

chal power establishes and sustains gendered and racialized social formations. White women were implicated in the maintenance of this wider system of oppression because they challenged only the parameters of their domestic confinement; by failing to reconstitute their class and caste interests, they reinforced the provincialism of their movement.

Id. at 306-07.

48. ESTRICH, *supra* note 44, at 107 n.2.

49. Wriggins, *supra* note 45, at 121 n.113. According to the study, "the average sentence received by Black men, exclusive of cases involving life imprisonment or death, was 4.2 years if the victim was Black, 16.4 years if the victim was white." *Id.* I do not know whether a white man has ever been sentenced to death for the rape of a black woman, although I could make an educated guess as to the answer.

50. ANGELA DAVIS, WOMEN, RACE, AND CLASS 174 (1981).

51. For example, Susan Brownmiller describes the black defendants in publicized Southern rape trials as "pathetic, semiliterate fellows," BROWNMILLER, *supra* note 43, at 237, and the white female accusers as innocent pawns of white men, *see, e.g., id.* at 233 ("confused and fearful, they fell into line"). *See also* DAVIS, *supra* note 50, at 196-99.

52. Barbara Ormolade, *Black Women and Feminism*, in THE FUTURE OF DIFFERENCE 247, 248 (H. Eisenstein & A. Jardine eds., 1980).

23 A Hair Piece: Perspectives on the Intersection of Race and Gender

PAULETTE M. CALDWELL

I WANT to know my hair again, to own it, to delight in it again, to recall my earliest mirrored reflection when there was no beginning and I first knew that the person who laughed at me and cried with me and stuck out her tongue at me was me. I want to know my hair again, the way I knew it before I knew that my hair is me, before I lost the right to me, before I knew that the burden of beauty—or lack of it—for an entire race of people could be tied up with my hair and me. I want to know my hair again, the way I knew it before I knew Sambo and Dick, Buckwheat and Jane, Prissy and Miz Scarlett. Before I knew that my hair could be wrong—the wrong color, the wrong texture, the wrong amount of curl or straight. Before hot combs and thick grease and smelly-burning lye, all guaranteed to transform me, to silken the coarse, resistant wool that represents me. I want to know once more the time before I denatured, denuded, denigrated, and denied my hair and me, before I knew enough to worry about edges and kitchens and burrows and knots, when I was still a friend of water—the rain's dancing drops of water, a swimming hole's splashing water, a hot, muggy day's misty invisible water, my own salty, sweaty, perspiring water.

When will I cherish my hair again, the way my grandmother cherished it, when fascinated by its beauty, with hands carrying centuries-old secrets of adornment and craftsmanship, she plaited it, twisted it, cornrowed it, finger-curled it, olive-oiled it, on the growing moon cut and shaped it, and wove it like fine strands of gold inlaid with semiprecious stones, coral and ivory, telling with my hair a lost-found story of the people she carried inside her?

Mostly, I want to love my hair the way I loved hers, when as granddaughter among grandsons I stood on a chair in her room—her kitchen-bed-living-dining room—and she let me know her hair, when I combed and patted it from the crown of her head to the place where her neck folded into her shoulders, caressing steel-gray strands that framed her forehead before falling into the soft, white, cottony temples at the border of her cheekbones.

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ON BEING THE SUBJECT OF A LAW SCHOOL HYPOTHETICAL

The case of *Rogers v. American Airlines*¹ upheld the right of employers to prohibit the wearing of braided hairstyles in the workplace. The plaintiff, a black woman, argued that American Airlines' policy discriminated against her specifically as a black woman. In effect, she based her claim on the interactive effects of racial and gender discrimination. The court chose, however, to base its decision principally on distinctions between biological and cultural conceptions of race. More importantly, it treated the plaintiff's claims of race and gender discrimination in the alternative and independent of each other, thus denying any interactive relationship between the two.

Although *Rogers* is the only reported decision that upholds the categorical exclusion of braided hairstyles,² the prohibition of such styles in the workforce is both widespread and longstanding. Protests surrounding recent cases in Washington, D.C., sparked national media attention. Nearly fifty women picketed a Hyatt Hotel, and black political leaders threatened to boycott hotels that prohibit black women from wearing braids. Several employees initiated legal action by filing complaints with federal or local fair employment practices agencies; most cases were settled shortly thereafter. No court has yet issued an opinion that converts *Rogers*.

