

# Global Critical Race Feminism Post 9-11: Afghanistan

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I am honored and privileged to be part of Washington University School of Law's Public Interest Law Speakers Series. In the spring of 2001, I told the staff of the Washington University Journal of Law and Policy that my general topic would be Global Critical Race Feminism (GCRF), but that I would determine the subtheme based upon events happening close to the time of my talk. I planned to discuss the plight of Rwandan women in my September talk because I had helped the Rwandans with a post-1994 genocide constitution last summer. Then September 11, 2001 came and the world changed. My speech, originally scheduled for September 13, 2001, was postponed until January 2002, and it was obvious that my subtheme had to change. I am especially pleased to finally give my speech and to have the opportunity this close to the events of 9-11 to begin to think about the current plight of Afghan women.

I am hoping that the horror of 9-11, unfortunate as it was, will encourage more Americans to care about the plight of people in the Muslim world and the Middle East. Those events have helped focus more international attention on the sad situation of Afghan women, most of whom still wear burkas despite the downfall of the Taliban. While some women may have preferred this form of dress prior to the rule of the Taliban, others remain forced to comply with this narrow vision of a proper woman. What I fear is that since the Afghan campaign is merely a "mopping up operation" now, American attention will move on to new concerns, leaving Afghan women in an even worse situation than before.

First, I will sketch out the jurisprudential genesis of GCRF and then attempt to illustrate its value by applying one of its theories to

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the Afghan context. GCRF is the title of my second anthology, specifically *Global Critical Race Feminism: An International Reader*,<sup>1</sup> and I refer you to the introduction of that book for a more detailed description of the roots of GCRF. If you have never heard of this title or concept before, join the rest of the legal profession. This term GCRF is something that I have cobbled together. I have been speaking a lot about it here in the United States and abroad. I was even pleased to hear that a Washington University School of Law professor was using this book in Nepal.

In essence, GCRF is concerned with the legal status of women of color around the world. By the term women of color, I refer to groups both inside and outside the United States. In the American context, I am including African Americans, Latinas, Asian, and Native Americans, as well as Arabs, Muslims, and any other group that is being socially constructed as people of color. I have never liked the commonly used term “third world women,” but if one still accepts such a term, then third world women could be considered the fourth world, i.e., the bottom of the bottom. Unfortunately, women in this broad category remain discriminated against in every society in which they live, whether that be in the economic, political, or educational spheres.

For this second anthology, I selected scholarship that women of color in legal academia who became professors in the 1980s and 1990s have been writing in the last few years. As women of color, some of us decided to focus on the plight of other women of color. As a result, the number of articles that have developed over relatively few years became substantial enough that I could collect them together under this rubric called GCRF.

GCRF is part of Critical Networks jurisprudence, which includes Critical Legal Studies (CLS), Feminism Jurisprudence, and Critical Race Theory (CRT). CRT has blossomed and now includes Latino Critical Studies (LATCRIT), Asian Crit, Queer Crit, Critical White Studies, and Critical Race Feminism (CRF), the title of my 1997 anthology.<sup>2</sup> In my view, these offshoots of CRT constitute a vibrant

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1. GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien Katherine Wing ed., 2000) [hereinafter GCRF].

2. CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1997) [hereinafter

part of academia, although they continue to be under-recognized and under-appreciated.

Now, I will speak about the origins of each term in GCRF. The first word I am going to talk about is the “critical” in GCRF. The “critical” derives from CLS, a movement of scholarship that began with white radical male scholars who had been hippies, anti-war activists, and other kinds of counter culturists in the ‘60s.<sup>3</sup> Some of these men became lawyers and others even became law professors, but at heart they remained progressive in their outlook. As you might assume, Communism, Marxism, and other radical terms that are not used often anymore influenced these men. An emphasis on class and class analysis was part of the critique. My generation was brought up using these terms and studied them in ways that current students might find hard to imagine.

CLS draws from European post-modernist thought and has focused on the deconstruction of concepts, such as justice, neutrality, or the “reasonable man.” CLS analyzes these terms to assert that there is nothing objective about them, that they are socially contingent and must be seen as based upon power relationships in society. Academia needs to deconstruct what is taught in law schools so students learn that the concepts mentioned above of justice and neutrality, for example, are not black letter objective law, but come from particular political and ideological biases that exist in the system.

