 231-243. See also ALICE WALKER, *ABSOLUTE TRUST IN THE GOODNESS OF THE EARTH* 26 (2003).

because it is situated in white-supremacist patriarchal culture without being saturated by white-supremacist patriarchal norms. Toni Morrison describes this when she notes:

If I had to live in a racial house, it was important, at the least, to rebuild it so that it was not a windowless prison into which I was forced, a thick-walled, impenetrable container from which no cry could be heard, but rather an open house, grounded, yet generous in its supply of windows and doors.¹⁰¹

In enabling subjects to inhabit their own private “open houses,” though situated in a society in which race informs material realities, it becomes possible to engender space for the imagination and creation of new safe sites for black subjects in both the public and private spheres. Morrison describes this as the contemporary searches and yearnings for social space that is psychically and physically safe.”¹⁰² That is, making homes in the private sphere enables the safe political imagining of making homes in the public sphere.

[H]ooks’s vision of “homeplace” does not seek to paint an essentialist picture of what the private signifies for the black female subject. Deploying her analysis is useful because it problematizes the notion that the private is a sphere of monolithic meaning, a site of only the female subject’s subordination, degradation, and abuse. Rather, feminist theory needs to grapple with the multiple meanings of the private and with the fact that by casting the private as a sphere of female injury and not also as a locus of empowerment, safety, and community-building, the discourse necessarily eliminates some female subjects whose experience of the private does not mirror the space that feminist theory has sought to problematize. I offer the analysis of the private as a safe space, as a site of community-building, to challenge the dominant narrative of the private as a regressive and sexist site. This counter-narrative constructs the home as a site of emotional and psychic safety and as a site of the creation of subjectivity and full-personhood in a culture that is oppositional to the creation of complex and affirmative selfhood for black subjects. In order to create a theory structured around multiplicity and complexity, feminists need to craft a more nuanced critique of the private and a more radical conception of the private which takes into account that, at times, the private is a deeply empowering and politicized site. In the next section, I will examine possibilities for reframing the private aside from a blanket problematization and critique and suggest what this might mean for feminists as we wrestle with legal strategies and engagement with the state.

V. LAVENDER TO PURPLE:

TOWARD RADICAL, MULTIPLE, AND INCLUSIVE THEORIES OF THE PRIVATE

The feminist conception of privacy as necessarily regressive and harmful is challenged and interrupted when examining the meaning of the private sphere for

¹⁰¹ Toni Morrison, *Home*, in *THE HOUSE THAT RACE BUILT 4* (Wahneema Lubiano, ed., 1998).

¹⁰² *Id.* at 10.

some black female subjects. In fact, the private can be a radical site, a space where interruptions of heteronormative white supremacist patriarchal culture are possible, a locus of the cultivation and creation of complex subjectivity even against the backdrop of an oppositional culture. In our post-*Bowers* cultural moment, it is increasingly evident that a right to privacy can function both as “an injury got up as a gift” and as a site for personal and political empowerment, and that feminists need to be attentive to both framings of the private before attempting to problematize, critique, or deconstruct the private.¹⁰³ Examining competing conceptions of the private reveals the radical potential of the private and suggests that the architecture of feminist legal theory needs to be fundamentally altered in order to craft a more inclusive theory that has the analytic and descriptive power to capture the array of female subject experiences. The challenge for feminist theory is to capture the private both as a site of male dominance and female subordination and as a space of empowerment and safety, to capture “the public nature of private violence” without deconstructing the right to privacy that, for some subjects, is synonymous with a right to subjectivity, autonomy, and equal personhood.¹⁰⁴

Feminists need to determine ways to construct “intersectional” methodologies, ways of “doing” feminist theory where multiplicity is meaningfully placed at the center of the inquiry. That is, this new feminist methodology must have at its core a problematization of feminist hegemony. Audre Lorde poignantly referred to the burden of “stand[ing] outside of the circle of this society’s definition of acceptable women,” a “burden” that falls on an array of women who do not fit the narrowly-defined notion of an appropriate woman.¹⁰⁵ Feminist theory has reified and replicated this hierarchy by creating a feminist subject that excludes an array of women including: women of color, low-income women, immigrant women, queer women, sexual minorities, and sex workers. Feminists must continue to problematize feminist hegemony which operates by forcing certain female subjects to stand on the outskirts of feminist theory, and propose a reconceptualization of both our theory and our praxis to move towards a meaningful multiplicity that is always informed by an analysis of how “white supremacist capitalist heteropatriarchy” marks bodies in simultaneous, complex, and multi-layered ways depending on one’s subject position in a wide array of cultural hierarchies.¹⁰⁶ This meaningful multiplicity is theoretically significant because it more completely and fully shades and nuances feminist theory, aiding in the movement from “lavender” to “purple,” from outline to shade.

