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## *I Am/I Am Not: On Angela Harris's Race and Essentialism in Feminist Legal Theory*

Mary Anne Franks

*University of Miami School of Law*, [mafranks@law.miami.edu](mailto:mafranks@law.miami.edu)

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# I Am/I Am Not: On Angela Harris’s *Race and Essentialism in Feminist Legal Theory*

Mary Anne Franks\*

*In 1990, Angela Harris wrote an article that interrogated the limitations of feminist legal theory. Nearly a quarter of a century later, the insights and challenges Harris offered in *Race and Essentialism in Feminist Legal Theory* continue to reverberate. The influence of her ideas can be seen in the fractured and passionate conversations about gender, race, and solidarity occurring both inside and outside of academia. In recent years, we have witnessed an explosion of debate of these topics in social media forums such as Twitter and Facebook. Far from being trivial, the intensity and persistence of these conversations suggest a welcome expansion of popular political and social consciousness. Harris’s work provides important context, depth, and insight to contemporary reflections on the nature and practice of feminism.*

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## INTRODUCTION

Angela Harris begins her famous essay *Race and Essentialism in Feminist Legal Theory* with two extreme voices: the “I” of Funes the Memorious, the title character of a short story by Jorge Luis Borges, and the “We” of “We the People” of the Declaration of Independence.<sup>1</sup> In Borges’s short story, Funes is a young man who wakes up from a horse-riding accident to discover that he can

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\* Associate Professor of Law, University of Miami School of Law.

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

remember everything he has ever seen or experienced. Funes has developed a numbering system only he can decipher: "In place of seven thousand thirteen, he would say (for example) *Máximo Pérez*; in place of seven thousand fourteen, *The Railroad*; other numbers were Luis Melián Lafinur, Olimar, sulphur . . ."<sup>2</sup> For Funes, "language is only a unique and private system of classification, elegant and solipsistic."<sup>3</sup> "The People" of the Declaration of Independence and by extension the Preamble of the U.S. Constitution, by contrast, speak in a "unified and universal voice."<sup>4</sup> Even though Funes "knows only particulars" and "The People" "know only generalities," Harris argues, they are in some sense the same: "Both voices are monologues; both depend on the silence of others. The difference is only that the first voice knows of no others, while the second has silenced them."<sup>5</sup>

In her essay, Harris discusses the work of two influential feminist legal theorists, Catharine MacKinnon and Robin West. Her central claim is that their writing relies on gender essentialism, which she defines as "the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience."<sup>6</sup> While categorization, which is necessary for communication and social change, always privileges some voices over others, Harris argues that the voices silenced by gender essentialism "turn out to be the same voices silenced by the mainstream legal voice of 'We the People'—among them, the voices of black women."<sup>7</sup> The challenge Harris's critique presents, then, is how feminism can move from the silencing generality of "We the People" without collapsing into the paralyzing particularity of Funes the Memorious. Harris takes pains to note that her goal is not to "replace one voice with its opposite" or to find some "golden mean" between the two, but to be "home both to the first and the second voices, and all the voices in between," a process she terms *multiple consciousness*.<sup>8</sup> Accordingly, Harris emphasizes that by offering a racial critique of gender essentialism in feminist legal theory, her "aim is not to establish a new essentialism in its place based on the essential experience of black women."<sup>9</sup> Harris instead seeks to recognize the necessity of categorization while calling for the destabilization of categories.

Harris argues that "white, straight, and socioeconomically privileged people who claim to speak for all of us" dominate feminist legal theory.<sup>10</sup> According to Harris, MacKinnon's theory reduces black women to the margins,

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2. *Id.* at 582.

3. *Id.*

4. *Id.*

5. *Id.* at 583.

6. *Id.* at 585.

7. *Id.*

8. *Id.* at 584.

9. *Id.* at 585.

10. *Id.* at 588.

treating blackness as a mere “intensifier” of suffering and subordination.<sup>11</sup> In Harris’s view, things are even worse in West’s work: “Black women are entirely absent . . . ; issues of race do not appear even in guilty footnotes.”<sup>12</sup> To move past gender essentialism, feminist theory, as well as legal theory more generally, must retreat from a rigid conception of the self and embrace fluidity, contradiction, and contingency.<sup>13</sup> The narratives of women of color play an important role in subverting the generalizing voice of “We the People,” providing “accounts of the particular, the different, and the hitherto silenced.”<sup>14</sup>

Harris’s essay was published in 1990 and is one of the most cited law review articles of all time.<sup>15</sup> The piece garnered much criticism as well as much praise. Among the most notable responses was Catharine MacKinnon’s *From Practice to Theory, or What Is a White Woman Anyway?*<sup>16</sup> In this 1991 piece, MacKinnon rejected the proposition that insisting on the category of “women” either erased race or impeded meaningful social practice. MacKinnon argued that to talk of the experiences of “women” is “not to invoke any abstract essence or homogeneous generic or ideal type, not to posit anything, far less a universal anything, but to refer to this diverse and pervasive concrete material reality of social meanings and practices such that, in the words of Richard Rorty, ‘a woman is not yet the name of a way of being human.’”<sup>17</sup> MacKinnon observed that vilification of the “white woman” imposes a monolithic narrative that erases oppression and inhibits the subversion of larger structures of subordination. This narrative decrees that the only relationship a white woman has to oppression is either principal or collaborator—never a victim herself.

