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# Critical Race Feminism and International Human Rights

Adrien Katherine Wing

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# CRITICAL RACE FEMINISM AND THE INTERNATIONAL HUMAN RIGHTS OF WOMEN IN BOSNIA, PALESTINE, AND SOUTH AFRICA: ISSUES FOR LATCRIT THEORY

ADRIEN KATHERINE WING\*

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## I. INTRODUCTION

This Article introduces Critical Race Feminism to the symposium theme of “International Law, Human Rights, and LatCrit theory” and attempts to raise some potential issues for LatCrit research. The context for these suggestions are publications on the international human rights of women in three societies: Bosnia, Palestine, and South Africa. I have never written on the subject of Latin American women,<sup>1</sup> so I will leave it up to LatCrit

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1. My experience with Latin America is based upon trips I have made to Mexico, Puerto Rico, Nicaragua, Cuba, and Brazil. As an international lawyer for two firms in

feminists such as Celina Romany,<sup>2</sup> Berta Hernández-Truyol,<sup>3</sup> and Jenny Rivera<sup>4</sup> to determine if any of my suggestions have relevance.

This Article will describe Critical Race Feminism, a new offshoot of both Critical Race theory and feminism, in Part II. Part III will apply a Critical Race Feminist analysis to the raping of Bosnian women and introduce the concept of "spirit injury." I will extrapolate how the concept of spirit injury might be used in the Latin American context. Part IV utilizes Critical Race Feminist principles to examine the situation of Palestinian women and explores the multiple levels of discrimination they face on the basis of custom, religion, and gender. Suggestions are made for examining the multiple levels of discrimination in Latin America, including the role of the Catholic religion. Part V compares the legal status of black South African women and looks at the role of ethnicity and color, as well as custom, which impedes their achievement of human rights. Color is a topic that has received little recognition in the Latin American context, and I call for new attention to this dimension. Part VI builds upon

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New York City from 1982 to 1987, part of my practice involved Latin American clients. In 1985, while in practice, I co-authored a presentation with Manuel Juaregui for the World Trade Institute entitled *Countertrade in Mexico: Legal Aspects*. As an international and comparative law professor, I have focused primarily on Africa and the Middle East.

2. For articles by Celina Romany on LatCrit feminism, see Keynote Address at Colloquium on International Law, Human Rights and LatCrit Theory (Oct. 4, 1996), *Claiming a Global Identity: Latino/a Critical Scholarship and International Human Rights*, 28 U. MIAMI INTER-AM. L. REV. 215 (1996-97); *Killing the Angel in the House: Digging for the Political Violence of Male Violence Against Women*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 285 (Martha Fineman & Roxanne Mykitiuk eds., 1994) (discussing domestic violence in Puerto Rico); *State Responsibility Goes "Private": A Feminist Critique of the Public/Private Distinction in Women's International Human Rights Law*, in HUMAN RIGHTS OF WOMEN: NATIONAL & INTERNATIONAL PERSPECTIVES (Rebecca Cook ed., 1994); *On Surrounding Privilege: Diversity in a Feminist Redefinition of Human Rights Law*, in FROM BASIC NEEDS TO BASIC RIGHTS: WOMEN'S CLAIM TO HUMAN RIGHTS 543 (Margaret A. Schuler ed., 1994); *Ain't I a Feminist?*, 4 YALE J.L. & FEMINISM 23 (1991).

3. For articles by Berta Hernández-Truyol on LatCrit feminism, see *International Law, Human Rights and LatCrit Theory: Civil and Political Rights—An Introduction*, 28 U. MIAMI INTER-AM. L. REV. 223 (1996-97); *Women's Rights as Human Rights—Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT'L L. 605 (1996); *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994).

4. For an article by Jenny Rivera on LatCrit feminism, see *Puerto Rico's Domestic Violence Prevention and Intervention Law and the United States Violence Against Women Act of 1994: The Limitations of Legislative Responses*, 5 COLUM. J. GENDER & L. 78 (1995).

the research I have done on Palestinian and South African women and analyzes a specific area—violence, which remains an area where more research is needed concerning Latinas.

## II. CRITICAL RACE FEMINISM<sup>5</sup>

While many are now familiar with Critical Race theory, few have heard of Critical Race Feminism (CRF). CRF joins LatCrit theory as the latest offshoot in the jurisprudential framework that began with Critical Legal Studies<sup>6</sup> and includes feminism<sup>7</sup> and Critical Race theory.<sup>8</sup> The Critical Legal Studies theorists have been a group of predominantly progressive or radical white male academics who have critiqued traditional positivist or realist legal jurisprudence. The premises embraced include post-modern critiques of the inviolability of laws and hierarchy in Western society. A primary method of analysis is deconstruction, which involves the critique of allegedly neutral concepts to expose the actuality of the socially constructed contingent power relationships.

Many progressive scholars, including white women and people of color, were attracted to Critical Legal Studies because it exposed various aspects of the nature of domination through

5. This Section is drawn from the introduction to *CRITICAL RACE FEMINISM: A READER* (Adrien Wing ed., 1997).

6. For more on Critical Legal Studies, see *CRITICAL LEGAL STUDIES* (James Boyle ed., 1992); Richard Delgado, *Critical Legal Studies and the Reality of Race: Does the Fundamental Contradiction Have a Corollary?*, 23 *HARV. C.R.-C.L. L. REV.* 407 (1988); Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 *HARV. C.R.-C.L. L. REV.* 301 (1987); *CRITICAL LEGAL STUDIES* (Peter Fitzpatrick & Alan Hunt eds., 1987); *CRITICAL LEGAL STUDIES* (Alan Hutchinson ed., 1989); MARK KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* (1987); MATTHEW KRAMER, *CRITICAL LEGAL THEORY AND THE CHALLENGE OF FEMINISM: A PHILOSOPHICAL RECONCEPTION* (1995).

7. For more on feminism, see KATHARINE P. BARTLETT, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* (1995); *FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER* (Katharine P. Bartlett & Rosanne Kennedy eds., 1991); MARY BECKER ET AL., *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* (1994); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 *BERKELEY WOMEN'S L.J.* 191 (1990); *FEMINIST LEGAL THEORY* (Frances E. Olsen ed., 1994); *FEMINIST LEGAL THEORY: APPLICATIONS* (D. Kelly Weisberg ed., 1995); *FEMINIST LEGAL THEORY: FOUNDATIONS* (D. Kelly Weisberg ed., 1993).

