

The Currency of White Women's Hair in a Down Economy

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Women want choices, especially when it comes to their hair. At just about any suburban drugstore, a woman of moderate means can buy hundreds of different hair dyes, gels, sprays, oils, shampoos, and conditioning treatments. On sale are hair combs, brushes, clips, rollers, bows, crimpers, irons, and even extensions, just an aisle or two away from the toothpaste and deodorant. For women who live far from wide-aisled stores,¹ internet pharmacies ("Free Shipping!") make the same products accessible with a few mouse clicks.² Some women who live in populated areas may buy hair products from a store specializing in "ethnic" hair-care products.³ Women have an abundance of choices about what to put in and on their hair and how to get it.⁴

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¹ See, e.g., *Store Count by State*, WALGREENS NEWSROOM, http://news.walgreens.com/article_display.cfm?article_id=1044 (last visited Jan. 21, 2011). Walgreens operates 7,650 stores in all 50 states in the United States, the District of Columbia, and Puerto Rico.

² See, e.g., DRUGSTORE.COM, <http://www.drugstore.com> (last visited Dec. 30, 2010) ("Free shipping on any order of \$25 or more").

³ In the case of black hair-care products, regardless of where they are sold, most are manufactured by corporations that are not owned by African-Americans. See, e.g., Tim Cavanaugh, *Personal Care '95: Ethnics Expand*, CHEM. MKTG REP. 21 (1995); James Clingman, *The Black Hair Care Tragicomedy*, CHI. DEFENDER, July 28, 2006, at 3.

⁴ In this essay, I limit my comments to the hair on a woman's head. *But see*, e.g., Bridget Crawford, *Laura Ingalls Had Hairy Pits and So Did Pa*, FEMINIST LAW PROFESSORS (July 12, 2009), <http://www.feministlawprofessors.com/2009/07/laura-ingalls-had-hairy-pits-and-so-did-pa/>; Bridget Crawford, *If You Dare Wear Hair There*, FEMINIST LAW

Women of all colors often go to great lengths to maintain their hair, even if they are financially constrained.⁵ Hair has the power to signal a woman's class,⁶ race,⁷ and gender identity.⁸ It may signal her sexuality,⁹ ethnicity,¹⁰ occupation,¹¹ religious affiliation,¹² musical

PROFESSORS (Sept. 14, 2007), <http://www.feministlawprofessors.com/2007/09/if-you-dare-wear-hair-there/>; Bridget Crawford & Amanda Kissel, *Perchance to Depilate*, FEMINIST LAW PROFESSORS (June 10, 2007), <http://www.feministlawprofessors.com/2007/06/perchance-to-depilate/>; Catherine Saint Louis, *Unshaven Women: Free Spirits or Unkempt?*, N.Y. TIMES, Apr. 12, 2010, <http://www.nytimes.com/2010/04/15/fashion/15skin.html>.

⁵ In the Chris Rock documentary "Good Hair," one hairdresser reports that several of her clients who are teachers and day-care workers pay up to \$1,000 for a hair weave that may need to be replaced three or four times per year. GOOD HAIR (HBO Films 2009). "Lay-away plans" are available at this salon. *Id.* Law Professor Margaret Montoya writes of growing up "poor, brown [and] female" in New Mexico in the 1950s. Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 190 (1994). Her mother emphasized to her children the importance of having neat hair. *Id.* at 187 ("'Don't move,' she'd say as she held the two hanks of hair, checking to make sure that the part was straight. Only then would she begin, braiding as tightly as our squirming would allow, so the braids could withstand our running, jumping, and hanging from the monkey bars at recess. 'I don't want you to look *greñudas*,' my mother would say. ['I don't want you to look uncombed.']").

⁶ See, e.g., Julie Bettie, *Women without Class: Chicas, Cholas, Trash and the Presence/Absence of Class Identity*, 26 SIGNS 1, 14 (2000) (describing experiences of white and Mexican-American girls to whom "[h]airstyles, clothes, shoes, and the colors of lip liner, lipstick, and nail polish were key markers used to express [racial and class-based] group membership as the body became a resource and a site on which difference was inscribed.").

⁷ See Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079, 1086-87 (2010) (arguing that "braids, locks, and twists" are "the functional equivalents of Afros" that are properly viewed "in the same light as other phenotypical and racial characteristics, such as skin color and nose width.").

⁸ See Rose Weitz, *Women and Their Hair: Seeking Power through Resistance and Accommodation*, 15 GENDER & SOC'Y 667, 677-78 (2001) (describing some white women's belief "that femininity and professional competence are antithetical. In such situations, women may consciously use their hair to defeminize themselves.").

