

BEARING WITNESS TO GHOSTS: NOTES ON THEORIZING PORNOGRAPHY, RACE, AND LAW

Jennifer C. Nash*

A panoply of intellectual projects have exposed the ways in which law is haunted,¹ bearing the imprints of the moment in which it is produced, and constituted as much by what it includes as what it excludes. The work of these critiques² has been to expose the "ghostly aspects" of law and to uncover the interplay between history, inequality, and the crafting of law.³ Feminist legal theory has been one critical intellectual site engaged in the process of "investigating how that which appears absent can indeed be a 'seething presence.'"⁴ In focusing on the ways in which the apparitions of patriarchy and heteronormativity haunt the construction and application of law, feminist legal theory has demonstrated that law can reinstall gendered inequities and reify male supremacy. Gordon describes this process of bringing "ghostly aspects" to the surface as learning to "identify hauntings and reckon with ghosts," in order to "make contact with what is without doubt often painful, difficult, and unsettling."⁵ Recognizing that

* A.B., Harvard College, 2001. J.D., Harvard Law School, 2004. Doctoral Student, African American Studies, Harvard University. Thanks to Danielle Egan, who introduced me to Avery Gordon's work, and Werner Sollors, who shared his time and feedback as I began my study of race and pornography. Thanks to Amin Ahmad for everything, especially lending his eyes, even in sickness, to reviewing my work. Thanks to my parents who have consistently cheered for me through this long academic journey. Finally, thanks to the *Wisconsin Women's Law Journal*, especially Melanie Cairns, for offering suggestions that helped me refine this project. Any errors are, of course, entirely my own.

1. Haunted is Sociologist Avery Gordon's notion of "a paradigmatic way in which life is more complicated than those of us who study it have usually granted. Haunting is a constituent element of modern social life. It is neither premodern superstition nor individual psychosis; it is a generalizable social phenomenon of great import. To study social life one must confront the ghostly aspects of it." AVERY F. GORDON, *GHOSTLY MATTERS: HAUNTING AND THE SOCIOLOGICAL IMAGINATION* 7 (1997).

2. The critical race project, and the intellectual projects that have emerged from it including critical race feminism, LatCrit, and QueerCrit, are other examples of scholarly traditions that have challenged law's "ghostly aspects." See PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1989); *CRITICAL RACE FEMINISM: A READER* (Adrien Katherine Wing ed., 1997); *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado & Jean Stefancic eds., 2d ed. 2000); *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw et al. eds., 1995); *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* (Francisco Valdes et al. eds., 2002); *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (Mari J. Matsuda et al. eds., 1993).

3. See GORDON, *supra* note 1, at 7.

4. *Id.* at 17.

5. *Id.* at 23.

law, a purportedly objective and neutral regime, is shaped by cultural traditions, norms, and practices can be a "painful, difficult, and unsettling" realization, as it undermines the law's impartial status.

However, the unsettling task of identifying hauntings and determining what or who is excluded has not always happened within the very intellectual movements that have sought to challenge law's purported objectivity and to call attention to law's "ghostly aspects." The work of attending to the ghosts that haunt these radical intellectual projects requires a methodological commitment "to writ[ing] stories concerning exclusions and invisibilities."⁶ One strain of exclusion and invisibility that has plagued feminist legal theory since its inception is the marginalization of the experiences of black women.⁷ In the service of exposing the continued "seething presence" of white dominance on the workings of feminist legal theory, it is critical to cast sustained theoretical attention to sites that feminists have analyzed as solely gendered.⁸ In interrogating these ostensibly gendered sites and examining how they might also be critically informed by race, the continued absence of a sustained feminist engagement with black women's experiences becomes apparent.⁹

6. *Id.* at 17.

7. See PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* (2nd ed. 2000) [hereinafter COLLINS, *BLACK FEMINIST THOUGHT*]; BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* (1981); ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: *BLACK WOMEN'S STUDIES* (Gloria T. Hull et al. eds., 1982) [hereinafter *BLACK WOMEN'S STUDIES*]; Hazel V. Carby, *White Woman Listen! Black Feminism and the Boundaries of Sisterhood*, in *BLACK BRITISH CULTURAL STUDIES: A READER* 61 (Houston A. Baker Jr. et al. eds., 1996); THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cherrí Moraga & Gloria Anzaldúa eds., 1981). It is important to note that an array of apparitions continue to haunt feminist legal theory including white supremacy, heterosexism, sexual hierarchy, classism, and American hegemony. It is critical to note that these various apparitions, while often theorized separately, are mutually interlocking and reinforcing structures. See COLLINS, *BLACK FEMINIST THOUGHT*, supra; 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) [hereinafter Crenshaw, *Demarginalizing*]; Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 *WOMEN'S RTS. L. REP.* 297 (1992); Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 *BERKELEY WOMEN'S L. J.* 181 (1990-91).

8. See GORDON, supra note 1, at 17. Examples of sites that feminists have imagined as solely or primarily gendered include prostitution and the sale of sexualized labor. That both are sites that are steeped in the workings of race, ethnicity, capitalism, the unequal bargaining power of nations, and class, has been left undertheorized by feminism.

9. See HOOKS, supra note 7; LOUISE MICHELE NEWMAN, *WHITE WOMEN'S RIGHTS: THE RACIAL ORIGINS OF FEMINISM IN THE UNITED STATES* (1999); BARBARA SMITH, *THE TRUTH THAT NEVER HURTS: WRITINGS ON RACE, GENDER, AND FREEDOM* (1998); ANTI-RACIST FEMINISM: *CRITICAL RACE AND GENDER STUDIES* (Agnes Calliste & George J. Sefa Dei eds., 2000); HOME-GROWN HATE: *GENDER AND ORGANIZED RACISM* (Abby L. Ferber ed., 2004); MAKING FACE, MAKING SOUL HACIENDO CARAS: *CREATIVE AND CRITICAL PERSPECTIVES BY FEMINISTS OF COLOR* (Gloria Anzaldúa ed., 1990).

Pornography provides a significant case study for exposing the apparitions that haunt feminist legal theory precisely because feminists have remained unified on the fact that pornography produces and reflects gendered ideologies.¹⁰ While feminists have debated the cultural meanings of pornography, feminist debates have generally started from the analytic premise that pornography and gender are fundamentally linked.¹¹

In focusing on pornography as solely a gendered site, and not as a complex field of signification where gender and race function as intersecting visual tropes, feminist legal theory has remained haunted by its continued failure to theorize "intersectionally."¹² This limited feminist vision of pornography yields theoretical shortcomings that

10. For texts demonstrating the variety of feminist positions on pornography, see DRUCILLA CORNELL, *THE IMAGINARY DOMAIN: ABORTION, PORNOGRAPHY, AND SEXUAL HARASSMENT* (1995) [hereinafter CORNELL, *IMAGINARY DOMAIN*]; LISA DUGGAN & NAN D. HUNTER, *SEX WARS: SEXUAL DISSENT AND POPULAR CULTURE* (1995); ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1981); JANE JUFFER, *AT HOME WITH PORNOGRAPHY: WOMEN, SEX, AND EVERYDAY LIFE* (1998); LAURA KIPNIS, *BOUND AND GAGGED: PORNOGRAPHY AND THE POLITICS OF FANTASY IN AMERICA* (1996); CATHARINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987) [hereinafter MACKINNON, *FEMINISM UNMODIFIED*]; CATHARINE MACKINNON, *ONLY WORDS* (1993) [hereinafter MACKINNON, *ONLY WORDS*]; CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) [hereinafter MACKINNON, *TOWARD A FEMINIST THEORY*]; NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS* (1995); LINDA WILLIAMS, *HARD CORE: POWER, PLEASURE, AND THE "FRENZY OF THE VISIBLE"* (1999) [hereinafter WILLIAMS, *HARD CORE*]; CAUGHT LOOKING: *FEMINISM, PORNOGRAPHY, AND CENSORSHIP* (Kate Ellis et al. eds., 2d ed. 1988); *FEMINISM AND PORNOGRAPHY* (Drucilla Cornell ed., 2000); *MAKING VIOLENCE SEXY: FEMINIST VIEWS ON PORNOGRAPHY* (Diana E. H. Russell ed., 1993); *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* (Carole Vance ed., 1984); *PORN STUDIES* (Linda Williams ed., 2004); *SEX EXPOSED: SEXUALITY AND THE PORNOGRAPHY DEBATE* (Lynne Segal & Mary McIntosh eds., 1992); *WHORES AND OTHER FEMINISTS* (Jill Nagle ed., 1997); Mireille Miller-Young, *A Taste for Brown Sugar: The History of Black Women in American Pornography* (Sept. 2004) (unpublished Ph.D. dissertation, New York University), available at <http://www.lib.umi.com/dissertations>.

11. For example, MacKinnon argues, Pornography, in the feminist view, is a form of forced sex, a practice of sexual politics, an institution of gender inequality. . . . Along with the rape and prostitution in which it participates, pornography institutionalizes the sexuality of male supremacy, which fuses the eroticization of dominance and submission with the social construction of male and female. Gender is sexual. Pornography constitutes the meaning of that sexuality. Men treat women as who they see women as being. Pornography constructs who that is. Men's power over women means that the way men see women defines who women can be. Pornography is that way.

MACKINNON, *FEMINISM UNMODIFIED*, supra note 10, at 148 (citation omitted).