8. For more on Critical Race Theory, see *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberle Crenshaw et al. eds., 1995); *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado ed., 1995); MARI MATSUDA ET AL., *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (1993).

law within American society. However, the analysis was incomplete as there was a lack of attention to the sexual and racial aspects of legal domination.

Critical Race theory embraces the Critical Legal Studies deconstruction methodology to challenge racial orthodoxy. Additionally, it draws from intellectual traditions such as liberalism, law and society, Marxism, postmodernism, pragmatism, and cultural nationalism. Critical Race theory is skeptical of traditional legal theories that support hierarchy, and so-called neutrality, objectivity, color-blindness, meritocracy, and ahistoricism. In areas as wide ranging as hate speech, affirmative action, and federal Indian law, Critical Race theory questions the ability of traditional legal strategies to deliver racial and social justice.

Women of color within the legal academy noted that there was insufficient attention within Critical Race theory and traditional feminist jurisprudence to the legal and social plight of the most oppressed groups within American society—African-American, Latina, Asian, and Native American women. Traditional rights jurisprudence seemed to be based on white middle class “reasonable man” standards, while traditional feminism was based upon “reasonable white middle class woman” standards. Even much of Critical Race theory seemed to present the essentialist term “minority,” when it really meant African-American men. Women began writing to fill the gap. A recent search of the literature found that there were more than one hundred law review articles dealing with the intersection of race, class, and gender. Many of these appear in an anthology I edited, entitled *Critical Race Feminism* (a term borrowed from Richard Delgado).<sup>9</sup>

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9. See THE CUTTING EDGE, *supra* note 8, at 477. The seven units featured in the work *Critical Race Feminism* are: anti-essentialism, life in the academy, mothering, sexual harassment, criminality, working, and international issues. The featured authors include: Lani Guinier, Anita Hill, Kathleen Cleaver, Angela Harris, Patricia Williams, and Anita Allen. Latinas featured in CRITICAL RACE FEMINISM, *supra* note 5, include: Celina Romany, *Ain't I a Feminist*, at 19; Trina Grillo & Stephanie Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons between Racism and Sexism (or Other Isms)*, at 44; Margaret Montoya, *Mascaras, Trenzas, y Grenas: Un/masking the Self While Un/Braiding Latina Stories and Legal Discourse*, at 57; Rachel Moran, *Full Circle*, at 113 (discussing how it felt to be teaching at UC Berkeley when the Regents ended affirmative action); Maria Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, at 188; Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, at 259; Maria Ontiveros, Rosa Lopez, Christopher Darden, and Me: *Issues of*

Jurisprudentially, CRF has much in common with Critical Race theory. It regards racism as an ordinary and fundamental part of American society, rather than an aberration. It utilizes the well-known narrative technique to construct alternative visions of reality and identity. CRF also adopts feminist notions focusing on the oppressed status of women within society.

CRF adds to Critical Race theory and feminism by placing women of color at the center, rather than in the margins or footnotes, of the analysis.<sup>10</sup> It attacks the notion of the essential woman, i.e., white middle class, and explores the lives of those facing multiple discrimination on the basis of their race, gender, and class, thereby revealing how all of these factors interact within a system of white male patriarchy and racist oppression.<sup>11</sup> It seeks to explore and celebrate the differences and diversity within women of color and to articulate how the law might improve their status.<sup>12</sup> Thus, while CRF is concerned with theoretical frameworks, it is very much centered on praxis and attempts to identify ways to empower women through law and other disciplines.

CRF goes beyond the U.S. domestic focus typical of most scholarship on Critical Legal Studies, feminism, and Critical Race theory. It embraces a global analysis as well<sup>13</sup> by taking the narrow United States notion of race and expanding it to look at the legal treatment of women of color, whether they are living in the developing world or in the developed world. After all, women of color in the United States originate in and often have

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*Gender, Ethnicity, and Class in Evaluating Witness Credibility*, at 269; Elizabeth Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!*, at 317.

10. See Kimberle 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.

11. See Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

12. See Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

13. The global issues unit in CRITICAL RACE FEMINISM, *supra* note 5, contains the following articles by the following authors: Devon Carbado, *Motherhood and Work in Cultural Context: One Woman's Patriarchal Bargain*, at 339; Isabelle Gunning, *Arrogant Perception, World Traveling, and Multicultural Feminism: The Case of Female Genital Surgeries*, at 352; Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, at 361; Sharon Hom, *Female Infanticide in China: The Human Rights Specter and Thoughts Toward (An)other Vision*, at 372; Janet Calvo, *Spouse-Based Immigration Laws: The Legacy of Coverture*, at 380; Adrien Wing & Eunice de Carvalho, *Black South African Women: Towards Equal Rights*, at 387.

continuing links with developing world societies, which also play a subordinate role within a post-Cold War unipolar world in which the United States dominates.

CRF also enhances the development of twentieth century international law, which is a field that has developed based upon principles first enunciated by American and European white male power elites. Men of color from the developing world did not become involved in entities like the United Nations until their respective nations gained independence or sufficient collective clout. Their voices are still muted, but often rise in discussions of cultural relativism and international human rights. European and American women have only very recently become involved in attempting to reconceptualize international law from a feminist perspective.<sup>14</sup> Once again, the viewpoints of women of color have been absent—a manifestation of their continued legal and social subordination on multiple grounds, including ethnicity, class, religion, and gender, both within and outside the developing world.<sup>15</sup> CRF adds to the development of international law by focusing on women of color in a theoretical and practical sense. The analysis may center on international human rights law, such as the Convention to Eliminate Discrimination Against Women (CEDAW),<sup>16</sup> but may also target the domestic law of a particular nation.

Now that I have provided a brief overview of CRF, I will discuss my efforts to use this type of analysis in three different international contexts.

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14. See, e.g., *WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* (Julie Stone Peters & Andrea Wolper eds., 1995); *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* (Rebecca Cook ed., 1994); *FROM BASIC NEEDS TO BASIC RIGHTS: WOMEN'S CLAIM TO HUMAN RIGHTS* (Margaret A. Schuler ed., 1994).

15. It has been noted that in the international women's rights movement, the voices of middle class European and American women are the loudest. Adetoun O. Ilumoka, *African Women's Economic, Social and Cultural Rights—Toward a Relevant Theory and Practice*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* (Rebecca Cook ed., 1994) at 307, 320; Celina Romany, *On Surrendering Privilege: Diversity in a Feminist Redefinition of Human Rights Law*, in *FROM BASIC NEEDS TO BASIC RIGHTS: WOMEN'S CLAIM TO HUMAN RIGHTS* 543 (Margaret A. Schuler ed., 1994); Julie Mertus & Pamela Goldberg, *A Perspective on Women and International Human Rights After the Vienna Declaration: The Inside/Outside Construct*, 26 N.Y.U. J. INT'L L. & POL. 201 (1994) (critiquing the hegemony of women from the North).

