Sexual Harassment and Racial Disparity: The Mutual Construction of Gender and Race

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Sexual Harassment and Racial Disparity: The Mutual Construction of Gender and Race

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As we look at ... patterns of oppression, we may come to learn, finally and most importantly, that all forms of subordination are interlocking and mutually reinforcing.¹

* Professor of Law, St. John’s University School of Law. A.B., Brown University; J.D., Yale Law School. I thank The Journal of Gender, Race & Justice for inviting me to participate in the symposium entitled A Critical Legal Perspective on Entertainment: Sports, Sex, Identity, which inspired me to explore the parallels between sex tourism and sexual harassment. I owe special thanks for the support provided by the Equal Employment Opportunity Commission and its outstanding representatives including William Tamayo, David Greenberg and Pierrette Hickey. My participation in the St. John’s University School of Law Workshop on Law and Statistics, along with the Cornell Law School Feminism and Legal Theory Project Fall 2000 Workshop, has facilitated my work on this Article. But none of this would have been possible without the incredible generosity of Professor Jack Williams, who not only provided me with an appreciation for statistics unparalleled in all my years of “fancy schooling,” but also revealed the magic and limitation of numbers. The following kind souls helped me make sense of the numbers by reading an earlier draft of this Article: Neil Gotanda, Catharine MacKinnon, Brian Z. Tamanaha, John Valery White, and of course, James Q. Walker accompanied by the loveable distraction of Alessandro Q. Walker, Holly Giordano, Sara Jane Haubert, Mark Murphy, Nili Schipper, Dianne Woodburn and especially Franklyn Arthur all provided excellent research assistance.

I. INTRODUCTION

For a number of years, commentators have proffered anecdotal evidence to suggest that women of color figure prominently as sexual harassment plaintiffs. Until recently, a systematic statistical analysis of women’s experiences of sexual harassment by race was largely unavailable. For the first time, this Article comprehensively analyzes Equal Employment Opportunity Commission (EEOC) sexual harassment charge statistics, by looking at data from the last seven years along with Lexis-Nexis and Westlaw electronic reports of sexual harassment complaints for the last twenty years. What immediately becomes apparent in this statistical analysis of sexual harassment charges in the United States is the overrepresentation of women of color and the “under-representation” of White women in the charging parties when compared with their demographic presence in the female labor force. Although a number of factors may very well be causally connected to the disproportionate patterns in female sexual harassment filing statistics by race, primary amongst the causal factors is the powerful influence of racialized gender stereotypes. Yet, sexual harassers rarely articulate the race-based nature of their conduct and may not even be conscious of it. Therefore, this Article draws upon the similar but more racially explicit context of sex tourism to explicate the race-based motives of sexual harassers.

2. See CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION 53 (1979) (describing Black women as “most vulnerable to sexual harassment, both because of the image of black women as the most sexually accessible and because they are the most economically at risk”).

3. My use of the term “under-representation” in the presentation of the racially comparative statistical data is not meant to suggest that White women should be victimized with greater frequency, but solely to depict the ways in which the sexual harassment statistics indicate significantly distinctive patterns for White and non-White women.

4. See infra apps. I-V. The statistical data analyzed in this Article contrasts White women and women of color as an aggregate for two reasons. First, the EEOC data collection only presents statistics for White, Black and “Other Race” women, in which Latinas, Native Americans and Asian Pacific women are collapsed. Telephone Interview with Pierrette Hickey, Director of the Charge Data System Division, EEOC Office of Communications (June 6, 2000). Beyond the pragmatic constraints of not having disaggregated data available for “Other Race” women, a comparative analysis of the ways in which racial stereotypes are used to sexualize women of color as a collective and to imbue their sexualization as an inherently interchangeable commodity, supports the binary comparisons of White women with the collective of women of color. These binary comparisons are not made for the purpose of collapsing the particular experiences of various racial minority groups, but rather for the purpose of illustrating their common oppression.


6. Sex tourism generally refers to the dynamic of traveling to other countries for the purpose of having sexual relations with exotic natives in exchange for money, luxury items, clothing or plane tickets. Kamala Kempadoo, Continuities and Change: Five Centuries of Prostitution in the Caribbean, in SUN, SEX, AND GOLD: TOURISM AND SEX WORK IN THE CARIBBEAN 3, 4 (Kamala
A comparison of racialized sexual harassment in the United States with international sex tourism reveals a parallel dynamic of racial disparity. An analysis of global sex tourism demonstrates that sex tourists disproportionately target women of color because of the lure of racialized gender stereotypes. Similarly, sexual harassers statistically appear to disproportionately victimize women of color as compared to their representation in the labor force. The comparison suggests a similar operation of racialized gender stereotypes that conceptually distinguish “pure” White women from “wanton” women of color. This is a distinction described by Beverly Balos and Mary Louise Fellows in a recent law review article as the “prostitution paradigm.” This Article applies Balos’ and Fellow’s prostitution paradigm to the (hetero)sexual harassment context in order to elucidate the rationale for the seeming racial disparity in rates of sexual harassment.

Part II of this Article examines the empirical evidence that suggests that women of color are disproportionately targeted as victims of sexual harassment in the United States and concludes that the depiction of women of color as prostitutes and as inherently wanton is instrumental to the construction of both gender and race. Part III discusses how the prostitution paradigm is an evident causal factor in the racial disparity of sexual harassment. I examine the parallels between sexual harassment and sex tourism to demonstrate the role of race in the subjugation of all women through the prostitution paradigm. Part IV elaborates on how the statistical analysis of sexual harassment complaints demonstrates the mutual construction of gender and race. I conclude the Article by exploring the multidimensionality of race and gender in the continued evolution of sexual harassment jurisprudence.

II. RACIAL DISPARITY OF SEXUAL HARASSMENT

In a study of 1992 EEOC sexual harassment statistics, the Center for Women in Government at the University of Albany reported that Black women complainants accounted for 14.4% of sexual harassment charges, women of other races (not specified) accounted for 14.7% of sexual harassment charges and White women accounted for 61.9%. Although


8. Although this Article focuses upon the experience of heterosexual women because statistically they are the overwhelming targets of sexual harassment, the racial analysis of the data implicates a more expansive construction of gender that is of significance to all targets of sexual harassment. See infra Part III.

9. Cost of Sexual Harassment to Employers Up Sharply: More Employees are Bringing
White women complainants accounted for the vast majority of EEOC sexual harassment charges, in racially comparative terms, White women are underrepresented as complainants. Specifically, White women accounted for only 61.9% of the sexual harassment charges in 1992, even though they made up 84.8% of all women employed in the civilian labor force in that same year. Furthermore, the data indicates an overrepresentation of women of color as complainants in comparison to their representation in the female labor force. Black women, at the time the studied statistics were gathered, made up only 11.5% of all women employed in the civilian labor force and yet they accounted for 14.4% of the sexual harassment charges. Other women of color only made up 3.7% of women employed in the civilian labor force but accounted for 14.7% of the sexual harassment charges. Particularly troubling is the fact that the 1992 EEOC data were not an aberration.

A. The Statistical Data

My own analysis of EEOC sexual harassment charge statistics from 1992 through 1999 indicates that the race-based disparity in filing charges is a pattern among women who filed EEOC charges. Similarly, after surveying federal court cases from the First through Sixth Circuits containing sexual harassment allegations through summer 2000, I discovered that since the inception of the sexual harassment cause of action, the same racial pattern emerged among female plaintiffs.

In the United States, the amount of variation between the observed numbers of sexual harassment charges by race and the expected number of sexual harassment charges based on racial demographic percentages of the


11. Id. (listing the number of Black women who were employed civilians in 1992 as 5231 and the total number of females employed as 45,381).

12. Compare id. (including women of “other races” in the total number of women employed), with Cost of Sexual Harassment, supra note 9 (finding women of other races accounted for 14.7% of the sexual harassment charges).

13. See infra apps. I-III.

14. This information is available on the electronic databases of Lexis-Nexis and Westlaw.

15. See infra apps. IV-V. I chose to analyze federal sexual harassment complaints originating in the First though Sixth Circuits because those circuits encompass jurisdictions where women of color are fairly represented and are thus better indicators of racial patterns in filing statistics.
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population is considerable for each year of data. The Supreme Court has acknowledged that, as a general rule, for sample sizes larger than thirty, if the difference between the expected value and the observed value is greater than two or three standard deviations, then a social scientist would view the data as not being the result of pure chance. The average sample size for each year of EEOC data analyzed in this Article was 13,051.5, and the average sample size for each circuit of federal cases analyzed was 97. Appendix II illustrates that the standard deviation for White women ranged from 71.5 to 84.4 and from 31.5 to 66.7 for women of color. The statistical probability of such extraordinarily large standard deviations occurring in a normal distribution is approximately zero. Therefore, although a number of factors could plausibly contribute to the racial disparity in sexual harassment charge statistics, the existence of some correlation between rates of sexual harassment and race-based decision-making on the part of harassers is inescapable. What the data suggests, is that sexual harassers target White women as victims at disproportionately lower rates than women of color. This conclusion is consistent with some of the few empirical studies to specifically focus on the influence of race on sexual harassment. Although there is no mechanism to absolutely determine whether the number of complaints of sexual harassment faithfully reflect the actual rates of sexual harassment in society, the sexual harassment charge statistics

16. It is interesting to note that transnational studies of sexual harassment also suggest a racial disparity in sexual harassment victimization. See Azy Barak, Cross-Cultural Perspectives on Sexual Harassment, in Sexual Harassment: Theory, Research and Treatment 263, 276 (William O'Donohue ed., 1997) (enumerating studies in Zimbabwe, Netherlands, Australia and South Africa which suggest a higher incidence of sexual harassment among women of color).


18. See infra apps. II, IV.

19. See Jay Devore & Roxy Peck, Statistics: The Exploration and Analysis of Data 209, 211 (3d ed. 1997) (explaining how the probability that any standard deviation which exceeds 3.89 can practically be considered zero because 99% of the time the variance between an expected value and an observed value is three standard deviations or less, and thus any standard deviation which exceeds that range is an extreme probability); see also R.A. Fisher, Statistical Methods for Research Workers 43 (1946) (observing that the frequency of standard deviations beyond three are exceedingly small).


21. Any analysis of patterns in the filing of legal complaints will contain a certain amount of uncertainty because of the inability to know whether each complaint filed is meritorious, and also how many instances of sexual harassment never resulted in a legal complaint at all. Given the inevitable potential for both over-inclusion and under-inclusion in estimated rates of sexual
suggest a general pattern of racial disparity that is highly significant given its consistency over the years. The analysis of charge statistics also has the advantage of being able to draw upon data generated from one consistent definition of sexual harassment. In contrast, social science researchers have observed widely varying sexual harassment statistics depending on the definition chosen by the designer of a study. Furthermore, the empirical harassment, this study seeks to highlight those general patterns in the data that are so highly suggestive of racial disparity that they are both statistically and legally significant. Just as gross statistical disparities may sometimes constitute prima facie proof of a pattern or practice of discrimination, statistical disparities in the presumed rates of sexual harassment are highly probative of the role of race in the incidence of sexual harassment. See Int'l Bd. of Teamsters v. United States, 431 U.S. 324, 339 (1977) (detailing the value of statistics in pattern or practice discrimination suits under Title VII of the Civil Rights Act of 1964).