12. Intersectionality is Kimberlé Crenshaw's term describing the ways that race, gender, sexuality, class, and an array of other social categories and social locations intersect to constitute subjects' senses of identity and oppression. Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 357-84* (Kimberlé Crenshaw et al. eds., 1995) [hereinafter Crenshaw, *Mapping the Margins*].

preclude feminist legal theory from adequately examining pornography's complexities. Even in the midst of a cultural moment where pornography receives considerable scholarly attention, the intersection of race and pornography remains underanalyzed.¹³

This Article does not seek to de-center gender from feminist analyses of pornography or to suggest that the feminist focus on gender is inherently problematic. Instead, I interrogate feminism's silences around the intersection of race, gender, and pornography, and suggest some ways that our theoretical interventions can move towards a complex analysis of both the simultaneity of race and gender in pornographic representation and the continued significance of race in shaping notions of gender and sex.¹⁴

The first Part of this Article examines the deeply polarized feminist debate on pornography. It foregrounds the central role that gender has played in pro- and anti-feminist analyses of pornography while largely ignoring the representational significance of race in pornography. Part II places the exclusive feminist focus on gender in conversation with the interventions of women of color feminists who stress the importance of analyses that attend to both race and gender. In underscoring this disconnection, this section highlights the apparitions that haunt feminist work and emphasizes the necessity of sustained feminist engagement with race and pornography. The representations of black women's bodies in pornography are ex-

13. Miller-Young, *supra* note 10, at 7 ("Pornography and sexuality studies tend to neglect the history of black women's participation as laborers in the adult industries, and the role of race in structuring the terms of representation and political economy of pornography has generally been elided."). Linda Williams's work stands at the vanguard of "porn studies." She argues that porn studies seeks to legitimize academic studies of pornography and to contend with the fact that "mainstream or margin, pornography is emphatically part of American culture." Linda Williams, *Porn Studies: Proliferating Pornographies On/Scene: An Introduction*, in PORN STUDIES, *supra* note 10, at 1-2. Williams argues that the emergence of porn studies suggests that the feminist conversation about pornography has moved beyond the pro/anti debates that dominated the dialogue in the 1980s and 1990s towards a more complex engagement with pornographic representation. *Id.* at 10-12. Instead, I would argue that this more robust vision of pornography is disciplinarily bound (because it has emerged in interdisciplinary circles including cultural studies, visual studies, and queer studies) and that the polarized debate of the 1980s remains the primary lens through which pornography is understood. For scholarship that has contributed to the scholarly conversation on race and pornography, see Richard Fung, *Looking for My Penis: The Eroticized Asian in Gay Video Porn*, in HOW DO I LOOK? QUEER FILM AND VIDEO 145-169 (Bad Object-Choices ed., 1991); Kobena Mercer, *Imaging the Black Man's Sex*, in PHOTOGRAPHY/POLITICS: TWO 61-69 (Patricia Holland et al. eds., 1986); Kobena Mercer, *Skin Head Sex Thing: Racial Difference and the Homoerotic Imaginary*, in HOW DO I LOOK? QUEER FILM AND VIDEO, *supra*, Miller-Young, *supra* note 10.

14. By "sex," I mean sexual intercourse (what Janet Halley terms "sex2"), not "sex" of the sex/gender distinction that feminists have theorized, interrogated, and problematized (what Janet Halley terms "sex1"). Janet Halley, *Sexuality Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 182, 183 (Catharine A. MacKinnon and Reva B. Siegel eds., 2004).

amined in Part III, exploring the connections between representation, racial fantasies, and gender, challenging feminist theory to develop a theoretical vocabulary for attending to the work that black bodies perform in pornography. This more robust feminist vocabulary will enable an interrogation of pornography as a site for the production of cultural fantasies about black women's sexual alterity and will challenge feminist legal theory to consider whether the deployment of racialized imagery in pornography complicates feminist engagement with law.¹⁵ Finally, this Article concludes that it is incumbent upon feminist legal theory to reflexively expose the ghosts that haunt our own work, the apparitions that have systematically blinded us to a meaningful engagement with the work of racialized imagery in pornography.

In bringing to light feminist legal theory's silence on the ongoing cultural importance of race in the collective "sexual imaginations of Americans,"¹⁶ the ghosts that continue to haunt feminist work become visible.¹⁷ Ultimately, I envision this Article as the beginning of a

15. It is important to note that there has been considerable feminist silence around theorizing black female sexuality and the ways in which the black female subject's experience of sexuality is shaped by intersecting racialized and gendered cultural scripts. While an array of feminist theorists have analyzed how sexuality is cultivated under conditions of heteronormative patriarchy, there has been a theoretical silence on how black female sexuality is cultivated under conditions of white-dominated heteronormative patriarchy. For a few significant exceptions, see COLLINS, BLACK FEMINIST THOUGHT, *supra* note 7, at 5; PATRICIA HILL COLLINS, BLACK SEXUAL POLITICS (2004); TRICIA ROSE, LONGING TO TELL: BLACK WOMEN TALK ABOUT SEXUALITY AND INTIMACY (2003); Evelyn M. Hammonds, *Toward a Genealogy of Black Female Sexuality: The Problematic of Silence*, in FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES (M. Jacqui Alexander & Chandra Talpade Mohanty eds., 1997).

16. RANDALL KENNEDY, INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION 14 (2003). Kennedy asserts,

In pornography the race-sex connection is a frequent motif. A whole genre of X-rated videos is dedicated to titillating those who presumably derive special pleasure from watching the interracial sexual activities depicted in such films as *Whose Dat Girl? I Am Curious Black*, *White Chicks Can't Jump*, and *Let Me Tell Ya 'bout White Chicks*. Long Dong Silver is a reflection of this fascination. A character in video pornography, he is a black man with an enormously long penis who caricatures the stereotype of the hypersexual Negro.

Id. at 16 (citations omitted).

17. Angela Harris refers to this practice as the "bracketing of race." Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 592-95 (1990). Harris argues,

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

feminist conversation where feminist legal theory extends itself beyond the legal academy and forges cross-disciplinary feminist alliances committed to constructing theories that both capture pornography's multiple meanings and embody the promise of "intersectionality."¹⁸

I. INTERROGATING THE ABSENCES: THE TERMS OF THE FEMINIST DEBATE

On both sides of the pornography debate, feminists' analytic focus has centered on debating pornography's gendered significance(s) with little theoretical attention to the ways in which gender and race operate simultaneously in pornography. An examination of the intellectual terrain of contemporary feminist debate around pornography underscores this theoretical absence and suggests new critical sites for feminist attention: an analysis of how pornography produces raced meanings and creates cultural narratives about black women's bodies. Finally, in exposing the lack of feminist engagement with the work that black female bodies perform in pornography, the specter of white supremacy, whose "seething presence" plagues feminist legal theory, is rendered visible.

A. *The Anti-Pornography Approach*

A considerable body of feminist legal theory grappling with the cultural meanings of pornography has asserted that pornography is the linchpin in a web of patriarchal power where violence against women, female subordination, and male dominance are sexualized, glorified, and normalized.¹⁹ For anti-pornography feminists, pornography is not simply an explicit representation of women's sub-

Id. at 592.

18. In forging cross-disciplinary alliances, feminist legal theory can begin to bridge its disconnect from feminist theory. While both projects maintain a general interest in gender (and remedying gendered injuries), the debates and discussions occurring within these fields are often quite disparate. One space for continued feminist intervention is bringing these two bodies of thought, scholarship, practice, and theory into closer and more dynamic dialogue. Katherine Franke argues,

[T]here appears to be an increasing disconnect between legal feminism and other feminist disciplines when it comes to the scope and meaning of a feminist approach to sexuality, desire, and women's "hedonic lives," to borrow a term Robin West introduced into the legal literature some years ago. . . . While we [feminist legal scholars] devote our considerable energies to addressing sexuality understood in terms of freedom from oppressive practices, feminists in other disciplines continue to simultaneously approach questions of sexuality in both negative (freedom from) and positive (freedom to) terms.

Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 181-82 (2001) (citations omitted).

19. See DWORKIN, *supra* note 10, at 24-25; MACKINNON, FEMINISM UNMODIFIED, *supra* note 10, at 148; MACKINNON, ONLY WORDS, *supra* note 10, at 16-17; MACKINNON, TOWARD A FEMINIST THEORY, *supra* note 10, at 195; MAKING VIOLENCE SEXY: FEMINIST VIEWS ON PORNOGRAPHY, *supra* note 10.

jugation. Instead, it functions as both a performance of male dominance and an advocacy of male power. Anti-pornography feminist Catharine MacKinnon argues, "[W]hat pornography *does* goes beyond its content: it eroticizes hierarchy, it sexualizes inequality. It makes dominance and submission into sex. Inequality is its central dynamic; . . . [pornography] institutionalizes the sexuality of male supremacy, fusing the erotization of dominance and submission with the social construction of male and female."²⁰ Because pornography functions as an act, anti-pornography feminists argue that pornography both mirrors and cements the actual position of women under conditions of patriarchy. MacKinnon asserts that

[i]n pornography, there it is, in one place, all of the abuses that women had to struggle so long even to begin to articulate, all the *unspeakable* abuse: the rape, the battery, the sexual harassment, the prostitution, and the sexual abuse of children. Only in the pornography it is called something else: sex, sex, sex, sex, and sex, respectively. Pornography sexualizes rape, battery, sexual harassment, prostitution, and child sexual abuse; it thereby celebrates, promotes, authorizes, and legitimizes them.²¹

Thus, for anti-pornography feminists, pornography is not only a metaphor for unspeakable abuse; it also constitutes the abuse itself.