This creature is not poor, not battered, not raped (not really), not molested as a child, not pregnant as a teenager, not prostituted, not coerced into pornography, not a welfare mother, and not economically exploited. She doesn’t work. . . . She flings her hair, feels beautiful all the time, complains about the colored help, tips badly, can’t do anything, doesn’t do anything, doesn’t know anything . . . . On top of all of this, out of impudence, imitativeness, pique, and a simple lack of anything meaningful to do, she thinks she needs to be liberated.<sup>18</sup>

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11. *Id.* at 592, 596.

12. *Id.* at 603.

13. *Id.* at 611.

14. *Id.* at 615.

15. Katharine T. Bartlett, *Feminist Canon*, in LEGAL CANONS 266, 289 n.7 (J. M. Balkin & Sanford Levinson eds., 2000).

16. Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991).

17. *Id.* at 16.

18. *Id.* at 18–19.

## I.

## SOLIDARITY IS FOR WHITE WOMEN?

Almost twenty-five years after Harris's article was published, the issues her piece raised clearly still resonate, and they do so far beyond the legal academy. In August 2013, NPR featured an article titled *Twitter*<sup>19</sup> *Sparks a Serious Discussion About Race and Feminism*.<sup>20</sup> The piece focused on the rise of the hashtags #solidarityisforwhitewomen and #blackpowerisforblackmen.<sup>21</sup>

The hashtag #solidarityisforwhitewomen was started by a blogger named Mikki Kendall in response to the very public meltdown of self-described male feminist Hugo Schwyzer.<sup>22</sup> Schwyzer resigned from his teaching position at Pasadena Community College after admitting to having several affairs with students.<sup>23</sup> In announcing that he was "quitting the Internet" for mental health reasons,<sup>24</sup> Schwyzer also publicly admitted that he had "trashed" women of color, which did not affect his favored status among prominent white feminists.<sup>25</sup> According to Kendall, she started the hashtag in response not only to Schwyzer's admission, but to address a much larger issue: what she considers to be white feminism's historical privileging of gender over race. Kendall writes, "That rhetoric not only erases the experiences of women of color, but also alienates many from a movement that claims to want equality for all,"<sup>26</sup> echoing Harris's critique that feminist legal theory brackets race so that "white women now stand as the epitome of Woman."<sup>27</sup>

Kendall explains that she thought the #solidarityisforwhitewomen hashtag "would largely be a discussion between people impacted by the latest bout of problematic behavior from mainstream white feminists. It was intended to be

19. For those readers unfamiliar with Twitter, it is an extremely popular social media "microblogging" platform that allows users to read and post messages limited to 140 characters called "Tweets." Users can group together topics by "hashtags" using the hashtag sign, #, and they can address each other or reply to each other by using the @ sign followed by users' Twitter "handles," or usernames. Topics that garner widespread attention are referred to as "trending topics." Twitter had 500 million registered users in 2012. *Twitter*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Twitter> (last visited Apr. 5, 2014).

20. *Twitter Sparks a Serious Discussion About Race and Feminism*, NAT'L PUB. RADIO (Aug. 23, 2013, 10:48 AM), <http://www.npr.org/blogs/codeswitch/2013/08/22/214525023/twitter-sparks-a-serious-discussion-about-race-and-feminism> [hereinafter NPR].

21. *Id.*

22. *Id.*

23. Lauren Gold, 'Porn Professor' Hugo Schwyzer Asked to Resign from Pasadena City College, PASADENA STAR-NEWS, Oct. 2, 2013, <http://www.pasadenastarnews.com/social-affairs/20131002/pom-professor-hugo-schwzyer-asked-to-resign-from-pasadena-city-college>.

24. Kat Stoeffel, *Why Did Hugo Schwyzer, Token Guy of the Lady Blogosphere, Retire Early?*, THE CUT (July 31, 2013, 10:53 AM), <http://nymag.com/thecut/2013/07/male-feminist-hugo-schwyzers-early-retirement.html>.

25. Mikki Kendall, #SolidarityIsForWhiteWomen: Women of Color's Issue with Digital Feminism, THE GUARDIAN (Aug. 14, 2013, 6:30 AM), <http://www.theguardian.com/commentisfree/2013/aug/14/solidarityisforwhitewomen-hashtag-feminism>.

26. *Id.*

27. Harris, *supra* note 1, at 592.

Twitter shorthand for how often feminists of color are told that the racism they experience ‘isn’t a feminist issue.’”<sup>28</sup> In other words, Kendall’s project was meant to expose what Harris decried as the gender essentialism of mainstream feminism. The following is a sample of some of the messages tweeted with the hashtag #solidarityisforwhitewomen:

I really need white feminists to quit with the defensiveness & just listen & adjust their worldview. #solidarityisforwhitewomen<sup>29</sup>

#SolidarityIsForWhiteWomen when you care more about the organic label on your strawberry than about the immigrant woman who harvested it<sup>30</sup>

#solidarityisforwhitewomen who think having one Black woman at the decision making table meets the “women of color” quota.<sup>31</sup>

#SolidarityIsForWhiteWomen is when Femen gets to decide the Muslim women’s attire.<sup>32</sup>

#SolidarityIsForWhiteWomen = fighting for #reprorights but saying nothing ab shackling of pregnant & forced sterilization incarcerated WOC<sup>33</sup>

