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Angela Harris and the Racial Politics of Masculinity: Trayvon Martin, George Zimmerman, and the Dilemmas of Desiring Whiteness

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This Festschrift Essay uses the Trayvon Martin controversy as an opportunity to reflect on the insights Angela Harris's scholarship provides about the dialogic relationship between race, masculinity, and the criminal law. After surveying Harris's contributions to critical race theory, masculinity studies, and feminist legal theory, this Essay distills some of her insights into a "masculinity studies toolkit" that scholars can use to reproduce the kind of nuanced analyses of race and gender Harris called for in much of her work. Harris's scholarship reminds us that the criminal law creates opportunities for the performances of masculinity, and that race always plays a role in understanding these performances of masculinity. Cases like the Martin controversy further teach us that we must acknowledge the ways in which contemporary, fluid approaches to race create unique tensions between white and minority men as they attempt to lay claim to specific, raced versions of masculinity. This Essay concludes by arguing that Harris's insights are even more valuable today than when her work was originally published, and the framework she provides remains the best approach to using masculinity studies to analyze contemporary race and gender conflicts.

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INTRODUCTION

In the summer of 2013, when I sat down to write this Festschrift Essay celebrating Angela Harris’s work on race, masculinity, and the criminal law, everyone’s attention was focused on the current “race trial”¹ of the moment: the Trayvon Martin case. At that time, the facts of the Martin case were widely known.² George Zimmerman, a “mixed-race” Latino and white male,³ stood

1. The term “race trial” as used here is a slight modification of the term “black trial[],” the term used by Professor Mark Weiner in his work. See MARK S. WEINER, *BLACK TRIALS: CITIZENSHIP FROM THE BEGINNINGS OF SLAVERY TO THE END OF CASTE*, at xi (2004) (describing “black trials” as legal events that make evident “certain basic ideological conflicts about race and civic life.”). I have modified Weiner’s original term to account for the fact that many of the contemporary cases that reflect ideological conflicts in the United States concern racial groups other than blacks and whites, and therefore we must develop conceptual tools and terms that encompass more than black-white relationships.

2. For a more detailed discussion of the Trayvon Martin case, see Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555 (2013). For a contemporaneously produced press account of the case, see Dan Berry et al., *Race, Tragedy and Outrage Collide After a Shot in Florida*, N.Y. TIMES, Apr. 1, 2012, <http://www.nytimes.com/2012/04/02/us/trayvon-martin-shooting-prompts-a-review-of-ideals.html>.

3. Latinos/Hispanics occupy a liminal space in America’s racial paradigm, as many Latinos believe that the term Latino refers to a racial group, and other Latinos treat Latino or Hispanic background as a kind of ethnic designation. See, e.g., Elizabeth Vaquera & Grace Kao, *The Implications of Choosing “No Race” on the Saliency of Hispanic Identity: How Racial and Ethnic Backgrounds Intersect Among Hispanic Adolescents*, 47 SOC. Q. 375, 389 (2006) (noting two-thirds of Latinos in a sample regarded Latino as a racial category). Because of this ambiguity, George Zimmerman faced some difficult political decisions regarding how to represent his racial identity and ethnic background to the press. Records show that Zimmerman’s father is a non-Hispanic white man, and his mother is a native of Peru. Manuel Roig-Franzia et al., *Who is George Zimmerman?*, WASH. POST, Mar. 23, 2012, at A1 (noting that Zimmerman’s father is white, his mother is Latina, and according to family members some of his relatives are black); see also Bryan Llenas, *George Zimmerman’s Family Deliberately Downplayed His Latino Roots*, FOX NEWS LATINO (July 12, 2013), <http://latino.foxnews.com/latino/news/2013/07/12/george-zimmerman-family-deliberately-downplayed-his-latino-roots> (discussing racial background and representations to the press). One media report indicates that Zimmerman consciously decided to downplay his Latino heritage while the case was being litigated to avoid injecting additional racial issues into the dispute. See *id.* It is unclear whether emphasizing his Latino background would have helped or hurt Zimmerman in the court of popular opinion. Those who treat Latinos as racial minorities might have concluded that Zimmerman, as a

trial in Florida state court for the murder of Trayvon Martin, an African American teenager.⁴ The pedestrian context of the case made its ending all the more heartrending. Martin was visiting a home in a middle-class gated community with his father and decided to make an evening trip to a nearby convenience store for snacks.⁵ On his return trip, he was followed and confronted by Zimmerman, a local resident working as a volunteer community watchman.⁶ When Zimmerman intercepted and attempted to question Martin, a physical altercation ensued and ultimately ended when Zimmerman fatally shot Martin.⁷ Immediately after the shooting, local police questioned Zimmerman but released him because, in their view, he established that he had acted in self-defense and merely “stood his ground” as was his right under Florida law.⁸ Community outcry over the police’s handling of the case was sharp, and Florida prosecutors later arrested and charged Zimmerman with second-degree murder.⁹

Importantly, although many of the basic facts in the Martin case were undisputed, different communities assigned different meanings to these facts,

Latino, could not have engaged in racially biased activity that harmed another minority male. See Achy Obejas, *Which Box Would Zimmerman Check?*, IN THESE TIMES, Aug. 6, 2013, http://inthesetimes.com/article/15407/which_box_would_zimmerman_check (raising concerns about assumption that Latinos cannot engage in anti-black racism). Those who perceive Latinos to be white might have found his Peruvian background to be of little relevance in determining whether discrimination occurred.

4. Lizette Alvarez & Michael Cooper, *Prosecutor Files Charge of 2nd-Degree Murder in Shooting of Martin*, N.Y. TIMES, Apr. 12, 2012, at A1.

5. Charles M. Blow, *The Curious Case of Trayvon Martin*, N.Y. TIMES, Mar. 17, 2012, at A21.

6. *Id.*

7. *Id.*

8. Lizette Alvarez, *A Florida Law Gets Scrutiny After a Killing*, N.Y. TIMES, Mar. 21, 2012, at A1 (discussing police’s view that they had no reason to arrest Zimmerman given the self-defense claim he made under Florida law). Florida is one of several jurisdictions in the United States to have a “Stand Your Ground” law. In Florida, the law provides full immunity to a person who uses force in self-defense. See FLA. STAT. ANN. § 776.032(2) (2013) (prohibiting law enforcement from arresting a person for using force “unless it determines that there is probable cause that the force that was used was unlawful.”). In general, there are twenty-seven states with shoot-first statutes that generally permit the use of deadly force in self-defense in public places with no duty to retreat: Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin. “*Stand Your Ground*” Policy Summary, L. CENTER TO PREVENT GUN VIOLENCE (July 18, 2013), <http://smartgunlaws.org/shoot-first-laws-policy-summary>. Seven additional states—California, Idaho, Illinois, New Mexico, Oregon, Virginia, and Washington—permit the use of deadly force in self-defense in public with no duty to retreat. *Id.* Through a combination of statutes, judicial decisions, or jury instructions, these states are distinct from true “Florida-style” laws in several respects. For one, many of the shoot-first protections established in these states may only be invoked during criminal trials, as opposed to the Florida law, which enables a shooter to escape liability in a pretrial hearing. Additionally, these states’ laws do not have some of the especially onerous elements found in the Florida law, such as the provision preventing law enforcement from arresting a shooter without probable cause that the force used was unlawful. Alvarez, *supra*.

9. Alvarez & Cooper, *supra* note 4; “*Stand Your Ground*” Policy Summary, *supra* note 8.

producing competing, racially charged narratives.¹⁰ These narratives revealed deep racial rifts that still divide the American polity. For example, some Americans understood the case to be a classic tale of Southern-style racism. In their view, Martin was an innocent African American male teenager whose sole “crime” was to take a seemingly circuitous route back to the apartment in which he was staying.¹¹ In their view, America remains a tragically dangerous place for young black men, as Martin’s harmless decision to don his hood in the rain and cut through the backyards of several neighbors in a white, suburban, gated community somehow left him vulnerable and afraid, staring down the barrel of Zimmerman’s loaded gun.¹²

In contrast, other Americans see the tale as a colorblind or post-racial tragedy. In their view, Zimmerman, a good-natured, aspiring police officer, simply took his responsibility as a community watchman a bit too seriously that fateful night. While they acknowledge that Zimmerman may have

10. The initial conflict between the two men and the subsequent verdict in the case functioned as a set of cultural litmus tests that allowed Americans to assess the state of race relations in the United States. For further discussion of different racially charged readings of the conflict, see PURSUING TRAYVON MARTIN: HISTORICAL CONTEXTS AND CONTEMPORARY MANIFESTATIONS OF RACIAL DYNAMICS (George Yancy & Janine Jones eds., 2013). The discussion more generally explores the dangers present for black male bodies in public space. See also Tamara F. Lawson, *A Fresh Cut in an Old Wound—A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors’ Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL’Y 271 (2012) (discussing racially charged characterization of case in popular dialogue).

