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## INTERSECTIONALITY AS AN INSTITUTION: CHANGING THE DEFINITION OF FEMINISM

*Holly Sanchez Perry\**

### I. INTRODUCTION

Feminism, like many other institutions in the United States, serves to benefit the people by whom it was created.<sup>1</sup> In the United States, given the racial and political climate, feminism has largely benefited the interests of White women—even if unknowingly or unintentionally. A continuous critique of feminism is that it largely excludes issues that are of the utmost importance to women who may not fit into the White, middle class, heteronormative box for which feminism in the United States was created. Thus, in order for feminism to better serve all persons who identify as women, the concept must continue to grow and adapt.

This paper shows how feminism (for the purposes of this paper being understood to be a White, middle class, heteronormative feminism) harms women in other spheres and makes the case for intersectionality in feminism as a solution to a movement that has been well-intentioned yet exclusive.

Part I of this paper looks at a brief history of feminism in the United States as well as defining the terms of “feminism,” “White feminism,” and “intersectional feminism.” Part I will also address the term “intersectionality” including its definition, its inception, and its purpose both widely and within feminist circles. Finally, Part I compares the ideas of White and intersectional feminism and point to key differences.

Parts II – IV uses case studies that will further enhance the reader’s understanding of ways in which traditional feminism can

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<sup>1</sup> See Geoffrey M. Hodgson, *What Are Institutions?* XL Journal of Economic Issues 1, 2 (2006). (“We may define *institutions* as systems of established and prevalent social rules that structure social interactions.”).

have a negative impact upon women who have intersectional identity. In essence, these case studies highlight the ways in which White feminism actively harms and works against the interests and needs of women in intersectional identities. The case studies include a look into domestic violence, criminal law, and electoral politics. For these case studies, this paper considers literature by notable race and gender scholars like Kimberlé Crenshaw, Aya Gruber, and Seema Ahmad, as well as other newsworthy authors and pieces on these topics.

Both the Crenshaw and Gruber pieces highlight the lack of intersectionality in feminism. They also critique the ways in which White feminism can actively undo the feminism strides of women of color in theory, policy, and law. Crenshaw, who coined the term “intersectionality” addresses the silencing of women of color. Crenshaw explores specifically the simultaneously raced and gendered dimensions of violence against women of color and draws attention to the way the specificity of Black women’s experiences of violence is ignored, overlooked, misrepresented, and/or silenced. Gruber analyzes how White women silence women of color in a number of ways. Lastly, the Ahmad piece tackles the question of whether race *or* gender is the main motivational factor in how White women vote. This question is relevant because seeks to show that White women, armed with the traditional notion of feminism, will vote against issues that would benefit other women in an effort to retain racial norms. Lastly, this section addresses the 2016 presidential run between Donald Trump and Hillary Clinton, analyzing it through Ahmed’s piece.

Finally, Part V will focus on the task of reshaping traditional feminism into intersectional feminism. This section will address the questions of what intersectional feminism looks like in action, analyzing the concept through the Women’s March on Washington. This section will also point to ways in which White women can focus their fight for gender equality by ushering in a new era of intersectional feminism.

The goal of this paper is to show that for feminism to truly serve all persons who identify as women, it cannot be one size fits all. Ultimately, this paper submits the idea of intersectional feminism as being a step in the right direction to redefine feminism to be truly inclusive.

## A. Part I: Feminism and Intersectionality

### 1. Feminism

Feminism is the belief in the social, political, and equality of men and women. It operates under the belief that sexism, specifically against women, is enduring, pervasive, systemic, cultural, and ingrained.<sup>2</sup> Feminism is also being armed with the knowledge that women and men are intellectual and social equals,<sup>3</sup> and operates as a movement that advocates gender equality for women and campaigns for women's rights and interests.<sup>4</sup>

The terms "feminism" and "feminist" did not gain widespread use until the 1970's, but even before the terms gained popularity, they were being used in the public sphere as early as the 1940's.<sup>5</sup> As such, feminism has adjusted throughout the years. Beginning with the suffrage movement in the United States, feminism set forth the belief that women should have sovereignty, political standing, and the right to control one's own body.<sup>6</sup> Though generally hailed as the crowning achievement of the movement, it is important to note that the 19th amendment really only achieved for White women the right to vote, even though many women of color were instrumental in the woman's suffrage

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<sup>2</sup> Cathy Reisenwitz, *The Definition of Feminism: What Does Feminism Mean? (Sex and the State)*, CATHY REISENWITZ (2017), <http://cathyreisenwitz.com/the-definition-of-feminism-what-does-feminism-mean/>.

<sup>3</sup> Suzannah Weiss, *7 Things The Word "Feminist" Does NOT Mean*, BUSTLE (July 5, 2016), <https://www.bustle.com/articles/170721-7-things-the-word-feminist-does-not-mean>.

<sup>4</sup> History and Theory of Feminist, GENDER AND WATER IN CENT. ASIA, [http://www.gender.cawater-info.net/knowledge\\_base/rubricator/feminism\\_e.htm](http://www.gender.cawater-info.net/knowledge_base/rubricator/feminism_e.htm) (last visited Oct. 17, 2017).

<sup>5</sup> *Id.*

<sup>6</sup> Women's Suffrage Movement, HISTORYNET (last visited Oct. 17, 2017), <http://www.historynet.com/womens-suffrage-movement>.

movement.<sup>7</sup> Though the Senate passed the 19th Amendment on June 4, 1919, it took over 60 years for all U.S. states to ratify the Amendment, with Mississippi being the last in 1984.<sup>8</sup>

Post WWII, feminists fought to retain careers outside the home, following the return of soldiers from war and into the labor force. In addition to careers, this era also saw a focus upon sexual and reproductive rights, with the birth control pill in the 1960s, as well as the United States Supreme Court ruling in *Roe v. Wade*, 410 U.S. 113 (1973).

The most recent reinvention of feminism began in the 1980's and continues through today. It seeks to address the destructive impact of Western imperialism, colonialism, and globalization on people and the environment worldwide.<sup>9</sup> Many critical race theory and feminist jurisprudence scholars believe that now is time for feminism to usher in a new era of intersectionality in practice.

Feminism, as it has been largely defined and practiced, is like any other institution that has been created by a dominant classification: only beneficial to that classification. For the sake of this paper, when feminism is mentioned, it should be understood through the lens of White, middle class, heteronormativity, or "White feminism" as some authors put it.

White feminism is a set of beliefs that specifically excludes issues that affect women of color.<sup>10</sup> As one critical race theory

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<sup>7</sup> African American Women and Suffrage, NAT. WOMEN'S HIST. MUSEUM, <https://www.nwhm.org/online-exhibits/rightsforwomen/AfricanAmericanwomen.html> (insert date last visited).

<sup>8</sup> Mary Pascaline, *Voting Rights 2016: When Did Women, Black People And Native Americans Get The Right To Vote?*, IB TIMES (Nov. 3, 2016, 12:30 AM), <http://www.ibtimes.com/voting-rights-2016-when-did-women-black-people-native-americans-get-right-vote-2440441>.

<sup>9</sup> Penny A. Pasque & Brenton Wimmer, *An Introduction: Feminist Perspectives*, MY ACPA [http://www.myacpa.org/sites/default/files/Feminist\\_Theoretical\\_Perspectives\\_pasque\\_wimmer\\_REV.pdf](http://www.myacpa.org/sites/default/files/Feminist_Theoretical_Perspectives_pasque_wimmer_REV.pdf) (last visited Oct. 17, 2017).

<sup>10</sup> Cate Young, *This Is What I Mean When I Say "White Feminism"*, BATTY MAMZELLE (Jan. 10, 2014),

scholar summarized, “white women repeatedly distinguish the oppression women of color face as women from the oppression women of color face from racial and national oppression.”<sup>11</sup> However, a key element of White feminism seems to be touting a “sisters in the struggle” approach—supposing that based on gender alone, women are “somehow socially constituted as a homogeneous group identified prior to the process of analysis.”<sup>12</sup> But minority women and women of color know that lived experiences of being a woman and being a person of color are intersectional—that is, that the experiences inform each other.

