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Commentary

Standing on the Corner— Trying to Find Our Way

*W.H. Knight, Jr.**

Corners are, of course, the places of intersection where two or more streets meet. When you get to a street corner, you must choose a path. But what happens when you find yourself in the middle of that intersection? How do you, or can you even choose a path? Socially and culturally, we Americans are at such an intersection. What do we do? Which way do we turn? How do we find our way? These are some of the questions our symposium speakers ask and then seek to answer.

Beyond the occasional outrage over intellectual challenge, rarely does an academic presentation evoke an emotional response in another academic. Today, however, I find myself quite moved by each of the four presentations we have just heard. Perhaps I found resonance in each presentation because the speakers have successfully articulated a vision of law and lawyering that I believe in and relish. Perhaps I related to their stories because of the humanity that each presenter brought to bear in her or his story. Perhaps I simply connected with the imagery painted by these speakers because I saw so much of myself in their stories.

Whatever the reason for my emotional response, each of these presentations gave us a glimpse of what critical theory is about—1) addressing how law and legal constructs affect the lives of everyday people, and 2) describing how legal constructs silence certain people and make them invisible in the process. Our speakers have chosen to talk about these invisible people, people who have contributed so much to our society but who have not been heard, people who have not been allowed to participate fully in the ongoing discourse about the direction in which our nation is headed. Our speakers ask us to consider how we can avoid marginalizing and making invisible countless numbers of people who aspire to the same universal notions of freedom, justice and equality about which we lawyers wax so eloquently. How can our society espouse ideals of justice when stories of the injustices done to these invisibles ring so powerfully in our ears?

In speaking historically about Victorian-era domestic servants and modern-day immigrant garment workers, two of our presenters—Mary Louise Fellows and Julie Su—respectively provide a historical and a modern example of the type of dominance/exploitation that critical legal theorists¹ and activist lawyers are trying

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1. For an introduction to critical race theory, see generally Patricia Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683 (1992); Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CAL. L. REV. 889 (1992);

to address. The other two presenters—Berta Esperanza Hernández-Truyol and Devon Carbado—focus their critical lenses on the problem the law has with multiple viewpoints or identities. All four presentations demonstrate that each of us lives a life layered in its existence. One person can identify with a number of different groups; multiple identities are extant in any story about the person.² This fact is especially true if the person identifies with a group that occupies a position of dominance. Choosing to cast a story of domination without recognizing that various group identities are present is problematic because any effort to discuss the issue of dominance will necessarily privilege only the identities chosen. How does the law address these intersections? In relating these four stories about dominance to our legal constructs, our four presenters bring us closer to an understanding of the goals of critical theory—that of making our dialogue about, and the application of, the law a more humane and encompassing process.

Devon Carbado's presentation describes the current invisibility of African-American women through the prism of the O.J. Simpson criminal trial. In the post-modernist tradition of critical race theory, Professor Carbado rejects the "trap" of the binary, either-or, dichotomy that both the law and those who have written about the Simpson case have seemed to adopt. Instead, he *deconstructs* this analytical model and challenges us to consider developing a new construct that will recognize the ideological location from which a critical analysis begins. For Carbado, recognizing this "starting point" should help us understand the complex nature of racism and thus begin to make strides in combating it.

He characterizes the Simpson trial as a dynamic that exemplified the dominant, binary view we frequently observe in matters of race—that male, heterosexual and Caucasian are the norm. Even though African-American, O.J. Simpson was able to assume a privileged and dominant status by portraying himself as a victim in response to accusations of domestic abuse. Because we too often see events in an either-or fashion, Carbado suggests that Simpson's race became dominant and privileged at the expense of the actual victim. With this racially oppositional epistemology, Simpson became a Black man persecuted by the criminal justice system and Nicole Brown, the victim of domestic abuse, became invisible. Carbado accurately observes that such an approach fails even to consider the role of personal responsibility and its presence or absence in the case. His analysis also provides insight into the support Simpson received from African-Americans. Race becomes privileged over domestic abuse.

But two or more parties can engage in the presentation of dichotomies. Professor Carbado discusses the attempt by activists against domestic violence to characterize the case solely as one of spousal abuse. He notes that this effort privileged Nicole Brown's identity as a wealthy, Euro-American woman. She was not supposed to suffer the ignominy of domestic violence. Under this construct, the racial aspect of the Simpson case became blurred. Carbado then asks the tell-tale

RICHARD DELGADO, *CRITICAL RACE THEORY: THE CUTTING EDGE* (1995); KIMBERLÉ CRENSHAW ET AL., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (1995).

