

Slavery and the Roots of Sexual Harassment

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In recent years, feminist scholars and activists have demonstrated the ways that U.S. slavery functioned as a system of gender supremacy. It entailed the dominance of men over women as well as whites over blacks. Adding the gender lens has shed immense light on the ways that sex, law, and power operated in the racially supremacist enslaving South. In recent years, this literature has emphasized the ways that slavery's sexual and racial subordination converged around the bodies of enslaved black women. My own contribution attempted to catalogue the legal rules that compelled black women into productive, reproductive, and sexual labor crucial to the political economy. That project characterized slavery as a "sexual political economy" to make explicit the connections between its markets, labor structure, and sexual exploitation.¹ It designated slavery a sexual economy to foreground slavery's gender hierarchies and mechanisms of subordination as well as to show how slavery offered early illustrations of the social construction and fluidity of gender and the false dichotomy between public and private relations.

Taking those insights to their logical conclusion, this essay frames enslaved women's sexual coercion through their roles as captive workers to cast the institution of slavery in a new light: as an early and particularly virulent strain of institutionalized sexual harassment. In the process, it shows how we gain better purchase on sexual harassment when we look at antecedents in U.S.

slavery. Conceiving slavery as sexual harassment sheds light on how slave labor was labor law, plantations were workplaces, and enslaved women's resistance constituted gender activism. Critically, such a framework also recovers the sexual dimension of both slavery *and* sexual harassment. Casting slavery in this way hopefully yields a richer and more nuanced understanding not only of slavery, but of feminist history, theory, and contemporary activism.

Labor in Slavery's Sexual Economy

As I described elsewhere, U.S. slavery compelled enslaved black women to labor in three markets—productive, reproductive, and sexual—crucial to the political economy.² As an initial matter, in a world built on slave labor, enslaved women's work was central. Unlike other slave economies that enslaved women primarily as wives or concubines, U.S. slavery forced black women to perform productive labor essential to the political economy. Some enslaved women were forced to join free white women in performing productive, domestic labor for white households. But, as a general matter, slavery markets for productive labor did not follow the gender segregation patterns of the free labor market. The overwhelming majority of enslaved women labored at tasks that in the free workforce were typically reserved for men. Slaveholders forced enslaved women to cut trees, build canals, and cart manure, as well as to plow, plant, hoe, and harvest crops. In some markets that drew heavily on enslaved men for skilled labor, slaveholders actually reserved the most arduous agricultural work for enslaved women, with a few earning the dubious honor of being rated the most valuable field hand. There was gender differentiation: enslaved men rarely did domestic labor and enslaved women were excluded from certain tasks, typically skilled labor, reserved to men. But unlike black men, white men, and white women, all of whom labored mainly in accord with traditional gender roles, enslaved women were compelled to perform every sort of productive labor, as the political economy demanded. Significantly, forcing enslaved women to breach the sexual division of free labor did not appear to challenge the male slaveholders' own gender identity.

In addition to coercing their labor in the conventional productive markets, slavery's law and markets extracted from enslaved women reproductive and sexual labor in a form required of no one else. Enslaved women reproduced the workforce. Like other New World plantation economies, that of the United States was based on a captive black workforce. "Land and slaves became the two great vehicles through which slaveholders realized their ambitions of fortune. . . . The usefulness of land increased in proportion to the availability of black slaves."³ But unlike its sister slave societies, the U.S. sud

tained its workforce through the women in it. By 1682, all of the colonies had adopted the rule of *partus sequitur ventrem* — a child inherited its status from its mother. Without regard to whether the father was free, enslaved women gave birth to enslaved children. This rule proved to be of immense economic and political significance. The South was one of the smallest importers of slaves, but had the largest slave population in the West. This demographic was inextricably tied to enslaved women's biological and social reproduction. Following the close of the (legal) international slave trade in 1808 and accompanying the rising labor demands driven by the expanding cotton market and southern frontier, a thriving domestic trade in black people emerged — supplied by black women's childbearing. In the end, "[t]he perpetuation of the institution of slavery, as nineteenth-century Southerners knew it, rested on the slave woman's reproductive capacity."⁴

Slavery also extracted sexual labor from enslaved women. Enslaved women found themselves coerced, blackmailed, induced, seduced, ordered and, of course, violently forced to have sexual relations with men. Sexual access was enforced through a variety of structural mechanisms. Most overtly, the South established markets that sold enslaved women for the explicit purpose of sex. In so-called "fancy girl" markets, principally in southern port cities, enslaved women could be bought to serve as the sexual "concubines" of one man, or to be prostituted in the more contemporary understanding of the term. According to one historian, we might understand "fancy" as referring to markets "selling the right to rape a special category of women marked out as unusually desirable."⁵ Outside of these overt markets for sex, most enslaved women and girls were purchased primarily for their productive labor in the fields or plantation house, but also were expected to have sexual relations with various men (their master, his sons or male relatives, visitors, overseers, enslaved men) on the plantation as well. Whether in sex markets or "productive" ones, every sale of an enslaved woman was a sale of sexual labor — or at least of the right to compel it. Sex was part and parcel of what was expected and coerced from women in the enslaved workforce.

By the nineteenth century, the standard mechanisms to protect a woman's sexuality were the law of rape and access to patriarchal protection. However ineffective for most white women, these protections were completely unavailable to enslaved women. The criminal law of rape reflected the economic and cultural expectation of sexual access. As a general rule, law did not recognize rape as a crime when committed against enslaved women.⁶ Nor did black men have the social authority to protect women in their community: "Without marriage or human rights, the female slave is a sexual vessel as well as chattel. There is no patriarchy to protect her unless the master assumes the role of her

protector, that is, if she is his concubine and has his children. Her men have no power or status; they are socially dead and thus are unable to come to her aid and protection, unable to father the children they sire. There are no laws that protect her because she has no place in the law."⁷

Regardless of filial, romantic, or simply community ties, a black man could rarely protect a black woman from sexual abuse. To do so was to risk his life and often hers. Rules of evidence and self-defense operated synthetically to criminalize any response but submission.⁸ Instead, at every opportunity, the legal system endorsed the principle that slaveholders' authority over the workers included sexual control and use. Slave law delivered what the market expected.

Once law and markets had institutionalized sexual access to enslave women, their sexuality could be manipulated to serve any number of economic, political, and personal interests. Men might coerce sexual relations with enslaved women for sexual gratification, to garner profits, to punish work-related transgressions, or to more firmly bolster the association of white women with the cult of the pedestal.⁹ Enslaved women's sexuality was made available simultaneously as an outlet for male eroticism, a market commodity, a tool of discipline, and an ideological device to justify slavery.