¹⁰³ MACKINNON, FEMINISM UNMODIFIED, *supra* note 3, at 100. See *Bowers v. Hardwick*, 478 U.S. 186 (1986), *overruled by* *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹⁰⁴ THE PUBLIC NATURE OF PRIVATE VIOLENCE: THE DISCOVERY OF DOMESTIC ABUSE (Martha Fineman & Roxanne Mykitiuk eds., 1994).

¹⁰⁵ Audre Lorde, *The Master's Tools Will Never Dismantle The Master's House*, in THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR 99 (Gloria Anzaldua & Cherrie Moraga, eds., 1981).

¹⁰⁶ Nagle, *supra* note 16, at 5.

In addition to new theoretical conceptions, feminists must remain committed to creative interventions that attend to the array of subject experiences of domestic violence. Feminists must grapple with the ways in which mandatory arrest/no-drop schemes have been constructed on the architecture of a particular kind of privacy, the privacy that the white female subject has been granted rather than on the privacy that the black female subject is denied. Various scholars have advanced new methods of responding to domestic violence in ways that will ensure women's safety, require batterers to be held accountable for their criminal behavior, and disrupt the cultural normalization of violence. Barbara Fedders offers one type of creative feminist intervention arguing:

Given the evidence of the differential impact the criminal justice system has on poor people and people of color, the movement cannot continue responsibly to advance an agenda that leads to more arrests, without confirming that such an agenda is supported by the battered women it purports to represent and is effective in actually reducing violence. Responses tailored to the needs of particular communities might be more effective and ultimately more empowering of battered women. Some alternatives might include removing the batterer's driver's license, notifying his employer, or publicizing his violent behavior in public places.¹⁰⁷

Fedders' response suggests the importance of feminist efforts to gear interventions towards particular communities, tailoring state action to what is found to be most effective for a particular community. Regardless of what feminists think of Fedders' practical policy proposal, her intervention points to the importance of particularity for grappling with the epidemic of domestic violence. That is, if the cultural trope of white police brutalizing black bodies has left some black subjects with the conception that law enforcement is an unlikely source of effective and fair assistance, help, or safety, feminists need to both rally with other social justice projects to ensure law enforcement's uniformity and neutrality and consider new ways of preserving black female subjects' safety and punishing batterers.

Domestic violence continues to be a cultural epidemic that brutally denies female subjects equal citizenship and equal personhood. As we continue to imagine new ways of combating this epidemic and ensuring the bodily integrity and safety of all female subjects, we must remain reflexive about our positionality. That is, feminist interventions contain particular ideologies and are constructed around particular models. Underpinning our interventions must be a meaningful commitment to multiplicity, a commitment to engaging with domestic violence as an issue that is gendered, racialized, classed, and sexualized, that is experienced differently based on race, ethnicity, age, religion, immigration status, sexual orientation, class, etc. It is only when a concern for the multiple not only informs our theory and praxis but is the architecture upon which our theory is constructed

¹⁰⁷ Fedders, *supra* note 32, at 298.

that our theoretical and political commitment to sex equality can begin to seem relevant and meaningful to all female subjects. That the female subject is “sexually harassed as a woman,” “pregnant as a woman” or “injured as a woman” will no longer suffice as a rationale for engaging in the essentialist project of utilizing the white feminist subject as the center of feminist theory.¹⁰⁸ That women are “harassed as women” does not change the fact that the experience of victimization is shaped and molded by one’s subject position. That is, that a woman is “harassed as a woman” does not mean that she does not experience that harassment on dimensions that are simultaneously gendered, raced, and classed. If feminism continues to purport to be both a theory and a practice attentive to remedying gendered inequality, it must also be attentive to the panoply of ways in which gendered inequality is experienced.

¹⁰⁸ MacKinnon, *From Practice to Theory*, *supra* note 9, at 20.