2. For example, O.J. Simpson is male, African-American, and an alleged domestic abuser. Nicole Brown was female, Euro-American, and an alleged victim of domestic abuse. Both also belonged to or identified with other identity groups—both were wealthy and both heterosexual.

question: what would have been the response of the anti-domestic violence community if Nicole Brown had been African-American? “Had Nicole Brown Simpson been Black, the symbolic impact of her abuse would have been minimal.”³ In the binary world view, all the victims are Black Men and White Women. It is this marginalization of the experiences of African-American and other women of color with domestic abuse that makes Carbado’s presentation powerfully appropriate for the subject of this symposium—Who Can Get Justice in the United States?

Professor Carbado’s presentation provides us with a provocative introduction to the idea of intersectionality. The *either-or* dichotomy that a binary world view creates leaves us with numerous questions about multiple identities. Each of the questions raised demonstrates the difficulties associated with individual identification and group membership. Does binary thinking mean one thing or the other, but not both? Or, does it mean one way or nothing at all? Carbado asks whether the Simpson criminal trial was about race or domestic abuse. Who was the victim? Which emphasized identity could galvanize political support to address a particular societal problem? Whose voice would be missing if we chose to privilege only one of these binary propositions? Are there other voices that might be silenced even if we tried to address both binary points of categorization?

In analyzing the intersections of race, gender and socio-economic status, Carbado suggests that the only effective approach to the problem is to take into account how *all* group identities combine to form an epistemological view of human interaction.⁴ Without such an effort, one will always end with a binary proposition—a “norm” and a “deviant.” For Carbado, the very privileging of one identity as a norm suggests that a different identity necessarily becomes deviant. The product of binary thinking produces an inevitable pattern of dominance that can only intensify one set of identities over others.

Obviously, Professor Carbado’s suggested approach makes any analysis more complex and more difficult to categorize. Because the subordination of different group identities is not a static concept, it cannot be explained in or confronted with simplistic measures. A purported resolution of an issue becomes more complicated. Carbado argues that despite the added complexity in addressing an issue, such efforts must be made if a more comprehensive form of justice is to be realized. His observations about the Simpson case remind us that at times, structures of domination meet, diverge, and even merge. Thus, depending on the context, even the oppressed can become the oppressors.⁵ Just as Hegel noted nearly two centuries ago, oppression itself is an interactive dynamic that changes and mutates.⁶ It is only

3. Devon W. Carbado, *The Construction of O.J. Simpson as a Racial Victim*, 32 HARV. C.R.-C.L. L. REV. 49, 59 (1997).

4. In this regard, Professor Carbado relies on the work of Professor Kimberlé Crenshaw who wrote, “Placing those who currently are marginalized in the center is the most effective way to resist efforts to compartmentalize experience and undermine potential collective action.” Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 167.

5. See generally PAOLO FRERE, *PEDAGOGY OF THE OPPRESSED* (1972).

6. See GEORG HEGEL, *PHENOMENOLOGY OF SPIRIT* (1807).

when we can recognize the complex nature and inter-relatedness of structures of dominance that we can begin to work to avoid marginalizing each other.

Mary Louise Fellows continues the discussion of identity and intersectionality by examining the social history of domestic servants. She begins her presentation by noting the absence of any effective language of intersectionality. As she sees it, any discussion of identity (let alone multiple identities) has been characterized as difference, a departure from the norm. But what exactly is the norm? For Fellows, the very idea of “norm” is problematic. Without a language of intersectionality, the idea of a norm takes on an unwarranted level of importance. Words are both literal and figurative manifestations of dominance. As Fraser and Gordon have noted:

A crucial element of politics . . . is the struggle to define social reality and to interpret people’s inchoate aspirations and needs. Particular words and expressions often become focal in such struggles, functioning as key words, sites at which the meaning of social existence is negotiated and contested. Keywords typically carry unspoken assumptions and connotations that can powerfully influence the discourses they permeate—in part by constituting a body of doxa, or taken-for-granted commonsense belief that escapes critical scrutiny.⁷

It is this ability to escape critical scrutiny that Professor Fellows poignantly illustrates in the case of domestic service. She notes a controversial point about the successive nature of language and subordination: “[A]n individual does not experience domination additively. Economic exploitation, abilism, ethnocentrism, racism, sexism, and heterosexism do not operate in *seriatim*; they operate simultaneously in identifying an individual in determining how that individual experiences subordination and exploitation. . . . Each system of domination depends on the other”⁸ Without a language that recognizes interlocking relationships, Fellows asserts that we cannot learn enough about ourselves to re-define who we are and how we deal with one another. Thus, any expansion of our concept of humanity is forever lost.