11. See generally Blow, *supra* note 5 (describing the case as an opportunity to consider the continuing, dangerous American cultural practice of racial profiling young black men); Ekow N. Yankah, *The Truth About Trayvon*, N.Y. TIMES, July 16, 2013, at A23 (noting that Zimmerman’s interpretation of every step Trayvon Martin took that evening was shaped by racial stereotypes that make black men seem suspicious).

12. This Comment treats the suburban complex where Martin was staying as a majority or predominantly white neighborhood because when Zimmerman acted as community watchman he repeatedly called the police department to notify law enforcement when black men were walking through the neighborhood, a fact that suggests that black male presence in this community was deemed anomalous. See Adam Weinstein, *Trayvon Shooter’s 911 Calls: Potholes, Piles of Trash—and Black Men*, MOTHER JONES (Mar. 22, 2012, 9:39 AM), <http://www.motherjones.com/politics/2012/03/trayvon-shooters-911-calls-potholes-piles-trash-black-men> (discussing Zimmerman’s anxieties about black men in his neighborhood). However, other commentators have represented Sanford more generally as racially diverse. See, e.g., Anthony E. Fairfax, *The Demographics of Sanford, Florida—A Majority Minority City?*, THE CENSUS CHANNEL (Mar. 26, 2012), <http://censuschannel.net/cc/news/the-demographics-of-sanford-florida-a-majority-minority-city-1517> (describing Sanford as 45 percent white, 29 percent Black, 20 percent Latino, and 2.7 percent Asian). However, even in these accounts emphasizing diversity, statistics show that Sanford was a majority white community. History suggests that white anxiety about the condition of the neighborhood may be particularly high in neighborhoods that are perceived by white residents to be in the process of becoming minority neighborhoods. JEANNINE BELL, *HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING* 53–85 (2013).

See also Lane DeGregory, *Trayvon Martin’s Killing Shatters Safety Within Retreat at Twin Lakes in Sanford*, TAMPA BAY TIMES, Mar. 24, 2012, <http://www.tampabay.com/news/humaninterest/trayvon-martins-killing-shatters-safety-within-retreat-at-twin-lakes-in/1221799> (explaining the racially diverse makeup of the Retreat at Twin Lakes, the neighborhood in which Martin was killed). For a further discussion of the prevalence of communities taking action to prevent racial integration, see BELL, *supra*.

inappropriately confronted Martin on the street that evening,¹³ they argue that it was Martin's unexpected, violent, and aggressive response to Zimmerman's questioning that actually precipitated the tragedy that occurred.¹⁴ In their view, it was Martin's decision to overreact that spurred the life-and-death physical struggle between the two men, a struggle that ultimately caused Zimmerman to shoot the teen dead on a dark residential street.¹⁵

The competing narratives assigned to the case came to a head when, after a brief, racially charged trial in the summer of 2013, an all-white female jury¹⁶ acquitted George Zimmerman on all charges.¹⁷ After the verdict, the nation was split between those who deemed the "not guilty" judgment a fair post-racial result and those who viewed the case as yet another example of the legal system sanctioning racial bias. In the wake of the verdict, several people aware of my work on race asked me for my thoughts in sorting through the dispute,¹⁸ but I found myself exhausted and jaded, sensing that there was nothing truly novel I could contribute. However, after re-reading Angela Harris's essay, *Gender, Violence, Race, and Criminal Justice*,¹⁹ my speechlessness gave way to voice. In an essay written nearly fifteen years ago, Harris provides readers with a conceptual toolkit that allows them to chart the dialogic, mutually

13. Some recognize that Zimmerman may have overstepped his bounds that night, as a police dispatcher advised him to stop following Martin and specifically told him not to get out of the car. See Lee, *supra* note 2, at 1557. For juror reactions matching this account, see Dana Ford, *George Zimmerman Was 'Justified' in Shooting Trayvon Martin, Juror Says*, CNN (July 17, 2013, 8:54 AM), <http://www.cnn.com/2013/07/16/us/zimmerman-juror> (quoting a juror who felt that Zimmerman "wanted to do good . . . [but] just went overboard.").

14. See Lizette Alvarez & Timothy Williams, *Documents Tell Zimmerman's Side in Martin Case*, N.Y. TIMES, June 22, 2012, at A9 (describing account in which Martin was goading Zimmerman with comments such as "Do you have a problem?" "You do now" immediately prior to Martin's attack); Peter Ferrara, *The Meaning of the Zimmerman Trial*, THE AM. SPECTATOR (July 17, 2013), <http://spectator.org/articles/55222/meaning-zimmerman-trial> (describing case as a race neutral conflict which Martin precipitated by punching Zimmerman in the face); Kevin Jackson, *The Zimmerman Case Exposes Black Racism*, THE BLACKSPHERE (July 11, 2013), <http://theblacksphere.net/2013/07/zimmerman-case-exposes-black-racism> (describing case as involving an overzealous community watchman that was then subject to a surprise attack).

15. See, e.g., Lizette Alvarez, *At Zimmerman Trial, a Tale of Pursuit and Attack*, N.Y. TIMES, June 27, 2013, at A19 (detailing Martin's response to being followed by Zimmerman).

16. The jury is described as all-white because media reports described the jury as being composed of five non-Hispanic white women and one Hispanic woman. Lizette Alvarez, *Zimmerman Case Goes to Jury, with Defense Urging It to Remove Emotion*, N.Y. TIMES, July 13, 2013, at A9. However, as explained above, some Latinos do not understand themselves to be white. Rather, they see themselves as members of a distinct racial category that should be recognized as separate and incapable of being described as an ethnic subgroup within the white or black racial category. See *supra* note 3.

17. Alvarez, *supra* note 16, at A9 (reporting that the jury had been asked to determine whether Zimmerman was guilty of second-degree murder or of the lesser charge of manslaughter); Lizette Alvarez, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 14, 2013, at A1 (detailing Zimmerman's acquittal on all charges).

18. For discussion of my work on the social construction of race, see *infra* notes 70–71.

19. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777 (2000).

constitutive role that race and gender play in identity construction,²⁰ and more specifically, to chart the ways in which race-specific masculinity performances can spur public violence and lead to race-based social subordination. Armed with this toolkit, one's understanding of the Martin case is unquestionably sharpened, and one's views about the cultural and social significance of the case are fundamentally transformed.

The Martin case undoubtedly is an American tragedy. This Festschrift Essay therefore attempts to reclaim this terrible tragedy for a redemptive end, to use the case as an opportunity to reflect on the enduring significance and value of Harris's work on the relationship between race, masculinity, class, and the criminal law. My primary mission in this piece is to celebrate Harris and her work on race and masculinity. My second, more specific goal is to mine Harris's essay *Gender, Violence, Race, and Criminal Justice* and reveal the basic principles that inform the masculinities studies toolkit that lies at the heart of her analysis. My hope is that once the insights in her essay are distilled in this manner, a new generation of scholars and readers will feel comfortable taking on the kind of masculinities analysis Harris proposes. The conceptual tools Harris offers in *Gender, Violence, Race, and Criminal Justice* are among the best contemporary analytics available for understanding masculinity conflicts and the interconnected nature of race and gender subordination.

The masculinities toolkit Harris offers has a number of virtues. First, it allows us to see that, when properly performed, masculinities analysis reveals important truths about both genders. For example, in this case, Harris's version of masculinity analysis allows us to reach beyond the individual conflict between Martin and Zimmerman, to examine the way the female jurors in the case (and the male attorneys) were influenced by certain masculinity constructs in understanding Zimmerman and Martin's behavior during the conflict, and whether either man was entitled to sympathy and understanding. Also, because Harris's masculinities framework requires us to simultaneously consider the racial inflection of the conflict between the two men, we are given the opportunity to consider the ways in which our understandings of race have changed, and the implications these changes will have for the performance of race and masculinity.

Part I of the Essay lays out the essential lessons Harris offers for understanding the dialogic relationship between race, gender, class, and social subordination. Together these lessons constitute what I call a "masculinity studies toolkit" that assists us in interpreting contemporary gender and race-based conflicts. Our discussion of the masculinities toolkit also gives us an opportunity to consider the contributions Harris's work has made to feminist

20. Harris's model is dialogic because it allows us to see that gender is always informed by race, and race is always shaped by gender. She argues that each identity variably shapes the other, a key insight that can enrich both gender and race performance scholarship in addition to masculinity studies.

legal theory,²¹ masculinity studies,²² and race discrimination scholarship²³ more generally. Part II uses Harris's masculinity studies toolkit to analyze the Martin case and encourages scholars to use her approach to masculinities analysis to produce new, nuanced readings of social conflicts. Scholars that make use of the tools she offers will find it easier to engage with the dialogic and mutually constitutive role that race, class, and gender play in identity performance, social conflict, and social subordination.

I.