16. The Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 14 (1981)[hereinafter CEDAW].

## III. SPIRIT INJURY IN BOSNIA

My first attempt to use CRF analysis in the international women's rights context was in my article *Rape, Ethnicity and Culture: Spirit Injury From Bosnia to Black America*.<sup>17</sup> The article examined the intersection of gender, ethnicity, religion, and culture in the systemic, wide-spread rapes of Bosnian women as part of Serbian ethnic cleansing. Bosnia was not the first place where rape was used as a war tactic, but it was the first place where the world community took notice of the violations as they were occurring.<sup>18</sup>

These rapes constitute, not only a physical injury to the individual women affected, but a spirit injury to the women, their families, and their entire culture. The notion of spirit injury is derived from CRF Professor Patricia Williams' concept of "spirit-murder." Williams characterizes the psychological impact of racism as a murder which is "as devastating, as costly, and as psychically obliterating as robbery or assault."<sup>19</sup> I had used the concept of spirit injury in the domestic context to refer to the combined impact of racism and sexism.<sup>20</sup> In the instance of rape, spirit injury is a combination of the impact of physical and psychological assaults. In the Bosnian example, the injuries are exacerbated because the attacks were ethnically motivated as well. The Bosnian women were raped because they were Bosnian. On the group level, spirit injury is the cumulative effect of individual injuries, "which leads to the devaluation and destruction of a way of life or of an entire culture."<sup>21</sup> While criminal or tort law may compensate victims for physical assault, the law does not address the spiritual assaults.

After a review of the history of the Bosnian, Serbian, and Croatian people, my article analyzed the rapes as constituting a war crime under the Geneva Convention and a violation of the

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17. Adrien Katherine Wing & Sylke Merchan, 25 COLUM. HUM. RTS. L. REV. 1 (1993).

18. Rapes have probably occurred in every war. They were recorded during the battles of ancient Greece, the Crusades, the United States Civil War, the Vietnam War, and World War II. *Id.* at notes 18-25 and accompanying text.

19. Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 129 (1987).

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

21. Wing & Merchan, *supra* note 17, at 1.



Genocide Convention.<sup>22</sup> The article also discussed the effect of the rapes as spirit injury in the patriarchal Muslim culture, which requires women's sexuality to be controlled and limited to marriage. The article called for the law of rape, both internationally and domestically, to address the individual and group spirit injuries as well as the physical injuries in Bosnia.

To demonstrate how systemic injuries affect an entire ethnic group, we developed a model of the symptoms of the spirit injury of rape. These symptoms include defilement, silence, sexuality, emasculation, trespass, and pollution.<sup>23</sup> Women feel defiled and shamed by the rapes, and thus keep silent in many cases, internalizing their pain. The rapes are an assertion of Serbian male "sexuality" and constitute a deliberate attempt to trespass on Bosnian males, and thus, emasculate them. To the Serbians, the Bosnian men are not real "men" since they could not protect their own women from being defiled. The rapes are "pollution" of Bosnian culture because the Serbs were deliberately impregnating the Muslim women to create non-Muslim children. Since a Muslim woman is not permitted to marry a non-Muslim man, impregnation by a non-Muslim is an impossibility, which the women and culture are now forced to confront. The resulting children are in limbo since their religion is determined by the father. They are unwanted "Serbians," shunned by Bosnians and languishing in orphanages. How will these children react when they reach puberty and come to fully understand the horror that their existence represents to the Bosnian people?

In constructing the model, we drew upon the experience of black Americans during and after slavery. We theorized that the history of rape and forced miscegenation that was committed on black American women by their masters and other white men has led to a long term spirit injury on the African-American culture, which still remains untreated, more than one hundred years after the end of slavery.<sup>24</sup> The impact of this spirit injury is evidenced by the continuation of color consciousness, which still values light skin over dark skin in the black culture, and

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22. Geneva Convention Relative to the Protection of Civilian Persons in Times of War, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 287; Convention on the Prevention and Punishment of the Crime of Genocide, *adopted by the General Assembly* Dec. 9, 1948, 78 U.N.T.S. 277.

23. Wing & Merchan, *supra* note 17, notes 134-177 and accompanying text.

24. For more on rape in African-American culture, see Jennifer Wriggins, *Rape, Racism and the Law*, 6 HARV. WOMEN'S L.J. 103 (1983).

which also manifests itself in the myth of black matriarchy and welfare queens dominating emasculated criminalized unemployable black men. Although it will undoubtedly manifest in different ways in Bosnia, the effect of the spirit injury on black America provides a worst case scenario with which to evaluate the potential future effect of long term spirit injury in the Bosnian context. The unfortunate end result in Bosnia will probably be shunned, defiled Bosnian women, who are unmarriageable; parentless and rebellious "Serbian" children acting out their rage as living symbols of the trespass on Bosnian culture; and emasculated Bosnian men unable to resume their customary roles as heads of the family.

The article concludes with my proposition to treat the long term Bosnian spirit injuries through a combination of law, rehabilitative, and preventive measures in the fields of education, counseling, and employment training. These efforts must be fully financed through a joint effort by the Bosnians, Serbians, and the rest of the international community. The legal solutions include actions brought in the War Crimes Tribunal<sup>25</sup> as well as in the Bosnian local courts. The United States has served as a venue for suit under the Torture Victim Protection Act of 1992<sup>26</sup> and the Alien Tort Claims Act.<sup>27</sup>

Now that I have outlined my Article, let us examine how its principles could be applied in LatCrit theory. Latin America has been plagued by civil wars and military dictatorships, which viciously oppressed civilian opposition. The El Salvadorean and Nicaraguan civil wars come to mind as does the ongoing Peruvian conflict with the Shining Path guerrillas. Rape flourishes in such environments but remains an undiscussed topic. It took the Japanese nearly fifty years to admit the kidnapping of 70,000 to 200,000 Korean, Chinese, and Filipino women during World War II for the purpose of sexual servitude as "comfort women."<sup>28</sup> It should not take fifty years for these Latin American rapes to be brought to light and the victims compensated for both their physical and spiritual injuries.

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25. The tribunal was established by S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/Res. 827 (1993).

26. Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1991).

