

Adrien K. Wing\*

# Poverty, Lawyering and Critical Race Feminism in the Trumpian Era

## Introduction

The Faculty of Law, Uppsala University hosted an impressive symposium<sup>1</sup> in August 2019 featuring University of London Professor Adam Gearey's book *Poverty Law and Legal Activism: Lives that Slide Out of View*.<sup>2</sup> The event brought together scholars from Finland, the United Kingdom, Hong Kong, and the United States, as well as faculty and graduate students from Sweden. It was my pleasure to be one of the primary respondents to Gearey's lecture as well as a presenter at the symposium. First, this chapter will briefly summarize Gearey's book. Second, it will focus on my remarks for the lecture he presented at the symposium entitled "Critical Thinking as an Art of Notice." Third, it will discuss some perspectives left out of his treatment of poverty law, specifically, critical race feminism. Finally, I will conclude with an example emphasizing a critical race feminist perspective in the era of U.S. president Donald Trump.

\* Adrien Katherine Wing is Associate Dean of International & Comparative Law Programs and Bessie Dutton Murray Professor of Law at the University of Iowa College of Law, USA.

<sup>1</sup> I would like to thank Uppsala University, the Faculty of Law, and especially professors Maria Grahn-Farley and Joel Samuelsson for making my attendance at the August 23–24, 2019 symposium possible. Additionally, the following Iowa research assistants provided great support – Efe Ayanruoh, Jessica Maharaj, Caroline Pappalardo, Alexandra Pecora, Natasha Riggleman, Riley Sexton, Rachel Shuen, Anayo Umeh, Keith Verschoore and Jacklyn Vasquez.

<sup>2</sup> Adam Gearey, *Poverty Law and Legal Activism: Lives that Slide Out of View* (2018).

## The Book

In his book, Gearey uses the lens of critical legal theory to raise a bricolage of issues about poverty law and the role of poverty lawyers, particularly in the United States. He emphasizes lawyers in the 1960s, but his insights apply to the situation in the early twenty-first century, perhaps even more so in the Trumpian era. None of the challenges that affected lawyers in the twentieth century has been resolved in the early twenty-first century. The COVID-19 pandemic during the Trump administration exacerbated wealth and health disparities, a situation that the legal system was not equipped to handle.

According to Gearey, critical legal theory has emerged as a continuation of Critical Legal Studies (CLS)<sup>3</sup> and is an umbrella term informed by “a radical sensibility inherited from the new left, the NWRO [National Welfare Rights Organization], radical constitutionalism, CRT [Critical Race Theory] and LatCrit [Latino/a Critical Theory]:<sup>4</sup> a complex of theory/praxis.”<sup>5</sup>

CLS evolved in the 1970s when politically radical white male academics, sometimes called “Crittters,” criticized the conservative nature of the law. European post-modern philosophers like Jacques Derrida and Michel Foucault influenced the Crittters.<sup>6</sup> Using Derrida’s deconstruction analysis, Crittters picked apart or deconstructed the idea that law was objective and neutral, and instead emphasized that the law was designed to benefit the wealthy and powerful. While many progressive legal scholars were attracted to CLS, some noted that the analysis omitted or largely ignored discussions of race and gender, and that the Crittters were primarily elite white males.

<sup>3</sup> See Mark Kelman, *A Guide to Critical Legal Studies* (1987); *Critical Legal Studies* (James Boyle ed., 1992); *Critical Legal Studies* (Peter Fitzpatrick & Alan Hunt eds., 1987); *Critical Legal Studies* (Alan Hutchinson ed., 1989); Roberto Unger, *The Critical Legal Studies Movement* (2015).

<sup>4</sup> See Francisco Valdes et al, AFTERWORD: What’s Next? Into a Third Decade of Lat-Crit Theory, Community, and Praxis, 16 *Seattle J. Soc. Just.* 884 (2018); *The Latino Condition: A Critical Reader* (Richard Delgado ed., 2011); Francisco Valdez, LatCrit: A Conceptual Overview, <http://www.latcrit.org/content/about/conceptual-overview/> (last visited Nov. 29, 2019).

<sup>5</sup> Gearey, *supra* note 2, at 164.

<sup>6</sup> See Christopher Watkin, Jacques Derrida: Great Thinkers (2017).