As one author put it, “A white woman is penalized by her gender but has the advantage of race. A Black woman is disadvantaged by her gender *and* her race. A Latina lesbian experiences discrimination because of her ethnicity, her gender and her sexual orientation.”<sup>13</sup> Intersectional feminism, then, is understanding how other factors in one’s existence – other than just being a woman – contribute to the ways in which women experience sexism.

## 2. Intersectionality

Intersectionality theory is the study of how different power structures interact in the lives of minorities.<sup>14</sup> Feminist scholars all interpret intersectionality differently. It is important to note that

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<http://battymamzelle.blogspot.com/2014/01/This-Is-What-I-Mean-When-I-Say-White-Feminism.html#.VNejdGTF9pw>.

<sup>11</sup> Jacqueline Mertz, *Women of Color- What Their Voices Teach Us*, 9 CARDOZO L. J. 205, 209 (2003).

<sup>12</sup> Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, 12 ON HUMANISM AND THE U. I: THE DISCOURSE OF HUMANISM 333, 337 (1984).

<sup>13</sup> Alia E. Dastagir, *What is intersectional feminism? A look at the term you may be hearing a lot*, USA TODAY (Jan. 19, 2017, 2:42 PM), <http://www.usatoday.com/story/news/2017/01/19/feminism-intersectionality-racism-sexism-class/96633750/>.

<sup>14</sup> Bim Adewumni, *Kimberlé Crenshaw on Intersectionality: “I wanted to come up with an everyday metaphor that anyone could use”*, NEW STATESMAN (Apr. 2, 2014), <http://www.newstatesman.com/lifestyle/2014/04/kimberl-crenshaw-intersectionality-i-wanted-come-everyday-metaphor-anyone-could>.

this term was created by a Black woman, and that many feel this term specifies the Black woman's perspective specifically.<sup>15</sup> The term was coined by critical race theory scholar Kimberlé Crenshaw in the 1980's, and since then, the idea of intersectionality, as it relates to feminism, has caused feminist jurisprudence to adjust its idea of what feminism is and who it was built to serve.<sup>16</sup>

In *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment*, published in 1990, Black feminist Patricia Hill Collins challenged the social contradictions first brought to light by Sojourner Truth.<sup>17</sup> Similar to Crenshaw's definition of intersectionality, Collins also used this analysis to determine how "oppressions work together in producing injustice." On the comparison of the traditional woman (thought to be seen as a White woman) and Black women, she said:

*If women are allegedly passive and fragile, then why are Black women treated as "mules" and assigned heavy cleaning chores? If good mothers are supposed to stay at home with their children, then why are US Black women on public assistance forced to find jobs and leave their children in day care? If women's highest calling is to become mothers, then why are Black teen mothers pressured to use Norplant and Depo Provera? In the absence of a viable Black feminism that investigates how intersecting oppressions of race, gender, and class foster these contradictions, the angle of vision created by being deemed devalued workers and failed mothers could easily be turned inward, leading to internalized oppression. But the legacy of struggle among US Black women suggests that a collectively shared Black women's oppositional*

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<sup>15</sup> Melissa Brown, *Why calling yourself an intersectional feminist is not a "Get Out of Privilege Free" card*, RESIST MEDIA, <https://resistmedia.org/2016/12/18/say-feminism-intersectional-really/>.

<sup>16</sup> Adewumni, *supra* note 14.

<sup>17</sup> PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 11-12 (Routledge, 2d ed. 2001).

*knowledge has long existed.*<sup>18</sup>

Juliet A. Williams, Professor of Gender Studies and Chair of the Social Science Interdisciplinary Program (SSIDP) at the University of California – Los Angeles,<sup>19</sup> defines intersectional feminism as a form of feminism “that stands for the rights and empowerment of *all* women, taking seriously the fact of differences *among* women, including different identities based on radicalization, sexuality, economic status, nationality, religion, and language.”<sup>20</sup> Nancy J. Hirschmann, director of the Alice Paul Center for Research on Women, Gender, and Sexuality at the University of Pennsylvania,<sup>21</sup> has made the claim that the different aspects of each of our individual identities connect and that “white women’s experiences ‘as women’ is partly defined by their race, just like Black women’s experiences are, it’s just that it’s easier for white women to ignore their race.”<sup>22</sup> When White, heteronormative women do not embrace the intersectionality of other women, they are operating under a traditional feminism lens that cannot purport to benefit all women.

In her piece discussing the frustrations of dealing with allies to the struggle of Black peoples, activist Jessie-Lane Metz wrote:

*When a person of color speaks to their own experiences of racism, they are speaking to a collective pain, and speaking truth to power. When a person with white skin privilege gives an anecdote about racism, whether their own or someone else’s, they are exposing more racialized people to this discrimination, and reasserting their own privilege. The narrative is no longer about Black victims of racist crimes and a deeply flawed justice system, it is about*

<sup>18</sup> *Id.*

<sup>19</sup> Faculty: Juliet A. Williams, UCLA, <http://www.genderstudies.ucla.edu/faculty/juliet-williams>. (last visited Oct. 17, 2017).

<sup>20</sup> Dastagir, *supra* note 13, at 10.

<sup>21</sup> Nancy Hirschmann, GENDER, SEXUALITY, AND WOMEN’S STUD. AT PENN <https://www.sas.upenn.edu/polisci/people/standing-faculty/nancy-hirschmann> (last visited Oct. 17, 2017).

<sup>22</sup> Dastagir, *supra* note 13.

*white feelings about Black bodies and their experiences. This is not helpful to intersectional practice, as it implies that only by making an oppression about the oppressor can power-holders work towards becoming allies. Secondly, it disregards the feelings of Black people by exposing them to further racism in an effort to work on white privilege.*<sup>23</sup>

Metz argues that when White persons intend to be allies to Black persons and their struggles, even though well-intentioned, they often change the narrative, centering on self instead of on the subject of historic oppression. This can be equivocated to White feminism because, in an effort to be an ally to the struggles of other women, White women often dominate the conversation, focusing on female oppression through a default White view instead of on the very real ways in which race intersects with gender in the oppression of women of color.

Other scholars have also critiqued the feminist movement for being exclusive of intersectional identities. Reginald Oh, a legal scholar, analyzed W.E.B. Dubois' works on racial consciousness to note that in order to move to full substantive equality and liberty, it is necessary for feminists to redefine feminism in order to affirm the truths "of women's lived experience, in all their multiplicity and diversity."<sup>24</sup> Feminist theorist Chandra Talpade Mohanty noted, this idea of feminism "limit[s] the possibility of coalitions among (usually White) Western feminists and working class and feminists of color around the world."<sup>25</sup>

There are three specific institutions that will be addressed in this paper, including domestic violence and the policies, laws, and resources surrounding this phenomenon, the criminal system, arguably not a justice system for people of color, and electoral politics—a space where people of color, and especially women of color, are still unwelcomed and persecuted. These laws and

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<sup>23</sup> Jessie-Lane Metz, *Ally-phobia: On the Trayvon Martin Ruling, White Feminism, and the Worst of Best Intentions*, THE TOAST (July 24, 2013), <http://the-toast.net/2013/07/24/ally-phobia-the-worst-of-best-intentions/>.

<sup>24</sup> Reginald Oh, *Defining Feminism, Defining Feminisms*, 9 CARDOZO WOMEN'S L.J. 465, 467 (2003).

<sup>25</sup> See Mohanty, *supra* note 12, at 334.

policies specifically address women of color differently than their White counterparts and, in analyzing these case studies, it will become apparent that without a viable seat at the table, women of color will continue to suffer in these instances. This is largely due to the exclusive nature of policy and law—mechanisms that attempt to represent all of society while intentionally excluding the voices of marginalized people, specifically people of color. In order to work toward more inclusive law and policy that is influenced by the theory of intersectionality, participants in the institution of feminism must first realize the dangers that lie in the current policies and laws—even if unwritten or only in effect—of domestic violence, criminal law, and electoral politics.

The first two case studies center around the idea of structural intersectionality—the disenfranchisement of certain groups of women of color that is often coincidental or perhaps just overlooked.<sup>26</sup> The last case study will focus on political intersectionality—the idea that women of color often find themselves in conflicting political agendas due to both race and gender.<sup>27</sup>

### ***B. Part II: Domestic Violence***

Work surrounding domestic violence has often been championed by the feminist movement. On average, nearly twenty people per minute are physically abused by an intimate partner in the United States. During one year, this equates to more than ten million people.<sup>28</sup> Like any other type of violence or social phenomena, it affects people of different color and gender in specific ways.