Thus, slavery's laws and markets collaborated to compel sexual and reproductive labor, as well as productive labor, from women in the enslaved workforce. Dictating that enslaved women gave birth to enslaved children and denying enslaved women access to either criminal rape law or patriarchal power, in effect, compelled enslaved women into reproductive and sexual labor. In fact, Jacqueline Jones points out, "[i]f work is defined as any activity that leads either directly or indirectly to the production of marketable goods then slave women did nothing *but* work."¹⁰ It is also important to keep in mind how race, gender, and status were simultaneously operative under slavery. Slavery's rules of race ensured that it was only *legally* black women who reproduced the workforce and who suffered in slavery's sexual markets. Of course, many enslaved people were superficially white, which actually drove the fancy market inflated prices of up to \$5,000. As one historian incisively commented, "What, after all, could be more valuable than a woman of 'white complexion who could be bought as one's private 'sex slave'?"¹¹ But legally, culturally, and politically, it was only "black" women who were compelled into such horrific "work."

Designating slavery a sexual political economy makes explicit the connections among its markets, labor structure, and sexual exploitation. It also directs attention toward the ways that New World slavery's geographic manifestation, the plantation, was particularly hospitable to institutionalized sexual

abuse and coercion of women in the black workforce. In the South, as in the rest of New World slavery, plantations were the primary units of production. Rising prices for commodities requiring intensive labor, reduced costs of capturing and enslaving that labor, increased political stability, and improved production and distribution capabilities resulted in the plantation-based economies that characterized New World slavery. Critically, plantations were not only the primary units of economic production—they were central cultural and political units of the slave economy as well. “[The plantation] not only constituted the chief vehicle for the exercise of power in southern society but also served as the foundation of southern public beliefs and values.”¹² Law and culture vested male heads of household with authority over all who lived on their plantations in both market and domestic relations. Both criminal and civil law declined to intervene in the slaveholder-enslaved relationship, except in the most egregious circumstances (which did not encompass enslaved women’s sexual exploitation and abuse).¹³ Moreover, the physical geography of plantations, often vast spaces, isolated from each other and denser populations, was ideal for those who sought to control the entire lives of their workforce. Plantation owners largely determined who entered and who left these vast workplaces/households, enslaved and free, black and white, female and male. Housing the workforces they enslaved, slaveholders could exercise the perpetual surveillance and scrutiny necessary to maintain racial and labor domination.

In short, the southern “plantation complex” both required and produced enslaved women’s sexual and reproductive exploitation. As workplaces, plantations were the source of insatiable demand for captive labor. As households, their gender norms insisted on the sexual subservience of black, enslaved women. Finally, their physical structure provided the privacy and authority necessary to convert and coerce labor relations into sexual ones.

Slavery as Sexual Harassment

In the 1970s, feminist scholar-activists identified sexual subordination in the workplace as a primary manifestation of sex inequality: “Work is critical to women’s survival and independence. Sexual harassment exemplifies and promotes employment practices which disadvantage women in work (especially occupational segregation) and sexual practices which intimately degrade and objectify women. . . . [S]exual harassment at work undercuts woman’s potential for social equality in two interpenetrated ways: by using her employment position to coerce her sexually, while using her sexual position to coerce her economically.”¹⁴ Sex was part and parcel of what was expected

from women as workers and had the added (or primary) effect of using the workplace to preserve gendered norms. More recent feminist elaborations of sexual harassment's injury characterize it as a "disciplinary, constitutive, and punitive regulatory practice."¹⁵ In the end, men harass women workers because of entitlement, to achieve sexual dominance, for personal pleasure, and to discipline women as workers and as women.

All of these motivations and effects were institutionalized *and* state-sanctioned under slavery on an almost incomprehensible scale. First, sexual (and reproductive) labor is part of what was expected and extracted from them as women in an enslaved workforce. Second, conveniently, the same acts that brought economic profits and sustained the political economy also resulted in sexual domination and personal erotic gratification.¹⁶ Third, slavery constituted a new category of labor relation: permanent, captive workers defined by race and as property, performing work essential to the means of production.¹⁷ Sexual coercion proved a key mechanism for compelling enslaved women to labor in the three parallel markets crucial to the southern political economy. (Enslaved men may have been sexually victimized for similar purposes, a topic which is underexplored in the literature.¹⁸ Indeed, contemporary sexual harassment theory has turned its attention to the theoretical and political dilemmas raised by same-sex harassment, which may prove insightful for trying to shed light on and comprehend the complex meanings of male sexual victimization of enslaved men.)¹⁹ Slaveholders sexually exploited and coerced women in the enslaved workforce for profit, pleasure, and punishment — simultaneously and without contradiction.

Feminist history helps us to see women in the enslaved workforce as sexually abused and exploited. Feminist legal theory helps us to see their abuse as sexual harassment — deployed to secure sexual access as part of the labor relation and to coerce captive labor. Slavery's structural sexual abuse and coercion was directed against them not only as women, or as black women, but as *black women workers*. Consider the descriptive power of Catharine MacKinnon's powerful articulation of sexual harassment when we substitute "slaveholder" for "employer." "In these cases, we are dealing with a male who is allegedly exercising his power as [a slaveholder], his power over a woman's material survival, and his sexual prerogatives as a man, to subject a woman sexually."²⁰ Hence slavery maps onto — indeed in many ways provides a map *for* — these contemporary understandings of sexual harassment. Consider the following.

As stated earlier, my previous work designated slavery a sexual political economy to make explicit the connections between its markets, labor structure, and sexual exploitation. Foregrounding the interplay between slavery's

political economic structure and its sexual norms also sheds light on the plantation complex as a vast workplace and one of the earliest American sites of institutionalized sexual harassment. The labor relation as defined by slavery incorporated sexual relations for purposes of pleasure, profit, punishment, and politics. The geography of plantations expedited widespread sexual exploitation for all of these purposes, granting the men who ran them sexual privacy and authority.²¹ Moreover, the geography of these “workplaces” meant that enslaved women could rarely escape their sexual dynamics. Enslaved women *and* their white mistresses describe enslaved women being forced to sleep in their masters’ bedrooms. There was no respite from sexual abuse at the end of the day, “at home.” Plantations comprised both “home” and “work,” and a master was as likely to stalk an enslaved woman in her quarters as in his bedroom. Finally, both public criminal and private plantation “justice” punished efforts to “exit” with extreme violence. Women in the enslaved workforce were, in effect, “sexual hostages.”²²

Slavery’s sexual economy also divided women, making black women susceptible to sexual abuse and harassment not only from men, but from white women. Barbara Omolade has richly described the ways that slavery operated as a racialized patriarchy — one in which white men broke ranks with black men in order to dominate all women.²³ White patriarchs were also exceptionally successful in encouraging white women to break ranks with their black sisters. Slavery’s sexual geography meant that enslaved women were harassed in the homes of women related to their abusers. Enraged and humiliated white wives insisted on the sale of black families fathered by their husbands, or themselves perpetrated ugly violence, at times sexual, against the women workers their husbands abused.²⁴ Hence, the sexual geography of the plantation complex also invited white women into sexual harassment of women in the enslaved workforce.