22. Data regarding the existence of racial disparity in the increased rates of sexual harassment complaints after the large scale publicity of the Clarence Thomas confirmation hearing also lends greater credibility to the presumed parallel between the racial pattern in sexual harassment charges and the actual dynamics of sexual harassment victimization. From 1992 to 1999 the rate of increase in sexual harassment charges filed by women of color was 99.3%, while the rate of increase for White women was only 35.6%. See infra app. III. In effect, the continued racial disparity in filing rates suggests that the same racial disparity may exist within the actual societal rates of sexual harassment. Moreover, the racial disparity demonstrated in the federal cases analyzed is in all likelihood a conservative depiction of the racial disparity in actual rates of sexual harassment because of my empirical decision to attribute those cases that did not specify the race of the plaintiff to the population of White women plaintiffs. I based this decision on the documented tendency that Whites have to view their Whiteness as invisible and not a race at all. See, e.g., Bonnie Kae Grover, Growing up White in America?, in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR 34, 34 (Richard Delgado & Jean Stefancic eds., 1997) ("White is transparent. That's the point of being the dominant race. Sure, the whiteness is there, but you never think of it. If you're white, you never have to think of it."). Therefore, my count of cases involving women of color overlooks those cases in which a woman of color did not think to specify her race and those instances in which the federal judge did not view a woman of color's racial classification as salient to the sexual harassment complaint being litigated. See infra notes 167-68 and accompanying text (discussing the difficulty women of color have in educating judges about racialized sexual harassment). Given my conservative approach in the collection of the data, the overrepresentation of women of color in federal court case filings is especially remarkable. Furthermore, sexual harassment lawyers have observed that the difficulty judges and juries have in appreciating the permutations and harms of racialized sexual harassment leads to a predisposition for dismissing the cases on summary judgement motions. Interview with Minna J. Kotkin, Director, Brooklyn Law School Federal Litigation Clinic, in Brooklyn, N.Y. (Sept. 11, 2000). Thus, there may very well be a significant number of women-of-color plaintiffs omitted from my empirical count because of the tendency to dismiss intersectional claims and because of the vagaries of judicial inclinations to publish their opinions with commercial electronic publishers like Lexis-Nexis and Westlaw. In short, the racial disparity is more astounding when one considers all the empirical difficulties with using the Lexis-Nexis and Westlaw universe of cases, which under-appreciate the actual numbers of cases brought by women of color.

23. The EEOC defines sexual harassment generally as unwelcome sexual conduct that is explicitly or implicitly made a term or condition of employment. 29 C.F.R. § 1604.11(a)(1) (1994). Quid pro quo sexual harassment occurs when "submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual." 29 C.F.R. § 1604.11(a)(2). A hostile work environment sexual harassment claim recognizes that unwelcome sexual conduct that "unreasonably interfere[s] with an individual's work performance" or creates an "intimidating, hostile, or offensive working environment" can constitute sex discrimination as well. 29 C.F.R. § 1604.11(a)(3).

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alternative of solely examining the data from successfully litigated cases suffers the weakness of grossly underestimating the societal occurrence of sexual harassment. The mechanism that pushes the majority of legal charges to settlement before litigation in court is also present in sexual harassment cases. In addition, the nature of the sexual harassment claim, with its ability to harm the reputation of the victim herself, works to artificially deflate the number of sexual harassment cases because it discourages many victims from filing meritorious charges. Many of those victims who do decide to file a charge are later dissuaded from continuing to pursue their claims. In fact, from 1992 to 1999, 32% to 49% of EEOC sexual harassment charges were administratively closed without any substantive resolution of the charge. Thus, given the known difficulties of pursuing a sexual harassment claim, using EEOC charge statistics and federal court sexual harassment allegations as a rough indicator of the existing patterns of sexual harassment in society may very well underestimate rather than overestimate the actual rate of sexual harassment.

B. Early Explanations for the Statistical Pattern

Before 1992, anecdotal evidence existed indicating that women of color were disproportionately represented among the female population of early sexual harassment complainants. At the time, Kimberle Crenshaw conjectured that the racialized nature of sexual harassment women of color


Charge closed for administrative reasons, which include: failure to locate charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, closed due to the outcome of related litigation which establishes a precedent that makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction.

Id.
experienced made it easier for them, and for Black women in particular, to conceptualize their victimization as sexual harassment, whereas White women might have experienced greater difficulty in articulating their experiences as something other than overly aggressive dating overtures. Since then, political scientist Anne-Marie Marshall’s study of all pivotal sexual harassment cases has provided empirical validation of the anecdotal evidence. Marshall has similarly theorized that Black women’s “heightened consciousness around issues of race may have also made the law a more salient resource” in challenging their experiences of sexual harassment.

After 1992, it became harder to rely upon that conjecture as the sole explanation for the continuing racial disparities in female sexual harassment charge statistics for several reasons. In October 1991, the publicly aired testimony of Anita Hill during the Clarence Thomas Supreme Court confirmation hearing raised public awareness about the nature of sexual harassment. In addition, Congress enacted the Civil Rights Act of 1991, which allows sexual harassment plaintiffs in all states to recover compensatory and punitive damages. Thereafter, the EEOC published a layperson-friendly four page pamphlet entitled Questions and Answers About Sexual Harassment, which started the publication campaign to bring greater awareness of the nature of sexual harassment to the public at large and to the many employers who began instituting sexual harassment policies of their own.

In short, since 1991, not only are all women in the United States better

28. See Kimberle Crenshaw, Race, Gender, and Sexual Harassment, 65 S. CAL. L. REV. 1467, 1470 (1992) (“Racism may provide the clarity to see that sexual harassment is not a flattering or misguided social overture but an intentional act of sexual discrimination that is threatening, and humiliating.”); see also MACKINNON, supra note 2, at 54 (“The stigmatization of all black women as prostitutes may sensitize them to the real commonality between sexual harassment and prostitution.”).


30. Id. at 776 n.24.

31. Cost of Sexual Harassment, supra note 9.

32. Id.

33. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, QUESTIONS AND ANSWERS ABOUT SEXUAL HARASSMENT 1 (1992). The brochure was drafted for the purpose of educating the public in a way not possible with the dense and lawyer-targeted policy guidelines of 1988 and 1990. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, NOTICE N-915-035, POLICY GUIDANCE ON CURRENT ISSUES OF SEXUAL HARASSMENT (1988); U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, NOTICE N-915-050, POLICY GUIDANCE ON CURRENT ISSUES OF SEXUAL HARASSMENT (1990). Since 1991, resources have been produced to educate the public about the nature of sexual harassment. See, e.g., ELLEN BRAVO & ELLEN CASSEDY, THE 9TO5 GUIDE TO COMBATING SEXUAL HARASSMENT: CANDID ADVICE FROM 9TO5, THE NATIONAL ASSOCIATION OF WORKING WOMEN (1992) (describing the problem of sexual harassment and ways to combat it, including a chapter on how to get your employer to adopt a sexual harassment policy).
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informed about the existence of a sexual harassment cause of action, but they are also better educated about the ways in which its manifestations give rise to a remedy at law. The view of sexual harassment as a legal claim is "now part of the national consciousness." In fact, the number of sexual harassment charges increased approximately 112% from 1989 to 1993 (moving from 5623 to 11,908 over the four-year period), with 1992 being the year of the greatest single increase when charges went up 53%. Not only have the annual number of sexual harassment complaints filed with the EEOC more than doubled since 1989, the EEOC reports that sexual harassment is the fastest growing area of employment discrimination. Therefore, the racial disparity in sexual harassment charge statistics can no longer be correlated solely with the "benefit" women of color have in experiencing sexual harassment as a more "easily recognizable" racial hostility.

A number of empirical studies also dispute the premise that women of color are more prone to file sexual harassment charges than White women who experience the same victimization. In fact, those social scientists that have discussed the role of race in sexual harassment observe that women of color may actually have a tendency to under-report instances of sexual harassment. This is true despite empirical studies that suggest that women
of color are disproportionately targeted as sexual harassment victims. In fact, at least one study suggests that White women tend to perceive incidents of sexual harassment as more serious than women of color do, and have a broader range of behaviors that they classify as sexual harassment. Some psychologists theorize that because women of color are accustomed to racist and sexist behavior in the workplace, they may be less prone to immediately filing a sexual harassment complaint. One study in particular found that sexual harassment victims are more likely to use internal coping methods when the harasser is outside of their racial or ethnic group—of particular salience to women of color who are primarily victimized in the workplace by White men. Therefore, when a geographically diverse sample of Black working women was surveyed, the study found that Black women see Black male subordinates and supervisors as more harassing than White males with the same job status. Consequently, no support was found for the hypothesis

SEXUAL HARASSMENT IN THE WORKPLACE: PERSPECTIVES, FRONTIERS, AND RESPONSE STRATEGIES 51, 58-59 (Margaret S. Stockdale ed., 1996) (stating that there is some evidence that Black women are less likely to report rape and less likely to quit work in response to sexual harassment).

41. See Barak, supra note 16, at 277 (describing how social stereotypes of Asian-American, Black and Chicana women encourage sexual harassment); Darlene C. DeFour, The Interface of Racism and Sexism on College Campuses, in IVORY POWER: SEXUAL HARASSMENT ON CAMPUS 45, 48-49 (Michele A. Paludi, ed., 1990) ("The images and perceptions of women of color also increase their vulnerability to harassment."); Murrell, supra note 40, at 54-55 (describing how social stereotypes affect the views of perpetrators of sexual assault and may increase the chances that a woman of color is sexually harassed).

42. Mary Giselle Mangione-Lambie, Sexual Harassment: The Effects of Perceiver Gender, Race and Rank on Attitudes and Actions 104 (1994) (unpublished Ph.D. dissertation, California School of Professional Psychology at San Diego) (on file with author) (finding that non-White women's perceptions of the seriousness of sexual harassment was less than White women's, and in fact, almost equal to men's perceptions).

43. See W. Lawrence Neuman, Gender, Race, and Age Differences in Student Definitions of Sexual Harassment, 29 Wis. SOCIOLOGIST 63 (1992) (finding older White female college students had the broadest definitions of sexual harassment); see also Barak, supra note 16, at 283 (describing a study in which females of color had more lenient definitions of what constituted sexual harassment than White females).

44. See Angela M. Hargrow, Speaking to Our Realities: From Speculation to Truth Concerning African American Women's Experiences of Sexual Harassment 56 (1996) (unpublished Ph.D. dissertation, Ohio State University) (on file with author) (stating that African-American women "may be accustomed to racist and sexist behavior in the workplace and may feel they have to accept the harassing behaviors").


46. See Merit Systems Protection Bd., Sexual Harassment in the Federal Workplace: Is It a Problem? (1981), reprinted in SEXUAL HARASSMENT IN AMERICA: A DOCUMENTARY HISTORY, supra note 25, at 19, 21 (stating that minority women were more likely to be harassed by someone not of their race or ethnicity).

47. Hargrow, supra note 44, at 51-52.
that Black women were more likely to report a White harasser than a Black harasser.\textsuperscript{48} Similarly, another study concluded that while being employed empowers White women to challenge dominant gender role attitudes, it does not have the same effect for women of color and Black women in particular.\textsuperscript{49} In addition, the argument that the racial disparity in charge statistics is primarily the result of the lower socioeconomic status of women of color, can be dismissed by examining the prevalence of sexual harassment across all occupational levels.\textsuperscript{50} Furthermore, one study that measured sexual harassment across occupational groups still found that 16.6\% of White women indicated they had been sexually harassed in comparison to 48.6\% of Black women.\textsuperscript{51} This finding is consistent with the work of noted sociologist James Gruber, who asserts that occupational status does not greatly influence women's responses to sexual harassment.\textsuperscript{52} Nor does the education

\textsuperscript{48} Id. at 50.