⁹ Cf. MARIA R. LOWE, *WOMEN OF STEEL: FEMALE BODY BUILDERS AND THE STRUGGLE FOR SELF-DEFINITION* 6, 10 (1998) (female athletes intentionally maintaining long hair to avoid being stereotyped as lesbians).

taste,¹³ regional origin,¹⁴ or even her political views.¹⁵ Women judge others' hair and are judged by their own hair.

¹⁰ Red hair, for example, is most commonly found among those of northern or western European descent. See Robin L. Flanigan, *Scientists Question Whether Rare Reds Are Headed For Extinction*, DEMOCRAT & CHRON., May 5, 2005, available at <http://www.azcentral.com/ent/pop/articles/0505redhair05.html>.

¹¹ For example, a woman with an asymmetrical hairstyle dyed purple and blue is almost certainly not a member of the active duty military. See U.S. Navy Uniform Regulations § 2201.1.b. (2009):

Hairstyles shall not be outrageously multicolored or faddish, to include shaved portions of the scalp (other than the neckline), or have designs cut or braided into the hair. Hair coloring must look natural and complement the individual. Haircuts and styles shall present a balanced appearance. Lopsided and extremely asymmetrical styles are not authorized. Ponytails, pigtails, widely spaced individual hanging locks, and braids which protrude from the head, are not authorized. Multiple braids are authorized. Braided hairstyles shall be conservative and conform to the guidelines listed herein. When a hairstyle of multiple braids is worn, braids shall be of uniform dimension, small in diameter (approx. 1/4 inch), and tightly interwoven to present a neat, professional, well groomed appearance. Foreign material (i.e., beads, decorative items) shall not be braided into the hair. Short hair may be braided in symmetrical fore and aft rows (corn rowing) which minimize scalp exposure. Corn row ends shall not protrude from the head, and shall be secured only with inconspicuous rubber bands that match the color of the hair.

¹² See, e.g., FRANCES HAWKER & MOHINI KAUR BHATIA, *SIKHISM IN INDIA* 4-5 (2010) (observant male and female Sikhs typically do not cut their hair). See also M.G. SMITH ET AL., *REPORT ON THE RASTAFARI MOVEMENT IN KINGSTON, JAMAICA* 25-26 (1960). A subgroup of Rastafarians known as the "Locksmen" do not cut their hair. *Id.* Men of this subgroup do not trim their beards, either. *Id.* Not all Rastafarians dread their hair, or even have visible hair on their face or heads. *Id.* Some female Rastafarians do not cut their hair. See *Antonie v. Governing Body, Settlers High School, & Others* 2002 (4) SA 738 (CPD) (S. Afr.) (South African court upheld constitutional right of fifteen-year-old female Rastafarian to wear dreadlocks and to cover her hair with a cap).

¹³ Punk rock is one notable example. See, e.g., *Punk Haircuts*, MYHAIRCUTS.COM, <http://www.myhaircuts.com/punk-haircuts.shtml> (last visited Dec. 30, 2010).

¹⁴ See Weitz, *supra* note 8, at 672 (describing popularity of "big hair," or hair that is "curled, teased, blow-dried, and sprayed" as "popular among southeastern whites").

The downturn in the United States economy¹⁶ has affected men and women differently.¹⁷ Some commentators have labeled this period a "man-cession"¹⁸ or a "he-cession"¹⁹ because of the disproportionate impact on

¹⁵ See, e.g., Audre Lorde, *Is Your Hair Still Political?*, ESSENCE, Sept. 1990 at 40. See also *Afro Hairdo Banned by Nation in Africa*, MILWAUKEE J., Aug. 27, 1971, at 31. According to this U.S. news source, in 1971 the Tanzanian government issued guidelines for "the proper dress and personal appearance of government employees" which banned the afro, presumably in opposition to U.S. influence. *Id.*

¹⁶ Discussing whether the current economic conditions constitute a depression or a recession, see, e.g., Tom Raum & Daniel Wagner, *Are we in a Depression Yet?*, THE ASSOCIATED PRESS, Mar. 2, 2009, http://www.seattlepi.com/business/402041_depression03.html; Jeff Cox, *Economy Caught in Depression, Not Recession*, CNBC.COM (Aug. 24, 2010), http://www.cnbc.com/id/38831550/Economy_Caught_in_Depression_Not_Recession_Rosenberg; *Statement of the NBER Business Cycle Dating Committee on the Determination of the Dates of Turning Points in the U.S. Economy*, THE NAT'L BUREAU OF ECON. RESEARCH, http://www.nber.org/cycles/general_statement.html (last visited Dec. 30, 2010).

¹⁷ See, e.g., Melissa Murray & Darren Rosenblum, *Should Job Creation Favor Men?*, S.F. CHRON., May 19, 2009, http://articles.sfgate.com/2009-05-19/opinion/17202600_1_gi-higher-education-jobs.