This particular hashtag and its backlash is characteristic of what Michelle Goldberg, writing in *The Nation*, referred to as “Feminism’s Toxic Twitter Wars.”<sup>34</sup> Many observers of the controversy have noted that the nature of online discourse—in particular the abbreviated, rapid-fire nature of Twitter—may be adding unnecessary fuel to the fire of substantial ideological disagreements. Goldberg tells the story of a feminist gathering at Barnard College in 2012 that resulted in a report titled *#Femfuture: Online Revolution*. The report sought to mobilize online activism on behalf of traditionally marginalized groups, noting that the Internet allowed for critiques of racial privilege to become visible in ways that were previously impossible. The group’s members, nearly half of whom were women of color, were shocked at the response they received. Goldberg writes that the Barnard group “was savaged as a cabal of white opportunists. . . . There was fury expressed on behalf of everyone—indigenous women, feminist mothers, veterans—whose

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28. Kendall, *supra* note 25.

29. Jane Doe, TWITTER (Aug. 12, 2013, 8:46 PM), <http://twitter.com/DrJaneChi/status/367130116012257280>.

30. Aura Bogado, TWITTER (Aug. 12, 2013, 6:47 PM), <http://twitter.com/aurabogado/status/367100007796576258>.

31. Charlene Carruthers, TWITTER (Aug. 12, 2013, 3:53 PM), <http://twitter.com/CharleneCac/status/367056314918109184>.

32. Farah, TWITTER (Aug. 12, 2013, 9:34 AM), <http://twitter.com/RoadToPalestine/status/366960793574576128>.

33. Renee Bracey Sherman, TWITTER (Aug. 12, 2013, 10:26 AM), <http://twitter.com/rbraceyshe/status/366974015685931009>.

34. Michelle Goldberg, *Feminism’s Toxic Twitter Wars*, THE NATION, Jan. 29, 2014, <http://www.thenation.com/article/178140/feminisms-toxic-twitter-wars>.

concerns were not explicitly addressed.”<sup>35</sup> Mikki Kendall was one of these critics, condemning the report for not making space for people without Internet access.<sup>36</sup> In a piece titled *The Trouble with Twitter Feminism*, Meghan Murphy, herself the target of aggressive online attacks, wrote “Twitter doesn’t like nuance. Twitter likes statements. . . . We have 140 characters and are making public statements. And this is where the posturing comes in. We are made to care more about appearances than compassion, and more about winning than understanding.”<sup>37</sup>

There is cause for both celebration and caution in the fact that a heated debate over what feminism is and should be is playing out in such a public and popular forum as Twitter. Harris maintained that feminist legal theory would benefit from listening to the stories of women of color, and Twitter has provided a real-time, relatively accessible way for women of color to make prolific and visible contributions. Subject to a few exceptions, any Twitter user can tweet at any other user, making it easier to bypass social hierarchies and circumvent academic insularity. Twitter and other forms of social media have also transformed the nature of political organizing and social movements. At the same time, as Murphy points out, the format is not necessarily conducive to careful analysis or generous communication.<sup>38</sup> While Tweets with mocking hashtags such as #WhiteFeministRants<sup>39</sup> and #whitewomantears<sup>40</sup> sometimes offer insightful critiques of race privilege, they sometimes merely attack women who criticize the quality or value of Twitter interactions.

As demonstrated in these examples, Twitter feminism raises some very provocative and important questions, as well as giving vent to some dubious and unsupported assertions. In doing so, it also reflects the tension that underlies Harris’s project in *Race and Essentialism*—the struggle to find a voice that neither silences nor fragments, the voice that is neither wholly “We the People” nor Funes the Memorious.<sup>41</sup>

One of the unsettling questions raised by #solidarityisforwhitewomen and similar hashtags, as well as by Harris’s essay, is the extent to which

35. *Id.*

36. *Id.*

37. Meghan Murphy, *The Trouble with Twitter Feminism*, FEMINIST CURRENT (Dec. 18, 2013), <http://feministcurrent.com/8403/the-trouble-with-twitter-feminism>.

38. *Id.*

39. E.g. Nashwa Lina K., TWITTER (Jan. 31, 2014, 6:45 PM), <http://twitter.com/nashwakay/status/429445348034351104> (“When you bring up how white I am it’s just as discriminatory as the patriarchy! #WhiteFeministRants”). See also *Feminism’s ‘Toxic Twitter Wars’ Inspire #WhiteFeministRants*, TWITCHY (Jan. 31, 2014, 10:40 PM), <http://twitchy.com/2014/01/31/feminisms-toxic-twitter-wars-inspire-whitefeministrants>.

40. #whitewomantears, TWITTER, <https://twitter.com/search?q=whitewomantears&src=typd> (last visited June 22, 2014) (listing uses of the hashtag); New Black Woman, TWITTER (Aug. 12, 2013, 12:36 PM), <https://twitter.com/NewBlackWoman/status/367006619986432000> (tweeting with the hashtag).

