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RETHINKING BATTERED WOMAN SYNDROME: A BLACK FEMINIST PERSPECTIVE

Sharon Angella Allard*

INTRODUCTION

The plight of battered women gained national attention when Farrah Fawcett portrayed a battered spouse in the television movie *The Burning Bed*.¹ The program depicted the physical and psychological torture that leads a battered woman to take the life of her batterer, and the subsequent legal challenges she faces when claiming self-defense in response to a murder charge. Viewers observed a woman in the throes of a psychological breakdown and in fear of losing her life. But viewers never saw her anger. The lack of any hostility in the act of killing her husband made her actions appear justifiable, excusable, or at least sympathetic.

This perception of battered women as psychologically impaired and lacking hostility is not limited to the confines of television programs or movies. Consider, for example, the real-life stories of Hedda Nussbaum and Geraldine Mitchell. Each woman claimed to have been battered by her companion, and each woman was charged with the battering death of the child in her care. The charges against Nussbaum were dropped because "she was so beaten down — emotionally and physically — that she had been

* J.D., UCLA School of Law, 1991; B.A., Wesleyan University, 1985. This Essay was conceived in Professor Kimberlé Crenshaw's seminar, "Race and Gender in the Law," given at UCLA School of Law in the spring of 1990. The seminar provided the unique opportunity to develop theory through application. In addition to Professor Crenshaw, I would like to thank Callie Glanton, Victor Cannon, and Laura Reece for their time, comments, and encouragement. I am especially grateful to Elvina and Lincoln Allard who taught me that knowledge opens doors others would rather leave closed.

1. *The Burning Bed* (NBC television broadcast, Oct. 10, 1984).

powerless to stop [her companion].”² Mitchell, in contrast, “was not given a chance to testify in return for the dropping of charges”³ and pleaded guilty to manslaughter. Despite almost identical factual situations, Mitchell’s story was silenced while Nussbaum’s was publicized and accepted. According to Mitchell’s attorney, Mitchell was treated more harshly than Nussbaum because Mitchell was Black and poor while Nussbaum was white and middle class.⁴ The courts’ different treatments of these cases perpetuate a view in the public that the impact of battering on a woman’s life varies, depending on whether a woman is Black or white.⁵

The relatively recent exposure of the plight of battered women led to a general theory of how a battered woman responds to her situation. In an effort to educate the court about why a battered woman might respond by killing, battered woman syndrome is often introduced at trials. As articulated by Lenore Walker, the syndrome is characterized by a cyclical pattern of psychological and physical abuse which can be broken down into three phases.⁶ The first phase is marked by minor battering incidents, when tension builds and the woman exhibits complacent behavior to appease the batterer. The second phase is marked by an acute battering incident, when the woman feels completely isolated and helpless. The third phase is marked by a period of conciliation (the “honeymoon” period), when the batterer expresses his remorse and the woman is forgiving and understanding. Battered woman syndrome theory rests on the notion that a battered woman may suffer from “learned helplessness,” whereby the psychological pressures of living in a constant state of fear limit her responses to coping with each individual attack rather than focusing on a way to escape her circumstances.⁷ Expert witnesses testify to educate the jury about the reasonableness of the battered woman’s conduct. In a homicide

2. Tumulty & Drogin, *Steinberg Convicted In Girl's Death; Jury Returns Manslaughter Verdict, Rejects Murder Count*, L.A. Times, Jan. 31, 1989, at A4, col. 1.

3. Fried, *Queens Mother Pleads Guilty in Fatal Battering of Boy, 3*, N.Y. Times, Jan. 24, 1991, at B2, col. 5.

4. *Id.*

5. The Essay will capitalize “Black” while not capitalizing “white.” I mean to distinguish between Black as a cultural group as opposed to a skin color. “Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.” Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). Inherent devaluation is communicated by the term “black,” and so the capitalization also seeks to empower the cultural group.

6. See generally L. WALKER, *THE BATTERED WOMAN* (1979).

7. See *id.* at 42–70.

case, expert testimony on battered woman syndrome can comprise an essential part of a battered woman's case for self-defense.

To claim self-defense, a defendant must show that she "reasonably" believed that she was in "imminent" danger of serious bodily harm or death. For a belief to be reasonable, the threatened harm must be imminent. The prevailing definitions of reasonableness and imminence, however, exclude a battered woman. Without testimony on battered woman syndrome, the court will not admit evidence of prior abuses against the woman by her batterer on the grounds of irrelevance to the homicide. Consequently, a jury is unlikely to find that a battered woman's use of deadly force was based on a reasonable belief that she was in danger of imminent death or serious bodily harm. Yet, the circumstances under which a battered woman kills her batterer often do not reflect standard notions of imminent danger: a battered woman might strike out against her batterer when his back is turned, or when he is asleep or is inattentive in some other way. Such an action may be perceived as unreasonable because the woman was not necessarily in imminent harm. The classic, male orientation of the law of self-defense, coupled with gender stereotypes, limits the ability of judges and jurors to perceive a battered woman's conduct as reasonable.⁸ Testimony on battered woman syndrome, therefore, makes an enormous difference in convincing juries that a battered woman's response was, in fact, a reasonable exercise of self-defense.