\textsuperscript{50} See Merit Systems Protection Bd., supra note 46, at 20 ("Sexual harassment is widely distributed among women and men of various backgrounds, positions and locations "); Barak, supra note 16, at 266 (describing prevalence of sexual harassment of female university students); Elizabeth Grauernolz, Sexual Harassment in the Academy: The Case of Women Professors, in SEXUAL HARASSMENT IN THE WORKPLACE: PERSPECTIVES, FRONTIERS, AND RESPONSE STRATEGIES, supra note 40, at 29, 32-33 (detailing survey data from 210 women faculty at Purdue University which suggests that sexual harassment is relatively widespread); James E. Gruber, An Epidemiology of Sexual Harassment: Evidence From North America and Europe, in SEXUAL HARASSMENT: THEORY, RESEARCH, AND TREATMENT, supra note 16, at 84, 88 (concluding that there is a universality of sexual harassment experiences for women across occupational status in the United States and internationally); Elvia R. Arriola, "What's the Big Deal?" Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985, 22 COLUM. HUM. RTS. L. REV. 21 (1990) (analyzing sexual harassment in blue collar construction industry); Maria M. Dominguez, Sex Discrimination & Sexual Harassment in Agricultural Labor, 6 AM. U. J. GENDER & L. 231, 254-55 (1997) (describing probability samples of women farm workers who experience sexual harassment); David N. Laband & Bernard F. Lentz, The Effects of Sexual Harassment on Job Satisfaction, Earnings, and Turnover Among Female Lawyers, 51 INDUS. & LAB. REL. REV. 594, 597 (1998) (estimating from an American Bar Association survey that nearly two-thirds of female lawyers in private practice, and nearly half of those in corporate or public agency settings, reported experiencing or observing incidents of sexual harassment on the job); Maya Alexandri, Note, The Student Summer Associate Experience with Harassing Behaviors: An Empirical Study and Proposal for Private Party Action, 19 WOMEN'S RTS. L. REP. 43 (1997) (describing survey of summer associates who experienced sexual harassment).

\textsuperscript{51} Barak, supra note 16, at 277. Furthermore, the majority of working women of all races in the United States employed in private industry are employed as office and clerical workers. See U.S. Equal Employment Opportunity Comm'n, Occupational Employment in Private Industry by Race/Ethnic Group/Sex and by Industry, United States, 1998, http://www.eeoc.gov/stats/jobpat/tables-1.html (Sept. 21, 2000) (detailing the statistics which demonstrate that 25.4\% of White women and 23.5\% of women of color in private industry are employed as office and clerical workers).

\textsuperscript{52} Gruber & Smith, supra note 25, at 556; see also Hargrow, supra note 44, at 55 (concluding that job type was not highly related to rate of sexual harassment for geographically diverse study of 166 African-American working women).
level of the victim appear to have a significant impact on victim selection.\textsuperscript{53} In contrast, Gruber states that the severity of harassment is a stronger predictor of a woman's willingness to report the incident.\textsuperscript{54} What remains to be explored is the premise that women of color's disproportionate filing of sexual harassment complaints may be a result of enduring more severe experiences of sexual harassment, which thereby compel formal resolution.\textsuperscript{55} But whether the racially disproportionate filing statistics can be explained as a consequence of greater severity or as a reflection of a higher rate of sexual harassment for women of color, both scenarios implicate the central importance of racial attitudes in sexual harassment victimization.

III. PROSTITUTION PARADIGM AS A CAUSAL FACTOR

Professors Beverly Balos and Mary Louise Fellows theorize that assumptions about prostitution underlie societal attitudes about violence against women.\textsuperscript{56} Balos and Fellows argue that there is a "continuum of violence" against women made up by sexual harassment, domestic abuse, and rape.\textsuperscript{57} The response to the continuum of violence is informed by what they refer to as a "prostitution paradigm."\textsuperscript{58} In effect, the prosecution of violence against women reflects a paradigm in which a dichotomy between "respectable" and "degenerate" women is constructed, preserving legal protection only for those women who successfully demonstrate their respectability by distancing themselves from the image of prostitution.\textsuperscript{59}

The sexual harassment context particularly illustrates the prostitution paradigm in that sexual harassers frequently equate their victims with

\textsuperscript{53} See Bails, supra note 20, at 46 (finding "that the education of the female victims does not appear to have a significant impact on victim selection").

\textsuperscript{54} Gruber & Smith, supra note 25, at 552-53.

\textsuperscript{55} See Gruber & Bjorn, supra note 39, at 284-85 (observing that in a study of women who work on the assembly line in the auto industry, Black women were more severely and frequently harassed); Deborah Ann Gerrity, Sexual Harassment's Effects on Emotional and Occupational Functioning of Female University Employees 113 (1994) (unpublished Ph.D. dissertation, University of Maryland) (on file with author) (noting that in a study of 649 female employees of a large, public, mid-Atlantic university, African-American women were more likely to report incidents of quid pro quo harassment than White women); Barbara Ann Rosen, Sexual Harassment of High School Females: Its Relation to Race/Ethnicity, Socioeconomic Status, and School Characteristics 70-71 (1994) (unpublished Ph.D. dissertation, Rutgers, the State University of New Jersey) (on file with author) (describing how in a study of 361 incoming freshman at a women's college, non-Whites (excluding Asians) had a significantly higher prevalence of the most severe forms of sexual harassment).

\textsuperscript{56} Balos & Fellows, supra note 7, at 1280.

\textsuperscript{57} Id. at 1229.

\textsuperscript{58} Id. at 1231, 1236.

\textsuperscript{59} Id. at 1231. See also Mary Louise Fellows & Sherene Razack, The Race to Innocence: Confronting Hierarchical Relations among Women, 1 J. GENDER RACE & JUST. 335, 348 (1998) (articulating the respectability/degeneracy dichotomy in relations among women).
women in prostitution and refer to prostitution in the victimization of their
targets. Catharine MacKinnon, the scholar who most influenced the legal
understanding of sexual harassment as a form of gender discrimination,
stated early on that a “great many instances of sexual harassment in essence
amount to solicitation for prostitution.” There appears to be, at least
implicitly, some judicial acceptance of the prostitution paradigm. For
example, courts continue to consider a plaintiff’s provocative speech and
dress in the assessment of whether the harassment was unwelcome
conduct. This legal standard condemns those women whose speech and
compact remotely resemble the stereotypical conduct of women in
prostitution.

Critical to the Balos and Fellows theory is their observation that societal
reliance upon racialized gender stereotypes is instrumental in the
maintenance of the prostitution paradigm. Women of color are stereotyped
as over-sexed and wanton and thus the quintessential prostitute, in contrast
to the depiction of White women as inherently respectable and pure. These
racialized stereotypes motivate the disproportionate recruitment of
prostitutes from communities of color.

Thus, Catharine MacKinnon’s early observation that Black women are
the most vulnerable to sexual harassment, in part because of societal
stereotypes about their sexual accessibility, may be relevant in analyzing
the racial disparities in sexual harassment charges by all women of color. I
am not suggesting that White women are infrequently targeted for sexual
harassment. In fact, White women have filed a significantly greater total
number of sexual harassment claims each year than women of color.

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60. *Id.* at 1235.
61. *See* Marshall, supra note 29, at 762, 786-87 (describing MacKinnon’s involvement in
this effort).
62. *MACKINNON, supra* note 2, at 159.
63. *See* Balos & Fellows, supra note 7, at 1232-34 (discussing cases where courts have held
that provocative speech and dress are not per se inadmissible in sexual harassment cases, and that
"provocatory conduct" by a wife murdered by her husband can help her husband have his murder
conviction repealed).
64. *Id.* at 1269-73.
65. *Id.*
pornography has fostered an environment where Black women are targeted for prostitution).
67. *MACKINNON, supra* note 2, at 53 (stating that Black women are most vulnerable to
sexual harassment because of the idea that Black women are “sexually accessible” and because they
are economically at risk).
68. *See infra* app. I fig. I (detailing the mean and median figures for filing EEOC sexual
harassment charges as a mean of 7593 and a median of 7852 for White women from 1992-1999, and
as a mean of 4344 and a median of 4656 for women of color as a collective for that same
timeframe).
the racially disproportionate charge rates may suggest is that the social meaning of sexual harassment has a racial component. Accordingly, racialized sexual harassment is what happens to White women even if they are not cognizant of it in that way. This is true because being treated as a White woman has everything to do with how women of color are treated. This is not to suggest that all women experience sexual harassment in the same way, but rather to underscore how race has everything to do with sexual harassment generally. In other words, when White women are sexually harassed in order to maintain the workplace as a masculine domain, male peers and supervisors treat them “like colored women.” In short, all women are policed and subjected to the imposition of gender norms, with the threat of becoming ensnared by the prostitution paradigm. The racial disparity in the data underscores the importance of examining the link between race and gender in the use of sexual harassment as a “technology of sexism.” This is significant to all concerned about societal oppression.

Katherine Franke uses the term “technology of sexism” in part to underscore the role of sexual harassment in constructing the gender of both the harasser and the harassed by reinforcing gender stereotypes. As Franke articulates it, sexual harassers feminize their victims by treating them as sex objects rather than competent employees. In so doing, sexual harassers masculinize themselves by exercising the power to inscribe femininity on the victim. In this way, sexual harassment regulates gender. The empirical evidence of racial distinctions in the use of sexual harassment illustrates that race is strategically deployed in the regulation of gender as well. Because there is a pragmatic constraint in obtaining data that overtly illustrates the race-based motivations of sexual harassers, it is especially important to consider the historical underpinnings of the role of race in constructing gender more generally.

69. See Martha R. Mahoney, What Should White Women Do?, in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR, supra note 22, at 642, 643 (“[R]acism is so deeply entwined and so profoundly implicated in all structures of gender oppression that it has harmed white women even as it has brought us privilege in many ways, so that we will never find freedom until we help transform all of these power relationships.”).

70. MACKINNON, supra note 2, at 30 (observing that “sexual harassment can be both a sexist way to express racism and a racist way to express sexism”).

71. Katherine M. Franke, What’s Wrong With Sexual Harassment?, 49 STAN. L. REV. 691, 693 (1997) (“Sexual harassment is a technology of sexism. It is a disciplinary practice that inscribes, enforces, and polices the identities of both harasser and victim according to a system of gender norms that envisions women as feminine, (hetero)sexual objects, and men as masculine, (hetero)sexual subjects.”).

72. Id. at 762-71.

73. Id. at 764.

74. Id.
A. Historical Backdrop to the Prostitution Paradigm

Cheryl Harris has observed:

[S]lavery was the primordial site of the production of racial patriarchy. Racial patriarchy describes that social, political, economic, legal, and conceptual system that entrenched the ideology of white supremacy and white male control over women's reproduction and sexuality.

... 

Indeed, through the rigid construction of the virgin/whore dichotomy along racial lines, the conception of womanhood was deeply wedded to slavery and patriarchy and the conduct of all women was policed in accordance with patriarchal norms and in furtherance of white male power. 