27. Alien Tort Claims Act, 28 U.S.C. § 1350 (1948).

28. See *Japan's Uncomfortable Past*, N.Y. TIMES, Aug. 8, 1993, § 4, at 14.

In addition to the area of rape, the civil wars and oppression have led to many "disappeared" persons, whose bodies have never been found and whose torturers, jailers, and murderers have never been identified, tried, or convicted. Remedies need to be found to assist the families, including the mothers, daughters, and wives, of these disappeared. Internal attempts to convene tribunals to either forgive or hold some small group of people accountable are not sufficient to deal with a spirit injury of this magnitude.

Another area where the concept of spirit injury could be used in Latin America is the forced sterilization of Puerto Rican women. It has been estimated that one-third of the childbearing age females have been sterilized, at the average age of twenty-eight.<sup>29</sup> Could an international law remedy be crafted? What are the remedies under domestic tort law? Are any of these women and their families, as part of the pronatalist Catholic culture, receiving counseling for such spirit injuries?

There are many Mexican women, who have left their families to work in U.S.-owned factories called *maquiladoras* on the Mexican side of the Texas border. The wages and conditions in these factories are horrendous, and many women are exposed to environmental hazards that can cause genetic damage. The women and their children ingest these toxic substances thereby causing permanent harm, but U.S. labor, employment, and environmental laws do not apply to these *maquiladoras* in Mexico. Where are the remedies for these sorts of physical and spirit injuries?

On the U.S. side of the border, Latina immigrants and their descendants are stereotyped as illegal lazy women, waiting to pop out babies in the United States in order to turn their undeserving children into citizens and collect welfare and health benefits or take jobs from "real" Americans. How could U.S. law be crafted to compensate these women for the spirit injury of defamation to themselves as individuals and their group as a whole?

I realize that these suggestions are rudimentary, but I hope they will inspire others to pursue this concept of spirit injury in future research on Latinas. Next, I will turn to CRF work done

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29. See *L'Operacion* (Cinema Guild, New York, 1982) a documentary on Puerto Rican sterilization.

on the subject of Palestinian women.

#### IV. PALESTINE

Palestine<sup>30</sup> has been my single largest area of scholarly interest. In addition to approximately one dozen publications on the region,<sup>31</sup> I served as legal advisor to the Palestinian Legislative Council during the summer of 1996 in order to assist them with the drafting of their first constitution. As you might imagine, wearing my multiple identities as a woman, scholar, fourteen-year Palestinian rights activist, mother (two children in tow), and African-American, that was a very interesting experience for me.

In *Custom, Religion and Rights: The Future Legal Status of Palestinian Women*,<sup>32</sup> I placed Palestinian women at the center of my analysis and examined how they faced multiple discrimination on the basis of their gender, custom, and religion. Both custom and the Islamic religion sanction differential treatment on the basis of gender. I proposed ways in which current and future Palestinian decisionmakers might begin to consider modifying these deeply entrenched norms to meet declared national goals of improving the legal status of women.<sup>33</sup>

30. I use the term Palestine to refer to the West Bank, Gaza Strip, and East Jerusalem (areas formerly known as the Occupied Territories).

31. In the area of Palestinian rights, my publications include: *Legal Decision-making During the Palestinian Intifada: Embryonic Self Rule*, 18 YALE J. INT'L L. 95 (1993); *Legitimacy and Coercion: Legal Traditions and Legal Rules for the Intifada*, MIDDLE EAST POL'Y, Fall 1993, at 87; *The Intifada: The Emergence of Embryonic Legal Mechanisms for Palestinian Self-Determination*, ARAB STUD. Q., Winter, 1993, at 63; *Prospects for a Democratic Palestine: Assets and Impediments*, in STATEHOOD 13 (Center for Policy Analysis on Palestine, 1994); *Palestinian Women: Their Future Legal Status*, ARAB STUD. Q., Winter, 1994, at 55; DEMOCRACY, CONSTITUTIONALISM AND THE FUTURE STATE OF PALESTINE (PASSIA Institute, Jerusalem, 1994); *The New South African Constitution: An Example for Palestinian Consideration*, 7 PALESTINE Y.B. INT'L L. 105 (1992-94); *Palestinian Women: Beyond the Basic Law*, THIRD WORLD LEGAL STUD. 141 (1994-95)(with Shobhana Kasturi); JUDICIAL REVIEW FOR PALESTINE (Birzeit Law Center, Palestine 1996)(with Qais Abdel-Fattah & Sonya Braunsweig); *The Palestinian Elections: An International Legal Context*, in PALESTINIAN ELECTIONS 17 (Center for Policy Analysis on Palestine, 1996); *A Critical Race Feminist Conceptualization of Violence: Palestinian and South African Women*, 60 ALBANY L. REV. (1997).

32. Adrien Katherine Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, 35 HARV. INT'L L.J. 149 (1994).

33. *Proclamation of the Independent Palestinian State*, issued by the 19th Session of the Palestine National Council, Algiers, Nov. 15, 1988, reprinted in INTIFADA: THE PALESTINIAN UPRISING AGAINST ISRAELI OCCUPATION 395 (Zachary Lockman & Joel Beinin eds., 1989). The Preamble to this symbolic declaration declared equality between the

Modern manifestations of ancient unwritten customary law (*urf*) control women in a system of patriarchy where their roles are limited to nurturers and repositories of family honor. Female chastity and purity must be maintained at all costs. Further, there is the ongoing tradition of honor killings, where male family members are authorized to kill errant sisters. An honor killing might be inflected for dating, premarital sex, leaving home without permission, marrying without approval, or other "Western" conduct. A bride price (*mahr*) is paid by the groom's family to the new bride.<sup>34</sup> If divorce occurs, she must return to the legal jurisdiction of her father or another male relative.

Islamic law (*sharia*) constitutes an additional source of discrimination in several ways. Men are permitted four wives, who can be Muslim, Christian, or Jewish, while women may only have one husband, who must be a Muslim.<sup>35</sup> The husband has the authority to beat his wife, and she must obey.<sup>36</sup> A man can divorce his wife at will, whereas a woman must have worthy grounds to get a divorce.<sup>37</sup> She will get custody of the children only if they are very young; however, at a certain age, custody automatically switches to the father.<sup>38</sup> A woman only inherits half what a male does even though they may be of the same degree of relationship to the deceased.<sup>39</sup> In the West Bank, the Islamic practices have been codified in the Jordanian Personal Status Code.<sup>40</sup>

After discussing the multiple levels of discrimination in my article, I then proposed three interrelated possibilities for legal reform. Such reforms must be undertaken carefully because of opposition from Islamic fundamentalist groups like Hamas and other traditionalists. First, Islamic reinterpretation can be undertaken based upon the work of progressive Islamic scholars.