She observes an inherent power in language to create and then to perpetuate hierarchical relationships of dominance and exploitation:

[C]ertain words strategically used to establish dichotomies do capture the “stubbornly simultaneous” nature of systems of oppression. Words like *respectability* and its opposite *degeneracy*, *manliness* and its opposite *unmanliness*, *civilization* and its opposite *primitive* are the language of intersectionality and interlocking oppressions that I believe can provide the analytical tools to appreciate how hierarchical arrangements came into existence in and through each other and the ways that those arrangements continue to be sustained in the late twentieth century.⁹

7. Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 *SIGNS* 309, 310 (1994).

8. Mary Louise Fellows, *The Race to Innocence: Confronting Hierarchical Relations Among Women*, Presentation at *The Journal of Gender, Race & Justice* Symposium (Oct. 18, 1996).

9. *Id.*

Professor Fellows develops this keyword concept by examining the idea of respectability in the context of domestic service in America. She finds support for her view from Michel Foucault's description of the development of the European bourgeoisie in *History of Sexuality*: "[T]he bourgeoisie made itself by marking the boundary between itself and the aristocracy as well as the working class."¹⁰ She notes that the dichotomy-creating language of the *respectable* and the *degenerate* not only occurred in Europe, but also in America. The evolution of the nineteenth century (all European-)American middle class not only marked a class distinction but also came to reflect racial and other prejudices as well.

Fellows considers slavery and domestic service intertwined. She challenges conventional wisdom that the growth and expansion of domestic service into the middle class coincided with the economic growth produced by the industrial revolution. She suggests that this explanation fails to recognize the interrelationship of events by exaggerating the impact of economic growth spurred by the industrial revolution: "[W]e need to explain why so many in the middle class chose to consume their discretionary income by hiring domestic workers rather than take advantage of an array of investment opportunities that held the potential of providing them more economic security and wealth."¹¹ Like Foucault's bourgeoisie, America's industrialized middle class needed a way to distinguish itself as a class. Since America had no technical aristocracy, the middle class virtues "became a route to citizenship, to becoming American." But the presence of such domestic workers created a dilemma for the middle class—how could the "degenerate other" be responsible for maintaining the cleanliness and stability of the "respectable class?"

In an attempt to mask this contradiction of middle class life, the "respectable" had only two choices: to hire Euro-American domestic servants or to hire "others." Euro-American workers were paid higher salaries and given better working conditions. In fact, the workers were even given a different name, "housekeepers" rather than "maids" or "help." For middle class families who could not find housekeepers, there developed an urgent need to subordinate their domestic maids: "The domestic worker entering the home as a waged laborer created yet another incursion on the security of middle-class life. The domestic worker knew the very truth the middle-class life was designed to eradicate—she knew its dirtiness."¹² By degrading and subordinating the domestic worker ". . . and her work, the middle-class family transformed her from a knowing subject into an invisible object . . ."¹³

The desire, intent and power to make domestic workers invisible, to deny their identities, was clearly evident in nineteenth-century America. Professor Fellows then discusses the evolving social history of domestic service from the nineteenth century into current times. She identifies maintenance of the hierarchical relationship as the consistent, principal function of domestic service well into the

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

second half of the twentieth century. Like Foucault's bourgeoisie, America's middle class needed a degraded "other" in order to define itself. Concluding her paper, Fellows writes:

The social history of domestic service provides important lessons about identity. It demonstrates both the power and the fragility of the identity of the middle class . . . It explains why the act of being identified as different is an act of subordination; it is a way for the dominant middle class to maintain its boundaries. It also explains why it is risky to self-identify. To self-identify as not of the middle class is by definition to lose the claim to respectability. This understanding of the systems of oppression through the middle-class project and the respectability/degeneracy dichotomy leads to an appreciation of current social and economic policies as well as a new understanding of everyday experiences.¹⁴

I found her analysis particularly striking because I am the son of a domestic worker. For most of her working life, my mother worked in the kitchens of upper-income, Euro-American families. As a child, I only got glimpses of the attempts some families made to degrade "their servants." I always thought it wrong for young children to call my mother by her first name. I thought it wrong that she had to leave *her* family early in the morning to take care of *someone else's* family. I was a latch-key kid so that someone else's children could come home to a hot-cooked meal. For a while, my father was also a domestic—doing heavy cleaning duties and driving Mr. & Mrs. Daisy.