THE RACIAL POLITICS OF MASCULINITY

A. Disclosure and Personal Reflections

Some disclosure is necessary in order for me to have any credibility in analyzing Harris's work. I confess: I am an Angela Harris fan. I am a huge, effusive, unapologetic Harris fan and have been for many years. Some of my admiration for her stems from the role she played in my early professional life. I was Harris's research assistant when she visited Yale Law School in 1998. Her brilliant example played a key part in my decision to hold on to my dream of being a legal scholar. At the time I began working for her, I had largely given up on that dream. My upstart attitude, working-class desire for straight talk, and honest, passionate engagement over social issues often were not an easy fit with the more refined gentleman's agreement approach to conversation that was the norm at Yale Law School in the 1990s. Consequently, many of my podium professors were not enthusiastic when I revealed my ambition to be a law professor. Unfortunately, prior to Harris's visiting offer being announced, there was little to encourage me to believe that my dream of being a legal academic was still possible. At that time, Yale Law School had never hired a

21. Feminist legal theory as an area of study examines "how gender has mattered to the development of the law and how different groups of men and women are differentially affected by the power of law." See MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY, at xxi (3d ed. 2013). It addresses questions such as formal inequality, gender-based stereotyping, the use of the law to perpetuate gendered norms, and the devaluation of the feminine. Some versions include elements of critical race theory as well as masculinity studies. *Id.*

22. Masculinity studies is defined as an approach that explores masculinity as a dimension of gender relations, hierarchy, and power. See CHAMALLAS, *supra* note 21, at 134. It considers how certain groups of men are both disadvantaged by prevailing models of masculinity and incentivized to perform gender in particular ways, and it explores tensions between contemporary versions of masculinity and their consequences in men and women's lived experiences. *Id.* at 133–36.

23. Harris works specifically in an area of race discrimination studies called critical race theory. Critical race theory is defined as "a collection of activists and scholars interested in studying and transforming the relationship among race, racism, and power. . . . Unlike traditional civil rights, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law." See CRITICAL RACE THEORY: AN INTRODUCTION 3 (Richard Delgado & Jean Stefancic eds., 2d ed. 2012). The movement in recent years has functioned as an umbrella term covering a variety of subgroups. *Id.* Some of these are discussed in the sections that follow.

tenure-track, black female professor. The administration repeatedly explained that they simply could not find anyone qualified to join their ranks.

Things at Yale fundamentally changed for me when Harris arrived as a visiting professor; her mere presence demonstrated to me that I could achieve my dreams of becoming a legal scholar. In order for Yale to even consider hiring her, she had to be widely regarded as one of the “best athletes” in the lateral market, someone destined to become a key player in feminist legal theory circles. Her first published piece, *Race and Essentialism in Feminist Legal Theory*,²⁴ intervened with a controversial splash, fundamentally changing the course of then-existing conversations in feminist legal theory.²⁵ With more than two thousand citations and counting, the article is perhaps the most famous of her written works. Time only confirmed Harris’s role as a key intellectual figure. Over the next ten years, Harris created an enormous, diverse body of scholarship, all of it informed by her deep feminist beliefs and commitment to anti-racism.²⁶

Harris, however, was more than just a brilliant professor role model when she visited Yale; she was a mentor to many students hungry for more intimate

24. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990). Hereinafter I sometimes refer to this piece simply as *Race and Essentialism*.

25. At that time, the primary conversations in feminist legal theory centered on defining what form gender equality would take—whether it would be shaped by an anti-subordination approach, a liberal equality model, or an approach shaped by differences theory. For further discussion of contemporary debates in feminist legal theory, see Katharine T. Bartlett, *Feminist Legal Scholarship: A History Through the Lens of the California Law Review*, 100 CALIF. L. REV. 381, 391–405 (2012). In *Race and Essentialism in Feminist Legal Theory*, Harris argued that feminist theorists involved in these debates were often theorizing from an unmarked white middle-class female perspective. Harris, *supra* note 24, at 585–86, 588. She offered solutions to this problem, in order to avoid the cognitive distortions and marginalization dangers that were present in contemporary feminist theorists’ works. *Id.* at 608–16.

26. Harris’s work covers a range of diverse fields including critical race theory, critical race feminism, feminist legal studies, environmental justice, animal rights, and queer theory. Her analyses typically straddle subgenres and engage multiple theoretical areas of inquiry at the same time. In this way, she manages to fuse together her interests in racial and gender identity, institutional racism, and structural inequality. See, e.g., Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J.L. & POL’Y 13 (2011) (using her work on masculinities to explore the problem of domestic violence and develop organizing strategies to challenge the disproportionate incarceration of men of color); Angela P. Harris, *Loving Before and After the Law*, 76 FORDHAM L. REV. 2821 (2008) (cautioning that gays may not be fully served by the marriage equality debate because the institution no longer is coupled with full citizenship given the structural economic, social, and technological changes that have reshaped the role of marriage in society); Angela P. Harris, *Love and Architecture: Race, Nation, and Gender Performances Inside and Outside the State*, 52 CLEV. ST. L. REV. 121 (2005) (discussing anthology readings that explore the mutually constitutive role of race and gender); Angela P. Harris, *Should People of Color Support Animal Rights?*, 5 J. ANIMAL L. 15 (2009) (arguing that people of color should invest in the development of an anti-racist version of animal rights by emphasizing the goal of eradicating all forms of subordination); Angela P. Harris, *Criminal Justice as Environmental Justice*, 1 J. GENDER RACE & JUST. 1 (1997) (showing how an environmental justice approach to analyzing criminal justice problems offers African American communities an alternative way to deemphasize the contentious role of state law enforcement in their communities).

faculty interaction. Although visiting professors are often advised to spend the lion's share of their time bonding with their colleagues at the host institution, Harris was intensely student-focused from the start of her time at Yale. She graciously took time to counsel me and engage me in dialogues that pressed me to discipline my thinking. She subtly urged me to recognize that I was capable beyond my imaginings. I still remember the words I spoke to the dean of the law school on the day she departed from the Yale Law School community. My comments to him then still ring true and real: "Without her, I would have had to invent myself whole cloth from nothing. Her example has meant everything to me."

In the years since that time, my interaction with Harris has primarily been through her work, and my engagement with her work has caused my deep admiration to grow even further. As a junior scholar myself, I now read *Race and Essentialism* with new eyes, recognizing it for the courageous act of bravery it was at such an early stage in her career. Specifically, in this first major piece Harris faulted prominent feminist theorists Catherine MacKinnon and Robin West for engaging in what she called "gender essentialism" as well as their reliance on "nuance theory."²⁷ These two concepts became seminal ideas that continue to structure conversations in feminist legal theory today.²⁸ The first concept, gender essentialism, challenges "the notion that a unitary, 'essential' women's experience" can be isolated and "described independent of other facets of experience like race, class, and sexual orientation."²⁹ Harris explained that the gender essentialism present in early legal feminists' works had caused them to privilege certain voices as universal and to de-privilege others. She counseled that contemporary feminist theory "need[ed] less

27. Harris, *supra* note 24, at 585. The two works Harris most closely examines in the discussion are seminal articles in the field of feminist legal studies. See Catharine A. MacKinnon, *From Practice to Theory, or What is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991); ROBIN WEST, *CARING FOR JUSTICE* (1997). Harris's incisive critique of MacKinnon and West is also coupled with a clear respect for these scholars' works. She explains that both MacKinnon and West are "smart and politically committed feminists" whose works are both "powerful and brilliant in many ways." Harris, *supra* note 24, at 605, 585.

28. With two thousand citations and counting, *Race and Essentialism in Feminist Legal Theory* has been incredibly influential, causing feminists to recognize the costs of theorizing based on a racially unmarked female subject and the ways in which the racially unmarked category of women causes one to miss crucial aspects of the experience of gender-based social subordination. See GOOGLE SCHOLAR, <http://scholar.google.com/scholar?cites=14854274803177256483> (last visited Apr. 15, 2014) (listing over two thousand citations to *Race and Essentialism in Feminist Legal Theory*).

Indeed, the debate Harris initiated about the role of the unmarked feminist subject in feminist legal theory has continued to shape conversations in feminist legal circles. See Bartlett, *supra* note 25, at 404 (discussing the article's seminal role). For further discussion of the influence the piece has had on feminist legal theory, see Jane Wong, *The Anti-Essentialism v. Essentialism Debate in Feminist Legal Theory: The Debate and Beyond*, 5 WM. & MARY J. WOMEN & L. 273 (1999) (analyzing the tenets and critiques of anti-essentialism and essentialism in feminist legal theory, and the effect of these conflicting philosophies on law reform).

29. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581, 586-88 (1990).

abstraction and not simply [the] different sort of abstraction” offered by feminist legal scholars.³⁰ The second construct, nuance theory, explores a phenomenon in which feminist legal theorists tend to treat women of color’s experiences as more extreme examples of issues and problems that affect unmarked (white) female subjects.³¹ She explained that by treating women of color as more extreme examples of the problems faced by unmarked (white) women, feminist legal scholars were simply replicating forms of subordination that they complained about in male scholars’ work. For male scholars often overlooked areas where gender considerations should have been a key part of their analyses. Feminists similarly were reducing race to a minor consideration rather than recognizing its central role in understanding social problems.