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sexes. The most recent drafts of the constitution also call for such equality. See *infra* notes 43-45 and accompanying text.

34. ABDUL RAHMAN I. DOI, *WOMEN IN SHARI'AH* 154 (1989).

35. Abdullahi An-Naim, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13, 39 (1990); Ann Elizabeth Mayer, *Law and Religion in the Muslim Middle East*, 35 AM. J. COMP. L. 127, 144 (1987).

36. KORAN, Verse 4:34.

37. An-Naim, *supra* note 35, at 39.

38. Mayer, *supra* note 35, at 144.

39. An-Naim, *supra* note 35, at 39.

40. Jordanian Law of Personal Status, Temporary Law No. 61/1976, Official Gazette No. 2668 of Dec. 1, 1976. For discussion of this law, see Lynn Welchman, *The Development of Islamic Family Law in the Legal System of Jordan*, 37 INT'L & COMP. L.Q. 868 (1988).

Such thinkers have espoused ending polygamy, the male unilateral right to divorce, and male guardianship of women. Tunisia is an example of a country that abolished polygamy based upon Islamic reinterpretation.<sup>41</sup>

A second alternative for legal reform is the adoption of revised personal status and other codes based upon Islamic reinterpretation or international human rights laws such as CEDAW.<sup>42</sup> Additionally, the proposed Basic Law (9th Draft)<sup>43</sup> contains fundamental rights and freedoms that apply to both men and women. The equality clause prohibits discrimination "because of race, sex, color, religion, political opinion, or disability."<sup>44</sup> Another article in the draft, however, indicates that *sharia* is "a main source of legislation,"<sup>45</sup> thus continuing the conflict between women's rights and religious practices.

Legal reforms can only be successful if accompanied by societal change; thus, the final method to combat discrimination is to build upon societal changes wrought by the uprising known as the *intifada*, which lasted from 1987 to 1993. During this period, many more women were politically active and some shifts occurred in family relationships, such as bride price. At the same time, there was also a fundamentalist backlash that hindered women's gains. This backlash is most exemplified by the Gaza *hijab* campaign, in which almost all women had to wear a headscarf or face being pelted by rocks, vegetables, or acid.<sup>46</sup>

My overall research in the area leads me to conclude that Palestine may have the best chance in the Arab world to adopt and enforce human rights norms that will enhance the current legal status of women. However, only time will tell.

The CRF analysis of Palestinian women, with its emphasis on the multiple discriminations they face, has several implications for LatCrit research. Unwritten customary practices exist in other parts of the world besides the Middle East and Africa.

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41. For more discussion, see Wing, *Custom, Religion, and Rights*, *supra* note 32, at 164.

42. CEDAW, *supra* note 16.

43. Palestinian Basic Law (9th Draft) (on file with author). I assisted with the sixth draft during summer 1996. As of this writing, the Basic Law is still not finalized.

44. *Id.* art. 9.

45. *Id.* art. 4(b).

46. For more on the *hijab* campaign, see Rema Hammami, *Women, the hijab and the Intifada*, MIDDLE EAST REP., May-Aug. 1990, at 24, 25-26.

The entire patriarchal *machismo* concept leads to customary discrimination against Latinas, in both the United States and in Latin America. Despite the existence of equality norms in the various constitutions, *machismo* limits women in their ability to attend school, get married, raise families, and have careers.

Islam is not the only religion that affects the human rights of women and men. Most Latinas are Catholic, and consequently, are limited in their ability to get divorced, remarried, or become clergy. *Marianismo*, the cult of the Virgin Mary, requires women to aspire to a level of chastity and purity that is similar to that required by Palestinian custom. Additionally, the spirit injuries that result from these multiple discriminations could also be explored. Such research would enhance our understanding of Latina lives. Viable legal and social reforms could then be designed to assist them.

## V. SOUTH AFRICA

The final international topic to which I have applied CRF analysis involves Africa.<sup>47</sup> In an article entitled *Black South African Women: Towards Equal Rights*,<sup>48</sup> multiple discrimination on the basis of race, class, and gender was explored. Black South African women constitute the most oppressed group within the new democracy. Although apartheid officially ended a few years ago, black women are still *de facto* discriminated against on a racial and class basis by all whites (the group which still constitutes the bulk of employers). A few years of democracy is not enough to overcome decades of legal discrimination in all areas of life, including housing, land ownership, education, health care, employment, judicial administration, freedom of speech and association, public accommodations, and marriage.<sup>49</sup>

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47. My publications on Africa include: *Communitarianism vs. Individualism: Constitutionalism in Namibia and South Africa*, 11 WISC. INT'L L.J. 295 (1993); *The New South African Constitution: An Example for Palestinian Consideration*, *supra* note 31; *A Critical Race Feminist Conceptualization of Violence: Palestinian and South African Women*, *supra* note 31; *Constitutional Options for a Democratic South Africa: A Comparative Perspective*, 16 MICH. J. INT'L L. 689 (1995) (reviewing ZIYAD MOTALA, CONSTITUTIONAL OPTIONS FOR A DEMOCRATIC SOUTH AFRICA: A COMPARATIVE PERSPECTIVE (1994)); *Women in Law*, 82 J. AM. HIST. 1297 (1995) (reviewing AKINTUNDE OBILADE, WOMEN IN LAW (1993)).

48. Adrien Katherine Wing & Eunice de Carvalho, 8 HARV. HUM. RTS. J. 57 (1995).

49. *Id.* at 60.

These women are also discriminated against by men in general. White men are the bulk of employers, followed by Asian and colored men. Black men dominate black women based on customary or "tribal" norms that resemble the Palestinian case. The customary law of the black ethnic groups, primarily Zulu and Xhosa, affects personal status areas such as marriage, divorce, guardianship, succession, contractual power, and property rights. Women are literally and figuratively male property and cannot marry, acquire property, or engage in contracts without permission. Further, inheritance is a right granted to males only.<sup>50</sup> As is the case in Palestine, men pay a bride price or *lobolo*, but this amount goes to the father of the bride, not the woman herself, as in Palestine. Some South Africans have characterized this practice as buying a bride, while others regard it as insurance, symbolism or reaffirmation of their status in the community.<sup>51</sup> As in Palestine, there is polygamy, but the number of wives a man may have in South Africa is unlimited. Since most black women still marry under customary law, they are not covered by the protections of civil law, which forbids polygamy and grants women the right to inherit and make contracts.