Finally, slavery graphically illustrates what feminists have argued since the earliest conceptions of sexual harassment: sexual subordination in the workplace is a central tool of labor, sexual, *and* racial control.²⁵ As Angela Davis argued at around the same time, white men claiming black women as sexual property functioned as a primary tool of repression against the entire enslaved workforce and black community more broadly.²⁶ White men not only wielded sexual abuse against enslaved women as individuals, but as a weapon of racial terror. Sexual authority over enslaved women was intimately bound with racial, economic, and political authority over all black workers, free and enslaved.²⁷ This is not a point about the “emasculatation” of enslaved men, but rather about what Davis characterized as “sexual terrorism” against a workforce.²⁸

In the end, while slavery's sexual harassment conforms to contemporary understandings it served interests and needs somewhat unique to slavery's distinct sexual economy. Some may worry that characterizing slavery as sexual harassment risks minimizing slavery's distinct brutal racial and gender subordination. I share their caution. Increasingly, we see history rewritten to erase embarrassing atrocities. Certainly slavery's sexual atrocities were exceptionally brutal. Sexual violence directed against black women workers was often lethal, was authorized by the state, and was part of a broader scheme of repressing a captive workforce. There is a sense in which our collective disgust, horror, and embarrassment about slavery causes us to draw a cordon noir around its sexual economy. But to exclude enslaved women from sexual harassment's history would be especially pernicious, whitewashing it, as it were. We can't let the horrifically corrupt and brutal manifestations of sexual abuse and coercion cause us to miss slavery for what it was: widespread, institutionalized, state-sanctioned sexual harassment implemented in perhaps its most corrupt form.

What do we get by conceiving enslaved women as coerced labor, plantations as some of the earliest large-scale workplaces, and slavery as sexual harassment? I would suggest three insights: one for history, one for theory, and one for contemporary activism.

Feminist History

Historians continue to contest the origins of feminism, but standard accounts locate its emergence in either the abolitionism that culminated in Seneca Falls or in the antebellum women's benevolent associations.²⁹ These narratives differ substantially, but both attribute the emergence of feminism to elite, literate, white women active in the early nineteenth-century public sphere. In neither account do enslaved women appear except as the objects of activism, or, if freed, as black compatriots of feminist abolitionists. Increasingly, women's history features enslaved women, but does not include them in discussions of feminism's origins.

The exclusion of enslaved women from formal feminist history takes more and less benign forms. At its most benign, it assumes that the dynamics of racial repression were so stark that they consumed the complete political consciousness of enslaved people. In this account, slavery's sexual abuse was secondary to its racial hierarchies. In its most essentialist formulation, feminism would argue that enslaved women failed to conform to the achievements of first wave white feminists: the production of public texts, organized protests, and the articulation of gender as a core axis of oppression. Neither

narrative considers enslaved women as gender activists operating independently of feminism's official white foremothers or, even more radically, as their predecessors in recognizing and resisting gender subordination.³⁰ Conceiving slavery as sexual harassment suggests a different view of feminist history.

For generations, feminist activists have noted the difficulty of organizing women because of gender's manifestation as both subordination and privilege. In America's racially patriarchal culture, white women have often experienced gender as privilege. Even today, many women (of all races and classes) stubbornly insist that gender's privileges outweigh its price. In addition, consider again the power of geography in both enabling and masking sexual subordination. Contemporaneously with much of slavery, most nonenslaved American women worked in small-scale workplaces, often their own households. Even those white women who joined enslaved black women in working on large plantations typically had some blood tie to the patriarch of the house. When the household was the unit and site of production, sexual harassment was difficult to distinguish from other forms of sexual abuse perpetuated within families and protected by law.³¹ Moreover, sexual exploitation of white women workers could be subsumed by the rhetoric — first, of paternal control over households and, later, separate spheres and gender “difference” as domesticity. The former denied its existence or attributed it to evil girls, women, and infants. The latter articulated the problem as women's abdication of the “private” domestic sphere. The solution was to remove women from the paid workforce and return them to the care and protection of men at home, again presuming paternalism. Sexual exploitation of individual women workers was condemned, but in language that continued to support gender hierarchy.

In contrast, slavery's racial supremacy may have enabled women in the enslaved workforce to recognize, politicize, and resist sexual harassment far earlier than many of their white peers. Black women in the enslaved workforce experienced sexual violence from white men unmediated by gender privilege. Nor did common gender rhetoric for mediating worker sexual abuse map onto the geography of the plantation (or enslaved women's lives). While southern planters incorporated metaphors of domesticity to describe and justify their absolute power over both their families and their slaves, the enslaved community experienced little ambiguity about the metaphor's descriptive power. By and large they were not members of the family and, even when they were, were not treated as such. From the perspective of enslaved women, paternalism failed to capture the dynamics of the plantation. Nor was anyone trying to drive them from “masculine” market work into “feminine” domestic labor. The plantation was not susceptible to separate spheres logic, nor were enslaved women's lives.³²

Moreover, when white men laid claim to enslaved women's sexual and reproductive capacity, they did so within a larger context of racial and workforce repression. This politicized sexual abuse, removing it from the realm of "private" conflicts between individual men and women.³³ Instead, as stated above, the entire enslaved workforce experienced sexual assault as a primary mechanism of their subordination. Slave narratives—autobiographies and oral histories—are replete with stories by victims and those close to them of brutal, sometimes lethal sexual atrocities. These texts parallel formal abolitionism in making sexual abuse part of the discourse of slavery's oppression, yet depart from standard abolitionist rhetoric in important ways. In lieu of depicting enslaved women as passive victims of abuse, they record a community in rebellion against the sexual norms whites sought to impose. Enslaved women themselves mounted multiple forms of resistance, some of them more recognizable than others.³⁴ But, additionally, the entire community resisted the appropriation of enslaved women's bodies as sexual property. Without romanticizing or obscuring the brutality and pain of sexual abuse, these narratives suggest that the politicized context entitled individual women to the support of their communities as they experienced, resisted, and survived sexual abuse. Instead of ostracism, blame, and denial, they received advice, collaboration, and assistance. In fact, the enslaved workforce may have been one of the first in the U.S. to mount active, community resistance to widespread sexual harassment.