I discovered *Rogers* while reading a newspaper article describing the actual or threatened firing of several black women in metropolitan Washington, D.C., solely for wearing braided hairstyles. The article referred to *Rogers* but actually focused on the case of Cheryl Tatum, who was fired from her job as a restaurant cashier in a Hyatt Hotel under a company policy that prohibited "extreme and unusual hairstyles."

The newspaper description of the Hyatts grooming policy conjured up an image of a ludicrous and outlandishly coiffed Cheryl Tatum, one clearly bent on exceeding the bounds of workplace taste and discipline. But the picture that accompanied the article revealed a young, attractive black woman whose hair fell neatly to her shoulders in an all-American, common, everyday pageboy style, distinguished only by the presence of tiny braids in lieu of single strands of hair.

Whether motivated by politics, ethnic pride, health, or vanity, I was outraged by the idea that an employer could regulate or force me to explain something as personal and private as the way that I groom my hair. I resented the implication that I could not be trusted to choose standards appropriate for the workplace and that my right to work could be conditioned on my disassociation with my race, gender, and culture. Mostly, I marveled with sadness that something as simple as a black woman's hair continues to threaten the social, political, and economic fabric of American life.

My anger eventually subsided, and I thought little more about *Rogers* until a student in my course in Employment Discrimination Law asked me after class to explain the decision. I promised to take up the case when we arrived at that point in the semester where the issues raised by *Rogers* fit most naturally in the development of antidiscrimination law.

Several weeks passed, and the student asked about *Rogers* again and again (al-ways privately, after class); yet I always put off answering her until some point later in the semester. After all, hair is such a little thing. Finally, while participating in a class discussion on a completely unrelated topic, the persistent one's comments wandered into the forbidden area of braided-hair cases. As soon as the student realized she had publicly introduced the subject of braided hair, she stopped in mid-sentence and covered her mouth in embarrassment, as if she had spoken out of turn. I was finally forced to confront what the student had obviously sensed in her embarrassment.

I had avoided private and public discussions about braided hair not because the student had asked her questions at the wrong point in the semester. Nor had I avoided the subject because cases involving employer-mandated hair and grooming standards do not illustrate as well as other cases the presence of deeply ingrained myths, negative images, and stereotypes that operate to define the social and economic position of blacks and women. I had carefully evaded the subject of a black woman's hair because I appeared at each class meeting wearing a neatly braided pageboy, and I resented being the unwitting object of one in thousands of law school hypotheticals.

WHY WOULD ANYONE WANT TO WEAR THEIR HAIR THAT WAY?

Discussing braided hairstyles³ with students did not threaten me in places where I had become most assured. I was personally at ease in my professionalism after a decade of law practice and nearly as many years as a law professor. I had lost—or become more successful in denying—any discomfort that I once may have experienced in discussing issues of race and gender in the too few occasions in the legal profession devoted to their exploration. I had even begun to smart less when confronted with my inability to change being the only, or one of inevitably too few, blacks on the faculty of a traditionally white law school. But I was not prepared to adopt an abstract, dispassionate, objective stance to an issue that so obviously affected me personally; nor was I prepared to suffer publicly, through intense and passionate advocacy, the pain and outrage that I experience each time a black woman is dismissed, belittled, and ignored simply because she challenges our objectification.

Should I be put to the task of choosing a logical, credible, "legitimate," legally sympathetic justification out of the many reasons that may have motivated me and other black women to braid our own hair? Perhaps we do so out of concern for the health of our hair, which many of us risk losing permanently after years of chemical straighteners; or perhaps because we fear that the entry of chemical toxins into our bloodstream through our scalps will damage our unborn or breastfeeding children. Some of us choose the positive expression of ethnic pride not only for ourselves but also for our children, many of whom learn, despite all of our teachings to the contrary, to reject association with black people and black culture in search of a keener nose or bluer eye. Many of us wear braids in the exercise of private, personal prerogatives taken for granted by women who are not black.