Progressive law scholars of color such as Derrick Bell,<sup>7</sup> Richards Delgado,<sup>8</sup> and others had been influenced by the U.S. Civil Rights movement and began to write beyond the CLS class analysis, and emphasize issues of race and ethnicity. For these authors, aspects of CLS were appealing, but many social and legal phenomena could not be properly understood unless race and ethnicity were central, rather than marginal or nonexistent. For example, to approach class without seeing race made the analysis of housing law incomplete, considering the long legacy of red-lining and both de jure and de facto housing segregation.<sup>9</sup> Patricia Williams offered an argument in favor of formalism when it comes to protection against discrimination and racial subjugation.<sup>10</sup>

The number of scholars of color, many of whom specialized in race issues in the legal academy, increased greatly in the 1980s. CRT held its first workshop in 1989, with much of the scholarship building in part on CLS and the work of the more senior scholars of color.<sup>11</sup> CRT became a race intervention in progressive legal discourse. Simultaneously, it became a progressive intervention in civil rights scholarship. Authors write from an anti-subordination and color conscious perspective.<sup>12</sup> They are concerned not only with theory, but also with praxis, how the theory is put into practice.

<sup>7</sup> See *The Derrick Bell Reader* (Richard Delgado & Jean Stefancic eds., 2005); Derrick Bell, *Faces at the Bottom of the Well* (1992); Derrick Bell, *Confronting Authority: Reflections of an Ardent Protester* (1994); Derrick Bell, *Gospel Choirs: Psalms of Survival for an Alien Land Call Home* (1996); Derrick Bell, *Afrolantica Legacies* (1998); Derrick Bell, *Ethical Ambition: Living a Life of Meaning and Worth* (2002); Derrick Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (2004).

<sup>8</sup> See *The Law Unbound!: A Richard Delgado Reader* (Adrien K. Wing & Jean Stefancic eds., 2007).

<sup>9</sup> John O. Calmore, *Racialized Space and The Culture of Segregation: Hewing a Stone of Hope from a Mountain of Despair*, 143 U. Pa. L. Rev. 1233 (1995).

<sup>10</sup> Patricia Williams, *The Alchemy of Race and Rights* (1991) at 146.

<sup>11</sup> See *Critical Race Theory: The Key Writings that Formed the Movement*. (Kimberlé Crenshaw et al eds., 1996)[hereinafter *Key Writings*]; Richard Delgado & Jean Stefancic, *Critical Race Theory: An Introduction* (3<sup>rd</sup> ed. 2017); Khiara Bridges, *Critical Race Theory: A Primer* (2019).

<sup>12</sup> For more on antisubordination, see *Key Writings*, *supra* note 11; *Critical Race Theory: The Cutting Edge* (Richard Delgado & Jean Stefancic eds., 3<sup>rd</sup> ed. 2013). For more on color consciousness, see Neil Gotanda, *A Critique of 'Our Constitution Is Color-Blind'*, 44 Stanford L. Rev. 1 (1991); Gary Peller, *Race Consciousness*, 1990 Duke L.J. 758, 760.

One controversial aspect of CRT has been the use of the narrative or story telling technique, in addition to traditional academic discourse.<sup>13</sup> The oral tradition not only has historical importance, but also serves as a form of communication from the old generations, to new generations in many communities of color. In addition, telling stories may help connect outsiders more directly with people of color, rather than trying to interpret arcane academic jargon. Some opponents of the narrative technique find it to be highly subjective, nonquantifiable, overly emotional, as well as lacking in intellectual rigor.<sup>14</sup>

CRT favors a multidisciplinary approach in order to develop the rights of people of color. By taking a multidisciplinary approach, CRT situates the law within society and refuses to disconnect the social experiences of people from the law that governs their lives. The law is necessary, but not sufficient to overcome discrimination and achieve success. It is essential that various disciplines play a role. Thus, all social science and humanities fields should be involved.<sup>15</sup>

Since that first CRT workshop, there have been numerous CRT-oriented books and anthologies, many conferences, as well as hundreds of law review articles. UCLA Law School has developed a Critical Race Studies program, which is a specialization that students can choose to pursue, and there are interdisciplinary programs and collaborations with the community.<sup>16</sup> CRT now spans many legal topics.<sup>17</sup>

A variety of other trends spun off from CLS or developed simultaneously or subsequently, including, as Gearey notes, FemCrit (feminist jurisprudence).<sup>18</sup> At the same time that many scholars were attracted to CLS and CRT, women began to become professors in larger numbers as well. Second wave feminists outside of law from the 1960s and after-

<sup>13</sup> See, e.g., Richard Delgado, *The Rodrigo Chronicles* (1995)(exemplifying the narrative technique).

<sup>14</sup> See, e.g., Richard Posner, *The Skin Trade*, reviewing Daniel A. Farber & Suzanna Sherer's *Beyond All Reason: The Radical Assault on Truth in American Law*, *New Republic*, Oct. 13, 1997, at 40.