Anti-pornography feminists endorse legal regulation of pornography under a theory that pornography has both production²² and consumption harms.²³ That is, women are injured through their "use" in the production of pornography and all women are injured through the circulation of pornography, which glamorizes male dominance and eroticizes female subordination. Because of these dual harms,

20. MACKINNON, FEMINISM UNMODIFIED, *supra* note 10, at 172.

21. *Id.* at 171.

22. MacKinnon argues that

[t]he first victims of pornography are the ones in it. . . . [B]efore the pornography became the pornographer's speech, it was somebody's life. This is particularly true in visual media, where it takes a real person doing each act to make what you see. This is the double meaning in a statement one prostitute made at our hearing: "[E]very single thing you see in pornography is happening to a real woman right now."

Id. at 179-80.

23. MacKinnon argues that the consumption of pornography is problematic because

pornography stimulates and reinforces, it does not cathart or mirror, the connection between one-sided freely available sexual access to women and masculine sexual excitement and sexual satisfaction. . . . Reality is: pornography conditions male orgasm to female subordination. It tells men what sex means, what a real woman is, and codes them together in a way that is behaviorally reinforcing. This is a real five-dollar sentence, but I'm going to say it anyway: pornography is a set of hermeneutical equivalences that work on the epistemological level. Substantively, pornography defines the meaning of what a woman is seen to be by connecting access to her sexuality with masculinity through orgasm. What pornography means *is* what it does.

Id. at 190.

law should be marshaled to end pornography's "technologically sophisticated traffic in women."²⁴

In regulating pornography, anti-pornography feminists argue, law can be deployed as a sex-equalizing device restoring the female subject's equal personhood, bodily integrity, and sexual autonomy. Acting under a belief that "the status of women . . . is at stake"²⁵ in the continued cultural presence of pornography, MacKinnon and Andrea Dworkin, also an anti-pornography activist, proposed a civil rights ordinance in 1983 that fit pornography under the rubric of sex discrimination and legislated accordingly.²⁶ The ordinance defined pornography as

the graphic sexually explicit subordination of women, whether in pictures or in words . . . [including representations where] . . . [w]omen are presented as sexual objects who enjoy pain or humiliation; or . . . [w]omen are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission of display.²⁷

The extraordinarily broad ordinance centered on eliminating pornography entirely to protect women (and, to some extent, men) from pornography's harms.²⁸

While anti-pornography feminist theory has developed a robust discourse exposing the links between pornography and patriarchal

24. MacKinnon, *Toward a Feminist Theory*, *supra* note 10, at 195.

25. *Id.* at 214.

26. See ANDREA DWORKIN & CATHARINE A. MacKinnon, *PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY* 138 (1988) (copy of Model Anti-Pornography Civil-Rights Ordinance). Several jurisdictions considered adopting versions of the model ordinance.

27. CATHARINE MacKinnon, *SEX EQUALITY* 1517 (2001). It is important to note that the ordinance stipulated that "[t]he use of men, children, or transsexuals in the place of women . . . shall also constitute pornography." *Id.* However, the theory underpinning the ordinance's promulgation, the protection of women's bodily integrity and sexual autonomy in the face of the cultural presence and production of pornography, never mentions the protection of men or transsexuals as a critical component of the ordinance's purpose. This ordinance was ultimately struck down in *American Booksellers Ass'n Inc. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985).

28. See *IN HARM'S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS* (Catharine MacKinnon & Andrea Dworkin eds., 1997). MacKinnon notes,

Men also testified [at the pornography hearings] about how pornography hurts them. One young gay man who had seen *Playboy* and *Penthouse* as a child said of such heterosexual pornography: "It was one of the places I learned about sex and it showed me that sex was violence. What I saw there was a specific relationship between men and women . . . [T]he woman was to be used, objectified, humiliated, and hurt; the man was in a superior position, a position to be violent. In pornography I learned that what it meant to be sexual with a man or to be loved by a man was to accept his violence." For this reason, when he was battered by his first lover, which he described as "one of the most profoundly destructive experiences of my life," he accepted it.

MacKinnon, *FEMINISM UNMODIFIED*, *supra* note 10, at 189 (citations omitted).

power, the anti-pornography regime has remained silent about a host of critical questions. In particular, anti-pornography feminism does not adequately address the pleasure that some female subjects receive from pornography,²⁹ the significance of pornography for the cultivation of some subjects' sexual imaginations,³⁰ or the inadequacy of

29. Instead, the anti-pornography movement has often drawn on a false consciousness theory to explain how women articulate claims to sexual pleasures under patriarchy. MacKinnon draws on this theory when she explains the position of women who oppose her civil rights ordinance:

Women who oppose the civil rights law against pornography are simply conservative about other things. When they defend the life they identify with, it is the sexual status quo they defend. . . .

Why do so many of us put so much into trying to get the benefit of a bargain that is so hopelessly stacked against us and so little, comparatively, into trying to change it? . . .

Women are randomly rewarded and systematically punished for being women. We are not rewarded systematically and punished at random, as is commonly supposed. We may or may not be rewarded if we go along with male supremacy. If we try to get out of its cage, it is virtually certain we will be punished. Actually, we are punished whether we try to get out or not, which is not even done to rats in experiments. So we peck forever for the occasional crumb that seems to reward our efforts and reinforces our hopes out of all proportion to reality, and we spend the rest of our time skulking in the corners of the cages we no longer try to leave. Not even when the door—as it occasionally is, through inadvertence or compassion or perversity or who knows what, or maybe even because some others of us bent the thing or picked the lock—is ajar.

MacKinnon, *FEMINISM UNMODIFIED*, *supra* note 10, at 226–27 (citation omitted). Similarly, MacKinnon believes that

sexual desire in women, at least in this culture, is socially constructed as that by which we come to want our own self-annihilation. That is, our subordination is eroticized in and as female; in fact, we get off on it to a degree, if nowhere near as much as men do. This is our stake in this system that is not in our interest, our stake in this system that is killing us. I'm saying femininity as we know it is how we come to want male dominance, which most emphatically is not in our interest.

Id. at 54.

30. For example, Drucilla Cornell argues that because desire is fundamentally linked to subjectivity, feminism's political project must be one that allows women to engage in claiming ourselves as agentic sexual subjects. To that end, Cornell argues, sexual representations can be crucial for enabling female subjects to envision themselves as sexual subjects, particularly under conditions of heteronormative patriarchy where there is a paucity of cultural space for the female subject to imagine herself as a sexual agent. See CORNELL, *IMAGINARY DOMAIN*, *supra* note 10. Despite an array of feminist critiques of the anti-pornography regime's failure to capture an affirmative right to pleasure, anti-pornography theory still lacks a critical analysis of female pleasure, desire, and arousal. See Amber Hollibaugh, *Desire for the Future: Radical Hope in Passion and Pleasure*, in *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 401, 409 (Carole S. Vance ed., 1984) ("Feminism must be an angry, uncompromising movement that is just as insistent about our right to fuck, our right to the beauty of our individual female desires, as it is concerned with the images and structures that distort it."); see also DUGGAN & HUNTER, *supra* note 10, at 58 ("Pornography carries many messages other than woman-hating; it advocates sexual adventure, sex outside marriage, sex for no reason other than pleasure, casual sex, anonymous sex, group sex,

causal relationships to describe the ways in which subjects respond to cultural products.³¹

B. *The Pro-Pornography Approach*

Pro-pornography feminists have exposed the critical absences in anti-pornography discourse, asserting that the anti-pornography movement is a puritanical regime which denies the female subject a critical space of sexual agency.³² Pro-pornography feminists imagine access to pornography (for both men and women) as fundamentally connected to agentic subjectivity and participation in the production of pornography as potentially liberating. Professor Camille Paglia epitomizes this position, arguing,

Far from poisoning the mind, pornography shows the deepest truth about sexuality, stripped of romantic veneer. . . . What feminists denounce as woman's humiliating total accessibility in porn is actually her elevation to high priestess of a pagan paradise garden, where the body has become a bountiful fruit tree and where growth and harvest are simultaneous.³³

voyeuristic sex, illegal sex, public sex. Some of these ideas appeal to women reading or seeing pornography, who may interpret some images as legitimating their own sense of sexual urgency or desire to be sexually aggressive."). MacKinnon, however, refuses to engage with questions of pleasure, and argues,

The *Diary* of the Barnard conference on sexuality [the conference from which Carole Vance's edited collection *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* emerged] pervasively equates sexuality with "pleasure." "Perhaps the overall question we need to ask is: how do women . . . negotiate sexual pleasure?" As if women under male supremacy have power to. As if "negotiation" is a form of freedom. As if pleasure and how to get it, rather than dominance and how to end it, is the "overall" issue sexuality presents feminism. As if women do just need a good fuck.