University of Miami Law Professor Donna Coker has researched domestic violence extensively, specifically focusing on

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<sup>26</sup> Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245 (1991).

<sup>27</sup> *Id.* at 1242.

<sup>28</sup> *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, CTR.'S FOR DISEASE CONTROL AND PREVENTION, [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf) (last visited Oct. 17, 2017).

the matter using an intersectional lens. She maintains that research “purportedly on ‘battered women’ or ‘domestic violence’ frequently rests on data gathered only or mainly about white women.”<sup>29</sup> In response to that research, strategies to decrease occurrences of domestic violence and to help victims are “inclined to reflect the experiences of white women.”<sup>30</sup> Thus, the experience of violence by women of color is ignored, “except to the extent it gains white support for domestic violence programs in the white community.”<sup>31</sup>

The Violence Against Women Act (VAWA) was passed in 1994 and was the first United States federal legislation acknowledging domestic violence and sexual assault as crimes.<sup>32</sup> It also provided federal resources for combating domestic violence and was reauthorized in 2000, 2005 and 2013.<sup>33</sup> Its underlying purpose was really to use law enforcement as the primary tool in stopping domestic violence.<sup>34</sup> But this purpose can have adverse effects on women who, historically, have fear of law enforcement due to their intersectional identities, or women who, due to their socioeconomic statuses specifically, fear the mandatory arrest policies within VAWA.<sup>35</sup> In fact, for many women, involvement in the domestic violence system “can mean loss of parental rights, incarceration on unrelated grounds, and disqualification for public

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<sup>29</sup> Donna Coker, *Piercing Webs of Power: Identity, Resistance, and Hope in LatCrit Theory and Praxis: Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1028-29 (2000).

<sup>30</sup> Beverly Horsburgh, *Schrodinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/new Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 577 (1996).

<sup>31</sup> See Crenshaw, *supra* note 26, at 1260.

<sup>32</sup> The Violence Against Women Act (VAWA) Renewal passes the House and Senate and signed into law, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, <http://nnedv.org/policy/issues/vawa.html>.

<sup>33</sup> *Id.*

<sup>34</sup> Kate Pickert, *What's Wrong with the Violence Against Women Act?*, TIME (Feb. 27, 2013), <http://nation.time.com/2013/02/27/whats-wrong-with-the-violence-against-women-act/>.

<sup>35</sup> *Id.*

housing.”<sup>36</sup>

Researchers in this field have criticized VAWA, arguing that mandatory arrest laws can exacerbate the financial instability that many marginalized women face, leaving them in precarious financial situations and in fear of losing custody of their children because of it.<sup>37</sup> Coker noted that this unintended consequence increases “the potential for state control of marginalized women.”<sup>38</sup> In a 2015 report co-authored by Coker, nine hundred advocates, attorneys, service providers, and non-profit workers, who support or represent domestic violence and sexual assault victims nation-wide, were surveyed. Nearly ninety percent of respondents said that “contact with the police sometimes or often resulted in the involvement of child protective services, threatening survivors with the loss of custody of their children.”<sup>39</sup> Over eighty percent of respondents believed that police relations with marginalized communities influenced survivors’ willingness to call the police.<sup>40</sup> As VAWA continues to utilize state power, researchers like Coker urge “more police accountability for biased enforcement and research into alternatives to punishment such as restorative justice and community accountability models.”<sup>41</sup>

Beth E. Richie, a sociologist and professor at the University of Illinois at Chicago who studies violence against women, believes that communities of color are directly harmed by policies like VAWA.<sup>42</sup> She contends that these policies create a sort of “schism” for communities of color because of the fight

<sup>36</sup> Aya Gruber, *Leniency As A Miscarriage of Race and Gender Justice*, 76 ALB. L. REV. 1571, 1618 (2013).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Donna Coker, *New Report, Co-Authored by Professor Donna Coker, Examines Why Victims of Domestic and Sexual Violence Don’t Call the Police*, MIAMI L. NEWS (Nov. 3, 2015), <http://www.law.miami.edu/news/2015/november/new-report-co-authored-professor-donna-coker-examines-why-victims-domestic-and>.

<sup>40</sup> *Responses from the Field: Sexual Assault, Domestic Violence, and Policing*, ACLU, 1 (Oct. 2015), <https://www.aclu.org/feature/responses-field?redirect=responsesfromthefield>.

<sup>41</sup> Coker, *supra* note 39.

<sup>42</sup> Pickert, *supra* note 34.

against mass incarceration when, at the same time, mass incarceration is “used as a tool to respond to the crime of violence against women.”<sup>43</sup> Richie also points out the complications that arise with the existence of intersectionality—that it is complex and the specific challenges cannot be addressed through existing law and policy.<sup>44</sup> This complication seems to point to the law not being a solution, or even an avenue, for justice—or at least for women of intersectional identities.

Because the only research on domestic violence has been largely conducted through the lens of White women, it would follow that strategies to combat domestic violence or resources for victims would also be created with White women in mind. Researchers in this area have concluded that women of color, and specifically Black women, are “ignored in the policy-making, planning and implementation of shelter services.”<sup>45</sup> Not only is there a lack of community outreach by shelters, but many times the shelter environment can be inhospitable to cultural differences.<sup>46</sup> Black women are more likely to need health care and other material items to help care for their children after leaving a shelter.<sup>47</sup> Studies also show that Black women remain in shelters longer than their White counterparts.<sup>48</sup> Women with intersectional identities have difficulty finding housing post-shelter, making it harder for women of color to “start over” after spending time in a

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<sup>43</sup> Lucy McKeon, *When anti-violence backfires*, SALON (June 2, 2012, 11:00 AM), [http://www.salon.com/2012/06/02/when\\_anti\\_violence\\_backfires/](http://www.salon.com/2012/06/02/when_anti_violence_backfires/).

<sup>44</sup> *Id.*

<sup>45</sup> Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African -American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003, 1021 (1995).

<sup>46</sup> *Id.*

<sup>47</sup> Cris M. Sullivan et al., *Brief Report, After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter*, 7 VIOLENCE AND VICTIMS, 267, 273 (1992).

<sup>48</sup> *Id.* at 273. (A “National Institute of Health funded study of sixty battered African-American women over an eight month period found that black women remained in shelters for a significantly longer time than their white counterparts before they could get the necessary resources to start over.”)

shelter.<sup>49</sup> It seems that not only are the laws ineffective to assist women with intersectional identities, but the institutions formed to provide these women with resources are as well.

Kay Pranis is a leader in restorative justice, which seeks to re-establish criminal justice as programs and policies that focus on the rehabilitation of offenders through reconciliation with victims and the community at large. She argues that many shelters actually undermine the efforts of restorative justice when they “prescribe predetermined strategies and services for particular ‘types’ of women.”<sup>50</sup> Additionally, by turning battered women away from shelter because they do not meet “appropriate” criteria (often determined based on a woman’s intersectional identities), shelters essentially place blame on the victim or her circumstances.<sup>51</sup>

Undocumented women face another set of barriers from services and resources, largely due to their legal status. Undocumented communities often feel prevented from accessing even confidential resources because of an understandable mistrust in institutions. Even if they can access them, many agencies do not provide language services for non-English speakers.<sup>52</sup> Since the election of Donald Trump and his rash changes to the immigrations systems, there is even more distrust and fear in immigrant communities. His immigration policies paired with the surge of Immigration and Customs Enforcement (“ICE”) raids in immigrant communities, leaves domestic violence survivors little recourse for justice in the legal system.<sup>53</sup> Even before Trump,

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<sup>49</sup> *Id.* (“African-American women would be quoted an apartment rental price over the phone, only to have that price raised when the landlord met the women.”)

<sup>50</sup> Kim Cook, *A Restorative Justice Critique of Shelters for Battered Women in the American Deep South*, RESTORATIVE JUST., <http://restorativejustice.org/10fulltext/cook> (last visited Oct. 17, 2017).

<sup>51</sup> *Id.*

<sup>52</sup> University of Minnesota Sexual Assault Prevention and Awareness Center, *Communities of Color and the Impacts of Sexual Violence*, <https://sapac.umich.edu/article/57> (last visited Oct. 17, 2017).