<sup>15</sup> See, e.g., Menah Pratt-Clarke, *Critical Race, Feminism, and Education: A Social Justice Model* (2011).

<sup>16</sup> See About the Critical Race Studies Program, UCLA LAW, <https://www.law.ucla.edu/centers/social-policy/critical-race-studies/about/>.

<sup>17</sup> See *infra* notes 23–30.

<sup>18</sup> Gearey, *supra* note 2; See, e.g., Catharine Mackinnon, *Feminism Unmodified: Discourses on Life and Law* (1987); Catharine Mackinnon, *Feminist Theory of the State* (1989).

wards influenced many legal feminists. Feminist jurisprudence developed since neither CLS nor CRT nor traditional legal jurisprudence focused on gender.

Gearey acknowledges the importance of LatCrit, which developed as scholars from Hispanic/Latinx backgrounds were attracted to CLS and CRT, but felt that CRT overemphasizes the black/white binary, i.e. seeing racial issues as mainly involving African Americans and whites. These scholars may have seen CRT as ignoring issues relating to language, immigration status, and religion that may disproportionately affect Latinx people, who may be of any race or ethnicity.

Finally, Gearey discusses ClassCrit, which started in workshops held at the University of Buffalo Law School. ClassCrit represents modern and creative thinking on Marx influenced by CLS and affiliated networks.<sup>19</sup> Maria Grahn-Farley,<sup>20</sup> Athena Mutua,<sup>21</sup> and Martha McCluskey<sup>22</sup> are among the scholars who have written in this field.

Interestingly, Gearey does not mention some of the other jurisprudential strands that have also developed. These include: AsianCrit (focusing on Asians);<sup>23</sup> QueerRaceCrit (focusing on LGBTIQ communities of color);<sup>24</sup> Global CRT;<sup>25</sup> IndianCrit;<sup>26</sup> DesiCrit (South Asians);<sup>27</sup> and

<sup>19</sup> See Symposium on ClassCrits IX, 39 Western New Eng. L. Rev. (2017); See generally ClassCrits: A Network for Critical Analysis of Law and Economic Inequality, <https://www.classcrits.org/> (last visited Nov. 29, 2019).

<sup>20</sup> See, e.g., Maria Grahn-Farley, *Race and Class: More than a Liberal Paradox*, 56 Buff. L. Rev. 935 (2008).

<sup>21</sup> See, e.g., Athena Mutua, *Introducing ClassCrits: from Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 Buff. L. Rev. 859 (2008).

<sup>22</sup> See e.g., Martha McCluskey, *Constitutionalizing Class Inequality: Due Process in State Farm*, ClassCrits Essay Issue, 56 Buff. L. Rev. 1035 (2008).

<sup>23</sup> See Robert Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Poststructuralism, and Narrative Space*, 81 Calif. L. Rev. 1241 (1993); Robert Chang, *Disoriented: Asian Americans, Law, and the Nation-state* (1999).

<sup>24</sup> Darren Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics*, 47 Buff. L. Rev. 1 (1999).

<sup>25</sup> Francisco Valdes and Sumi Cho, *Critical Race Materialism, Theorizing Justice in the Wake of Global Neoliberalism*, 43 Conn. L. Rev. 1513 (2011).

<sup>26</sup> See Robert Williams, *Vampires Anonymous and Critical Race Practice*, 95 Mich. L. Rev. 741 (1997).

<sup>27</sup> See Vinay Harpalani, *To Be White, Black, or Brown? South Asian Americans and the Race-Color Distinction*, 14 Wash. U. Global Stud. L. Rev. 609 (2015).

Critical White Studies.<sup>28</sup> Even more recently, eCrit (focusing on empirical analysis),<sup>29</sup> and DisCrit (focusing on disability issues)<sup>30</sup> have emerged as well. CRT literature has attained a global presence and is being written in Europe and other parts of the world too.<sup>31</sup>

Gearey would like the reader to pull from the more recent strands of critical thinking he acknowledges and apply them to our understanding of modern poverty law. While his book mainly focuses on the United States, it clearly could be relevant to progressive lawyering in other jurisdictions. He calls for the poverty lawyer to be an ethical actor who recognizes the potential and limits in the struggle against twenty-first century economic inequality.<sup>32</sup>

## The Lecture: Critical Legal Thinking as an Art of Notice

During Gearey's lecture at the symposium he expanded upon a number of themes developed in his book,<sup>33</sup> but I will restrict my comments to what I discussed in my response to the lecture. He credits the phrase "art of notice" to Anna Tsing, an University of California at Santa Cruz anthropology professor. This term deals with how we engage with commodities and people, and how some humans have come to be regarded as objects or things. Poverty status can reduce and alienate people such that they are not noticed as humans by others around them.