41. Harris, *supra* note 1, at 586.

“feminism,” in particular “white mainstream feminism,” is in fact the right target for blame in the long list of omissions, misdirections, and injustices that women of color have catalogued. White women, white feminists, and “feminists” generally are surely no more a monolith than women of color are, and the assertion that feminism is really white feminism inadvertently opens itself to the charge of silencing or ignoring the contributions of feminists of color.<sup>42</sup> To take as one example from the messages above, “fighting for #reprorights but saying nothing ab shackling of pregnant & forced sterilization incarcerated WOC,” the author rightly points out that the reproductive rights of female prisoners receive far less attention than the reproductive rights of, say, middle-class women.<sup>43</sup> But it seems odd to lay the blame for this at feminism’s doorstep, given that many feminists of all races do in fact agitate for reproductive rights for all women and do highlight the terrible conditions for female prisoners.<sup>44</sup> What is more, the suggestion that shackling and forced sterilization affect only women of color is an essentialist statement that ignores the fact that white female prisoners are also subjected to shackling while pregnant and have also been subjected to forced sterilization.<sup>45</sup> But perhaps even more importantly, it is odd to suggest that the real obstacle to reproductive autonomy—for any women—is other women, least of all feminists. It is abundantly clear that the political and social forces driving the war on women’s bodily autonomy are anything but feminist. They are, at least of late, the results of efforts by powerful, mostly male, mostly Republican politicians.<sup>46</sup>

Given that rage and protest can be precious resources, they are best spent challenging the most powerful forces of oppression. This is not to suggest that one cannot have multiple targets or that mainstream feminism should not be scrutinized for its omissions and errors. It is to emphasize the importance of paying attention to larger structures of oppression and hierarchy. The importance of identifying and challenging systematic subordination is

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42. “An argument advanced in many critiques by women of color has been that theories of women must include all women, and when they do, theory will change. On one level, this is necessarily true. On another, it ignores the formative contributions of women of color to feminist theory since its inception.” MacKinnon, *supra* note 16, at 21.

43. See Sherman, *supra* note 33.

44. See, e.g., Larry O’Dell, *Groups Back Limiting Shackling Pregnant Va. Inmates*, THE VIRGINIA PILOT (Feb. 7, 2012), <http://hamptonroads.com/2012/02/groups-back-limiting-shackling-pregnant-va-inmates> (describing the coalition of groups, including Planned Parenthood, supporting a change in the law); *Shackling Pregnant Inmates*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/blog/tag/shackling-pregnant-inmates> (last visited June 22, 2014) (chronicling the ACLU’s efforts); *Statement of Opposition to Shackling Pregnant Women and Girls in Maryland*, BIRTHING BEHIND BARS (Feb. 27, 2013), <http://nationinside.org/campaign/birthing-behind-bars/posts/statement-of-opposition-to-shackling-pregnant-women-and-girls-in-maryland> (listing groups endorsing call for legislation).

45. The infamous case declaring forced sterilization constitutional, *Buck v. Bell*, 274 U.S. 200 (1927), involved the sterilization of a “feeble-minded,” teenaged, white, rape victim. *Id.* at 204.

46. See TANYA MELICH, *THE REPUBLICAN WAR AGAINST WOMEN* (1998); Frank Rich, *Stag Party*, N.Y. MAG., Mar. 25, 2012, <http://nymag.com/news/frank-rich/gop-women-problem-2012-4>.

emphasized in Harris's later work. In *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, Harris argues that gender violence produces an "interconnected web that stretches across civil society and the state. This web creates a common interest among women, sexual minorities, racialized minorities, and straight-identified men in eliminating gender violence."<sup>47</sup>

Harris's *Race and Essentialism* essay, and the critical race theory consciousness her work has done so much to spread, also raises hard questions about what any white feminist is allowed or expected to say that are reflected in contemporary Twitter debates. It is conventional wisdom that one should write about what one knows, and that attempting to write about others' experiences often leads to very poor results. It is difficult to imagine how either MacKinnon or West could have delved into the experience of nonwhite women without opening themselves to the opposite charges of appropriation or preemption. What then is the role for white feminists supposed to be? The answer often provided in online feminist discourse is to shut up, check their privilege, or ask forgiveness for their flaws. Goldberg quotes Brittney Cooper, an assistant professor at Rutgers and one of the black women who participated in #Femfuture: "I actually think there's a subset of black women who really do get off on white women being prostrate. It's about feeling disempowered and always feeling at the mercy of white authority, and wanting to feel like for once the things you're saying are being given credibility and authority."<sup>48</sup> Anna Holmes, a black woman who founded the feminist website Jezebel, told Goldberg that she is disturbed to see "some of the more intellectually dishonest arguments put forth by women of color being legitimized and performed by white feminists, who seem to be in some sort of competition to exhibit how intersectional they are."<sup>49</sup> Such sentiments echo MacKinnon's 1996 essay, in which she criticized the view of white women as privileged, useless, and apologetic: "Her feminist incarnation is all of the above, and guilty about every single bit of it, having by dint of repetition refined saying 'I'm sorry' to a high form of art."<sup>50</sup>

What Harris encourages in *Race and Essentialism* is surely not the erasure of one's lived experience or the subordination of one's identity to another's identity. Her project is much more careful and much more modest, instructing that "we make our categories explicitly tentative, relational, and unstable."<sup>51</sup> It would surely be an impossible and unwise task for any feminist of any race to try to speak in the voice of experiences she has not had or to silence her own

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47. Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J.L. & POL'Y 13, 17–18 (2011).