The CRTs joined the legal academy. Eventually men of color, like Derrick Bell and Richard Delgado, became law professors and were interested in the critical analysis, but felt that there was something missing. With its emphasis on class, the critical analysis was not focusing on race as distinguished from class. The lack of attention to racism was typical of Marxian approaches where class trumped other issues. Bell, Delgado, and the various other people of color who soon joined them knew that everything in America could not be reduced to class. For example, no one asked Rodney King if he was a judge or a law professor. When they hit him, it was because he was black. His

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CRF].

3. See Kimberlé Crenshaw, *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xix (Kimberle Crenshaw et al. eds., 1996).

class status did not matter. At least in the United States, there are many issues where race trumps class. Therefore, CRT began to focus on race and ethnicity.

Over the past fifteen years, CRT has contributed much to legal academy and has brought attention to the race-based nature of many aspects of American law. CRT, like GCRF that has sprung from it, is color conscious. CRTs are not interested in being colorblind because nothing, in a CRT's view, was ever color blind in America, from the era of the founding fathers to the present. Because America has never been colorblind, you must be color conscious in order to rectify the racism that exists in society.<sup>4</sup>

CRTs also look at race as being socially constructed. There is no such thing as biological race, as verified by science. Race is what a society says it is. For example, in the United States, I am African American. In South Africa, I am perceived to be a member of a mixed race group known as Coloured. In Brazil, I am classified as white. Yet, I am Adrien Wing in all these societies. In the United States, those who are socially constructed as white get certain privileges and those defined as other than white do not get the same privileges.

CRT sees racism as an ordinary part of American society. It is not aberrational. It is not isolated. It is central to the development of American society. Of course, everything I am saying is controversial and disputed, and there are bodies of literature attacking these various tenets of CRT. Granted I am vastly oversimplifying so I can fit it all in a short span of time, but there are many scholars who would refute the points I raise.

Professor Bell goes even further in stating that not only is racism ordinary in American society, it may even be permanent.<sup>5</sup> Perhaps the belief that racism will always exist is a pessimistic view of society. Not every CRT would agree with him, but he analogizes racism to alcoholism: you are always going to be alcoholic, you maybe in remission, you may even be in recovery, but you still have to deal

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4. See Neil Gotunda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1 (1991); Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758 (1990).

5. See generally DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

with your self as alcoholic, rather than think you are cured.<sup>6</sup> Some critical race theorists would agree with him.

CRT proponents have emphasized a rights discourse, even though they would agree with the CLS adherents that rights are socially constructed and contingent on what a society says the rights should be. Rights are not absolute, but unlike in CLS, CRTs believe that even though rights are contingent, they are nevertheless important to people who have never been able to actualize their rights. It is easy if you are a privileged white male at Cambridge to say these rights issues do not really matter, because you have had the benefit of those rights for centuries. Such a person can choose to throw them aside, although in reality he can never surrender them because of his white skin privilege. However, for people that come from communities that have been oppressed for several hundred years, even if rights are contingent, the oppressed nonetheless want to exercise their rights for the benefit of society.

CRTs also believe in the use of a controversial technique called the narrative. There is a lot of literature on this subject. There are many people who think of writing in the narrative as a form of telling stories, but not a form of legal scholarship.<sup>7</sup> Maybe it is literature, maybe it is fiction, but it is not legal scholarship. Nevertheless, some of us try to use the narrative (i.e., personal stories) to humanize what we are discussing, in part, because we are coming from communities where oral tradition is important and valuable in communicating certain points, which can be legal in nature. Some of us are not as skilled at using the narrative. Not everyone can be a great fiction writer or even a non-fiction writer. Nevertheless, we feel it is important to get beyond the standard approach of analyzing cases and humanize the discussion by using the narrative.

CRT also attempts, and I emphasize attempts, to be multi-disciplinary. CRTs realize that law is an important profession and function, or we would not have joined it. However, CRTs realize it is not the sole answer, and that we might have to look to other disciplines, like sociology, history, political science, economics,

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6. *See id.*

7. *See, e.g.*, DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997).