While battered woman's syndrome furthers the interest of some battered women, the theory incorporates stereotypes of limited applicability concerning how a woman would and, indeed, should react to battering. To successfully defend herself, a battered woman needs to convince a jury that she is a "normal" woman —

8. The chief criticism of the law of self-defense has been that it is inapplicable to the sociological experiences of women. In this context, as well as in the area of battered woman syndrome, the analysis employed is not wholly transferable to the experiences of Black women. Discussions on the sex biases in the law of self-defense point to the differences in the socialization of men and women with regard to the use of physical force and violence.

A woman who has spent twenty, thirty or fifty years absorbing the message that she is, and ought to be, gentle, weak and helpless; that she needs to be protected from pain and injury; that she cannot really rely on her own strength to save her from danger . . . is bound to view a violent assault differently than a man whose own training in these matters is likely to have been so very different.

C. GILLESPIE, *JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW* 115-16 (1989). This characterization applies to all women to some degree. However, the dominant perception of Black women, coupled with their actual socialization, may render the above characterization inapplicable. See *infra* Part III.

weak, passive, and fearful. If the battered woman deviates from these characteristics, the jury may not associate her situation with that of the stereotypical battered woman. Therefore, it is possible that the difference in perception as to the reality of Nussbaum's and Mitchell's experiences with battering was shaped by cultural notions of who are "good" women and "bad" women.⁹ Race certainly plays a major role in the cultural distinction between the "good" and "bad" woman. The passive, gentle white woman is automatically more like the "good" fairy tale princess stereotype than a Black woman, who as the "other" may be seen as the "bad" witch. White women have the benefit of this dual stereotype of "good" and "bad" women. If a woman is perceived as being a "good" woman, she can expect greater protection, while Black women are seen as "bad" and as deserving victims.¹⁰

This Essay demonstrates that while theories such as battered woman syndrome explain why a battered woman's behavior is reasonable, the definition of "woman" which guides such theories is based upon limited societal constructs of appropriate behavior for white women. This mythological standard, however, does not apply to the historical experiences of women of color, particularly Black women. Part I of the Essay addresses the need for an intersectional analysis of battered woman syndrome based upon race and gender. Such an analysis is needed to free all women from subordinating stereotypes. Part II compares the different historical legal treatment of Black and white women. The fact that Black and white women have been subordinated in different ways has resulted in distinct normative definitions of their roles as women. Finally, Part III explores media portrayals and images generated by the historical experiences of Black women. These images define Black wo-

9. Feminist scholars have developed the idea of "good" as opposed to "bad" women in the context of gender stereotypes. See, e.g., A. DWORKIN, *WOMAN HATING* 17-46 (1974). The racial component of this concept, however, has not been widely explored.

I am expanding upon the concept set forth by Kimberlé Crenshaw that "Racist ideology . . . arrang[es] oppositional categories in a hierarchical order; historically, whites represented the dominant antinomy while Blacks came to be seen as separate and subordinate." Crenshaw, *supra* note 5, at 1373.

10. See Murray & Stahly, *Some Victims are Derogated More than Others*, 11 W.J. BLACK STUD. 177 (1987). The results of this study confirm that "the derogation of Black women relative to white women seems to be both a general and a pervasive phenomenon." *Id.* See also McClain, *Cause of Death — Homicide: A Research Note on Black Females as Homicide Victims*, 7 VICTIMOLOGY 204, 205 (1986). Although this Essay focuses on the experiences of Black women, the underlying arguments apply to all women who fall outside of the standard gender definitions described by current battered woman syndrome theory.

men in a manner which excludes them from the “feminist” critiques of either self-defense or battered woman syndrome. This Essay concludes that theories such as battered woman syndrome provide, at best, only a partial solution for explaining the conduct of battered women. By relying on prevailing definitions of “women,” the theory does not address the law’s refusal to recognize a battered woman’s conduct as reasonable unless her conduct falls within a very narrow set of stereotypical behaviors and circumstances.

I. THE NEED FOR AN INTERSECTIONAL ANALYSIS OF BATTERED WOMAN SYNDROME

An intersectional approach — one which incorporates a gender and race analysis — of battered woman syndrome is needed if the law is to address adequately the needs of all battered women.¹¹ Existing studies on the sexual biases in the law of self-defense and battered woman syndrome include little, if any, analysis as to how race and gender shape women’s experiences of violence. Ideally, theories about battered woman syndrome should not marginalize any group of women, but should incorporate those experiences shaped by race and gender.¹² Racism alone does not cause the disproportionate conviction of Black women who kill their batterers. We must expose why stories about battered Black women are less credible to a jury than stories about battered white women.