<sup>53</sup> Leila AMcNeill, *What Trump’s Immigration Policies Mean For Domestic Violence Victims*, ALTERNET (Feb. 25, 2017),

studies found that Latinx immigrants are less likely to seek assistance for domestic violence from agencies (around 7 percent versus around 15 percent).<sup>54</sup> These numbers are likely to stay low (if not decrease), in immigrant communities, in the Trump era.

On February 20, 2017, the Department of Homeland Security released a pair of memoranda outlining how it would seek to implement Trump's executive orders regarding immigration.<sup>55</sup> Nowhere in these memoranda were the existing protections for immigrant victims of domestic abuse and other violence mentioned, begging the question *do these protections even exist under the Trump administration?*<sup>56</sup> In an emailed statement from ICE officials, a representative said that "U.S. Immigration and Customs Enforcement (ICE) officers will take into consideration if an individual is the immediate victim or witness to a crime, in determining whether to take enforcement action. Particular attention is paid to victims of domestic violence, human trafficking or other serious crimes."<sup>57</sup> This statement, however, is hardly a guarantee.

Communities of color are discouraged from reporting crime, both by the responses of the criminal system and by long-held power struggles between communities of color and White communities. Arguably, even with reporting, police power does

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<http://www.alternet.org/trump-immigration-policies-and-domestic-violence-victims>.

<sup>54</sup> Ingram, E. M, *A comparison of help seeking between Latino and non-Latino victims of intimate partner violence*, 13(2) VIOLENCE AGAINST WOMEN, 159 (2007).

<sup>55</sup> See Memorandum from John Kelly, U.S. Sec'y. of Homeland Sec. on DHS Memos Re: Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017) (*available at* [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf) and [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf)).

<sup>56</sup> *Id.*

<sup>57</sup> P.R. Lockhart, *Immigrants Fear a Choice Between Domestic Violence and Deportation*, MOTHER JONES (Mar. 20, 2017), <http://www.motherjones.com/politics/2017/03/ice-dhs-immigration-domestic-violence-protections>.

nothing to curb domestic violence and actively works in ways that are against women of color (like putting them in perilous financial or legal situations). There must be an alternative, in order for women of color to find justice and have access resources in situations of domestic violence, without having to further subject their bodies and spirits to mistreatment.

### *C. Part III: Sexual and Gender Based Crimes*

The idea of White feminism has long been married to police power and the criminal system as a means to gain justice for sex crimes. But this system actively works against the interests of many women of color. It is well established that women of color have a long history of fear of the police and immigrant women often neglect to report for fear of repercussions associated with their immigration status.<sup>58</sup> Further still, mandatory minimums can lead to the over-criminalization of people of color, given the prosecutorial and judicial discretion that can be a breeding ground for decisions fueled by bias.<sup>59</sup> This can present a grave problem to women of color who are entrenched in the general fight against the over-criminalization of people of color.<sup>60</sup> Likewise, though the enactment of the rape shield laws assist in making sure that a woman's sexual history does not have bearing on jury decisions, race can still be a motivating factor in jury bias.<sup>61</sup>

In her article, *Rape, Feminism, and the War on Crime*, Aya

<sup>58</sup> See Gruber, *supra* note 36; Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (2000).

<sup>59</sup> Jeffrey T. Ulmer, Megan C. Kurlychek, & John H. Kramer, *Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences*, 44 J. RES. CRIM. & DELINQ. 427, 451 (2007).

<sup>60</sup> Charles G. Koch & Mark V. Holden, *The Overcriminalization of America*, POLITICO, (Jan. 7, 2015), <http://www.politico.com/magazine/story/2015/01/overcriminalization-of-america-113991>.

<sup>61</sup> Jaclyn Friedman, *Women of Color Seen As Always Sexually Available*, WOMEN'S ENEWS, (Oct. 29, 2011), <http://womensenews.org/2011/10/women-color-seen-always-sexually-available/>.

Gruber points out that the idea that police power is the ultimate form of maintaining women's rights against sex crimes perpetuated by men is a belief that has been strongly cultivated by White feminists in direct opposition to the needs and desires of women of color.<sup>62</sup> This credence continues in mainstream feminism, regardless of abuse by police powers contra communities of color, and without regard for the lack of trust people of color have toward the police. To support her idea, Gruber surmises that "women should not walk the halls of power in the criminal justice system but should rather begin the complicated process of disentangling feminism and its important anti-sexual coercion stance from a hierarchy-reinforcing criminal system that is unable to produce social justice."<sup>63</sup> In order to make this a reality, Gruber believes that feminism must return to a time before the war on crime, a time in which the goal was to change society, not just throw people in jail.<sup>64</sup>

Some scholars of color have highlighted the use of the criminal justice system as a way to seek justice as being deeply in conflict with the ultimate goal of anti-subordination.<sup>65</sup> In fact, some scholars have even gone as far as to argue that hate crime legislation "actually reinforces such discrimination by actively adopting legal structures premised on the concept of social hierarchy."<sup>66</sup> This mirrors Gruber's understanding of the way in which power struggles between the state power and communities of color continue to play out in today's highly charged political environment.

Gruber believes that feminists must disentangle the traditional notion that the criminal justice system as is, is the effective

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<sup>62</sup> Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581 (2009).

<sup>63</sup> Law professor says feminists should abandon tough rape laws and the war on crime, UNIV. OF IOWA (Jan. 22, 2010), <http://news-releases.uiowa.edu/2010/january/012210gruber.html>.

<sup>64</sup> *Id.*

<sup>65</sup> Gruber, *supra* note 50, at 606.

<sup>66</sup> Sally Kohn, *Greasing the Wheel: How the Criminal Justice System Hurts Gay, Lesbian, Bisexual and Transgendered People and Why Hate Crime Laws Won't Save Them*, 27 N.Y.U. REV. L. & SOC. CHANGE 257, 260 (2001).

method of pursuing social justice with regards to sex crimes. She followed up with these 2009 thoughts in a 2013 article, entitled *Leniency as A Miscarriage of Race and Gender Justice*.<sup>67</sup> Again, Gruber focused more on the racial disparities present in aggressive policing and prosecution, questioning again whether these policies truly benefit all women.<sup>68</sup> She argued that immigrant women often do not embroil themselves in the criminal justice system, as the system itself can be “hostile to their interests.”<sup>69</sup> Similarly, non-immigrant women of color are already wary of police interactions;<sup>70</sup> therefore, giving example to “how the separation model poses the greatest danger to women who are already economically and socially marginalized.”<sup>71</sup> Gruber’s final takeaway from both of her pieces is that feminists need to disentangle the traditional notion that the criminal system, as it currently exists and operates, is the effective method of pursuing social justice with regards to sex crimes.

Another element of criminal law fought for by White feminists, but remains a topic of discussion and disagreement within rape reform and intersectional feminist circles, is mandatory minimum sentencing. One of the biggest critiques of this form of sentencing is that minimums have not actually eliminated sentencing disparities because sentencing discretion still exists—only this time it is in the hands of the prosecutors.<sup>72</sup> Some critique that prosecutors now have an unreviewable discretion over the types of charges to bring, whether or not to engage in plea bargaining, and whether or not “to ask the district court to reduce a defendant’s sentence due to his ‘substantial assistance’ to the government.”<sup>73</sup> Some critics maintain that

<sup>67</sup> Gruber, *supra* note 25, at 1620.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Coker, *supra* note 58, at 1015.

<sup>71</sup> Gruber, *supra* note 25, at 1620.

<sup>72</sup> *See, e.g.*, Ulmer *supra* note 59, (“Our findings support the long-suspected notion that mandatory minimums are not mandatory at all but simply substitute prosecutorial discretion for judicial discretion.”)