¹⁸ Sarah Baxter, *Women are Victors in 'Mancession'*, THE SUNDAY TIMES (U.K.), June 7, 2009, http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6445913.ec e. See also Marc Lifsher & Alana Semuels, *California Unemployment Rises to Record 11.5% in May*, L.A. TIMES, June 20, 2009, <http://articles.latimes.com/2009/jun/20/business/fi-california-jobless20> ("Out of every four jobs lost nationwide since the recession began in December 2007, three have been lost by men. Some experts have dubbed the phenomenon a 'mancession.'"); Mark J. Perry, *The Great Man-Cession of 2008-2009 Continues*, CARPE DIEM: PROFESSOR MARK J. PERRY'S BLOG FOR ECONOMICS AND FINANCE (June 5, 2009, 1:21 PM), <http://mjpperry.blogspot.com/2009/06/great-man-cession-of-2008-2009.html>.

¹⁹ Jemimah Noonoo, *Facing Your 'He-cession'*, HOUSTON CHRON., Mar. 1, 2009, at 8. See also Greg Burns, *Recession Has Hit Men Harder*, L.A. TIMES, Apr. 3, 2009, at B4 ("It's a 'he-cession' out there and, man, it's brutal."); See also David Zincenko, *Decline of the American Male*, USA TODAY, June 17, 2009, at 10A ("Like most Americans, I look at the news about the economy, the need for health care reform and our growing national debt, and I worry about how we're going to escape the recession. But as someone who has spent his career working to save an endangered species - men - I have another worry on my mind: What are we going to do about the Great He-cession?"); Jay Hancock, *'He-Cession' Has More Men Looking at Once-'Female' Jobs*, BALTIMORE SUN, July 17, 2009, at 2A.

men's jobs.²⁰ For men, loss of employment may mean loss of personal and social prestige,²¹ or even masculinity, in the popular press.²² Women,

²⁰ Male-dominated construction and manufacturing sectors have been especially affected. See Heather Boushey, *Recession Hits Traditionally Male Jobs Hardest*, *CTR. FOR AM. PROGRESS* (May 8, 2009), http://www.americanprogress.org/issues/2009/05/gender_recession.html. See also Elisabeth Eaves, *In This Recession, Men Drop Out*, *FORBES.COM* (April 10, 2009), <http://www.forbes.com/2009/04/09/employment-men-women-recession-opinions-columnists-gender-roles.html> ("Of the 5.1 million jobs that have disappeared, a full 20% have been lost in construction, almost entirely by men. Another 20.6% of jobs have been lost in male-dominated manufacturing. Meanwhile, employment in the female-dominated fields of education and health services has increased by 12% since the recession began. In total, 78% of the jobs lost in this recession have been lost by men."). As of March 2009, men had lost more than 72% of all nonagricultural, private-sector jobs. *U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, NEWS: THE EMPLOYMENT SITUATION: JUNE 2009*, http://www.bls.gov/news.release/archives/empisit_07022009.htm.

²¹ The consequences of male unemployment have been the subject of much academic study. See, e.g., MIRRA KOMAROVSKY, *THE UNEMPLOYED MAN AND HIS FAMILY: THE EFFECT OF UNEMPLOYMENT UPON THE STATUS OF THE MAN IN FIFTY-NINE FAMILIES (1940)* (Octagon Books 1971).

²² See, e.g., Michael Luo, *Job Woes Exacting a Toll on Family Life*, *N.Y. TIMES*, Nov. 11, 2009, <http://www.nytimes.com/2009/11/12/us/12families.html> (describing a man who lost his six-figure salaried job as an energy consultant but didn't tell his family for several days; he "got dressed in the morning and left the house as usual at 6 a.m., but spent the day in coffee shops, the library or just walking around."). See also Louis Uchitelle, *Still on the Job, But at Half the Pay*, *N.Y. TIMES*, Oct. 14, 2009, at A1 (describing airline pilot who was demoted from captain status when his commercial carrier employer cut back on its workforce). Katherine Franke highlights the gendered aspects of this reporting:

Uchitelle tells the story of Bryan Lawlor, a good guy who tried to do right for his family by becoming a commercial pilot, but whose pay and status were cut in half when airline revenues dropped in the last year. As a result, Lawlor's blue pilot hat sits, not proudly on his head, but idle on a bookcase at home. You see, with his new downgraded status, he is prohibited by airline rules from displaying authority as he used to by wearing his full uniform. He can't walk through the airport wearing the captain's hat anymore - it "made me feel in command, and capable and powerful." It's hard not to laugh out loud at the unwitting (really?) reference to the well-known trope of the "hat" as penis-fetish and hatless-ness as a sign of castration. But just in case you missed the subtle implications of Lawlor's downgrade to his masculinity, Uchitelle connects the dots for you: Lawlor underwent a vasectomy shortly after his "downgrade" because he could no longer afford his former potency.