As a young man, I was angry, and at times, embarrassed about the circumstances my mother and father endured. These emotions reflect yet another side of the domestic service story that Professor Fellows could not have known about or described. Just as the very fact of domestic service created contradictions in the middle-class lifestyle, there were also contradictions in the domestic's home life. Identifying these contradictions also serves an educational purpose. For me, the most important lesson I learned was one about human dignity and the indomitability of the spirit. Neither my mother nor my father ever seemed broken by their situations, nor did the countless other Black women and men I knew who worked for Mr. or Mrs. Daisy. All of these people endured various attempts at degradation and taught us, their children, the importance of rising above the anger and hatred that such behavior naturally evokes. Instead, we learned that the path toward gaining respect begins first with our respecting even the "other's" human dignity.

My parents taught me the power of compassion and the need to self-discover. What you self-discover can never be taken away by someone else's words or deeds. By the very ways in which they carried themselves in their working lives, my parents not only showed me how to live a life of dignity, but they also, in fact, helped transform many of those for whom they worked! When attempts at disrespect fail, the power dynamic changes; the dominant party has less control and less of an ability to dominate. For me, this second lesson also became a lasting message. Through the power of one's own inner strength, someone who believes

14. *Id.*

in him or herself can *act* in ways that will affect the ways of others. So, while Professor Fellows concludes that the social history of domestic service provides important lessons about *how* identities are constructed, her presentation also reminded me of the multiple identities and lessons to be learned in every story, and how our responses to such constructed identities can indeed help to *reconstruct* those identities.

Reconstructing identities is also the theme of Professor Berta Esperanza Hernández-Truyol's prodigious work, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*. Here, Hernández-Truyol discusses the unseen and unheard plight of Latin women, *Las Olvidadas*, or the forgotten ones. Her goal is to identify the structural roadblocks that perpetuate the invisibility and to propose a LatCrit model¹⁵ that will recognize the voices of Latinas by creating a new, more culturally sensitive and aware language and dialogue. The capacity of the Spanish language to gender its references "renders the normativity of the male, everyday Spanish-speak emblematic of Latinas' plight: we are simply languaged out of existence . . ."¹⁶

Professor Hernández-Truyol identifies three structural barriers that prohibit Latina participation in discussions on justice—race and ethnicity, gender, and culture. While her personal narrative suggests that she had made it all the way to college before it was suggested that her gender or ethnicity could or would prevent her from achieving her goals, Hernández-Truyol correctly identifies her situation as atypical. For Latinas, lower academic achievement is the communicated expectation they encounter, not only at school but also in their home lives. She presents a host of statistics on education, economics and crime in an effort to show the pervasiveness of the underachiever message. But Professor Hernández-Truyol saves her most ringing indictment for the cultural roadblocks known as "marianismo":

Throughout history, and in the literature, Latinas are simultaneous and conflicting stereotypes: sentimental, gentle, passive, modest, docile, faithful, submissive, dependent, maternal and timid; at the same time they are pretty, seductive, flirtatious and impulsive.¹⁷

She asserts that these gender-role caricatures are so deeply embedded in the culture that the first steps toward developing a more inclusive language must be the recognition of this cultural identification and then a layering of ethnicity and gender. Like Carbado, Hernández-Truyol asserts that acknowledgment of both the Latina's ethnic culture and her gender is the only way to escape invisibility and its concomitant domination. Her analysis provides a vivid example of the convolution and inter-connectedness of multiple identities.

15. For an overall description of the LatCrit theory, see generally Francisco Valdes, *Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in PostModern Legal Cultures: From Practices to Possibilities*, 9 *LA RAZA L.J.* 1, 10-31 (1996).