This article discussed the impact of the 1993 Interim Constitution on historical patterns of gender and race inequality. The human rights chapter binds the executive and legislative branch. In it, there is an equal protection clause which states, "[e]very person shall have the right to equality before the law and to equal protection of the law."<sup>52</sup> This antidiscrimination clause is one of the most comprehensive in the world, covering "race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, and language."<sup>53</sup> Another clause permits, but does not require, affirmative action for disadvantaged groups.<sup>54</sup> A Gender Commission is created under the constitution as well.<sup>55</sup>

Significantly, the protections afforded in the constitution are limited to the public sphere; however, most women live their

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50. *Id.* at 64. For more on customary law, see T.W. BENNETT, A SOURCEBOOK OF AFRICAN CUSTOMARY LAW FOR SOUTHERN AFRICA (1991); J.C. BEKKER, SEYMOUR'S CUSTOMARY LAW IN SOUTHERN AFRICA (1989).

51. Wing & de Carvalho, *supra* note 48, at 64.

52. S. AFR. CONST. art. 8(1).

53. *Id.* art. 8(2).

54. *Id.* art. 8(3)(a).

55. *Id.* art. 119.



lives in the private sphere of the family. In addition, the constitution provides a role for customary law; however, this creates potential contradictions with the equality provisions.<sup>56</sup>

While these provisions are promising and exemplary on the global scene, our analysis indicates that insufficient attention was paid to the intersection of race and gender in the constitutive process. As a result, our fear was that the blacks who will advance the most will be black men and not black women. The women who will likely benefit from government and private sector affirmative action will be white women. Without special public and private efforts, black women are likely to languish at the bottom. Perhaps the new parliament, which is one-quarter women, will be able to plug the gaps in the constitution.

A permanent constitution was adopted in December 1996 and will take effect in 1997.<sup>57</sup> The Bill of Rights provisions will soon be binding on private parties as well as on the government.<sup>58</sup> Additionally, a revised article on freedom and security of the person now indicates that people have a right to be free from domestic violence, a major societal problem.<sup>59</sup> The revised article on culture and language indicates that while everyone has the right to participate in the culture of their choice, such culture must not be inconsistent with the Bill of Rights.<sup>60</sup> These revisions should enhance women's rights in the new South Africa.

How could this focus on race, class, and gender in the South African context apply to LatCrit theory? I have already mentioned how the *machismo* aspect of Latino custom could be explored. While Latin America does not place the same emphasis on race as does South Africa or the United States, there is the issue of ethnicity and color. Those with higher percentages of Spanish blood and whiter color are privileged over the darker "Indians." To say that one looks or acts like an "Indian" is an epithet. What situation then do darker Indian women face in various Latin American countries? How does the white/black dynamic play itself out in Puerto Rico and Cuba, in particular?

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56. *Id.* ch. XI.

57. S. AFR. CONST. (1996)(on file with author).

58. *Id.* art. 8(2).

59. *Id.* art. 12. For more on domestic violence, see *infra* Part VII; Wing, *A Critical Race Feminist Conceptualization of Violence*, *supra* note 31.

60. S. AFR. CONST. art. 30 (1996)(on file with author).

I know every time that I have gone to Latin America, if a dark person was with me, that person would face mistreatment. I found the color and class dynamic most interesting when I went to Brazil. As a light-skinned African-American, I was considered white. Under the Brazilian definition, ninety percent of the people are white. Every social event I attended where highly educated affluent people were in attendance was "lily white." Yet looking at the Brazilians from an American racial perspective, we might call most of them black. Ironically, in South Africa, I was classified a colored.

Critical Race theory analysis focusing on the culturally-constructed meaning of identity would be interesting in the Latin American context, as would detailed investigations of the lives of black Brazilian women who live in the Bahia province. In Nicaragua, there is a group of black English speakers who live on the remote Atlantic coast. How are these women treated compared to the white Spanish-speaking majority or to the dark indigenous-speaking Indians in an area that was recently the location of civil war between the Sandinistas and the Contras?

## VI. PALESTINIAN AND SOUTH AFRICAN WOMEN: VIOLENCE AGAINST WOMEN

My most recent use of CRF analysis builds upon my prior publications on Palestinian and South African women and extends the research in one specific area—violence against women. In this field, one can explore the intersection of gender, ethnicity, custom, and religion in a subject where little has been written outside the U.S. context.<sup>61</sup> In *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*,<sup>62</sup> I examine violence against women under both international and foreign law. It is only very recently that such violence has been thought of as a proper subject for international human rights law. Traditional notions of state responsibility have typically excluded the private sphere of family and home where most such violence occurs. There are also profound misconceptions and ig-

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61. For U.S. sources, see generally BEVERLY BALOS & MARY LOUISE FELLOWS, LAW AND VIOLENCE AGAINST WOMEN: CASES AND MATERIALS ON SYSTEMS OF OPPRESSION (1994); Romany, *Killing the Angel in the House*, *supra* note 2; DOMESTIC VIOLENCE LAW: A COMPREHENSIVE OVERVIEW OF CASES AND SOURCES (Nancy K.D. Lemon ed., 1996).

62. Wing, *A Critical Race Feminist Conceptualization of Violence*, *supra* note 31.

norance about the prevalence of the violence.<sup>63</sup>

For the purposes of my article, violence against women is defined according to the 1993 United Nations Declaration on the Elimination of Violence Against Women as "any act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."<sup>64</sup> Therefore, the notion includes what many call domestic violence<sup>65</sup> as well as violence from external sources, such as the State or enemies, as in the Bosnia situation.

Feminism has defined five traditional categories of violence against women: battering, sexual harassment, rape, prostitution, and pornography.<sup>66</sup> CRF enhances our understanding of violence by focusing on the racial aspect of the sexualized violence as well as the sexualized aspect of racial violence.<sup>67</sup> In the international context, articles have begun to focus on the plight of women in several countries.<sup>68</sup>

63. For a discussion of the reasons why so little attention has focused on domestic violence as a proper subject for international human rights law, see Michele E. Beasley & Dorothy Q. Thomas, *Domestic Violence as a Human Rights Issue*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 323 (Martha Fineman & Roxanne Mykitiuk eds., 1994).

64. *United Nations Declaration on the Elimination of Violence Against Women*, G.A. Res. 104, U.N. GAOR, 48th Sess., Supp. No. 49, at 217, U.N. Doc. A/RES/48/104 (1993).

65. Some authors have called for new terminology, such as "domestic terrorism" to more adequately capture the true nature of the harm. Isabel Marcus, *Reframing "Domestic Violence": Terrorism in the Home*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 11 (Martha Fineman & Roxanne Mykitiuk eds., 1994).