<sup>73</sup> Paul Larkin & Evan Bernick, *Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms*, THE HERITAGE FOUND. (Feb. 10, 2014), <http://www.heritage.org/crime-and->

prosecutors' personal and professional aspirations can also affect their discretion, as they may gain professionally from successful convictions and are not given incentives to use their discretion with responsibility.<sup>74</sup>

Mandatory minimums are just one of many examples of strategies that White feminism has fought for that actually causes more discrepancies in the realm of protection of women of color against sex crimes. According to the ACLU, Black defendants are often prosecuted in sexual violence cases more seriously than White defendants, especially when the victim is White.<sup>75</sup> In fact, in the ACLU's analysis of around 900 cases of forcible sexual assault investigations, "cases in which a Black defendant is accused of raping a White woman are disproportionately likely to be brought to trial, and Black men accused of raping White women received more serious charges."<sup>76</sup> Ultimately, there is room for racial bias in prosecution and conviction, and even a potential temptation for utilizing mandatory minimums for professional upward mobility. Mandatory minimums "cannot adequately address systemic bias in the criminal legal system"<sup>77</sup> and actively work against women of color in this way.

In his article *Real Women, Real Rape*, Bennet Capers shares the concern that by pushing for rape shield laws, feminists and

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justice/report/reconsidering-mandatory-minimum-sentences-the-arguments-and-against#\_ftn25.

<sup>74</sup> See *Reevaluating the Effectiveness of Mandatory Minimum Sentences: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. 4 (2013) (statement of Hon. Brett Tolman arguing that "institutional pressures to prosecute with an eye toward identifying and using mandatory minimum statutes to achieve the longest potential sentence in a given case are severe").

<sup>75</sup> *Written Submission of the ACLU on Racial Disparities in Sentencing Hearing on Reports of Racism in the Justice System of the United States Submitted to the Inter-Am. Comm'n on H. R. 153rd Sess.*, (Oct. 27, 2014), [https://www.aclu.org/sites/default/files/assets/141027\\_iachr\\_racial\\_disparities\\_aclu\\_submission\\_0.pdf](https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf).

<sup>76</sup> Meghan Racklin, *Why Mandatory Minimum Sentencing For Sexual Assault Isn't The Answer*, THE ESTABLISHMENT, (July 21, 2016) <https://theestablishment.co/why-mandatory-minimum-sentencing-for-sexual-assault-isnt-the-answer-266839160e6c>.

<sup>77</sup> *Id.*

other proponents of these kinds of laws have “re-inscribed the very chastity requirement they hoped to abolish.”<sup>78</sup> Capers’ concern is that juries receive some women as more deserving of the law’s protection over others. Though Capers focuses his analysis on a woman’s sexual history, he hints toward a racial analysis as well. He takes his readers through a thought exercise.

*Imagine a jury in a sexual assault case. Imagine too that the complainant is a young, attractive, white woman. She is solidly middle class, well educated, and articulate. In short, she is presentable to the jury. During the course of the trial, the jurors will be inundated with information and, when the complainant testifies, they will likely learn her approximate age, whether she attended college, what she does for a living, and other background information... In the absence of this information (barred by Rape Shield laws), the jury is likely to assume that this apparently ideal victim is, sexually speaking, a good girl. Indeed, jurors may even contrast her with other rape victims they have heard about on the news who seem sexually immoderate and whose accusations did not result in convictions. They may contrast her with someone who is not middle class or who is supposedly less presentable. In other words, when jurors are told nothing, they do not assume “nothing.” Instead, they use the information they are provided, as well as the surface appearance of the complainant--does she look like a good girl or a bad girl?--to fill in the blank.<sup>79</sup>*

The possibility for judgment-making based on a woman’s sexual history has disappeared under the rape-shield law, allowing for more women to be seen as “good women.”<sup>80</sup> However, the door remains wide open for individual racism and bias to creep into the process. Similar to the issue of prosecutor discretion in mandatory minimum sentencing, even absent sexual history, juries still have a plethora of information with which to make judgment

<sup>78</sup> Bennett Capers, *Real Women, Real Rape*, 60 UCLA L. REV. 826 (2013).

<sup>79</sup> *Id.* at 857-858.

<sup>80</sup> *Id.*

calls on the worth of a woman. For women of color, many of whom are disproportionately sexualized,<sup>81</sup> the power of the jury to make decisions based on underlying bias adds to the lack of justice that can be realistically achieved by the criminal justice system.

Perhaps a more blatant criticism of White feminism is the idea that White women utilize police power to protect themselves and prosecute sex crimes, specifically perpetrated against women because of their gender. Yet at the same time, White feminists disavow the fact that women of color are specifically targeted because of their intersectional identities. In his commentary on the sexual harassment claims brought by female FOX News anchors against people like Roger Ailes and Bill O'Reilly, professor and legal scholar Terry Smith noted that anchors, such as Andrea Tantaros and Megyn Kelly, have hypocritically been willing to serve as "female mouthpiece[s] for Fox News's hidebound racial ideology while selectively championing the cause of sex harassment."<sup>82</sup> Smith notes a paradox in these mouthpieces holding to the idea that charges of racism, before racism has been proven, "shuts down all reasonable dialogue,"<sup>83</sup> and exists because "women who have aided and abetted the news network that has done the most to promote the racist, anti-immigrant views of Donald Trump and his followers are now relying on a legal theory that owes its existence to Black and Latina women."<sup>84</sup> Through this article, Smith seeks to address the same issues that appear within the electoral politics sphere—the mistaken belief that racism and sexism are two different beasts, neither of which is tied to each other, and one of which is more harshly disadvantageous.

The focus on the criminal system as the way in which women can pursue justice for sex crimes has a discriminate effect on

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<sup>81</sup> Friedman, *supra* at note 61.

<sup>82</sup> Terry Smith, *Empathy For the Women of Fox News*, HUFFINGTON POST, (Sept. 7, 2016), [http://www.huffingtonpost.com/terrysmith2/empathy-with-the-women-of\\_b\\_11863068.html](http://www.huffingtonpost.com/terrysmith2/empathy-with-the-women-of_b_11863068.html).

<sup>83</sup> Joe Dziemianowicz, *D.L. Hughley rips Megyn Kelly and Fox in bitter back-and-forth about race*, N.Y. DAILY NEWS, (July 14, 2016), <http://www.nydailynews.com/entertainment/tv/hughley-rips-megyn-kelly-fox-article-1.2711268>.

<sup>84</sup> Smith, *supra* note 70.

people of color, and therefore, actually services to limit women of color's access to justice. So, while the criminal justice system may serve as a somewhat valid avenue for White women, justice in this manner remains largely unattainable for women of color. In addition to criticizing and rethinking these laws with an intersectional lens, feminism through an intersectional lens demands that White women acknowledge the ways in which race and other demonized characteristics can further exacerbate the sexism and sex-based crimes suffered by women of color.

#### ***D. Part IV: Electoral Politics***

In her piece *Hillary Clinton, Barack Obama, and the Continuing Need for Intersectional Discourse*, Seema Ahmad argues that society's treatment of Hillary Clinton during her 2008 presidential run was not the feminist victory it had been heralded as, but actually worked to silence the struggles of women of color.<sup>85</sup> Ahmad points to op-ed articles published after Barack Obama clinched the Democratic nomination that pit race and gender against each other in a who-has-it-worse analysis, instead of realizing the effect of the intersectionality of the two.

In March of 2008, Geraldine Ferraro, former congresswomen and vice-presidential candidate, said in a newspaper interview, "If Obama was a white man, he would not be in this position. And if he was a woman of any color, he would not be in this position. He happens to be very lucky to be who he is. And the country is caught up in the concept."<sup>86</sup> Almost immediately, Ferraro's words ignited tense conversations regarding race and gender in the political sphere. Obama's advisors called upon Ferraro to disavow her original comments, while Clinton's campaign slowly backed away from the controversy. In the days that followed, Ferraro defended her words

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<sup>85</sup> Seema Ahmad, *Hillary Clinton, Barack Obama, and the Continuing Need for Intersectional Discourse*, 1 GEO. J.L. & MOD. CRITICAL RACE PERSP. 135 (2008).