Contrary to arguments of some feminist theorists that other identity "clouds" the operation of gender, the racial context of slavery meant that women in the enslaved workforce were some of the first to name, politicize, publicize, and resist institutionalized sexual harassment. That they actively resisted slavery's structural gender supremacy strongly suggests that American feminist activism goes back much farther than the Seneca Falls Convention. I understand the impulse to mark moments when women gathered, issued written texts, and developed a vocabulary that called national attention to women's structural subordination. And I do not want to minimize the significance of the emergence of gender as a distinct category of analysis in history. But including slavery as part of sexual harassment history does not restrict the scope of feminism; it expands it. Confronting the fundamentally patriarchal nature of American slavery opens the possibility that, through their manifold resistance, literally thousands of black women were joining with their free white sisters in recognizing and despising gender subordination. In fact, it appears that, precisely due to the racial context of slavery's sexual economy, feminism drew some of its first activists from among the enslaved workforce. They may not have understood their oppression solely through the gender lens. Their oppres-

sion was both gendered and racialized, and they recognized it as such. But the fact that there were *two* axes to their resistance ought not erase the significance of their *antixist* efforts.³⁵

Feminist Theory

Sexual harassment was a key component of Catharine MacKinnon's dominance theory of feminism, which emphasizes sexual power as a primary mechanism of women's subordination.³⁶ But increasingly, feminists want to take the "sex" out of sexual harassment.³⁷ At the extreme end, some new frameworks characterize sexual harassment not as sexual dominance, but as economic competition.³⁸ In this view, men sexually harass women to preserve male-only workspaces. Hence, in the blue-collar context, men create debilitating, sometimes dangerous, hostile environments in order to force women out of relatively desirable, higher-paying jobs or jobs with greater status, flexibility, or status.³⁹ A less extreme critique attempts to keep the focus on dominance while shifting the emphasis of sexual harassment theory to policing gender norms or disciplinary practices. Katherine Franke puts it succinctly: men harass women to feminize them, not for sex.⁴⁰ This trend in conceptions of sexual harassment is indicative of larger trends in feminist theory. Increasingly, academic feminists are skeptical as to whether dominance adequately captures sexual harassment specifically, or sociosexual dynamics more generally. There are related efforts to redefine women's subordination as gender, rather than sexual, oppression. Implicit in some theories seeking to protect sex is that worker identities can be distinguished from gendered or sexual ones — a resurrection of public and private as oppositional and exclusive, perhaps.

Reading slavery as sexual harassment contradicts theories of sexual harassment that would segregate it from other forms of sexual violence or redefine it as economic to the exclusion of being sexual. Recall that part of the plantation complex's cultural specificity is that it functioned simultaneously as home and workplace. For enslaved women there was no respite from employer sexual abuse. Assault from a slaveholder was as likely in her home (or his) as in the fields. A theory that segregates violence according to geography — whether it happened at "home" or at "work" — defies her experience. Within the plantation complex, sexual violence constituted both sexual harassment *and* domestic violence. Relatedly, harassment often came in the form of rape, and when women were whipped and punished, it was often intensely sexualized. When an enslaved woman was raped in the field, stripped bare for whipping, sexually threatened in the fields by her slaveholder/father, or threatened with sale for refusing sex in her "master's" bed, it was all sexual and it was all economic.

Despite its historical specificity, the plantation offers a paradigm case of sexual harassment, domestic violence, rape, and incest as on a continuum of *sexual* violences.⁴¹ Attempting, then, to disaggregate enslaved women's gendered (sexualized) identities from their worker identities results only in incoherence. Instead, comprehending sexual harassment as such is contingent on recognizing that there is not a tension between sexual desirability, contempt for women, and the denigration of women as workers.⁴² Rather, they are completely consistent and mutually reinforcing — and all sexual. Despite our desire to preserve sex as the realm of the positive, part of labeling slavery a sexual economy is to remind us that we can't always conveniently segregate private, intimate relations from market, work relations, or sexual harassment from other forms of violence against women.⁴³ Hence, slavery puts the sex back in sexual harassment.

It also suggests the ongoing explanatory power of sexual dominance as motivating sexual harassment. White men harassed and abused black women in the enslaved workforce for any variety of reasons. Significantly, at no point was the goal of sexual coercion to force enslaved women out of the workforce or into gender-segregated work (with the exception of coerced reproduction). Having already defined gender identity (i.e., masculinity and femininity) along racial lines, elite white men appeared personally enriched, not threatened, by enslaved women's work patterns. Instead, it was to secure their submission as well as the submission of black male workers. And it had the added benefit of being erotic as defined by slavery's sexual economy.⁴⁴ In fact, efforts to leave the workplace brought punishment and repression. I am particularly empathetic to Franke's insistence that sexual harassment functions as a "disciplinary practice" to achieve "power, privilege, or dominance," and to her conscientious inclusion of new theories of gender to enrich our understanding of gender-based subordination.⁴⁵ But slavery suggests the racial and historical limits of Franke's argument. Slavery offers a fascinating early example of the fluidity and social construction of gender.⁴⁶ Enslaved women's sexuality comprised an integral part of the political economy, and as such, was regulated by that structure's material and ideological needs. Through constant manipulation, it was continuously under construction, as required by the dictates of the culture. (This is not to say that enslaved women did not resist, a point of much contention. They did, as described above.) An enslaved woman might be socially constructed as "masculine" for the purposes of productive work and brutal physical punishment, but very much a woman for the purposes of reproductive and sexual exploitation. But, while white men sexually abused them as women, they refused to impute to them the "femininity" ascribed to white women.

In short, women can be made into sexual objects without being subjected to policing along the lines of conventional gender identity. For many nondominant women, sexual harassment (and other sexual violences) continue to be imposed without the accompanying imposition of femininity. Or, “femininity” (and gender generally) has to be expanded to include an understanding of black women’s sexual subordination. An analysis grounded in slavery as sexual harassment also sheds light on another mechanism of workplace sexual subordination that is at the center of much of Franke’s insightful work: the ways that sexual abuse of women can be an effective way of harassing men in the workplace. Particularly when combined with other identity categories (race, class, ethnicity, religion), sexual harassment can be deployed against men without feminizing moves. When we ground sexual harassment in this expanded history, we can see more clearly how its goal is labor, racial, *and* sexual, as well as gender, control. Franke does acknowledge the racial variations of sexual harassment, but does not accordingly limit her description of perpetrator motivations or the goals of these disciplinary practices.