66. BALOS & FELLOWS, *supra* note 61, at 183.

67. See, e.g., RACE, GENDER AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS (Anita Hill & Emma Jordan eds., 1995); Martha Chamallas, *Jean Jew's Case: Resisting Sexual Harassment in the Academy*, 6 YALE J. LAW & FEMINISM 71 (1994); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense"*, 17 HARV. WOMEN'S L.J. 57 (1994); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231 (1994); James Zion & Elsie Zion, *Hozho Sokee—Stay Together Nicely: Domestic Violence Under Navajo Common Law*, 25 ARIZ. ST. L.J. 407 (1993); Kevin Brown, *The Social Construction of a Rape Victim: Stories of African-American Males about the Rape of Desiree Washington*, 1992 U. ILL. L. REV. 997; Sharon Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 UCLA WOMEN'S L.J. 191 (1991); Kristen Bumiller, *Rape as a Legal Symbol: An Essay on Sexual Violence and Racism*, 42 U. MIAMI L. REV. 75 (1987); Wriggins, *supra* note 24, at 103.

68. Celina Romany, *Black Women and Gender Equality in a New South Africa: Human Rights Law and the Intersection of Race and Gender*, 21 BROOK. J. INT'L L. 857 (1996); Wing & de Carvalho, *supra* note 48; Rivera, *supra* note 4; Rosemary Ofeibe Ofei-

In conceptualizing violence, I used two notions: the Outside/Inside dichotomy and the previously discussed spirit injury. With respect to the first concept, I posit that under conditions of the "outside" violence of colonialism, neocolonialism, apartheid, or occupation, the men of an oppressed group are not allowed to be "men" in the culturally-constructed sense of the term. In effect, they are not allowed to dominate in the outside public sphere of government and business because of the influence and control of outsider men. One of the few areas where the oppressed men can exert some limited expression of their maleness is through oversight of their own women in the "inside" or private sphere. The only sphere where the "emasculated" men can take out their frustration is the private one affecting their own women and children; thus, their families are going to be disproportionately subject to domestic violence because the family members bear the brunt of the oppressed men's frustration due to high unemployment and political impotence. Ironically, the oppressed male's ability to dominate even in the private sphere may be further limited since the oppressor's police or army can intrude in this realm as well.

Custom, culture, and religion become psychological refuges for the oppressed against foreign penetration.<sup>69</sup> Ancient, and in many cases, repressive patriarchal traditions may be glorified in order to restore and maintain a sense of manhood for the embattled men. Many women, as well as men, view these customs as desirable. Indeed, it is an area in which their culture is reaffirmed, even though it can lead to female subordination. Most women, subject to the multiple burdens of their ethnicity and gender, would not even think of going to the outsiders, i.e., police or other officials, to seek relief from repressive practices or to report their own men for abuse. This would make the women collaborators or traitors.<sup>70</sup>

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Aboagye, *Domestic Violence in Ghana: Some Initial Questions*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE* 260 (Martha Fineman & Roxanne Mykitiuk eds., 1994); Romany, *Killing the Angel in the House*, *supra* note 2; Wing & Merchan, *supra* note 17; Janet Calvo, *Spouse Based Immigration Laws: The Legacy of Coverture*, 28 *SAN DIEGO L. REV.* 593 (1991).

69. See NAWAL EL SAADAWI, *THE HIDDEN FACE OF EVE: WOMEN IN THE ARAB WORLD* 4 (Sherif Hetata ed. & trans., 1980).

70. Jenny Rivera has written about this "double bind" in the context of U.S. Latina women abused by Latino men. The women are fearful of reporting them to the police. Rivera, *supra* note 67. Kimberle Crenshaw has written about black American women's hesitance to involve the police in domestic disputes, and the general unwillingness of people of color in the United States, as racially subordinated people, to subject their pri-

The multiple effect of the violence on the women, simultaneously coming from outside and inside their culture, constitutes a "spirit injury" on the women, and thus on the entire culture. The symptoms of spirit injury discussed in Part III apply to Outside/Inside violence in this context as well: defilement, silence, sexuality, trespass, and emasculation.

South Africa's culture of the outsider violence of apartheid has contributed to the fact that many women and men accept domestic violence in the private sphere as a fact of life.<sup>71</sup> South African women have experienced a great deal of abuse as a result of both rape and domestic violence. While ninety-five percent of rapes are estimated to be unreported, it is believed that ninety-five percent were committed against black women.<sup>72</sup>

While the high prevalence of rape and abuse may be partially attributable to the outsider violence of apartheid, there is a role played by customary law as well. Since customary beliefs include the idea that women are male property, it follows that men have the right to batter and rape women.<sup>73</sup> These patterns have continued despite the adoption of the 1993 Constitution. Women who are victimized by domestic violence are unable to obtain much assistance from doctors, counselors, police, or the legal system.

The combination of the Outsider/Insider violence of apartheid and customary practices constitutes a massive spirit injury for black South African women. Women are defiled by the multiple levels of abuse—abuse from the outsider violence of the apartheid legacy, insider violence by their own men, and injury from a legal system that rerepresents them if they attempt to seek

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vate lives to public scrutiny. Kimberle Crenshaw, *Mapping the Margins*, *supra* note 67. For articles written between 1985 and 1988 on black women, see Beth Richie, *Battered Black Women: A Challenge for the Black Community*, in DOMESTIC VIOLENCE LAW: A COMPREHENSIVE OVERVIEW OF CASES AND SOURCES 154 (Nancy K.D. Lemon ed., 1996); Soraya M. Coley & Joyce O. Beckett, *Black Battered Women: Practice Issues in DOMESTIC VIOLENCE LAW: A COMPREHENSIVE OVERVIEW OF CASES AND SOURCES* 158 (Nancy K.D. Lemon ed., 1996). The United Nations Declaration on the Elimination of Violence Against Women expresses its concern that minority group women may be especially vulnerable to violence. See *United Nations Declaration on the Elimination of Violence Against Women*, *supra* note 64, Preamble.

71. Robert Shepard, *Working to Fix a Violent Culture*, CHI. TRIB., Aug. 28, 1994, at 1.

72. John Carlin, *After Violence, There is Only Fear*, INDEP., May 30, 1992, at 14.

73. *Id.* (quoting Lloyd Vogelmann, head of the Project for the Study of Violence at the University of Witwatersrand).

justice. The women may prefer to suffer in silence as their men attempt total control over their lives, including their sexuality.