Nor did the power of racial patriarchy ebb after slavery was abolished. Agents of racial oppression like the Ku Klux Klan organized themselves to simultaneously police gender norms in the service of White male privilege. To be specific, although the Ku Klux Klan's stated mission was and is the maintenance of White supremacy, the Klan carried out its mission by regulating gender norms with continual assessments of White women's reputations it sought to "protect." The Klan often sought retribution for any spurious allegation of a Black man communicating with a White "lady," but did not concern itself for the most part with Black male interactions with "bad" White women or any Black woman. In addition, class distinctions across gender often informed which White women were classified as "ladies" or as "bad." Historian Martha Hodes terms the strategic uses of race and gender constructions in the expression of Klan violence "the sexualization of Reconstruction politics." This tactic involves the conflation of manhood and political rights and served to instill the fear that Black male suffrage meant Black male access to the privileged domain of


77. Id. at 162.

78. Id. at 162-63.

79. Id.

80. Id. at 165.
White womanhood.\textsuperscript{81}

The institution of Jim Crow racial segregation gendered race by segregating all Blacks from the purity of White women. Barbara Welke's analysis of the racial segregation of public transportation illuminates how public conveyances were racially segregated to preserve a White "ladies" train car.\textsuperscript{82} Meanwhile, Black women, who were presumed to be wanton and often accused of being prostitutes, were relegated to the wilds of the racially integrated male cars where they risked unwanted attention from male travelers.\textsuperscript{83} "A woman both confirmed and protected her respectability by riding in the ladies' car."\textsuperscript{84} And while many Black women were unsuccessful in their attempts to legally challenge their obstruction from the "ladies car," those Black women who were light-skinned, modestly dressed and demure in presence, were often able to convince White male jurors and trial judges of the impropriety of denying them admission to the "ladies car."\textsuperscript{85} Such women were able to mitigate their racial classification with their hyper-feminized and thus White-like aspects.\textsuperscript{86} Thus, there is not only a rich history of the use of race to inscribe gender norms, but also of the use of gender to enforce race. What figures prominently in that history is the paradigm of the Black woman as innate prostitute.\textsuperscript{87}

The use of the prostitution paradigm in the mutual construction of race and gender is not unique to the sexualization of Black women. Asian Pacific women and Latinas have also been historically positioned as lascivious "others."\textsuperscript{88} Racial disparity in sexual harassment continues the historical

\textsuperscript{81} Id. at 165-67; see also GLENDA ELIZABETH GILMORE, GENDER AND JIM CROW: WOMEN AND THE POLITICS OF WHITE SUPREMACY IN NORTH CAROLINA, 1896-1920, at 61 (1996) (stating that "[i]n the 1890's, southern middle-class white men embraced the racialization of manhood," which equated masculinity with Whiteness).

\textsuperscript{82} Barbara Y. Welke, When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to Plessy, 1855-1914, 13 L. & HIST. REV. 261, 276-77 (1995).

\textsuperscript{83} Id. at 276.

\textsuperscript{84} Id. at 278.

\textsuperscript{85} Id. at 294.

\textsuperscript{86} See Ruth Frankenberg, White Women, Race Matters: The Social Construction of Whiteness, in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR, supra note 22, at 632, 633 ("Similarly, whiteness, masculinity, and femininity are coproducers of one another, in ways that are, in their turn, crosscut by class and by the histories of racism and colonialism.").

\textsuperscript{87} See Abdul R. JanMohamed, Sexuality On/Of the Racial Border: Foucault, Wright, and the Articulation of "Racialized Sexuality," in DISCOURSES OF SEXUALITY: FROM ARISTOTLE TO AIDS 94, 112 (Donna C. Stanton ed., 1992) ("[W]ithin the discursive formation of racialized sexuality, the process of racialization is always already a process of sexualization, and the process of sexualization is also always already—or at least functions as if it were—a process of racialization.").

\textsuperscript{88} See, e.g., Sumi K. Cho, Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong, 1 J. GENDER RACE & JUST. 177, 190-95 (1997) (describing stereotypes of Asian women, including beliefs that they are exotic, masochistic and "the antidote to visions of liberated career women"); Maria L. Ontiveros, Three Perspectives on Workplace Harassment of Women of Color, 23 GOLDEN GATE U. L. REV. 817, 819-20 (1993)
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trajectory, with its predisposition for viewing women of color as innate prostitutes.

B. The Sex Tourism Comparison: Overt Expression of Racialized Gender Stereotypes

In the absence of widespread admissions from sexual harassers as to the race-based nature of their gender discrimination, an examination of the separate context of sex tourism can be quite helpful. The sex tourist characteristic of disproportionately targeting women of color provides a striking parallel with the racial disparity in sexual harassment victimization. It is this parallel that furnishes the ability to more deeply assess the unspoken racialized motivations of sexual harassers. Unlike the population of sexual harassers, the community of male sex tourists is overt and public about the racialized sexual fantasies that motivate them. What the comparison reveals is the centrality of "racialized commodification" in the maintenance of the prostitution paradigm.

1. Sex Tourism Defined

Sex tourism generally refers to the growing phenomenon, in this era of globalization, of travel to other countries for the purpose of having sexual relations with exotic natives "in exchange for money, luxury items, clothing, or a ticket off the island." The term "sex tourism" is widely associated with organized sex tours, often conjuring up images of groups of middle-aged businessmen being shepherded into state-sanctioned brothels in South Korea or go-go bars in the Philippines and Thailand. However, if "sex tourism" is used as a broad term to describe the activities of individuals who, whether or not they set out with this intention, use their economic power to attain powers of sexual command over local women, men and/or children while travelling for leisure purposes, it refers to a much wider range of people,

(describing stereotypes of Asian women as exotic and submissive, and Latinas as "naturally sexual").

89. Even though men who sexually harass women of color often express racial hostility in the act of sexual victimization, they do not always overtly articulate the race-based gender stereotypes that inform the sexual harassment of women of all races. See, e.g., Kathryn Abrams, Title VII and the Complex Female Subject, 92 Mich. L. Rev. 2479, 2480 (1994) (stating that male employers may harass women employees either as an expression of hostility toward women or as a result of characterizing women as sexual objects).

90. See infra Part IV for discussion of "racialized commodification."

91. Kempadoo, supra note 6, at 4. 
sexual practices and geographical locations.  

Sociologists who have interviewed and studied sex tourists have correctly noted that the more expansive notion of sex tourism, which looks beyond the “formal” prostitution context and is instead inclusive of the informal sexual exchanges which commodify women, is more capable of uncovering the gendered and racialized power dynamics of globalization. This is because examining sex tourism is itself an interrogation of the “relations between sex and power, men and women, first and third worlds, and sexual relations across state, national, racialised and culturalised boundaries.” The expansive conceptualization of sex tourism encompasses men who do not acknowledge the instrumental nature of their relationships with “native women” while on vacation. British sociologist Julia O’Connell Davidson labels these men “Right On Backpackers” or “Mr. Averages” because they do not consciously seek organized sex tour vacations but instead look for tourist destinations where the local people are reputed to be “friendly” and thus amenable to a “holiday romance.” They want to maintain the fiction that the local women are attracted to them because of their personal charm and not their wallets and status as capitalist foreigners. And in turn, many of the “native” women with whom they interact want to distance themselves from the stigma of prostitution.

2. Prevalence of Sex Tourism

An examination of the tourism industry demonstrates that sex tourism is not an anomaly but an integral component of the international tourism


93. Margaret Jane Radin, Justice and the Market Domain, in MARKETS AND JUSTICE: NOMOS XXXI, at 165, 167 (John W. Chapman & J. Roland Pennock eds., 1989). “Commodification” is the process whereby objects, relationships and even people are objectified and viewed as goods or commodities that can be subject to a type of market valuation. Id. Although there has existed an ongoing debate in feminist circles as to whether sex work empowers or oppresses women, there is little contention over the understanding that sex work does package women and their sexuality as commodities to be sold. See, e.g., Martha C. Nussbaum, Whether from Reason or Prejudice: Taking Money for Bodily Services, 27 J. LEGAL STUD. 693, 707-12 (1998) (arguing that even though prostitution is bound up with gender hierarchy and limits women’s autonomy, the very same can be said of most labor associated with poor women).

94. Kempadoo, supra note 6, at 4, 18-23.


97. Id.
industry, and is prominent in globalization and the crossing of borders for monetary exchange. Sex tourism is just one component of the globalization dynamic that makes women of color another commodity to purchase and to sometimes import as mail-order brides and domestic or sexual servants. Many foreign countries not only tolerate sex tourists as a necessary evil accompanying the lucrative tourism industry, but also implicitly market their women as part of the allure of vacationing there. For instance, advertisements for Jamaica have frequently featured Black female entertainers bending under limbo bars, with the camera angle focused on the area between their legs. Similarly, in the Dominican Republic where Catholic ideology pervades the society and represses sexuality, tourism posters blatantly display “exotic” women as the enticement. The

98. CYNTHIA ENLOE, BANANAS, BEACHES & BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS 36 (1989); see also Amalia Lucia Cabezas, Pleasure and Its Pain: Sex Tourism in Sosua, the Dominican Republic (Prostitution, Tourism, Informal Economy) (1998) (unpublished Ph.D. dissertation, University of California at Berkeley) (on file with author) (describing how global capitalism creates an environment where women can sell sexual services at far better rates than other forms of labor, and how this practice forges transnational linkages to a globalized economy).

99. At its most expansive, “globalization” can be defined as the heightened awareness of international connections amongst nation-states and corporate interests. ROLAND ROBERTSON, GLOBALIZATION: SOCIAL THEORY AND GLOBAL CULTURE 8 (1992) (describing globalization as including “the intensification of consciousness of the world as a whole”). In the economic context, globalization refers to the increasing economic interdependence of nations in the global economy. This envisions a universal marketplace without borders in which the free market has an infinite number of buyers and sellers for the exchange of goods. The hope is that in transcending national boundaries the free market will enable companies to operate more efficiently and prosperously, with benefits for workers and consumers alike. JEREMY BRECHER & TIM COSTELLO, GLOBAL VILLAGE OR GLOBAL PILLAGE: ECONOMIC RECONSTRUCTION FROM THE BOTTOM UP 15-16 (1994).

100. See Donna R. Lee, Comment, Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions, 5 ASIAN L.J. 139 (1998) (discussing the Asian Pacific mail-order bride industry); see also Ontiveros, supra note 88, at 820-21 (detailing the Sonoma County District Attorney's account of women imported from rural Mexican villages to satisfy the sexual demands of men in the United States).


102. A. Lynn Bolles, Women as a Category of Analysis in Scholarship on Tourism: Jamaican Women and Tourism Employment, in TOURISM AND CULTURE: AN APPLIED PERSPECTIVE 77, 84 (Erve Chambers ed., 1997); see also Shirley Campbell et al., “Come to Jamaica and Feel All Right”: Tourism and the Sex Trade, in SUN, SEX, AND GOLD: TOURISM AND SEX WORK IN THE CARIBBEAN, supra note 6, at 125, 135 (“[T]here is a particularly unsubtle way of marketing Jamaican tourism and a strong suggestion that sex is readily available in Jamaica.”).

103. Amalia L. Cabezas, Women's Work is Never Done: Sex Tourism in Sosua, the Dominican Republic, in SUN, SEX, AND GOLD: TOURISM AND SEX WORK IN THE CARIBBEAN, supra note 6, at 93, 110.

