

What About #UsToo?: The Invisibility of Race in the #MeToo Movement

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ABSTRACT. Women involved in the most recent wave of the #MeToo movement have rightly received praise for breaking long-held silences about harassment in the workplace. The movement, however, has also rightly received criticism for both initially ignoring the role that a woman of color played in founding the movement ten years earlier and in failing to recognize the unique forms of harassment and the heightened vulnerability to harassment that women of color frequently face in the workplace. This Essay highlights and analyzes critical points at which the contributions and experiences of women of color, particularly black women, were ignored in the moments preceding and following #MeToo's resurgence. Ultimately, this Essay argues that the persistent racial biases reflected in the #MeToo movement illustrate precisely why sexual harassment doctrine must employ a reasonable person standard that accounts for complainants' different intersectional and multidimensional identities.

What history has shown us time and again is that if marginalized voices—those of people of color, queer people, disabled people, poor people—aren't centered in our movements then they tend to become no more than a footnote. I often say that sexual violence knows no race, class or gender, but the response to it does . . . Ending sexual violence [and harassment] will require every voice from every corner of the world and it will require those whose voices are most often heard to find ways to amplify those voices that often go unheard.

— Tarana Burke¹

1. Tarana Burke, *#MeToo Was Started for Black and Brown Women and Girls. They're Still Being Ignored*, WASH. POST (Nov. 9, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/11/09/the-waitress-who-works-in-the-diner-needs-to-know-that-the-issue-of-sexual-harassment-is-about-her-too> [<https://perma.cc/22XR-GUEJ>].

INTRODUCTION

On October 15, 2017, the #MeToo movement exploded onto the popular media stage after actress Alyssa Milano asked Twitter users to “write ‘me too’ as a reply to [her] tweet” if they had “been sexually harassed or assaulted.”² Milano’s request brought on an avalanche of stories concerning sexual harassment. Combined, more than twelve million users of Twitter, Facebook, Snapchat, and other social media platforms offered posts and reactions to Milano’s #MeToo challenge.³

Along with millions of affirming responses to Milano’s tweet, there were also critiques of her request, namely from women of color who were upset that – yet again – a white woman was receiving credit for an idea originated by a woman of color.⁴ In their responses to Milano’s call for “me too” tweets, these women highlighted not only that the phrase “me too” was originally coined by a black woman, Tarana Burke, more than ten years prior, but also that Burke had never received anywhere near the same level of support that white feminists like Milano received from the general public.⁵ For example, Alicia Garza, one of the co-founders of Black Lives Matter, tweeted the following message to Burke the very

2. See Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html> [<https://perma.cc/RG8R-LKNN>].
3. *Id.* (“The hashtag was widely used on Twitter, Facebook, Snapchat and other platforms; on Facebook, it was shared in more than 12 million posts and reactions in the first 24 hours.”).
4. See *id.* (noting that “when Ms. Milano tweeted out the #metoo hashtag without crediting Ms. [Tarana] Burke, some noted that black women had again been left out of the story”).
5. See *id.* Although the #MeToo movement began to gain widespread media attention in October 2017 after journalists Jodi Kantor and Megan Twohey broke the story about Harvey Weinstein’s sexual harassment of women in the *New York Times*, Tarana Burke, a black woman who founded Just Be Inc., a nonprofit organization that helps victims of sexual harassment and assault, actually started the #MeToo movement in 2007. See *id.* (describing how and why Burke began the “Me Too” movement); Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <http://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> [<https://perma.cc/TD P8-SFLJ>] (reporting in detail the results of a breakthrough “investigation by *The New York Times*,” which “found previously undisclosed allegations against Mr. Weinstein stretching over nearly three decades” and uncovered “at least eight settlements” that Weinstein made with women at Miramax and the Weinstein Company). This series of events “highlights a common problem: Feminist movements are often whitewashed when they’re brought into mainstream conversations. Women of color are often overlooked and left out of the very conversations they create.” Alanna Vagianos, *The “Me Too” Campaign Was Created By a Black*

next morning: “Thank you @TaranaBurke for bringing us this gift of #MeToo almost 10 years ago. Still powerful today.”⁶ Others like Aura Bogado, a Latina blogger and a writer for *The Nation*, and Bevy Smith, a television personality best known for her work as a cohost on the show *Fashion Queens*, offered more direct critiques of the erasure of Burke from the #MeToo narrative.⁷ For instance, Bogado tweeted, “#MeToo was started by Tarana Burke. Stop erasing black women.”⁸

The recent resurgence of the #MeToo movement reflects the longstanding marginalization and exclusion that women of color experience within the larger feminist movement in U.S. society.⁹ This marginalization of women of color has occurred within the #MeToo movement despite the fact that a black woman, Mechelle Vinson, was the plaintiff in the very first Supreme Court case to recognize a cause of action under Title VII for a hostile work environment created by sexual harassment;¹⁰ despite the fact that #MeToo began with a woman of color; and despite the fact that women of color are more vulnerable to sexual harassment than white women and are less likely to be believed when they report harassment, assault, and rape.¹¹

Women 10 Years Ago, HUFFINGTON POST (Oct. 17, 2017, 1:44 PM), http://www.huffingtonpost.com/entry/the-me-too-campaign-was-created-by-a-black-woman-10-years-ago_us_59e61a7fe4b02a215b336fee [<https://perma.cc/NZ7F-T8FS>].