While *Race and Essentialism* quickly attracted its share of fans and critics, Harris’s second core feminist legal theory article, *Gender, Violence, Race, and Criminal Justice*,³² drew little attention.³³ This fact has always struck me as somewhat strange, as the article makes an equally significant contribution to feminist legal theory as *Race and Essentialism*.³⁴ Moreover, the pieces are complementary and function as two sides of the same coin. *Race and Essentialism* calls on feminists to *theorize* from a self-consciously, contextually specific place—one that accounts for the mutually constitutive role race and gender play in identity construction and experience. *Gender, Violence, Race,*

30. *Id.* at 585.

31. *Id.* at 595. Nuance theory posits that women of color’s experiences are simply more extreme examples of general phenomena—for instance, more extreme cases of rape or other gender-based problems. *See id.* at 591–92 (criticizing several prominent feminists for the assumption that “in describing the experiences of ‘women’ issues of race, class, and sexual orientation can therefore be safely ignored, or relegated to footnotes.”). *See also* Frank Rudy Cooper, *Race and Essentialism in Gloria Steinem*, 11 BERKELEY J. AFR.-AM. L. & POL’Y 36 (2009) (discussing Harris’s nuance theory as the phenomenon is illustrated in Steinem’s work). This approach makes women of color the exclamation point to analyses that privilege white middle-class feminists’ interests, without ever explaining or taking an interest in why these problems are compounded for women of color.

32. Harris, *supra* note 19, at 777.

33. For example, Katharine Bartlett’s recent essay summarizing developments in feminist legal scholarship over the past fifty years recognizes Harris’s work in the field, but solely relies on Harris’s *Race and Essentialism in Feminist Legal Theory* in discussing her contribution. *See* Bartlett, *supra* note 25, at 404 (discussing Harris, *supra* note 24). Bartlett generally recognizes that the critical race theory movement caused feminist legal scholars to consider the ways in which race and gender are mutually constitutive. *Id.* at 406–07 nn.145–46. However, she does not identify Harris’s *Gender, Violence, Race, and Criminal Justice* essay as an exemplar, nor does she mention the framework Harris offers for understanding the interplay between racialized masculinities. *Compare id.*, with Harris, *supra* note 19. Bartlett’s approach, however, is the most common way of representing Harris’s work, with the unfortunate consequence that most feminist legal theory surveys of this nature marginalize or only briefly make note of her work on masculinity. *See* Bartlett, *supra* note 25, at 427.

34. Citation counts alone are no measure of the significance of a piece, but *Gender, Violence, Race, and Criminal Justice* has under two hundred Google Scholar citations compared to over two thousand for *Race and Essentialism in Feminist Legal Theory*. *Compare* GOOGLE SCHOLAR, *supra* note 28 (listing over two thousand citations to *Race and Essentialism in Feminist Legal Theory*), with GOOGLE SCHOLAR, <http://scholar.google.com/scholar?cites=15383566223820953234> (last visited Apr. 15, 2014) (listing under two hundred citations to *Gender, Violence, Race, and Criminal Justice*).

and *Criminal Justice* calls on feminists and other scholars to similarly *interpret cases and other social conflicts* through a lens that recognizes the mutually constitutive role race, gender, and class play in constructing personal identity, and the role identity performance plays in initiating social conflict.

What accounts for the comparatively small amount of attention that the *Gender, Violence, Race, and Criminal Justice* essay has received? I suspect that part of the problem is the analysis Harris performs in *Gender, Violence, Race, and Criminal Justice* is a hard act to follow. Scholars who admire the analysis she performs in the essay may hesitate to use the concepts and tools she offers because they worry they are not equipped to produce the same deeply insightful readings of masculinity contests that Harris offers. Indeed, many scholars instead pull isolated insights from the essay and still produce incredibly powerful work.³⁵ An intrepid cohort of scholars have pursued a more sustained engagement with the masculinities framework she puts forward, including Frank Rudy Cooper,³⁶ Anne McGinley,³⁷ Russell Robinson,³⁸ and Kim Shayo Buchanan.³⁹ These scholars are part of a contemporary movement called multiple masculinities theory (MMT), a school of work that simply would not

35. Many scholars, instead of adopting all of the propositions that inform Harris's framework, use individual observations drawn from the piece to produce productive readings. *See, e.g.*, Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259, 1297 n.261 (2011) (citing Harris's work as seminal in his exploration of how rape functions to subordinate men based on race, but without explicitly adopting the framework); Mary Ellen Gale, *Calling in the Girl Scouts: Feminist Legal Theory and Police Misconduct*, 34 LOY. L.A. L. REV. 691, 733–34 (2001) (citing Harris's work on masculinities as critical in understanding police brutality without explicitly engaging with Harris's masculinities framework in theorizing proposals for reform).

36. *See* Frank Rudy Cooper, *Masculinities, Post-Racialism and the Gates Controversy: The False Equivalence Between Officer and Civilian*, 11 NEV. L.J. 1 (2010); Frank Rudy Cooper, "Who's the Man?": *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671 (2009) (calling for reforms in police training to reduce "macho" policing); Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 862 n.32 (2006) (discussing Harris's insight about the relationship between "hypermasculinity" in criminality and police misconduct).

37. *See* Ann C. McGinley, *Reasonable Men?*, 45 CONN. L. REV. 1, 39 (2010) (discussing the way race shapes understanding of masculinity, and appropriate masculine response in employment discrimination cases); Ann C. McGinley, *Ricci v. DeStefano: A Masculinities Theory Analysis*, 33 HARV. J.L. & GENDER 581, 585 n.19 (2010) (discussing ways in which understandings of race, masculinity and class influence discourse about blue collar work).

38. *See generally* Russell K. Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309 (2011) (discussing cultural stereotypes about race and masculinity that inform Los Angeles jail policies); Russell K. Robinson, *Racing the Closet*, 61 STAN. L. REV. 1463 (2009) (discussing the ways in which construction of black male sexuality in HIV discussions scapegoats subcategories of black men while hiding structural causes of HIV transmission).

39. *See generally* Kim Shayo Buchanan, *Engendering Rape*, 59 UCLA L. REV. 1630 (2012) (discussing ways in which raced-gender stereotypes shape the social understanding of rape risks in prison and consequently distort prison rape policies); Kim Shayo Buchanan, *Our Prisons, Ourselves: Race, Gender and the Rule of Law*, 29 YALE L. & POL'Y REV. 1 (2010) (discussing same).

exist in its current form without the conversation Harris launched in *Gender, Violence, Race, and Criminal Justice*.⁴⁰

Although MMT scholars have begun mapping out the key issues that inform their approach,⁴¹ in my view, it is important to revisit Harris's original articulation of similar principles to appreciate the way in which she boldly combines seemingly disparate areas of scholarship to produce a uniquely informative approach. For, although the essay may intimidate some readers, *Gender, Violence, Race, and Criminal Justice* was clearly intended to act as an open invitation for other scholars to engage with masculinities analysis. Harris shows readers the rich intellectual insights that await us if we more closely consider the race-based masculinity performances that are part of normal social life and further consider how race-based masculinity contests play a key role in our criminal justice system.

B. Charting the Racial Politics of Masculinity: Harris's Masculinities Analysis Toolkit

Section B lays out the basic principles Harris offers in *Gender, Violence, Race, and Criminal Justice* to reveal the "masculinities analysis toolkit" at the heart of her analysis. In the course of exploring these principles, I comment on how the conceptual tools Harris offers demonstrate her engagement with and positions on key issues in feminist legal theory, masculinities studies, and critical race theory.

In *Gender, Violence, Race, and Criminal Justice*, Harris provides her reader with ten essential insights that are necessary to understanding how race and gender work together in individual identity performance projects and how raced-gender performances play a key role in criminal justice conflicts.⁴²

Harris's first insight is relatively simple and uncontroversial: we must be aware that hierarchies of "race, class, [and] sexual orientation" mediate conflicts in social life.⁴³ Her second insight is similarly uncontroversial:

40. See, e.g., Ann C. McGinley & Frank Rudy Cooper, *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*, 13 NEV. L.J. 326, 327 n.5 (2013) (identifying Angela Harris, Darren Hutchinson, Devon Carbado, and Frank Valdes as "forerunners" for multiple masculinities theory). MMT is a perspective that investigates how concepts of masculinity interact with other categories of identity in varied legal contexts. *Id.* at 329.

41. Multiple masculinities theory seeks "to merge masculinities theory with feminist and critical race theories, and in some instances queer theory, to achieve an understanding of why masculinity in general is such an enduring social value and how masculinities combine with race, sexual orientation, class, and other identities in different contexts. Furthermore, it is important to use multiple lenses to show both how identity concepts are embedded in the law and how the law furthers gender, race, class, and other hierarchies." See McGinley & Cooper, *supra* note 40, at 332.

42. Performativity or gender performance theory provides that an individual will feel compelled to engage in socially recognized acts that are culturally recognized as masculine or feminine as a way of actualizing his or her claim to a given gender. The theory has also been used to discuss the individual's relationship to racial identity.