Responding to student requests for explanations of cases is a regular part of the profession of law teaching. I was not required, therefore, to express or justify the reasons for my personal decision to braid my hair in order to discuss the application of employment discrimination laws to braided hairstyles. But by legitimizing the notion that the wearing of any and all braided hairstyles in the workplace is unbusinesslike, Rogers delegitimized me and my professionalism. I could not think of an answer that would be certain to observe traditional boundaries in academic discourse between the personal and the professional.

The persistent student's embarrassed questioning and my obfuscation spoke of a woman-centered silence: She, a white woman, had asked me, a black woman, to justify my hair.⁴ She compelled me to account for the presence of legal justifications for my simultaneously "perverse visibility and convenient invisibility."⁵ She forced me and the rest of the class to acknowledge the souls of women who live by the circumscriptions of competing beliefs about white and black womanhood and in the interstices of racism and sexism.

Our silence broken, the class moved beyond hierarchy to a place of honest collaboration. Turning to Rogers, we explored the question of our ability to comprehend through the medium of experience the way in which a black woman's hair is related to the perpetuation of social, political, and economic domination of subordinated racial and gender groups; we asked why issues of experience, culture, and identity are not the subject of explicit legal reasoning.

To Choose Myself: Interlocking Figurations in the Construction of Race and Gender

SUNDAY. School is out, my exams are graded, and I have unbraided my hair a few days before my appointment at the beauty parlor to have it braided again. After a year in braids, my hair is healthy again: long and thick and cottony soft. I decide not to french roll it or twist it or pull it into a ponytail or bun or cover it with a scarf. Instead, I comb it out and leave it natural, in a full and big "Angela Davis" afro style. I feel full and big and regal. I walk the three blocks from my apartment to the subway. I see a white male colleague walking in the opposite direction and I wave to him from across the street. He stops, squints his eyes against the glare of the sun, and stares, trying to figure out who has greeted him. He recognizes me and starts to cross over to my side of the street. I keep walking, fearing the possibility of his curiosity and needing to be relieved of the strain of explanation.

MONDAY. My hair is still unbraided, but I blow it out with a hair dryer and pull it back into a ponytail tied at the nape of my neck before I go to the law school. I enter the building and run into four white female colleagues on their way out to a white female lunch. Before I can say hello, one of them blurts out, "It IS weird!" Another drowns out the first: "You look so young, like a teenager!"

The third invites me to join them for lunch while the fourth stands silently, observing my hair. I mumble some excuse about lunch and interject, almost apologetically, that I plan to get my hair braided again the next day. When I arrive at my office suite and run into the white male I had greeted on Sunday, I realize immediately that he has told the bunch on the way to lunch about our encounter the day before. He mutters something about how different I look today, then asks me whether the day before I had been on my way to a ceremony. He and the others are generally nice colleagues, so I half-smile, but say nothing in response. I feel a lot less full and big and regal.

TUESDAY. I walk to the garage under my apartment building, again wearing a big, full "Angela Davis" afro. Another white male colleague passes me by, not recognizing me. I greet him and he smiles broadly, saying that he has never seen me look more beautiful. I smile back, continue the chat for a moment more, and try not to think about whether he is being disingenuous. I slowly get into my car, buckle up, relax, and turn on the radio. It will take me about forty-five minutes to drive uptown to the beauty parlor, park my car, and get something to eat before beginning the long hours of sitting and braiding. I feel good, knowing that the braider will be ecstatic when she sees the results of her healing handiwork. I keep my movements small, easy, and slow, relishing in a rare, short morning of being free.

My initial outrage notwithstanding, Rogers is an unremarkable decision. Courts generally protect employer-mandated hair and dress codes, often according the greatest deference to ones that classify individuals on the basis of socially conditioned rather than biological differences. All in all, such cases are generally considered only marginally significant in the battle to secure equal employment rights.

But Rogers is regrettably unremarkable in an important respect. It rests on suppositions that are deeply imbedded in American culture—assumptions so entrenched and so necessary to the maintenance of interlocking, interdependent structures of domination that their mythological bases and political functions have become invisible, especially to those to whom their existence is most detrimental. Rogers proceeds from the premise that, although racism and sexism share much in common, they are nonetheless fundamentally unrelated phenomena—a proposition proved false by history and contemporary reality. Racism and sexism are interlocking, mutually reinforcing components of a system of dominance rooted in patriarchy. No significant and lasting progress in combatting either can be made until this interdependence is acknowledged, and until the perspectives gained from considering their interaction are reflected in legal theory and public policy.