Battered woman syndrome relies on prevailing gender characterizations of dominant, white society. A recent study identified

11. See 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, for an analysis of how race and gender are viewed as exclusive of one another and are treated as such in antidiscrimination law, feminist theory, and antiracist politics. This exclusive analysis results in the exclusion of Black women’s legal claims.

12. See B. HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* (1981); P. GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* (1984). Both works offer an historical analysis of the impact of Black women on race and gender in American society. Hooks’s introduction presents the problem:

No other group in America has so had their identity socialized out of existence as have black women. . . . When black people are talked about, sexism militates against the acknowledgement of the interests of black women; when women are talked about, racism militates against a recognition of black female interests. When black people are talked about the focus tends to be on black *men*; and when women are talked about the focus tends to be on *white* women.

B. HOOKS, *supra*, at 7.

forty-one sex role stereotypes.¹³ A number of these stereotypes about women can be found in the battered woman syndrome characterization of women: very emotional, very submissive, very excitable in a minor crisis, very passive, very uncomfortable about being aggressive, very dependent, very gentle.¹⁴ Each of these characterizations reflects traditional notions of what society considers appropriate behavior for "normal" women.

In contrast to these stereotypes, both the stereotypical images and the historical reality of Black women's experiences in the United States are interpreted by the dominant society as a manifestation of Black women's deviance from "normal" women. This deviance is reflected in the omnipresent images of the hostile Sapphire,¹⁵ the wanton Jezebel,¹⁶ and the strong and assertive Sojourner Truth.¹⁷ The characterizations of the antagonistic yet subordinated Sapphire and the promiscuous Jezebel reaffirm society's belief that Blacks are less human and less individualistic than whites, while the strength found in the characterization of Sojourner is a direct challenge to the prevailing definitions of "pas-

13. See C. GILLESPIE, *supra* note 8, at 106.

14. *Id.*

15. Sapphire is the name of the Black female character in the television comedy *Amos 'n' Andy* about two Black males. Sapphire was the loud and sassy wife of one of the men. She regularly fought with her husband about his annoying behavior. The show was eventually discontinued after civil rights organizations complained about the stereotypical and derogatory depiction of Blacks. Today the term "Sapphire" conjures up images of a shrill, nagging, hostile, and aggressive Black woman. See Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 540 n.1; B. ANDREWS & A. JULLIARD, *HOLY MACKEREL! THE AMOS 'N' ANDY STORY* 15-16 (1986); *NEW DICTIONARY OF AMERICAN SLANG* 368 (R. Chapman ed. 1986).

16. Jezebel is defined as a woman who is "impudent, shameless, or abandoned." WEBSTER'S NEW COLLEGIATE DICTIONARY 616 (150th ed. 1981). "Jezebel was the wanton, libidinous black woman whose easy ways excused white men's abuse of their slaves as sexual partners." Austin, *supra* note 15, at 570; D. WHITE, *AR'N'T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH* 46, 61 (1985).

17. Sojourner Truth freed herself from slavery to become an active abolitionist and suffragist. Her bold spirit and unswaying convictions became a touchstone within the 1970s women's rights movement. Truth is widely known for her response to a heckler at a women's rights convention in 1871:

Truth asserted that women were not inherently weak and helpless. Raising herself to her full height of six feet, flexing a muscled arm, and belting with a voice one observer likened to the apocalyptic thunders, Truth informed the audience that she could outwork, outeat, and outlast any man. Then she challenged: "Ain't I a woman?"

P. GIDDINGS, *supra* note 12, at 54; *BLACK WOMEN IN NINETEENTH-CENTURY AMERICAN LIFE: THEIR WORDS, THEIR THOUGHTS, THEIR FEELINGS* 234 (B. Loewenberg & R. Bogin 3d ed. 1981).

sive" womanhood. Consequently, Black women must overcome the demeaning stereotypes of both race and gender.

To the extent that battered woman syndrome theory is based on stereotypes of white women, the theory is inapplicable to women of color. For instance, Black women's exclusion is evident in Lenore Walker's discussion of battered women and anger.¹⁸ Walker stresses that for a battered woman to present a successful defense to a charge of killing her batterer, the woman must not appear angry. If the jury perceives that a woman killed out of anger, rather than fear, the jury is likely to give her a harsher penalty. This has disturbing implications for Black women, who Walker acknowledges are subject to the stereotype that all Black women are "angry."¹⁹ Given that the legal system legitimizes these perceptions,²⁰ there is a greater likelihood that a jury would believe a prosecutor's story that a battered Black woman acted out of revenge and anger, as opposed to fear, in taking the life of her batterer.