43. Harris, *supra* note 19, at 779, 783 (explaining that hierarchies of race and class give rise to power struggles between men).

gender, when combined with race, “mark[s] out groups of men as vulnerable to the violence of other men.”⁴⁴ In fleshing out this insight, Harris posits that white men operate at the highest level of privilege, whereas minorities occupy various lower levels and therefore experience greater risk and vulnerability.⁴⁵ The strength of her claim becomes clear if we interpret state-authorized violence, or policing, as being raced as white and gendered as masculine, as she does in her analysis.⁴⁶ With this understanding, the disproportionate incarceration of black men, as well as the police surveillance of certain segments of black, Latino, and Asian American communities, become potent evidence of the unique dynamics of race-based subordination and gender vulnerability that affect many minority men.

Harris then shifts to a discussion of identity performance theory in laying out her remaining insights. Her third insight is that gender, like all components of identity, is unstable, and consequently, individuals engage in so-called performative acts to claim a given gender.⁴⁷ Men, in order to feel like men or feel masculine, must engage in gender performance behavior. Importantly, as she explains, *violence is one of the key ways in which men perform masculinity*. To be clear, the gender performance models that American men use depend upon violence as an essential tool to manifest, prove, and establish masculinity.⁴⁸ Certainly, there are other ways of socially performing masculinity, including stylistic choices associated with masculinity, dating patterns that emphasize sexual prowess, as well as competition in sports and other venues. Men are taught that violence is one of the key ways that one demonstrates that one is a man. Consequently, both law breakers (typically figured as minority) and law enforcers (typically figured as white) share an understanding of masculinity that naturalizes violence as a response to challenge.⁴⁹

Harris’s fourth insight is key: she explains that the instability of masculine identity makes violence in defense of self-identity a constant possibility.⁵⁰ Her

44. Harris, *supra* note 19, at 779.

45. Of course, Harris’s claims about race are made at fairly broad levels of generality in fleshing out her model. She recognizes that class mitigates the experience of privilege for whites as well, and in discussing institutional power, she is referring to an economically and racially privileged white subject.

46. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 797–98 (2000). For further discussion, see also *id.* at 798 n.77.

47. Gender is unstable in the sense that men continuously feel driven to engage in behavior that allows them to reaffirm their masculinity. *Id.* at 777. For further discussion of the theoretical claims regarding gender performance and masculinity, see *id.* at 782 n.22 (discussing Candace West & Don H. Zimmerman, *Doing Gender*, 1 GENDER & SOC’Y 125, 157 (1987)).

48. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 789–90 (2000).

49. *Id.* at 777, 794.

50. *Id.* at 788. As Harris explains, her “account of contemporary hegemonic masculine identity suggests that violence—whether directed at women, at other men, or at oneself—is never far below the surface. Men must constantly defend themselves against both women and other men in order to be

next two insights explore the two ways in which this violence emerges. Specifically, the fifth insight is that a man may engage in violence to protect a racialized community. For example, a Latino man may use violence to thwart Asian American men who appear to be invading their “turf” or neighborhood. White men historically have used violence to protect their access and claim to white women, performing another version of this role of being protective of a raced community. The sixth insight is that a man also may engage in violence to protect his own sense of masculinity. When a white police officer beats a Latino man for spitting on him, he is protecting his own masculinity from attack. Similarly, when an Asian American man gets into a brawl with a black man for some perceived act of disrespect, the Asian American man is protecting his personal sense of masculinity. Harris’s model suggests that we should expect to see all men respond aggressively when they are challenged; socially privileged white men may use state power instead of violence, but all men respond in some fashion when they believe that their masculinity has been threatened and they can respond in a meaningful fashion.⁵¹

Harris’s seventh insight is also critically important. She argues that we must pay more attention to how understandings of race shape masculinity constructs, which, in turn, inform racial understandings.⁵² In her view, it is not productive to try to analyze race and gender separately. Rather, gender identities are always racialized, and racial identities are always gendered. This understanding has particular consequences for the ways in which different communities of men engage in identity performance and the ways in which others regard their masculine identity performances. Men are constantly choosing from a menu of masculine gender constructs available to them, and these gender constructs are race and class-specific. This does not mean that a man is wholly blocked from claiming a particular form of masculinity because his physical body does not match the raced-cultural form of masculinity he hopes to claim. Rather, his physicality may limit the success of his ability to perform a race-specific version of masculinity, but he may still gain access to it in some form. For example, a black man who plays golf and smokes cigars at a formerly all-white country club is experimenting with a model of masculinity that historically has been closed to him. While some white men may never fully accept his right to access this model of masculinity, the black man may still derive feelings similar to the exercise of white masculine power by participating in these activities.

Harris’s eighth insight easily follows from her prior observations about gender/race performance and racial hierarchies. This insight is perhaps the most

accepted as men; their gender identity, crucial to their psychological sense of wholeness, is constantly in doubt. . . . [U]nder these circumstances, gender performance frequently becomes gender violence.”
Id.

51. *Id.* at 788–89.

52. *Id.* at 782–83.

critical but least understood component of masculinities analysis. She explains that men who occupy a given location in this hierarchy of racialized masculinities still desire to claim and perform other models of masculinity.⁵³ For example, subordinate or vulnerable minority men still desire to claim white masculinity. Additionally, relatively more privileged white men are attracted to the various models of masculinity that poor and/or minority men have developed.⁵⁴ This is because men who are disempowered by racial or class status develop alternative, but still attractive, rebellious ways of proving their manhood. Harris further argues that by mapping the ways that the criminal justice system perpetrates violence on particular groups of men, one can see how “masculine identity is shaped by relations of repulsion and desire between men.”⁵⁵

In Harris’s model the dynamics of attraction, repulsion, and subordination between men of different races are reflected in many contemporary criminal justice conflicts.⁵⁶ However, they are also clearly on display in popular culture. One need only listen to the strains of rap music from the cars of white male teenagers to see white men with access to a privileged model of masculinity sampling and flirting with a rebellious and “otherized” masculinity associated with black and Latino men.⁵⁷ Conversely, minority men, who would otherwise be trapped by the expectation that they perform this model of rebellious masculinity, find ways to associate themselves with professions linked to white male power.⁵⁸ In an ironic twist, many black men performing rap songs will refer to material trappings associated with white masculinity, as well as activities deemed to be part of the arena for white privileged men, making the cycle of attraction and repulsion complete. Minority men seeking to escape this rebellious model may attempt to find refuge by becoming lawyers, bankers, or even police officers—the position most associated with white male state power, and by extension with state-authorized violence.⁵⁹

53. *Id.* at 784 (“At the cultural level, however, these competing forms of masculinity allow for interracial relations of envy and desire as well as mutual hostility.”).

54. *Id.*

55. *Id.* at 780.

56. Masculinity anxieties help explain the behavior of a working class white male, like Bernard Goetz, when he initiates an armed conflict with a group of young working class black men on the New York City subways. It similarly helps us understand the masculinity concerns a wealthy, African American man like Henry Louis Gates, Jr. would have when a white male police officer arrives at his home and appears to disrespectfully question him.

57. For further discussion, see Bill Youssman, *Blackophilia and Blackophobia: White Youth, the Consumption of Rap Music, and White Supremacy*, 13 COMM. THEORY 366 (2003) (arguing that white male attraction to rap music is linked with fear of African Americans and resistance to challenging institutionalized racism).

58. Harris, *supra* note 19, at 784 (discussing how African American men that have been denied access to “full” manhood have “constructed rebellious forms of manhood”).

59. This proposition is a logical extension of Harris’s more general claim that white men in positions of institutional authority glorify their version of masculinity, which gives them access to institutional and financial power. Minority men, although they may in many instances denigrate this

Harris's remaining insights are about agency, interpretation, and choice. Her ninth insight is that we must always be mindful that individual social actors are actively making choices when they engage in race and gender performance. They may choose to perform or emphasize certain aspects of their identities in certain contexts because they desire to form coalitions with others along certain lines or because certain aspects of a given environment make a particular kind of race-based masculinity performance more salient in one space than in others. The tenth insight relates to the importance of third-party interpretation and limits on choice. A man may engage in a kind of masculinity performance that is common to men of all races, but his behavior may be interpreted differently depending on his race or class position. The young man engaged in drunken behavior on the street is likely to be seen as a fun-loving frat boy if he is white, a social menace and violent threat if he is black or Latino, and perhaps a lapsed teetotaler if he is Asian American. Importantly, the person engaged in masculine gender performance may intend to convey one meaning, but he may be subject to state sanction or even violence if others misread his behavior, and the dangers associated with misinterpretation are particularly acute for men from social groups that have been historically stigmatized as criminal or violent.

C. Appreciating the Toolkit: The Polygamous Marriage of Feminist Legal Theory, Masculinity Studies, and Critical Race Theory

Harris's insights about race and masculinity were considered pathbreaking at the time *Gender, Violence, Race, and Criminal Justice* was published.⁶⁰ Indeed, in the essay she makes sizeable contributions to feminist legal theory, masculinity studies, and critical race theory. In the most general terms her contribution in all three areas stems from her nuanced understanding of performativity theory, offering ways this theoretical approach could be meaningfully integrated in masculinity studies, critical race theory, and feminist legal scholarship. However, she provides many insights that allow the three disciplines to be fused to a uniquely productive end.