<sup>86</sup> Gene Maddaus, *Ferraro defends controversial comments on Barack Obama*, DAILY BREEZE, (Mar. 11, 2008) <http://www.dailybreeze.com/general-news/20080311/ferraro-defends-controversial-comments-on-barack-obama>.

that had caused so much division, at one point stating that “sexism is a bigger problem” than racism.<sup>87</sup> Though she eventually walked her words back, the damage was already done, and it worked to show that between both Hillary Clinton and Barack Obama a space for women of color was left open, unfulfilled, and unrepresented. Other “feminist” leaders followed Ferraro’s train of thought. In an op-ed that appeared in the New York Times, Gloria Steinem touted that “gender is probably the most restricting force in American life.”<sup>88</sup> Her words fell into the false idea that women are a monolithic group, all facing the same discrimination and challenges, solely based on gender and no other circumstance.<sup>89</sup>

In an NPR segment of *All Things Considered*, a husband-wife duo, Christopher Edley and Maria Echaveste, pondered the happenings that came from Ferraro’s remarks, as well as the question of whether race and gender should make an appearance in conversations about the election.<sup>90</sup> The duo both worked under Bill Clinton’s administration, but during the run between Clinton and Obama, Edley advised on Obama’s campaign, while Echaveste advised on Clinton’s.<sup>91</sup> Of the issues of race and gender, Edley cautioned that “[it] is such a sensitive issue and so dangerous that I believe in this year everybody needs to be hyper-careful, hypersensitive about saying anything, doing anything that will be interpreted in a way that injects race or gender into the equation.”<sup>92</sup> When asked directly if the topics of race and gender should be avoided, the duo disagreed. Echaveste seemed to believe that these were important and engaging topics that would continue through the November elections regardless of the Democratic nominee, while Edley maintained that the discussion was “mostly bad on many levels for the [Democratic] party.”<sup>93</sup> The idea that race and

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<sup>87</sup> *Id.*

<sup>88</sup> Gloria Steinem, *Women Are Never Front Runners*, N.Y. TIMES, (Jan. 8, 2008), <http://www.nytimes.com/2008/01/08/opinion/08steinem.html>.

<sup>89</sup> *Id.*

<sup>90</sup> *Ferraro Quits Clinton Job After Obama*, NPR, (Mar. 12, 2008, 4:00 PM), <http://www.npr.org/templates/transcript/transcript.php?storyId=88154039>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

gender are topics to be avoided even though they are commonly understood to affect society and the political climate is evidence of the resistance to recognize intersectionality and its effects.

Of course, as Ahmad points out, women of color experience subordination and discrimination in a unique way and, therefore, when considering progress made for Black Americans by the run and subsequent presidential terms held by Barack Obama, we must recognize that Black women carry “unique burdens” given their intersectional identity.<sup>94</sup> Throughout the presidential race, and even during the eight years of the Obama administration, the discrepancy of intersectionality recognition was apparent. Ahmad compares the way in which American society and media championed Barack Obama as groundbreaking while they demonized Michelle Obama, characterizing her as the “angry Black woman.”<sup>95</sup> The mainstream media is also quick to acknowledge that Michelle Obama was dismissed as “an angry black woman unsuited for the tradition-bound role of first lady.”<sup>96</sup>

Michelle Obama might be the perfect case-in-point for intersectionality in electoral politics. The formulation of her character as “baby mama”<sup>97</sup> or the combative representation of Michelle brandishing a machine gun<sup>98</sup> “are not easily classifiable as either sexist *or* racist, but instead draw on both sorts of tropes, as have such familiar representations of Black women as

<sup>94</sup> Ahmad, *supra* note 85, at 144.

<sup>95</sup> *Id.* at 146.

<sup>96</sup> Julie Hirschfeld Davis, *The Closer: Michelle Obama*, N.Y. TIMES (Nov. 5, 2016), [https://www.nytimes.com/2016/11/06/us/politics/michelle-obama-2016-presidential-election-first-lady.html?\\_r=0](https://www.nytimes.com/2016/11/06/us/politics/michelle-obama-2016-presidential-election-first-lady.html?_r=0).

<sup>97</sup> Alex Koppelman, *Fox News Calls Michelle “Obama’s Baby Mama”... FOX: Producer Used Poor Judgment*, HUFFINGTON POST (last updated May 25, 2011), [http://www.huffingtonpost.com/2008/06/11/fox-news-calls-michelle-o\\_n\\_106655.html](http://www.huffingtonpost.com/2008/06/11/fox-news-calls-michelle-o_n_106655.html).

<sup>98</sup> Paul Lewis, *New Yorker’s ‘terrorist’ Obama cover under fire*, THE GUARDIAN, <https://www.theguardian.com/world/deadlineusa/2008/jul/14/newyorkercover>. (last visited Oct. 17, 2017).

promiscuous, or as militant, emasculating mammies.”<sup>99</sup> Michelle Obama’s position as First Lady and the public response to her role show that women of color still take a back seat in appreciation, recognition, and value in the political sphere.

This picture became clearer during the 2016 election, in the months leading up to when Melania Trump would become the First Lady. For many, the stark contrast between the media portrayal and societal “forgiveness” of the Michelle and Melania came to a pivotal point with Melania’s July 2016 speech, at the Republican National Convention. Her speech paralleled Michelle Obama’s at the 2008 Democratic National Convention. Many regarded this as a blatant act of plagiarism, as the speech had “considerable similarity in wording, construction and themes” to Michelle’s.<sup>100</sup> Many theorized that this was a pointed example of when Melania was given a “pass,” in moments where Michelle would have been further demonized as unfit to hold the title of First Lady.<sup>101</sup> In response to press inquiries about the similarities in the two speeches, the senior communications adviser for the Trump campaign, Jason Miller, issued this statement:

*In writing her beautiful speech, Melania's team of writers took notes on her life's inspirations, and in some instances included fragments that reflected her own thinking. Melania's immigrant experience and love for America shone through in her speech, which made it such a*

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<sup>99</sup> Erin C. Tarver, *Rethinking "Intersectionality": Michelle Obama, Presumed Subjects, and Constitutive Privilege*, 1 PHILOSOPHIA 150, 151 (2011).

<sup>100</sup> Cooper Allen, *Was Melania Trump's speech plagiarized from Michelle Obama?*, USA TODAY (last updated July 19, 2016, 12:12 PM), <https://www.usatoday.com/story/news/politics/onpolitics/2016/07/19/melania-trump-republican-convention-speech-plagiarism/87278088/>.

<sup>101</sup> Dahleen Glanton, *White privilege and why Melania Trump gets a pass, Michelle Obama doesn't*, CHI. TRIBUNE (July 20, 2016, 8:10 PM), <http://www.chicagotribune.com/news/columnists/ct-melania-michelle-criticism-glanton-talk-20160720-column.html>.

*success.*”<sup>102</sup>

The results of the 2016 presidential race between Republican nominee Donald Trump and Democratic nominee Hillary Clinton was, for many, unexpected. The eventual divide between voters showed that the race versus gender is a constant in the American value system. As one news author wrote, “The sisterhood, as real sisterhood tends to be, turned out to be riddled with complications.”<sup>103</sup> Those complications seem to rest largely on the issue of race. Although Clinton won women as a whole, she only managed to procure forty-three percent of the White female vote.<sup>104</sup> Trump received his strongest support from White women without college degrees—that number totaling sixty-two percent.<sup>105</sup> Many theorists theorized that Trump tapped into the fears of working class White women whose families were deeply rooted in blue-collar occupations and whose lifestyles make a great breeding groups for “us vs. them” rhetoric.<sup>106</sup>

As the news of Trump’s win rocked the country, many self-proclaimed feminists struggled (and are still struggling now) with the significance of the first female major party nominee losing the vote of women—regardless of race. But the fact that Clinton lost the White female vote is no mistake. In the same way in which White women support policy that is anti-woman of color (as referenced above regarding domestic violence and criminal justice reform, for example), a vote for Clinton in the 2016 election would have been a vote that unilaterally upheld some of

<sup>102</sup> *Section Of Melania Trump's Monday Speech Mirrors Michelle Obama's In 2008*, NPR (July 19, 2016, 12:38 AM), <http://www.npr.org/2016/07/19/486560186/section-of-melania-trumps-monday-speech-closely-imitates-michelle-obama-in-2008>.

<sup>103</sup> Claire Malone, *Clinton Couldn't Win Over White Women*, FIVETHIRTYEIGHT (Nov. 9, 2016, 7:16 PM), <https://fivethirtyeight.com/features/clinton-couldnt-win-over-white-women/>.

<sup>104</sup> Exit Polls, CNN, (last updated Nov. 23, 2016, 11:58 AM), <http://www.cnn.com/election/results/exit-polls>.