16. Berta Esperanza Hernández-Truyol, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 *J. GENDER, RACE & JUST.* 353, 355 (1998).

17. *Id.* at 376.

To discuss intersectionality means to discuss complex strands of identified relationships. It means no easily identifiable street corners, no street signs to guide us in a particular path. How do we find our way now that we see the myriad of connecting points? I had hoped that Professor Hernández-Truyol would give us more direction in this regard. What steps should we take that will allow all of us to embrace a new, culturally-sensitive, and aware language? What obstacles might we encounter in our journey toward this new language? While I found myself wanting more from her paper, Professor Hernández-Truyol's call to this charge is an important first step toward inclusion that trumpets loudly.

Our last presenter, attorney Julie Su, had no time to prepare a formal paper for this symposium. Nevertheless, her oral presentation was one of the most powerful I have heard. Ms. Su is on the front line of the effort to define a new direction for those of us interested in human social progress. Her work with immigrant Thai garment workers in the El Monte region of East Los Angeles provides a concrete example of the three themes noted by the other presenters. Intersectionality, hierarchical dominance and invisibility are all frighteningly apparent in this story of 1990s indentured servitude and slavery. During her presentation, Su discussed the role of language in constructing barriers to achievement. In the El Monte work camp, the inability of Thai workers to communicate their plight provided ample evidence of such a barrier. Even when they were freed from their shackled work environment, these workers were then forced to learn yet another new language—that of the legal system.

Unable to see beyond the rigid and hierarchical structure of Immigration and Naturalization Service rules, INS agents compounded the problem of these workers by failing to see the intertwined relationship their case provided. This case was not a simple labor problem, or a simple immigration matter, or even alone, a civil rights case. Su pointedly asks, how are these workers better off if they cannot effectively participate in the problem-solving process? Her commentary is an indictment of our legal system's attempt to reduce every relationship to a binary proposition involving rights and duties. For both the Thai and Latina/o garment workers, there was no legal recognition of the cultural differences and language barriers to their active participation. In fact, the very process of freeing these people from their forced work settings put them squarely in the position of being discouraged from speaking out against their oppressors.

Much like domestic servants who could not speak out against their subordination if they hoped to keep a job, the garment workers could not speak out against their employers/oppressors. It was the employers who had helped them achieve a part of their dream of emigrating to America, the employers who had found them work for pay; and yet, it was also the employers who built a system that tried to deny these people a degree of human dignity. Just as in the O.J. Simpson criminal trial, the legal system failed to comprehend the intertwined nature of the garment workers' predicament. Finally, and in a manner quite similar to the language subordination of Latinas, the garment worker clients of Ms. Su found themselves struggling to overcome the cultural obstacles that both their employers and the law placed before them. Indeed, race, gender, class, language and culture

all merged/intersected in the El Monte garment workers case. Perhaps even more unfortunate was the inability of the law to handle these multiple intersections.¹⁸

Even as she chastised us, lawyers and law teachers alike for our own complicity in maintaining such a system, Su also urged us to help build a bridge between practice and justice, to build a bridge that will recognize the total reality of situations like El Monte, and to build a bridge that will permit effective participation by even the least (educationally or politically) among us. Su's work in the El Monte case is a shining example of how we can work across lines of identity. Her story is about our learning more about one another and ourselves. It is about our re-defining a social reality by expounding upon the idea of what it means to be a person and a member of a society. I hope that one day she will be able to recount parts of this story for others to learn. Her work provides us all with a measure of inspiration to tackle the questions that a multiply identified, intersectional world presents.

All of us live lives of multiple existence. These multiple identities often intersect and even contradict. We are all people, often similar, but also often different. Each one of us has stories that need to be told and, more importantly, that need to be *heard*. Part of our self-discovery lies in learning more about those around us, learning to hear the stories of others, and learning to build bridges with those who are not quite the same. Thai and Latinas/os working together is a great start. I hope that as more of us recognize our own multiple identities, we will work harder to understand the complexities that such multiple identities present/create in our daily lives. I hope that we can and will work to build coalitions that will help all of us find our ways across the divides and toward a more moral and just world.

18. This failure could be reflected in the police investigation of the case (why did it take so long to discover the work camp?), the INS's handling of the immigrant workers (even after discovery of the camp, the INS treated the employee-victims as wrongdoers), and in the court's lengthy efforts to address the case.