48. Goldberg, *supra* note 34.

49. *Id.*

50. MacKinnon, *supra* note 16, at 19.

51. Harris, *supra* note 1, at 586.

voice; the aspiration should rather be to speak in a voice that does not silence. The front lines of the feminist “toxic Twitter wars” seem to be in dire need of Harris’s insights.

## II.

### WE ARE TRAYVON MARTIN?

Twitter feminism is not the only recent online phenomenon that offers intriguing illustrations of Harris’s insights on race and gender. The widespread protests over the killing of Trayvon Martin took shape not only in the streets, but also on Facebook, Tumblr, and Twitter.

When the news broke that the jury for the trial of George Zimmerman, facing second-degree murder charges for the fatal shooting of Trayvon Martin, would be entirely composed of women,<sup>52</sup> many wondered if this unusual composition would have an effect on the outcome of the trial, and if so, whether this effect would favor the prosecution or the defense.<sup>53</sup> Given that a juror’s judgment is often strongly affected by whether she identifies more strongly with the putative perpetrator or the putative victim, the all-female jury raised questions about whether women are more likely to identify with a white/Hispanic male adult or a black male teenager. The additional information that all but one of the jurors was white made the question even more stark: With whom is a *white* woman more likely to identify?

On the one hand, there is plenty of reason for women to identify with Trayvon Martin. After all, the victim-blaming script in which a young black man is considered responsible for his own murder is all too reminiscent of the script that blames women for rape. Pundits and commentators frequently focused on what Martin was wearing—a hooded sweatshirt—to explain or defend Zimmerman’s assessment of him as a suspicious character who needed confronting, in much the same way that a woman’s clothing is often cited as a reason for an attacker to believe she was available for sexual activity. There are numerous parallels between the positions imposed upon young black men and women generally: both are frequently evaluated on the basis of their appearance, both are subjected to increased surveillance and social scripting that make their daily lives precarious in ways not experienced by white men, and both are structurally disempowered in heteropatriarchal<sup>54</sup> society.<sup>55</sup>

52. Cara Buckley, *6 Female Jurors are Selected for Zimmerman Trial*, N.Y. TIMES, June 20, 2013, <http://www.nytimes.com/2013/06/21/us/6-female-jurors-are-selected-for-zimmerman-trial.html>.

53. Erin Donaghue, *George Zimmerman Trial: Panel of Women Jurors a “Slam Dunk” for Defense, Expert Says*, CBS NEWS (June 20, 2013, 8:42 PM), [http://www.cbsnews.com/8301-504083\\_162-57590372-504083/george-zimmerman-trial-panel-of-women-jurors-a-slam-dunk-for-defense-expert-says](http://www.cbsnews.com/8301-504083_162-57590372-504083/george-zimmerman-trial-panel-of-women-jurors-a-slam-dunk-for-defense-expert-says).

54. Harris defines “heteropatriarchy” as “a system of subordination that burdens not only women and sexual minorities but also the straight-identified men that it purports to privilege.” Harris, *supra* note 49, at 17.

55. The 2014 trial of Michael Dunn raised similar issues. Dunn fired ten times at four black

But women, at least certain women, also have reason to identify with George Zimmerman, or at least with the values that Zimmerman claimed to be defending. Zimmerman viewed himself as a protector of the vulnerable, standing up against social disorder and violence—particularly male violence, and particularly the violence of black men. This is not only a product of historical fear and suspicion of black men, but also the prevailing conditions of crime and disorder that place women at a significant disadvantage relative to men. Women have good reason to fear male violence in various forms, so that they might either identify with or at least be amenable to the idea of men patrolling the streets in an effort to keep families and property safe.<sup>56</sup>

No doubt the prosecution's botched handling of Zimmerman's case—failing to file charges for months as the outcry over Martin's death grew and then bringing a charge that seemed to greatly overestimate the evidence available against Zimmerman—played a role in the jury's decision to acquit. So too did the confusing instructions given to the jury,<sup>57</sup> effectively allowing Zimmerman a "Stand Your Ground" defense despite the fact that he had not sought the required hearing for such a defense.<sup>58</sup> And finally, of course, there was the tragic fact that the jury only had one firsthand account of what

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teenagers in an SUV following a dispute over loud music, killing one of them. Dunn claimed he acted in self-defense, arguing that he thought the teenager he killed, Jordan Davis, had a weapon and was threatening to kill him. Dunn was convicted of three counts of attempted second-degree murder and one count of firing into a vehicle. The jury hung on the first-degree murder charge for the killing of Jordan Davis. Michael Muskal, *Michael Dunn Convicted on 4 of 5 Charges in Loud-Music Murder Case*, L.A. TIMES (Feb. 15, 2014, 4:20 PM), <http://www.latimes.com/nation/nationnow/la-na-nn-michael-dunn-loud-music-verdict-20140213,0,5446202.story#axzz2vnDeJQqR>.