6. Vagianos, *supra* note 5.

7. *Id.*

8. *Id.*

9. See generally Kimberlé W. Crenshaw, *Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality*, 46 TULSA L. REV. 151 (2010) (noting that the marginalization of black women in feminist legal theory as well as the common misunderstandings about intersectionality necessitate a black feminist particularism); Preston D. Mitchum, *Screaming To Be Heard: Black Feminism and the Fight for a Voice from the 1950s-1970s*, 4 GEO. J. L. & MOD. CRITICAL RACE PERSP. 151, 154 (2012) (discussing “the sexist attitudes during civil rights demonstrations, such as the 1963 March on Washington, and the racist sentiments of women’s rights organizations in the nineteenth century”).

10. See *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986); DeNeen L. Brown, *She Said Her Boss Raped Her in a Bank Vault. Her Sexual Harassment Case Would Make Legal History*, WASH. POST (Oct. 13, 2017), http://www.washingtonpost.com/news/retropolis/wp/2017/10/13/she-said-her-boss-raped-her-in-a-bank-vault-her-sexual-harassment-case-would-make-legal-history/?utm_term=.fe2532cc7d5d [<https://perma.cc/NBQ6-JD4J>].

11. Katherine Giscombe, *Sexual Harassment and Women of Color*, CATALYST (Feb. 13, 2018), <http://www.catalyst.org/blog/catalyzing/sexual-harassment-and-women-color> [<https://perma.cc/NBQ6-JD4J>] (noting that “the penalties [that women of color’s] assailants suffer are less severe than those of people who sexually assault White women” and citing to “[a] Brandeis University study [that] found disparities in [the] treatment of sexual assault cases that correspond with the race of the victim,” with prosecutors filing “charges in 75% of the

Yet this marginalization within a greater feminist movement should not be surprising given the way privilege and subordination interact with race, sex, and other characteristics. In 1991, Professor Kimberlé Crenshaw, one of the founders of Critical Race Theory, created the framework of “intersectionality” to explain how people who share one identity characteristic, such as race, may experience discrimination and subordination differently based on divergent intersecting identity categories, such as being black and female as compared to being black and male or white and female.¹² In other words, Crenshaw revealed how “the intersection of racism and sexism [may] factor[] into [women of color’s] lives in ways that cannot be captured wholly by looking at the race or gender dimensions of those experiences separately.”¹³ A few years later, other academics like queer theorist Darren Hutchinson and masculinities scholar Athena Mutua built on Crenshaw’s work to develop the concepts of gendered racism and multidimensionality, both of which recognize how individuals whose identities meet at the intersection of privilege and disadvantage—for example, male and black—may encounter unique forms of discrimination and subordination, depending upon context.¹⁴ For instance, although being male is generally viewed as a privilege in our society, within the context of police brutality and racial profiling, black maleness, for example, is far from a privileged identity.¹⁵ As Hutchinson explained, recognizing the multidimensional nature of discrimination and subordination is critical because solutions to one form of subordination cannot be

cases in which a White woman was attacked, but” only 34% of the cases “when the victim was a Black woman”).

12. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991).
13. *Id.* Legal scholar Frank Rudy Cooper explains that intersectionality “provides the ‘insight that identities are always formed at the place where categories of identities meet.’” Frank Rudy Cooper, “Who’s The Man?”: *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 680 (2009).
14. Darren Lenard Hutchinson, *Identity Crisis: ‘Intersectionality,’ ‘Multidimensionality,’ and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285, 312 (2001) [hereinafter Hutchinson, *Identity Crisis*]; Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Queer Theory and Political Discourse*, 29 CONN. L. REV. 561, 641 (1997) [hereinafter Hutchinson, *Out Yet Unseen*]; see also Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship or Legal Scholars as Cultural Warriors*, 75 DENV. L. REV. 1409, 1415 (1998).
15. See Athena D. Mutua, *Multidimensionality Is to Masculinities What Intersectionality Is to Feminism*, 13 NEV. L.J. 341, 344-59 (2013). According to Hutchinson, multidimensionality “more effectively captures the inherent complexity and irreversibly multilayered nature of everyone’s identities” because it, unlike intersectionality, does not focus solely on intersecting subordinations, but rather on intersecting privilege and subordination based on context. Hutchinson, *Out Yet Unseen*, *supra* note 14.

provided “without analyzing how [the subordination] is affected and shaped by other systems of domination.”¹⁶

In this Essay, I argue that the persistent racial biases reflected in the #MeToo movement illustrate precisely why sexual harassment law must adopt a reasonable person standard that accounts for these different intersectional and multidimensional identities. In other words, they show why courts should employ a standard based on a reasonable person *in the complainant’s intersectional and multidimensional shoes*, rather than the ostensibly objective reasonable person standard—which some courts have declared to be male biased¹⁷—when evaluating sexual harassment claims.¹⁸ Although many authors have argued for adopting a reasonable woman standard in harassment law, none have taken the further step of contending that the standard must also be rooted in an intersectional and multidimensional lens in order to capture the different ways that women across