The images that suggest wildly sexual Dominican women betray more than a few national anxieties. It is more profitable for the state, in conjunction with transnational corporations, to sell a tourism destination by appealing to sexual desire. Such images stimulate desire for an exotic “other” constituted in racial, sexual, and national differences. Dominican women are commodities to be sold to Western consumers.
welcoming and exotic female is the image presented as the lure for travel. The promotion of women of color as exotic is particularly disturbing when one appreciates the magnitude of the tourism industry and the important role of sex within the industry.

The women's organization Equality Now estimates that sex tourism is a multibillion-dollar industry.\textsuperscript{104} In Thailand alone sex tourism is the primary catalyst for the four billion dollar-a-year tourist industry, responsible for the modernization process known as the "Thai Economic Miracle."\textsuperscript{105} The international tourism industry eclipsed the oil industry in number of employees by the mid-1980s.\textsuperscript{106} Today it has become one of the world's largest industries.\textsuperscript{107} For many countries, international tourism is an indispensable source of needed foreign exchange earnings.\textsuperscript{108} In fact, the World Bank actively promotes international tourism to those third world countries to which it makes loans as a source for all-important foreign currency.\textsuperscript{109} As Cynthia Enloe states, "[T]he international politics of debt and the international pursuit of pleasure have become tightly knotted together."\textsuperscript{110} This is particularly so because of the great economic dependence many developing nations have upon tourism.\textsuperscript{111} However, it should be noted that the tourism industry often serves the economic and political interests of local elites rather than the poor who actually service international tourists.\textsuperscript{112} In the tourism industry, as in other aspects of globalization, "the bulk of participants in the global economy are ultimately denied relevance."\textsuperscript{113} Indeed, a number of commentators have analyzed the

\begin{itemize}
  \item \textsuperscript{104} Equality Now, \textit{Sex Tourism: "Real Sex with Real Girls, All for Real Cheap,"} at http://www.equalitynow.org/action_eng_12_1.html (Dec. 1996).
  \item \textsuperscript{105} RYAN BISHOP & LILLIAN S. ROBINSON, \textit{Night Market: Sexual Cultures and the Thai Economic Miracle}, at vi (1998).
  \item \textsuperscript{106} ENLOE, \textit{supra} note 98, at 20.
  \item \textsuperscript{107} M. Estellie Smith, \textit{Hegemony and Elite Capital: The Tools of Tourism}, in \textit{TOURISM AND CULTURE: AN APPLIED PERSPECTIVE}, \textit{supra} note 102, at 199, 200.
  \item \textsuperscript{108} See \textit{WORLD TOURISM ORG.}, \textit{TOURISM HIGHLIGHTS 2000}, at 15 (2000) (observing that tourism ranks in the top five export categories for eighty-three percent of countries and is the leading source of foreign exchange in at least thirty-eight percent of countries).
  \item \textsuperscript{109} O'CONNELL DAVIDSON, \textit{supra} note 92, at 74.
  \item \textsuperscript{110} ENLOE, \textit{supra} note 98, at 32.
  \item \textsuperscript{112} See Smith, \textit{supra} note 107, at 205 (describing how tourism helps the elite economically by increasing control over the poor).
  \item \textsuperscript{113} Kunal M. Parker, \textit{Official Imaginations: Globalization, Difference, and State-
international human rights aspects of sex tourism and the need for legal prosecution of sex tourists who target children. One of the troublesome aspects of child sex tourism that intersects with the subject of this Article is the way in which racial and cultural differences are used by the sex tourists to flout any notion of an age of consent. Where women are racialized as

Sponsored Immigration Discourses, 76 OR. L. REV. 691, 724 (1997). Critics of globalization assert that embedded in the concept is a “myth of oneness” that overlooks the gender and race hierarchies inherent in the global economy, which is structured to exploit poor working women. Zillah Eisenstein, Stop Stomping on the Rest of Us: Retrieving Publicness from the Privatization of the Globe, 4 IND. J. GLOBAL LEGAL STUD. 59, 63-64 (1996); see also ANNETTE FUENTES & BARBARA EHRENREICH, WOMEN IN THE GLOBAL FACTORY (1983) (describing the impact of the “global factory” on women in various parts of the world); Lewis, supra note 111, at 312 (“Women of color struggle to survive within their own rural villages, urban centers, and nation-states, but their hard-won participation at these levels can be undermined by the global fluidity of capital and culture.”). The corporate efficiencies that are achieved through globalization only benefit a very small elite and are tied to the decline in working and social conditions for workers world-wide, because globalization is premised on the mobility of capital—in other words, the flexibility of moving corporate operations from one country to another in search of the cheapest wages. BRECHER & COSTELLO, supra note 99, at 16, 24, 51-53 (labeling the consequences of globalization as the “race to the bottom”). In this way, the modern transformation from domestic to foreign production, known as globalization, starts to look like old-fashioned imperialism. Hope Lewis, Lionheart Gals Facing the Dragon: The Human Rights of International Black Women in the United States, 76 OR. L. REV. 567, 571 (1997). The wide-scale protests that recently took place in Seattle, Washington and Washington, D.C. at the meetings of the World Trade Organization, the International Monetary Fund and the World Bank were all centered on the harms of globalization. Margaret Graham Tebo, Power Back to the People, A.B.A. J., July 2000, at 52.


115. See, e.g., Margaret A. Healy, Note, Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?, 18 FORDHAM INT’L L.J. 1852, 1857-58, 1912 (1995) (observing that the U.S. government does not enforce the 1994 Child Sexual Abuse Prevention Act, which makes it illegal to travel across state lines or to a foreign country to engage in sexual activities and similar acts with minors, because of the intimate connection between the lucrative tourist industry and sexual activities with minors).

116. Madeleine Mercedes Plasencia, Internet Sexual Predators: Protecting Children in the
inherently libidinous and thereby viewed as sexual objects without autonomy, very little separates women from girls. 117

3. Race-Based Nature of Sex Tourism

The attraction of international sex tourism is at the heart of what I term "the politics of the exotic," where tourists view people of other cultures and races as exotic objects to be experienced. 118 Habitual sex tourists are predominantly White heterosexual men 119 from the United States, Canada, Australia, and Western Europe who "have very specific 'racialised'-sexual fantasies. They travel in order to secure cheap, easy, and safe sexual access to 'Oriental,' Asian, Black [and/or Latin(a) women, men and/or children." 120 In fact, the entirety of the discourse promoting sex tourism is embedded in race-based sex stereotypes. 121 For instance, guidebooks are

Global Community, 4 J. GENDER RACE & JUST. 15, 28 (2000) (describing an Internet site that provides information about the age of consent in each of the fifty states and in countries all over the world).

117. See Pettman, supra note 95, at 97, 104-05. The international lobby for prosecution of child sex tourists is an example of the political aspect of globalization. Id. In the political context, globalization refers to the convergence of interests in human rights values across borders. Alex Y. Seita, Globalization and the Convergence of Values, 30 CORNELL INT'L L.J. 429, 430-31 (1997). In other words, the political goal of globalization is to assist in the protection of human rights by furthering economic development and enhancing international pressure to conform to universal standards. Elizabeth Spahn, Shattered Jade, Broken Shoe: Foreign Economic Development and the Sexual Exploitation of Women in China, 50 ME. L. REV. 255, 258 (1998).

118. See Kempadoo, supra note 6, at 14 ("Characteristic also of sex work related to the tourism industry is the centrality of racialized fantasies and desires among the clients . . . .").

119. This Article focuses on the male heterosexual as the quintessential sex tourist because of their predominance as sex tourists. It should be noted that gays, lesbians, and heterosexual women have also been observed as the occasional sex tourist with particular racial fantasies. See Cabezas, supra note 103, at 100-01 (describing the "sanky-pankies," who are male sex workers who have worked for homosexual men as well as heterosexual women).

120. O'Connell Davidson, supra note 96, at 42. This same racially-gendered dynamic informs the impetus for international mail-order brides and the importation of women of color from abroad to work in the brothels of economically advantaged countries. Pettman, supra note 95, at 97.

121. "[A] stereotype is an exaggerated belief associated with a category. Its function is to justify (rationalize) our conduct in relation to that category," Gordon W. Allport, The Nature of Prejudice 191 (1954). Those who have studied the role of stereotyping in the perpetuation of racism note that "stereotypes undermine the individual by promoting unreasonable or untrue generalizations; they shortcut the process of being discriminating." Anita Cava, Taking Judicial Notice of Sexual Stereotyping, 43 Ark. L. Rev. 27, 28 (1990). The objective of stereotyping is "to make racism, sexism, and poverty appear to be natural, normal, and an inevitable part of everyday life," as well as to "maintain[] interlocking systems of race, class, and gender oppression." Patricia Hill Collins, Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment 68 (1991); see also Linda L. Ammons, Mules, Madonnas, Babies, Bathwater: Racial Imagery and Stereotypes, in Critical White Studies: Looking Behind The Mirror, supra note 22, at 276, 277 (according to scientists who study stereotypes, Blacks are consistently described less favorably than Whites).

The subtlest and most pervasive of all influences are those which create and maintain the repertory of stereotypes. We are told about the world before we see it. We imagine
made easily accessible through mainstream internet sales on websites like Amazon.com, and are often dedicated to advising sex tourists such as Fantasy Islands: A Man's Guide to Exotic Women and International Travel. These websites and guidebooks describe themselves as appealing to "the man who is attracted to women from different cultures, who wants to explore relationships with a woman who can offer a unique insight into life." They also rank Asia, Brazil, Mexico, the Caribbean, and Costa Rica as the best locations to meet "good girls, bad girls, and good girls you convince to be bad girls!" Sex tourism websites creators and guidebook writers attempt to justify the existence of these media: "If a man is attracted to women of a certain racial and cultural background, what's wrong with finding them overseas?" Missing from this convenient rationalization is any explanation of why a fuller spectrum of culturally different women is not targeted for sex tourism. In other words, women in France, Italy, and Spain are culturally different from many men in the United States. However, the sexual availability of these French, Italian, and Spanish women does not figure prominently in their countries' appeal as major tourist destinations. Instead, a large percentage of sex customers seek sex workers whose racial, national, or class identities are different from their own. In fact, sociologists who have performed empirical surveys of sex tourists have observed the racial disparity in travel location preferences.

most things before we experience them. And those preconceptions, unless education has made us acutely aware, govern deeply the whole process of perception.

Id. at 276. Furthermore, once an individual resorts to stereotyping as a mechanism for explaining societal differences, such stereotypes become an entrenched part of the individual's cognition. Linda Hamilton Kreiger, The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity, 47 STAN. L. REV. 1161, 1203 (1995).


123. Id.; see also http://www.tsmtravel.com (travel and the single male website); http://www.ectasytour.com (Dominican Republic sex tourism website); http://www.singletravel.com (international sex tourism website); http://www.gentlemensvacationclub.com (international sex tourism website).


125. WILSON ET AL., supra note 122, at 7.

126. France, Spain, and Italy consistently rank as three of the countries with the highest annual volume of international tourists, closely followed by the United States. See WORLD TOURISM ORG., supra note 108, at 8; see also World Tourism Org., World Tourism Results Revised Upwards, at http://www.world-tourism.org/omt/pressrel/00_5_111.htm (May 11, 2000) (detailing the rates of 1999 international arrivals by country, which demonstrates that more international tourists visited France and Spain than any other country).