While Walker recognizes that such perceptions greatly affect a Black woman's chances for acquittal when she kills her batterer, Walker does not offer an analysis of how battered woman syndrome, by its own terms, fails to address this problem. Consider the story of Sarah Smith, a Black woman who shot and killed her abusive husband to save her own life. Smith was convicted of second degree murder.²¹ When asked by the prosecution if she considered leaving her husband when he was lying down, Smith responded: "Not without chancing that he would catch me at the door and blow my brains out[,] no."²² Smith's story arguably would have

18. See L. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* 201-22 (1989).

19. The ratio of Black women to white women convicted of killing their abusive husbands is nearly two to one in one of my studies. My feeling is that this is the result of our society's misperceptions of Black people in general, of women in general, and of Black women in particular. The "angry Black woman" is a common stereotype in many white minds; subtly, but no less powerfully, white society in America fears "Black anger."

Id. at 206.

20. The courts have permitted prosecutors to use peremptory challenges to strike prospective Black jurors on the basis that such persons appeared to be hostile. See Johnson, *Black Innocence and the White Jury*, 83 MICH. L. REV. 1611 (1985). Similarly, it is unlikely that a potential employer will be found to have discriminated on the basis of race if she can point to specific deficiencies in an applicant's interview even when these deficiencies may reflect cultural biases.

21. Golden, *Abused Wife Is Found Guilty of Murder; Self-Defense Plea Rejected*, N.Y. Times, Jan. 24, 1991, at A16, col. 4. One juror commented, "We didn't believe her."

22. *Id.*

been accepted by the jury if battered woman syndrome did not limit a battered woman's motivation to a response based solely on a woman's fear. Moreover, Smith's story would have been more "believable" to a jury under a theory which legitimized a battered woman who acted from a position of strength rather than of weakness. Such a theory does not now exist; such a theory is needed.

II. THE HISTORICAL LEGAL VIEW OF "WOMEN" IS RACE-BASED

The Anglo-American legal tradition initially viewed women as property. This view was based on the patriarchal gender stereotypes of active, masculine, powerful, and authoritative men and passive, feminine, powerless, and deferential women.²³ In 1897, British jurist William Blackstone held that men were responsible for the actions of their wives and therefore authorized to control them.²⁴ Included within men's responsibility was a duty to protect their wives. Therefore, "good" women were not expected to have to defend themselves in any fashion. Women were certainly not permitted to kill their protectors for any reason.²⁵

Feminist theorists criticize these traditional laws as reflecting the "origin of law as a form of male authority and power."²⁶ These theorists argue that the adoption of sexist images results in paternalistic laws designed to protect women.²⁷ But such critiques ignore

23. D. Wareha & R. Castillo, *Afro-American and Mexican-American Women Who Have Been Victims of Domestic Violence (Battered) in Los Angeles County Shelters* (June 1985) (Thesis, Graduate School of Social Welfare, UCLA); L. GILBERT & P. WEBSTER, *BOUND BY LOVE: THE SWEET TRAP OF DAUGHTERHOOD*, xvi (1982).

24. Husband and wife, in the language of the law, are styled *baron* and *feme*. . . . [I]f the baron kills his feme it is the same as if he had killed a stranger, or any other person; but if the feme kills her baron, it is regarded by the laws as a much more atrocious crime, as she not only breaks through the restraints of humanity and conjugal affection, but throws off all subjection to the authority of her husband. And therefore the law denominates her crime a species of treason, and condemns her to the same punishment as if she had killed the king. And for every species of treason . . . the sentence of women was to be drawn and burnt alive. Schneider, *Equal Rights to Trial For Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. REV. 623, 629 (1980) (quoting 1 W. BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 418 n.103 (R. Welsh & Co. ed. 1897)).

25. *Id.*

26. Rifkin, *Toward a Theory of Law and Patriarchy*, 3 HARV. WOMEN'S L.J. 83, 87 (1980).

27. The conventional policy wisdom of the eighteenth and nineteenth centuries regarded women as appropriately dependent on men. Women were thought incapable of determining important matters for themselves, too virtuous to be exposed to the rough and tumble of the larger world.

the distinct impact of race in the assignment of gender definitions. Sexist as these protectionist images may have been, they were not meant for Black women. Throughout history, Black women's experiences with patriarchy differed from those of white women.²⁸

Black women's historical and social experiences under slavery and thereafter resulted in images which define Black women as deviant. While the Victorian notion of "true womanhood" defined white women as possessing unquestionable moral character, Black women were defined as immoral.²⁹ This race-based difference in stereotypes made it easier for white men to justify the sexual exploitation of Black women. Such stereotypes also made it easier for white women to accept the exploitation of Black women. Because exploitation was ignored or justified, Black women were not perceived as deserving of male protection.³⁰ For example, the law historically denied that Black slave women could be raped because they were regarded as immoral. This perception continues to influence the investigation and prosecution of rape charges brought by Black women today.³¹

The difference between how Black and white women are treated and perceived also stems from the fact that Blacks as a group have not received the protection of the law and have histori-

D. KIRP, M. YUDOF & M. FRANKS, GENDER JUSTICE 30 (1986).

28. Family life during slavery presents but one example of this difference. While white women's experiences were marked by a paternalistic protection in the domestic sphere, Black women were subjected to the sexual and economic desires of their captors.