56. On this point, it is worth considering the markedly different legal treatment received by George Zimmerman and Marissa Alexander, another recent Florida case that raised Stand Your Ground issues. Alexander, a black woman, was immediately arrested after firing what she described as a warning shot at her abusive husband. She was later sentenced to twenty years for three counts of aggravated assault with a firearm. Alexander was granted a retrial due to error in the trial court's jury instructions regarding her self-defense claim; prosecutor Angela Corey has announced her intention to have Alexander serve the three assault counts consecutively rather than concurrently, which would make her sentence sixty years. Amanda Marcotte, *Prosecutors Now Seeking a 60-Year Sentence for Marissa Alexander's Alleged Warning Shot*, SLATE (Mar. 4, 2014, 12:37 PM), [http://www.slate.com/blogs/xx\\_factor/2014/03/04/marissa\\_alexander\\_now\\_faces\\_up\\_to\\_60\\_years\\_in\\_prison\\_for\\_her\\_alleged\\_warning.html](http://www.slate.com/blogs/xx_factor/2014/03/04/marissa_alexander_now_faces_up_to_60_years_in_prison_for_her_alleged_warning.html). For more on gender and self-defense law, see Mary Anne Franks, *Stand Your Ground's Woman Problem*, HUFFINGTON POST (Mar. 3, 2014, 7:02 PM), [http://www.huffingtonpost.com/mary-anne-franks/stand-your-grounds-woman-\\_b\\_4886650.html](http://www.huffingtonpost.com/mary-anne-franks/stand-your-grounds-woman-_b_4886650.html).

57. Kevin Drum, *"Stand Your Ground" Did Indeed Play a Role in the Zimmerman Trial*, MOTHER JONES (July 19, 2013, 11:25 AM), <http://www.motherjones.com/kevin-drum/2013/07/stand-your-ground-did-indeed-play-role-zimmerman-trial>. The jury instructions included the following language under "justifiable use of force": "If George Zimmerman was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony." *Id.*

58. *Zimmerman to Argue Self-Defense, Will Not Seek 'Stand Your Ground' Hearing*, CNN (May 1, 2013, 5:43 AM), <http://www.cnn.com/2013/04/30/justice/florida-zimmerman-defense>.

happened that night in Sanford.<sup>59</sup> But the person with which the women on the jury identified more strongly—the unarmed young black man or the armed white/Hispanic would-be enforcer—also undoubtedly had to do with gender, race, and class. As Natalie Jackson, co-counsel for the Martin family, put it, the all-female jury viewed Martin as “the black boogeyman everybody is afraid of.”<sup>60</sup> And if they viewed Martin this way, then they viewed Zimmerman as a flawed hero, regrettably but understandably overreacting to a perceived threat to the neighborhood.

Criminal trials, by their nature, force complex considerations into simple conclusions: guilty/not guilty. A juror might well identify with both defendant and victim, but is compelled to make a choice between them. The one nonwhite juror, Juror B29, said in an interview that “George Zimmerman literally got away with murder.”<sup>61</sup> Juror B29 could have held on to her view that Zimmerman was guilty, resulting in a hung jury, but she did not. Her reasons for failing to do so are not clear, as her interview reveals what appear to be serious misunderstandings of the law.<sup>62</sup> But on at least one level, her failure—and the failure of the other jurors—is a failure to recognize and reckon with Harris’s conception of multiple consciousness.

Harris defines the phrase “multiple consciousness” as “a process in which propositions are constantly put forth, challenged, and subverted.”<sup>63</sup> This process is “a constant contradictory state of becoming, in which both social institutions and individual wills are deeply implicated.”<sup>64</sup> One could argue that every juror in every criminal case should practice multiple consciousness—that is, should be able to see herself not only as potential victim, but as potential aggressor. Practicing this consciousness does not determine what a juror ultimately decides, but would enrich the process of determination itself. A female juror practicing multiple consciousness in the Zimmerman trial should have been able to consider the fear of a young black man in both senses of the phrase: the fear a young black man inspires, and the fear a young black man experiences. While the jurors in the Zimmerman case seem to have been unwilling or unable to embrace multiple consciousness, it seems to have been very much at work in the protests and mourning both before and after the

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59. “There were no eyewitnesses to the shooting, and only one person is alive to tell the story.” Amy Padnani & Troy Griggs, *The Zimmerman Trial, Day by Day*, N.Y. TIMES (July 11, 2013), <http://www.nytimes.com/interactive/2013/07/12/us/zimmerman-highlights.html>.

60. Kristinn Taylor, *Martin Family Attorney: Racist Zimmerman Jury Saw Trayvon Martin as ‘Black Boogeyman,’* FREE REPUBLIC (July 20, 2013, 3:10 PM), <http://www.freerepublic.com/focus/news/3045417/posts>.

61. Catherine E. Shoichet, *Zimmerman Juror to ABC: He ‘Got Away With Murder,’* CNN (July 28, 2013, 1:12 PM), <http://www.cnn.com/2013/07/25/justice/zimmerman-juror-b29-interview>.

62. *Juror B29 Says Zimmerman “Got Away with Murder,” Intensifying Scrutiny of Prosecution & Florida Laws*, DEMOCRACY NOW! (July 26, 2013), [http://www.democracynow.org/2013/7/26/juror\\_b29\\_says\\_zimmerman\\_got\\_away](http://www.democracynow.org/2013/7/26/juror_b29_says_zimmerman_got_away).

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

64. *Id.*

verdict in Zimmerman's trial.