<sup>28</sup> See Critical White Studies: Looking Behind the Mirror (Richard Delgado & Jean Stefancic eds. 1997).

<sup>29</sup> See Osagie K. Obasogie, *Blinded by Sight: Seeing Race Through the Eyes of the Blind* (2013).

<sup>30</sup> See Rabia Belt, *Contemporary Voting Rights Controversies through the Lens of Disability*, 68 Stan. L. Rev. 1491 (2016).

<sup>31</sup> See, e.g., Jean Stefancic & Richard Delgado, *A Shifting Balance: Freedom of Expression and Hate Speech Regulation*, 78 Iowa L. Rev. 737 (1992–1993); Carol A. Ayward, *Canadian Critical Race Theory* (1999); Mathias Moschel, *Race in Mainland European Legal Analysis: Towards a European Critical Race Theory*, 34 Ethnic & Race Studies 1648 (2011); Debato Arudou, *Japan's Under-Researched Visible Minorities: Applying Critical Race Theory to Racialization Dynamics in a Non-White Society*, 14 Wash. U. Global Stud. L. Rev. 695 (2015).

<sup>32</sup> See *supra* note 2.

<sup>33</sup> Adam Gearey, *Critical Legal Thinking as an Art of Notice*, lecture presented at Uppsala University Law School, Sweden, Aug. 23, 2019 [hereinafter "Lecture"].

In the lecture, I was honored that Gearey referenced my work on “spirit murder.”<sup>34</sup>

[S]pirit-murder consists of hundreds, if not thousands, of spirit injuries and assaults—some major, some minor—the cumulative effect of which is the slow death of the psyche, the soul, and the persona. This spirit-murder affects all blacks and all black women, whether we are in the depths of poverty or in the heights of academe.<sup>35</sup>

It is clear that the cumulative process of being ignored that happens to poor people results in murder of the spirit. My own work notes how this alienation occurs with respect to black people and many people of color, regardless of their class status, and thus exposes how class alone, whether through Marx, CLS, critical legal theory, or ClassCrits is not enough to precisely analyze the deeply embedded hatreds that existed historically and still existed in the Trumpian era.

Despite my relatively privileged status as a tenured law professor in the United States now, I can never forget that I am the descendant of slaves, who were literally considered less than a person in our constitution. The three-fifths clause in the American Constitution – the foundation of the U.S. as a nation stated that for purposes of representation in Congress, enslaved blacks in a state would be counted as three-fifths of the number of white inhabitants of that state.<sup>36</sup> Blacks are still living with that legacy more than two hundred years later as our votes continue to be suppressed, stolen, and gerrymandered in the electoral process.<sup>37</sup> The Russian government may have taken exclusionary measures to a new level and conspired to lower black voting numbers in the 2016 U.S. presidential election via clever misuse of social media.<sup>38</sup>

<sup>34</sup> See Adrien K. Wing, *Brief Reflections towards a Multiplicative Theory and Praxis of Being*, 6 Berkeley Women's L. J. 181 (1990–91).

<sup>35</sup> *Id.* at 186.

<sup>36</sup> U.S. Const. art. 1, section 2.

<sup>37</sup> Gerrymandering involves political officials redrawing voting district boundaries, often in unnatural configurations, to give one political party an advantage over another in an election. David Daley, *The Secret Files of the Master of Modern Republican Gerrymandering*, New Yorker, Sept. 6, 2019,

<https://www.newyorker.com/news/news-desk/the-secret-files-of-the-master-of-modern-republican-gerrymandering>.

<sup>38</sup> Scott She & Sheera Frenkel, *Russian 2016 Influence Operation Targeted African-Americans on Social Media*, N.Y. Times, Dec. 17, 2018, <https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html>.

Police treatment of blacks nationally has resulted in us being overrepresented in the prison industrial complex.<sup>39</sup> We used to pick the crops during slavery and thereafter. Now, we are the crop, the inhuman crop. We can be injured or killed for doing almost anything or nothing while black. These situations have occurred while blacks were breathing, driving, thinking, sleeping, sitting, counseling, playing, barbecuing, or shopping.<sup>40</sup>

The black community has relatively little net worth financially, as we are still the objects of property, rather than subjects/owners of property. In 2016, the median net worth of whites was ten times (\$171,000) that of blacks (\$17,600), and the gaps are still growing.<sup>41</sup>

My own family provides examples of the wealth disparities. My relatives owned two brownstones in the poor area known as South Bronx, New York for many decades. When they sold one of the houses a few years ago, it was worth 350,000 dollars. A similar type of home in Manhattan would be worth several million dollars. Of course, they were fortunate enough to own a house at all, compared to many blacks. My son, who is 35, is the only cousin of his generation of more than 30 people, who has been able to buy property at all. In his case, being able to buy property was easier because he married a white woman whose physician father paid for all her schooling through her master's degree. She had no educational or consumer debt. She was an ideal candidate for the mortgage lender and co-op board. Most of his other cousins may be renters for life.