29. P. GIDDINGS, *supra* note 12, at 46-48. Giddings discusses how economic expansion in the 1830s resulted in the growth of a new middle class seeking to reach upper class status.

For women, the vehicle for these aspirations was what became known as the "cult of the lady" or the "cult of true womanhood." . . . [A] woman had to be true to the cult's cardinal tenets of domesticity, submissiveness, piety, and purity in order to be good enough for society's inner circles. Failing to adhere to any of these tenets — which the overwhelming number of Black women could hardly live up to — made one less than a moral, "true" woman.

Id. at 47.

30. See *infra* Part III for a discussion of the masculine characterization of Black women.

31. See Wriggins, *Rape, Racism and the Law*, 6 HARV. WOMEN'S L. J. 103, 117-23, for a discussion of the law's failure to address the rape of Black women. Wriggins traces this denial through slavery (rape of Black women by both Black and white men legal) and the Post-Civil War Period (fact of Black defendant only relevant to prove intent to rape a white woman). She notes recent studies showing both that white judges and juries impose harsher sentences when the victim is white and that decisions to prosecute for rape are based on differences in the perceptions of chastity based on race.

cally been denied all rights.³² While laws formally changed, recent statistics continue to reflect that crimes committed against whites have higher prosecution rates and result in longer sentences than crimes committed against Blacks.³³ Again, Black women are saddled with dual stereotypes of race and gender. As women, they have to overcome the presumption that the law provides sufficient protection for them. As Black women, they must further prove that they are deserving of such protection.

This difference in stereotyping is what makes battered woman syndrome all the more damaging; not only does the theory perpetuate dominant gender role stereotypes, but it does so to the exclusion of Black women. Therefore, when a jury hears a story of a down-trodden woman completely overwrought by the circumstances of her situation and in fear for her life, it is less likely that they will accept this story as applied to women whose history and present day images deny their need for protection. It is true that white women may face this risk due to the "good" woman/"bad" woman dichotomy. However, while white battered women have to transcend one set of stereotypes to achieve the "good" woman status, Black women, who are in a sense twice removed from this status, have a far heavier burden.

III. MEDIA IMAGES AND SOCIAL PERCEPTIONS OF BLACK WOMEN: THE IMPACT OF RACE AND GENDER IN THE LAW OF SELF-DEFENSE AND BATTERED WOMAN SYNDROME

Black women generally fall outside the dominant gender definitions upon which battered woman syndrome and feminist analyses of self-defense rely. The media provides much of the information about persons outside of the majority population.³⁴ Deviant images of Black women abound in society. Images which accurately repre-

32. Both during and after slavery, Blacks were subjected to white discipline and control as a matter of law; first through the use of slavery codes and then through "Black" codes. For a more expansive treatment of these issues, see A. HIGGENBOTHAM, *IN THE MATTER OF COLOR* (1978); D. BELL, *RACE, RACISM AND AMERICAN LAW* 85 (1980).

33. See *McCleskey v. Kemp*, 481 U.S. 279, 312 (1987) (statistics show that the race of the defendant and the victim are often factors which lead to disparities in death penalty sentencing); BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS* 692 table 6.70 (1984) (data indicates that a larger number of nonwhites than whites are executed).

34. Mass media contributes to the "public's conceptions of reality, the 'facts', concepts, and definitions from which people construct their beliefs about the world in general and about social reality in particular." *DISCOURSE AND DISCRIMINATION* 24 (G. Smitherman-Donaldson & T. Van Dijk ed. 1988).

sent the experiences of Black women exist, but nonetheless remain outside the dominant view of who is a "real" woman.

One image of the Black woman is that of an immoral, promiscuous being.³⁵ This image arose from a perverted reversal of the historical sexual exploitation of Black women. Current media images perpetuate this perversion. For example, in a commercial for an automobile, Tina Turner appears in shorn clothing while her counterpart, Lindsay Wagner, appears in long, light, and airy ensembles. Actress/singer Grace Jones will never run out of material to continue her public persona as strange yet enticing and seemingly masochistic.³⁶ These commercial images do not exactly replicate the extreme degradation of Black women found in the Black exploitation films³⁷ of the 1970s. Many contemporary images of Black women, however, may be derived from these films. Black exploitation films portrayed Black women as mindless sex objects "to be used and abused without rationale by white and black males

35. After slavery ended, the sexual exploitation of black women continued, in both the North and the South. . . . To sustain it, in the face of the nominal freedom of black men, a complex system of supportive mechanisms and sustaining myths was created. One of these was the myth of the "bad" black woman. By assuming a different level of sexuality for all Blacks than that of whites and mythifying their greater sexual potency, the black woman could be made to personify sexual freedom and abandon. A myth was created that all black women were eager for sexual exploits, voluntarily "loose" in their morals and, therefore, deserved none of the consideration and respect granted to white women.