The first wave of protests, which began as news of the shooting and the failure to arrest Zimmerman reached the media, powerfully crystallized around the phrase "I am Trayvon Martin." At rallies and in pictures posted on social media, athletes, celebrities, and ordinary citizens wore hoodies and held signs that proclaimed, "I am Trayvon Martin."<sup>65</sup> The pronouncement, "I am Trayvon Martin," frequently accompanied pictures of black males in hoodies, from toddlers to senior citizens, provoking the viewer to reflect on the way racial profiling touches all men of color and renders their lives precarious. The sentiment reached its height when President Barack Obama addressed the verdict, saying, "Trayvon Martin could have been me 35 years ago."<sup>66</sup> There are very few African American men in this country who haven't had the experience of being followed when they were shopping at a department store, and that includes me."<sup>67</sup>

But the phrase also accompanied pictures of white men, black women, and white women in hoodies. The images of non-black, non-male individuals proclaiming "I am Trayvon Martin" are harder to parse than those of black males. These images were presumably also used to express solidarity, but this solidarity rests on uncertain grounds. The images suggest commonality between the subjects depicted and Trayvon Martin. The accuracy or usefulness of this commonality is not always immediately apparent. In this sense, "We Are Trayvon Martin" begins to resemble "We the People" of the Constitution that Harris critiques—it "claims to speak 'for an entire and united nation and to do so directly and personally, not in the third person or by merely delegated authority.'"<sup>68</sup> In doing so, the movement inspires and motivates, but it also simplifies and covers. This seems to have been what prompted a man named Bob Seay to write, "I am not Trayvon Martin," a Facebook post that soon went viral and sparked a rallying cry in itself:

I am not Trayvon Martin.

I keep seeing people say, "I am Trayvon Martin." I understand the

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65. *'I Am Trayvon Martin' Rallies Across US Voice Anger at 'Humiliating' Verdict*, THE OBSERVER (July 20, 2013), <http://www.theguardian.com/world/2013/jul/21/trayvon-martin-protests>.

66. See Stephanie Condon, *Obama: "Trayvon Martin Could Have Been Me 35 Years Ago,"* CBS NEWS (July 19, 2013, 8:01 PM), <http://www.cbsnews.com/news/obama-trayvon-martin-could-have-been-me-35-years-ago>. This statement is an intriguing contrast to President Obama's earlier, more indirect observation (prior to Zimmerman's arrest), that "[i]f I had a son, he'd look like Trayvon." Stephanie Condon, *Obama: "If I Had a Son, He'd Look Like Trayvon,"* CBS NEWS (Mar. 23, 2012, 2:37 PM), <http://www.cbsnews.com/news/obama-if-i-had-a-son-hed-look-like-trayvon>.

67. See Condon, *Obama: "Trayvon Martin Could Have Been Me 35 Years Ago,"* *supra* note 66. Apropos of President Obama's statement, see Julee Wilson, *Black College Student Arrested for Buying a Designer Belt, Barney's & NYPD Slapped with Lawsuit*, HUFFINGTON POST (Oct. 23, 2013, 9:29 AM), [http://www.huffingtonpost.com/2013/10/23/trayon-christian-lawsuit-barneys-new-york-nypd\\_n\\_4148490.html](http://www.huffingtonpost.com/2013/10/23/trayon-christian-lawsuit-barneys-new-york-nypd_n_4148490.html).

68. Harris, *supra* note 1, at 582 (quoting JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING* 232 (1984)).

sentiment. If that is you, then I respect that.

I am not Trayvon Martin. I am a middle-aged, middle class, overweight white guy.

I am also a teacher, and in 20 years of teaching, I have seen plenty of Trayvon Martins. More accurately, I have seen plenty of young men who fit the caricatured image that is being portrayed of this kid in the media, Left and Right. Fox News and MSNBC. I'm guessing that neither portrayal—saint or thug—is accurate. People are more complex than that.

None of the Trayvon Martins that I know deserve to die. They may arouse suspicion, but your paranoia is not their crime. If they do commit a crime, they deserve to have a trial. Trayvon Martin's jury consisted of one person. That is not how we are supposed to do things in America. Unfortunately, that is our reality.

Here's my point: You don't have to be Trayvon Martin to know this is wrong. You don't have to be black, or young, or a "troubled student" or a pot smoker to know this was murder. And you don't have to be the parent of Trayvon Martin to know this was a gross miscarriage of justice.

Let me be more blunt: This type of injustice will continue until enough guys like me—guys who are not Trayvon Martin—have had enough of it and finally say "No more."

You don't have to be Trayvon Martin.

You just have to be human.<sup>69</sup>

Seay's post spawned a slew of "I Am Not Trayvon Martin" missives, many of which highlight the ways in which their authors differ from Trayvon Martin, especially in terms of race, gender, and class privilege. A self-identified white, queer woman wrote that while she experienced struggles on the basis of her sexual orientation,

As a child, I was never targeted or criminalized based on the color of my skin. . . . I, like the other white folks in [my] family, will never be targeted by people like George Zimmerman. We will never be predated [sic] on by police or railroaded into prisons by the courts. Our resume will never be overlooked because someone thinks we have a 'ghetto' name. If someone walked up and murdered us on the street, Fox News would see us as victims, not "delinquents."<sup>70</sup>

Other posts reflect on how being gay or belonging to a different racial minority meant being subjected to prejudice that was in some ways similar to, but importantly also different from, what young black men experience: "I am not