<sup>105</sup> Laura Morgan & Roberts Robin J. Ely, *Why Did So Many White Women Vote for Donald Trump?*, FORTUNE (Nov. 17, 2016), <http://fortune.com/2016/11/17/donald-trump-women-voters-election/>.

<sup>106</sup> *Id.*

the interests of women of color, such as immigration reform and expansive healthcare. The issue was not the nominee; it was the problematic potential that the interests of women of color would be moved to the forefront, rather than keeping the status quo of White feminism that continued this phenomenon of race above gender.

Ultimately, Ahmad maintains that the perspectives of non-White feminists and non-male antiracists must be added to the dominant discourse to strengthen anti-subordination movements and, in turn, empower a broader coalition of persons.<sup>107</sup> If White feminists continue to be the face of progress within the political process, the needs of women of color will continue to be disregarded and disavowed. Therefore, for the electoral process to mirror intersectionality, women of color must be both allowed and encouraged to rise to the top of the political sphere. Additionally, White women must challenge their own racism that exhibits in the political process, when the needs and interests of women of color take up much of the political discourse.

### *E. Part V: Reshaping Feminism*

The case studies on domestic violence, the criminal system, and electoral politics detail the ways in which White feminism has, at the very least, disregarded the needs of, and at the very worst, actively worked against the interests of women of color. Research shows that women of color often choose not to report domestic violence because of the extreme financial or legal situations it can put them in. The data and response to data on domestic violence has been largely centered on the way that White women experience domestic violence, without much concern for the unique ways in which women of color experience domestic violence. Using police power and the criminal system as the main avenues for victims of sex crimes to receive justice is a complicated and, oftentimes, vexing experience for women of color. Immigrant women and communities of color have long feared the police, and prosecuting sex crimes solely through these systems can lead to the over-criminalization of people of color—a

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<sup>107</sup> Ahmad, *supra* note 85 at 148.

phenomenon directly against the interests of women of color. Current rape shield laws are not created in a way that race can be sure to be excluded in the opinion factor of juries. Without the perspectives of non-White feminists and non-male antiracists added to the political sphere, the needs of women of color will continue to be disregarded and disavowed. Ultimately, the problem boils down to one categorization of women holding the power in influencing laws/policies purported to serve *all* women.

Having the knowledge of intersectionality and knowing the purpose it serves is only half of the battle. How intersectionality and intersectional feminism looks in action can be quite difficult to imagine. Recent efforts have been made to take the White feminist movement and reshape it to be more intersectional.

With the 2016 election stirring up more interest in the political sphere and under the guise of uniting women against Donald Trump and his policies, the Women's March on Washington hit the headlines as a pristine example of what feminism *should* be.

The Women's March on Washington was a rally, which took place the day after the inauguration of President Donald Trump. The rally began organically on Facebook and was initially criticized for failing to include women of color as organizers.<sup>108</sup> Based on that criticism, the organizers and leaders of this march and subsequent movement include Tamika Mallory, a Black civil rights activist and former director of the National Action Network; Linda Sarsour, a Muslim who heads the Arab American Association of New York; and Carmen Perez, a Latina activist who directs Harry Belafonte's Gathering for Justice. The march continues as a movement using the policy platform of "Unity Principles," embodying the belief that "Gender Justice is Racial Justice is Economic Justice."<sup>109</sup>

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<sup>108</sup> Karen Grigsby Gates, *Race And Feminism: Women's March Recalls The Touchy History*, NPR (Jan. 21, 2017, 9:22 PM), <http://www.npr.org/sections/codeswitch/2017/01/21/510859909/race-and-feminism-womens-march-recalls-the-touchy-history>.

<sup>109</sup> *Women's March on Washington: Guiding Vision and Definition of Principles*, <https://static1.squarespace.com/static/584086c7be6594762f5ec56e/t/5877e2>

The Women's March on Washington has been heralded as a prime example of intersectionality in practice. Women from all backgrounds joined together on January 21, 2017, under the common theme that liberation as a woman is bound to the liberation of each other, and the understanding that in order for any of these social movements to be successful, women must always be asking themselves *what are we doing that harms other women and how can we support more fully other women in their different and intersectional identities?*

The march itself was widely criticized in the intersectional feminism movement. One participant, a woman of color, described the protest as "one of privilege."<sup>110</sup> She wrote:

*After the March, I read that no one had been arrested. "Isn't it wonderful," someone gushed on Facebook, "how we could have such a peaceful protest?" The contrast was huge between the Women's March and the protests we've seen in the last year for Black Lives Matter or #NoDAPL. There were no snipers poised on the roofs of Washington DC waiting for a woman in a floppy pink hat to step out of line. Demonstrators cheered cops as they rode past on motorcycles.<sup>111</sup>*

A common theme for many women of color was the frustration that so many touted the fact that no arrests were made in any city, in which there was a Women's March, as a sign of success.<sup>112</sup> For women whose bodies and beings are policed because of the color of their skin, this felt like a jab at the women of color who have, in quite literal terms, put their bodies on the

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4a29687f9613e546ff/1484251725855/WMW+Guiding+Vision+%26+Definition+of+Principles.pdf.

<sup>110</sup> Nadya Agrawal, *We Need to Talk About This Issue With the Women's March*, POPSUGAR (Jan. 29, 2017), <https://www.popsugar.com/news/Being-Woman-Color-Women-March-Washington-43040248>.

<sup>111</sup> *Id.*

<sup>112</sup> Ijeoma Oluo, *When You Brag That The Women's Marches Were Nonviolent*, THE ESTABLISHMENT (Jan. 3, 2017), <https://theestablishment.co/when-you-brag-that-the-womens-marches-were-nonviolent-b042133ae2bb>.

line to fight for equality. This mentality supposed that women, specifically the White women who started and largely participated in this march, were establishing a form of White protest and flaunting this form as the “best” form. Ijeoma Oluo, Editor-At-Large at The Establishment, a media platform run and funded by women penned her frustrations as such:

*When you say that your protests were nonviolent, I wonder,  
how do you define violence?  
Is it a brick?  
Is it a rock?  
Is it a baton?  
Is it pepper spray?  
Is it a firehose?  
Is it a police dog?  
Or is it poisoned water?  
Is it a school suspension?  
Is it mass incarceration?  
Is it grinding poverty?  
Is it that “random” airport security check?  
Is it yet another traffic stop?  
Is it the toy gun in that kid’s hand?  
Is it that stop and frisk?  
Or is it the thought that you could march a million white  
women down the street without fear—and high five the  
same cops who wouldn’t hesitate to pepper spray black  
and brown faces begging for nothing less than their lives—  
and then call it progress?<sup>113</sup>*

The Women’s March on Washington was a step toward the realization of the power that an intersectional view of feminism can hold. In many ways, it taught women the importance and the purpose of solidarity. However, women of color already understand the need for intersectionality. Because feminism, as we know it, is White feminism, it follows White women through their power and privilege, needs to usher in intersectional feminism. When there is a more widespread realization of intersectional feminism, policies, laws, and minds can begin to change to create

<sup>113</sup> *Id.*

intersectional frameworks wherein the needs and women of color are recognized equally as White women.

In order to affect change in the institutional areas of the three case studies, organizations and policy makers must begin to shift toward an intersectional approach to their leadership makeup. INCITE!, an activist organization of women of color that seeks to end violence against women, gender-nonconforming, and trans people of color and their communities, has been pointing out that while “mainstream anti-violence advocates are demanding longer prison sentences as a front line approach to stopping violence against women,” resorting to the criminal justice system can be equally as oppressive, since criminal justice and prison systems have histories of violence and brutality against people of color.”<sup>114</sup> INCITE! uses a real life example of a woman in Tucson, Arizona, who calls the police reporting domestic abuse and, under the mandatory arrest laws in Arizona, was arrested because the police could not find the batterer.<sup>115</sup> The police then found out about her immigration status and reported her. In Chicago, Illinois, a Black homeless woman was gang raped and reported this to the police. She was then arrested on prostitution charges.<sup>116</sup>

Domestic Violence shelters and response organizations must fully implement women of color in leadership, in order to form programming and housing that specifically addresses the emotional and spiritual needs pertaining to a woman of color’s unique experience in the realm of domestic violence. One such organization that has done this is the Women of Color Network.<sup>117</sup> It is an organization dedicated to build the capacity of women of color advocates and activists responding to violence against women in communities of color. It is a nationally recognized, women of color-led initiative, as the leadership, staff, and

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<sup>114</sup> Zai Gilles, *Social Justice Approach to Ending Domestic Violence in Context*, BANARD CTR. FOR RES. ON WOMEN (April 7, 2014), <http://bcrw.barnard.edu/blog/social-justice-approach-to-ending-domestic-violence-in-context/>.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *About*, WOCN, (last visited Oct. 17, 2017) <http://www.wocninc.org/about-wocn/>.