G. LERNER, *BLACK WOMEN IN WHITE AMERICA: A DOCUMENTARY HISTORY* 163 (1973).

36. Grace Jones is a Jamaican-born Black woman who is a singer, model, and actress. Her hairstyle, attire, and performance style have earned her a myriad of images including: "jungle cat," Rosemberg, *Guillotines, Sheep Chopped From French Revolution Parade*, Reuters, Feb. 11, 1989 (LEXIS, Nexis); "androgynous," Wrong, *French Impresario Plans Surrealist Bastille Day Parade*, Reuters, Feb. 11, 1989 (LEXIS, Nexis); "erotic menace — she once appeared in a tiger cage gnawing raw meat," *The Stars, The Sounds, The Screens of June*, LIFE, June 1985, at 139; "an image either sexless or voraciously sexy, depending on your point of view," *Jungle Fever*; by Jean-Paul Goude, PEOPLE, Oct. 25, 1982, at 12. Grace Jones "once wore a dress so tight she had to be carried up the stairs to the stage by a bodyguard," O'Malley & Gratteau, *No Biz Like Show Biz*, Chi. Tribune, Mar. 11, 1987, § 1, at 16, col. 1.

The purpose of sketching this contrast is simply to identify the fact that the public images which we observe reflect a historical construction which labels Black women as "other."

37. The term refers to a genre of film from the 70s which depicted streetwise Black men (and sometimes women) as the central characters in action adventure stories. The films were widely criticized as derogatory for their portrayal of Blacks as pimps, drug dealers, hustlers, or other criminal types. See Mills, *Blaxploitation 101: A Brief Film History of Sticking It to the Man*, Wash. Post, Nov. 4, 1990, at G1, col. 2.

in films."³⁸ Black women's sexuality continues to be portrayed as deviant. Black women are represented as sex objects and as comparatively more sexually aggressive and available than white women.

The media has since moved away from the extreme caricatures of Pam Grier as a "female superspade"³⁹ in the movie *Foxy Brown*⁴⁰ or the role played by Diana Sands as the adulterous wife who seduces her white landlord while her husband is imprisoned in the movie *The Landlord*.⁴¹ Nonetheless, when they appear in current films, Black women are vividly portrayed as sexually immoral. In the movie *Coming to America*,⁴² for example, there is no need to juxtapose a Black woman's sexual immorality against the virtuousness of a white woman's, because the contrast between the portrayals of the darker-skinned sister's sexual exploits as compared to the angelic existence of her older fair-complexioned sister is obvious. In the movie *48 Hours*,⁴³ the only Black woman depicted is a prostitute.

The overall image of Black women on prime time television is still in conflict with the normative definition of womanhood. For

38. BLACK FILMS AND FILMAKERS: A COMPREHENSIVE ANTHOLOGY FROM STEREOTYPE TO SUPERHERO 199 (Patterson ed. 1975) [hereinafter BLACK FILMS AND FILMAKERS]. In an interview, Donald Bogle, a historian of Blacks in television and film, discussed the troubling images in Black exploitation films, including those of Black women,

who were often "thrown in and out of bed" by the ever-ready hero. Even when a black woman was the star, playing a tough, assertive character, as Pam Grier did in "Coffy" and "Foxy Brown," the viewer still knew "she was going to get tied up, the blouse was going to pop open, the breasts were going to surface."

See Mills, *supra* note 37, at G6, col. 5.

39. A superspade was the characterization given to the Black heroes of the Black exploitation films of the 1970s. "Typical is the main character of the 1971 MGM movie *Shaft*. Indestructible, flippant, romantic and triumphant . . . Superspade is just another caricature." D. LEAB, FROM SAMBO TO SUPERSPADE: THE BLACK EXPERIENCE IN MOTION PICTURES 4, 237 (1975).

40. A newspaper review of the 1974 American International release described the movie.

Before femme might makes right, Grier and callgirl Juanita Brown have a brawl in a lesbian bar . . . doxy Sally Ann Stroud has her throat slashed, two degenerate white thugs who've raped Grier are burned to death, and white Brown is castrated. Tasteful finale has Grier delivering Brown's private parts in a pickle jar to leader Loder before driving off with neighborhood vigilante leader . . .

Variety, Apr. 17, 1974, at 16, col. 5.

41. See BLACK FILMS AND FILMAKERS, *supra* note 38, at 199.

42. *Coming To America* (Paramount 1988).