69. Bob Seay, Status Update, FACEBOOK (July 14, 2013, 6:55 AM), <http://www.facebook.com/bobseay/posts/4895459316081>.

70. WE ARE NOT TRAYVON MARTIN, <http://www.wearenottrayvonmartin.com> (last visited Apr. 5, 2014).

Trayvon Martin. . . . As a gay man, I live in hope of a time when I will be able to spend an entire day without fear.” A black woman wrote, “I am not Trayvon Martin. . . . I am fearful because . . . if my child is a boy, he could be Trayvon one day.”<sup>71</sup>

These posts seem to embody Harris’s multiple consciousness: “[A] sense of self-contradiction, of containing the oppressor within oneself.”<sup>72</sup> They both recognize the privilege afforded to them by not being young, black, and male, but also articulate the authors’ own unique struggles. They express solidarity without resting on false equivalence. They illustrate what Harris, in a particularly beautiful passage, describes as the kind of important contributions that black women make to feminist theory: “[T]he recognition of a self that is multiplicitous, not unitary; the recognition that differences are always relational rather than inherent; and the recognition that wholeness and commonality are acts of will and creativity, rather than passive discovery.”<sup>73</sup> We see a version of these contributions at work in the “I am not Trayvon Martin” posts, so many of which are complex, nuanced, contradictory, and poignant in their reflections on privilege and prejudice.

At the same time, Seay’s original post calls for more than this kind of recognition, and it is a “more” that illustrates a deep understanding of the essentialism that Harris critiques. Seay’s post, unlike the posts that came to dominate the “I am not Trayvon Martin” theme, does not emphasize the ways in which the author differs from Trayvon Martin, nor the ways in which he resembles him. Seay’s post first highlights the essentializing of Trayvon Martin by both his defenders and his attackers. Seay writes, “I’m guessing that neither portrayal—saint or thug—is accurate. People are more complex than that.”<sup>74</sup> Again, we should be reminded here of the similarities with the idealization/vilification of rape victims: the persistent idea that a woman must be “pure” to be a victim, and that any indication of sexual interest or activity somehow nullifies her credibility as a victim of rape.<sup>75</sup> It should not matter, and we should not be afraid to admit, that Trayvon Martin may have gotten into fights or had trouble at school. We should not need to beatify Martin to condemn his murder. After all, one way to describe privilege in our society is as the ability to be imperfect without tragic consequences. Seay refuses essentialism—not the gender essentialism that Harris critiques in her influential article, but political essentialism. Like gender essentialism, political essentialism is “intellectually convenient,” and “often appears . . . as the only alternative to chaos,”<sup>76</sup> and by turning Trayvon Martin into a saint behind

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71. *Id.*

72. Harris, *supra* note 1, at 608.

73. *Id.*

74. Seay, *supra* note 69.

75. See Bennett Capers, *Real Women, Real Rape*, 60 UCLA L. REV. 826 (2013).

76. Harris, *supra* note 1, at 589.

whom the multitudes can rally, we deny him his humanity and his complexity.

The second point Seay makes is that our solidarity with Trayvon Martin should not rest on our identification with him. “You don’t have to be Trayvon Martin to know this is wrong. You don’t have to be black, or young, or a ‘troubled student’ or a pot smoker to know this was murder. And you don’t have to be the parent of Trayvon Martin to know this was a gross miscarriage of justice.”<sup>77</sup> Not only are attempts at identification fraught with essentialism and false equivalences, but they also obscure the fact that we are all implicated in injustice. Ultimately, we should not decry Trayvon Martin’s death only because it could have been one of us or only because it was a tragic loss. We should decry it because his death is a product of our collective failure as a society.

### CONCLUSION

Our ability to confront our “multiple and contradictory selves, selves that contain the oppressor as well as the oppressed,”<sup>78</sup> is the groundwork for social and political engagement. It makes us realize that we can act in the world, for better or for worse. We can do more than merely “feel the right way,” as Harris would put it, about Trayvon Martin.<sup>79</sup> In *Compassion and Critique*,<sup>80</sup> Harris draws an important distinction between pity and compassion: “Caring without outrage is only merely pity, an emotion that requires no action, only the feeling of sympathy.”<sup>81</sup> It is not enough to feel pity for Trayvon Martin; we must feel outrage, and we must act to create a world in which his death is not acceptable.

It is unlikely that Seay is a scholar of feminist legal theory. But his closing point is in many ways Harris’s theory in practice: “This type of injustice will continue until enough guys like me—guys who are not Trayvon Martin—have had enough of it and finally say ‘No more.’”<sup>82</sup> This is where Seay’s post offers more than either the typical “I am Trayvon Martin” or “I am not Trayvon Martin” missive. It is an explicit recognition of responsibility. It is a call for compassion as Harris defines it: “[T]he desire to relieve another’s suffering, the desire to act.”<sup>83</sup>

In *Race and Essentialism*, Angela Harris envisioned a world populated by the stories of the marginalized: a world of flattened hierarchies, assailable privilege, and transformative action. Her insights into the complex dynamics of race, gender, identity, and consciousness have helped bring this world into being, and her work continues to help us understand and change it.

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77. Seay, *supra* note 69.

78. Harris, *supra* note 1, at 609.

79. See generally Harris, *supra* note 1.

80. Angela P. Harris, *Compassion and Critique*, 1 COLUM. J. RACE & L. 326 (2012).

81. *Id.* at 330.

82. Seay, *supra* note 69.

83. Harris, *supra* note 80, at 329.