The symptoms of spirit injury resulting from violence manifest themselves among the Palestinians as well. Unfortunately, the silence of spirit injury is so profound that there are no reliable statistics on domestic violence or other violence against women, and public discussion on such issues is still relatively muted.<sup>74</sup> Alarming rates of domestic violence have been found in the West Bank and Gaza. Wife beating continues due to patriarchy, i.e., the way males are socialized to view women from an early age, and the custom of noninterference in domestic disputes. Custom and religion dictate that it simply is not a crime to beat one's spouse.

There are several potential international legal remedies for the situation of violence against women in South Africa and Palestine, including CEDAW.<sup>75</sup> South Africa has ratified it. However, the Committee on the Elimination of Discrimination Against Women (Committee), which is the body charged with oversight of CEDAW, endorsed an explicit resolution on this point in 1992 since CEDAW is rather vague on the issue. This resolution recognized that violence against women is a form of discrimination.<sup>76</sup> CEDAW was interpreted as explicitly making gender-based violence a violation of several articles. The Committee's action was followed up in 1993 when the General Assembly of the United Nations adopted the Declaration on the Elimination of Violence Against Women, which defines violations of women's human rights to equality.

With respect to Palestine, the Basic Law (9th draft) explicitly states, "[t]he Palestinian National Authority shall work, without delay, to join the regional and international declarations and covenants that protect human rights."<sup>77</sup> This should include CEDAW. While the Authority, as an autonomous entity does not

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74. *Occupied Territories Human Rights Practices*, 7 DISPATCH (Dept. of St. Bureau of Pub. Affairs, 1996), available in LEXIS, Genfed Library, Dstate File. There are few empirical studies in the Arab world. Jamileh Abu-Duhou, *Report on Services Available for Victims of Violence and the Attitude of Service Providers in the West Bank/Palestine 1995-1996*, at 11 (on file with author).

75. CEDAW, *supra* note 16.

76. *General Recommendation No.19: Violence Against Women*, Comm. on Elimination of Discrimination Against Women, 11th Sess., Agenda Item 7, U.N. Doc. CEDAW/C/1992/L.1/Add.15(1992).

77. Palestinian Basic Law (9th Draft) (on file with author).

have the status of independent statehood, and thus cannot join these agreements, it is highly significant that it is committing itself to these principles.

The Article next looked at the domestic law of the jurisdictions. As discussed in Part V, a positive step forward is the new South African Constitution, which will come into effect in 1997. It has a revised article on freedom and security of the person. Article 12 now specifies that everyone has a right to be "free from all forms of violence from either public or private sources as well as the right not to be tortured in any way."<sup>78</sup> The revised article on language and culture now makes clear that while everyone has the right to participate in the culture of their choice, no one can do so if participation in that culture is inconsistent with the Bill of Rights.<sup>79</sup> These revised articles should augment the constitutional protections available to abused women.

I conclude by suggesting some legal and policy recommendations. With respect to the legal arena, both South Africa and Palestine could seek to implement some of the proposals of the United Nations Declaration on the Elimination of Violence Against Women, including the development of adequately funded national plans of action to promote the protection of women.<sup>80</sup>

Additionally, in Palestine, specific constitutional provisions could be drafted. Two Latin American countries provide models for future drafters. Brazil has a provision that states, "[t]he state should assist the families in the person of each of its members, and should create mechanisms so as to impede violence in the sphere of its relationships."<sup>81</sup> Colombia's constitution is also exemplar: "Family relations are based on the equality of rights and duties of the couple and on the reciprocal rights of all of its members. Any form of violence in the family, is considered destructive of its harmony and unity and will be sanctioned according to law."<sup>82</sup>

Equality between men and women cannot remain a paper right found only in the constitution. As a result, changes in the various personal status laws are required in both societies to put

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78. *Id.* art. 12.

79. *Id.* art. 30.

80. *United Nations Declaration on the Elimination of Violence Against Women*, *supra* note 64, art. 4.

81. C.F. [Constitution] art. 226, § 8 (Braz.).

82. COLOM. CONST. art. 42.

these laws in conformance with the new constitutions. Additionally, changes in penal laws are needed to ensure that domestic abuse is a crime and that batterers are arrested, tried, convicted, and sentenced. The South Africa Prevention of Family Violence Act is a step in the right direction, and Palestine should consider enacting similar provisions at some future point.

In addition to law, other areas are ripe for change. With respect to education, there is a profound need to train police, judges, lawyers, teachers, medical personnel, and professionals in both societies. Community education is also needed in schools, religious places and women's centers so that men, women, and children learn that violence against women is inappropriate in the twenty-first century. There is also a need for sensitive individual and family therapy in societies that shun this Western approach. The batterer must not be left out of the counseling loop. Anonymous hot lines and shelters are also essential, so that women may leave violent situations. All of these suggestions though will be merely "band aid" solutions unless women are given sufficient economic and educational opportunities to enable them to have realistic options if they do decide to leave abusive relationships.

There also must be programs that focus, not only on domestic violence, but on the legacy of outsider violence that affects women who have been the mothers, wives, and daughters of prisoners and martyrs as well as prisoners themselves during the liberation struggle. The controversial Truth Commission of South Africa is an attempt to deal with the cultural spirit injury caused by outsider violence. The Commission permits human rights violators from the apartheid era to confess all their crimes. If their cooperation and remorse are viewed as genuine, the result may be a pardon. At some far future point, Israel and Palestine might also consider creating such a Commission as an attempt at mutual healing.

Violence against Latinas in the United States and Latin America is a subject which deserves additional LatCrit research. Part III of this paper discusses rape and spirit injury as potential areas in need of greater consideration. The Outside/Inside dichotomy could be utilized to examine domestic abuse among Indian women or other minority groups in Latin America. Do their men exhibit increased tendencies to batter their women? It would also be interesting to explore how domestic violence mani-



feels itself in U.S. immigrant communities where *machismo* practiced in Latin America carries over in the new country. The Latino men must transform from majority group dominant culture to minority group subordinated culture. They lack the supportive surroundings or outlets for the frustration they face due to oppression on the job. Their women need to be exposed to educational and career options that did not exist in their home country. Do the men react to their "emasculatation" by lashing out even more at their wives and children? Additionally, the men have to deal with American laws that criminalize partner abuse and rape. Conduct that was legal or customary in their home country may now be penalized.

## VII. CONCLUSION

In conclusion, CRF is a relatively young untapped jurisprudential addition to the various critical frameworks. I hope that fruitful collaboration between CRF and LatCrit theorists will create energizing scholarship in the future. I will be grateful if my ideas provide some food for thought and make a small contribution to our mutual theoretical and practical endeavors.