43. *48 Hours* (Paramount 1988).

example, the television program *Miami Vice*⁴⁴ attempts to justify the scantily clad Olivia Brown ("Trudy") by making her an undercover detective. As an "undercover detective," she mostly poses as a prostitute. The image of sexual aggressiveness is again depicted on the television show *227*⁴⁵ in which Black actress Jackee plays the role of Sandra, whose sole purpose in life is to obtain as many male companions as possible.⁴⁶

Very few Black female television characters are likely to be depicted as passive or demure. In fact, it is more likely that their assertiveness would be interpreted as reflective of some element of a "Sapphire."⁴⁷ Recent examples include the younger sisters on *Family Matters*,⁴⁸ who spend a great deal of their time verbally abusing their older brother and finding ways to ingratiate themselves with their parents, and Robin Givens's role in *Head of the Class* as a self-centered domineering high school student.⁴⁹

Moreover, the women of the *Cosby Show*⁵⁰ and *A Different World*⁵¹ challenge prevailing notions about the traditional role of women by occupying equal, if not domineering positions, with respect to their male counterparts on the shows.⁵² The fact that the majority of Black female characters on television appear in situation

44. *Miami Vice* (NBC television broadcast, 1984).

45. *227* (NBC television broadcast, 1985).

46. It is interesting to compare the character of Chrissie, a white woman, on the television program *Three's Company* (ABC television broadcast, 1977) with the character of Sandra on *227*. While Chrissie's dress is at least as suggestive as Sandra's, she is portrayed as having no sexual interests outside of marriage. She shares her room with another female, and the two regularly rebuff their male roommate's sexual advances. Sandra, on the other hand, lives alone and cannot wait until her next "hot date." A comparison of the two characters provides a stark contrast in imagery.

47. See *supra* note 15 and accompanying text.

48. *Family Matters* (ABC television broadcast, 1989).

49. *Head of the Class* (ABC television broadcast, 1986). In one episode involving a competition for high school queen, Givens threatened the white male student chair of the program to obtain a promise that she would be queen while her white counterparts cajoled him with flattery and flirts to obtain the same promise.

50. *Cosby Show* (NBC television broadcast, 1984).

51. *A Different World* (NBC television broadcast, 1987).

52. Other illustrations abound. Take, for example, the women of *227* (NBC television broadcast, 1985). All of the characters are domineering and aggressive: Pearl the elderly grandmother reigns over her teenage grandson; Rose is the single landlady of the building; Mary, though a loving mother and wife, nonetheless frequently challenges her husband. Similarly, on the television show *Amen* (NBC television broadcast, 1986), Thelma, the daughter of a deacon, is anything but demure and obedient. She is always ready to assert her quick tongue, fierce eyes, and aggressive posture anytime another woman threatens her relationship with her husband.

comedies further challenges their legitimacy.⁵³ While these characters' assertiveness may be considered a positive attribute by feminists, this potential positive effect is substantially weakened by the fact that these characters are not meant to be taken seriously by the viewer.

All of the above images deviate from or directly challenge those of the traditional passive woman. Because battered woman syndrome is based on the traditional view of the "normal," passive woman, the theory does little to help Black women who are excluded from this stereotype. The dominant images of Black women as domineering, assertive, hostile, and immoral may hinder a judge's or juror's ability to comprehend a Black woman's act of self-defense as based on "learned helplessness"⁵⁴ in much the same way that gender definitions of white women serve as an obstacle in the law of self-defense. While a white woman's conduct in killing may be viewed as inapposite to traditional gender roles, the same conduct by a Black woman may be viewed as typical of her character.

The historical acceptance of wife beating⁵⁵ also makes it less likely that a jury will perceive any present or prior beating as indicative of bodily harm sufficient to justify the use of deadly harm by any woman. This is particularly likely to be the case for Black women who are considered "strong and suffering."⁵⁶ The perception that Black women possess more physical strength than white women may decrease the likelihood that a Black woman reasonably believed that she was in danger of serious bodily harm.⁵⁷ This per-

53. STEENLAND, *UNEQUAL PICTURE: BLACK, HISPANIC, ASIAN AND NATIVE AMERICAN CHARACTERS ON T.V.* (1989) (National Commission on Working Women, Washington, D.C.). Additionally, Black sitcoms in syndication such as *The Jeffersons* (CBS television broadcast, 1975); *Good Times* (CBS television broadcast, 1974); *What's Happening* (ABC television broadcast, 1976); and *Sanford and Son* (NBC television broadcast, 1972) provide even more extreme images of Black women as Sapphires.

54. See *supra* note 7 and accompanying text.

55. See Schneider, *supra* note 24, at 627-30 (discussing the legal origins of the sanctioning of woman abuse based on a notion that women were property to be protected by men).

56. Gloria Naylor in an essay on the myth of the strong Black woman also traces the roots of this imagery to the role of Black women during slavery: "They were stronger creatures; they didn't feel pain in childbirth; they didn't have tear ducts."