Barbara Omolade captures slavery’s complex dynamics when she describes it as a racialized patriarchy, in which white men broke allegiances with black men, dominating both white and black women.⁴⁷ Comprehending slavery as gender supremacy suggests a different view of the relationship between sex and sexual harassment, or at least the need to refine claims. Slavery’s sexual economy constituted two hundred years of racialized sexual dominance. When we look at slavery, to borrow MacKinnon’s articulation of sexual harassment, “the entire structure of sexual domination, the tacit relations of deference and command, can be present in a passing glance.”⁴⁸ This is not to say that enslaved women did not resist, negotiate, manipulate, and, ultimately, shape the system. As I described above, they did. But this is a primary mistake of those who oppose dominance theory: to say that men seek to dominate women, to say that patriarchy is real, is not to say that men are always completely successful. Nor is it to say that there aren’t other axes of power continuously at work: slavery comprised a racialized patriarchy in which sexual abuse of enslaved women workers was part of the gender dominance by white men over white wives and the racial dominance of white men over black men. Relatedly, it is not to say that same-sex subordination isn’t in play: that one way of dominating *other men* is to feminize them, including sexually. But, it is to say that enslaved women workers’ sexuality was a primary site of contestation, and control and use of it was viewed as key to racial and class hierarchy. To my understanding, this seems to be in keeping with the basic tenets of dominance feminist theory. Other feminists may disagree with my conclusion, although I hope not with my characterization of slavery’s brutal racialized

sexual dynamics. This analysis suggests the need for contemporary feminist theories that further develop and account for slavery's distinct sexual dynamics. A theory of feminism inapplicable to or uncharacteristic of millions of enslaved women over two hundred years cannot be much of a theory for women.

Feminist Activism

One quite effective strategy among antifeminists is to whitewash feminism, erasing the presence of women of color in feminism's ranks and leadership. With specific regard to sexual harassment, advocates of ending or limiting legal relief have deployed the stereotype of the "strong" black mama, who, hand on hips, tells off employers and coworkers. They argue that white women should take lessons from their black "sisters."

Incorporating enslaved women's vigorous, systematic, and diverse resistance as part of sexual harassment history links their struggle to those of the black plaintiffs in early Title VII harassment litigation. Contradicting those who characterize feminists as white and sexual harassment as a white woman's issue, black women workers were among the first plaintiffs to bring Title VII harassment claims (against white and black men). Margaret Miller, Paulette Barnes, Diane Williams, and Maxine Munford were among the earliest women to litigate sexual harassment as prohibited sex discrimination.⁴⁹ Sandra Bundy brought an important hostile environment claim in 1981, and Mechelle Vinson was the plaintiff in the U.S. Supreme Court case affirming it as a viable cause of action under Title VII in 1986.⁵⁰ Anita Hill named it publicly in 1991, sacrificing much to do so. In 1977, Pamela Price joined her Yale classmates in arguing that the school's failure to combat sexual harassment denied their right to equal educational opportunity.⁵¹ It took more than twenty years from the enactment of Title IX until Aurelia and LaShonda Davis, a black mother and daughter team, convinced the Supreme Court that Title IX does provide a remedy against schools for failing to curtail student-on-student sexual harassment.⁵² LaShonda Davis was in the fifth grade.

Critically, it is not that black women found the sexual harassment cause of action and framework descriptive of their lives. Instead, they were instrumental and central in creating and formulating the frameworks that *described* their lives. In her discussion of the litigants with whom she worked, Catharine MacKinnon reflects:

Black women's least advantaged position in the economy is consistent with their advanced position on the point of resistance. Of all women, they are

most vulnerable to sexual harassment, both because of the image of black women as the most sexually accessible and because they are the most economically at risk. These conditions promote black women's resistance to sexual harassment and their identification of it for what it is.⁵³

It makes sense, then, that we find high percentages of black women active in bringing a legal remedy to workplaces and educational spaces, spaces long associated with racial, as well as sexual, subordination. Having fought so hard to gain access, why would black women then accept lesser status within these spaces? After years of flight, dissemblance, and physical resistance, for black women workers in particular, Title VII offered welcome legal relief.

Viewing sexual harassment through the lens of slavery also highlights severe limitations in the reach and scope of the doctrine. Sexual harassment is typically associated with women working in factories, offices, banks, and construction sites. (And LaShonda Davis has helped us, finally, to see it in schools as well.) But slavery's sexual economy calls attention to the ways women working in certain geographic configurations are particularly vulnerable to sexual abuse, especially when combined with other axes of social power (lessness), such as race, age, immigrant/document status, or imprisonment.⁵⁴ One of the defining characteristics of enslaved women's sexual exploitation was their combined lack of rights, exclusion from legal protection from sexual assault, and economic and political vulnerability. Paradoxically, Title VII continues to exclude the historical paradigm of black women's sexual harassment, domestic labor done in private, individual homes, now increasingly performed by undocumented women. Meanwhile, forced labor sweatshops, agricultural workplaces employing unpapered women, and prisons offer paradigm instances of contemporary geographies that concentrate sexually vulnerable populations of women workers. Prisons, in particular, resonate with plantations, in that women's status and sexual abuse *as workers* is often invisible.⁵⁵ In fact, prisons, like plantations, are closed geographies from which there is no exit without legal authorization. The state returns both enslaved and incarcerated women (and men) to the conditions of their subjection. Nor is the goal of harassment and abuse of incarcerated women to drive them from a workplace defined as male; rather, sex is perceived by many as, again analogously, a tool of discipline and a prerogative of power. Not surprisingly, we find women of color disproportionately represented in all four of these geographies.⁵⁶

Recovering enslaved women as gender activists in feminist history is a powerful, political counter-blow to conservative efforts to foment racial division among feminists. In addition, it reminds us that sexual harassment activists must fight to cover women working everywhere, especially in those places where the most vulnerable — unpapered immigrants, poor women, children,

and women of color — continue to labor. This should encourage us to rethrust the scope of Title VII, but also to create other legal remedies that extend modern-day equivalents of plantations, where women workers continue to be held as sexual hostages.⁵⁷

Conclusion

The brutality of slavery's overt racial repression often causes people to miss its sexual atrocities. Not only does this obscure slavery's dynamics, but also distorts feminist history and theory. As yet, neither feminists nor slave scholars have confronted slavery as sexual harassment. In fact, slavery was one of the most extraordinary instances of gender supremacy in U.S. history and one of the first to institutionalize and perfect sexual harassment. Labor historians have warned against the distortions that can occur when slavery is excluded from labor history. Feminists should take heed. Understanding enslaved women as forced labor and conceiving slavery as sexual harassment sheds light on plantations as vast workplaces, slavery as early, large-scale institutionalized sexual harassment, and enslaved women as early gender activists in naming, politicizing, and resisting sexual harassment. Such a framework also suggests directions for future research and work. First, conceiving slavery as sexual harassment gains new ground from which to view labor, racial, and sexual history. It also raises questions as to how geography, race, and other axes of social power, and sexual dominance continue to influence sexual harassment's manifestations. We need to grapple more explicitly with slavery as a sexual institution.