As UCLA law professor Cheryl Harris has written, whiteness itself, is a form of property interest.<sup>42</sup> Thus, no matter how high I rise in U.S. society, I can never obtain that property interest. Perhaps, some of my grandchildren and great grandchildren will be able to obtain it if they intermarry with whites, such that the tinge of tan skin tone is gone. Two

<sup>39</sup> See, e.g. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010).

<sup>40</sup> See, e.g. Lauren Williams, *21 Things You Can't Do While Black*, Mother Jones, February 12, 2014, <https://www.motherjones.com/politics/2014/02/21-things-you-cant-do-while-black/>.

<sup>41</sup> Tracy Jan, *White Families have nearly 10 Times the Net Worth of Black Families. And the Gap is Growing*, Wash. Post, September 28, 2017, <https://www.washingtonpost.com/news/wonk/wp/2017/09/28/black-and-hispanic-families-are-making-more-money-but-they-still-lag-far-behind-whites/>.

<sup>42</sup> Cheryl Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1993).



grandchildren are currently capable of passing as white. There have been some situations where the most white-looking blacks who are discovered to be black, then descend to being treated as black, i.e. an inferior status.<sup>43</sup> My aunt passed for white in New York in the 1940s and thereafter. She was able to hold a job at the AT & T phone company that would not have gone to her if she had revealed that she was a Negro, the term of that era for black people.

My seven children (two biological) and fifteen grandchildren span the rainbow in skin color. My two daughters are Ethiopian refugees. One is a Muslim who wears a hijab. She is in medical school and she has been mistreated by fellow students, doctors, nurses, patients, and their family members. Three sons are biracial, where their birth mother was white and their fathers were black. One biological son could be seen as black, Hispanic, Indian, Hawaiian, Muslim, whatever that latter category looks like. None of them can pass for white, however, and all have experienced being not noticed or being noticed as inferior.

For critical thinkers, including Gearey's poverty lawyers, the art of notice requires that they see the art as a spirit, an anima –a way of keeping my family firmly in view as their own.<sup>44</sup> Based upon my almost forty years as a lawyer, I think we are very far away from a day where those with various forms of privilege, including the privilege of being noticed, will see my rainbow family as their equal.

## Critical Race Feminism (CRF)<sup>45</sup>

To enable critical thinkers to notice the nonprivileged, they must expand their understanding to embrace another jurisprudential stream Gearey ignored – Critical Race Feminism (CRF). Professor Richard Delgado coined the term “Critical Race Feminism” in his 1995 anthology *Critical Race Theory: The Cutting Edge*.<sup>46</sup> CRF involves an emphasis on the status of women of color. In the United States, women of color may

<sup>43</sup> See, e.g., Gregory Williams, *Life on the Color Line: The True Story of a White Boy Who Discovered He Was Black* (1995).

<sup>44</sup> Gearey, Lecture, *supra* note 33.

<sup>45</sup> This section in particular and other parts of this chapter draw from Adrien Wing, *Critical Race Feminism*, in *Sage Encyclopedia on Higher Education* (Marilyn J. Amey ed. 2020).

<sup>46</sup> See *Critical Race Theory: The Cutting Edge* (Richard Delgado ed., 1995)(coining the phrase “Critical Race Feminism.”)

include blacks, Latinos, Asians, Native Americans, Arabs or other minority groups. In other countries, women of color may be from a majority group in the developing world or a minority group in Europe or other predominantly white countries. Whether in the United States or in other countries, these women exist at the bottom of their societies economically, socially, politically, and often educationally. Applying a CRF perspective highlights the specificities of discrimination affecting women of color. Acknowledging their specific problems can enable the creation of relevant solutions in the areas of poverty law and lawyering so central to Gearey's book.