MACKINNON, *TOWARD A FEMINIST THEORY*, *supra* note 10, at 135 (citations omitted). MacKinnon's analysis, however, obscures the importance of desire in the constitution of sexual personhood and the centrality of both sexuality and pleasure in subjectivity. That is, in framing female sexuality around (male) dominance (and in casting dominance as necessarily reifying the subordination of women, not as something that can be performed, mimicked, and transformed), MacKinnon denies the female subject a site of claiming sexuality, a space of creating cultural, discursive, social, and imaginary space for defining herself sexually. While the process of sexual self-definition occurs against the backdrop of patriarchal culture, MacKinnon's vision of the primacy of the backdrop of patriarchy occludes the possibilities for individual resistance in the formation of sexual subjectivity. That is, while patriarchy is systematic, subjects can still carve sites where they problematize or challenge the workings of patriarchal power.

31. See Deborah Cameron & Elizabeth Frazer, *On the Question of Pornography and Sexual Violence: Moving Beyond Cause and Effect*, in *FEMINISM AND PORNOGRAPHY*, *supra* note 10, at 240.

32. See DUGGAN & HUNTER, *supra* note 10; CAUGHT LOOKING: FEMINISM, PORNOGRAPHY, AND CENSORSHIP *supra* note 10.

33. CAMILLE PAGLIA, *VAMPS AND TRAMPS: NEW ESSAYS* 66 (1994); see also CAROL QUEEN, *REAL LIVE NUDE GIRL: CHRONICLES OF SEX-POSITIVE CULTURE* 202, 204 (1997) ("I believe that sex is sacred and healing. This idea pervades my work as a prostitute, and this vantage point often startles people accustomed to negative ideas about sex

This emphasis on the liberation inherent in pornography has often led pro-pornography feminists to romanticize both sex work and pornography, removing them from the patriarchal context in which their production (and consumption) take place.

Pro-pornography feminists have argued against state regulation of pornography under two theories. First, state regulation of pornography cements a larger American tradition of deploying law to promote sexual Puritanism.³⁴ Furthermore, regulation of pornography will hurt sexual minorities and reify sexual hierarchies both outside of and within feminism.³⁵ In *Sex Wars: Sexual Dissent and Popular Culture*, Lisa Duggan and Nan Hunter responded to MacKinnon and Dworkin's collaborative efforts to pass municipal anti-pornography ordinances.³⁶ Duggan and Hunter argued that Catharine MacKinnon "joined with the right wing in invoking the power of the state against sexual representation."³⁷ They believed MacKinnon and her supporters helped spur a moral crusade that was beyond the control of feminists and which could only be "dangerous to the interests of feminists

workers' lives. They press me to delve into the negative side, and it often seems that what they're really looking for is evidence that men who patronize prostitutes are contemptible. I don't believe this To guide another person to orgasm, to hold and caress, to provide companionship and initiation to new forms of sex, to embody the Divine and embrace the seeker—these are healing and holy acts. Every prostitute can do these things, whether or not s/he understands their spiritual potential.").

34. See DUGGAN & HUNTER, *supra* note 10, at 40-41 ("Feminists have engaged in such symbolic campaigns before. In the nineteenth and early twentieth centuries, for instance, some British and American feminists waged campaigns against prostitution and for 'social purity,' and they achieved legislative success with the help of conservative[s] The raising of the age of consent in the early twentieth century, also accomplished with feminist support in the United States, had the result of empowering institutions of juvenile justice to persecute and incarcerate adolescent girls for the 'offense' of sexual activity. In all these cases, conservatives ultimately exercised more power in determining how laws, once enacted, would finally affect women's lives—more power than feminists imagined. . . . The MacKinnon/Dworkin bill has contributed to a moral crusade that is threatening to expand to other places on a wider scale.").

35. *Id.* (arguing that antigay assumptions underpin anti-pornography politics as the first prosecution under Canada's anti-pornography legislation (modeled on MacKinnon and Dworkin's anti-pornography statute) was a queer bookstore selling a lesbian sex magazine). Duggan and Hunter further note that

[they] suspected all along that antigay assumptions were deeply embedded in feminist antiporn rhetoric. This homophobia was projected onto gay male sexuality, allowing "nice" lesbians to feel normalized by their distance from "disgusting" male sexuality and promiscuity. This move required that "bad" lesbian sex be attacked as male-identified— butch-fem dykes and Samois activists were cut off from the normalizing feminine, and cast into the vile male "outside" envisioned by antiporn feminism.

Id. at 10-11; see also Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 267, 300-01 (Carole Vance ed., 1984).

36. CAUGHT LOOKING: FEMINISM, PORNOGRAPHY, AND CENSORSHIP, *supra* note 10, at 40-42.

37. *Id.* at 42.

everywhere, and to the future of women's rights to free expression."³⁸ Thus, pro-pornography feminists have situated anti-pornography feminists' reliance on the state to protect women as an entrenchment of sexual Puritanism furthering the interests of the right, and as a problematic "strange bedfellows" partnering of radical feminism and social conservatism.

C. *The Sex-Radical Rejoinder*

In the face of a polarized feminist debate, sex-radical feminists offer the most nuanced analysis of pornographic representation, envisioning pornography as a site of multiple and contradictory meanings that feminists can reclaim.³⁹ Theorizing the mutually constitutive nature of desire, pleasure, subordination, and dominance, sex-radical feminists have provided a theory that accounts for both the complexity of pleasure and the multiplicity of meanings inherent in representation.⁴⁰ This complex theoretical stance has allowed sex-radicals to investigate how feminists can challenge pornographic representations from inside the parameters of the genre.⁴¹ Isabelle Barker noted, "An effective feminist intervention into pornography will include means of discerning how pornography can at times represent violence, while at other times, it merely functions to ethically represent the complexities of human sexuality."⁴² Barker's contention epitomizes the sex-radical concern with the ability of paradox to create spaces of feminist resistance within pornography. It is precisely because sex-radicals understand pornography as a site of multiple meanings that they imagine pornography as a space that can be appropriated and re-made by feminists.⁴³

38. *Id.*

39. For the best articulations of the sex-radical position, see WENDY CHAPKIS, *LIVE SEX ACTS: WOMEN PERFORMING EROTIC LABOR* 26 (1997); WHORES AND OTHER FEMINISTS, *supra* note 10, at 127; Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995).

40. PAT CALIFIA, *SAPPHISTRY: THE BOOK OF LESBIAN SEXUALITY* 107 (1980) ("No erotic act has an intrinsic meaning. A particular sexual activity may symbolize one thing in the majority culture, another thing to members of a sexual subculture The context within which an erotic act occurs can also alter its meaning.").

41. For example, Chapkis argues,

From this perspective [of sex radicalism], acts of apparent complicity may also be acts of subversive resistance. Just as a colonized people may make use of the language of the colonizer in transgressive ways, women are understood to be able to subversively resignify sexual language and practices through using them in unintended ways.

CHAPKIS, *supra* note 39, at 26.

42. Isabelle Barker, *Editing Pornography*, in *FEMINISM AND PORNOGRAPHY*, *supra* note 10, at 643, 645.

43. For more on the possibility of (re)making feminist pornographies by altering the conventions of the pornographic genre while working within its parameters, see Jennifer C. Nash, *Doing it Differently: Feminist (Re)makings of Pornography* (2001) (unpublished A.B. thesis, Harvard College) (on file with author).

Sex-radicals envision the feminist project as centrally committed to dismantling sexual hierarchies and promoting sexual diversity, and as a result this camp is concerned with the installation of certain sexual practices as "feminist." Like pro-pornography feminists, sex-radical feminists argue that the creation of "strange bedfellows" between anti-pornography feminists and social conservatives enables both the entrenchment of sexual hierarchy within feminism and the reification of a gendered erotica/pornography binary, which implies that certain sexual practices are "more feminist" than others.⁴⁴ In particular, sex-radicals are apprehensive about the ways in which the anti-pornography position suggests that the only appropriate feminist stance toward pornography is advocacy for its abolishment, and consequently forecloses the political and personal longings of an array of female subjects who may feel that their sexual preferences, practices, and politics are not sufficiently feminist.⁴⁵ Feminist scholar Amber Hollibaugh argues that

44. See generally Franke, *supra* note 18, at 198-202. Sex-radical feminists problematize the pornography/erotica binary that a number of anti-pornography feminists, including Gloria Steinem, have reified. Steinem asserts,

Look at or imagine images of people making love; really making love. Those images may be very diverse, but there is likely to be a mutual pleasure and touch and warmth, an empathy for each other's bodies and nerve endings, a shared sensuality and a spontaneous sense of two people who are there because they *want* to be.

Now look at or imagine images of sex in which there is force, violence, or symbols of unequal power. They may be very blatant: whips and chains of bondage, even torture and murder presented as sexually titillating, the clear evidence of wounds and bruises, or an adult's power being used sexually over a child. They may be more subtle: the use of class, race, authority, or just body poses to convey conqueror and victim; unequal nudity, with one person's body exposed and vulnerable while the other is armored with clothes

GLORIA STEINEM, *OUTRAGEOUS ACTS AND EVERYDAY REBELLIONS*, 219 (1983). Steinem also argues that "[t]he problem is that there is so little erotica. Women have rarely been free enough to pursue erotic pleasure in our own lives, much less to create it in the worlds of film, magazines, art, books, television, and popular culture—all the areas of communication we rarely control." *Id.* at 222. Steinem's erotica/pornography binary entrenches a conceptualization of sex where women's pleasures are imagined as *warm* and *soft*, and men's pleasures are envisioned as *violent* and *dominant*. Under this regime, the fact of the female subject desiring wounds and bruises, or enjoying the role play of conqueror and victim renders her longings "unfeminist." The markings of particular kinds of pleasure as "unfeminist" stands in staunch opposition with the feminist project of destabilizing sexual hierarchies and allowing women access to cultural, social, legal, emotional, and psychic space for the cultivation and articulation of our sexuality. Katherine Franke argues that this reinstallation of sexual binaries under the guise of celebrating erotica "mirrors the dominant account of female and male sexuality provided by traditional sexologists that has undergone rigorous critique by feminist and queer sex researchers." Franke, *supra* note 18, at 207 (citation omitted).