16. Hutchinson, *Identity Crisis*, *supra* note 14, at 308.

17. See, e.g., *Ellison v. Brady*, 924 F.2d 872, 878 (9th Cir. 1991) (“We therefore prefer to analyze harassment from the victim’s perspective. A complete understanding of the victim’s view requires, among other things, an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women.”); see also *Lipsett v. Univ. of P.R.*, 864 F.2d 881, 898 (1st Cir. 1988) (“A male supervisor might believe, for example, that it is legitimate for him to tell a female subordinate that she has a ‘great figure’ or ‘nice legs.’ The female subordinate, however, may find such comments offensive.”); cf. Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1203 (1989) (asserting that one characteristically male view depicts what many women would view as sexual harassment as harmless amusement); Nancy S. Ehrenreich, *Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law*, 99 YALE L.J. 1177, 1207 (1990) (arguing that men frequently consider some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object”). Indeed, Professor Ehrenreich has argued that socialization processes for men and women result in broad commonalities of perspective for each group. She explains that “how one perceives a particular social situation or interaction . . . will be a function both of one’s personal psychological makeup and of social factors, such as one’s race, sex, class, etc.” Ehrenreich, *supra*, at 1194.

18. See, e.g., David Schultz, *From Reasonable Man to Unreasonable Victim?: Assessing Harris v. Forklift Systems and Shifting Standards of Proof and Perspective in Title VII Sexual Harassment Law*, 27 SUFFOLK U. L. REV. 717-18 (1993) (noting that some courts have “reasoned that the reasonable person standard is not neutral but male-biased and patriarchal, that it tends to validate the aggressor’s perspective and not the victim’s, and that it fails to appreciate the perspective of women, which clearly differs from men”); see also Kamla Alexander, Note, *A Modest Proposal: The “Reasonable Victim” Standard and Alaska Employers’ Affirmative Defense to Vicarious Liability for Sexual Harassment*, 17 ALASKA L. REV. 297, 298 (2000) (arguing in favor of a reasonable woman standard); Christopher Yeh, *Workplace Stereotypes*, HAW. B.J., May 2002, at 13-14 (discussing the arguments for and against the adoption of a reasonable woman standard in sexual harassment cases); cf. *Harris v. Int’l Paper*, 765 F. Supp. 1509 (D. Me. 1991) (applying an objective “reasonable black person” standard in a racial harassment case).

intersectional categories may experience any particular event or events. This Essay contends that such a lens is a necessary component to achieving equality and inclusion in harassment law.

Currently, antidiscrimination law employs what courts deem an objective victim standard to analyze sexual harassment claims. In so doing, the law ignores the complexities of how gender and racial subordination, stereotype, and bias can shape a victim's vulnerability to harassment, her credibility in the eyes of factfinders, and others' perceptions about whether she is harmed by the undesired conduct.¹⁹ It also disregards how a complainant's own understanding of others' perceptions about her group or groups, whether based on race, sex, or other identity factors like religion and age, can shape her own response to the harassment she is enduring.²⁰ By adopting a standard based on a reasonable person with the complainant's intersectional and multidimensional identity, courts can acknowledge how the current standard, though allegedly objective, is actually rooted in the experiences of white men, particularly because the case law has largely been developed by white male judges.²¹ Indeed, one can see not only male biases in favor of those alleged to be the aggressors in the application of sexual harassment doctrine to the facts of sexual harassment cases, but also biases in the application at the intersection of gender, race, socioeconomic class, gender identity, disability, citizenship status, and other identity categories.²² For instance, courts have reified class bias, inequities, and stereotyped perceptions of blue-collar workers in sexual harassment law by insisting that the bar for proving sexual harassment is higher in blue-collar work environments because crass and crude language are common in such environments.²³ In so doing, courts

19. See Angela Onwuachi-Willig, *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), in *FEMINIST JUDGMENTS: REWRITTEN OPINIONS OF THE UNITED STATES SUPREME COURT* 303, 309-12 (Kathryn M. Stanchi et al. eds. 2016).

20. See *id.* at 309-12, 315.

21. See SANDRA F. SPERINO & SUJA A. THOMAS, *UNEQUAL: HOW AMERICA'S COURTS UNDERMINE DISCRIMINATION LAW* 20-21 (2017) (arguing that because "federal judges are overwhelmingly white and male, and have elite backgrounds and credentials," employment discrimination law is rooted in their experiences rather in those of the more diverse populace).

22. See, e.g., Rie Ohta, *Can U.S. Immigrant Detainees Have a #MeToo Movement?*, HUM. RTS. WATCH (Feb. 15, 2018, 4:49PM), <http://www.hrw.org/news/2018/02/15/can-us-immigrant-detainees-have-metoo-movement> [<http://perma.cc/KYZ5-QKLE>]; S.E. Smith, *Disability Should Be Integral to the #MeToo Conversation*, REWIRE.NEWS (Nov. 1, 2017, 5:54 PM), <http://rewire.news/article/2017/11/01/disability-integral-metoo-conversation> [<http://perma.cc/7HVW-DDFE>]; Meredith Talusan, *Trans Women and Femmes Are Shouting #MeToo — But Are You Listening?*, THEM (Mar. 2, 2018), <http://www.them.us/story/trans-women-me-too> [<https://perma.cc/K3YX-Q8CQ>].