## Origins

CRF derives from the intertwining of three jurisprudential movements: CLS, CRT, and feminist jurisprudence/womanist theory. CLS, CRT and feminism were attractive to some women of color as they became academics, but many felt that all these movements omitted the perspectives of minority women. The genres assumed that women of color faced the same challenges as white women or men of color. Women of color legal academics also resonated with feminist or "womanist" theory written by women of color outside the law, including Patricia Hill Collins, *belle hooks*, Toni Morrison, Alice Walker, and Angela Y. Davis.<sup>47</sup>

CRF literature began to flourish in the last decade of the 20<sup>th</sup> century. It became a race intervention in traditional feminism and a gender perspective in CRT. A number of articles have been written and several symposia have been held. Two New York University Press anthologies I edited exist: *Critical Race Feminism: A Reader*<sup>48</sup> and *Global Critical Race Feminism: An International Reader*.<sup>49</sup> Legal scholars authoring some CRF scholarship include: Kimberlé Crenshaw, Angela Harris, Lani Guiner, Mari Matsuda, Patricia Williams, Cheryl Harris, Dorothy Roberts, Berta Hernandez, Margaret Montoya, Celina Romany, and myself Adrien Wing.<sup>50</sup>

<sup>47</sup> See, e.g. Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (2d ed. 1990); *belle hooks*, *Feminist Theory: From Margin to Center* (1984); Toni Morrison, *Beloved* (1987); Alice Walker, *The Color Purple* (1982); Angela Y. Davis, *Women, Race & Class* (1981).

<sup>48</sup> *Critical Race Feminism: A reader*. (Adrien Wing ed., 2d ed. 2003)[hereinafter CRF].

<sup>49</sup> *Global Critical Race Feminism: An International Reader* (Adrien Wing ed., 2000).

<sup>50</sup> See articles in CRF, *supra* note 48.

## Contributions of Critical Race Feminism

CRF has contributed to and expanded upon various concepts in law and social science. This section will discuss several notions: anti-essentialism, demarginalization, intersectionality, identity, and praxis.

### Anti-essentialism

In 1990, UC Berkeley law professor Angela Harris wrote a foundational CRF article entitled *Race and Essentialism in Feminist Legal Theory*.<sup>51</sup> She vigorously critiqued the idea that there was one essential female voice, i.e. all women would feel one way on a particular issue. Any attempt to claim women speak in one voice actually privileges the views of middle class or elite white women, and ignores the views of all other women, including women of color. Moreover, arguing that there is one essential black voice, ends up privileging black male voices and assuming black women think the same as the men. CRF challenges the idea that the black males' experiences are identical to black females' experiences. Thus, CRF is anti-essentialist, and requires acknowledging the differences and complexities in individual lives.

### Demarginalization

Professor Crenshaw, a UCLA/Columbia law professor, wrote a foundational CRF article in 1989 entitled *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*.<sup>52</sup> She called for the law to demarginalize the status of women of color. Rather than ignoring such women in publications about race or gender, it was necessary to center them in the analysis, whether the area be in education, affirmative action, employment, housing, personal injury, or traditional female subjects such as sexual harassment, reproductive rights, welfare reform, domestic violence, or poverty lawyering.

<sup>51</sup> Angela Harris. *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990).

<sup>52</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Leg. Forum 139.

## Intersectionality

Crenshaw's *Demarginalizing* article introduced the notion of intersectionality into American legal discourse, and the concept is now broadly applied in a number of disciplines.<sup>53</sup> To fully understand the situation of women of color requires not only looking at their racial identity and their gender identity, but also exploring the intersection of these identities. For example, a black woman is not black or a woman, but a holistic black woman. Mari Matsuda developed the notion of "multiple consciousness"<sup>54</sup> to describe how women of color may view the world based upon their several identities. I use the term "multiplicative identities" in my scholarship.<sup>55</sup>

## Identity

While the initial CRF scholarship emphasized the intersection of race/ethnicity and gender, publications began to complicate the analysis of the intersections by bringing in other identities. Some identities may permit you to experience privileging, while others may subject you to discrimination, simultaneously. For instance, being a professor may give you a privileged status at a university, but being a black person may subject you to police harassment on that very same campus. Among the additional identities that can come into play are: nationality, color, class, sexual orientation, religion, age, disability, language, minority, marital, and parenthood status.

## Praxis

Like CRT, CRF can involve praxis. For example, Crenshaw co-founded and is the Executive Director of a nongovernmental organization, the African American Policy Forum (AAPF).<sup>56</sup> Established in 1996, this intersectional feminist group promotes the rights of women and girls of color

<sup>53</sup> Kimberlé Crenshaw & Devon Carbado, *Intersectionality at 30: Mapping the Margins of Anti-essentialism, Intersectionality, and Dominance Theory*, 132 Harv. L. Rev. 2193 (2019).

<sup>54</sup> Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 Women's Rts. L. Rep. 7 (1989).

<sup>55</sup> Adrien K. Wing, *Brief Reflections*, *supra* note 34.