African studies, and women studies to find solutions to the problems we face. As a result, you will find citations to other disciplines in CRT literature. It is still embryonic because most CRTs only hold a J.D.; we do not all have Ph.D.s in other fields. Most CRTs have not mastered the literature in other disciplines, but at least there is something beyond law review citations to substantiate reality.

Finally, CRT is concerned not only with theory, but also with praxis, the combination of theory and practice.<sup>8</sup> Since we come from oppressed communities that are facing horrible situations, many CRTs feel we cannot afford to live only in the proverbial ivory tower where our theorizing is unconnected to reality. Our communities need us not only to theorize, but also to help them in developing practical strategies to address the oppression. Consequently, some, but not all CRTs are pragmatically oriented.

The next term from GCRF I want to address is “feminism.” Like feminism, CRF focuses on gender and sex in its analysis. It also uses the narrative and tools like consciousness raising. We in CRF were heavily influenced by the work of non-lawyers: black women like Patricia Hill-Collins, Angela Davis, Bell Hooks, Audrey Lord, and Alice Walker. These were women from the 1970s and beyond that began to analyze issues concerning women of color and CRFs pay homage to them. As CRFs, we inject race into feminism because many of us have attacked traditional feminism for assuming all women are white.

CRFs are concerned with what Kimberle Crenshaw termed “demarginalizing” the status of women of color and looking at the intersection of race and gender.<sup>9</sup> CRFs also inserted a gender perspective into CRT, because much of CRT assumes all minorities are male. CRT may presume that Asians, Blacks, and Native Americans face the same reality, a male norm that is simply inaccurate.

CRF has also developed “multiple consciousness,” a term coined

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8. See, e.g., Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 BERKELEY WOMEN'S L.J. 181 (1990-91).

9. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antitrust Politics*, 1989 U. CHI. LEGAL F. 139.

by Mari Matsuda.<sup>10</sup> It represents the ability to see through your race and gender “lenses” simultaneously rather than only your race identity or only your gender identity.<sup>11</sup>

I brought together a lot of this new literature when I composed my anthology, *Critical Race Feminism: A Reader*.<sup>12</sup> Within that anthology, I included topics such as Anti-Essentialism, which is the idea of not looking at women as uniformly the same.<sup>13</sup> Authors like former Black Panther Kathleen Cleaver contributed to this part.<sup>14</sup> Angela Gilmore wrote the first article about being a black lesbian law professor.<sup>15</sup> Angela Harris contributed a seminal article on race and gender essentialism.<sup>16</sup> The unit entitled *Outsiders in the Academy*, deconstructs the terms “role model” and “mentor.”<sup>17</sup> It asks whether black women are hired only because they are black Barbie dolls just standing there as a role models for other black women.<sup>18</sup> I also included authors such as Lani Guinier, Anita Hill, Anita Allen, among others.<sup>19</sup> Dorothy Roberts, one of the foremost scholars on parenting and women of color, contributed to the unit on mothering.<sup>20</sup> Isabelle Gunning wrote about being a black lesbian mother, the homophobia she faces within the black community, and the racism of white lesbians.<sup>21</sup> Another unit on sexual harassment deconstructed the Anita Hill saga.<sup>22</sup> Hill remains the icon for the notion of sexual harassment in America today. The sexual harassment unit also

10. Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, Talk presented at the Yale Law School Conference on Women of Color and the Law (Apr. 16, 1988), in 14 *WOMEN’S RTS. L. REP.* 297 (1992).

11. *See id.*

12. *See* CRF, *supra* note 2.

13. CRF, *supra* note 2, at Part 1.

14. Kathleen Neal Cleaver, *Racism, Civil Rights, and Feminism*, in CRF, *supra* note 2, at 35.

15. Angela D. Gilmore, *It is Better to Speak*, in CRF, *supra* note 2, at 51.

16. Angela Harris, *Race and Essentialism in Feminist Legal Theory*, in CRF, *supra* note 2, at 11.

17. CRF, *supra* note 2, at Part 2.

18. *Id.*

19. CRF, *supra* note 2, at Part 2, 69-124.

20. Dorothy E. Roberts, *Punishing Drug Addicts Who have Babies: Women of Color, Equality, and the Right of Privacy*, in CRF, *supra* note 2, at 127.