128. Id.
tourists are conscious of the racial specificity of their activity, as best exemplified by the article for sex tourists entitled *Why No White Women?*, which states:

Q. Is it because white women demand more (in terms of performance) from their men during Sex? and white men cannot deliver?

A: In my case, it’s just that my dick is not long enough to reach them up on the pedestal they like to stand on.  

It is particularly clear that mere coincidence does not explain why sex tourists gravitate towards destinations in which women of color predominate, especially when one considers the ways in which histories of militaristic imperialism and European colonialism have positioned women of color as natural-born sex workers. In the Caribbean context, for instance, scholars have long noted:

Prostitution in the Caribbean is inextricably tied to the power and control exerted by European colonizers over black women since the sixteenth century . . . .

. . . .

. . . [R]acialized, colonized masculine power rested in part on the ideological constructions of black slave women in the Caribbean as sexually promiscuous and immoral and on notions that they were by nature “hot constitution’d” and sensuous in an animal-like way, lacking all the qualities that defined “decent” womanhood or women of “purity of blood.”

Similarly, U.S. military interaction with Asian countries has generated a distinct set of racialized gender stereotypes. The stereotypes of Asian women as submissive and sexually desirable have promoted the sex tourism markets. In fact, sex tourism literature draws upon the histories of imperial relationships to entice customers as illustrated by statements about why military and businessmen prefer Asian women.

129. *Id.* at 45.

130. Kempadoo, *supra* note 6, at 5.


132. *Wilson et al.*, *supra* note 122, at 10, 120. Other scholars have also analyzed the way in which sex tourists socially construct nations of color as feminine in order to reaffirm their masculinity in their presumed colonial conquest of the inhabitants through the vehicle of the sex
Furthermore, sex tourism is viewed as “safe” because the sex tourist gets to enjoy sexual access to a racialized “other” without risking the censure of his neighbors, friends and colleagues or without having to confront his desire for the “other.” While on holiday outside of the continental United States, the North American sex tourist can “shed civilization’s constraints” and be free from the standards of behavior imposed by presumably respectable White women back home. The current Cuban context highlights this particularly well where Afro-Cuban women are targeted for sex tourism. A U.S.-based company publishes a book and electronic newsletter entitled Travel and the Single Male, which identifies Cuba as a new “hot destination for the adventurous single male.” An even more direct indicator of Cuba as the sex tourism destination of choice is the mainstream U.S. media’s promotion of Cuba as a location for meeting “vacation girlfriends” at rates which are cheaper than other centers of sex tourism such as the Philippines and Thailand.

The economic desperation of Afro-Cuban women and the scarcity of food and consumer goods on the island position them as cheap dates. “[A]s one British sex tourist proudly boasted, ‘Some of them have slept with me for just a bar of soap.’” And it is the numerically small dollar value of the sexual exchange which lends these encounters an informality that can veil their commercial nature and, in turn, further the image of Afro-Cuban women as “always wanting some.” The economic context allows sex tourists to rationalize their exploitative behavior by focusing on the cheapness of the transaction. Since the cost to the men is de minimus, it does not seem like prostitution. But even more troubling is the fact that the sex trade. See, e.g., Kempadoo, supra note 6, at 24.

A third perspective argues that prostitution (by either gender) in Third World countries signifies a “libidinizaiton” of various parts of the globe, where countries such as Thailand and the Philippines are constructed as “feminine” in relationship to Western capitalist states. The latter, it is argued, use their “masculine” power to “penetrate” local economies, turning the dominated nations into “sites of desire” and “economies of pleasure.”

Id. (notes omitted).

133. Kempadoo, supra note 6, at 47-52.
134. ENLOE, supra note 98, at 28.
135. O’CONNELL DAVIDSON, supra note 96, at 43.
136. Frank Bruni, Island of Forbidden Fruits, N.Y. TIMES, Aug. 8, 1999, LEXIS, Nexis Library, N.Y. Times File (describing Cuba’s attraction as being the “sexy, cash-strapped young women”); Parsa, supra note 111, at 36 (“Leafy palm trees, wanton women, cigars, and all the Cuba libres you can drink” await tourists who come to Cuba according to magazine cover story on travel to Cuba).
137. O’CONNELL DAVIDSON, supra note 96, at 44.
138. Id. at 46 (describing stereotypes in Cuba about Black women, including hypersexuality, untamed sexuality, and being “hot for it”).
139. Id. at 45.
tourist does not consider the economic deprivation of the women when seeking a rationale for his sexual potency abroad. Instead, the women of the entire population are envisioned as lascivious and the sex tourist’s personality as inherently fascinating.  

Afro-Cuban women find themselves at the intersection of race and ethnicity, being both Black and Latina, and are thus stereotyped by international tourists and Cubans themselves as sexually wanton. In fact, White Cuban women who self-identify as prostitutes observe that sex tourists seem only to seek out Afro-Cuban women for their encounters—these men come to purchase a specific racialized sexual fantasy. The Cuban tourism industry trades on those stereotypes by widely promoting cabaret shows that feature scantily clad Afro-Cuban women who dance provocatively for visitors. Afro-Cuban women thereby garner an essential role in the promotion of the tourism industry by playing on racial and gender stereotypes about their exaggerated promiscuity and sensuality. In short, the exotic woman of color as the commodity of attraction is best exemplified by the current Cuban expression “La Mulata es un negocio”—the mulatta is a business. In effect, international sex tourism not only commodifies sex workers, as all forms of prostitution do, but also performs the function of “racially commodifying” all women of color through its exploitation of international racial stereotypes. As I will elaborate in the next section, racial commodification is an essential factor in the prostitution paradigm that illustrates the mutual construction of gender and race in sexual harassment and sex tourism.

IV. THE MUTUAL CONSTRUCTION OF GENDER AND RACE

I use the term “racialized commodification” to reflect the ways in which commodification itself is implicated in the constructions of Whiteness,
femininity and thus gender. To be specific, racialized commodification describes the manner in which the racialized gender stereotypes of women of color as “wanton” predisposes women of color to being objectified and equates them with sex as a consumer good. Racialized commodification thus constructs women of color as sexual objects rather than sexual subjects. As a sexual object with no autonomous self, women of color need not be consulted before imposing a demand for sex. Consequently, racialized commodification makes women of color disproportionately more vulnerable to being targeted by sex tourists and sexual harassers alike. Stated differently, the entrenched view of women of color as instruments of commerce makes it inconceivable to sexual harassers that sexual advances to such women could be deemed harassment. In contrast, White women are constructed as sexual subjects with agency to consent to or rebuff sexual advances, as long as they conform to patriarchal gender norms.

The concept of racialized commodification gives greater texture to the theory of the prostitution paradigm by revealing the way in which the paradigm’s juxtaposition between “degenerate” women of color and “pure” White women is facilitated by a racially-determined respect for female autonomy. Thus, to the extent that women of color are stereotyped as embodying the commodity of sex, the notion of the market eviscerates their agency as sexual subjects. While the prostitution paradigm describes how women of color are viewed as inherent prostitutes predisposed to solicitation for sex, the paradigm does not specifically reveal why women of color are treated as prostitutes who need not be solicited at all. In contrast, incorporating the concept of racialized commodification into the prostitution paradigm elucidates how women of color are not only positioned as sellers of sex, but as sex itself. More importantly, the racialized commodification deployed by the prostitution paradigm illustrates how race and gender construct one another. Inasmuch as Whiteness is used to define the masculine characteristic of autonomy and gender is implicated in who gets “treated White,” one can say that race and gender construct one another. The racial disparity in sexual harassment filing statistics suggests that the Whiteness of White women lends them the male privilege of sexual autonomy until they are viewed as not conforming with patriarchal gender norms—at which point their Whiteness is lessened with a shift to being treated as a sexual object.

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145. BELL HOOKS, BLACK LOOKS: RACE AND REPRESENTATION 23 (1992) (“When race and ethnicity become commodified as resources for pleasure, the culture of specific groups, as well as the bodies of individuals, can be seen as constituting an alternative playground where members of dominating races, genders, sexual practices affirm their power-over in intimate relations with the Other.”). On the other hand, it should be noted that commodification can also be viewed as sometimes empowering those poor women who have limited economic choices and therefore survive as sex workers. See Margaret Jane Radin, Market-Inalienability, 100 HARV. L. REV. 1849, 1916 (1987) (“The argument that commodification empowers women is that recognition of these alienable entitlements will enable a needy group—poor women—to improve their relatively powerless, oppressed condition, an improvement that would be beneficial to personhood.”).
This premise is particularly apparent in the sex tourism context, in which male participants more readily articulate their race-based motivations. For instance, one U.S. sex tour company brochure explicitly states the prevailing attitudes of the sex tourism industry with the following remark: “Had enough of the American bitches who won’t give you the time of day and are only interested in your bank account? In Asia you’ll meet ‘girls’ who will treat you with respect and appreciation, unlike their American counterparts.” Sumi Cho has characterized the gender stereotype of Asian Pacific women as serving a “model minority” function. Asian women are contrasted with White women who violate the norms of femininity. This juxtaposition serves to “discipline” White “women-libbers.” The racialized gender stereotype of Asian submissiveness acts as a warning to White women to maintain the norm of heterosexual femininity because if they do not, they will not be considered real women and will therefore be abandoned for Asian women.

Although the specific racialized gender stereotypes vary across race and ethnicity, women of color share the commonality of being viewed by White men as the center of raw sexuality. Women of color become interchangeable in their ability to serve as a contrast to White womanhood. The stereotypes of Black women as animalistic wantons and of Latinas as hot and willing sex partners disciplines White women who consider disrupting the gendered construction of purity. These stereotypes threaten to diminish their White race privilege by punitively viewing such norm violators as engaging in Black-like or Latina-like conduct. In other words, racialized gender stereotypes transform women of color in the United States and around the world into fungible goods of sexuality. “[R]acialized sexuality . . . functions by first reducing the colonized or racialized subject to a generic being that can be exchanged for any other ‘native’ or racialized subject.” In effect, White womanhood is constructed by its juxtaposition with stereotypes of non-White women.

146. Equality Now, Sex Tourism: “Real Sex with Real Girls, All for Real Cheap,” at http://www.equalitynow.org/action_eng_12_1.html (Dec. 1996); see also Cabezas, supra note 103, at 111 (“White skin is devalued because it is connected to civility, or feminist discourses, and is thus less sexual. In opposition Dominicanas (Dominican women) are a racial, sexual, and traditionally feminine fetish sought out to perform racial assumptions about their sexuality.”).

147. Cho, supra note 88, at 192 (“Asian Pacific women are particularly valued in a sexist society because they provide the antidote to visions of liberated career women who challenge objectification of women.”).

148. Id.

149. See Hooks, supra note 145, at 22, 23 (describing the conviction shared by White men that all non-White women are more sensual and sexual because they are “different”).

150. JanMohamed, supra note 87, at 106. “[R]acialized sexuality is a product of stereotypic, symbolizing, and condensing discursivity . . . .” Id. at 105-06.

151. Hooks, supra note 145, at 147 (“[T]he idealized notion of the female/feminine is really a sexist idealization of white womanhood.”).
Sexual Harassment and Racial Disparity

racial difference as sexual is simultaneously implicated in policing racial differences and notions of gender difference all in the service of "hetero-sexist patriarchy."152

These stereotypes define true women as White women and true men as White men, with rightful access for the latter to White women and illicit access to women of color.153 Indeed, sex tourism researchers observe that "[s]ex tourism is not only about sustaining a male identity. For white men it is also about sustaining a white identity."154 In short, race and gender not only intersect—they construct one another.