45. See Hollibaugh, *supra* note 30.

[f]eminism cannot be the new voice of morality and virtue, leaving behind everyone whose class, race, and desires never fit comfortably into a straight, white, male (or female) world. . . . Instead of pushing our movement further to the right, we should be attempting to create a viable sexual future and a movement powerful enough to defend us simultaneously against sexual abuse.⁴⁶

In foregrounding the ways in which feminism, morality, and virtue become conflated when feminism partners with social conservatism, sex-radicals challenge feminism to develop politics that open up sexual possibility rather than condemning particular sexual practices.

In response to concerns about sexual hierarchy, sex-radical feminists have challenged the anti-pornography feminists' focus on negative rights⁴⁷ and have argued in favor of claiming affirmative rights that focus on sexual autonomy, sexual subjectivity, and radical sexual personhood. Sex-radical feminists have sought to "build a movement that validates the right for a woman to say yes instead of no"⁴⁸ Thus, the sex-radical project has focused on the contours and consequences of "yes"—of seeking and claiming pleasure under conditions of patriarchy.⁴⁹ The correlative feminist legal project that has emerged from sex-radicalism has been centrally concerned with challenging law to capture affirmative rights and to actively "theorize yes."⁵⁰

46. *Id.* at 409.

47. Jill Nagle usefully imagines negative rights as a kind of "stop" feminism, one which focuses on preventing gender-motivated violence against the female subject. This "stop" feminism, she argues "has a limited domain" because "stop" feminism is to women's sexuality as an ambulance is to human health: a necessary measure absolutely appropriate in many circumstances, but not suitable for daily care." Jill Nagle, *Introduction to WHORES AND OTHER FEMINISTS*, *supra* note 10, at 1, 7. Ultimately, an exclusive feminist focus on negative rights or "stop" feminism "fails to theorize a positive, autonomous view of female sexuality, instead reproducing much of society's deeply held ambivalence about female sexual agency." *Id.*

48. Hollibaugh, *supra* note 30, at 408.

49. See CORNELL, *IMAGINARY DOMAIN*, *supra* note 10. Cornell argues, [M]y affirmation of the representational politics of "femme" pornographers such as Candida Royalle . . . expresses the emphasis in my own feminism on unleashing the feminine imaginary, rather than on constraining men. I place myself on the side of those feminists who have stressed the importance of expanding the horizons of feminine sexuality.

. . . . As I have already argued, I believe that feminism must struggle to clear the space for, rather than create new barriers to, women's exploration of their sexuality.

Id. at 98-99.

50. Franke argues, "Without a doubt, when it comes to sex, we have done a more than adequate job of theorizing the right to say *no*, but we have left to others the task of understanding what it might mean to say *yes*." Franke, *supra* note 18, at 181. This project of "theorizing yes" is fundamentally linked to granting women sexual agency and sexual choice (though it is critical to recognize that those choices are always mediated by patriarchy, heteronormativity, white supremacy, etc.).

Despite sex-radicalism's nuanced reading of pornography, its approach has yet to permeate feminist legal scholarship. The sex-radical position has been institutionalized in the academy through the inclusion of "porn studies" in a host of interdisciplinary projects including cultural studies, visual studies, sexuality studies, and gender studies.⁵¹ Undergirded by the notion that pornography is culturally "on/scene,"⁵² that through Internet, DVDs, videos, and spam e-mails, pornography has become a part of daily American life,⁵³ porn studies scholars have established the academic pursuit of grappling with pornography's meanings.⁵⁴ Scholars working out of the porn studies tradition have sought to transcend the profeminist/antifeminist dialogue by asking new questions about representation, consumption, genre conventions, and the "pedagogy of pornography."⁵⁵ That this scholarship generally occurs outside the legal academy suggests the continued power that the pro/anti debate holds over the feminist legal imagination and the failure of feminist theory to enter into meaningful dialogue with the feminist legal project.

II. GHOSTS OF THE PRESENT: THE APPARITION OF RACE AND THE FEMINIST IMAGINATION

While feminists on both sides of the pro/anti debate remain divided as to the meanings of pornography and the appropriate feminist interventions in the arena of pornography, the terms of the feminist debate remain centered on pornography as a site of gendered meanings.⁵⁶ Focusing exclusively on gender is particularly troubling in light of the interventions of women of color feminisms that have exposed the contradiction between feminism's claim to speak for women and feminism's practice of systematically marginalizing the voices

51. Linda Williams notes that "porn studies addresses a veritable explosion of sexually explicit materials that cry out for better understanding. Feminist debates about whether pornography should exist at all have paled before the simple fact that still and moving-image pornographies have become fully recognizable fixtures of popular culture." Linda Williams, *Porn Studies: Proliferating Pornographies On/Scene: An Introduction*, in *PORN STUDIES*, *supra* note 10, at 1.

52. Linda Williams uses the term "on/scene" to describe one way of signaling not just that pornographies are proliferating but that once off (or) scene sexual scenarios have been brought onto the public sphere. On/scenity marks both the controversy and the scandal of the increasingly public representations of diverse forms of sexuality and the fact that they have become increasingly available to the public at large.

Id. at 3.

53. *Id.* at 1-2.

54. *Id.* at 1.

55. *Id.* at 17.

56. There has been considerable feminist work on the intersections of race and other areas of conventional feminist theoretical attention. See Crenshaw, *Mapping the Margins*, *supra* note 12; Barbara Omolade, *Hearts of Darkness*, in *WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT* 362 (Beverly Guy-Sheftall ed., 1995); Jennifer Wriggins, *Rape, Racism and the Law*, 6 HARV. WOMEN'S L.J. 103 (1983).

of women of color.⁵⁷ That is, the work of decades of "womanist"⁵⁸ scholarship has demonstrated the ways in which the exclusive feminist focus on gender obscures the intersections of gender and other vectors of power, ignores the experiences and concerns of women of color, and produces a feminist politics that fails to adequately capture the variety and complexity of women's experiences.⁵⁹ This critique is epitomized by bell hooks, who argues that "[w]hite women who dominate feminist discourse, who for the most part make and articulate feminist theory, have little or no understanding of white supremacy as a racial politic, of the psychological impact of class, of their political status within a racist, sexist, capitalist state."⁶⁰ Despite sustained attacks against feminist theory for its failure to offer a meaningful theory of gendered oppression that accounts for experiences that are both gendered and racialized, feminist theory has yet to develop a methodology for analyzing the simultaneity of race and gender.

The conventional feminist response to these critiques is to analyze race as ancillary to gender.⁶¹ That is, gender and race are analyzed together, with gender always remaining the focus of the analysis. This feminist pluralism approach allows for theorizing black women's experiences or Latina women's experiences, but always through the lens of *women's* experiences.⁶² MacKinnon epitomizes this problematic position:

57. See PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA (1984); HOOKS, *supra* note 7; VALERIE SMITH, NOT JUST RACE, NOT JUST GENDER: BLACK FEMINIST READINGS xiv-xxiii (1998); BLACK WOMEN'S STUDIES, *supra* note 7.

58. Alice Walker defines womanist as:

1. From *womanish*. (Opp. Of "girlish," i.e. frivolous, irresponsible, not serious.) A black feminist or feminist of color. From the black folk expression of mothers to female children, "You acting womanish," i.e., like a woman. Usually referring to outrageous, audacious, courageous or willful behavior. Wanting to know more and in greater depth than is considered "good" for one. Interested in grown-up doings. Acting grown up. Being grown up. Interchangeable with another black folk expression: "You trying to be grown." Responsible. In charge. *Serious*.

4. Womanist is to feminist as purple to lavender.

ALICE WALKER, IN SEARCH OF OUR MOTHERS' GARDENS: WOMANIST PROSE xi-xii (1983).

59. See HOOKS, *supra* note 7; AUDRE LORDE, SISTER OUTSIDER: ESSAYS AND SPEECHES (1984); BLACK WOMEN'S STUDIES, *supra* note 7.

60. bell hooks, *Black Women: Shaping Feminist Theory*, in WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 270, 272 (Beverly Guy-Sheftall ed., 1995).

61. See Catharine MacKinnon, *From Practice to Theory, Or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991-92). See generally CATHARINE MACKINNON, WOMEN'S LIVES, MEN'S LAWS (2005) [hereinafter MACKINNON, WOMEN'S LIVES, MEN'S LAWS].