Cases arising under employment discrimination statutes illustrate both the operation in law and the effect on the development of legal theory of the assumptions of race-sex correspondence and difference. These cases also demonstrate the absence of any consideration of either race-sex interaction or the stereo-

typing of black womanhood. Focusing on cases that involve black female plaintiffs, at least three categories emerge.

In one category, courts have considered whether black women may represent themselves or other race or gender discriminatees. Some cases deny black women the right to claim discrimination as a subgroup distinct from black men and white women.⁶ Others deny black women the right to represent a class that includes white women in a suit based on sex discrimination, on the ground that race distinguishes them.⁷ Still other cases prohibit black women from representing a class in a race discrimination suit that includes black men, on the ground of gender differences.⁸ These cases demonstrate the failure of courts to account for race-sex intersection, and are premised on the assumption that discrimination is based on either race or gender, but never both.

A second category of cases concerns the interaction of race and gender in determining the limits of an employer's ability to condition work on reproductive and marital choices associated with black women.⁹ Several courts have upheld the firing of black women for becoming pregnant while unmarried if their work involves association with children—especially black teenage girls. These decisions rest on entrenched fears of and distorted images about black female sexuality, stigmatize single black mothers (and by extension their children), and reinforce "culture of poverty" notions that blame poverty on poor people themselves. They also reinforce the notion that the problems of black families are attributable to the deviant and dominant roles of black women and the idea that racial progress depends on black female subordination.

A third category concerns black women's physical images. These cases involve a variety of mechanisms to exclude black women from jobs that involve contact with the public—a tendency particularly evident in traditionally female jobs in which employers place a premium on female attractiveness—including a subtle, and often not so subtle, emphasis on female sexuality. The latter two categories sometimes involve, in addition to the intersection of race and gender, questions that concern the interaction of race, gender, and culture.

The failure to consider the implications of race-sex interaction is only partially explained, if at all, by the historical or contemporary development of separate political movements against racism and sexism. Rather, this failure arises from the inability of political activists, policymakers, and legal theorists to grapple with the existence and political functions of the complex of myths, negative images, and stereotypes regarding black womanhood. These stereotypes, and the culture of prejudice that sustains them, exist to define the social position of black women as subordinate on the basis of gender to all men, regardless of color, and on the basis of race to all other women. These negative images also are indispensable to the maintenance of an interlocking system of oppression based on race and gender that operates to the detriment of all women and all blacks. Stereotypical notions about white women and black men are not only developed by comparing them to white men but also by setting them apart from black women.

THE ROGERS OPINION

The *Rogers* decision is a classic example of a case concerning the physical image of black women. Renee Rogers, whose work for American Airlines involved extensive passenger contact, charged that American's prohibition of braided hairstyles in certain job classifications discriminated against her as a woman in general, and as a black woman in particular.¹⁰ The court did not attempt to limit the plaintiff's case by forcing her to proceed on either race or gender grounds, nor did it create a false hierarchy between the two bases by treating one as grounded in statutory law and the other as a "plus" factor that would explain the application of law to a subgroup not technically recognized as a protected group by law. The court also appeared to recognize that the plaintiff's claim was not based on the cumulative effects of race and gender.

However, the court treated the race and sex claims in the alternative only. This approach reflects the assumption that racism and sexism always operate interdependently even when the claimant is a member of both a subordinated race and a subordinated gender group. The court refused to acknowledge that American's policy need not affect all women or all blacks in order to affect black women discriminatorily. By treating race and sex as alternative bases on which a claim might rest, the court concluded that the plaintiff failed to state a claim of discrimination on either ground. The court's treatment of the issues made this result inevitable—as did its exclusive reliance on the factors that it insisted were dispositive of cases involving employee grooming or other image preferences.

The distinct history of black women dictates that the analysis of discrimination be appropriately tailored in interactive claims to provide black women with the same protection available to other individuals and groups protected by antidiscrimination law. The *Rogers* court's approach permitted it to avoid the essence of overlapping discrimination against black women, and kept it from applying the basic elements of antidiscrimination analysis: a focus on group history; identification of recurring patterns of oppression that serve over time to define the social and economic position of the group; analysis of the current position of the group in relation to other groups in society; and analysis of the employment practice in question to determine whether, and if so how, it perpetuates individual and group subordination.