Katherine Franke, *Downsized Men on Page One of the New York Times*, *Feminist LAW PROFESSORS* (Oct. 14, 2009),

too, have suffered the effects of the economic downturn, as approximately 66% of all employers have lost revenues, and 90% of those employers have cut or frozen salaries or fired workers.²³ Unemployment among married couples with children under eighteen doubled in the two-year period ending in March 2009.²⁴ An unprecedented number of individuals and families are living with economic insecurity, if not below the poverty line.²⁵ Economic insecurity is the

<http://www.feministlawprofessors.com/2009/10/downsized-men-on-page-one-of-the-new-york-times/>.

²³ ELLEN GALINSKY & JAMES T. BOND, *FAMILIES & WORK INST.*, THE IMPACT OF THE RECESSION ON EMPLOYERS 4, <http://www.familiesandwork.org/site/research/reports/Recession2009.pdf> (The most obvious indication of the recession's impact on employers is that two thirds (66%) of employers report that their revenues declined in the past 12 months. . . . Most employers (77%) have made some effort to reduce or control costs during the recession. Among employers that have experienced lower revenues, 90% have taken steps to reduce labor and operational costs versus 50% of other employers. . . . Decreasing or eliminating bonuses, eliminating salary increases, laying off employees and instituting hiring freezes are the most frequent strategies employers have used to control costs.").

²⁴ U.S. CENSUS BUREAU, *AMERICA'S FAMILIES AND LIVING ARRANGEMENTS: 2009*, TABLE FG2 Married Couple Family Groups, by Family Income, and Labor Force Status of Both Spouses: 2009, <http://www.census.gov/population/www/socdemo/hh-fam/cps2009.html>. See also Press Release, U.S. Census Bureau, Census Bureau Reports Families with Children Increasingly Face Unemployment (Jan. 15, 2010), http://www.census.gov/Press-Release/www/releases/archives/families_households/cb10-08.html.

²⁵ The number of people living in poverty in the United States was estimated to be 39,829,000 in 2008 (13.2% of the population) and 37,276,000 (12.5% of the population) in 2007. U.S. CENSUS BUREAU, *HISTORICAL POVERTY TABLES-PEOPLE* (2010), <http://www.census.gov/hhes/www/poverty/data/historical/people.html> (follow "Table 2. Poverty Status, by Family Relationship, Race, and Hispanic Origin" hyperlink). The computation of poverty status is based principally on income and the number of persons living in a particular household. See *How the Census Bureau Measures Poverty*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/www/poverty/methods/measure.html> (last visited Dec. 31, 2010). In 2008, the poverty threshold for a family of four with two minor children was \$21,834; in 2007 and \$21,027 in 2007. *Poverty Thresholds 2008*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/www/poverty/data/threshld/thresh08.html> (last visited Dec. 31, 2010); *Poverty Thresholds 2007*, U.S. CENSUS BUREAU,

baseline state for many women and children;²⁶ their financial suffering is not news.

With media attention mostly on middle class white men's loss of status, one must look elsewhere for cultural measures of women's well-being. Curiously, the hair-care industry provides one measure of some women's efforts to retain or regain a toehold in the economy.²⁷ As the economy has declined, sales of home hair-care products targeted toward white women have increased.²⁸ According to a survey conducted by market research firm Mintel on 1,000 women who have had their hair dyed professionally, 15% report their shift to home-dyeing.²⁹ Information Resources, another market research company, reports a 20% increase in sales of Clairol's Root Touch-Up.³⁰ Major news outlets report on salon

<http://www.census.gov/hhes/www/poverty/data/threshld/thresh07.html> (last visited Dec. 31, 2010).

²⁶ For historic data on women's poverty, see *Historical Poverty Tables - People*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/www/poverty/data/historical/people.html> (follow "Table 7. Poverty, by Sex" hyperlink). A study by the Guttmacher Institute suggests that women making less than \$75,000 per year delay pregnancy during times of economic recession. *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions*, GUTTMACHER INSTITUTE (Sept. 2009), <http://www.guttmacher.org/pubs/RecessionFP.pdf>.

²⁷ Another might be the "lipstick index" or the "perfume index." See Chandler Burr, *Perfumers Breathe in Sales Data and Strategize*, N.Y. TIMES, June 19, 2009, http://www.nytimes.com/2009/06/20/business/20perfume.html?_r=1&pagewanted=2 (reporting decline of fragrance sales in 2008 and 2009).