21. Isabelle R. Gunning, *A Story from Home: On Being a Black Lesbian Mother*, in CRF, *supra* note 2, at 159.

22. CRF, *supra* note 2, at Part 4.

included an article by Sumi Cho on Asian women and the sexual harassment they face.<sup>23</sup> Attorney Deirdre Davis wrote about a new type of harassment called street harassment.<sup>24</sup>

The criminality unit included my own work on Black women and gangs in Los Angeles.<sup>25</sup> Jenny Rivera wrote about the domestic violence faced by women in the Latino community.<sup>26</sup> Patricia Williams, a foremother of CRF,<sup>27</sup> wrote about spirit murder, the psychological aspect of racism.<sup>27</sup> The final domestic law unit concerned employment, Regina Austin contributed a seminal piece entitled *Saffire Bound*, which discussed the discrimination against a black unwed mother who got pregnant while working as a counselor to young black women.<sup>28</sup> Austin addressed whether you can or should fire someone in such a position.<sup>29</sup> Paulette Caldwell wrote about hair, particularly black women's hair,<sup>30</sup> and how society constructs it as deviant enough to forbid very deep seated practices such as braids on the job.<sup>31</sup> Interestingly, I just saw a black male United Airlines flight attendant who wore braids. I had never seen that before. It is a long way from everyone having to wear their hair in the same bun for the benefit of the employer to a man being able to wear braids at 30,000 feet.

Next, I address the term "global" from GCRF. We are attempting to contribute to all the subfields of international and comparative law by centering on women of color. In other words, we are addressing questions of public international law, human rights, international business transactions, comparative law, and every other area of

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23. Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, in CRF, *supra* note 2, at 203.

24. Deirdre E. Davis, *The Harm that Has No Name: Street Harassment, Embodiment, and African American Women*, in CRF, *supra* note 2, at 192.

25. Adrien Katherine Wing & Christine A. Willis, *Sisters in the Hood: Beyond Bloods and Crips*, in CRF, *supra* note 2, at 243.

26. Jenny Rivera, *Domestic Violence against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, in CRF, *supra* note 2, at 259.

27. Patricia Williams, *Spirit Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, in CRF, *supra* note 2, at 229.

28. Regina Austin, *Sapphire Bound!*, in CRF, *supra* note 2, at 289.

29. *Id.* at 290.

30. Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, in CRF, *supra* note 2, at 297.

31. *Id.* at 298.



international law. The idea is to take women of color from the margin, where they are silenced, and put them into the analysis. American and European white males have dominated international and comparative law and, consequently, these doctrines were not created with women of color in mind. We are also hoping to contribute to feminist concepts that are impacting international law. Additionally, we want to contribute to post-colonial theories examining the status of countries since gaining independence and their development following the exit of colonizers.

Finally, we are hoping to make a small contribution in two relatively new areas in international law. Professor David Kennedy developed *New Approaches to International Law (NAIL)* a number of years ago and it has been the subject of several conferences.<sup>32</sup> Out of NAIL sprung *Third World Approaches to International Law (TWAAIL)*.<sup>33</sup> As you can see, we are intersecting with as many areas of legal jurisprudence as we can. I should note that both of the anthologies have extensive bibliographies in the hope that young students will want to do more research and write where their elders have feared to tread.

The GCRF anthology covered a numbers of areas, the first being a response to the “F” word: feminism.<sup>34</sup> For most of the world, not to mention for many Americans, feminism is a dirty word. You do not go into Afghanistan and say, “Hi, I am a feminist and I want to do to this, that and the other.” The GCRF anthology emphasized culturally sensitive perspectives that will be helpful, because many western women, including women of color, have been perceived as being imperialistic and interfering in the affairs of women from other countries.<sup>35</sup> In this light, Berta Hernández-Truyol sensitively explored the nature of revolutionary Cuban feminism.<sup>36</sup> Hope Lewis contributed an article that addresses how we can apply the international notion of the right to development to female Jamaican

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32. Adrien Katherine Wing, *The South African Transition to Democratic Rule: Lessons for International and Comparative Law*, 94 AM. SOC. INT’L L. PROC. 254 (2000).