The court gave three principal reasons for dismissing the plaintiff's claim. First, in considering the sex discrimination aspects of the claim, the court disagreed with the plaintiff's argument that, in effect, the application of the company's grooming policy to exclude the category of braided hairstyles from the workplace reached only women. Rather, the court stressed that American's policy was even-handed and applied to men and women alike.¹¹ Second, the court emphasized that American's grooming policy did not regulate or classify employees on the basis of an immutable gender characteristic.¹² Finally, American's policy did not bear on the exercise of a fundamental right.¹³ The plaintiff's racial discrimination claim was analyzed separately but dismissed on the same grounds: neutral application of American's anti-braid policy to all races and absence of any

impact of the policy on an immutable racial characteristic or of any effect on the exercise of a fundamental right.

The court's treatment of culture and cultural associations in the racial context bears close examination. It carefully distinguished between the phenotypic and cultural aspects of race. First, it rejected the plaintiff's analogy between all-braided and Afro, or "natural," hairstyles. Stopping short of concluding that Afro hairstyles might be protected under all circumstances, the court held that "an all-braided hairstyle is a different matter. It is not the product of natural hair growth but of artifice."¹⁴ Second, in response to the plaintiff's argument that, like Afro hairstyles, the wearing of braids reflected her choice for ethnic and cultural identification, the court again distinguished between the immutable aspects of race and characteristics that are "socioculturally associated with a particular race or nationality."¹⁵ However, given the variability of so-called immutable racial characteristics such as skin color and hair texture, it is difficult to understand racism as other than a complex of historical, sociocultural associations with race.

The court conceived of race and the legal protection against racism almost exclusively in biological terms. Natural hairstyles—or at least some of them, such as Afros—are permitted because hair texture is immutable, a matter over which individuals have no choice. Braids, however, are the products of artifice—a cultural practice—and are therefore mutable, i.e., the result of choice. Because the plaintiff could have altered the all-braided hairstyle in the exercise of her own volition, American was legally authorized to force that choice upon her.

In support of its view that the plaintiff had failed to establish a factual basis for her claim that American's policy had a disparate impact on black women, thus destroying any basis for the purported neutral application of the policy, the court pointed to American's assertion that the plaintiff had adopted the prohibited hairstyle only shortly after it had been "popularized" by Bo Derek, a white actress, in the film *10*.¹⁶ Notwithstanding the factual inaccuracy of American's claim, and notwithstanding the implication that there is no relationship between braided hair and the culture of black women, the court assumed that black and white women are equally motivated (i.e., by the movies) to adopt braided hairstyles.

Wherever they exist in the world, black women braid their hair. They have done so in the United States for more than four centuries. African in origin, the practice of braiding is as American—black American—as sweet potato pie. A braided hairstyle was first worn in a nationally televised media event in the United States—and in that sense "popularized"—by a black actress, Cicely Tyson, nearly a decade before the movie *10*.¹⁷ More importantly, Cicely Tyson's choice to popularize (i.e., to "go public" with) braids, like her choice of acting roles, was a political act made on her own behalf and on behalf of all black women.¹⁸

The very use of the term "popularized" to describe Bo Derek's wearing of braids—in the sense of rendering suitable to the majority—specifically subordinates and makes invisible all of the black women who for centuries have worn braids in places where they and their hair were not overt threats to the American

aesthetic. The great majority of such women worked exclusively in jobs where their racial subordination was clear. They were never permitted in any affirmative sense of the word any choice so closely related to personal dignity as the choice—or a range of choices—regarding the grooming of their hair. By virtue of their subordination—their clearly defined place in the society—their choices were simply ignored.

The court's reference to Bo Derek presents us with two conflicting images, both of which subordinate black women and black culture. On the one hand, braids are separated from black culture and, by implication, are said to arise from whites. Not only do blacks contribute nothing to the nation's or the world's culture, they copy the fads of whites. On the other hand, whites make fads of black culture, which, by virtue of their popularization, become—like all "pop"—disposable, vulgar, and without lasting value. Braided hairstyles are thus trivialized and protests over them made ludicrous.