²⁸ See Terry Trucco, *Taking Hair Color Into Their Own Hands*, N.Y. TIMES, Apr. 22, 2009, <http://www.nytimes.com/2009/04/23/fashion/23skin.html> (hair stylist shops at drugstore for clients trying to save money with home touch-ups between professional salon appointments).

²⁹ *Id.*

³⁰ *Id.*

customers trying to stretch out the time between their regular \$250 hair salon treatments.³¹ In times of economic distress, these women turn to home hair dyes to conform to certain appearances. To have gray hair is to be old (unemployable and unattractive) or menopausal (unproductive and unsexual). To retain one's hair color (natural or chosen) is to retain a currency of employability, utility, and desirability.³² As if to underscore the importance of well-maintained hair, several salons offer free haircuts to those who can prove their unemployment.³³

In contrast, the hair-care spending of African-American women (of all socio-economic classes), appears to be less susceptible to economic cycles, perhaps because of the unique role that the salon plays in many African-American women's lives.³⁴ One woman describes "the black salon experience [as] the enclave of warmth, comfort and

³¹ *Id.*

³² Sociologist Rose Weitz suggests that women develop "strategies" to "seek power using their hair," and that in doing so, "they combine accommodation and resistance as they actively grapple with cultural expectations and social structures." Weitz, *supra* note 8, at 669. Weitz likely would define dying one's hair a color that occurs naturally in humans - such as a color other than purple or aqua - as an act of "accommodation," insofar as it fails to challenge "ideologies that support subordination" (such as preferences for youth or traditional feminine beauty). *Id.* at 670.

³³ See, e.g., Susan Dominus, *Offering Hope in Haircuts for the Jobless*, N.Y. TIMES, Nov. 10, 2009, at A-26 (free cuts at Cristiano Cora studio in Greenwich Village, New York).

³⁴ See Delece Smith-Barrow, *Will Black Salons Survive the Recession?*, THE ROOT, Mar. 26, 2009, <http://www.theroot.com/views/will-black-salons-survive-recession> ("As businesses struggle to stay afloat, I have faith in the economic staying power of the black salon. It's the brilliance of leaders like Madam C.J. Walker, who founded the first hairdresser's union for black women, and Annie T. Malone, creator of one of the first companies to manufacture hair products for black women—and thousands of other businesswomen like them—that keeps my black-is-beautiful smile glowing year-round.").

fellowship guided gently by a stylist, who serves triple duty as BFF, therapist and family member all rolled into one.”³⁵ In that sense, the author continues, “black women have a little stimulus engine all their own. Yes, times are tight, but for as long as I can – and maybe a bit longer after that – I’m keeping my regular hair appointment.”³⁶ In some neighborhoods, the salon may be more than just a place to get one’s hair done.³⁷ If it is the locus of an informal support network, salon appointments might be one of the last items cut in a tight household budget.³⁸

African-American legal scholars have given voice to the complex role that hair can play in the personal, professional, social and legal lives of black women. For example, NYU Law Professor Paulette Caldwell has written of a desire to appreciate her hair apart from the meaning that society ascribes to it:

I want to know my hair again, to own it, to delight in it again, to recall my earliest mirrored reflection when there was no beginning and I first knew that the person who laughed at me and cried with me and stuck out her tongue at me was me. I want to know my hair again, the way I knew it before I knew that my hair is me, before I lost the right to me, before I knew that the burden of beauty – or lack of it – for an entire race of people could be tied up with my hair and me.³⁹

³⁵ *Id.*

³⁶ *Id.*

³⁷ See MARTÍN SÁNCHEZ-JANKOWSKI, *CRACKS IN THE PAVEMENT: SOCIAL CHANGE AND RESILIENCE IN POOR NEIGHBORHOODS* 199 (2008) (“[H]air shops played a critical role in the personal development of the neighborhoods’ residents.”); KIMBERLY BATTLE-WALTERS, *SHEILA’S SHOP: WORKING-CLASS AFRICAN AMERICAN WOMEN TALK ABOUT LIFE, LOVE, RACE AND HAIR* 1-2 (2004) (describing “the Black beauty shop” as a “gathering place”).

³⁸ BATTLE-WALTERS, *supra* note 37, at 2.

³⁹ Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 *DUKE L.J.* 365, 365 (1991).

Caldwell uses these personal reflections to frame a discussion of *Rogers v. American Airlines*,⁴⁰ which upheld an employer's right to prohibit an African-American woman from wearing a braided hairstyle at work.⁴¹ She criticizes the *Rogers* court for failing to appreciate that "[r]acism and sexism are interlocking, mutually-reinforcing components of a system of dominance rooted in patriarchy."⁴² *Rogers* overlooks that African-American women's decision to braid their hair (or not) takes

⁴⁰ *Rogers v. American Airlines, Inc.*, 527 F. Supp. 229 (S.D.N.Y. 1981).

