

Intersecting Race Within #MeToo Movement as #UsToo

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Angela Onwuachi-Willig, [What About #UsToo? The Invisibility of Race in the #MeToo Movement](#), 128 *Yale L.J. Forum* 105 (2018).

The current #MeToo movement is a powerful force in our society. It has inspired multitudes of women to come forward about hideous incidents of workplace sexual assault and harassment by powerful men such as Harvey Weinstein, the movie and entertainment mogul. As droves of women in the entertainment industry began making allegations about Weinstein's sexually abusive behavior, actress Alyssa Milano sought to shine a national spotlight on it. In an October 18, 2017 [tweet](#), Milano invited other women who had been sexually harassed or assaulted to respond by writing 'me too' as a method to capture the severity of the problem. There is no doubt that Milano's tweet helped propel a juggernaut of a movement now referred to as #MeToo.

A recent Essay that I like a lot, *What About #UsToo? The Invisibility of Race in the #MeToo Movement*," by [Angela Onwuachi-Willig](#), criticizes #MeToo and the feminist movement more generally because its "essential woman" continues to be a "white woman." Published in the *Yale Law Journal Forum*, Onwuachi-Willig's Essay is one of twelve contributions to a symposium on "#MeToo and the Future of Sexual Harassment Law"; the entire collection can be found in the [Yale Law Journal Forum](#) and the [Stanford Law Review Online](#).

Onwuachi-Willig's Essay criticizes staunch feminist supporters of the #MeToo movement for ignoring women of color, starting with the omission of [Tarana Burke](#), the black woman who coined the term, "me too" in 1997—before the use of hashtags—as part of a movement concerned with sexual abuse and mistreatment of women. In addition to highlighting the failure of the #MeToo movement to recognize Burke's prominent original contribution, the Essay encourages us to consider how the lack of women of color playing a dominant role in the #MeToo movement warrants a scholarly response, which Onwuachi-Willig refers to as an #UsToo analysis. Further, the Essay provides an important discussion of the #MeToo movement's failure to develop a cohesive strategy addressing the intersection of race and gender, especially for women of color.

In 16 pages with 62 footnotes, Onwuachi-Willig's Essay offers a quick and cogent read. In reviewing the present day #MeToo movement's tendency to downplay the contributions and experiences of women of color, Onwuachi-Willig reveals that women of color have been long similarly overlooked in both public discussions about sexual harassment, and in harassment law—even though women of color assumed key roles in harassment law's development before and after the #MeToo movement. For example, the Essay compares the (lack of) response when the black actress and comedienne, Leslie Jones, and the black journalist and sportscaster, Jemele Hill, were harassed on Twitter, with the robust response to poor treatment of the white actress Rose McGowan. As the Essay shows, most reports failed even to recognize the gendered aspects of Jones's and Hill's harassment. Instead, their hostile treatment on twitter was wrongly considered to be primarily a racial matter rather than a matter of both race and sex.

The Essay also discusses Kimberle Crenshaw's groundbreaking work on intersectionality. The Essay suggests that Crenshaw's "intersectionality" framework supports the development of a new legal analysis for sexual harassment claims brought by women of color that should extend beyond the typical objective reasonable person standard; in other words, legal responses to #MeToo should accommodate #UsToo. Because of the intricacies of intersectional discrimination experienced by women of color, Onwuachi-Willig's expanded reasonable person standard would require the consideration of a complainant's different intersectional and multidimensional identities. The Essay acknowledges that other scholars have argued for a reasonable woman standard rather than an objective reasonable person

standard. However, the Essay adds to that approach by also including intersectional and multidimensional identities in assessing the reasonable person standard for women of color.

The Essay's greatest contribution lies in its call for intentional consideration of race within the dynamics of the #MeToo movement. Given the make-up of the current Congress and the courts, as well as the current President, I am less than sanguine about prospects for the adoption of a broader reasonable person standard that considers the intersectional and multidimensional identities of the complainant, as the Essay urges. To be sure, there are some hopeful signs. At least [one recent successful congressional response to the #MeToo movement](#) already occurred in December 2018, with the inclusion of IRS code provision Section 162(q), sometimes referred to as the "Harvey Weinstein" provision, in the Tax Cuts and Jobs Act. That provision prevents the tax deduction of money paid to settle or resolve sexual harassment or abuse claims and attorney's fees related thereto, if the agreement contains a confidentiality or non-disclosure provision. Additionally, public pressure has led some companies and law firms to eliminate their arbitration policies, and some states have prohibited the use of non-disclosure provisions in settling sexual abuse or sexual harassment claims. But still, I think that a change in federal antidiscrimination law aimed at considering intersectionality is unlikely.

Whether or not Congress responds positively to Onwuachi-Willig's call to action, her Essay offers a thoughtful starting point for further and more in-depth explorations into the intersection of race, including how black males may fit into this analysis. Whether Onwuachi-Willig pursues other remaining issues of race and sex intersections in her subsequent scholarly endeavors or leaves it to other scholars, her Essay resoundingly marks the #MeToo movement as deficient with respect to intersectional identity. Others should now respond to Onwuachi-Willig's #UsToo analysis by centering race within the ongoing objectives of the #MeToo movement.

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