<sup>56</sup> See generally The African American Policy Forum, <http://aapf.org/> (last visited Nov. 29, 2019).

in the U.S. and beyond its borders. It is an academic think tank, but also has been linked to the Black Lives Matter, #Me Too, and the Times Up! movements. AAPF launched the #Say Her Name movement to highlight the lack of attention to the deaths of black women at the hands of the police across the country. The organization has hosted a summer camp and a social justice writers retreat as well as has held conferences, webinars, and participated in marches.

## Global contributions

CRF literature has evolved beyond the borders of the United States. Intersectionality analysis has been applied in many contexts.<sup>57</sup> Women of color around the world are marginalized and essentialized. Global CRF promotes women of color perspectives in the development of international and comparative law, including public international law, human rights, and international business transactions. Global CRF analysis offers transnational perspectives and contributes to postcolonial theory and global feminism in all disciplines. Debates about issues such as cultural relativism and universalism of human rights are more meaningful when the views of women of color are fully represented. Indeed, some women might be viewed as disloyal to their community and their lives may be at risk if their views are outside of deeply held patriarchal customary and religious norms. In addition to previously mentioned topics affecting all women, publications concerning customary law, inheritance and property, dowry, sex selection, bride burning, polygamy, and female genital surgery/mutilation have also been the subjects of analysis.

<sup>57</sup> See, e.g., Shreya Atrey, *Women's Human Rights: From Progress to Transformation, An Intersectional Response to Martha Nussbaum*, 40 Hum. Rts. Q. 859 (Nov. 2018); Ana Martin Beringola, *Intersectionality: A Tool for the Gender Analysis of Sexual Violence at the ICC*, 9 Amsterdam L. Forum 84 (2017); Gauthier de Beco, *Protecting the Invisible: An Intersectional Approach to International Human Rights Law*, 17 Hum. Rts. L. Rev. 633 (2017); Pok Yin S. Chow, *Has Intersectionality Reached its Limits? Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence*, 16 Hum. Rts. L. Rev. 453 (2016); Shreya Atrey, *Lifting as We Climb: Recognizing Intersectional Gender Violence in Law*, 5 Onati Socio-leg. Series (Online) 1512 (2015); Aisha Nicole Davis, *Intersectionality and International Law: Recognizing Complex Identities on the Global Stage*, 28 Harv. Hum. Rts. J. 205 (2015).

## An Example in the Trumpian Era

This final section applies a CRF analysis to the area of poverty law and lawyering in the Trumpian era. The Trump administration has implemented policies that benefit the wealthy white elites while encouraging xenophobia, racism, and Islamophobia on the governmental and private levels. Being an effective poverty lawyer requires noticing the intersectional and multiplicative nature of your clients' lives in this historic period, i.e. going beyond a sole emphasis on their class status as poverty-stricken.

We shall imagine a client, Fatima, who comes in with a housing problem. She is facing eviction. She does not speak English very well, and you find out her native language is Arabic. No one in your office speaks it, but Fatima's seven-year-old daughter Sara, has some command of both English and Arabic. Fatima has taken her out of school to assist with translation. You deduce that there is a sexual harassment problem with the property owner, but Sara's language skills are not up to the complexity to explain the precise situation.

You find out that Fatima is a non-US citizen, from a country under the Trump administration travel ban. Her husband Abdullah has been arrested and is going to be deported for unknown reasons. She rarely hears from him and she does not know where he is being held. Their home country is undergoing severe civil unrest, and the family has published social media posts critical of the regime. Fatima is severely depressed as she fears what will happen if Abdullah is returned to their native land. He had always told her to stay in America at all costs if she can.

Abdullah was the breadwinner and his job provided medical coverage for the family. Fatima is pregnant with their third child. Sara is asthmatic, and mold in the apartment may be affecting her. The oldest son, Nidal, is in high school. He is hanging out with a bad crowd, and faces Islamophobic bullying at school. Fatima is worried that Nidal may be attracted to the global jihad websites in his social media.

As a single parent now, Fatima needs to work, but she lacks a work visa and she needs a consultation with an immigration lawyer to see if she is even eligible to work. Additionally, she has been very sick during the pregnancy. The mold may be affecting her as well. Sara needs to go to the hospital a lot for the asthma, but Fatima is afraid they will be rejected now because their health insurance has lapsed. Between their medical problems and Fatima's lack of English skills, it might be impossible for

her to get a job even if she obtained a legal visa. Moreover, Sara is too young to be left alone after school.