62. Catharine MacKinnon epitomizes the notion that intersectional experiences can be examined through the lens of "women's experiences." She argues,

We urgently need to comprehend the emerging pattern in which gender, while a distinct inequality, also contributes to the social embodiment and expression of race and class inequalities, at the time as race and class are deeply imbedded in gender. For example, the sexualization of racial and ethnic attributes like skin color or stereotypes is no less a dynamic within racism for being done through gender.⁶³

The feminist tendency to be wed to the idea that oppression can only be done through gender, rather than grappling with the ways in which oppressions occur along multiple axes of power, continues to have a hold over the feminist imagination.⁶⁴

When race is engaged in conventional feminist theory, it is often deployed to show that black women's injuries are particularly sexist, rather than marked by both race and gender.⁶⁵ Patricia Hill Collins argues, "Interested in building coalitions among women across differences of race, theorists typically add Black women into preexisting feminist frameworks, often to illustrate how Black women 'have it worse.' Everyone has spoken for Black women, making it difficult for us to speak for ourselves."⁶⁶ While Collins foregrounds the ways in which the feminist mantra that "black women have it worse" silences

"Women," . . . is not a racist term. Most critical race thinkers see straight through the charge that feminism is essentialist to feminism's analysis of the reality of male dominance as a social system.

... "Essentialism" in this sense means taking white women as the model of "woman," taking white women's status and treatment as paradigmatic of women as such. In this criticism, white solipsism produces a category, "sex," in which white women are mistaken for all women, in which women who are white define what gender means for all women. As to particular work, this characterization either is or is not accurate; it has been both. What it has become is something more: the claim that it is racist to speak of "women" at all.

... Analyzing women "as women" says nothing about whether an analysis is essentialist. It all depends on *how* you analyze them "as women"; on whether what makes a woman be a woman, analytically, is deemed inherent in their bodies or is produced through their socially lived conditions.

MACKINNON, WOMEN'S LIVES, MEN'S LAWS *supra* note 61, at 85-86. For MacKinnon, anti-essentialism does not compel a deconstruction of theorizing women's experiences as women. Yet the interventions of critical race theory and critical race feminism require nuanced feminist theorizing to attend to the fact that experiences as women simply do not exist in a cultural moment where experiences as women intersect with raced, classed, sexualized, nationalized, etc. experiences. This does not seek to negate women either as an identity category or a political class. Instead, it seeks to compel feminist theory to attend to the fact that women might have competing interests or function as stakeholders in other women's oppression.

63. MACKINNON, FEMINISM UNMODIFIED, *supra* note 10, at 2.

64. *Id.*

65. Angela Harris has offered the best articulation of this premise. See Harris, *supra* note 17, at 603.

66. COLLINS, BLACK FEMINIST THOUGHT, *supra* note 7, at 124.

black women by enabling other women to speak on black women's behalf, this notion also hinders robust theorizing that grapples with the ways in which race and gender are interconnected vectors which inscribe black women's bodies in particular ways.⁶⁷

The notion that "black women have it worse" has pervaded feminist scholarship on pornography, and anti-pornography feminists have dominated scholarly engagement with the intersections of race and pornography. In the context of feminist theorizing around pornography, Collins' essay *Pornography and Black Women's Bodies* has functioned as the primary site of feminist investigations of racialized imagery in pornography and has been deployed by anti-pornography feminists to stand for the proposition that racialized imagery in pornography is a particularly sexist form of pornographic representation.⁶⁸ Collins' essay asserts that race can be understood as the "key pillar on which contemporary pornography . . . rests,"⁶⁹ as "[t]he pornographic treatment of Black women's bodies challenges prevailing [feminist] assumptions that since images of White women prevail in pornography; racism has been grafted onto pornography."⁷⁰ She traces contemporary pornographic representations to the historical legacy of the Hottentot Venus⁷¹ whose body functioned as an object of display upon which nineteenth-century white viewers could cast their colonizing gazes.⁷² Collins argues that the process illustrated by the "pornographic treatment of the bodies of enslaved African women . . . has since developed into a full-scale industry. . . . [encompassing] all women . . . objectified differently by racial/ethnic category."⁷³ Thus, Collins raises the ways in which pornography sexualizes racialized op-

67. See Harris, *supra* note 17, at 585.

68. Patricia Hill Collins, *Pornography and Black Women's Bodies*, in BLACK FEMINIST THOUGHT, *supra* note 7, at 135-43. For additional scholarly treatment of the deployment of Collins' essay as the totality of feminist theorizing on race and pornography, see Jennifer Nash, *Black Bodies, White Longings: Reading Race in Pornography* (2006) (unpublished paper) (on file with author).

69. Patricia Hill Collins, *Pornography and Black Women's Bodies*, in BLACK FEMINIST THOUGHT, *supra* note 7, at 136.

70. *Id.* at 138.

71. Sarah Bartmann, the Hottentot Venus, was a black woman whose body was displayed for nineteenth-century European audiences as emblematic of the difference inherent to black bodies. The collective European fascination with the Hottentot Venus has been imagined as centrally linked to prevailing conceptions that blacks were both physiologically and sexually deviant. See JANELL HOBSON, *VENUS IN THE DARK: BLACKNESS AND BEAUTY IN POPULAR CULTURE* (2005); BELL HOOKS, *BLACK LOOKS: RACE AND REPRESENTATION* 62-63 (1992); T. DENEAN SHARPLEY-WHITING, *BLACK VENUS: SEXUALIZED SAVAGES, PRIMAL FEARS, AND PRIMITIVE NARRATIVES IN FRENCH* (1999); Sander Gilman, *Black Bodies, White Bodies: Toward an Iconography of Female Sexuality in Late Nineteenth Century*, 12 CRITICAL INQUIRY 204, 213-21 (1985); Zine Magubane, *Which Bodies Matter? Feminism, Poststructuralism, Race and the Curious Theoretical Odyssey of the "Hottentot Venus,"* 15 GENDER & SOC'Y 816 (2001).

72. Patricia Hill Collins, *Pornography and Black Women's Bodies*, in BLACK FEMINIST THOUGHT, *supra* note 7, at 137.

73. *Id.*

pression, replicating hierarchies among women by drawing on a white supremacist history of exploiting black women's bodies.⁷⁴

With the notable exception of Collins' essay, there is a paucity of feminist scholarship that has grappled with racialized pornographic representation other than to formulate a cumulative expression where Sexualized Subordination + Racialized Subordination = Particularly Problematic Pornographic Representation. That is, feminist legal theory has failed to grapple with how race is deployed in pornographic representation, how black women's bodies function as sites of subordination and resistance in pornographic representation, and how reading race and gender simultaneously changes feminist strategy, practice, and politics. The absence of these critical questions from feminist engagement with pornography suggests the critical need for feminists to begin "writ[ing] stories concerning exclusions and invisibilities."⁷⁵

This dearth of scholarship is surprising given the theoretical power that "intersectionality," the conception that oppressions are constituted by intersecting mutually reinforcing vectors of power, carries in feminist discourse.⁷⁶ Intersectionality has enabled feminists to engage with the ways that

[b]lack women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.⁷⁷

However, the intersectional intervention of imagining the simultaneity of power's working has yet to yield a feminist methodology.⁷⁸ That is, while feminist theory is invested in analyzing intersectional experiences, it has not yet developed a vocabulary for engaging in this enterprise.

74. Collins demonstrates the ways in which pornography reifies racial hierarchies among women by drawing on Alice Walker's assertion that "'[w]here white women are depicted as human bodies if not beings, black women are depicted as shit.'" *Id.* at 138 (quoting Alice Walker, *Coming Apart*, in YOU CAN'T KEEP A GOOD WOMAN DOWN 41, 52 (1981)).

75. GORDON, *supra* note 1, at 17.

76. See NAOMI ZACK, *INCLUSIVE FEMINISM: A THIRD WAVE THEORY OF WOMEN'S COMMONALITY* 1-2 (2005); Leslie McCall, *The Complexity of Intersectionality*, 30 SIGNS 1771, 1771 (2005).

77. Crenshaw, *Demarginalizing*, *supra* note 7, at 209.

78. For feminist attention to constructing an intersectional methodology, see McCall, *supra* note 76.

III. GHOSTS OF THE PAST: PORNOGRAPHY AND THE PRODUCTION OF COLLECTIVE LONGINGS

Understanding what meanings pornographic representations of black women hold is of particular significance in a cultural moment when we are beginning to grapple with the historical legacy of sexual interracialism and its interplay with the collective American imagination. Ongoing cultural debates about the relationship between Thomas Jefferson and Sally Hemings and about Strom Thurmond's bi-racial daughter suggest both the deep historical roots of black/white sexual interracialism and the persistence of cultural anxiety surrounding sexual interracialism.⁷⁹ The social anxiety surrounding black/white interracialism has struck some theorists as particularly peculiar. Randall Kennedy, in reflecting on the Thomas Jefferson/Sally Hemings case, asks, "Why is it . . . that allegations of interracial sex should seem so much more damning than charges regarding other aspects of the man's conduct—for example, the indisputable fact that he owned, sold, and gave as gifts numerous human beings?"⁸⁰

This rhetorical gesture to the cultural anxiety around interracial sex stands in a paradoxical relationship to the hypervisibility of sexual interracialism in mainstream heterosexual pornography, and suggests the importance of sustained feminist investigations of the work that racialized images are performing in pornography. At a cultural moment when black female/white male sexual interracialism is rarely visually represented in nonpornographic fields, feminists must begin to query why pornography is a site where black women's bodies are routinely consumed by ostensibly white viewers.⁸¹ How do we analyze a collective white desire for the black female body and how does this psychic, historical, cultural, and social pull enable a fuller and richer understanding of representation, race, and gender? How are racial

79. For a discussion on Thomas Jefferson and Sally Hemings, see KENNEDY, *supra* note 16, at 50-59.

80. *Id.* at 52.