Notes

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1. See Adrienne D. Davis, "'Don't Let Nobody Bother Yo' Principle': The Sexual Economy of American Slavery," in *Sister Circle: Black Women and Work* 103 (Sharon Hark and Black Women and Work Collective eds., 2002) (hereinafter Davis, "Principle").

2. See Davis, "Principle," *supra* note 1.

3. James Oakes, *The Ruling Race: A History of American Slaveholders* 73 (1982).

4. Deborah Gray White, *Ar'n't I a Woman? Female Slaves in the Plantation South* 79–80 (1985).

5. Edward E. Baptist, "'Cuffy,' 'Fancy Maids,' and 'One-Eyed Men': Rape, Commodification, and the Domestic Slave Trade in the United States," 106 *American Historical Review* 1619, 1643 (2001); see also Neal Kumar Katyal, Note, "Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution," 103 *Yale Law Journal* 791, 798 (1993).

6. See *George v. State*, 37 Miss. 316, 320 (1859). Subsequently, Mississippi amended its statutory code to extend protection from sexual assault to black girls under twelve, but only those assaulted by black men. For a more detailed discussion of Mississippi's interplay of common and statutory law, see Adrienne D. Davis, "Loving Against the Law: The History and Jurisprudence of Interracial Sex" (unpublished manuscript, on file with author) (hereinafter, Davis, "Loving Against the Law"). Thomas Morris also offers a good summary of the ways that "[r]ace, age, and status were all elements in the law of rape in the South." Thomas D. Morris, *Southern Slavery and the Law: 1619-1860*, at 305 (1996).

7. Barbara Omolade, "The Unbroken Circle: A Historical and Contemporary Study of Black Single Mothers and Their Families," 3 *Wisconsin Women's Law Journal* 239, 242 (1987); see also Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," 1989 *University of Chicago Legal Forum* 139, 158-159 [hereinafter Crenshaw, "Demarginalizing the Intersection"].

Slave husbands had no right to protect (or control) their wives' sexuality. In contrast, common law gave free (and white) husbands enormous control over their wives' sexuality: no form of marital rape was recognized as a crime and every form of sex outside of marriage was at least nominally criminalized. See Jill Elaine Hasday, "Federalism and the Family Reconstructed," 45 *U.C.L.A. Law Review* 1297, 1333-1334 (1998); see also Jill Elaine Hasday, "Contest and Consent: A Legal History of Marital Rape," 88 *California Law Review* 1373, 1382-1406 (2000).

8. See Davis, "Loving Against the Law," *supra* note 6.

9. Davis, "Principle," *supra* note 1, at 114-117.

10. Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* 14 (1985).

11. Brenda E. Stevenson, *Life in Black and White: Family and Community in the Slave South* 180 (1996); see also Baptist, *supra* note 5.

12. Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* xi (1995). As one Methodist minister put it: "Every Southern plantation is *imperium in imperio*." Eugene Genovese, "'Our Family, White and Black': Family and Household in the Southern Slaveholders' World View," in *In Joy and in Sorrow: Women, Family, and Marriage in the Victorian South, 1830-1900*, at 69, 70 (Carol Bleser ed., 1991) (quoting Reverend H. N. McTyeire, "Plantation Life—Duties and Responsibilities," *DeBow's Review*, Sept. 1860, at 30).

13. See, e.g., *State v. Mann*, 13 N.C. (2 Dev.) 263, 264 (N.C. 1824) (in reversing a criminal assault and battery conviction of a man who had hired out a slave and shot her, the North Carolina Supreme Court concluded: "The power of the master must be absolute to render the submission of the slave perfect").

14. Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* 7 (1979) (hereinafter MacKinnon, *Sexual Harassment of Working Women*). Similarly, Kathryn Abrams defines sexual harassment as efforts to "preserve male control and entrench masculine norms in the workplace." Kathryn Abrams, "The New Jurisprudence of Sexual Harassment," 83 *Cornell Law Review* 1169, 1172 (1998); see also Kathryn Abrams, "Gender Discrimination and the Transformation of Workplace

Norms," 42 *Vanderbilt Law Review* 1183 (1989); Kathryn Abrams, "Title VII and the Complex Female Subject," 92 *Michigan Law Review* 2479 (1994).

15. Katherine M. Franke, "What's Wrong with Sexual Harassment?" 49 *Stanford Law Review* 691, 696 (1997).

16. See Baptist, *supra* note 5.

17. See Laura F. Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* 68–70 (1997); see also David Brion Davis, *The Problem of Slavery in Western Culture* 60 (1966).

18. See sources cited in Davis, "Principle," *supra* note 1, at 125 n.60.

19. See, e.g., Franke, *supra* note 15.

20. MacKinnon, *Sexual Harassment of Working Women*, *supra* note 14, at 92.

21. Harriet Jacobs, the heroic formerly enslaved author of a signal autobiography documents the sexual specificity of plantations. She describes the perpetual sexual surveillance and scrutiny she endured from her master, a doctor whose primary residence was in a small town. Significantly, Jacobs dates her determination to escape her master at any cost to his decision to send her to the plantation. Jacobs offers remarkable insight into how slavery functioned as sexual harassment. Harriet Jacobs, *Incidents in the Life of a Slave Girl* 84 (1861).

22. Darlene Clark Hine, "Rape and the Inner Lives of Black Women: Thoughts on the Culture of Dissemblance," in *Hine Sight: Black Women and the Re-Construction of American History* 37, 41 (Darlene Clark Hine ed., 1994) (hereinafter Hine, "Dissemblance").

23. "The white man's division of the sexual attributes of women based on race meant that he alone could claim to be sexually free: he was free to be sexually active within a society that upheld the chastity and modesty of white women as the 'repositories of white civilization.' He was free to be irresponsible about the consequences of his sexual behavior with black women within a culture that placed a great value on the family as a sacred institution protecting women, their progeny and his property. He was free to use violence to eliminate his competition with black men for black or white women, thus breaking the customary allegiance among all patriarchs. He was also free to maintain his public hatred of racial mixing while privately expressing his desire for black women's bodies. Ultimately, white men were politically empowered to dominate all women and all black men and women; this was their sexual freedom." Barbara Omolade, "Hearts of Darkness," in *Powers of Desire: The Politics of Sexuality* 350, 352 (Ann Snitow et al. eds., 1983) (footnotes omitted); see also Crenshaw, "Demarginalizing the Intersection," *supra* note 7.

24. Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* 325–326 (1988); see also Nell Irvin Painter, "Soul Murder and Slavery: Toward a Fully Loaded Cost Accounting," in *U.S. History as Women's History Feminist Essays* 125, 132 (Linda Kerber et al. eds., 1995) ("[w]hen the household was also a work site, the influence of labor relations within families would have been magnified") Nell Irvin Painter, "Of *Lily*, Linda Brent, and Freud: A Non-Exceptionalist Approach to Race, Class, and Gender in the Slave South," in *Half Sisters of History: Southern Women and the American Past* 93 (Catherine Clinton ed., 1994) (describing strategies of denial)

25. "[S]exual harassment can be both a sexist way to express racism and a racist way to

express sexism." MacKinnon, *Sexual Harassment of Working Women*, *supra* note 14, at 30. For an excellent series of essays discussing the intersection of race, sex, sexual harassment, and power, see generally *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas and the Construction of Social Reality* 412 (Toni Morrison ed., 1992) (hereinafter *Race-ing Justice, En-gendering Power*).

26. Angela Y. Davis, "Reflections on the Black Woman's Role in the Community of Slaves," in *The Angela Y. Davis Reader* 111, 124 (Joy James ed., 1998) (originally published in 32-4 *The Black Scholar* 3, 13 (Dec. 1971)) (hereinafter Davis, "Reflections"). Andrea Dworkin also employed this term early on to capture the circumstances of women's sexual repression. See Andrea Dworkin, "Pornography: The New Terrorism," 8 *New York University Review of Law and Social Change* 215 (1978-1979).

27. A germinal case on sexual authority is described in more detail in Davis, "Loving Against the Law," *supra* note 6. It also describes how antebellum judges and slaveholders resorted to analogies to the marital rape exclusion in defending their sexual "privacy" vis-à-vis enslaved women.

28. See Davis, "Reflections," *supra* note 26. bell hooks argues for a complex understanding of black men in patriarchy. She says: "To suggest that black men were dehumanized solely as a result of not being able to be patriarchs implies that the subjugation of black women was essential to the black male's development of a positive self-concept, an idea that only served to support a sexist order. Enslaved black men were stripped of the patriarchal status that had characterized their social situation in Africa but they were not stripped of their masculinity." bell hooks, *Ain't I a Woman: Black Women and Feminism* 20-21 (1981).

29. Compare Eleanor Flexner, *Century of Struggle: The Women's Rights Movement in the United States* (1959) with Barbara J. Berg, *The Remembered Gate: Origins of American Feminism: The Woman and the City, 1800-1860* (1978).

30. See also Robin Kelley, *Race Rebels: Culture, Politics, and the Black Working Class* (1994) (describing how labor activism and other resistance of the black working class often went unnoticed because it didn't conform to the paradigm of unionized or other formalized resistance).

31. "Physical closeness and daily contact seem to lend the appearance of individuation to relationships." MacKinnon, *Sexual Harassment of Working Women*, *supra* note 14, at 89.

32. "[S]ome black women have been able to grasp the essence of the situation, and with it the necessity of opposition, earlier and more firmly than other more advantaged women." MacKinnon, *Sexual Harassment of Working Women*, *supra* note 14, at 53. Kimberlé Crenshaw concurs: "Racism may well provide the clarity to see that sexual harassment is neither a flattering gesture nor a misguided social overture but an act of intentional discrimination that is insulting, threatening, and debilitating." Kimberlé Crenshaw, "Whose Story Is It Anyway? Feminist and Antiracist Appropriations of Anita Hill," in *Race-ing Justice, En-gendering Power*, *supra* note 25, at 412.

33. MacKinnon's early work took account of this history in identifying black women's leadership as sexual harassment activists and litigants. "To the extent they are sensitive to the operation of racism on an individual level, they may be less mystified that the sexual attention they receive is 'personal.' Their heritage of systematic sexual harassment under

slavery may make them less tolerant of this monetized form of the same thing. The stigmatization of all black women as prostitutes may sensitize them to the real commonality between sexual harassment and prostitution. Feeling closer to the brand of the harlot, black women may more decisively identify and reject the specter of its reality, however packaged." MacKinnon, *supra* note 14, at 53–54.

34. See, e.g., Hine, "Dissemblance," *supra* note 22 (discussing how structural sexual and reproductive abuse shaped cultures of resistance in southern black women); Darlene Clark Hine, "Female Slave Resistance: The Economics of Sex," in *Hine Sight: Black Women and the Re-Construction of American History* 27, 34 (Darlene Clark Hine ed., 1994) ("when they resisted sexual exploitation through such means as sexual abstention, abortion, and infanticide, they were, at the same time, rejecting their vital economic function as breeders. . . . The female slave, through her sexual resistance, attacked the very assumptions upon which the slave order was constructed and maintained. Resistance to sexual exploitation therefore had major political and economic implications."); see also Leslie A. Schwalm, *A Hard Fight for We: Women's Transition from Slavery to Freedom in South Carolina* 38 (1997) ("[w]omen's encounters with the threat of rape and sexual abuse provided additional impetus for subtle, persistent resistance and occasional outbreaks of open rebellion"). Black mothers advised their daughters: "Don't let nobody bother yo' principle, 'cause dat wuz all yo' had." John Blassingame, *The Slave Community: Plantation Life in the Antebellum South* 163 (1972) (quoting Minnie Folkes, a former Virginia slave). Harriet Jacobs famously hid in her grandmother's attic for seven years, waiting an opportunity to escape *with* her children. Jacobs, *supra* note 21. Some feminist literary scholars have argued that Jacobs's embrace of Victorian feminine rhetoric in her autobiography also constituted resistance to dominant racist stereotypes about black women.

35. Black feminist theorist bell hooks made this point more generally about race and feminist politics. Speaking of late nineteenth- and twentieth-century organizations she noted: "Black women identified themselves racially calling their groups Colored Women's League, National Federation of Afro-American Women, National Association for Colored Women, and because they identified themselves by race scholars assume that their interest in the elevation of blacks as a group overshadowed their involvement with woman's effort to effect social reform. In fact, black female reform organizations were solidly rooted in the women's movement." hooks, *supra* note 26, at 163; see also Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880–1920* (1993). hooks also notes: "While it is true that white women have led every movement toward feminist revolution in American society, their dominance is less a sign of black female disinterest in feminist struggle than an indication that the politics of colonization and racial imperialism have made it historically impossible for black women in the United States to lead a women's movement."