23. See generally Rebecca K. Lee, *Pink, White, and Blue*, 70 BROOK. L. REV. 677 (2005) (describing and analyzing this effect).

have made women in blue-collar jobs more vulnerable to sexual harassment, pushing them into unequal positions that their white-collar counterparts are not expected to endure.²⁴

In arguing for a standard based on a reasonable person with the complainant's intersectional and multidimensional identity, I first briefly highlight the ways in which intersectional and multidimensional race, gender, and sexual orientation biases were invisible before the most recent wave of the #MeToo movement. I then use those examples to illustrate why the objective standard in sexual harassment cases must center on broader intersectional and multidimensional identities of complainants.

#METOO AND THE NEED FOR AN INTERSECTIONAL AND MULTIDIMENSIONAL LENS

Women involved in the most recent wave of the #MeToo movement have rightly received praise for breaking long-held silences about harassment in the workplace, but the movement itself has also rightfully earned criticism from women of color. Specifically, the movement has merited criticism not only for initially ignoring the contributions of women of color to the creation of the movement, but even more, for ignoring the unique forms of harassment and the heightened vulnerability that women of color frequently face in the workplace.²⁵

Even before Milano's clarion call, some black women had criticized the disparity in white feminists' responses to harassment when it was perpetrated against white female actresses as opposed to black female actresses. Public mobilization on Twitter in the #MeToo movement exemplifies this problem. Just months before the October 2017 resurgence of the #MeToo movement, black women criticized what they viewed as a double standard: white women responded strongly when white actress Rose McGowan was engaged in a fight with Twitter, but were relatively silent when black actress Leslie Jones and black female journalist and sportscaster Jemele Hill encountered problems with Twitter and ESPN, respectively.²⁶ Specifically, black women were angered to see

24. See Lee, *supra* note 23, at 678 (highlighting "court rulings that suggest that harassment law cannot pierce the cultural exterior of the blue-collar workplace, where crude and offensive behavior is allowed to reign").

25. See Garcia, *supra* note 2.

26. See *id.* (noting the widespread support of a Twitter boycott after McGowan's tweet, and relative lack of support for black actresses). Arguably, Twitter users may not have called for a boycott based on the harassment of Jones because Twitter permanently banned Milo Yiannopoulos, Jones's most outspoken harasser, from its site within two days. See *infra* notes 30-32 and accompanying text. Still, as I explain later in this Essay, this reasoning does not explain

white women immediately organize a boycott of Twitter after the social media platform suspended McGowan for tweeting the personal cellphone number of an alleged harasser in violation of the company's privacy policies, when no such boycott was called when Jones was viciously harassed following the release of her all-female remake of *Ghostbusters* or when ESPN suspended Hill after she called President Donald Trump a "white supremacist" for attacking NFL players who were protesting police brutality and racial profiling at the beginning of football games.²⁷ As one black female Twitter user stated in response to the call for boycotting Twitter until McGowan was able to regain access to her own account, "I'm wary of #WomenBoycottTwitter. Folks looking funny in the light. *Picking when we stand up for the silencing of women. #iStandwithJemele.*"²⁸ Similarly, Kimberly Bryant, the founder of the nonprofit Black Girls Code, tweeted, "Intersectionality = when you really want to support #WomenBoycottTwitter but you're conflicted bec[ause] Black women never get the same support."²⁹

What was even more troubling about the reactions to Jones's and Hill's harassment on Twitter was the failure of many reporters and commentators to see that harassment as related not only to their race, but also to their sex. Instead, reporters mostly attributed the problems that the two black women faced to race, as opposed to both race and sex intersectionally. For instance, although some reporters referred to the harassment that Jones faced on Twitter as both racist and sexist, many simply depicted the harassment as racist.³⁰ Yet as I explain below, a close analysis of the harassment Jones and Hill endured reveals that the conduct was both racialized and gendered.

why many failed even to acknowledge how the harassment of Jones constituted intersectional race and sex harassment. See *infra* notes 39-48 and accompanying text.

27. See Garcia, *supra* note 2; see also Michelle Castillo, *Some Women Call for a Boycott of Twitter After Actress Rose McGowan is Partially Suspended*, CNBC (Oct. 12, 2017, 2:39 PM), <http://www.cnn.com/2017/10/12/some-call-for-twitter-boycott-after-rose-mcgowan-is-partially-suspended.html> [<https://perma.cc/8L72-PVY3>] (describing McGowan's troubles with Twitter); Charlie Warzel, *Twitter Permanently Suspends Conservative Writer Milo Yiannopoulos*, BUZZFEEDNEWS (July 19, 2016, 7:09 PM), <http://www.buzzfeed.com/charliwarzel/twitter-just-permanently-suspended-conservative-writer-milo> [<http://perma.cc/LA6K-SX8Z>] (describing the harassment Jones faced on Twitter).
28. Garcia, *supra* note 2 (emphasis added).
29. *Id.*
30. See, e.g., Abby Ohlweiser, *Just How Offensive Did Milo Yiannopoulos Have to Be to Get Banned From Twitter?*, WASH. POST (July 16, 2016), <https://www.washingtonpost.com/news/the-intersect/wp/2016/07/21/what-it-takes-to-get-banned-from-twitter> [<https://perma.cc/3B4X-2QTK>] (noting that "Twitter permanently banned the conservative writer Milo Yiannopoulos as it cracked down on a wave of racist abuse targeting the 'Ghostbusters' actor Leslie Jones," referring to Yiannopoulos's tweets as "a racist abuse campaign against Jones," and asserting that the "media gave significant coverage to the onslaught of racism Jones was enduring," but