81. I use "ostensibly white viewers" to gesture at the tradition of feminist film theory imagining the viewer as male (and later interventions designed to capture the racialized aspects of looking). It is important to note that an array of scholars have problematized the notion that the viewer is necessarily male or necessarily white, both theoretically and practically. For eloquent critiques of the assumptions underpinning conventional film theory, see JACQUELINE BOBO, *BLACK WOMEN AS CULTURAL READERS* (1995); RICHARD DYER, *WHITE* (1997); bell hooks, *The Oppositional Gaze, in BLACK LOOKS: RACE AND REPRESENTATION*, *supra* note 71, at 115; JANE JUFFER, *AT HOME WITH PORNOGRAPHY: WOMEN, SEX, AND EVERYDAY LIFE* (1998); Lola Young, *Fear of the Dark: 'Race', Gender and Sexuality in the Cinema* (Gender, Racism, Ethnicity Series, Kum-Kum Bhavnani et al. eds., 1996); Jane Gaines, *White Privilege and Looking Relations: Race and Gender in Feminist Film Theory*, 4 *CRITICAL CRITIQUE*, Autumn 1986, at 59-79; Deborah Grayson, *Is It Fake? Black Women's Hair as Spectacle and Spec(tac)ular*, *CAMERA OBSCURA* 36, Sept. 1995, at 13; Joy James, *Black Femmes Fatales and Sexual Abuse in Progressive "White" Cinema: Neil Jordan's Mona Lisa and The Crying Game*, *CAMERA OBSCURA* 36, Sept. 1995, at 33.

fantasies collectively generated and maintained through pornography?

A. *Histories of Ownership*

Various scholarly readings of interracialism have placed the allure of the black female body in conversation with the historical tradition of white ownership of black bodies.⁸² Because pornography has been understood as a representational space that enables ostensibly male viewers to consume a fantasized site, scholars have situated sexualized representations of interracialism against the backdrop of colonialism, slavery, and white ownership of black women's sexuality and reproductive capacities.⁸³ Collins argues that contemporary black/white sexual interracialism should be historically contextualized to offer a richer understanding of its complexity. Collins stated,

[T]he historical relationship [of Black women] with White men has been one of legal but not sexual rejection: Propertied White men have exploited, objectified, and refused to marry African-American women and have held out trappings of power to their poorer brothers who endorse this ideology. The relationships between Black women and White men have long been constrained by the legacy of Black women's sexual abuse by White men and the unresolved tensions this creates. Traditionally, freedom for Black women has meant freedom from White men, not the freedom to choose White men as lovers and friends.⁸⁴

Situating black/white interracialism in a historical context where black women's bodies existed solely for white male consumption suggests that the current pornographic fetishization of black female bodies displayed for white male enjoyment can be understood as part of a continuing legacy of white male (visual) access to black female bodies.

B. *Practices of Consumption*

Scholars have also hinged their analyses of the appeal of the black female body in the context of a cultural milieu where black bodies are consumable by white audiences. Rather than rooting their analyses in the historical tradition of white ownership of black bodies, these scholars examine the ways in which the global traffic of images allows for the consumption and commodification of the racially marked Other. Under this regime, white majoritarian culture "claim[s] the body of the colored Other instrumentally, as unex-

82. See Abdul R. JanMohamed, *Sexuality on/of the Racial Border: Foucault, Wright, and the Articulation of "Racialized Sexuality," in DISCOURSES OF SEXUALITY: FROM ARISTOTLE TO AIDS 94* (Domna C. Stanton ed., 1992).

83. Examples of scholarship attending to the intersections of sexualized representations of black women and interracialism include HOOKS, *supra* note 7; K. SUE JEWELL, *FROM MAMMY TO MISS AMERICA AND BEYOND: CULTURAL IMAGES AND THE SHAPING OF US SOCIAL POLICY* (1993); Omolade, *supra* note 56.

84. COLLINS, *BLACK FEMINIST THOUGHT*, *supra* note 7, at 162.

plored terrain, a symbolic frontier that will be fertile ground for their reconstruction of the masculine norm ⁸⁵ This "eating [of] the other" allows the white subject to temporarily consume the black body while retaining a position of social authority and privilege.⁸⁶ For these scholars, representations of interracialism allow the white viewer a small taste of the Other, enabling him to enact colonial, patriarchal, and white-supremacist fantasies on the fertile ground of black female flesh.

C. *The Turn Toward the Psychic*

Although the historical ownership of black women's bodies and the contemporary commodification of black bodies both offer partial explanations of the sexual allure the black female body holds over the collective American imagination, these theories fail to account for the psychic pleasures, pulls, and pains of racialization and sexualization. That is, these theories neglect to confront the psychic undercurrents and tugs that form both the individual and the collective sexual imagination, and inform the hypersaturation of the pornographic visual field with images of black bodies. In attending to the psychic lure of interracial pornography, feminist theory can both examine the centrality of race to the American conception of sexuality and fantasy and can develop interventions that attend to the fact that pornography is a site where collective fantasies and anxieties are made visible. In imagining pornography as a site underpinned by fantasy, feminist legal scholars must begin to query if, how, and in what manners law can engage with a site undergirded by collective racial/sexual fantasies and desires.

In putting race and sexuality into dialogue, one scholar has noted that "[d]iscussions of the colorline are incomplete if we fail to address its function as an instrument of pleasure."⁸⁷ Anthony Farley argues that race is primarily an instrument of pleasure. According to Farley, white subjects garner pleasure from race, a pleasure that is enhanced as race is cloaked in the language of the natural which provides a seemingly innate justification for both white superiority and black degradation.⁸⁸ Ultimately, "[r]ace, like sexuality, is a place where

85. bell hooks, *The Oppositional Gaze*, in *BLACK LOOKS: RACE AND REPRESENTATION*, *supra* note 71, at 24.

86. *Id.* at 21.

87. Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457, 465 (1997).

88. Farley posits a conception of power that is problematically unidirectional. For Farley, blacks are degraded, humiliated subalterns and whites are empowered, privileged, pleasure-seeking subjects. *Id.* at 464. However, if race is a performance or a (re)iterated cultural practice steeped in the fulfillment of roles, the interventions of poststructuralism and postmodernism suggest that in their repetition, the roles can be re-made. The underdevelopment of the pleasure black subjects might take in race suggests that Farley's theoretical conception of power is not sufficiently robust to attend to the provocative concept of race as pleasure that he advances. That subjects on

power masks itself as nature."⁸⁹ Pulling back the cloak of the natural to expose the workings of power enables a more complex engagement with the ways in which "the colorline" works as both an individual and a collective "instrument of pleasure." Analyses that attend to race-pleasure suggest that the interracial pornographic scene is an iteration of the race/sex line where whites wield the ma(r)king of race for their own sexual and racial pleasures.

Engaging race and sexuality problematizes and complicates conventional readings of the work that pornography performs. Conventional feminist analyses suggest that pornography functions as a mechanism that purports to represent the *truth* of women's pleasure, and as a site that is "aimed at eliciting the confession of the scientific truths of sex."⁹⁰ Through its unyielding focus on making the body's mechanisms, workings, and visible pleasures, pornography seeks to capture the *truth* of women's bodies.⁹¹ Yet the irony of the primacy of the visual in pornography is that contemporary pornography seeks to situate women's pleasures in a visual economy where the "money shot" continues to represent the literal and visual climax of the film and where the primacy of the visual renders women's pleasures invisible.⁹² That is, the seemingly invisible female orgasm can never be captured within the visual parameters of pornography. Thus, pornography can be analyzed as a longing to locate the truth of female pleasure and as a frustrated (and frustrating) genre because that truth can never be made known within the parameters of conventional pornography.

This reading of pornography, however, neglects the ways in which pornography can also be understood as an attempt to make the imagined differences of raced bodies and raced pleasures visible for the white viewer. That is, because race is fundamentally an instrument of pleasure, pornography provides a visual medium for making the imagined truth of race visible.⁹³ Yet scholars have ignored the

both sides of the color line take bodily pleasure in race suggests that whites and blacks have stakes, though different and differential, in the maintenance of race.

89. *Id.* at 467.

90. WILLIAMS, HARD CORE, *supra* note 10, at 3.

91. *Id.* at 4.

92. Luce Irigaray's work has sought to interrupt the saturation of the sexual with images of the phallus by restoring the feminine (particularly images of *jouissance*, feminine pleasure that exceeds the scope of phallogocentric language) to conversations about sexuality. See LUCE IRIGARAY, *SPECULUM OF THE OTHER WOMAN* (Gillian C. Gill trans., 1985); LUCE IRIGARAY, *THIS SEX WHICH IS NOT ONE* (Catherine Porter & Carolyn Burke trans., 1985); LUCE IRIGARAY, *TO BE TWO* (Monique M. Rhodes & Marco F. Cocito-Monoc trans., 2001).

93. It is critical to note that technological changes have produced audience changes and the presumed notion that the viewer is always heterosexual, white, or male must be disrupted in the service of building a more nuanced feminist vocabulary. Yet it is critical to balance this attention against the ways in which black women's bodies are made to perform for a (presumably white) male viewer. That these moments of performance may be viewed and interpreted by an array of other viewers

ways in which representations of black bodies in pornography attempt to provide *proof* of the imagined pleasures of racially marked bodies, particularly in a regime where sexual difference(s) and sexual deviance are imagined as significant markers of racial difference.