Many would characterize Harris's essay as an exemplar of how to successfully marry masculinity studies and feminism, and thus it makes a contribution to both fields. Even now, more than fifteen years after her essay was published, feminists express concern that we have not adequately

hegemonic "white" version of masculinity, will still desire this version of masculinity and find ways to claim it when they can. *Id.* at 782–83 (discussing desire for hegemonic masculinity), 798 (discussing pleasure generated when a minority male can claim a job or position that gives him access to hegemonic masculinity).

60. See Michael Kimmel, *Foreword* to *MASCULINITY STUDIES AND FEMINIST THEORY: NEW DIRECTIONS*, at ix, ix–xi (Judith Kegan Gardiner ed., 2002); Michael Kimmel, *Reducing Men's Violence: The Personal Meets the Political*, in *MALE ROLES, MASCULINITIES AND VIOLENCE: A CULTURE OF PEACE PERSPECTIVE* 239–47 (Ingeborg Breines, Robert Connell & Ingrid Eide eds., 2000).

integrated feminist legal inquiry with masculinity studies. As feminist law professor Nancy Levit explains, legal scholarship over the past decade makes it appear as though the two fields of study occupy separate silos.⁶¹ Of course, some feminist legal scholars did discuss the relationship between masculinity and the law prior to Harris's essay; however, Harris's analysis shifted the discussion to a broader analysis of social events and also considered the social structural implications of these masculinity conflicts.

The continuing importance of Harris's framework has become even clearer as multiple masculinities theory has emerged, and feminists renew their call for more engagement by feminists with masculinity studies. Most recently, feminist legal scholar Nancy Dowd cited Harris's work as a prime example of how raced masculinities analysis should be conducted and can be productively combined with more traditional analysis in feminist legal theory.⁶² Calling on feminists to "ask the man question," Dowd suggested that an understanding of multiple masculinities could work in the same way that intersectionality and anti-essentialism have worked to enrich feminist legal theory.⁶³ As Dowd explains, understanding relationships between men as a necessary negotiation of the terms of patriarchy—rather than focusing solely on men's relationship to and subordination of women—helps us identify patriarchy's essential dynamics. Harris's work is especially insightful because she nimbly explores a particular nuanced layer of patriarchy's dynamics. She shows that race is one of the key criteria by which masculinity is organized, placed in hierarchy, and contested for reevaluation and dominance.⁶⁴ Indeed, Harris persuasively shows that forms of masculinity are structured in relation to the protection of racialized communities.⁶⁵

Additionally, although feminist legal scholars had previously looked to performativity for insight about the social construction of gender,⁶⁶ Harris extends our understanding of what gender performance means. Specifically, she demonstrates that violence itself is performative and that the violent social

61. See Nancy Levit, *Separate Silos: Marginalizing Men in Feminist Theory and Forgetting Females in Masculinities Studies* (Feb. 8, 2010) (unpublished manuscript), available at <http://ssrn.com/abstract=1550365>.

62. See Nancy E. Dowd, *Asking the Man Question: Masculinities Analysis and Feminist Theory*, 33 HARV. J.L. & GENDER 415, 415, 428 (2010).

63. For a discussion of the relationship between the anti-essentialism critique and intersectionality, see Bartlett, *supra* note 25, at 406–07 (explaining that this critique charged that feminist scholarship [wa]s "essentialist" in disregarding differences based on race and class, and inattentive to the intersection between sex and other bases of subordination"). As Bartlett explains, "[i]t further [explains] that race is not just an intensifier of women's subordination that can be simply noted as an additional, cumulative source of oppression, but that it transforms women's experience of discrimination." *Id.* at 407.

64. Harris, *supra* note 19, at 784.

65. See *id.* at 797–98 (discussing racialized masculinity performances designed to protect particular racial communities from outsiders).

66. See, e.g., Bartlett, *supra* note 25, at 413 n.186 (discussing Judith Butler as a key influence on feminist legal theorists, including Katherine Franke).

performances at the heart of masculinity unite men as a community. Also, her work revealed, for the first time, that a nearly identical act of masculine violence will have a very different social register depending on the racial identity of the subject engaged in violence. Although each man may be engaged in similar gender performance behavior, the race of the subject involved often has enormous social relevance in establishing the meaning of the individual's conduct (e.g., distinguishing law enforcers from law breakers).⁶⁷

Last, Harris's use of performativity also shaped feminist legal theory because she showed how an understanding of performativity theory produces concrete, specific proposals for social policy. Specifically, her work explores the ways in which policing models might be altered to "feminize" or de-emphasize the violence-associated and violence-triggering gender performance associated with masculinity.⁶⁸ Her work stands as a clear answer to those who might otherwise suggest that performance theory is merely about abstract, relatively minor expressive concerns.

Harris should also be credited for maintaining space for discussion of performativity-influenced accounts of race in critical race theory. Her early work opened the door to discussions about the role of agency in racial identification.⁶⁹ These questions about agency and racial identity have become increasingly significant in recent years, as agency-based, volitional aspects of racial identity increasingly have become a basis for racist sanction.⁷⁰ Indeed, this agency-based, performative account of race has been a major theme in my work⁷¹ and the work of other race discrimination scholars.⁷² Though we seldom

67. Harris, *supra* note 19, at 794–95 (comparing similar masculine practices, norms, and ideals shared by law enforcement and street gangs).

68. *Id.* at 804–06 (addressing attempts to rethink the criminal justice system in general, and law enforcement models in particular, in light of the "endemic problem in policing").

69. Angela P. Harris, *Theorizing Class, Gender, and the Law: Three Approaches*, 72 LAW & CONTEMP. PROBS. 37, 43 (2009) (discussing agency exercised in style choices as part of racial identity performance process); Angela P. Harris, *From Color Line to Color Chart?: Racism and Colorism in the New Century*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 52, 59 (2008) (explaining "[p]eople think strategically about how they are perceived by others, and undertake various kinds of long-term and short-term action projects to influence others' perception of them").

70. For example, some scholars have investigated the ways in which a person's decision to claim a multiracial identity or claim a racial identity that does not clearly match one's phenotype can cause a person to experience discrimination. See generally Nancy Leong, *Judicial Erasure of Mixed-Race Discrimination*, 59 AM. U. L. REV. 469 (2010) (discussing discrimination against persons who choose to assert a mixed-race identity); Camille Gear Rich, *Elective Race: Recognizing Race Discrimination in the Era of Racial Self-Identification*, 102 GEO. L.J. (forthcoming June 2014) (discussing the role that an individual's voluntary racial identification choices can play in workplace discrimination suits); Jessica M. Vasquez, *Blurred Borders for Some but not "Others": Racialization, "Flexible Ethnicity," Gender, and Third-Generation Mexican American Identity*, 53 SOC. PERSPS. 45 (2010) (discussing discrimination triggered when one's chosen racial identity does not match one's phenotype).

71. Specifically, my work on race has stressed the fluid nature of whiteness as a social category. See Camille Gear Rich, *Marginal Whiteness*, 98 CALIF. L. REV. 1497, 1515–16 (2010)

cite Harris for her seminal role in developing this strand of antidiscrimination scholarship, we owe her a debt of gratitude for her part in stressing that race is not purely ascriptive—it is not just the subordinating experience of being racially categorized by others. The versions of masculinity deployed in Harris’s model are partly about involuntary racial ascription (the race one is socially assigned), but she also explores the choices one consciously makes about racial identity. She notes that some gender performance choices are context driven, strategic, and made for reasons of pleasure. All of these issues are now explored in the more explicitly agency-based models Harris describes as the identity performance branch of critical race theory.⁷³

Certainly some scholars, particularly those associated with critical race theory, still view agency-based accounts of racial identity with some concern, given the key role of involuntary racial assignment or racial ascription in the process of race-based subordination.⁷⁴ They argue most people do not experience racial identity as a personal decision based solely on individual choice.⁷⁵ Yet Harris’s model demonstrates that an analysis can focus on agency

(introducing an agency-based fluid model of whiteness to describe experiences of white identity for “marginal whites”). These agency questions are particularly important, as we are in a “racial formation moment” in which the boundaries of whiteness are being renegotiated. Social science data suggests that various groups that some might call “near whites” are being courted to “elect” or opt into the category of whiteness, in particular certain Latinos, Asians, and multiracials. Because of the space Harris created for conversations about agency and racial identity, I was inspired to explore the ways in which culture and social structure incentivize “near whites” or marginal whites to choose a white identity. I return to this issue in Part II as, when combined with Harris’s theory of the choices that men make among masculinity constructs, an understanding of marginal whiteness suggests that we will see more “near-whites” or mixed-race minority men experimenting with performances of white masculinity in ways that are potentially dangerous for minority communities. For a discussion of agency-based theories of racial identity and other groups, see Gear Rich, *supra* note 70, at 27 (discussing fluid experience of race for near-whites, phenotypically ambiguous persons, and conscientious objectors to American racial categories).