⁴¹ *Id.* at 232 ("[T]he grooming policy applies equally to members of all races, and plaintiff does not allege that an all-braided hair style is worn exclusively or even predominantly by black people."). See Caldwell, *supra* note 39, at 369. Caldwell writes about her unease in discussing the case in her law school class, asking:

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

Caldwell, *supra* note 39, at 369. See also Joan R. Tarpley, *Blackwomen, Sexual Myth, and Jurisprudence*, 69 TEMP. L. REV. 1343, 1343 (1996) (discussing, *inter alia*, a case in which female employees won right to wear braids at fast-food chain restaurant); Constance Dionne Russell, *Styling Civil Rights: The Effect of § 1981 and the Public Accommodations Act on Black Women's Access to White Stylists and Salons*, 24 HARV. BLACKLETTER L.J. 189 (2008) (suggesting § 1981 of the Civil Rights Act as possible legal grounds for challenging discriminatory practices by hair salons).

⁴² Caldwell, *supra* note 39, at 371-72.

place in a different cultural context than white women's decisions.⁴³

"Wherever they exist in the world, black women braid their hair. They have done so in the United States for more than four centuries. African in origin, the practice of braiding is as American - black American - as sweet potato pie."⁴⁴ The court's attribution to white actress Bo Derek the "popularizing" of cornrows (Derek wore them in the 1979 film *10*),⁴⁵ in Caldwell's view, "specifically subordinates and makes invisible all the black women who for centuries have worn braids in places where they and their hair were not overt threats to the American aesthetic. The great majority of such women worked exclusively in jobs where their racial subordination was clear."⁴⁶ Hair, then, is not just hair, but part of women's historical and continuing experience of discrimination.⁴⁷

Columbia Law School Professor Patricia Williams has described course evaluations in which students explicitly commented on her appearance:

It is the end of a long academic year. I sit in my office reviewing my students' evaluations of me. They are awful, and I am devastated. The substantive ones say that what I teach is "not law." The nonsubstantive evaluations are about either my personality or my physical features My braids are described as being swept up over my "great

⁴³ See *Rogers*, 527 F. Supp. at 231-32.

⁴⁴ Caldwell, *supra* note 39, at 379.

⁴⁵ *10* (Geoffrey Productions Oct. 5, 1979); *Rogers*, 527 F. Supp. at 232.

⁴⁶ Caldwell, *supra* note 39, at 379.

⁴⁷ See, e.g., Lolita Buckner Inniss, *A 'Ho New World: Raced and Gendered Insult as Ersatz Carnival and the Corruption of Freedom of Expression Norms*, 33 N.Y.U. REV. L & SOC. CHANGE 43, 45-49 (2009).

bald dome of a skull," and my clothes, I am relieved to hear, are "neat." I am obscure, challenging, lacking in intellectual rigor, and brilliant.⁴⁸

These comments about the professor's hair highlight the ways that African-American women's personal grooming choices continue to be judged and evaluated for compliance with so-called "professional" norms, in a way that white women's grooming choices are not.⁴⁹

For African-American women, hair has never been just hair; it has been and continues to be a source of "othering" by mainstream society. White women's anxiety - the motivations to dye and style one's hair - does not occur in the same social, historical, and cultural context that black women's decisions do. Black women in this country live with the legacy of a message - from slavery to the present day - that the

⁴⁸ PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 95 (1991).

⁴⁹ This is not to say that African-American women are the only ones who receive comments about appearance in their course evaluations. My colleague and dear friend Darren Rosenblum reports regular feedback from his students on his tie choices. Darren Rosenblum, *A Little More Mascara: Response to Making Up Is Hard to Do*, 33 HARV. J.L. & GENDER 59, 65 (2010). White women, too, worry about appearing professional in the classroom. See Miranda Fleischer, *Rapunzel, Rapunzel*, PRAWFSBLOG (March 28, 2007, 7:28 PM), http://prawfsblawg.blogs.com/prawfsblawg/2007/03/rapunzel_rapunz.html. But no other group appears to be on the receiving end of as much routinely vitriolic scrutiny as African-American women receive. See Tami, *Dispatches from Nappyville: What is "Good Hair" Anyway?*, RACIALICIOUS (Nov. 2, 2009, 9:33 AM), <http://www.racialicious.com/2009/11/02/dispatches-from-nappyville-what-is-good-hair-anyway/> ("We live in a society where beauty is governed by Eurocentric standards that say the most attractive tresses for women are straight, long, shiny, fine and preferably light in color. To be sure, many, many women of all races fall short of this standard, but none so much as women of African descent, whose crowning glory tends to be, in many ways, the opposite of what is considered beautiful. It would be easier if, despite living in a majority culture that is different form [sic] our own, the black community as a whole was able to embrace the qualities most often associated with our hair, which tends to be highly-textured.").

hair with which an African-American is born is less than beautiful.⁵⁰

It seems that only in a down economy do some white women confront their hair's complex signaling function, including its link to race and privilege.⁵¹

My own hair is a site of personal battle and personal pride.⁵² For the first thirty-nine years of my life, I disliked my red hair.⁵³ I wanted to be brunette, blond, or raven-haired - anything other than red.⁵⁴ But that was not to be; my family won the phaeomelanin genetic

⁵⁰ PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 99-100 (2000).