Describing some of the harassment that she endured on Twitter, Jones stated, “I have been called Apes, sent pics of their asses, even got a pic[ture] with semen on my face. I’m tryin[g] to figure out what human means. I’m out.”³¹ From Milo Yiannopoulos, a famous and controversial white supremacist alt-right personality, Jones also received insulting comments like “[a]t least the new *Ghostbusters* has a hot black guy in it.”³² After Jones blocked him from her account, Yiannopoulos continued harassing her, tweeting that he had been “rejected by yet another black dude.”³³ Despite the fact that the harassment Jones endured included clear references to gender and sex, the racialized nature of the harassment seemingly made it difficult for white women to see themselves in Jones, and accordingly, to see her experiences as related to sex. When coupled with the fact that Jones’s harassment did not involve sexual advances – the very type of harassment that Professor Vicki Schultz has long argued serves as the primary basis for courts’ far-too-narrow understanding of sexual harassment³⁴ – one can more readily see how a failure to examine Jones’s experience

not referring to any of the harassment as related to sex or sexism) (emphasis added); Aja Romano, *Milo Yiannopoulos’s Twitter Ban, Explained*, VOX (July 20, 2016, 2:00 P.M. EST), <http://www.vox.com/2016/7/20/12226070/milo-yiannopoulos-twitter-ban-explained> [<https://perma.cc/LNQ2-TUQX>] (arguing that, “[t]hrough multiple attempts have been made to paint the *Ghostbusters* backlash as a product of what is perceived (largely inaccurately) as a more general trend of fan entitlement, the nature of Jones’s harassment is very clearly and overwhelmingly a product of *extreme racism* that has nothing to do with the *Ghostbusters* franchise”) (emphasis added); see also Jamie Altman, *The Whole Leslie Jones Twitter Feud, Explained*, USA TODAY: COLLEGE (July 25, 2016 5:40 P.M. EST), <http://college.usatoday.com/2016/07/25/the-whole-leslie-jones-twitter-feud-explained> [<https://perma.cc/7MGS-XHW5>] (referring to the tweets Jones received as “racist comments” even while mentioning sexism-related acts by users who “sent the actress pornographic images” and describing how “Jones, along with her fellow cast mates in the new all-female remake of *Ghostbusters*, [had] endured criticism over the last few months”).

31. Kate Conger, *Harassment of Ghostbusters’ Leslie Jones Shows Twitter Needs to Change*, TECHCRUNCH (July 19, 2016), <http://techcrunch.com/2016/07/19/leslie-jones-twitter-harassment> [<https://perma.cc/ZBZ2-UGY8>].
32. Suzanne Zuppello, *Why We Let Famous Women Get Bullied Online*, ROLLING STONE (July 20, 2016), <https://www.rollingstone.com/culture/features/why-we-let-famous-women-get-bullied-online-w429954> [<https://perma.cc/9BPP-PKBF>].
33. Altman, *supra* note 30.
34. Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1687–89 (1998) (arguing that the sexual desire paradigm in sexual harassment law is underinclusive because it excludes “many of the most prevalent forms of harassment” and that the paradigm is also overinclusive because it may work to “prohibit some forms of sexual expression that do not promote gender hierarchy at work”). Professor Schultz criticized the way that paradigms for evaluating sex harassment focused too narrowly on sexual acts and sexuality, “obscuring a full view of the culture and conditions of the workplace” that can result in the denigration and subordination of women and nonconforming men in the workplace. *Id.* at 1689, 1720–21.

through an intersectional and multidimensional lens led to an equally narrow understanding of her experiences as solely racial harassment by some writers and pundits.

Yet the type of harassment that Jones experienced very much was sexual harassment. In her seminal article, *Reconceptualizing Sexual Harassment*, Schultz explained that hostile environment sexual harassment is based on “a drive to maintain the most highly rewarded forms of work as domains of masculine competence,” and detailed the various forms of gender harassment that fall within this “competence-centered” paradigm for understanding and evaluating sexual harassment claims.³⁵ In so doing, she first highlighted and explained the “gender-guarding” aspects of sexual harassment. These aspects of harassment are linked to job segregation based on sex and work and “reinforce[] the idea that women are inferior workers who cannot meet the demands of a ‘man’s’ job,” “preserve the image of [certain] jobs as masculine work that no real women can do,” and discourage women from entering masculine spheres of work.³⁶ Schultz then explained the “competence-undermining” functions of hostile work environment sexual harassment, which have “the purpose or effect of undermining the perceived or actual competence of women (and some men) who threaten the idealized masculinity of those who do the work.”³⁷ This form of sexual harassment, Schultz asserted, involves not only communicating to women that they have no place holding the job or jobs in question, but also denigrating their very ability to perform the job’s duties and deliberately sabotaging their work and career advancement.³⁸

Notwithstanding commenters’ characterization of the abuse Jones suffered as purely racial, Jones endured both gender-guarding and competence-undermining forms of harassment. Indeed, she faced demeaning behavior that was specifically designed to emphasize her differences as a woman, and particularly as a black woman. Using Schultz’s framing, we can see that the harassment Jones faced was designed to signal to her that she was unequal to the men her harassers believed should have been in her movie role, and to undermine her actual performance of her job – here, the promotion of her movie.³⁹

To begin, the harassment was gender-guarding in that it was partially related to some movie watchers’ anger that the *Ghostbusters* movie remake starred all female Ghostbusters, instead of all male characters as the original had. Moreover,

35. *Id.* at 1755.