The mutual construction of gender and race is even apparent in the male articulation of sexual desire as an excuse for sexual harassment and sex tourism. For example, sex tourists target destinations predominantly populated by women of color purportedly motivated by their sexual desire for racially different women.155 Yet, the sexual desire itself is a manifestation and tactic of the technology of oppression that seeks to police White women and women of color alike.156 White patriarchy manufactures racialized gender stereotypes to sustain itself and those stereotypes in turn shape the sexual desire for the racial other. Similarly, the articulation of desire in many sexual harassment cases is simply a mechanism to subordinate women in the workplace.157 In fact, if sexual harassment were solely about the individualized sexual desires of the harasser, one might expect to see a greater proportion of quid pro quo claims (that involve more direct assaults on the sexuality of the individual victim) rather than hostile work environment claims.158 Yet, the vast majority of sexual harassment

152. Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 CAL. L. REV. 1, 8 n.14 (1995) (introducing the term "hetero-patriarchy" to refer to "the fusion of androsexism and heterosexism, both socially and sexually, to obtain and maintain the supremacy of 'masculinity' and of 'masculine'-identified (heterosexual) men, over personal, economic, and cultural life").

153. See JUDITH BUTLER, Gender is Burning: Questions of Appropriation and Subversion, in BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX" 121, 126 (1993) ("This 'being a man' and this 'being a woman' are internally unstable affairs.").

154. O'Connell Davidson & Taylor, supra note 127, at 44. "These are people who, by and large, equate true masculinity with unbridled sexuality over women more generally." Id. at 39.

155. See discussion supra Part ILB.3.

156. Naomi Zack, The American Sexualization of Race, in RACE/SEX: THEIR SAMENESS, DIFFERENCE, AND INTERPLAY 147 (Naomi Zack ed., 1997) ("The sexualization of race also means that the aesthetic standards and micro-judgments that in myriad ways express the devaluation of Americans designated as black, as well as reproducing that devaluation, are also part of individual sexual choices, judgments, reactions, and expressions.").

157. But see Schultz, supra note 35, at 1686-88 (urging that sexual harassment not be construed as solely a manifestation of sexual desire, but also address non-sexual gender-based discrimination, because the author believes the "sexual desire-dominance paradigm" can disguise the systemic subordination of women in the workplace).

158. See supra note 23.
cases are litigated as hostile work environment claims. And this holds true for plaintiffs of all races. Instead, sexual desire is used as the discursive vehicle for regulating the workplace as the domain of male competence and authority. “By subverting women’s capacity to perform favored lines of work, harassment polices the boundaries of work and protects its idealized masculine image—as well as the identity of those who do it.” Sexual harassment casts doubt upon the capability of women and non-gender conforming men in order to systemically maintain gender subordination. Accordingly, the reliance upon racialized gender stereotypes to disproportionately target women of color functionally polices White women as well by preserving the image of the workplace as the domain of White heterosexual masculinity. “[W]ithin the discursive formation of racialized sexuality the process of racialization is always already a process of sexualization, and the process of sexualization is also always already—or at least functions as if it were—a process of racialization.”

In summary, both global sex tourism and domestic sexual harassment construct and maintain gender through a prostitution paradigm that depicts women of color as the quintessential prostitute. Inasmuch as the racialized sex stereotypes that pervade sexual harassment construct women of color as embodying the open invitation to sex—the prostitute whose autonomy is irrelevant because she “is” sex and not a subject—sexual harassment, like sex tourism, is an issue of racialized commodification.

V. CONCLUSION

The compilation of the racially comparative data presented and analyzed in this Article offers sexual harassment scholars the opportunity to further expand their theories by incorporating an explicit recognition of the

159. See infra app. V. Sexual harassment scholars and a number of empirical studies have also suggested that quid pro quo forms of sexual harassment are less prevalent than hostile work environment forms. E.g., FRANCIS ACHAMPONG, WORKPLACE SEXUAL HARASSMENT LAW: PRINCIPLES, LANDMARK DEVELOPMENTS, AND FRAMEWORK FOR EFFECTIVE RISK MANAGEMENT 87 (1999) (“Hostile-environment sexual harassment is the more common of the two forms of workplace sexual harassment.”); Gruber, supra note 50, at 88-89, 91 (detailing the statistics from a variety of surveys in which hostile work environment incidents of sexual harassment prevail). Another factor that may account for the lower numbers of quid pro quo claims is the greater willingness of employers to sanction employees whose “sexual bribery” most clearly evidences itself as sexual harassment. Interview with Minna J. Kotkin, Director, Brooklyn Law School Federal Litigation Clinic, in Brooklyn, N.Y. (Sept. 11, 2000).

160. See infra app. V.

161. Schultz, supra note 35, at 1687.

162. Id. at 1691.


164. JanMohamed, supra note 87, at 112.
“multidimensionality” of gender and race.\textsuperscript{165} While a number of scholars have focused on the ways in which women of color distinctly experience sexual harassment as a form of racial harassment different from White female victims of sexual harassment, none have had the opportunity to analyze the import of the racial difference in rates of sexual harassment as indirectly indicated by the sexual harassment charge statistics. Similarly, for those scholars who have suggested overall reconceptualizations of the jurisprudence of sexual harassment, the data highlights the importance of incorporating and examining the role of racialized gender stereotypes in understandings of sexual harassment victimization.\textsuperscript{166}

Sumi Cho has suggested that “the law’s current dichotomous categorization of racial discrimination and sexual harassment . . . as separate spheres of injury is inadequate to respond to racialized sexual harassment.”\textsuperscript{167} But regardless of whether a separate cause of action is developed for racialized sexual harassment or whether the current sexual harassment cause of action is modified to explicitly permit evidence of racial harassment as part of the sexual harassment claim,\textsuperscript{168} the joint analysis of

\textsuperscript{165}. Darren Hutchinson advocates for the use of a “multidimensional” lens that simultaneously examines race, class, gender and sexuality in order to “reveal the ‘host of interlocking sources of advantage and disadvantage’ that sustain the ‘various institutions of oppression.’” Darren Lenard Hutchinson, “Gay Rights” for “Gay Whites”? Race, Sexual Identity, and Equal Protection Discourse, 85 CORNELL L. REV. 1358, 1367-69 (2000); see also Peter Kwan, Jeffrey Dahmer and the Cosynthesis of Categories, 48 HASTINGS L.J. 1257, 1264 (1997) (developing the theory of “cosynthesis” to provide a theoretical framework which replaces “assumptions of autonomic categories such as race, gender, and homosexuality with a notion that allows for their simultaneous implication” in order to gain “a richer understanding of both the production and consequences of categorical meanings . . . .”); cf. Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities & Inter-Connectivities, 5 S. CAL. REV. L. & WOMEN’S STUD. 25, 49-50 (1995) (stressing that “inter-connectivity is a personal awakening to the tight interweaving of systems and structures of subordination . . . . Inter-connectivity therefore signifies the personal attitude and the practice of comprehensive resistance to interlocked oppressions.”). Similarly, “intersectionality” theorists who focus on the particular experiences of subordination of individuals with multiple axes of identity, early on identified that “oppressions cannot be dismantled separately because they mutually reinforce each other.” E.g., Trina Grillo, Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House, 10 BERKELEY WOMEN’S L.J. 16, 27 (1995); see also, e.g., Kimberle Crenshaw, 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 (supporting intersectionality as a tool necessary to overcome the marginalization of Black women).

\textsuperscript{166}. See, e.g., Franke, supra note 71, at 693 (describing sexual harassment as a technology of sexism which feminizes women and masculinizes men, thereby rendering women sexual objects and men sexual subjects); Rosa Ehrenreich, Dignity and Discrimination: Toward a Pluralistic Understanding of Workplace Harassment, 88 GEO. L.J. 1, 4-5 (1999) (advocating a pluralistic understanding of workplace harassment which embraces both common-law torts and Title VII of the Civil Rights Act of 1964); Schultz, supra note 35, at 1692 (suggesting that courts reconceptualize sexual harassment more comprehensively to include a competence-centered account of hostile work environment harassment, which can more effectively reveal how sexual harassment is used to police the boundaries of work as the domain of men).

\textsuperscript{167}. Cho, supra note 88, at 209.

\textsuperscript{168}. See Abrams, supra note 89, at 2538 (suggesting that courts recognize the possibility of discrimination based on multiple factors in a single case to avoid unidimensional results); Ontiveros,
sex tourism and sexual harassment charges reveals the need to begin to infuse sexual harassment law with a deeper understanding of the ways in which gender is racialized. In short, an understanding of the globalized stereotypes of women of color as sexual commodities must begin to be incorporated into the construction of sexual harassment claims, thereby beginning to get at the root of how gender is racialized generally. A globalized understanding of sexual harassment, for instance, would require that the element of “unwelcomeness” be informed by the knowledge that harassers perceive “welcomeness” to sexual overtures just by virtue of a woman’s race or ethnicity. This gives even more meaning to Catharine MacKinnon’s observation referenced earlier in this Article that sexual harassment is, in essence, a solicitation for prostitution.

Educating the judiciary and public of all the ways in which gender is racially constructed and maintained should begin with the observation that racialized sexual harassment is what happens to White women even if they are not cognizant of it in that way. The sex tourism context highlights this premise nicely with its positioning of subjugated “natives” in opposition to emasculating White American “woman-libbers” in the construction of gender. Accordingly, White women’s stories of sexual harassment, like the stories of women of color, should start to be analyzed as part of the process of racialization in addition to being viewed as a form of sex discrimination. Using a racial lens to assess all women’s stories of sexual harassment may be helpful in the continuing project of making the legal claim of sexual harassment more responsive to the lives of real women.

Also on the horizon is the real possibility that continued sex tourism will worsen the equality rights of women of color in the United States. Women targeted for sex tourism are similarly ensnared in the “politics of the exotic,” which I described earlier as the objectification of women of color as inherently sexual. Inasmuch as White men continue to view all women of color as fungible sexual commodities, the actualization of racialized sexual fantasies through sex tourism will further reify the racialized gender stereotypes that harm women in the workforce. In short, the racialized gender stereotypes already exist for women of color in the United States, but they will only be further entrenched by their continued production in international sex tourism.

supra note 88, at 827-28 (suggesting the creation of a cause of action for “discrimination against women of color as women of color”).