To narrow the concept of race further—and, therefore, racism and the scope of legal protection against it—the *Rogers* court likened the plaintiff's claim to ethnic identity in the wearing of braids to identity claims based on the use of languages other than English. The court sought refuge in *Garcia v. Gloor*, a decision that upheld the general right of employers to prohibit the speaking of any language other than English in the workplace without requiring employers to articulate a business justification for the prohibition.¹⁹ By excising the cultural component of racial or ethnic identity, the court reinforces the view of a homogeneous, unicultural society, and pits blacks and other groups against each other in a battle over minimal deviations from cultural norms. Black women cannot wear their hair in braids because Hispanics cannot speak Spanish at work. The court cedes to private employers the power of family patriarchs to enforce a numbing sameness, based exclusively on the employers' whim, without the obligation to provide a connection to work performance or business need, and thus deprives employees of the right to be judged on ability rather than on image or sound.

Healing the Shame

Eliminating the behavioral consequences of certain stereotypes is a core function of antidiscrimination law. This function can never be adequately performed as long as courts and legal theorists create narrow, inflexible definitions of harm and categories of protection that fail to reflect the actual experience of discrimination. Considering the interactive relationship between racism and sexism from the experiential standpoint and knowledge base of black women can lead to the development of legal theories grounded in reality, and to the consideration by all women of the extent to which racism limits their choices as women and by black and other men of color of the extent to which sexism defines their experiences as men of subordinated races.

Creating a society that can be judged favorably by the way it treats the women

of its darkest race need not be the work of black women alone, nor will black women be the exclusive or primary beneficiaries of such a society. Such work can be engaged in by all who are willing to take seriously the everyday acts engaged in by black women and others to resist racism and sexism and to use these acts as the basis to develop legal theories designed to end race and gender subordination.

Resistance can take the form of momentous acts of organized, planned, and disciplined protests, or it may consist of small, everyday actions of seeming insignificance that can nevertheless validate the actor's sense of dignity and worth—such as refusing on the basis of inferiority to give up a seat on a bus or covering one's self in shame. It can arise out of the smallest conviction, such as knowing that an old woman can transmit an entire culture simply by touching a child. Sometimes it can come from nothing more than a refusal to leave a grandmother behind.

NOTES

1. 527 F. Supp. 229 (S.D.N.Y. 1981).
2. *Rogers* relied on *Carswell v. Peachford Hosp.*, 27 Fair Empl. Prac. Cas. (BNA) 698 (N.D. Ga. 1981) (1981 WL 224). In *Carswell*, the employer discharged the plaintiff for wearing beads woven into a braided hairstyle. The prohibition applied to jewelry and other items and was justified by safety precautions for employees working in a hospital for psychiatric and substance-abusing patients. Significantly, the court noted that the hospital did not categorically prohibit the wearing of either braided or Afro hairstyles.
3. According to Cheryl Tatum, the Hyatt's personnel manager, a woman, said: "I can't understand why you would want to wear your hair like that anyway. What would our guests think if we allowed you all to wear your hair like that?" Employers often rely on "customer preference" to justify the imposition of certain requirements on employees or to restrict, on the grounds of race or sex, the persons who can occupy certain jobs. This justification typically amounts to nothing more than the expression of the preferences of the employer or a subterfuge for the exploitation of the images of employees for economic advantage. See L. Binder, *Sex Discrimination in the Airline Industry: Title VII Flying High*, 59 CALIF. L. REV. 1091 (1971).
4. I know that the student intended no harm toward me. She, too, was disturbed by *Rogers*. She had come to law school later in life than many of her classmates and was already experiencing the prejudices of the labor market related to the intersection of gender and age. She seemed to sense that something in the underlying racism and sexism in *Rogers* would ultimately affect her in a personal way.
5. McKay, *Black Woman Professor—White University*, 6 WOMEN'S STUD. INT'L. F. 143, 144 (1983).
6. See, e.g., DeGraffenreid v. General Motors Assembly Div., 413 F. Supp. 142, 145 (E.D. Mo. 1976) (Title VII did not create a new sub-category of "black women" with standing independent of black males).