36. *Id.* at 1692, 1760.

37. *Id.* at 1762.

38. *Id.* at 1762–69.

39. *Id.* at 1691.

the harassment reinforced the view that Jones’s movie role belonged to a man when Yiannopoulos proclaimed that the only good thing about the new, female-centered *Ghostbusters* was that it starred a “hot man,” purportedly Jones.⁴⁰ The insults that Jones received on her Twitter account from Yiannopoulos were intended to undermine her sense of belonging, not only in the *Ghostbusters* movie, but in Hollywood in general.

Additionally, the Twitter harassment that Jones endured was also “competence-undermining” because it questioned her very ability to perform the role she took on in the *Ghostbusters* remake.⁴¹ Indeed, the harassment centered on denigrating Jones for what Yiannopoulos viewed as her failure to conform to a longstanding idealized image of femininity in our society—that of a physically delicate and demure (white) woman—by insinuating that Jones was not a woman at all.⁴² Yiannopoulos did so both by referring to Jones as a male and by releasing nude pictures of Jones to highlight ways in which she, as a black woman, did not satisfy the ideal of True Womanhood.⁴³ In this way, the harassment had the effect of undermining Jones’s sense that she was properly performing both the role of a woman playing a Ghostbuster character and the role of a woman in society. This latter notion is a familiar one for black women who have never been viewed as “true” women.⁴⁴ Indeed, the perception and identification of Jones as a “man” comports with the research of psychologists Phillip Atiba Goff, Margaret Thomas, and Matthew Christian Jackson. They found in a recent study that their subjects, 292 white undergraduates from Pennsylvania State University, made significantly more errors when categorizing black women by sex than they did for any other race or gender group, and that associations of

40. *Id.* at 1689, 1759–60 (“More subtly, for women who stay in nontraditional jobs, harassment exaggerates gender differences to remind them that they are ‘out of place’ in a ‘man’s world.’”). Actress Alyssa Milano has made a similar point, calling for “companies to create a code of conduct and hire more women.” Melissa Chan, ‘Now the Work Really Begins.’ *Alyssa Milano and Tarana Burke on What’s Next for the #MeToo Movement*, TIME (Dec. 6, 2017), <http://time.com/5051822/time-person-year-alyssa-milano-tarana-burke> [https://perma.cc/KD2C-NEJW].

41. Schultz, *supra* note 34, at 1762 (noting that “the central function of such harassment is to preserve the masculine image and male-dominated composition of favored types of work”).

42. Cf. Amii Larkin Barnard, *The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women’s Fight Against Race and Gender Ideology, 1892–1920*, 3 UCLA WOMEN’S L.J. 1, 2 (1993) (defining the ideal of True Womanhood, which applied only to white woman, and “defined women as by nature physically delicate, intellectually weak and spiritually pure, thus making them naturally designed for a sheltered life outside the public sphere” and that demanded that women be pure, pious, and deferential to men).

43. See *supra* notes 31–33 and accompanying text.

44. See Barnard, *supra* note 42.

black women with “maleness” resulted in black women being rated as less attractive.⁴⁵

Finally, the harassment that Jones faced also fit within more traditional notions of crude, sexualized harassing behavior, as it included images of her with semen on her face.⁴⁶ As Andrea Dworkin once explained, this image “is a way of saying (through showing) that [a woman] is contaminated with [a man’s] dirt; that she is dirty.”⁴⁷ While the negative conduct that Jones endured did not consist of sexual advances, it constituted sexual harassment because it embodied the everyday forms of gender hostility that women and men who do not conform to white- and male-dominated understandings of masculinity and femininity encounter in society.⁴⁸ To be exact, it constituted intersectional race and sex harassment because it relied on both racial and gendered stereotypes of black women and involved racialized sexism against a black woman.

Relatedly, reporters also failed to recognize that the harassment Jemele Hill experienced after tweeting that Trump was a “white supremacist,” including Trump’s personal demands that ESPN fire her, was related not only to her race but also to her sex. Indeed, whereas at least some reporters acknowledged the racism and sexism underlying the harassment Jones faced, few, if any, reporters or pundits labeled Hill’s troubles with ESPN as gender-related.⁴⁹ Yet Hill was silenced in a competence-undermining way because she spoke out on an issue, police brutality, which black women have long viewed as a feminist issue, but which white women have rarely viewed as a women’s issue. Commenters likely

45. Phillip Atiba Goff, Margaret A. Thomas & Matthew Christian Jackson, “*Ain’t I a Woman?*”: *Towards an Intersectional Approach to Person Perception and Group-Based Harms*, 59 *SEX ROLES* 392, 397-98 (2008).