36. "Gender is a . . . question of power, specifically of male supremacy and female subordination. . . . The dominance approach centers on the most sex-differential abuses of women as a gender, abuses that sex equality law in its difference garb could not confront." Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* 40 (1987); *id.* at 42–43; see also *id.* at 46–62; Catharine A. MacKinnon, *Toward a*

Feminist Theory of the State 3–80, 215–249 (1989); Catharine A. MacKinnon, “Reflections on Sex Equality Under Law,” 100 *Yale Law Journal* 1281 (1991); Catharine A. MacKinnon, “Feminism, Marxism, Method and the State: An Agenda for Theory,” 7 *Signs* 515 (1982); Catharine A. MacKinnon, “Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence,” 8 *Signs* 635 (1983).

37. Kathryn Abrams recently rendered a powerful critique of theories that reject women’s sexual subordination as part and parcel of sexual harassment. “The New Jurisprudence of Sexual Harassment,” 83 *Cornell Law Review* 1169 (1998).

38. See, e.g., Vicki Schultz, “Reconceptualizing Sexual Harassment,” 107 *Yale Law Journal* 1683, 1686–1687 (1998) (“much of the gender-based hostility and abuse that women (and some men) endure at work is neither driven by the desire for sexual relations nor even sexual in content. Indeed, many of the most prevalent forms of harassment are actions that are designed to maintain work — particularly the more highly rewarded lines of work — as bastions of masculine competence and authority”).

39. MacKinnon made this point in *Sexual Harassment of Working Women*. See MacKinnon, *supra* note 14, at 9–23.

40. “[S]exual harassment is understood as a mechanism by which an orthodoxy regarding masculinity and femininity is enforced, policed, and perpetuated in the workplace.” Franke, *supra* note 15, at 760; see also Katherine Franke, “Gender, Sex, Agency, and Discrimination: A Reply to Professor Abrams,” 83 *Cornell Law Review* 1245 (1998) (hereinafter Franke, “A Reply”).

41. Beverly Balos and Mary Louise Fellows make these arguments in their work, “Guilty of the Crime of Trust: Nonstranger Rape,” 75 *Minnesota Law Review* 599 (1991); “A Matter of Prostitution: Becoming Respectable,” 74 *New York University Law Review* 1220 (1999); *Law and Violence Against Women* 578 (1996).

42. MacKinnon, *Sexual Harassment of Working Women*, *supra* note 14, at 43.

43. In “Don’t Let Nobody Bother Yo’ Principle” I describe the ways that slavery offers an early challenge to public/private dichotomies that rest on distinctions between informal “family” and formal “market” relations. Davis, “Principle,” *supra* note 1, at 119–120.

44. See Baptist, *supra* note 5, at 1621.

45. Franke, *supra* note 15, at 693, 745.

46. I describe this in Davis, “Principle,” *supra* note 1, at 119.

47. See *supra* notes 7, 23.

48. MacKinnon, *Sexual Harassment of Working Women*, *supra* note 14, at 95.

49. These early cases are described in detail in *id.* at 59–74; see also Anna-Maria Marshall, “Closing the Gaps: Plaintiffs in Pivotal Sexual Harassment Cases,” 23 *Law and Social Inquiry* 761, 775–782 (1998).

50. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); Marshall, *supra* note 49, at 775–782.

51. *Alexander v. Yale*, 459 F. Supp. 1 (1977), *affirmed* 631 F.2d 178 (2d Cir. 1980).

52. *Davis v. Monroe County*, 526 U.S. 629 (1999), *reversing* 120 F.3d 1390 (11th Cir. 1997). Mother and daughter were named two of *Glamour* magazine’s Women of the Year for 1999. “Women of the Year,” *Glamour*, December 1999, at 164.

53. MacKinnon, *Sexual Harassment of Working Women*, *supra* note 14, at 53. In her important sociological study of “legal mobilization” through sexual harassment litigation, Anna-Maria Marshall agrees that “the complex interaction of gender, class, and race created an enormous gap between harassed women and their employers—a gap that allowed employers, sanctioned by law, to ignore the women’s complaints. Yet relying on communications networks, these women mobilized the law to bridge that gap and to force employers to address their complaints.” Marshall, *supra* note 49, at 765. Similarly, in an interview with Marshall, feminist activist/scholar Nadine Taub speculated: “I don’t think it was an accident that many of the early cases were brought by black women because I would think that a lot of white women could be tricked into thinking that could be worked out, whereas for black women, they knew. They’d been exploited since day one.” *Id.* at 776.

54. Kimberlé Crenshaw’s germinal article on intersectionality retains its tremendous explanatory power here. *See generally* Crenshaw, “Demarginalizing the Intersection,” *supra* note 7; *see also* Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color,” 43 *Stanford Law Review* 124 (1991). Katherine Franke analogizes workplace to other institutional forms of sexual harassment, concluding: “Each location contributes a unique set of intersectional dynamics that render the sting of gender discipline painful and effective in different ways.” Franke, “A Reply,” *supra* note 40, at 1249.

55. *See, e.g.*, Angela Y. Davis, “Public Imprisonment and Private Violence: Reflections on the Hidden Punishment of Women,” 24 *New England Journal on Criminal and Civil Confinement* 339 (1998); Cassandra Shaylor, “‘It’s Like Living in a Black Hole’: Women of Color and Solitary Confinement in the Prison Industrial Complex,” 24 *New England Journal on Criminal and Civil Confinement* 385 (1998); Chris Weaver and Will Purcell, “The Prison Industrial Complex: A Modern Justification for African Enslavement?” 4 *Howard Law Journal* 349 (1998); *see also* Teresa A. Miller, “Keeping the Government Hands Off Our Bodies: Mapping a Feminist Legal Theory Approach to Privacy in Cross-Gender Prison Searches,” 4 *Buffalo Criminal Law Review* 861 (2001).

56. *See, e.g.*, Mary Romero, *Maid in the U.S.A.* (1992); Samantha C. Halem, “Slaves in Fashion: A Thirteenth Amendment Litigation Strategy to Abolish Sweatshops in the Garment Industry,” 36 *San Diego Law Review* 397 (1999); Laura Ho et al., “(Dis)Assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry,” 31 *Harvard Civil Rights–Civil Liberties Review* 383 (1996). Black women make up an even greater proportion of incarcerated women than black men do of incarcerated men. *See, e.g.*, Angela Y. Davis, “Women in Prison,” *Essence*, September 2000, at 150; Dorothy E. Roberts, “Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement,” 34 *U.C. Davis Law Review* 1005, 1017 (2001).

57. *See, e.g.*, Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464 (2000).