The entire family can face Islamophobia in the street and schools, especially since Fatima wears a hijab. Their Muslim dietary requirements mandate halal meat, which is more expensive and less available. Since the local stores do not carry it, Fatima must go to a farm that is thirty minutes away. There is no public transit available and Fatima does not have a driving license, much less a car. She fears the landlord will turn her in as a terrorist if she does not comply with his demands to engage in sexual contact.

Because Fatima and her family are dark skinned, such that they cannot pass for white, they face race discrimination as well. They would not approach the local Black American community, as the family is culturally very different. Unfortunately, there are not people from Fatima's country in the local community to the best of her knowledge.

Overall, it is clear that the multiple complexities involved in her "simple" housing issue require attention beyond your abilities. You realize you need translation that will not require a seven year old staying out of school or her being exposed to sophisticated adult subjects. You find out that the many dialects of Arabic may mean that the translator you may find may not be able to really understand Fatima very well. Nidal, who also speaks some English, has been skipping a lot of school, and is not helpful at this point.

You realize that Fatima is a devout woman, and she seems very uncomfortable around you, a white male. Maybe, it would be better if you got a female lawyer involved in her case. To try to get some understanding of her culture and religion, you do a little research and discover there are many different ways Islam is practiced in different countries, and it will be too difficult to figure it all out in the context of your very limited time to work on her case, one case among dozens. In addition, you are not sure if anything you would do would make a real difference.

Effective poverty lawyering will mean more than handling complexity on an individual client basis with a predominantly white professional staff. You need to hire lawyers and professionals with various identities that have prepared them to handle multiplicative discrimination. Imagine how Fatima might react if her lawyer came in wearing a hijab as well and was a recent immigrant! Imagine if your paralegal spoke Arabic. If Fatima spoke a different dialect, maybe the paralegal would have access to someone who knew someone who spoke that dialect. Maybe the pa-

rare legal would know a discount place to get halal goods. Imagine if everyone on staff had complex diversity, equity, and inclusion training once a year. This training would not merely be normed to black-white racial issues, but would be representative of the broader array of communities in your area.

Imagine if the elite white male Harvard graduate who is a poverty lawyer could commit “class suicide” as the late Guinea Bissau revolutionary leader Amilcar Cabral<sup>58</sup> called for doing. That lawyer would then viscerally identify with his clients and denounce his own white privileging.<sup>59</sup>

Above all, your client needs to be treated with dignity, a concept the U.S. legal system does not quantify. You could learn much from the South African Constitution that does mention dignity in article 10: “Everyone has inherent dignity and the right to have their dignity respected and protected.”<sup>60</sup> The South African courts have applied the dignity concept in family law and other fields.<sup>61</sup> Dignity was the theme for the Washington-based Law & Society conference in May 2019. “Dignity embraces justice, rights, rule of law, respect for humanity and diversity as well as a commitment to human engagement, subjects that have been central in the law and society tradition. Dignity is a core idea in many different legal traditions and is shaped by a variety of struggles. It provides a bridge across cultures intersecting with diverse values and identities.”<sup>62</sup> Even if the U.S. does not have the dignity concept, there is nothing to prevent your work place from infusing its efforts with a commitment to providing dignity for all your clients. Imagine if one backlash from the Trumpian era was a national conversation on the need to treat all people residing within U.S. borders with dignity, especially as we head toward a mid-century country where people of color will be the majority.<sup>63</sup>

<sup>58</sup> Amilcar Cabral. *Revolution in Guinea: Selected Texts* by Amilcar Cabral (1970).

<sup>59</sup> Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack* (July/Aug. 1989), [www.nymbp.org/uploads/2/6/6/0/26609299/whiteprivilege.pdf](http://www.nymbp.org/uploads/2/6/6/0/26609299/whiteprivilege.pdf).

<sup>60</sup> S. Afr. Const. art. 10 (1996).

<sup>61</sup> See *Volks NO v Robinson and Others*, (CCT12/04) [2005] ZACC 2; 2005 (5) BCLR 446 (CC) (21 Feb. 2005).

<sup>62</sup> See Law and Society Association Annual Meeting 2019, <https://www.lawandsociety.org/WashingtonDC2019/Washington2019.html>.

<sup>63</sup> See William Frey, *The US will become 'Minority White' in 2045, Census Projects*, Brookings Institution (Mar. 14, 2018), <https://www.brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects/>.



## Conclusion

Gearey's book and lecture raise much food for intellectual thought in the Trumpian era. Those interested in or committed to critical legal theory should immerse themselves in the rich discussion on a variety of interwoven topics. The need for more sophistication in poverty lawyering in the twenty-first century will only continue to grow no matter who is the president of the United States.