46. See Conger, *supra* note 31.

47. Andrea Dworkin, *Pornography Happens to Women*, in *THE PRICE WE PAY: THE CASE AGAINST RACIST SPEECH, HATE PROPAGANDA, AND PORNOGRAPHY* 182-83 (Laura J. Lederer and Richard Delgado, eds. 1995); cf. Meghan Murphy, *Facials, Feminism, and Performance: On F**king Men in a Patriarchy*, *FEMINIST CURRENT* (Aug. 29, 2012), <http://www.feministcurrent.com/2012/08/29/facials-feminism-performance-on-fking-men-in-a-patriarchy> [https://perma.cc/M54L-P4FP] (“It’s more than likely that women learned this was hot from porn. And that is troubling. Because I think emulating porn doesn’t help us enjoy our bodies or sex . . .”). *But see* Barbie Davenport, *Are Facials Demeaning: Feminists Didn’t Really Respond . . . But L.A.’s Experts Did*, *L.A. WKLY.*, (May 24, 2011, 9:02 A.M.), <http://www.laweekly.com/news/are-facials-demeaning-feminists-didnt-really-respondbut-las-experts-did-2529161> [https://perma.cc/22KX-VD5N] (arguing that this conduct is demeaning only when it is unwanted).

48. See Schultz, *supra* note 34, at 1710.

49. Cf. P.R. Lockhart, *Jemele Hill, Known for Anti-Trump Tweets, Is Leaving ESPN’s SportsCenter*, *VOX* (Jan. 26, 2018, 5:08pm EST), <https://www.vox.com/2018/1/26/16936812/jemele-hill-espn-sportscenter-departure-trump-tweets> [https://perma.cc/5XBM-G86J] (interpreting the harassment of Hill narrowly and failing to see its relationship to sex discrimination).

missed the feminist aspect of Hill’s message largely because the “essential” woman in the feminist movement has traditionally been and continues to be a white woman.⁵⁰ The fact is that black women’s lives are routinely affected by police brutality, as black women are frequent victims of such brutality, which includes sexualized violence by the police.⁵¹ In fact, in many instances, offending police officers have specifically targeted black women, trans women, and other marginalized women, because they are less likely to be believed.⁵² Consider, for example, the case of former Oklahoma City police officer Daniel Holtzclaw, who purposefully targeted black women with blemished records and forced them to perform sex acts for him because he knew no one would believe them.⁵³ Additionally, black and brown women are heavily affected by the loss of sons, daughters, husbands, and partners who disproportionately die at the hands of the police. Consider, for example, the women whom former Secretary of State and former presidential candidate Hillary Clinton called the Mothers of the Movement – mothers like the mothers of Trayvon Martin, Eric Garner, Sandra Bland, all of whom have not only lost their children but sacrificed their lives and time to make sure their children did not lose their lives in vain.⁵⁴ Yet reporters overlooked this feminist dimension to Hill’s message.

Commenters also neglected that the harassment Hill faced in response was gender-based as well as racial. For one thing, the racial stereotype of the “angry black woman”⁵⁵ was utilized against Hill throughout the controversial episode with Trump as a means of portraying her as not professional enough to serve as

50. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 586-90 (1990) (asserting that feminist legal theorists generally conceive of the essential woman as a white, heterosexual, middle-class woman, and highlighting how this assumption obscures the diverse array of experiences of women who are not white, who are gay, and who are poor or working class); see also #SayHerName, AF. AM. POL’Y F., <http://www.aapf.org/sayhername> [<https://perma.cc/Q53Z-CVZU>].

51. Andrea J. Ritchie, *How Some Cops Use the Badge to Commit Sex Crimes*, WASH. POST (Jan. 12, 2018), https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html [<https://perma.cc/D8JN-QSLL>] (referring to a “2000 survey of nearly 1,000 New York City youth that found that 2 in 5 young women – almost half of whom were black, Latina or Asian – reported sexual harassment by officers”) (emphasis added).

52. *Id.*

53. *Id.*

54. Michael Sebastian, *Who Are the ‘Mothers of the Movement’ Speaking at the Democratic National Convention?*, ELLE (July 26, 2016), <https://www.elle.com/culture/career-politics/news/a38111/who-are-mothers-of-the-movement-dnc/> [<https://perma.cc/M6AC-4PR4>].

55. See generally Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Sociates at the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53 (1999) (analyzing stereotypes about black women, including that of the angry black woman).

an ESPN sportscaster. This negative portrayal of Hill occurred even though other public figures had been and were currently engaged in similar critiques of the President.⁵⁶

What's more, reporters failed to recognize the ways in which the harassment Hill faced on Twitter was rooted in gender-guarding conduct, as the attacks focused on Hill's status as a woman and as a black woman in a white and male-dominated field. Specifically, the attacks were linked to the view that women, especially women of color, should keep quiet and should not openly challenge male authority.⁵⁷ Indeed, while speaking about persistent notions that women journalists are out of place at ESPN, Hill described how women, particularly women in sports, are targeted with both sexist and racist comments like "Get back in the kitchen" and "Go back to Africa."⁵⁸

Finally, many reporters failed to acknowledge that Trump may have attacked Hill with such force because of her identity as a black woman. Although Trump routinely attacks people who have insulted him, he reserves many of his most demeaning attacks for black women.⁵⁹ Conversely, Trump has remained silent in instances where white men, such as the rapper Eminem, have challenged him even more harshly than Hill did.⁶⁰