169. See supra notes 23, 63 and accompanying text.

170. MACKINNON, supra note 2, at 159.

171. See supra note 140 and accompanying text.

172. See supra text accompanying note 118.


174. Law Professor Thomas Joo describes the cultural transmission and replication of racial
(hetero)sexual harassment," for example, she describes the experience of a Japanese student who was harassed by a professor.\textsuperscript{175} After having traveled to Japan and discovering that he was "popular," the professor was now interested in Japanese females in the United States "because they were easy to have sex with and because they were submissive."\textsuperscript{177} But sex tourism not only poses a threat to women transnationally because of the sexual harassment that sex tourists may be encouraged to commit in the United States, but also by virtue of the racialized stereotypes that are transmitted globally to all men whether they travel as sex tourists or not. Thus, it is also worth noting that the EEOC has recently settled three major lawsuits which all involved the targeting of women of color for sexual harassment.\textsuperscript{178} The EEOC's General Counsel has even noted that the "Commission is seeing a rising national trend in cases involving egregious harassment of a racial and sexual nature."\textsuperscript{179}

The "racialized sexual hostility, or sexualized racial hostility"\textsuperscript{180} is magnified by sex tourists indulging in racialized sexual fantasies while on vacation in permissible international settings with economically deprived and "coincidentally" compliant women. While at the same time, submerging those fantasies on the home front where acquaintances can observe them and they must confront their desire for the subordinated "other." The sexual stereotypes as an ideological "meme" that fights for survival over time like a gene and which is particularly insidious in its ability to "replicate" its simplistic views of human nature throughout society. Under Joo's extrapolation of the meme theory it is clear that the propagation of international racial stereotypes in sex tourism poses the danger of influencing people transnationally to accept gender and racial hierarchy as a continuing norm. Thomas Wuil Joo, Comparative Racialization 15-16 (May 1999) (unpublished manuscript, on file with author).

175. Sumi Cho uses this term to describe how racial and gender stereotypes converge to inflict a particular set of injuries on Asian Pacific women in the workplace. Cho, supra note 88, at 181. I borrow her term and apply it more broadly to all women of color given their common experience of racialized gender subordination in the workplace.

176. Id. at 179.

177. Id.


180. Abrams, supra note 89, at 2501.
frustration of not being able to easily have women of color in the United States "for a bar of soap" may play a part in their future victimization in the workplace. As it is, immigrants from Latin America have already begun to experience a disproportionate amount of sexual harassment on the job. Although the EEOC does not inquire into the immigration status of its complainants for data collection purposes, the agency has observed that immigrant women of color in low wage positions are particularly vulnerable to sexual harassment.

Ultimately, the racial analysis of global sex tourism and domestic sexual harassment has much to offer in the continued evolution of sexual harassment jurisprudence specifically and to the understanding of the mutual construction of race and gender generally. The racially-laden prostitution paradigm that informs sex tourism and sexual harassment reveals that efforts to dismantle gender subordination must take into account the role of race. Similarly, efforts to dismantle racial hierarchy must take into account the role of gender, because "all forms of subordination are interlocking and mutually reinforcing."

181. See supra text accompanying note 120.
183. See Greenhouse, supra note 178. Some scholars also note that the perception of some immigrant cultures as less assertive and less inclined to complain may also factor into why immigrant women are chosen as sexual harassment victims. See Ontiveros, supra note 88, at 818 ("From the viewpoint of the harasser, women of color appear to be less powerful, less likely to complain, and the embodiment of particular notions of sexuality."). See also Vellos, supra note 182, at 409 explaining that employers commonly threaten to deport undocumented domestic workers if they reject sexual advances).
184. Matsuda, supra note 1, at 1189.
Appendix I

Annual % EEOC Charges By Rate of Female Complainant
Compared to % in Female Employed Labor Force^{185}

<table>
<thead>
<tr>
<th>Year</th>
<th>Wh Charges</th>
<th>Wh Employment</th>
<th>WOC Charges</th>
<th>WOC Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>55.8%</td>
<td>85.1%</td>
<td>26.7%</td>
<td>14.9%</td>
</tr>
<tr>
<td>1993</td>
<td>58.7%</td>
<td>84.8%</td>
<td>29.3%</td>
<td>15.2%</td>
</tr>
<tr>
<td>1994</td>
<td>61.2%</td>
<td>84.8%</td>
<td>29.6%</td>
<td>15.2%</td>
</tr>
<tr>
<td>1995</td>
<td>61.5%</td>
<td>84.1%</td>
<td>31.3%</td>
<td>15.9%</td>
</tr>
<tr>
<td>1996</td>
<td>58.2%</td>
<td>83.8%</td>
<td>34.7%</td>
<td>16.2%</td>
</tr>
<tr>
<td>1997</td>
<td>58.9%</td>
<td>83.4%</td>
<td>35.3%</td>
<td>16.6%</td>
</tr>
<tr>
<td>1998</td>
<td>55.9%</td>
<td>83.1%</td>
<td>38.1%</td>
<td>16.9%</td>
</tr>
<tr>
<td>1999</td>
<td>58.6%</td>
<td>82.5%</td>
<td>38.4%</td>
<td>17.5%</td>
</tr>
</tbody>
</table>


Wh = White Women
WOC = Women of Color

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^{185} Percentages do not total 100% because data for those complainants who did not specify a racial identification on the EEOC intake sheet are not included in this chart.
AGGREGATE AVERAGE 1992-1999 EEOC CHARGES BY RACE

APENDIX I: FIGURE 1
APPENDIX I: FIGURE II
AGGREGATE AVERAGE FOR 1992-1999 FEMALE EMPLOYMENT RATES BY RACE

Employed Women of Color
16%

Employed White Women
84%
### Appendix II

**EEOC Sexual Harassment Charges By Racial Comparison of Variation Between OV & EV**

<table>
<thead>
<tr>
<th>Year</th>
<th>Wh - OV</th>
<th>Wh - EV</th>
<th>Wh - SD</th>
<th>WOC - OV</th>
<th>WOC - EV</th>
<th>WOC - SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>5,380.0</td>
<td>8,175.6</td>
<td>79.3</td>
<td>2,576.0</td>
<td>1,465.4</td>
<td>31.5</td>
</tr>
<tr>
<td>1993</td>
<td>6,796.0</td>
<td>9,825.8</td>
<td>78.5</td>
<td>3,400.0</td>
<td>1,761.2</td>
<td>42.5</td>
</tr>
<tr>
<td>1994</td>
<td>7,981.0</td>
<td>10,960.7</td>
<td>71.3</td>
<td>3,851.0</td>
<td>2,077.3</td>
<td>42.5</td>
</tr>
<tr>
<td>1995</td>
<td>8,730.0</td>
<td>11,902.9</td>
<td>72.2</td>
<td>4,447.0</td>
<td>2,301.0</td>
<td>48.8</td>
</tr>
<tr>
<td>1996</td>
<td>8,153.0</td>
<td>11,692.7</td>
<td>80.4</td>
<td>4,865.0</td>
<td>2,327.3</td>
<td>57.5</td>
</tr>
<tr>
<td>1997</td>
<td>8,686.0</td>
<td>12,260.6</td>
<td>78.6</td>
<td>5,212.0</td>
<td>2,493.4</td>
<td>59.7</td>
</tr>
<tr>
<td>1998</td>
<td>7,723.0</td>
<td>11,398.2</td>
<td>82.3</td>
<td>5,265.0</td>
<td>2,417.8</td>
<td>63.7</td>
</tr>
<tr>
<td>1999</td>
<td>7,294.0</td>
<td>11,006.2</td>
<td>84.3</td>
<td>5,134.0</td>
<td>2,350.8</td>
<td>63.2</td>
</tr>
</tbody>
</table>


OV = Observed Value as the actual number of charges filed annually  
EV = Expected Value of charges based on population’s percentage in the employed female labor force  
Wh = White Women  
WOC = Women of Color  
SD = Z score standard deviation
Appendix III

Annual Rates of Increase in EEOC Sexual Harassment Charges by Race

<table>
<thead>
<tr>
<th>Year</th>
<th>Wh Rate</th>
<th>WOC Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992-1993</td>
<td>26.3%</td>
<td>31.9%</td>
</tr>
<tr>
<td>1993-1994</td>
<td>17.4%</td>
<td>13.2%</td>
</tr>
<tr>
<td>1994-1995</td>
<td>9.3%</td>
<td>15.4%</td>
</tr>
<tr>
<td>1995-1996</td>
<td>-6.6%</td>
<td>9.3%</td>
</tr>
<tr>
<td>1996-1997</td>
<td>6.5%</td>
<td>7.1%</td>
</tr>
<tr>
<td>1997-1998</td>
<td>-11.0%</td>
<td>1.0%</td>
</tr>
<tr>
<td>1998-1999</td>
<td>-5.5%</td>
<td>-2.4%</td>
</tr>
<tr>
<td>1992-1999</td>
<td>35.6%</td>
<td>99.3%</td>
</tr>
</tbody>
</table>

Source: U.S. Equal Employment Opportunity Commission

Wh = White Women
WOC = Women of Color
### Appendix IV

Federal Court Cases of Sexual Harassment by Circuit of Origin

<table>
<thead>
<tr>
<th>Circuit</th>
<th>Total # Cases Filed By Female Plaintiffs 1964-July 2000</th>
<th>White Women Plaintiffs</th>
<th>Women of Color Plaintiffs</th>
<th>Women of Color % of Total Cases&lt;sup&gt;186&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>46</td>
<td>29</td>
<td>17</td>
<td>37.0%</td>
</tr>
<tr>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>172</td>
<td>109</td>
<td>63</td>
<td>37.0%</td>
</tr>
<tr>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>123</td>
<td>83</td>
<td>40</td>
<td>32.5%</td>
</tr>
<tr>
<td>4&lt;sup&gt;th&lt;/sup&gt;</td>
<td>94</td>
<td>68</td>
<td>26</td>
<td>28.0%</td>
</tr>
<tr>
<td>5&lt;sup&gt;th&lt;/sup&gt;</td>
<td>81</td>
<td>58</td>
<td>23</td>
<td>28.0%</td>
</tr>
<tr>
<td>6&lt;sup&gt;th&lt;/sup&gt;</td>
<td>66</td>
<td>42</td>
<td>24</td>
<td>36.0%</td>
</tr>
</tbody>
</table>

Source: Lexis and Westlaw Electronic Databases.

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186. Women of Color typically represent 16% of female employed workforce according to the U.S. Bureau of Labor Statistics.
**Appendix V**

Federal Court Cases of Sexual Harassment by Type of Claim and Race of Female Plaintiff Within Each Circuit of Origin

<table>
<thead>
<tr>
<th>Women</th>
<th>Women of Color</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIR</td>
<td>Claim Filed</td>
<td># Cases</td>
</tr>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>H 12</td>
<td>92%</td>
</tr>
<tr>
<td></td>
<td>Q 1</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>B 4</td>
<td>23%</td>
</tr>
<tr>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>H 55</td>
<td>98%</td>
</tr>
<tr>
<td></td>
<td>Q 1</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>B 7</td>
<td>11%</td>
</tr>
<tr>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>H 27</td>
<td>96%</td>
</tr>
<tr>
<td></td>
<td>Q 1</td>
<td>4%</td>
</tr>
<tr>
<td></td>
<td>B 12</td>
<td>30%</td>
</tr>
<tr>
<td>4&lt;sup&gt;th&lt;/sup&gt;</td>
<td>H 22</td>
<td>92%</td>
</tr>
<tr>
<td></td>
<td>Q 2</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>B 2</td>
<td>8%</td>
</tr>
<tr>
<td>5&lt;sup&gt;th&lt;/sup&gt;</td>
<td>H 20</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>Q 0</td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>B 3</td>
<td>13%</td>
</tr>
<tr>
<td>6&lt;sup&gt;th&lt;/sup&gt;</td>
<td>H 19</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>Q 0</td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>B 5</td>
<td>26%</td>
</tr>
</tbody>
</table>

**H** = Hostile Work Environment  
**Q** = Quid Pro Quo  
**B** = Both H and Q  
Source: Lexis and Westlaw Electronic Databases for cases filed between 1964 and July 2000.