7. See, e.g., *Moore v. Hughes Helicopter, Inc.*, 708 F.2d 475, 480 (9th Cir. 1983) (certified class includes only black females, as plaintiff black female inadequately represents white females' interests).

8. See, e.g., *Payne v. Travenol*, 673 F.2d 798, 810-12 (5th Cir. 1982) (interests of black female plaintiffs substantially conflict with interests of black males, since females sought to prove that males were promoted at females' expense notwithstanding the court's finding of extensive racial discrimination).

9. See *Chambers v. Girls Club of Omaha*, 834 F.2d 697 (8th Cir. 1987).

10. *Rogers v. American Airlines, Inc.*, 527 F. Supp. 229, 231 (S.D.N.Y. 1981). *Rogers* sued under the thirteenth amendment, 42 U.S.C. § 1981 (1988), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1988). The court disposed of the thirteenth amendment claim on the ground that the amendment prohibits practices that constitute badges and incidents of slavery. Unless the plaintiff could show that she did not have the option to leave her job, her claim could not be maintained. *Rogers*, 527 F. Supp. at 231. The court also noted that the Title VII and section 1981 claims were indistinguishable in the circumstances of the case and were, therefore, treated together. *Id.*

11. *Id.* at 231.

12. *Id.*

13. *Id.*

14. *Id.* at 232.

15. *Id.*

16. *Id.* at 232.

17. Tyson is most noted for her roles in the film *Sounders* (20th Century Fox 1972) and in the television special *The Autobiography of Miss Jane Pittman* (CBS Television Broadcast, Jan. 1974).

18. Her work is political in the sense that she selects roles that celebrate the strength and dignity of black women and avoids roles that do not.

19. *Garcia v. Gloor*, 618 F.2d 264, 267-69 (5th Cir. 1980); cf. *Gutierrez v. Municipal Court*, 838 F.2d 1031, 1040-41 (9th Cir.), vacated, 409 U.S. 1016 (1988).

From the Editor: Issues and Comments

DO YOU agree with Rodrigo that small groups who split off from the larger parent organization have nothing to apologize for, but are instead apt to represent the cutting edge of social change? Can a larger group, such as feminism, adequately represent the interests of a smaller subset of itself, such as black women, and if so, when and when not? Should smaller groups make strategic alliances with larger ones, even if the larger one does not represent its interests exactly? If a group—say, black women—has a practice (e.g., wearing hair in braids) that is more characteristic of it, more associated with identity, than that same practice is for white women or black men, how should courts treat the practice when it collides with a private company's rule? Should it receive more, or less, solicitude than a rule that disadvantages men or women in general?

Is there a union of all oppressed people, regardless of the means of their oppression, whether race, sex, class, sexual orientation, or something else? Or can we only speak of "oppressions"?

Part VII, which follows, treats many of these same problems and issues through the opposite lens—that of essentialism and antiessentialism; in that sense, the two parts represent a coherent whole and should be read together. On race and *class*, see the selections by Calmore, Powell, and Ansley in the Suggested Readings, immediately following. On how race, class, and culture affect women as childbearers, see the excellent article by Ikemoto. On gays and lesbians of color, see the work of Kendall Thomas generally (especially his contribution to *Constructing Masculinity*, Maurice Berger/DIA Center, eds., forthcoming from Routledge, 1995). On the situation of non-black communities of color and their role in civil rights as U.S. demography changes rapidly, see the contributions of Lisa Ikemoto (on intergroup conflict), Robert Chang (on a radical Asian critique of law), and Michael Olivas (on Latinos) elsewhere in this book.

Suggested Readings

- Ansley, Frances Lee, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993 (1989).
 Austin, Regina, *Black Women, Sisterhood, and the Difference/Deviance Divide*, 26 NEW ENG. L. REV. 877 (1992).
 Calmore, John O., *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OR. L. REV. 201 (1982).
 Crenshaw, Kimberlé Williams, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

Davis, Adrienne D. & Stephanie M. Wildman, *The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings*, 65 S. CAL. L. REV. 1367 (1992).

Gilmore, Angela D., *It Is Better to Speak*, 6 BERKELEY WOMEN'S L.J. 74 (1990-91).

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