72. Harris, *From Color Line to Color Chart?: Racism and Colorism in the New Century*, *supra* note 69, at 59 (citing Devon Carbado, Mitu Gulati, Emily Houh, Angela Onwuachi-Willig, John Calmore, Regina Austin, Kenji Yoshino, and Camille Gear Rich as members of the racial performativity school). As she explains, “These writers have all called attention to how people perceived as belonging to disfavored identity categories must work to disabuse strangers and acquaintances (such as co-workers) of negative stereotypes and expectations.” *Id.*

73. *Id.* at 59 (discussing emergence of the performativity school).

74. See generally Tanya Katerí Hernández, “Multiracial” Discourse: *Racial Classifications in an Era of Color-Blind Jurisprudence*, 57 MD. L. REV. 97, 98 nn.2, 4, 99 n.7 (1998); Naomi Mezey, *Erasure and Recognition: The Census, Race and the National Imagination*, 97 NW. U. L. REV. 1701, 1749–52 (2003).

75. Katerí Hernández, *supra* note 74, at 102–03 (raising concern that multiracial discourse tends to evacuate the socio-political meaning of race and ignore the need to use race to address historically established patterns of economic and social subordination). See also Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994) (attempting to address concerns about the ways in which material condition shapes agency choices, and physicality limits racial identity decisions). Feminist legal scholars also have parsed these concerns out in detail. See Joanne Conaghan, *Intersectionality and the Feminist Project in Law*, in INTERSECTIONALITY AND BEYOND: LAW, POWER AND THE POLITICS OF LOCATION (Emily Grabham, Davina Cooper, Jane Krishnadas & Didi Herman eds., 2008) (fleshing

and involuntary racial ascription simultaneously. In her model, men are clearly involuntarily raced on one side of the divide, but this ascription process does not prevent them from engaging with and trying on other raced models of masculinity, even though they are trapped by the social register of their physical bodies.

Another concern raised about agency-based accounts of race is that these accounts are insufficiently attentive to social structural concerns that limit or shape individuals' choices about racial identity.⁷⁶ Harris's model is conscious of these limitations, even as she recognizes space to make choices about race. Additionally, her model draws attention to the larger material and social implications of these racial identity choices. Indeed, she persuasively shows that black men's performance of a given model of racial identity has resulted in their being targeted for incarceration in larger numbers. White male police officers' performance of racial identity has led to the same structural problem.

Harris's work on race and masculinity can also be analyzed in relation to Kimberlé Crenshaw's seminal work on intersectionality in critical race theory.⁷⁷ Intersectionality theory draws our attention to the ways in which race and gender combine to produce uniquely different experiences of subordination for persons who are members of multiple, different socially subordinated groups. Harris's approach explores the other side of the coin. Rather than focusing on the individuating experience of subordination for persons trapped at the intersection of multiple disfavored identity categories, Harris instead draws our attention to the ways in which persons at these intersections have power to emphasize different aspects of their identity when making decisions about how to constitute a community.

Specifically, Harris notes that individuals weigh and control the relative salience of identity variables such as race and sex, and then can decide which of the two will be the controlling interpretational frame that determines their bounds of allegiance and affiliation in any dispute.⁷⁸ For example, sometimes black men will read a particular dispute as requiring them to unite along gender lines, preferencing that identity in a way that deemphasizes racial allegiances with black women. Conversely, in other circumstances, black men will interpret a dispute along racial lines and form a coalition with black women

out critique of agency-based models of identity in the context of feminist legal theory). As Conaghan explains, we currently do not have an adequate discourse that allows us to talk about how material conditions constrain and affect personal identity choices or the ways in which these choices affect material conditions. *Id.*

76. See generally *supra* note 75.

77. See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

78. Harris, *supra* note 19, at 779 (discussing black police officers' calculus in excessive force disputes concerning minorities). Black officers can participate in the "blue wall of silence," a cultural construct that allows them to tap into a gender-based alliance with white men, or they can foreground race and read excessive force scenarios through a lense that requires them to prioritize their connections to minority communities. *Id.* at 795.

against other racial groups. Harris's description of the identity-choice options available to minority men in gender and race-based disputes suggests, therefore, that we should not assume that group affiliations and allegiances organized by race and gender are stable or that one can predict which identity-based analytical frame will control in a given conflict.

While Harris's contributions to scholarly discussions about race and gender are significant, her goal in *Gender, Violence, Race, and Criminal Justice* is to read social conflict in a manner that generates meaningful insights that can be used to shape social policy. Consequently, Part II turns our attention to this endeavor, demonstrating how the masculinities toolkit allows us to understand contemporary social conflicts like the Trayvon Martin controversy.

II.

UNDERSTANDING THE TRAYVON MARTIN CONTROVERSY: INSIGHTS PRODUCED BY THE MASCULINITY STUDIES TOOLKIT

Harris's discussion of the hierarchical, racially inflected relationships between men re-contextualizes the Martin tragedy. Rather than focusing on race and gender in the abstract, we find ourselves presented with a disturbing, puzzling contest between differently raced versions of masculinity. Again, by way of review, Harris posits that the hierarchies of race and class give men access to different versions of masculinity. These different positions in the racial hierarchy also make minority men more vulnerable to both white and state-sponsored violence. These propositions suggest that both Martin, as an African American, and Zimmerman, as a Latino, were positioned in ways that made them acutely sensitive to their vulnerability to white violence or state-authorized violence. Much of the media coverage of Martin confirms, as did his phone conversation that evening, that he felt vulnerable to that violence, as demonstrated by his anxiety stemming from Zimmerman's surveillance.⁷⁹ Yet Zimmerman seems not to have accepted his role as a Latino in the socially constructed racial hierarchy. Instead, he claimed the position of protector and enforcer—a role that Harris approximates with white masculinity. Rather, Zimmerman saw himself as the enforcer of law and order, and felt more powerful and more entitled to confront Martin as a result.

Why did Zimmerman, as a Latino male, feel authorized to take on this persona that Harris approximately equates with white masculinity? What possessed him to act as the force of law and order in the gated community he patrolled? Again, Harris explains that minority men desire and are attracted to more socially privileged versions of masculinity, and more socially privileged men are attracted to the rebellious versions of masculinity often associated with

79. Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 14, 2013, at A1 (describing prosecution's account of Martin's frightened phone call to Rachel Jeantel on the evening of the attack).

minority and working-class men.⁸⁰ Indeed, oversimplified readings of Harris's dialogic model of race and gender might suggest that men are involuntarily and inescapably drafted into certain forms of masculinity; however, the racial filter each man negotiates should be understood more as a kind of default tracking model that makes him more inclined to choose or more likely to be associated with a particular model. Harris's model of masculinity assumes that each man, regardless of race, still exercises some agency in choosing the version of masculinity that he performs. Zimmerman, consequently, felt free to choose a more powerful, white-identified model of masculinity—that of the beat cop or the Southern enforcer.

Harris's model also explains that repeated identity performances are required in order for an individual to feel that he has a stable hold on a given identity construct. Men therefore are constantly at risk of engaging in violence against one another in order to perform or defend their chosen version of masculinity. The Martin-Zimmerman altercation seems born of these identity performance demands. Specifically, Zimmerman felt compelled to ferret out and report unknown black men wandering his neighborhood. Using Harris's insights, one might say that Zimmerman's model of masculinity was constructed in connection with protecting a particular racialized community, and that he felt authorized to engage in violence in pursuit of his goal. Indeed, his identity performance desires seem to have driven him from his car, even in the face of the police dispatcher's express instruction that he not pursue Martin.

Martin similarly felt compelled to defend his own rebellious version of masculinity. Indeed, even as a female friend on the phone counseled him to run when his anxiety about Zimmerman's surveillance grew, Martin felt he could not run. Certainly, some of this refusal to flee may have stemmed from the understanding that a black man running through a suburban neighborhood would more easily trigger violence and suspicion than a black woman engaged in such action. However, it also likely stemmed from his understanding that his hold on a certain rebellious form of black masculinity would be at risk if he ran. Instead, his defensive action was to don his hood in order to shield himself from surveillance. Ironically, this action only served to heighten the tension between the two men and increase the risk of violence. Harris comments on the reciprocal relations of revulsion and desire as men evaluate competing models of masculinity. One can imagine the struggle Zimmerman engaged in as he seemed preoccupied with black masculinity and black threat. This same preoccupation with black threat explains Zimmerman's repeated calls to the Sanford police department about unknown black men roaming his neighborhood.