33. *Id.*

34. GCRF, *supra* note 1, at Part 1.

35. *Id.*

36. Berta Esperanza Hernández-Truyol, *Féminismes Sans Frontières? The Cuban Challenge-Women, Equality, and Culture*, in GCRF, *supra* note 1, at 81.

immigrants in Boston that certainly do not want the “F” word applied to them.<sup>37</sup>

Another unit, *Third World within the First*, focused on women of color who are minorities in so-called first world countries.<sup>38</sup> This unit included an important article by Judy Scales-Trent where she looked at the status of Algerian women in France and how their religion, culture, and ethnicity have led to their marginalization within French society.<sup>39</sup> Serbian feminist lesbian scholar Zorica Mrsevic contributed a special article written just for the anthology about gypsy women in Serbia and the domestic violence they face.<sup>40</sup> In Europe, gypsies are socially constructed as black. You can even read European newspapers where they refer to gypsies as black with the same negative connotation that it carries in the United States.<sup>41</sup> Mrsevic looked at the gypsies’ position at the very bottom of Serbian society, a position compounded for gypsy women, who are at the bottom of gypsy society. Her article reminds the reader of the domestic violence faced by women from many countries, including our own.

Mary Dudziak examines historical perspectives in the international arena through an article on Josephine Baker.<sup>42</sup> Josephine Baker played an important role in attacking U.S. race discrimination.<sup>43</sup> She faced a lot of criticism for that and her role as a mother to a rainbow tribe of twelve children from around the world in her efforts to show that all people could live in peace and harmony.<sup>44</sup>

Dudziak presented a side of Josephine Baker that was not the central theme in a television movie portrayal with Lynn Whitfield in the main role.<sup>45</sup>

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37. Hope Lewis, *Women (Under) Development: Poor Women of Color in the United States and the Right to Development*, 18 LAW & POL’Y. 281 (1996), reprinted in GCRF, *supra* note 1, at 95.

38. GCRF, *supra* note 1, at Part 2.

39. Judy Scales-Trent, *African Women in France: Immigration, Family, and Work*, 24 BROOK J. INT’L L. 705 (1999), reprinted in GCRF, *supra* note 1, at 141.

40. Zorica Mrsevic, *Filthy, Old and Ugly: Gypsy Women in Serbia*, in GCRF, *supra* note 1, at 160.

41. *Id.*

42. Mary L. Dudziak, *Josephine Baker, Racial Protest, and the Cold War*, 81 J. AM. HIST. 543 (1999), reprinted in GCRF, *supra* note 1, at 179.

43. *Id.*

44. *Id.*

45. *Id.*

There was a unit on the complex interplay of culture, customs, and religion.<sup>46</sup> Aziza al-Hibri, who is one of the few U.S. based scholars dealing with Islam in the law, wrote an article about deconstructing patriarchal assumptions in Islam.<sup>47</sup> It is her view as a feminist that the Koran does not require that women be treated in an inferior fashion.<sup>48</sup> As you might imagine, her view is not that of the majority. There are also two articles on female genital surgery, a topic with which many Americans are familiar.<sup>49</sup>

In the unit on violence in the family, Penny Andrews wrote about domestic violence against aboriginal women in Australia.<sup>50</sup> Another scholar wrote about domestic violence in Ghana.<sup>51</sup> The anthology includes my own work on domestic violence in Palestine and South Africa.<sup>52</sup> Finally, there is a unit on the global work place.<sup>53</sup> In this unit, Leti Volpp, Catherine Powell, and attorney Laura Ho have written important work on women in sweat shops and the international and domestic laws that may be used to ameliorate their plight.<sup>54</sup>

Now that I have given you a brief sketch of the jurisprudential roots of GCRF, I will turn to an application involving my own theoretical contribution to this genre in the Afghan context. I have developed a theory of Global Multiplicative Identity (GMI), which is

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46. GCRF, *supra* note 1, at Part 4.