Advisors are completely and exclusively made up of women of color, and because all initiatives are generated directly from a women of color constituency by using a part of continuous dialogues, surveys, and other programming.

The Women of Color Network realizes, like all collectives of people of color do, that anti-oppression work must be informed by certain working theories. Some of the working theories or assumptions held by the WOCN include:

- Oppression is pervasive and hurts us all, though not in the same ways.
- “There is no hierarchy of oppression.”
- None of us “invented” oppression; we inherited it. Though its creation is not our fault, we must now accept responsibility for our role in its continued existence.
- Our commitment to eliminating all forms of injustice must be a lifelong one.
- Racism, classism, heterosexism, and all other forms of oppression are BOTH systems of oppression and systems of privilege.
- All of us have had the experience as a target of oppression, as well as the experience of privilege. We must also understand multiple oppressions and/or multiple privileges vary these experiences.
- As women of color, we have the ability to still exert power/privilege over each other. We must examine our personal role in this as well as educate other women of color about this. Our commitment as women of color to understand and interact with each other deepens our relationships and ensures our collective survival.<sup>118</sup>

Operating under similar assumptions can help other non-profits, shelters, and other organizations or policy makers involved in domestic violence or criminal work, begin to change the rhetoric that has been largely White-focused and begin to see and

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<sup>118</sup> *Working Assumptions*, WOCN, <http://www.wocninc.org/about-wocn/working-assumptions/> (last visited Oct. 17, 2017).

address the specific needs of women of color.

Some organizations like The Movement for Black Lives have released specific demands that people of color believe would work toward meaningful, institutional equality.<sup>119</sup> Some of those demands revolve around the criminal system. For example, one demand is to end capital punishment. The Movement for Black Lives argues that people of color are largely over-represented on the death penalty.<sup>120</sup> This ideology intersects with domestic violence and women of color, as Movement for Black Lives notes that “most women on death row are there in connection with the death of an abusive partner.”<sup>121</sup> But this is more than just a demand. This organization has come up with policy platforms enabling real action to affect change in these areas. In the case of capital punishment, Movement for Black Lives suggests that the way to begin is with community education and action on behalf of people on the death penalty, including coordinating with attorneys and placing pressure on local and state officials to abolish the death penalty.<sup>122</sup> In order to begin this process, Movement for Black Lives also identified the way in which attaining this goal could be achieved through the legal process:<sup>123</sup>

In some states, the death penalty can be abolished through legislative advocacy through the strategic efforts of coordinated coalitions accompanied by public education. In other states, the death penalty can be legislatively and/or judicially reformed to result in fewer new death sentences and less frequent executions. In some states, the courts are well-positioned to declare the death penalty unconstitutional for a range of reasons. As legislatures and courts in other states (particularly former states of the Confederacy) are unlikely to reform, repeal or abolish the death penalty, the U.S. Supreme Court will have to declare the death

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<sup>119</sup> *End the War on Black People*, THE MOVEMENT FOR BLACK LIVES, <https://policy.m4bl.org/end-war-on-black-people/> (last visited Oct. 17, 2017).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

penalty unconstitutional in order to impact the entire country.<sup>124</sup>

Other organizations and policy makers must come alongside women of color, such as those in leadership with the Movement for Black Lives, to begin to use positions of privilege (whether that be political or otherwise) to implement the ideas and well-thought-out policies that women of color are blatantly saying will help remedy the inequality that exists, without an intersectional framework in criminal law and policy.

In the political arena, it must first be realized that intersectional women experience differences in “political mobilization and interest in politics and demonstrate different participatory styles than white women do.”<sup>125</sup> Women of color legislators are “more likely to be elected from majority-minority districts.”<sup>126</sup> These districts were specifically drawn as a response “racially polarized voting patterns and the desire to allow minority voters to select their candidates of choice,” but of course this cannot be the only strategy for involving more women of color in office.<sup>127</sup> In addition, Black and Latina women generally have less access to financial resources than White women and are “disproportionately concentrated in low-wage and service-oriented work (the jobs least likely to allow room for politics).”<sup>128</sup> Women, and most certainly women of color, are seldom encouraged to seek political office, and in fact are often discouraged, either formally or informally, from doing so. Single women find it difficult to run for political office given their familial structure, and openly-lesbian women have historically faced gender discrimination that has severely limited political careers, showing that

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<sup>124</sup> *Id.*

<sup>125</sup> Nadie E. Brown, *Political Participation of Women of Color: An Intersectional Analysis*, 35(4) J. WOMEN, POL. & POL’Y 315 (2014).

<sup>126</sup> Center for American Women and Politics and Political Parity, *Research Inventory: American Women in Politics*, 15, POL. PARITY (Aug. 2012), <https://www.politicalparity.org/wp-content/uploads/2012/08/research-inventory.pdf>.

<sup>127</sup> *Id.*, at 77

<sup>128</sup> Shauna Shames, *Barriers and Solutions to Increasing Women’s Political Power*, SCHOLARS STRATEGY NETWORK (2015), [https://www.scholarsstrategynetwork.org/sites/default/files/shauna\\_shames\\_-\\_barriers\\_and\\_solutions.pdf](https://www.scholarsstrategynetwork.org/sites/default/files/shauna_shames_-_barriers_and_solutions.pdf).

intersectionality itself often plays a part in the lack of political engagement.<sup>129</sup>

However, holding office is not the unilateral way for women to begin influencing policy and laws that are made from those offices. In fact, some scholars have begun to consider a reshaping of the idea of what is political. Cathy J. Cohen argues that “the political participation of women of color doesn’t always fit conventional definitions of ‘political activity’ as defined by mainstream political scientists; instead, research—and particularly research on African American women—has highlighted political activities that women of color undertake through work in local communities and churches and through labor organizing.”<sup>130</sup> One possible strategy to start would be to redefine political involvement. As is apparent with Michelle Obama’s political presence, holding office was not a prerequisite for her political work and the political views held about her. Likewise, winning office does not always guarantee influence.<sup>131</sup>

In order to affect real change in the areas of domestic violence, criminal law, and the political arena, women of color must be present and free to be vocal in all spaces that have been reserved for a White majority for too long. In addition, White women must also use their voice, privilege, and political power, not only when it directly affects them, but also in solidarity with women of color who do not have that same voice, privilege, or power.<sup>132</sup> White women as individuals must attempt to understand that, as women, our liberation is bound to each other’s. Women as a whole will never truly be liberated until all women of color, minority women, Muslim women, immigrant women, women with disabilities, queer and trans women, and poor and disenfranchised women are liberated. Indigenous Australian activist Lilla Watson penned the quote, “If you have come here to help me, you are wasting your time. But if you have come because your liberation is

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<sup>129</sup> *Id.*

<sup>130</sup> Center for American Women, *supra* note 125.

<sup>131</sup> *Id.*

<sup>132</sup> Lakin Starling, *The Women’s March Was A Moment For Solidarity. For Many Women Of Color, It Felt Divided*, FADER (Jan. 23, 2017), <http://www.thefader.com/2017/01/23/womens-march-women-of-color>.

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bound up with mine, then let us work together.”<sup>133</sup>

## II. CONCLUSION

What comes next for feminism is wholly up to us. Armed with the knowledge that feminism as it has operated since its inception in this country is a danger to women of color as it functions “in an exclusionary manner by marginalizing less powerful and less privileged women and allies.”<sup>134</sup> Intersectional feminism is necessary to redefine feminism and to be truly inclusive of women's lived experiences in its many forms. When we win, we will win together.

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<sup>133</sup>Lillia: International Women’s Network, <https://lillanetwork.wordpress.com/about/>. (last visited Oct. 30, 2017).

<sup>134</sup>Dasagir, *supra* note 13.