Importantly, those eager to represent the case as being a post-racial conflict were eager to identify Zimmerman as Latino. In their view, a dispute

80. Harris, *supra* note 19, at 784.

between Latinos and blacks could not be about white racism, making the question of white privilege and white violence wholly irrelevant. However, this is in fact a far more complicated question. Certainly some Latino communities participate in anti-black racism. Additionally, we might also question whether Zimmerman was properly regarded as Latino; he might also be described as a white multiracial in addition to being a Latino man. The name Zimmerman is from his Irish father, and his mother is Peruvian. Media accounts indicate that both Zimmerman and his mother sometimes identified as Latino on electoral registration forms. Also, as his photographs suggest, his physical body certainly would make him socially recognized by many individuals as a Latino person. However, as I have cautioned in my other work, it is a mistake to assume that the self-identification decisions of near-whites are the same in all contexts. Consequently, Zimmerman might choose to identify as Latino in one context and as white in another. No one form or questionnaire provides the final answer to Zimmerman's identity. Also, it is a mistake to assume that individuals always claim the racial identity that most closely matches the racial category that others would place them in based on their physical features.

Some would argue that these questions may not matter in the end. Harris's model suggests that even if Zimmerman identified solely as Latino, he might still make a claim to white masculinity by pursuing a career as a police officer or heading the neighborhood watch, as these activities placed him in the white-associated role of enforcer, a masculinity construct associated with whiteness. Yet something is gained when we parse more carefully through the politics of whiteness and how they shaped Zimmerman's identity-performance calculations.

For in this particular cultural moment, Latinos—particularly white Latinos—are currently being courted to identify as white. Some research suggests that other white multiracials in particular—persons with one minority parent and one white parent—are being courted into the category of whiteness. Specifically, some research suggests that persons in Zimmerman's position (i.e., with a mixed-race background) are actually socially functioning as low-status whites, and therefore they may act in service of so-called "white interests" with the goal, aspiration, and desire to access and claim white privilege. As I have elsewhere explained, near-whites or "marginal whites" like Zimmerman desire to claim white identity, have others recognize that identity, and may engage in behavior that serves "white" interests even while at the same time being foreclosed from receiving many of the benefits associated with whiteness.⁸¹

The challenge then is for men like Zimmerman to question their "marginal white" status position, to actively name their experiences of marginalization,

81. See generally *supra* note 71.

and to problematize their connection to the category of whiteness.⁸² So-called marginal whites should be encouraged to recognize that their actions in service of white advantage may fail to inure to their benefit on a consistent basis, and may mark them as complicit in the maintenance of social dynamics that subordinate many of their family members.

These dynamics are clearly on display in the Martin case. Zimmerman reveals his connection to marginal whiteness; his desire to access the experience of white masculinity is what gets him there. The Zimmerman verdict should therefore be understood as a commentary on marginal whiteness, and it should raise the concerns of all minority men and women who find themselves the subject of a police officer's gaze. Although the case has little to no actual legal precedential value, it sets a series of cultural precedents that are sure to inure to the benefit of white privilege and against subordinate minority men.

These precedents include: (1) It is okay to profile a minority man in a hoodie if he seems to be wandering through a neighborhood. (2) It is permissible to pursue a minority man in a white neighborhood if he does not seem to "belong" there. (3) It is reasonable to claim self-defense when a physical altercation with a minority man puts one in sufficient fear of losing life and limb and a shooting occurs.

Certainly, Zimmerman must have had experiences being profiled as a Latino man. He must have had experiences occupying the very model of rebellious masculine identity that placed Martin at risk. Yet even though Zimmerman must have had some experience being perceived as a racial threat, he bracketed these experiences when he looked at Martin. Harris's work helps us understand why: the masculine posture of the white male cop is a more powerful position from which to view the world, and Zimmerman chose to occupy that space when it was available to him.

Indeed, had Zimmerman chosen a subordinated minority version of masculinity during the conflict, it would have forced a more complex, nuanced assessment of Martin's behavior. This alternative model of masculinity might have required Zimmerman to gather additional information before concluding that Martin was indeed a criminal threat. Instead, Zimmerman chose the version of masculinity that provided him with the maximum amount of social power and privilege during the conflict.

My assessment of the racial politics of the encounter should not be read to suggest that men committed to a minority, racialized identity are not also guilty of racial stereotyping. However, Martin's friend, Rachel Jeantel, made it clear that both she and Martin understood that Zimmerman had claimed a white identity position in that moment, as she recalled Martin referring to

82. *See id.*

Zimmerman as a “creepy-ass cracker”⁸³—a label normally reserved for discriminatory whites in the Deep South.

Armed with Harris’s model, we can account for the unarticulated horror that gripped many Americans as they analyzed the Martin case. For many Americans could not accept that Zimmerman, a Latino male, acted out a cultural script that fateful night with Martin—a cultural script that ostensibly should only be available to those associated with racially biased, white male police officers. How is it that Zimmerman successfully enacted this cultural script? Harris’s powerful account of how personal agency and choice shape the performance of race as well as masculinity explains how and why Zimmerman came to embrace white masculinity. Indeed, when supplemented with contemporary scholarship about the fluid experience of “near white” or “honorary white” minorities, the Martin controversy becomes a funhouse mirror that reveals the disturbing racial and gender politics of the contemporary era.

Moreover, Harris’s model also teaches us that the Zimmerman case, rather than just being about the individual identity choices of two men involved in a life-and-death scuffle, reveals that the state has a stake in these identity struggles as well. Both the prosecution and the defense traded on assumptions about the raced-based and gender-based identity decisions of the jurors: Would a predominantly white female jury choose to identify as mothers and protect Martin? Or conversely, would that jury identify as white and defend Zimmerman’s decision to shoot the black teen?⁸⁴ Had the prosecution and the defense thought about race and gender as simultaneously shaping these women’s experiences, as Harris suggests we all do, they might have realized that many of the women identified as white mothers, and therefore they were interested in protecting a version of masculinity that was primed to protect white space.⁸⁵

Indeed, many Americans were taken aback by the interviews with Juror B37, who expressed maternal and protective feelings for *Zimmerman* and described him as a reasonable and likeable young man who “went overboard”

83. Alvarez & Buckley, *supra* note 79.

84. None of the media accounts are as explicit about the race and gender-based overtures made in the case. However, the two narratives offered to the jurors, that Martin was a “child returning home,” who was needlessly killed or, conversely, that Zimmerman was a young man attacked while doing his “civic duty,” both rested on understandings about motherhood and fear of attack. For a discussion of the defense’s interest in securing an all-female jury, see Yamiche Alcindor, *Zimmerman Consultant Wanted All-Female Jury*, USA TODAY (July 18, 2013, 12:22 AM), <http://www.usatoday.com/story/news/nation/2013/07/17/zimmerman-trayvon-martin-jury-consultant-killing-sanford/2530151>. For a discussion of the competing narratives offered to jurors, see James Novogrod et al., *Jury Finds George Zimmerman Not Guilty*, NBC NEWS (July 16, 2013, 10:40 AM), <http://www.nbcnews.com/news/us-news/jury-finds-george-zimmerman-not-guilty-v19441838>.

85. See Sumi Cho, *Understanding White Women’s Ambivalence Towards Affirmative Action: Theorizing Political Accountability in Coalitions*, 71 UMKC L. REV. 399, 399–402 (2002).

in his zeal to protect their community from a potential threat.⁸⁶ Importantly, it was Zimmerman's role in protecting a racialized white community that motivated him to claim a white masculine subject position that evening, and it appears from the verdict that at least some of the white female jurors recognized, respected, and rewarded that performance of white masculinity, even as they may have recognized that Zimmerman physically did not have a claim on that identity.

These insights help us to understand why Zimmerman, despite identifying as Latino, acted much like the archetype of a white, Southern, racist police officer who views black masculinity as a threat in the most mundane of circumstances. His conduct and the verdict in the Martin case serve to create a series of legal and cultural precedents that further naturalize and validate the suspicion of minority men in ways that make legally sanctioned violence a permissible and even an expected response. Zimmerman's actions are frightening because they are only intelligible through a racist logic that should be unavailable to him precisely because he is just as likely as Martin to be the target of that suspicion in other circumstances. Those who believe Zimmerman's actions had little to do with race operate in a colorblind or post-racial space; this colorblind space is the arena in which multiracials and Latino white individuals are being courted into the category of whiteness.

CONCLUSION

I hope there will be no more Trayvon Martins, but I worry that there will be. What the Martin case tells us, when examined through the lens of Harris's work, is both that nothing has changed, and that everything has changed. Virulent stereotypes about black men still make them extremely vulnerable to other men's violence. At the same time, we are in an era in which new bodies are claiming whiteness and white masculinity—bodies that years ago would have not felt the same ability to defend white interests.

Harris's work offers us a path to understand the race and class-based masculinity dynamics that shape violent conflict and other aspects of social life. It also offers us practical solutions, as activists, to change policing in light of the masculinity concerns she raises. While we may not produce those changes tomorrow, we will certainly produce smarter questions. And that result, in my view, makes Harris's scholarship essential reading.

86. Igor Volsky, *7 Mind Blowing Moments from Zimmerman Juror B37's First Interview*, THINKPROGRESS (July 16, 2013, 9:06 AM), <http://thinkprogress.org/politics/2013/07/16/2306901/7-mind-blowing-moments-from-zimmerman-juror-b37s-first-interview>. In the aftermath of the interview, four of the white female jurors attempted to publicly distance themselves from juror B37's comments about the case. *Id.*