47. Azizah Y. al-Hibri, *Deconstructing Patriarchal Jurisprudence in Islamic Law: A Faithful Approach*, 12 AM. U. J. INT'L. L. & POL'Y 1 (1997), *reprinted in* GCRF, *supra* note 1, at 221.

48. *Id.*

49. See Leslye Amede Obiora, *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision*, 47 CASE W. RES. L. REV. 275 (1997), *reprinted in* GCRF, *supra* note 1, at 260; Isabelle R. Gunning, *Uneasy Alliances and Solid Sisterhood: A Response to Professor Obiora's "Bridges and Barricades"*, 47 CASE W. RES. L. REV. 445 (1997), *reprinted in* GCRF, *supra* note 1, at 275.

50. Penelope E. Andrews, *Violence Against Aboriginal Women in Australia: Possibilities for Redress within the International Human Rights Framework*, 60 ALB. L. REV. 917 (1997), *reprinted in* GCRF, *supra* note 1, at 303.

51. Rosemary Ofeibe Ofei-Aboagye King, *Domestic Violence in Ghana: An Initial Step*, 4 COLUM. J. GENDER & L. 1 (1994), *reprinted in* GCRF, *supra* note 1, at 317.

52. Adrienne Katherine Wing, *A Critical Race Conceptualization of Violence: South African and Palestinian Women*, 60 ALB. L. REV. 943 (1997), *reprinted in* GCRF, *supra* note 1, at 332.

53. GCRF, *supra* note 1, at Part 6.

54. Laura Ho et al., *(Dis) Assembling Rights of Women Workers along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 383 (1996), *reprinted in* GCRF, *supra* note 1, at 377.

designed to get beyond looking at merely race, gender, religion, or ethnicity. Identity is much more complicated than any of us have acknowledged in our scholarship to date.<sup>55</sup> First, I have tried to delineate as many identity categories as possibly could. The idea is that all individuals have these combined identities, not just women of color. Some of our identities give us privileges, while simultaneously other identities may cause us to face discrimination. If we are going to be helpful to groups that are trapped at the bottom of society, such as women of color, we must look at the real complexity of their multiple identities, the interplay of those identities, and then design practical solutions to their problems. Our failure with respect to the law in the twentieth century is that we took one identity, for example race or gender, and analyzed the situation as if that form of discrimination was the only issue that the individual may face. Of course, the linear solutions developed could not even attempt to address the complex nature of the problems.

I have characterized the identities as multiplicative because I believe that we must multiply them together. I am not an additive person; not merely the sum of my race plus gender. I am race times gender times many other categories. The resultant consequence is that we must analyze the holistic identities, rather than examining them from a black perspective today and from a woman's perspective tomorrow.

Now, how would this theory apply to the plight of Afghan women? What are their identities and have we thought about the interplay of these identities. Unfortunately, we have to talk about them one by one, because I can only communicate in a linear fashion. However, just imagine these identities interacting with each other in a multiplicative fashion.

The first identity I want to address is nationality. Most people have a nationality. In the case of Afghan women, their nationality has subjected them to particular hardships recently, but Afghanistan has been in conflict for over twenty years.<sup>56</sup> Many Afghan women are

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55. Adrien Katherine Wing, *Introduction to GCRF*, *supra* note 1, at 7.

56. Maura Yusof, *The Taliban Movement in Afghanistan: How Should the Imposition of an Oppressive Regime Under the Guise of 'Islamic Law' Affect United States Policy for Admitting Refugee Women Suffering from Persecution on Account of Female Gender?* 5 (Jan.

living in diaspora; there are millions of them who are refugees.<sup>57</sup> Whatever legal solutions we develop to help Afghan women in their own country, we cannot ignore the Afghan women in Pakistan, Turkmenistan, and many other countries. There are also foreign women living in Afghanistan. Much attention has been focused on Bin Laden, but he is accompanied by four wives and approximately twenty children and this fact does not receive any attention. I do not know if any of his wives are Afghan. I know he recently married a seventeen year old Yemeni girl.<sup>58</sup> We have to look at the plight of those women who are living in the Afghan society and who may be considered interlopers. We have to remember that these women do not have individual autonomy in most cases because they are under the legal control of their husbands and fathers. I scan Middle Eastern media regularly. The U.S. bombings may have killed the wife and children of one of Osama Bin Laden's Egyptian lieutenants.<sup>59</sup> We did not see this story covered very well in the U.S. media, but it certainly was covered in the Arab media. It has not been at the forefront of U.S. media like the death of Americans in Afghanistan. You saw that story in the news magazines.<sup>60</sup> American media prioritizes certain deaths. Here you had a foreign woman killed in Afghanistan, an Egyptian. In other words, nationality is a central identity that must be addressed when we talk about the plight of Afghan women or women in Afghanistan.