Naylor, *The Myth of the Matriarch*, LIFE, Spring 1988, at 65. Naylor also points out that Black women themselves may have adopted this perception at great cost to their personal well-being by feeling that if they are not able to withstand all things they are somehow inadequate. This observation provides an interesting perspective from which to evaluate the experiences of Black women who are battered. *Id.*

57. The image of the strong Black woman arose during slavery to justify the disparate treatment of Black women and white women with regard to labor. "To explain the black female's ability to survive without the direct aid of a male and her ability to

ception of Black women is further perpetuated today in theories which assert either implicitly or explicitly that Black women are emasculating or matriarchal. For example, the current policy debate concerning the status of the "underclass" tends to focus on the plight of Black men, which implies that Black female-headed households are the real problem for the underclass.⁵⁸ Moreover, the moralistic overtones of this debate contributes to the perception that Black women are sexually immoral.⁵⁹

The relevance of the differences in the normative definitions of Black women and white women may not be significant with regard to self-defense if neither woman's behavior is considered reasonable. The distinction is significant, however, in the context of battered woman syndrome theory. The theory's use of characterizations which reflect traditional gender role stereotypes appears to be an attempt to restore the battered woman's image to reflect society's normative definition of a normal woman. But this definition does not apply to women who are considered "other." "Black men and women live in a society that creates sex-based norms and expectations which racism operates simultaneously to deny; Black men are not viewed as powerful, nor are Black women seen as passive."⁶⁰ Thus, battered woman syndrome essentially excludes Black women.

CONCLUSION

Battered woman syndrome presents a troubling paradox. For some battered women, the theory is a viable tool for satisfying the legal standard of self-defense and for explaining their behavior as reasonable. For others, the theory's use of standard gender definitions may not only exclude some battered women but may actually

perform tasks that were culturally defined as 'male' work, white males argued that black slave women were not 'real' women but were masculinized sub-human creatures." B. HOOKS, *supra* note 12, at 71.

58. "Anti-feminists argue that changing sex role patterns have threatened males so that they are demonstrating their anger by domestic brutality. As supporters of male dominance they assert that violent acts against women will continue until society returns to the good old-fashioned days of sharply delineated sex roles." *Id.* at 105. See also W. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* (1987); D. MOYNIHAN, *The Tangle of Pathology in THE NEGRO FAMILY: A CASE FOR NATIONAL ACTION* (1965) (This controversial report asserted the existence of a matriarchal family structure among Black households was the reason for the low socio-economic progress of Blacks in America.)

59. McGrory, *Moynihan Was Right 21 Years Ago*, Wash. Post, Jan. 26, 1986, at B1, col. 1; Will, *Voting Rights Won't Fix It*, Wash. Post, Jan. 23, 1986, at A23, col. 5. Both articles point to irresponsible sexual conduct as the primary cause of the underclass.

60. See Crenshaw, *supra* note 11, at 155.

impose an additional obstacle. To the extent that battered woman syndrome restores a battered woman's image to that of a "good" woman, the theory implicitly embraces the notion that there are "good" women and "bad" women. This dichotomy necessarily implies there is an "other" who can be pointed to as lacking in the characteristics of "true womanhood." Therefore, to assert battered woman syndrome successfully, a woman must avoid association with any of the images of "other."⁶¹ Such avoidance is especially difficult for a Black woman, who is viewed as "other" simply by virtue of her skin color. Thus, battered woman syndrome fails as a viable theory for *all* battered women.

While it may be possible to expand the characterizations or terminology upon which battered woman syndrome relies, this would also be a limited solution. The problems which spawned the need for theories such as battered woman syndrome still remain. The law of self-defense is a narrow vehicle for accommodating the specific circumstances in which women may find it necessary to take defensive action. Battered woman syndrome explains the behavior of battered women within fairly strict categories, i.e. that a woman is fearful, weak, and submissive. Yet, the theory provides no means for assessing the reasonableness of the woman's act of killing unless she is given the "excuse" of learned helplessness. "Excuse connotes personal weakness and implies that the defendant could not be expected to function as would a 'normal' person."⁶²

Even an analysis that criticizes battered woman syndrome for pigeonholing the battered women's behavior as unreasonable relies on dominant gender-based experiences.⁶³ Gender-based theories that do not incorporate race and class will be as problematic as battered woman syndrome. As long as such theories rely on majority gender definitions, the majority will marginalize the experiences of the minority.

61. Such images include those based on ethnicity, class, and sexual orientation as well as race.

62. Sagaw, *A Hard Case for Feminists: People v. Goetz*, 10 HARV. WOMEN'S L.J. 253, 256 n.21 (1987).

63. See Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23. While this work provides a legitimate critique of battered woman syndrome, it is nonetheless a gender-based analysis; it is suggested that another explanation for why a battered woman remains in an abusive relationship is the connection thesis which describes women as connected to others (materially in the context of pregnancy), and as fearing abandonment and isolation.

Measures must be taken to isolate and redefine established gender norms. The lack of a comprehensive analysis incorporating the effects of race, class, and gender on the legal system reinforces the necessity of "multiple consciousness as jurisprudential method."⁶⁴ This is not to suggest that the existing studies and theories are without merit. Rather, it is a call to recognize the harm which will continue in the absence of an intersectional analysis of feminist legal principles.

64. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