An engagement with the ways in which pornography purports to produce evidence of both gender and racial difference allows feminists to craft a theory considerate of the pornographic production of gendered and racialized fantasies. This new conceptualization of pornography, conscientious of the fact that neither sex inequality nor sexual agency offer full analytical stories of pornography's cultural presence or pornography's multiple meanings, compels feminist legal theory to "see the things and the people who are primarily unseen and banished to the periphery of our social graciousness."⁹⁴

IV. GHOSTS TO BE RECKONED WITH: TOWARD NUANCED FEMINIST THEORIZING

As we begin to frame our analyses around race, gender, and pornography, it is crucial that as feminists, we honor the interventions of sex-radicalism by honoring pornography's complexity and multiple significations. In particular, it is critical that we circumvent the pitfall of reading all representations of black women's bodies in pornography as inherently racist.⁹⁵ Williams persuasively notes, "To recognize the racism that has generated these [racialized] fantasies does not suggest that the function they fulfill today is racist in the same way. Nor is it to say that it does not participate in aspects of an increasingly outmoded racial stereotyping."⁹⁶ Williams' intervention encourages feminist theory to move beyond the type casting of pornography as racist (or sexist) and suggests that feminists start asking more complex questions about representation, meaning-making, the intersections of race, gender, and desire, and the production and maintenance of fantasy. In moving beyond knee-jerk charges of racism or sexism, and instead examining the ways in which racialized and sexualized imagery work in pornography, feminist legal theory can develop a more complex analysis that can be used for an array of feminist projects. These new areas—building affirmative notions of pleasure into feminist discourse, partnering with the state to insure safe access to pornography for willing viewers, toppling sexual hierarchies within feminism, and attending (and responding) to the ghosts of white supremacy that haunt feminist discourse—will allow feminist legal theory to reconceptualize its practice in new, and more nuanced, ways.

does little to destabilize the ways in which black women's bodies are made to function as sites for white pleasure in pornography.

94. GORDON, *supra* note 1, at 196.

95. PORN STUDIES, *supra* note 10, at 302.

96. *Id.*

Furthermore, these new interventions compel a shift in feminist legal theory away from the anti-essentialist rhetoric that has pervaded feminist discourse and towards an attention to "the blind field[s]" that are "constituent feature[s] of contemporary modern life" and mainstream feminist legal theory.⁹⁷ Significant critiques of essentialist feminist theorizing and feminist exclusivity have highlighted the ways in which particular women's voices, namely the voices of heterosexual middle-class white women, have consistently been allowed to represent all women's voices.⁹⁸ The anti-essentialist thread of feminist thought has been particularly significant in compelling nuanced analyses which account for the fact that speaking *as* or *for* women will necessarily fail to account for the variety, diversity, and multiplicity of experiences that fall under the broad category of *women*.

An attention to hauntings, however, produces a slightly different challenge for the feminist legal project. An engagement with hauntings compels an awareness of what is absent and excluded from feminist theorizing, and what that exclusion reveals about the contours of what is included. While an anti-essentialist move requires a rhetorical shift to the plural (that is, from *woman* to *women*), an attention to hauntings requires a theoretical and political shift towards excavating feminist theory and practice to locate what is missing and to interrogate the consequences of those absences on the robustness and complexity of feminist work.

In foregrounding the absence of an analysis of race in feminist engagement with pornography, the apparition of white supremacy continues to haunt feminist work. This apparition haunts by making race nearly invisible in feminist analyses and by purportedly fulfilling the promise of intersectional theorizing through the mere mention of the word race. Race is hyper-visible in pornographic works, yet race remains invisible in feminist analyses of pornography, as gender is foregrounded as the sole vector of power worthy of feminist analysis. In rendering racialized representations in pornography absent from feminist discourse, feminists have failed to generate a theory that attends to pornography's complexity, multiplicity of meanings, or connections to the maintenance (and possible disruption) of both white supremacy and patriarchy. Most importantly, theorizing the multiplicity of meanings in pornography creates space for feminists to begin to do the work of harnessing law for affirmative purposes, using law to carve out cultural space for the feminine sexual imagination.⁹⁹ Ask-

97. GORDON, *supra* note 1, at 206.

98. See generally ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); CHANDRA TAPLADE MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* (2003).

99. The best example of marshaling law in the service of preserving the feminine sexual imagination is Drucilla Cornell's conception of "zoning" as a tool to prevent enforced viewing of pornography but to maintain access to pornography. Cornell argues that enforced viewing of pornography violates the degradation principle, as

ing feminist legal theory to create space for the feminine imagination to flourish compels an attention to the multiple ghosts that continue to haunt law, the legal academy, and feminist legal theory, and requires a commitment to constant reflexivity about the very framing of the feminist project.

In her reflections on feminist politics, Audre Lorde asked, "What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the narrowest parameters of change are possible and allowable."¹⁰⁰ This Article should function as a starting point for feminist reflexivity about hauntings, a beginning of a conversation about how to destabilize "a racist patriarchy" without drawing on the fruits of that same patriarchy. In attending to what has been absent from feminist discourse, we can locate the sites to which we need to turn our critical attention. Gordon writes,

When a ghost appears, it is making contact with you. Offer it a hospitable reception we must, but the victorious reckoning with the ghost always requires a partiality to the living. Because ultimately haunting is about how to transform a shadow of life into an undiminished life whose shadows touch softly in the spirit of a peaceful reconciliation. In this necessarily collective undertaking, the end, which is not an ending at all, belongs to everyone.¹⁰¹

In collectively interrogating our own silences and granting apparitions "a hospitable reception" in the service of exposing their "seething presence," feminist legal theory will stand to offer robust analyses which will better enable us to destabilize the workings of white heteronormative patriarchy.

"[s]omeone is degraded when they are reduced to stereotypes of their 'sex' or have imposed upon them objectified fantasies of their 'sex' so that they are viewed and treated as *unworthy* of equal citizenship." CORNELL, *IMAGINARY DOMAIN*, *supra* note 10, at 10. Yet, Cornell notes that "[f]or some women, exploration of hard-core pornography is crucial to their sexual imaginary." *Id.* at 103-04. To that end, Cornell stresses legal regulation of pornography both to preserve access to pornography for those who imagine it as part of the process of becoming a sexual subject and to ensure that unwilling viewers never confront pornography. *Id.* at 147-58. Ultimately, Cornell's vision of the use of law is underpinned by an attention to hauntings. That is, Cornell views law as a site that can reinstall and reify precisely the binaries and constructions it seeks to dismantle. In critiquing MacKinnon and Dworkin's anti-pornography statute, Cornell notes that law should not "entrench stereotypes of femininity as the basis of discrimination law." *Id.* at 99. Instead, Cornell argues, law must protect women who are injured through the production of pornography and ensure that unwilling viewers (either men or women) are not forced to confront pornography. *Id.* at 102. Yet feminists must also challenge law to create and protect space for the cultivation of subjects' sexual imaginations. *Id.* at 158.

100. Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES* 110, 110-11 (1984).

101. GORDON, *supra* note 1, at 208.

NOTES

WHERE ARE WE NOW? CLINIC PROTECTION IN THE WAKE OF *SCHEIDLER V.* *NATIONAL ORGANIZATION FOR WOMEN, INC.*¹

*Autumn Nero**

In March 1986, several antiabortion opponents entered the Ladies Center in Pensacola, Florida, a clinic providing abortion services.² The activists were members of the Pro-Life Action Network, a nationwide antiabortion group.³ Upon entering, the group pushed the clinic's administrator down the stairs and slammed a National Organization for Women volunteer escort against a wall, causing serious injuries to both.⁴ They then destroyed the clinic's medical equipment, rendering two abortion suction machines inoperable.⁵ Afterwards, the perpetrators gloated about the success of this clinic "invasion," claiming that by destroying the equipment they had "'shut down an abortuary for a couple of days.'"⁶

The Pensacola incident is by no means an isolated event. Since the Supreme Court's landmark 1973 decision in *Roe v. Wade*,⁷ antiabortion protestors have engaged in a variety of violent and coercive strategies in an attempt to stop clinics from providing abortion services.⁸ These tactics have ranged from the exasperating, such as pour-

1. *NOW v. Scheidler (NOW III)*, 126 S. Ct. 1264 (2006); *NOW v. Scheidler (NOW II)*, 537 U.S. 393, 409 (2003); *NOW v. Scheidler (NOW I)*, 510 U.S. 249, 253 (1994).

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2. Fay Clayton & Sara N. Love, *NOW v. Scheidler: Protecting Women's Access to Reproductive Health Services*, 62 ALB. L. REV. 967, 978-79 (1999).

3. *Id.*

4. *Id.* at 979.

5. *Id.* n.80.

6. *Id.* n.81 (quoting letter from Joseph Scheidler to Dow Pursley (Mar. 31, 1986)).

7. 410 U.S. 113 (1973).

8. See generally H.R. REP. NO. 103-306 (1993). I do not wish to imply that all antiabortion protestors engage in such activities. Many abortion protestors engage in peaceful and constitutionally protected prayer, song, and leafleting. Such lawful protests are not the subject of this Note.