The second identity to consider is the racial identity of someone from Afghanistan. Clearly the nineteenth century notion of three races—Caucasoid, Mongoloid, and Negroid, does not work. Are they white, Asian, or Black? Afghans look like a mixture of people. They

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6, 2002) (unpublished manuscript, on file with author) [hereinafter Yusof, Taliban Movement]; see generally BARNETT RUBIN, *THE FRAGMENTATION OF AFGHANISTAN: STATE FORMATION AND COLLAPSE IN THE INTERNATIONAL SYSTEM* (1995).

57. See, e.g., Susan Milligan, *Fighting Terror: Refugees and Survivors Insecurity Keeps Pakistan Camps Full, Afghan Refugees Fearing Homeland*, BOSTON GLOBE, Jan. 30, 2002, at A1.

58. Samson Mulugeta, *America's Ordeal: He's One of Their Own: Bin Laden Seen as Hero in Yemen*, NEWSDAY, Sept. 30, 2001, at A07.

59. Doug Hanchett, *War on Terrorism, Hunt is on for Bin Laden, Interim Leader Asks Villagers to Join Search*, BOSTON HERALD, Dec. 9, 2001, at 00J.

60. See, e.g., C. Richard Cotton & Tatsha Robertson, *Fighting Terror Profile/Combat Death*, BOSTON GLOBE, Nov. 29, 2001, at A10 (discussing death of CIA agent John Michael Spann).

can fit into the social construction of various races, if you still endorse the idea of biological races of people. You can be sure that in the United States, Afghans are being socially constructed as something other than white. Consequently, you do not see much in the U.S. media about how many Afghans have been killed. We will probably never know how many Afghan civilians were killed during the U.S. bombing campaign. The idea is that people in the Muslim world may have been hearing that thousands of Afghans are being killed. The American people are simply not being told that information. There is a parallel that arises in American society. If one white person is killed, the media focuses on that, but if a bunch of Black people, Native Americans, or Asians are killed, the media is not as interested. With respect to our future assistance to Afghanistan, if we do not acknowledge that we differentiated these people from whites, we can not be helpful to them. We are going to be left with the same question: "Why do they hate us?" Once again, we have socially constructed another people as racially different.

A third identity to consider is color, which is separate from race or ethnicity. African American skin tone can range from white to jet black. The color identity of Afghan women is also very important, because in Afghan society like in most societies, lighter is better. Lighter is more privileging; lighter people belong in certain occupations. Of course, since most of the women are Muslim and most still wear burkas, their skin color is hidden under the required dress.

A fourth identity to consider is ethnicity. Afghan women's nationality is Afghani, but their ethnicity is something else. The largest Afghan ethnic group is the Pashtuns, but there are many other ethnic groups.<sup>61</sup> In the United States, we too often conflate race and ethnicity; they are different and distinct. We must learn to recognize that a Pashtun is different than a Tajik. Of course, the Taliban were mainly Pashtuns and the Northern Alliance is mainly composed of ethnic minorities. In order to help women in Afghanistan, you cannot just treat them all as women; you must recognize their ethnicities and

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61. Shannon A. Wiley, *Fighting Back Against the Taliban: The Case for Restoring Afghan Men's and Women's Right to Self-determination*, 7 WM. & MARY J. WOMEN & L. 523, 528 (2001).

how that affects their options.