In all, the failure to recognize the harassment of Jones and Hill as gendered reveals how the unique form of racialized sexism that women of color face routinely gets marked as outside of the female experience. These examples demon-

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56. See Ameer Hasan Loggins, *ESPN's Jemele Hill Is Being Reduced to an "Angry Black Woman,"* GUARDIAN (Oct. 12, 2017, 11:02 AM EST), <https://www.theguardian.com/commentisfree/2017/oct/12/espn-jemele-hill-angry-black-woman-suspension-nfl> [https://perma.cc/2J4B-FJAU].
57. See Andrea González-Ramírez, *No, ESPN Shouldn't Fire Jemele Hill over Her Tweets*, REFINERY29: STRONG OPINIONS (Oct. 10, 2017, 11:20 AM), <https://www.refinery29.com/2017/09/172078/jemele-hill-trump-objectivity-media> [https://perma.cc/HJ65-SWUM] (questioning why Hill suffered repercussions for calling Trump a white supremacist when she was just one of many public figures who had labelled Trump a white supremacist).
58. See *Jemele Hill: "I'll Never Get Used to Online Harassment,"* ESPN W, <http://www.espn.com/espnw/video/15411943/never-get-used-online-harassment> [https://perma.cc/KXN9-F8KR].
59. See Sophia A. Nelson, *What's Trump's Problem with Black Women?*, POLITICO (Oct. 26, 2017), <https://www.politico.com/magazine/story/2017/10/26/trump-black-women-gop-215751> [https://perma.cc/D9BW-MQTX]; Heather Timmons, *The Dangerous Way the Trump Administration Talks About Black Women*, QUARTZ (Oct. 23, 2017), <https://qz.com/1107990/trumps-attacks-on-frederica-wilson-myeshia-johnson-and-other-black-women-make-them-targets-for-abuse> [https://perma.cc/RYX6-WRWK].
60. See, e.g., Emily Gaudette, *Eminem Is 'Extremely Angry' at Trump for Not Tweeting about His Freestyle Diss*, NEWSWEEK (Nov. 24, 2017, 11:56 AM) <http://www.newsweek.com/eminem-freestyle-donald-trump-bet-awards-721667> [https://perma.cc/YD3L-WXP3].

strate that the realities of white women's lives, as opposed to the distinctive harassment employed against black women and other women of color, still define the female experience. Thus, moving to a reasonable woman standard alone is unlikely to be inclusive of the experiences of women of color. To ensure that judicial analyses of sexual harassment claims leave room for the experiences of women of color, courts should adopt a standard based on a reasonable person with the complainant's intersectional and multidimensional identity, rather than the ostensibly objective reasonable person standard, or even the presumably more inclusive reasonable women's standard.

CONCLUSION

In conclusion, there is much to praise about the resurgence of the #MeToo movement after October 15, 2017. We have, at least for now, shifted from a society in which women did not feel empowered to report harassment—either out of fear of being disbelieved or out of a fear of being believed but ignored—to one where many women now feel they may both be heard and believed by those with the power to effect change. Even Anita Hill, who famously testified that Justice Clarence Thomas sexually harassed her when they both worked at the Equal Employment Opportunity Commission as lawyers, has noted the major shift in societal responses to claims of harassment. Hill explained, “In today's atmosphere, there would be more people who would understand my story, who would believe my story, and I think the numbers have changed over the year in terms of people who believe me and support me.”⁶¹

And yet, while much has changed in society about how we respond to claims of sexual harassment, much has also remained the same. Specifically, some women, particularly white women, within the feminist movement, still barely acknowledge or understand the unique, racialized and gendered harassment experiences that women of color face. One of the best means for ensuring that this racialized sexism is seen, understood, and acknowledged within the justice system is to develop and apply a doctrinal framework that rejects false notions of objectivity and facilitates the use of a particularized objective standard. Here, that means a standard that examines the facts of each case from the lens of a reasonable person in the complainant's intersectional and multidimensional shoes. Although support has long existed for a reasonable woman standard in harassment law, the standard must also be rooted in an intersectional and mul-

61. Ricardo Lopez, *Anita Hill on Sexual Harassment: 'Today, More People Would Believe My Story,'* VARIETY (Dec. 8, 2017, 5:54 PM), <http://variety.com/2017/biz/news/anita-hill-uta-sexual-harassment-1202634689/> [<http://perma.cc/WA2V-2C66>].

tidimensional lens in order to capture the different ways that women across intersectional categories may experience any particular event or events. This is a necessary step to achieving equality and inclusion in harassment law.

Like Tarana Burke, the founder of the #MeToo campaign, this Essay calls for both the #MeToo and #TimesUp movements to embrace intersectional and multidimensional understandings of sexual harassment and sexual harassment law. After all, as Burke has made clear,

This work can't grow unless it's intersectional. We [women of color] can't do it alone and they [white women] can't do it alone Until we change [how we interact], any advancement that we make in addressing this issue is going to be scarred by the fact that it wasn't across the board.⁶²

It's time for all our voices to be heard.

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62. Samantha Cooney, *Meet the Woman Who Started #MeToo 10 Years Ago*, TIME (Oct. 19, 2017), <http://time.com/4988282/me-too-tarana-burke-interview/> [http://perma.cc/7BJG-XYP3].