⁵¹ Catherine Saint Louis, *Black Hair, Still Tangled in Politics*, N.Y. TIMES, Aug. 26, 2009, <http://www.nytimes.com/2009/08/27/fashion/27SKIN.html>.

⁵² Apparently, my experience fits into an observable phenomenon: "Redheads typically receive negative treatment as children, and, as a consequence, redheads experience a lowered self-esteem, feelings of differentness, and a sense of being the center of attention. Nevertheless, redheads typically transform a negative experience into a positive one by learning to appreciate their hair color and how it has shaped their sense of self. In essence, they become an example of tertiary deviants." Druann Maria Heckert & Amy Best, *Ugly Duckling to Swan: Labeling Theory and the Stigmatization of Red Hair*, 20 SYMBOLIC INTERACTION 365, 365 (1997). Who knew?

⁵³ I perceived my hair as different and thus undesirable. I did not, however, associate the color of my hair with other negative traits, and I was not aware that others did or might. Cf. *id.* at 365.

⁵⁴ This sentiment most likely was shared by many others after the television show *South Park* aired an episode featuring "Kick a Ginger Day." *South Park: Ginger Kids* (Comedy Central television broadcast Nov. 9, 2005). Unfortunately, some real-life youths took this as their inspiration for violence against their redheaded classmates. See "Kick a Ginger" Day Left Redheads with Legs Covered in Bruises, VANCOUVER SUN, Nov. 22, 2008, <http://www.canada.com/vancouver/sun/story.html?id=ac06eaac-1cb1-4ee7-8e17-a9b8b314af71> (reporting that one thirteen-year-old boy was kicked about eighty times; in another school, twenty students were suspended after kicking redheads); "Ginger Day" Attacks: Boys Arrested for Bullying Redheads, HUFFINGTON POST (Nov. 30, 2009, 2:04 PM), http://www.huffingtonpost.com/2009/11/30/ginger-day-attacks-3-boys_n_374133.html (three boys arrested for bullying redheads "after a Facebook message promoted 'Kick a Ginger Day' at a Southern California school. . . . Authorities believe the shoves and kicks were prompted by a message referring to a 'South Park' episode satirizing racial prejudice."). For further discussion of anti-redhead sentiment, see Finlo Rohrer, *Is*

jackpot.⁵⁵ Both of my parents had red hair. My sister had red hair. My three cousins had red hair. My maternal great-grandmother had red hair. My paternal grandmother had red hair. My uncle had red hair. Hair color connected my family across and within generations. Red hair is so much a part of my father's self-identity that he and his brother have called each other some variation of "Red" for as long as I can remember. My uncle is "Rojo"⁵⁶ and my father is "Rua"⁵⁷ in return. My father even calls my daughter "Red", although she is not phaeomelaninically blessed, because to be part of my family is to be redheaded, in the face of visual evidence to the contrary.

Beginning at the age of ten, I began a three-decades' long battle against my hair. I alternately had it cut, grew it, curled it, straightened it, and even squeezed on a bit of lemon juice from time

Gingerism as Bad as Racism?, BBC NEWS MAGAZINE, June 6, 2007, <http://news.bbc.co.uk/2/hi/6725653.stm>. For the record, I think "gingerism" is an unfair prejudice, but to compare it to racism is to deny the insidious, invidious structural complex that is racism.

⁵⁵ My family has this in common with the fictional wizarding family, the Weasleys. See J.K. ROWLING, *HARRY POTTER AND THE SORCERER'S STONE* 108 (1997) (upon meeting Ron Weasley, Draco Malfoy says, "No need to ask who you are. My father told me all the Weasleys have red hair, freckles, and more children than they can afford.").