A fifth identity to consider is religion. It is more evident to many Americans since 9-11, that many people in the world view religion as their central identity. In the United States, many are secular; I am a secular Christian. However, many other people in the United States and elsewhere put their religious identity first and, as we know from 9-11, there are people that are misusing Islam in such a way to say it can stand for murder of innocent civilians. In Afghanistan, the majority of the population is Muslim. However, not all Muslims are the same sect; most Afghans are Sunni Muslims, but there are also Shiites.<sup>62</sup> Even within the Sunnis there are divisions.<sup>63</sup> The Wahhabi sect of Sunni Islam was practiced by the Taliban, in Saudi Arabia, and elsewhere, with certain perspectives on a variety of issues.

I will not go into details about gender identity since that is obviously a central focus, but I will mention language identity. In Afghanistan, it is important whether you speak the majority language of Pashto or another dialect. Those few in the United States that have studied any of Afghanistan's languages probably studied Arabic, but that is not going to help you in most of Afghanistan. It will help you if you meet Bin Laden, but not with the Afghans.

Yet another identifier is sexual orientation. In most of the world, including the world of color, homosexuality remains a taboo subject. Many people in the developing world consider homosexuality a western disease. Homosexuals in Afghanistan are likely to meet a violent end if discovered.<sup>64</sup> There are not openly gay communities in the Muslim world. There was recently a case in Egypt where the authorities criminally convicted a group of men who were at a gay club because homosexuality is a sin against Islam.<sup>65</sup> Lesbian Afghan women are not going to come out and talk about their needs. They are not going to be able to come out at all. Sexual orientation is unlikely to be an axis of reform in Afghanistan.

Disability is another important distinguishing identity. I have read

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62. *Id.* at 8.

63. *Id.* at 7.

64. U.S. Dep't of State, Annual Report on International Religious Freedom for 1999: Afghanistan, at 5 (Sept. 9, 1999).

65. Hectar Tobar & Natalia Tarnawiecki, *Response to Terror, Military Courts*, L.A. TIMES, Nov. 21, 2001, at A4.

reports of how Afghans are losing limbs to landmines.<sup>66</sup> There is very limited medical care for women in Afghanistan;<sup>67</sup> how can you help a woman who only has one leg? What is she going to be able to do in that society, if not just die from her inability to get sufficient medical care?

Marital status identity and parenthood identity are two other identities. Like most women in the world, the preferred marital status for Afghan women is married and the preferred parenthood status is with children. Whenever I travel around the world and say I am the mother of five sons, everyone says “Oh! You are so lucky, you are so blessed.” Male children are privileged around the world and because I am the mother of these sons, that is often my entrée to talk about law. Then I can do a lot because I can talk with women who are not involved in the law by relating that I am the mother of five sons. Those two statuses are very important. In the United States, parenthood and marital status do not necessarily have to go together, but they certainly do in Afghanistan. You do not have women having children outside marriage in Afghanistan; women discovered having sexual relationships outside of marriage are often beaten or killed.<sup>68</sup>

Geographic identity is another identity. For instance, are you an urban or a rural person? Are you from Iowa or St. Louis? These are all examples of geographic identities that may influence your outlook on life. You also have what I call your ideological identity. Are you a Jesse Jackson Democrat? Are you a Bush Republican? Are you a member of the Taliban? Are you with the new interim Afghan government? In Afghanistan, your ideological position may place you in danger, thus your affiliation may vary depending on the current political climate.

Stature identity is another identity. How do you look? In every country, if you look a particular way that fits with the ideal of the majority group, you are privileged. How does that work when a woman is wearing a burka? The point of the burka is to eliminate all of that. You do not know how she looks, but when she is getting

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66. Karl Inderforth, *Afghanistan: Unearth the Killing Fields: Land Mine Casualties have Jumped to 5 a Day*, L.A. TIMES, Dec. 23, 2001, at M2.

67. U.S. Dep't of State, *supra* note 64, at 19-20.

68. *Id.* at 1-2.



married to somebody, he will know how she looks. She will be chosen by that man based on the preferred characteristics for her society.

I have mentioned numerous intersecting identities. Our ability to help the women of Afghanistan in the legal sphere will require us to further examine this interplay and develop international, domestic, and humanitarian programs that can help their plight while considering their multiplicative identities.

In this limited time, I hope that I have intrigued some of you, the students in particular, to consider writing your independent study paper or law review articles on GCRF.