⁵⁶ "Red" in Spanish. See BABYLON TRANSLATION, <http://dictionary.babylon.com/spanish/> (search "red"; then follow "define" hyperlink) (last visited Dec. 31, 2010). I am not sure why my father called my uncle "Rojo" when no one in their family spoke anything other than English and a bit of Irish. In multi-ethnic Cleveland, Ohio in the 1940s and 1950s, other potential nicknames could have been "Rosso" (Italian), рыжеволосый человек (Russian), "Рудий" (Ukrainian), "rdečelaske" (Slovenian), "Vöröshajú" (Hungarian); "zrzka" (Czech); "Rudowłosy" (Polish), "Roythorik" (Yiddish). See GOOGLE TRANSLATOR, <http://translate.google.com> (last visited Dec. 31, 2010). Indeed, "Rdečelaske" was what my father was called by the clerks in our local bakery. On Cleveland's historic ethnic groups, see W. DAVID KEATING ET AL., *CLEVELAND: A METROPOLITAN READER* (1995).

⁵⁷ "Red" in Irish. See IRISH DICTIONARY ONLINE, <http://www.irishdictionary.ie/home> (search "Type English Word" for "red"; then follow "look up" hyperlink) (last visited Dec. 31, 2010).

to time, but a persistent redhead I remained. When my beloved Chevrolet Monte Carlo with over 100,000 miles joined me at college, so did the license plates that spelled "REDHED." Incidentally, those plates were a great source of amusement and pride for my father, a life-long fan of vanity plates. But in my new college life, the license plates seemed decidedly uncool. Certainly I could have changed my hair (and presumably the license plates, too) once I left home, but by that time, I somehow knew that coloring my hair would have been the ultimate act of family disloyalty. I wasn't quite prepared to be left alone in the world. Luckily I found comfort in the arms of a man who spent the next twenty years telling me that my hair was gorgeous.

Only when I turned forty, when a few grey hairs appeared, did I begin to love the color of my own hair.⁵⁸ My hair - simultaneously a badge of belonging (to my family) and of disconnect (to the majoritarian world of blondes, brunettes, and raven beauties) - is a familiar life companion. Now I appear engaged in a long, slow goodbye to that friend. For a while I pulled out all of the gray hair I could find, but the wiry white sprouts have become more plentiful and harder to tame. My own familiarity with hot rollers and curling irons leaves me no prejudices against chemical treatments, hair dye, highlights, or just about anything a woman can do to her hair. In a few years, or perhaps even months, I very well may welcome Miss Clairol into my own

⁵⁸ For as long as I can remember, my mother referred to the onset of her own grey hair as the discovery of "silver threads among the reds." Hers is more "reds among the silver threads" these days, although she retains some natural color at age seventy-three.

home.⁵⁹ For now, I linger in the mirror to savor glimpses of blond, bronze, honey, brick, strawberry, and ginger strands. I wonder whether a bottle can replicate these tones. My own anxieties stare back at me in the mirror.

To be sure, this focus on hair may seem trivial or unimportant. We live in a time of poverty,⁶⁰ war,⁶¹ environmental devastation,⁶² and restrictions on civil rights and liberties.⁶³ But hair is not irrelevant, either. The choices women make - to spend or not, and on what - are choices informed by class, gender, and racial considerations. Our choices are situated in historical, personal, social, cultural, economic, and legal contexts. To consider white women's hair in a down economy is to consider the constraints on

⁵⁹ Miss Clairol is a hair-dye product of the Procter & Gamble company. CLAIROL HAIR COLOR, <http://www.clairol.com> (last visited Dec. 31, 2010). I have always enjoyed the brand's advertisements. See, e.g., *Miss Clairol Hair Color Commercial 1978*, YOUTUBE, <http://www.youtube.com/watch?v=O2Rofq33z2Q> (last visited Dec. 31, 2010); *1973 Miss Clairol Hair Color Cybill Shepherd*, FLICKR, <http://www.flickr.com/photos/25692985@N07/3377745249/> (last visited Dec. 31, 2010).

⁶⁰ *State & County Quick-Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Dec. 31, 2010) (13.2% of U.S. population living in poverty in 2008).

⁶¹ See, e.g., Laura King, *Burden of War in Afghanistan Shifts Even More to the U.S.*, L.A. TIMES, Aug. 1, 2010, <http://articles.latimes.com/2010/aug/01/world/la-fg-afghan-war-deaths-20100801>.

⁶² See, e.g., Tom Zeller, Jr., *Estimates Suggest Spill is Biggest in U.S. History*, N.Y. TIMES, May 27, 2010, <http://www.nytimes.com/2010/05/28/us/28flow.html>.

⁶³ See, e.g., Editorial, *Breaking a Promise on Surveillance*, N.Y. TIMES, July 29, 2010, <http://www.nytimes.com/2010/07/30/opinion/30fril.html> (describing a request by the Obama administration to Congress to "clarify" or "expand" - depending on whom one asks - the authority of the federal government to compel internet service providers to provide subscriber information).

women's decisions about how they use their talents, body, abilities,
and resources.